

The Promise Scotland's response to the Scottish Government's consultation on legal aid reform

October 2026

Background

In 2017, [the Independent Care Review](#) was established, following years of campaigning from the care community demanding change. On February 5th 2020, it published its full findings in seven reports, including [the promise](#), with an ambition for Scotland that **all its children and young people will grow up loved, safe and respected— so that they will realise their full potential.**

To realise this ambition, the Independent Care Review set out over 80 recommendations on what must be done, set out under five foundations – Voice, Family, Care, People and Scaffolding.

Scotland's then First Minister promised that that the country would implement these recommendations in full, by 2030. That commitment got the support of all of the Scottish Parliament's political parties, and so Parliament made the promise.

[The promise](#) made a number of conclusions relating to legal advice and representation:

“Children and their families must have a right to legal advice and representation if required” (the promise, Pg 116).

[Plan 24-30](#) (Scotland's plan for keeping the promise) states that this means:

- *All children, young people and families in contact with the 'care system' and care experienced adults have access to independent advocacy and legal advice and representation if required.*
- *Legal professionals working with children and young people act with empathy, clarity and respect. There are accredited specialisms in child law that embed understanding of children's rights, trauma and wellbeing.*

The Promise Scotland's response to this consultation should be read in the context of the seven reports from the Independent Care Review and the information on Plan 24-30, which sets out a route map for change for [advocacy and legal advice](#). We have responded to the questions where we can draw clear positioning in line with the promise rather than respond to all questions in the consultation.

Consultation questions

1. As set out in the overview section, to what extent do you agree with the Scottish Government's proposed approach?

- Strongly agree
- **Agree**
- Neutral
- Disagree
- Strongly disagree
- Other (Please specify)

The Promise Scotland agrees with the proposed direction of reform. A simpler, more accessible and sustainable legal aid system is vital to protect the rights of individuals. We also see this review as an opportunity to help Scotland deliver on its commitment to fully implement the conclusions of the Independent Care Review by 2030 which relate to legal advice and representation.

On 5 February 2020, the Care Review published seven reports, with 'the promise' narrating a vision for Scotland, built on five foundations. In relation to legal advice and representation, the conclusions were as follows:

"Legal Representation

Children and their families must have a right to legal advice and representation if required. Scotland must be clear that the provision of advocacy does not replace rights to legal representation but the two roles (advocacy and legal representation) have a separate, distinct purpose. Emerging evidence is demonstrating that the presence of lawyers is supporting children to see their parents.

Upholding the rights of children on the edge of and within Scotland's system of care requires a unique skill set. The Review has also heard the language used by lawyers has been confusing and distressing. Lawyers must act in way that is accessible, understandable and not overtly adversarial.

Scotland must consider the creation of an accredited legal specialism to set standards for legal professionals representing children. Those standards must uphold children's rights, understand trauma and attachment and how to operate in a setting that seeks to uphold children's wellbeing. There must be ready access to legal advice and representation when aspects of the 'care system' go wrong. There must be clarity about where care experienced children and young people can turn for legal redress."

Plan 24-30 (Scotland's plan for keeping the promise) states that this means:

“All children, young people and families in contact with the ‘care system’ and care experienced adults have access to independent advocacy and legal advice and representation if required.

Legal professionals working with children and young people act with empathy, clarity and respect. There are accredited specialisms in child law that embed understanding of children’s rights, trauma and wellbeing.”

We were pleased to see progress towards these objectives under the recent Children (Care, Care Experience and Services Planning) (Scotland) Act 2026. That Act requires rights of access to independent care experience advocacy services to be established by regulations and places the Scottish Ministers under a duty to ensure that services are available to the extent necessary for those rights to be exercised. It also requires regard to be had to enabling access at the earliest appropriate opportunity.

We see a clear opportunity for the new legal aid framework to complement this change by making specific and enforceable provision for the needs of care experienced children, young adults and their families. There is an obvious overlap between some of the proposals for legal aid reform, and the recommendations under the Promise.

Legal aid reform should support early access to legal advice, prevent problems from escalating and ensure that publicly funded legal assistance is readily available when aspects of the system of care go wrong. The Promise recognises that rights and entitlements should ordinarily be respected and upheld without children and families having to resort to litigation. However, those with the least power and agency must have access to advocacy and legal advice in order to obtain that to which they are entitled.

A system described as user-centred must be designed around the experiences and needs of children, young adults and families, rather than requiring them to navigate complex administrative structures.

2. Do you think it would be beneficial for Scottish Ministers to continue to set a clear purpose for the legal aid system, supported by periodically updated objectives for the Scottish Legal Aid Board?

- **Yes – both purpose and objectives**
- Yes – purpose only
- Yes – objectives only
- Neither purpose nor objectives
- Don’t know

3. What principles, if any, should inform the purpose and objectives?

Principles are the high-level considerations that guide how decisions are made (e.g. user-centred or evidence-based). “Purpose” describes the overarching aim of the system, and “objectives” set out the specific outcomes needed to deliver that aim.

The purpose and objectives of the legal aid system should be informed by the following principles:

1. Children’s rights - The UNCRC and the rights of children should be central to the legislative framework and to the design and delivery of legal aid.
2. Voice and meaningful participation - Children and young people must be listened to and meaningfully involved in decisions affecting them. Their views must be heard and responded to, rather than treated as a procedural formality.
3. Accessibility - Legal services must be understandable, approachable and capable of being accessed quickly. Legal advisors must communicate in language that children and families can understand.
4. Trauma-informed practice - Services for children and families on the edge of or within the system of care must understand trauma, attachment and child development.
5. Non-adversarial practice - Legal representation should uphold rights without unnecessarily intensifying conflict or distress.
6. Early intervention and prevention - Advice should be available before legal problems escalate into crisis or require litigation. This principle is reinforced by the approach taken in the 2026 Act, which recognises the importance of access to advocacy at the earliest appropriate opportunity.
7. Ready access to legal redress - Care experienced children and young people must know where to turn when systems fail and must be able to obtain legal advice and representation.
8. No substitution of advocacy for legal representation - Advocacy and legal representation perform distinct functions. Access to advocacy must not be used to restrict access to legal advice or representation where legal expertise is required.
9. Effective referral pathways - A person receiving advocacy must be able to move into legal advice or representation without repeated referrals, unnecessary reassessment or delay. Equally, legal advisers should

understand when access to independent advocacy would assist their client. Passporting provisions will be relevant to this.

10. Independence - Publicly funded legal advisers must be, and be seen to be, independent of the authorities whose decisions or actions may require challenge. The 2026 Act's focus on the independence of care experience advocacy provides a useful parallel for protecting the actual and perceived independence of legal assistance.
11. Awareness and active assistance - Rights are not effective unless those entitled to exercise them know that they exist and can access the relevant service. Information about legal aid must therefore be accessible, age-appropriate and provided at relevant decision-making points. Passive publication of information should not be treated as sufficient.
12. Needs-based provision - Services should be designed and commissioned according to identified need, supported by clear data and direct engagement with children and families.
13. Standards, qualifications and training - Providers assisting children and care experienced people should meet appropriate standards and receive specialist training. The 2026 Act provides a recent legislative precedent for establishing standards and training requirements in relation to advocacy. Legal aid reform should complement this by supporting specialist standards for legal advisors.
14. Outcome-focused accountability - Success should be assessed according to children's and families' experiences and outcomes, rather than administrative inputs, expenditure or volumes of activity alone.
15. Inclusive access – the definitions which are used to determine rights and entitlements should be broad enough to include all young people for whom Scotland has exercised parenting responsibilities – i.e. to ensure that children who leave care prior to their sixteenth birthday are able to access legal entitlements.
16. Independent scrutiny and consistent standards - Services should be subject to consistent standards, meaningful scrutiny and continuous improvement.

4. Do you think these principles should be subject to Parliamentary scrutiny?

- ☐ **Yes**
- ☐ No
- ☐ Don't know

5. Which of the following benefits, if any, do you think simplification would provide? (Select all that apply)

- ☐ Easier access for users
- ☐ Reduced administrative burden for providers and the Scottish Legal Aid Board
- ☐ Faster decision-making
- ☐ Improved consistency
- ☐ Better use of public funds
- ☐ Ability to support a wider range of service delivery models
- ☐ Ability to support innovation and service improvement
- ☐ Ability to support providers in different ways e.g. technology or training
- ☐ None
- ☐ **Other (please specify)**

Simplification should help care experienced children, young adults and families obtain legal advice quickly, understand what assistance is available and move through the system without repeated applications, reassessments or referrals.

It should also ensure that the developing of advocacy and legal aid frameworks connect clearly. The 2026 Act represents important progress in establishing rights of access to independent advocacy. Legal aid reform should now make it equally clear:

- when an individual requires advocacy;
- when an individual requires legal advice or representation;
- when both forms of support may be needed;
- how advocates can refer individuals for legal advice; and
- how individuals can move between services without avoidable delay.

Simplification should not remove safeguards or narrow access. Its success should be assessed by whether children and families experience the system as accessible, understandable, responsive and capable of securing their rights.

6. To what extent do you agree with the proposal to consolidate or streamline, where possible, the current range of separate aid types?

- ☐ Strongly agree

- ☒ **Agree**
- ☐ Neutral
- ☐ Disagree
- ☐ Strongly disagree

7. To what extent do you agree or disagree that contributions and repayment arrangements should be simplified?

- ☐ Strongly agree
- ☒ **Agree**
- ☐ Neutral
- ☐ Disagree
- ☐ Strongly disagree

8. To what extent do you agree or disagree that contributions and repayment arrangements should be made more consistent across all types of legal aid?

- ☐ Strongly agree
- ☒ **Agree**
- ☐ Neutral
- ☐ Disagree
- ☐ Strongly disagree

9. What changes, if any, should be made to contributions and repayment arrangements? (Select all that apply)

- ☐ Clear and consistent rules
- ☐ Transparent calculations
- ☐ Simpler assessments
- ☐ Published guidance
- ☐ Safeguards for low incomes
- ☐ Flexibility in exceptional cases

- **Other (please specify)**

There should be specific protection against contributions or repayment arrangements preventing children, care experienced young adults and their families from obtaining legal advice and representation in matters concerning care, family relationships, accommodation, support, rights and entitlements.

Information about contributions and repayment should be provided in accessible and child-friendly language. Individuals should not be exposed to unexpected or hidden financial liabilities.

The impact of financial arrangements should be monitored through engagement with children, young adults, families and advocacy providers. Advocacy organisations may be particularly well placed to identify circumstances in which anticipated legal costs prevent people from taking advice.

Monitoring should not be confined to application numbers or sums recovered. It should examine whether people have forgone legal advice, abandoned a matter or relied on advocacy in circumstances where legal representation was required.

10. Do you agree that eligibility for legal aid should be clearly separated from the assessment of what a person is required to contribute?

- Yes
- No
- **Unsure**

11. To what extent do you agree or disagree that the Scottish Legal Aid Board should have a bi-annual statutory duty to review and advise on contribution thresholds and arrangements?

- Strongly agree
- **Agree**
- Neutral
- Disagree
- Strongly disagree
- Other (please specify)

A regular statutory review is supported, but it should assess more than general economic conditions. It should consider whether contribution thresholds or

repayment arrangements are deterring care experienced children, young adults or families from seeking advice.

Reviews should be informed by lived experience and outcome data. They should examine:

- delay in obtaining advice;
- unmet legal need;
- withdrawal from cases;
- whether people have forgone advice because of anticipated cost;
- whether advocacy providers encounter cases that require legal assistance but cannot be referred successfully; and
- whether financial barriers create a gap between the advocacy and legal aid systems.

Biannual review should be a minimum rather than a barrier to earlier adjustment where evidence demonstrates that arrangements are preventing access.

12. Are you in favour of a higher trust model for accredited providers?

A “high trust” model would focus less on upfront checks by the Scottish Legal Aid Board and give accredited solicitors greater freedom to progress cases without repeated approvals at different stages.

- ☐ Yes
- ☐ No
- ☐ **Don't know (please specify)**

A higher-trust model is supported where it enables accredited providers to deliver advice and representation without avoidable delay.

In matters involving children on the edge of or within the system of care, accreditation should include specific standards relating to:

- children’s rights;
- trauma and attachment;
- child development;
- accessible communication;
- non-adversarial practice;
- professional independence;
- working effectively with advocates; and

- understanding the distinct roles of advocacy and legal representation.

The 2026 Act provides a useful recent precedent for linking rights-based support with standards, qualifications and training. Legal aid reform should build on that direction by supporting the development of an accredited legal specialism for lawyers representing children and care experienced people.

Accreditation should be accompanied by consistent national standards, continuing professional learning, monitoring of children's and families' experiences and appropriate independent scrutiny. It should not create a two-tier system in which specialist representation is unavailable in parts of Scotland.

13. Are you in favour of data sharing between organisations (such as the Scottish Legal Aid Board and Social Security Scotland) to ease the passporting of benefits?

Passporting is where an entitlement to one benefit or scheme gives access to another.

- **Yes**
- No
- Don't know (please specify)

Data sharing is supported where it reduces repeated requests for information, makes eligibility easier to establish and allows children, young adults and families to access legal assistance more quickly.

It may also support effective referral between advocacy and legal advice services, provided that information is shared lawfully, transparently and only where appropriate.

The purpose of data sharing should be clearly defined and limited to improving access and outcomes. Data should not be treated as a substitute for listening to the individual or understanding the full circumstances of a child or family.

Implementation should recognise that existing datasets may not reliably identify care experienced people. Data quality, completeness and inclusive definitions must therefore be addressed. Children and young people should receive accessible information about:

- what information is being shared;
- who will receive it;
- why it is being shared;
- how it may affect their application; and

- what choices or rights they have.

Coordination with implementation of the 2026 Act will be important so that data-sharing arrangements facilitate, rather than fragment, access to advocacy and legal assistance.

**14. Which funding models do you think should be used more in future?
(Select all that apply)**

- Judicare (case-by-case funding)
- Commissioning (grant funding / contracting)
- Direct employment
- **Other (please specify)**

A mixed model should be available because no single delivery mechanism is likely to meet every form of need.

Judicare should remain available to preserve access to independent legal representation and choice of solicitor. Commissioning and direct employment may be appropriate to address gaps in provision, create specialist services and secure access in areas where ordinary provision is insufficient.

The 2026 Act demonstrates that establishing a right is not sufficient unless services are available to enable the right to be exercised. Legal aid planning should adopt the same practical approach. Where ordinary provision is insufficient, the responsible bodies should be able and required to take steps to ensure that appropriate independent legal services are available.

Funding decisions should be based on identified need and should support early, preventative and holistic assistance. Commissioning should promote collaboration rather than competition or duplication and should provide sufficient stability for services that meet appropriate standards and achieve positive outcomes.

Whatever funding model is used:

- advocacy must remain functionally distinct from legal representation;
- advocates should have effective referral routes into legal services;
- lawyers should be able to work constructively alongside advocates;
- legal advisers must remain professionally independent; and
- the funding body should not be capable of influencing advice given in a case involving a challenge to a public authority.

15. Are you in favour of services being commissioned directly in line with the approach set out, for example through grants/contracts or direct employment?

- Yes
- No
- **Unsure (please specify)**

Direct commissioning is supported where it addresses clearly evidenced gaps and secures ready access to specialist legal advice and representation for care experienced children, young adults and families.

Commissioned services should:

- be designed with meaningful participation by children, young adults and families;
- be based on local and national assessments of need;
- complement rather than displace access to independent judicare representation;
- work effectively with independent advocacy services;
- include services equipped to assist children with disabilities or other barriers, including unaccompanied asylum-seeking children;
- provide accessible, trauma-informed and non-adversarial assistance;
- operate under consistent national standards;
- be funded for a period that supports continuity, relationships and workforce stability; and
- be evaluated according to experience and outcomes rather than case volume alone.

The 2026 Act's focus on independent advocacy highlights the importance of structural and perceived independence. Commissioning arrangements must therefore protect professional independence. A service funded or employed by a public body must still be able to advise and represent a child or family whose rights may have been infringed by that or another public authority.

Service specifications should include clear pathways between advocacy and legal advice. They should avoid making advocates responsible for functions that properly belong to qualified legal representatives.

18. Which of the following planning and reporting requirements do you think should apply to the Scottish Legal Aid Board under any new scheme? (Select all that apply)

- ☐ Approval by Ministers of strategic service delivery plans
- ☐ Reporting regularly to the Scottish Government and the Scottish Parliament on performance and outcomes of the legal aid system
- ☐ No significant change from current annual reporting to the Scottish Parliament
- ☐ **Other (please specify)**

Strategic plans and reports should include:

- evidence of legal need among care experienced children, young adults and families;
- geographical and subject-area gaps in provision;
- waiting times and speed of access;
- availability of specialist, trauma-informed representation;
- the experiences and views of children and families;
- the accessibility and understandability of services;
- the effect of contributions and repayment arrangements on take-up;
- continuity of representation;
- outcomes achieved for users;
- complaints and routes to redress;
- the number and nature of referrals from advocacy services;
- whether individuals receiving advocacy can obtain legal advice where required;
- whether people are informed of both advocacy and legal assistance;
- the time taken to move between advocacy and legal services; and
- action taken in response to identified shortcomings.

Planning should be coordinated with implementation of the 2026 Act. It should identify how advocates refer individuals for legal advice, how legal advisers work appropriately alongside advocates and how gaps between the two systems will be prevented.

Reporting should not focus solely on expenditure, case numbers or process compliance. Data should be combined with meaningful engagement and qualitative evidence from those who use services.

19. Do you think there should be powers to act if the Scottish Legal Aid Board is not able to deliver the objectives of the legal aid system?

- ☐ **Yes**
- ☐ No
- ☐ Don't know

20. Who should have powers to act if the objectives of the legal aid system are not being delivered? (Select all that apply)

- ☐ Scottish Ministers
- ☐ Scottish Parliament
- ☐ Both Scottish Ministers and the Scottish Parliament
- ☐ An independent body
- ☐ No formal powers
- ☐ **Other (please specify)**

As noted in response to question 19, The Promise Scotland agrees that there should be powers to act if the objectives of the legal aid system are not being delivered. However, further exploration of the options would be required to determine the best mechanism for this.

21. What types of powers should be available? (Select all that apply)

- ☐ Direct the Scottish Legal Aid Board to take action
- ☐ Set or change performance targets
- ☐ Commission independent reviews
- ☐ Change governance arrangements
- ☐ **Other (please specify)**

Powers should include:

- requiring a time-limited improvement plan;

- directing action to address geographical or specialist gaps;
- requiring engagement with affected children and families;
- requiring engagement with advocacy providers about unmet legal need;
- directing the creation or improvement of referral pathways;
- requiring publication of progress and outcome information; and
- requiring remedial action where financial or administrative rules are preventing access.

Performance targets should measure substantive access and outcomes, including:

- ready access to legal advice;
- accessibility of communication;
- availability of specialist representation;
- user experience;
- the effectiveness of referrals from advocacy;
- continuity between services; and
- whether relevant legal problems are resolved at the earliest appropriate stage.

Targets should not incentivise faster case closure or reduced expenditure at the expense of quality, relationships or rights.

Independent reviews should place children's voices and experiences at the centre of their methodology. They should also examine the interaction between legal aid and the advocacy framework established under the 2026 Act.

22. Overall, how would you characterise the likely impact of the proposed reforms?

- Likely to have a positive overall impact
- Likely to have a negative overall impact
- Likely to have mixed impacts
- **Insufficient information to reach a conclusion**

The proposed reforms have the potential to produce a positive impact through simpler pathways, earlier assistance, strategic planning, a wider range of delivery models, better use of data and a higher-trust approach for accredited providers.

From the perspective of The Promise, the ultimate impact will depend on whether implementation improves the actual experience of care experienced children, young adults and families. The reforms should be judged by whether they provide ready, timely and understandable access to legal advice and representation, particularly when systems fail or rights and entitlements are not being respected.

The Children (Care, Care Experience and Services Planning) (Scotland) Act 2026 is an important recent legislative step towards implementing The Promise's call for independent advocacy. Once implemented, it is intended to provide care experienced people with a lifelong entitlement to advocacy and to strengthen the provision of information and access to advocacy within the Children's Hearings System.

Legal aid reform provides an opportunity to complete the support framework around those rights by ensuring that independent legal advice and representation are readily available where advocacy is not appropriate.

The reforms should avoid creating an artificial choice between advocacy and legal representation. The effectiveness of the new advocacy framework will depend in part upon there being clear and accessible routes into legal advice when an advocate identifies that a person's rights require legal interpretation, negotiation, enforcement or redress.

The principal opportunities are:

- reducing complexity and repeated applications;
- supporting earlier advice and preventing escalation;
- creating clear pathways between advocacy and legal representation;
- commissioning specialist services where need is unmet;
- developing an accredited specialism for legal advisors representing children;
- improving accessibility and trauma-informed practice;
- planning services according to need;
- ensuring that statutory rights are matched by practical service availability; and
- focusing accountability on experience and outcomes.

The principal risks are:

- sustainability or efficiency objectives restricting access in practice;
- strategic commissioning displacing independent representation or choice;
- advocacy being treated as a substitute for legal representation;
- ineffective referral pathways between advocates and lawyers;
- financial contributions or repayment deterring early advice;

- data being relied upon without listening to children and families;
- national consistency overlooking individual circumstances;
- direct employment or commissioning compromising perceived or actual independence;
- specialist services being inconsistently available across Scotland; and
- performance measures prioritising process, volume or cost over rights and outcomes.

The Bill and implementation framework should therefore include explicit commitments to children's rights, meaningful participation, ready access to independent legal advice and representation, specialist and trauma-informed practice, inclusive eligibility, transparent monitoring and corrective action where legal need is not being met.

We have not responded to questions within the following sections:

- Equality Impact Questions
- Business and Regulatory Impact Assessment (BRIA)

Child Rights and Wellbeing Impact Assessment (CRWIA) Questions

40. In your view, could the proposals impact children and young people?

- ☒ **Yes**
- ☐ No
- ☐ Unsure

41. If yes, do you consider the impact is likely to be:

- ☐ Positive
- ☐ Negative
- ☐ Both positive and negative
- ☒ **Unsure**

42. Which aspects of children's rights could be affected? (Select all that apply)

- **Access to justice**
- **Right to be heard**
- **Protection from harm**
- **Right to family life**
- **Equality and non-discrimination**
- **Other (please specify)**

All of the listed aspects of children's rights could be affected.

Access to justice

Legal aid determines whether children and their families can obtain advice, understand legal processes, challenge decisions and secure an effective remedy when their rights are not respected. The Promise states that children and their families must have a right to legal advice and representation where required and that there must be ready access to legal assistance when aspects of the system of care go wrong.

Children must receive accessible and age-appropriate information about their rights, the legal aid available, any financial consequences and the distinction between advocacy and legal representation. Rights have limited practical value if children do not know that assistance exists or cannot identify where to seek redress.

Access to legal advice is particularly important where decisions may restrict or remove a child's liberty, including decisions concerning secure care. The Promise requires children to understand the legal protections and appeal rights applying in secure care and insists that this must be done meaningfully rather than tokenistically.

Right to be heard

Access to legal advice and representation can help children understand processes and decisions, communicate their views and participate meaningfully in proceedings. The Promise requires children to be listened to and meaningfully and appropriately involved in decisions about their care. It also calls for decision-making to address power imbalances that can allow professional voices to crowd out the child's views.

The 2026 Act reinforces this direction by strengthening information and advocacy arrangements within the Children's Hearings System. The wider legal aid system should ensure that children can also obtain child-centred legal advice and

representation when participation requires legal support rather than advocacy alone.

Protection from harm

Children may require legal advice where decisions concern their safety, care, accommodation, support, secure care, restraint or liberty. Timely advice can help identify rights infringements and prevent legal problems from escalating. The Promise requires children's rights to be upheld throughout decision-making and emphasises that responses to children who have experienced trauma must be informed, therapeutic and protective.

Right to family life

Legal advice and representation may affect decisions about whether children remain with their families, relationships with parents and brothers and sisters, contact with family members, permanence and state intervention. The Promise places family relationships at the centre of its approach and recognises that legal representation can support children's relationships with their families.

Equality and non-discrimination

Children who are care experienced, living with disabilities, unaccompanied asylum seekers, living in poverty, living in secure care or unable to communicate or instruct in conventional ways may encounter additional barriers to legal assistance. A formally uniform scheme may have unequal effects if it does not recognise those circumstances.

The Promise calls for specialist support for children with disabilities and unaccompanied asylum-seeking children and an inclusive approach to definitions governing care-related rights and entitlements. It also recognises that poverty, inequality and trauma can compound poor outcomes for care experienced children.

43. Could the proposals improve access to legal advice and representation for children and young people?

- ☐ Yes
- ☐ No
- ☐ **Unsure**

44. Are there any groups of children or young people who may be particularly affected?

As set out above, the proposals would have a particular impact on children:

- who are care experienced,
- with disabilities,
- who are unable to communicate or instruct in conventional ways (e.g. infants and nonverbal children),
- who are unaccompanied asylum seekers,
- living in poverty, and
- subject to secure care.

45. What steps could be taken to maximise positive impacts on children's rights and wellbeing?

1. Make children's rights an express legal aid principle

The statutory purpose and principles should expressly recognise children's rights, access to justice and meaningful participation. They should require the legal aid system to operate in a manner consistent with the best interests, rights and evolving capacities of children.

2. Guarantee early access

Legal advice should be available at the earliest appropriate stage, including before formal proceedings have begun. Early assistance can help children and families understand decisions, resolve disputes and avoid escalation.

This would complement the direction taken in the 2026 Act, which places importance on timely access to advocacy and strengthens the provision of information and referral opportunities within the Children's Hearings System.

3. Provide child-friendly information and active referral

Children should receive clear, accessible and age-appropriate information about:

- their right to obtain advice;
- the assistance available;
- how to contact a provider;
- the difference between advocacy and legal representation;
- any contribution or repayment liability;
- confidentiality; and
- routes to review, challenge or appeal.

Information should be provided at relevant decision points. Children should be offered practical help to contact a lawyer rather than simply being directed to a website or list of providers.

4. Create effective pathways between advocacy and legal representation

Implementation should be coordinated with the advocacy provisions in the 2026 Act. Advocates should know how to identify and refer legal issues, while solicitors should understand and respect the advocate's separate role.

Referral arrangements should minimise repeated disclosure, with appropriate consent and data safeguards. A child should not need to retell distressing experiences unnecessarily each time they move between services.

5. Preserve the distinction between advocacy and legal representation

Guidance should state clearly that advocacy does not replace legal advice or legal representation. The availability of an advocate should never be used as a reason to refuse or restrict legal aid where legal expertise is required.

6. Establish a specialist accreditation framework

The reform should support an accredited specialism for lawyers representing children. Standards should cover:

- children's rights;
- trauma and attachment;
- child development;
- communication with children;
- disability and additional support needs;
- non-adversarial practice;
- the Children's Hearings System;
- working alongside advocates; and
- professional independence.

This would reflect The Promise's recommendation that Scotland consider an accredited legal specialism for professionals representing children.

7. Ensure sufficient specialist provision throughout Scotland

Strategic needs assessments should identify geographical and subject-area gaps. Commissioning powers should be used to address those gaps without unnecessarily displacing existing independent provision or restricting choice.

8. Remove financial barriers

Children should not be personally responsible for contributions. Contributions or repayment liabilities imposed upon parents or carers should not prevent a child from receiving independent advice. Urgent advice should not be delayed while financial eligibility is assessed.

9. Support continuity and trusted relationships

Wherever possible, the same lawyer should support the child throughout connected processes. Funding and administrative rules should recognise the time required to build trust, explain complex matters and communicate in a way suited to the individual child.

10. Involve children and young people in service design

Care experienced children and young people should be meaningfully involved in developing legal aid principles, service standards, information materials, accreditation requirements, complaints processes and outcome measures.

11. Measure substantive outcomes and experience

Evaluation should consider whether children:

- obtained advice when it was needed;
- understood the advice provided;
- felt listened to and respected;
- were able to participate in decisions;
- experienced continuity;
- could access a specialist lawyer;
- could move effectively between advocacy and legal services; and
- obtained an effective remedy where their rights were not upheld.

The Promise warns that administrative data cannot, by itself, explain children's experiences. Monitoring must combine quantitative information with direct engagement and qualitative evidence.

12. Establish accessible complaints and redress mechanisms

Children should be told how to raise concerns about legal aid decisions or the service received. Complaints procedures should be child-friendly, independent and capable of producing timely remedies.

46. What steps could be taken to mitigate any negative impacts?

The following safeguards should be incorporated into the legislation and implementation arrangements.

1. Protect scope and entitlement

Simplification should not be used to narrow the matters covered, reduce the assistance available or remove procedural protections. The effect on children should be assessed before existing categories or routes to representation are consolidated.

2. Prevent financial deterrence

Children should not face contributions or repayment liabilities. No child should be denied or delayed legal assistance because a parent or carer cannot, or will not, make a contribution.

Clear safeguards should apply where the child's interests differ from those of a parent, carer or public authority.

3. Protect actual and perceived independence

Directly employed or commissioned lawyers must remain able to advise and act against public authorities. Funding and contractual arrangements should not influence the advice provided, the cases accepted or the remedies pursued.

The emphasis on independent advocacy in the 2026 Act provides a useful parallel. Legal advice must likewise be independent of the body whose decisions may be under challenge.

4. Do not substitute advocacy for legal representation

Legislation, guidance and decision-making criteria should make clear that an advocate cannot be expected to provide legal advice, interpret complex law, conduct litigation or exercise the professional functions of a solicitor.

5. Avoid gaps between services

Formal protocols should govern referral between advocacy and legal aid providers. Responsibility for assisting the child should not be lost while organisations decide which service is appropriate.

6. Maintain individual choice where possible

Commissioned services should supplement provision and address gaps, rather than automatically displacing a child's ability to choose an appropriately qualified solicitor.

7. Require child-rights impact assessment of implementation measures

Regulations, eligibility changes, contribution rules, service plans and commissioning decisions should be assessed for their impact on children generally and upon particular groups of children.

8. Preserve non-digital access

Digital systems may improve efficiency but should not become the only route to advice. Face-to-face and supported access should remain available for children who lack privacy, technology, connectivity, confidence or the ability to communicate effectively online.

9. Avoid rigid or exclusionary definitions

Eligibility should not depend on narrow definitions of care experience that exclude children or young people for whom Scotland has exercised parenting responsibility. The Promise specifically identifies deficiencies in definitions that exclude people who left care before 16 or experienced adoption disruption.

10. Monitor legal aid deserts and specialist capacity

There should be regular reporting on geographical availability, waiting times, specialist expertise and unsuccessful referrals. Remedial commissioning or other intervention should follow where unmet need is identified.

11. Avoid inappropriate performance incentives

Targets should not encourage providers to close cases quickly, avoid complex clients or minimise time spent developing trusted relationships. Quality, understanding, participation and outcomes should be measured alongside speed and cost.

12. Introduce review and corrective-action mechanisms

The reformed system should allow intervention where children cannot obtain legal assistance or where particular groups experience unequal outcomes. Reviews should involve children, families, advocates and specialist legal providers.

47. Please provide any further comments on impacts on children and young people.

The legal aid reforms should not be designed or evaluated solely as administrative or financial reforms. They are also part of the wider framework through which Scotland seeks to uphold the rights of children and care experienced people. If approached correctly, these reforms could be a crucial step in helping Scotland deliver the Promise by 2030.

The legal aid reforms should build on the progress made regarding advocacy services by the Children (Care, Care Experience and Services Planning) (Scotland) Act 2026. Legal aid reform should ensure that children and their families can access legal advice and representation when they are navigating the most challenging periods of their lives, particularly where decisions may have a profound and lasting impact on the family unit.

Particular attention should be paid to children who cannot access services through conventional routes, children with disabilities, neurodivergent children, children who have experienced trauma, children in secure care, unaccompanied asylum-seeking children and those living in rural or underserved areas.

A child-centred legal aid system should:

- be readily and quickly available;
- provide accessible and understandable information;
- support children to express their views and participate;
- recognise trauma, attachment and communication needs;
- protect relationships and avoid unnecessary adversarialism;
- preserve professional independence;
- provide specialist representation;
- operate effectively alongside independent advocacy;
- avoid financial barriers;
- provide continuity wherever possible; and
- be accountable for children's experiences and outcomes.

The success of reform should ultimately be assessed by asking whether children know where to obtain help, receive that help when it is needed, understand what is happening, feel listened to and can secure an effective remedy when their rights are not respected.

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