

PE1673/H

Petitioner submission of 28 July 2018

Please find attached my response to the submissions by Social Work Scotland and Scottish Children's Reporter Administration in relation to the request for comments from them by your Committee on 10th May, 2018, in relation to Petition 1673.

1 This response has been compiled from comments by mothers, family members, advocates, lawyers and professionals in child protection, all of whom have experienced firsthand the points in Petition 1673. I have knowledge of the misuse/misinterpretation of both legislation and guidelines by "professionals" in order to take children in to care for periods of years, often for life. There is great dismay as to why Who Dares? Scotland (a major contributor to the Independent Care Review Group) and Circle Scotland failed to respond to your request for comments. There are concerns over the personal interest/involvement in Children's Hearings by Rona Mackay, MSP. Should she exclude herself from further discussion/decisions on Petition 1673 or not.

2 Nobody disputes that in some cases children need to be taken into care and children may have better outcomes than if left at home. The concerns are about high numbers being taken into care (with the majority being denied any form of access/communication with mothers and family – all contrary to the Legislation and Government guidelines) unnecessarily leading to major and serious long term outcomes for children and their families. The terms assault, abuse and neglect are key elements in every application to Sheriff Courts or Children's Hearings. A family member grabbing an errant child by the clothing to prevent that child causing serious injury to themselves or another is classed as assault. Parents who shout at an errant child to stop them running into harm e.g. a roadway are accused of verbal abuse. Failing to iron the clothes of a 2 and 4 year old has been listed as a sign of neglect. Parents and family members who question a social worker are automatically classed as being non-engaging, therefore a threat to the child.

3 Within politicians, every part of the "Corporate Parent" group and charities (some of whom have a large commercial and financial interest in the status quo) there is an institutional and engrained belief that every mother is a threat to a child, therefore that child needs to be taken into care. There are over 60 Government and Local Government agencies and bodies as Corporate Parents responsible for "looked after children" The public question why so many organisations are involved in child protection – organisations such as Scottish Fire and Rescue for one.

4 In her summing up on 10th May, 2018, the Convener, **Joanne Lamont, MSP** hit the nail firmly on the head when she said clearly *".....in relation to the petition, we would want to look at whether we are inappropriately bringing children into care because there is not enough support or because there is a mindset that says that that is the solution."* **Brian Whittle, MSP** said *".....in raising the issue, the petitioner continues to keep child protection at the forefront. I also agree with you, convener, in that there are some issues around early intervention that still have to be addressed. It would not do any harm to continue to flag that and investigate it."* **Michelle Ballantyne, MSP** said *"Because this is quite a complicated area, which spreads into what we are doing on vulnerable two-year-olds and the early years, there is a big conversation to be had about how we support families and how we prevent children from ending up in the hearings system and in care."* **Maggie Mellon** in a previous submission to the Scottish Parliament, said :- *"children are often more harmed by separation than by anything they were suffering at home."*

5 The question in child protection is why are so many children (1.6% to 2% of all children) in Scotland are being "looked after" by Corporate Parents. The Lord Clyde Orkney enquiry of 1991/92 was the closest legal enquiry into how children were taken into care. That case was based on accusations of sexual abuse within a group of families. Lord Clyde made a total of 185 recommendations, most of which have been ignored in child protection since then. In his report

he made many comments and suggestions about improving Children's Hearings. The Rt Hon Lady Ann Smith enquiry is about abuse in care that occurred some 30 to 50 years ago. It is historic and has no relationship to current practices.

6 Much is said about the current Independent Care Review Group. It is not "independent". Members are either employed by organisations that are heavily involved in child protection or have been appointed by organisations involved in the care of "looked after children". My understanding is that among the members, three organisations are under complaints investigation nationally, both internally and externally under civil law for the way they have dealt with families and child protection matters. Over 60% of the secretariat including the secretariat leader all have back grounds in child protection. Therefore there are no members who are completely independent of child protection, particularly "looked after children". Considering that all child protection matters are governed by legislation, it is strange that no fully trained legal person is a member of the Review Group. Further concerns are there are no representation by mothers or families where their children have been and are still in care. Having made a 200 page plus submission to the Independent Review Group, met with the Secretariat Leader and studied all their publications and enquiry directions, the remit for the Independent Care Review Group is purely to look at the situation of children once in care. The Independent Care Review Group does not have the remit, qualified persons or resources to carry out the enquiry requested by Petition 1673 into how so many children end up in care.

7 Over the years there have been a number of "independent" reviews and enquiries into all aspects of child protection but excluding how children came into the system, on what grounds they were taken into care and the psychological, social and financial outcomes for the child, parents and family. Each review/enquiry was carried out by individual organisations within child protection. Each organisation appointed its own committee members, set the remit, protocols and procedures for the review/enquiry. All were set up to look at procedures within the system, not the outcome for children and parents. Most "evidence" was gathered by the use of questionnaires designed by the organisation, all of which were worded to give the response the organisation wanted – i.e. confirmation of their mode of operation. The net result is the situation we are in today where more and more children are ending up "looked after" not at home while legislation, Court judgement and Government guidelines are total ignored.

8 Social Work Scotland refers to the Child Protection System Review. It was commissioned by Mark McDonald MSP, Minister for Childcare and Early Years, to examine the role and function of Child Protection Committees; the use of Child Protection Registers and Child Protection Case Conferences; and the efficacy of Significant and Initial Case Reviews and to recommend what changes or improvements may be needed to these underpinning processes and structures in order to protect children more effectively. The Review did not examine why children came into care, it only reviewed current practices and took evidence from "professionals". The report does not indicate any contact with children and families on the taking of children into care. It did not cover any of the main issues within Petition 1673. The report reinforces and imbeds current practice in the current system of "looked after Children". The recently published report "Falling Through The Cracks" by Kezia Dugdale MSP¹, should be read and understood by all Corporate Parents. It identifies 84 children who have died in care in the past 10 years.

9 In a system where mothers are being accused of abuse, neglect and assault on their children, it is both morally wrong and a clear breach of Article 6, therefore Article 8 of the ECHR to say that it is correct that the child protection system should be carried out under a civil legal system rather than at the higher standards of a criminal Court. To remove legal representation from Children's Hearings would be a very serious breach of ECHR and would give Corporate Parents a far stronger control over the lives of Looked after Children, many of whom already have serious outcomes. Each child and parent is legally entitled to representation at a Hearing. To remove

¹ Falling through the Cracks – copy attached as an annexe to this paper

them would leave very emotional and psychological traumatised mothers and parents with no help whatsoever against what many lawyers and others describe as social workers reports that are full of mis and dis information and lies. There are no statistics available to show how many mothers/parents have been dealt with under criminal law, surely a much required step to prove that the child needs taken into care. Even when cleared in a criminal investigation, the original complaint is still used against the mother to have children taken into care. SCRA state in their response that Local Authorities have a lack of resources to provide proper family support. They state that many LA's do not have any family support services available, hence reason more children are taken into care. That can only be classed as a major disgrace. However, unable to provide family support, Local Authorities are prepared to pay high sums of money to Foster Carers (who have to be registered as self-employed with HMRC). Foster parents are paid between £11000.00 and £36,000, per child per year plus other expenses. It is estimated that Foster carers in Scotland are paid between £240 million and £430 million per year from public funds. The higher sum would employ approximately 9000 professionally trained family officers to support families in their own home.

10 Between the different Corporate Parent Groups, classification of children and reference titles are confusing and misleading by name. Supervision Orders, Looked after Children and Referrals to Hearings are all words used to describe the same figures. Social Works Scotland website shows that in 2016/17 there were 14897 children "looked after" and a further 2631 children on Child Protection Orders. A total of 16780. Of "looked after children" 3766 (25%) were looked after at home, down from 43% in 2007. No figures are available for residency of children on the Child Protection Orders. "Legally secure permanence", has increased every year since 2012, and now stand at 2,064, a 4% increase on 2016.

11 Scottish Children's Reporter Administration figures for the same year show the following. 9996 on compulsory Supervision Orders of which 4486 (45%) were at home. Why is there such a discrepancy between the two organisations? Does any organisation know how many children are actually "looked after" at any one time and how many are with parents? SCRA statistics show 20% of these referred are offenders. The same statistics show that 75% of all referrals to Hearings are by the police. SCRA tend to base a lot of their statistics on "referral" numbers. That is completely misleading as one person can be referred on a number occasions and does not give a true figure of how many "looked after children" there are within the system. Both Social Works Scotland and Scottish Childrens Reporter Administration web pages provide very long complicated spread sheets of data that the layman has great difficulty trying to understand. As Kezia Dugdale, MSP, states in her report, far too much information is not available as to the reality of children in care and afterwards. That is a major problem across all of child care.

The real cause of problems within Child Protection in Scotland

The centre of child protection in Scotland is the Children's Hearing. Set up in 1971 their remit was purely to dispose of juvenile offenders who had either admitted their guilt or had been found guilty in a Sheriff Court. The idea was to remove juveniles from the criminal court system and dispose of the cases in a more sympathetic and caring manner. It allowed individuals to enter adult life without criminal convictions except in very serious cases. Panel members to the Hearings were and still are lay people. Their training was and is on how to run a Children's Hearing and what decisions they could make in dealing with juvenile offenders. They made their decisions on reports compiled and submitted by social workers. SCRA was and still is an administrative body tasked with the management/administration of Children's Hearings. Children's Hearings had no remit or training in hearing evidence from social workers and the mother/parent to decide for themselves the merit of the allegations against the child/mother/parent.

Today, (47 years on) the situation is completely different but the remit, role and function of Children's Hearings has not changed. Since 1971, the number of offending children to welfare

children appearing in hearings has gone from 100% to 20%. Social workers still produce and submit reports to the Panel Members and/or the Sheriff. In applications to Sheriff Courts, especially to have children taken into care or parental rights moved, the parents are very rarely informed in advance and submissions/reports are not submitted under oath. The "evidence" laid before the Sheriff by the Reporter is a social workers opinion of the situation. No further enquiries are done or anybody representing the child and mother/or parents is asked for their opinion of the "evidence". The Sheriff does not have the opportunity to hear the child/mother/parents arguments or questioning of the information submitted to the Sheriff. The child/mother/parents, because of the secrecy, do not have the opportunity to have legal representation at the Hearings which are always held in private and often out with the Sheriff Court. In one recent case, and only with the intervention of an MSP, a mother discovered that without her knowledge, a solicitor who had had no contact of any kind with the family, represented her in a Hearing. The net result is that a Sheriff or Children's Panel have no option but follow the social workers report and make an order for the child to be taken into or kept in care.

Once a child has been taken into care through this process, there must be a "48 hour Hearing". That is in front of a Children's Hearing. Depending on weekend days and public holidays the "48 hour" meeting may take upwards of 4 days. As said above, the Panel Members have no remit or training on hearing evidence from either side, whereby they can make a balanced decision. All they can do is make a decision on the reports submitted to the Sheriff by the social workers. It should be borne in mind that children/mothers/parents are normally in a state of emotional and psychological trauma as a result of their children having being removed from the family (at any time of the day or night), have had very little chance to read the information given to them when the children are removed from the home or to instruct solicitors. From the mother/parents viewpoint it is a case of "guilty until you prove your innocence". In his report Lord Clyde states:- *"It is by no means clear that a Sheriff would feel particularly qualified to challenge at his own hand the combined opinion of professionals who had been consulted and the feeling that the decision is little more than an endorsement of a decision reached by others could well be experienced by a Sheriff as well as a Children's Hearing"*.

The only information that a Children's Hearing receive for a Hearing is the report of the social workers. With such short notice given of the contents of the papers (3 days), very very few parents have the time and skills to challenge any of the contents. As said, the Children's Hearing does not have the remit or training to sit as a judicial body receiving information/evidence from both parties and making a balanced judgement. No minutes/records are kept of a Children's Hearing, only the final decision. Challenges to the contents of the social workers report are ignored and never recorded. The net result is that the social workers report is filed without amendments and goes unchallenged for future Hearings. Neither Children's Hearing Scotland or SCRA have procedures for dealing with complaints that information submitted to a Hearing is incorrect or even lies. Children/mothers/parents when making such complaints are advised to take the complaint up with the Local Authority/other body. It is the experience of mothers/parents/relevant persons that such complaints are denied by the Local Authority/other body and the complainant referred to the Scottish Public Services Ombudsman or appropriate authority. Only the procedures in handling the complaint can be examined. Even if procedures have been found to be incorrect, the original complaint cannot be reexamined. Appeals to the Sheriff on a Children's Hearing Decision are held on procedural grounds. In some cases Sheriffs have refused to uphold an appeal on the grounds that there has been no written reason from the Children's Hearing as to how they came by their decision.

Social workers and Children's panel members have no training qualifications in a wide range of medical conditions including and particularly learning disabilities/difficulties. Yet they continue to make decisions purely on their opinion. In upholding an Appeal on 1st March, 2017, the Supreme Court ruled that in one case, decisions on the case in Scotland had been made purely on opinion

with no evidence to back them up. In his report² Lord Clyde made many observations on the workings of Children's Hearings, most of which have been ignored. There is no method/system whereby parents can challenge false reports to Children's Hearings and a Sheriff Court. The net result is an increasing number of "looked after children".

For clarification of the operation of a Children's Hearing, the Petitions Committee may consider asking the Scottish Criminal Justice Council to produce a report on the current system, its compliance with current legislation and compatibility with the ECHR. In doing so the SCJC may interview families who have encountered the system rather than the professionals working within the system.

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/235702/0195.pdf

Falling through the cracks.

**A Report into the effectiveness of the Children and Young
People (Scotland) Act 2014 and the life chances of
Scotland's care experienced community.**

Kezia Dugdale, Member of the Scottish Parliament for Lothian region

July 2018



The Scottish Parliament
Pàrlamaid na h-Alba

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Foreword

By Kezia Dugdale, Member of the Scottish Parliament for Lothian region

In 2012, a young angry woman called Ashley Cameron walked in to my office. She sat down, crossed her arms and told me that, throughout her lifetime, governments had written 19 different reports about people like her. Countless promises had been made and broken. She wanted to know why this encounter would be any different.



Together, along with many organisations across the children's sector including Barnardo's, Aberlour and Who Cares? Scotland, we worked on improving and shaping what would become the Children and Young People (Scotland) Act 2014. This Act would be known for many things, not least the Named Person initiative and a huge expansion of early learning and childcare. Yet it also delivered some profound and transformational changes to the care system. It gave young people the right to return to care up to the age of 21 and the right to receive support in the community up to the age of 25.

Four years on, Ashley and I have decided to join forces again to look at whether all the promises made have been kept.

This report is the culmination of that work. It represents a piece of research which we've completed alongside all our day-to-day responsibilities. Ashley has been finishing her degree at Stirling University; I've been doing my day job as one of the MSPs for the Lothian region.

We've looked at how the delivery of Continuing Care has been operating in practice and we've also looked at the life chances of young people after they leave care: lives which too often lead to early deaths.

The results are startling and deeply worrying. They also show how little we actually know because the State doesn't record the data properly. It should move public policy makers to act, but it should also make us all angry.

Care experienced children are our children. The State is the parent and we're all responsible for their care. Our taxes pay for it. We also all pay the price of their lives being diminished by poor health and opportunities.

It's a scandal that we don't know exactly how many care experienced young people die before their 25th birthday – but we do know it's far too many.

Please read this report, then join us in doing everything we can to improve the lives of Scotland's care experienced young people.

Personal statement

By Ashley Cameron (researcher)



This report is in two parts: the first part explores Fatal Accident Inquiries in relation to the deaths of care experienced young people, while the second part explores the implementation of Continuing Care in Scotland's local authorities. The two-part approach highlights serious concerns relating to data collection - or a lack thereof - on a local authority level regarding the lives of care experienced young people.

Data from answers to Freedom of Information requests sent to all of Scotland's local authorities provides the evidence base for this report. During the initial research stage, I was horrified - but not surprised - at the lack of data that is collected by local authorities relating to care experienced young people on both the funding of the Continuing Care provision; and the number of deaths of care experienced people - which relate only to the deaths of young people in secure care.

The lives of care experienced people and their subsequent premature deaths should always be considered a matter of public interest. It is well evidenced that care experienced young people who struggled with a lack of stability while in care go on to have poorer outcomes and poorer life chances. In addition, it has been found that issues around attachment and a lack of long-term stable relationships have a detrimental impact on social and emotional development, educational outcomes, and long-term mental health issues.

Throughout the Continuing Care formation process, care experienced young people and adults, including myself, shared their often-traumatic experiences with the Scottish Government of their care journey, and explained how quickly the support was removed when they left care at just 16-years-old. Care experienced adults also discussed how it took much longer to get to college and/or university, notwithstanding experiences of repeated homelessness, poor health outcomes and the struggle in finding permanent employment.

From stakeholders and MSPs to the care experienced young people themselves, there were high expectations around the implementation of Continuing Care and the huge benefits that the provision could bring in relation to support, resources and permanency. It has become apparent through the research findings contained within this report that the provision has been rushed; this means that care experienced people will continue being left behind to fall through the cracks. We should never expect poor outcomes to remain static in the vicious cycle of homelessness, fragmented employment and poor mental and physical health.

Academics state that people who influence law change are more likely to be the ones who report when things go wrong, and that's what we have done here. Because if not now, then when? And if not us, then who?

Glossary

After care. The term used to describe the rights young people have to advice, guidance and assistance up to and inclusive of the age of 25 because they are care experienced.

Care experienced. Formerly defined as 'looked-after children' in the 1995 Children (Scotland) Act. Defined as a child or young person who is cared for by the government in various type of care, which are: foster; residential; kinship (relatives or friends); looked after at home; and secure care.

Children and Young People (Scotland) Act 2014. Legislation which sets out government and local authorities duties to members of the public, and grants rights to children and young people. Introduces the term 'Continuing Care'.

Continuing Care. Places a duty of care on a local authority to care for young people up to the age of 21 in the same accommodation type as before they turned 18. This is being rolled-out and as of 1st April 2018, it applies to young people aged 20.

Fatal Accident Inquiries (FAI). A Fatal Accident Inquiry is held when there is a death in the workplace or when a cause of death is unknown. There are various criteria where a Fatal Accident Inquiry may be held. The Lord Advocate also has discretionary powers to call for an inquiry if it is considered to be in the public interest.

Freedom of Information (FOI) requests. Legislation under the Freedom of Information (Scotland) Act (FOISA) which allows any member of the public to request information from local authorities, governments and other organisations.

NEETS. Term used to describe people up to the age of 24 who are not in education, employment or training.

Executive summary

This report provides an analysis and evaluation on the implementation of the Continuing Care provision in Scotland's local authorities in relation to funding allocation and expenditure since the Children and Young People (Scotland) Act came into force on the 1st of April 2014. The data contained within this report has been collected and collated from Freedom of Information requests which were submitted to all 32 local authorities in Scotland in 2017 and 2018. The report also utilises evidence that third sector organisations have submitted in response to the ongoing Independent Care Review which reinforces the responses from local authorities.

Analysis of the data collected in part one of this report highlights how little information is recorded in relation to the premature death of young people in care. Part one of the report also highlights the need to expand current mandatory Fatal Accident Inquiries to include all care experienced people up to the age of 21, regardless of the type of care placement. At present, Fatal Accident Inquiries for care experienced young people automatically take place only if the young person was under the age of 18 and had been residing in secure care accommodation.

Analysis of the data collected in part two of this report shows a range of issues from the point of funding allocation to how the funding for Continuing Care is being used to meet the provision requirements. Part two also highlights a disconnect between the number of care experienced young people eligible for Continuing Care and those receiving it. At present, care experienced young people are eligible to stay in their foster, kinship or residential house up to the age of 21 if they were born after the 1st of April 1999.

This report makes four recommendations in relation to the Fatal Accident Inquiries legislation and the reporting of robust data to track the deaths and long-term outcomes of care-experienced people in Scotland. It makes a further six recommendations which relate to improving the sustainability and implementation of Continuing Care.

Part one: Recording the deaths of care experienced children and young people in Scotland

Quick facts

- Care experienced young people are thought to be 20 times more likely to die before the age of 25 than their non-care experienced peers (*Who Cares? Scotland*).
- 2% of care leavers completely disappear from the system before their 19th birthday. Their 'destination' is completely unknown by any agency (*National School-Leavers Survey*).
- 52% of care experienced children aged 5-10 have a mental health condition compared to 8% of children from the general population.
- Among care experienced young people aged 5-17 years, 45% have been assessed as having mental health issues (*Office for National Statistics*).
- It is estimated that one of the highest rates of youth smoking exists for care experienced young people at 67% (*ScotPho, 2009*).
- Official statistics suggest that at least 21% of care leavers become homeless within five years of leaving care (*Scottish Government, 2016*), however practitioners estimate the figure could be as high as 50%.
- 26% of young people continue to leave care without a formal plan for what happens next (*Scottish Government, 2016*).
- Over 22% of care experienced people have tried to self-harm or complete suicide (*National Health Survey*).

Research findings

- The Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 only requires a mandatory inquiry to take place if a child was subject to a court order to reside in a Secure Care Unit.
- From the 1st of January 2009 to 31st of December 2011, 30 care experienced young people died in secure care before their 18th birthday. 70% of these deaths were boys and 30% were girls.
- In 2012, eight care experienced young people under 18 died in secure care.
- The most common reasons for the premature death of a care experienced young person are: suicide; overdose; accidents; and complex health issues.
- Over the last ten years, 84 care experienced young people in secure care have died prematurely; 16 of these are categorised as 'reasons unreported'.
- There is currently no statutory duty placed on the Care Inspectorate to annually publish a report on the numbers of deaths of looked-after children.

... There are no recorded or published statistics about the lives of care experienced young people's lives nine months after leaving care and into adulthood.

Recommendations

- 1. The Scottish Government should ensure the recording of information relating to the specific causes of deaths in care experienced and accommodated young people is a statutory reportable requirement for all local authorities in Scotland. This should apply to both those under 18 who are in the care system, and those between 18 and 25 who have experienced it.**
- 2. The Fatal Accidents and Sudden Deaths (Scotland) Act 2016 inquiry protocol should be amended to include all looked-after young people who die suddenly or as the result of an accident up to the age of 25.**
- 3. Where the Lord Advocate takes the decision not to hold a FAI in to the death of a care experienced person, a written reason should be provided and made publicly available.**
- 4. There should be a duty on the Care Inspectorate to annually publish a report on the numbers of deaths of looked-after children and young people up to the age of 21.**

Research background

All too often we hear in the Scottish media about young people in care completing suicide or being admitted to a mental health ward due to expressing suicidal intentions, yet these young people often don't get the ongoing support they desperately need. An example of this was reported in November 2017, where one young girl with complex health needs was placed under a 24-hour suicide watch, yet she still managed to complete suicide. These are Scotland's children. Their births, path through life and untimely death should be a concern to everyone.

To understand how deaths and Fatal Accident Inquiries are carried out regarding care experienced young people, Freedom of Information (FOI) requests were sent to all 32 local authorities in Scotland. The FOI requested local authorities to provide the following information:

- 1. The number of young people in care over the last ten years, broken down by year.*
- 2. A summary of the circumstances of death for each of the young people who have died in care (this information may be anonymised).*
- 3. Number of deaths of care experienced adults in your local authority area over the last ten years.*
- 4. Summary of the causes of deaths (as above) for each, anonymised. (High level summary- not looking for the specifics of each case, for example: six people completed suicide)*
- 5. Causes of deaths of all young people between 0-16 + 16-24 years old for the last ten years.*

From the data provided by local authorities and the statistics held by the Scottish Government on the number of looked-after young people, it was confirmed that 14/20 local authority areas which responded witnessed an increase in the number of looked-after young people. In addition, only one local authority recorded the number of looked-after young people as static. Furthermore, only 3/20 authorities witnessed a small decrease in their numbers, which were Scottish Borders, Moray and Orkney Islands.

Data not held

It is pertinent to note that one local authority refused to provide any of the above requested information (Midlothian Council), the reason for which is that it does not record any information relating to the deaths of care experienced children and young people.

Glasgow City Council, which cares for the largest number of looked-after young people in Scotland, responded to the FOI request but refused to provide any of the information requested. The reasons for which Glasgow refused to provide the information is due to apparent costs attached to collating the data. Much like other local authorities in Scotland, Glasgow does not have a central recording system which allows it to centrally record and track the data required.

Aberdeenshire Council in its response stated that there have been approximately 15 recorded deaths of care experienced adults under the age of 25 over the last ten years. Unfortunately, Aberdeenshire Council does not hold information relating to the causes of circumstances of these deaths and admitted there may be more deaths than it was aware of due to inconsistent information recording.

Despite the issue of non-responders to requests for information, the collected data is cause for grave concern. In some local authority areas, data was only provided regarding the numbers and causes of deaths for the last five years; before this there was no clear statutory responsibility placed on authorities to record the information. In addition, where the numbers of deaths were fewer than five, some councils refused to provide the necessary information due to an exemption under the Freedom of Information (Scotland) Act (FOISA). This exemption is rightly in place to protect the identity of the individual who has died. However, not having this information publicly available means the data relating to the deaths of care experienced people is incomplete.

It is believed the inclusion of the data from the remaining 12 local authorities would provide a more enhanced insight into the situation regarding the deaths and causes of deaths of the looked-after population nationally. Those authorities which failed to answer the FOIs have been reported to the Scottish Information Commissioner to seek a review.

The Care Inspectorate has acknowledged it does have a general duty regarding sharing information in section 51(3) (c) of the Public Services Reform (Scotland) Act 2010, hence the publication of the report into the deaths of looked-after

children 2009-11 in 2013. In the experience of the sector, people were glad to see this report and found it worthwhile.

We believe that reporting annually would support the other recommendations in this report, ensuring opportunity for comparison year-on-year with the numbers and causes of deaths and, as a result, further accountability regarding avoidable deaths of looked-after children and young people.

Secure care only

It is unclear whether the 84 deaths from the data collection research were solely from secure care or mixed with other types of care such as residential/foster and kinship care. The reason for this is that Scotland does not have a central recording system which captures all this data and the understanding of various terminology and reporting requirements vary from local authority to local authority. This is an important caveat, but it does not detract from the starkness of the findings. If we are ever going to understand the true picture of care experienced deaths in Scotland, we need to vastly improve the national system and process of recording deaths of vulnerable groups.

Why does the data matter?

From the data collected there is particular concern over the numbers of suicides, overdoses, accidental deaths, unknown causes and unreported causes of death. It is evident from the data collected that there should and must be a greater emphasis to not only care for this population of vulnerable young people, but to also improve how vital information relating to this group is tracked and recorded.

The statistics for care experienced young people have not improved for more than ten years, with care experienced young people still more likely to end up in a prison than a university lecture theatre. Unless drastic measures are taken to improve their situation, the outcomes for this group of young people are likely to get worse. Furthermore, with the numbers of looked-after young people on the increase, action must be taken sooner rather than later.

Resources follow the need across public policy. If you don't record the data, it's hard to evidence the problem and therefore resource the need.

Data tables

Q1. The number of young people in care over the last ten years, broken down by year

Local Authority	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Dumfries & Galloway	419	462	441	453	461	427	400	370	393	387
Midlothian	167	264	385	465	425	392	373	419	389	350
Argyle & Bute	119	115	119	123	125	148	174	155	115	87
East Ayrshire	440	470	524	482	508	517	521	500	461	463
Scottish Borders	194	182	193	216	208	194	184	179	201	218
Stirling	71	84	105	101	93	79	100	67	70	63
Renfrewshire Council	265	290	325	313	323	324	336	307	286	277
Perth & Kinross	183	193	199	201	201	223	237	246	255	286
Orkney Islands	N/A	N/A	31	26	18	26	27	49	46	34
North Ayrshire	N/A	N/A	N/A	N/A	N/A	382	371	383	409	391
Falkirk	N/A	N/A	437	443	399	430	375	370	364	373
East Lothian	259	264	270	278	277	265	273	277	284	305
Dundee	586	584	589	695	704	713	667	600	611	567
Clackmannanshire	N/A	N/A	207	222	221	214	183	184	198	233
Glasgow City	N/A	N/A	3,280	3,570	3,834	3,740	3,674	3,504	3,410	3,294

Source: FOI data received September 2017

Q2 & 3. Summary of deaths and numbers of care experienced adults who died in the last ten years

In response to question two and three of the Freedom of Information request, all local authorities responded with: "Data not recorded/Information not held."

Source: Freedom of Information Request: September 2017

...This is a huge problem.

Q4 & 5. Causes of death for each of the young people who have died in care

Causes of deaths in looked-after young people (0-24 years of age) over the last ten years.	Numbers: (20/32 local authorities responded)
<u>Refused to comment:</u>	8
<u>Suicide:</u>	12
<u>Overdose:</u>	12
<u>Murder:</u>	2
<u>Accidental:</u>	11
<u>Complex health issues</u>	12
<u>Natural causes</u>	6
<u>Unknown</u>	5
<u>Unreported</u>	16
	Total= 84

Source: FOI data received September 2017

Non-responders

All the local authorities identified below have been reported to the Scottish Information Commissioner to seek a review.

Non-responders:
Aberdeen City Council
Angus Council
East Dunbartonshire Council
East Renfrewshire Council
Fife Council
Glasgow City Council
Highland Council
Inverclyde Council
North Lanarkshire Council
South Ayrshire Council
West Dunbartonshire Council

Source: FOI data received September 2017

Part two: Implementation of Continuing Care
in Scotland's local authorities

Quick facts

- Only 7% of care experienced young people go on to higher education, compared with 39% of the general population (*Scottish Government 2016*).
 - 28% of the Scottish prison population indicated they had spent time in care at some point during their up-bringing. That's around 2,000 people at any one give time.
 - ...50% of them were in care aged 16 (*Scottish Prison Survey, 2017*).
 - Almost half of looked-after young people have not had their educational needs assessed, even though they are entitled in law to additional support (*Scottish Social Work statistics*).
 - Nine months after leaving school, 30% of care experienced young people are classed as NEET (Not in Employment, Education or Training), compared to 8% of their peers (*National School Leavers Survey*).
 - At least one-third of care experienced young people have experienced three or more placement moves during their childhood. There is no requirement to report on the number of placements, so we only know this because of an Audit Scotland investigation in 2010.
 - It is estimated that care experienced young people have experienced seven placement moves (*Who Cares? Scotland*).
- Ashley Cameron was moved 30 times.

Research findings

- Across 20 local authorities there were 3,117 young people eligible for the Continuing Care provision, however only 177 young people - 6% - had requested or been offered the option to remain in care.
- In many local authority areas, the Continuing Care provision is underfunded and places additional pressure on already stretched council budgets.
- Several local authorities' expenditures have exceeded the amount allocated, with no promise of increased funding on a per annum basis.
- Local authorities are not recording vital information regarding the allocation and expenditure of funds received for the Continuing Care provision.
- Local authorities such as Dumfries and Galloway, Shetland Islands and East Dunbartonshire are not aware of a ring-fenced grant for the Continuing Care provision.
- Some local authorities have de-registered foster carers and re-registered them as 'supported carers', placing a strain on resources – this has resulted in reduced numbers of foster carers available for those currently awaiting care placements (Fostering Network, 2018).
- Some local authorities have spent the allocated funding for the Continuing Care provision to relieve pressures elsewhere in their area.
- Some local authorities, despite having eligible young people for the provision and allocated funding to implement it, currently have no young people receiving Continuing Care provision.
- Foster parents receive half the amount they do for looking after an under-18-year-old when they take on Continuing Care responsibilities.

Recommendations

- 5. The Scottish Government should ensure that the funding allocated to local authorities for the Continuing Care provision is ring-fenced, ensuring protection from budget cuts and that the funding is used only for the implementation of the provision - and not for relieving other financial pressures within the council.**
- 6. The Scottish Government should amend current legislation in the form of the Children and Young People (Scotland) Act 2014 to place a legal responsibility on local authorities to track and record information relating to the funding and implementation of the Continuing Care provision in a way which can be monitored centrally.**
- 7. The Scottish Government should develop and provide further vital guidance to local authorities on the practicalities of implementing the Continuing Care provision and encourage all local authorities to work towards a pre-set standard of how to implement the provision where appropriate.**
- 8. The Scottish Government should ensure that the Continuing Care provision funding through local authorities is statutory so that it is offered to all care experienced and accommodated children and young people who reach the qualifying age.**
- 9. The Scottish Government should ensure that foster parents who provide Continuing Care for young people aged up to 21 receive the same fee as they do for those under 18.**
- 10. The Scottish Government should address the need for approximately 900 new foster carers. It is recommended that the Scottish Government initiates a national foster carer recruitment campaign.**

Research background

The Children and Young People (Scotland) Act was introduced in 2014 and included new provisions that would not only strengthen the rights of children and young people but increase childcare provision and support.

Continuing Care is Part 11 of the Act which extends the age in which care experienced young people can remain in their care setting up to the age of 21. The intention of Continuing Care is to provide more stability and security for one of the most vulnerable groups of young people in Scotland following generations of young people feeling pushed out of the system at 16-years-old. It is the hope of the Scottish Government that allowing young people to stay in care up to the age of 21 will result in better outcomes and life chances for this group.

In 2014 the Scottish Government announced it had guaranteed £5million-a-year, increasing annually until 2020, for the implementation of the Continuing Care provision within the Children and Young People (Scotland) Act 2014 (Part 11). The Continuing Care provision came into effect on the 1st of April 2015 starting with 16-year olds and increasing yearly on a roll-out basis. While the well-meaning intention of the Continuing Care provision is to be welcomed, further research indicates that it is underfunded and unprotected, which will no doubt have profound consequences on the sustainability of the provision offered to care experienced young people now and in the future.

In 2013, my parliamentary group colleagues attempted to stop the Children and Young People (Scotland) Bill process from continuing, due to the lack of a robust financial memorandum. There are currently no parliamentary procedures which exist to enable a Bill to be halted without a financial memorandum. It is up to the Scottish Government whether it chooses to publish or attach a financial memorandum to a Bill.

To paint a Scotland-wide picture of how Continuing Care is being implemented, FOI requests were sent to all 32 local authorities in Scotland in March 2017 regarding the allocation and expenditure on the Continuing Care provision.

The FOI requested local authorities to provide the following information:

1. *Draft proposals to the Scottish Government in regard to the scrutiny of the Continuing Care Provision set out in Part 11 of the Children and Young People (Scotland) Act 2014.*
2. *Whether the local authority has identified concerns in regard to the funding provision of Continuing Care, in relation to the council's allocated budget.*
3. *a) How much the local authority receives annually to implement the Continuing Care provision.*
b) How much the local authority spends annually to implement the Continuing Care provision.
4. *How many care experienced young people in your local authority area are eligible for the Continuing Care provision.*
5. *How many care experienced young people have been offered or have requested to remain in care under the Continuing Care provision.*

The FOI request resulted in 31 local authorities responding, with the exception of the City of Edinburgh Council.

In response to question one of the above FOI, all responders were clear that although no scrutiny proposals had been submitted to the Scottish Government, scrutiny and review procedures would be conducted internally in each of the local authority areas.

Data not held

Conducting research surrounding the implementation of Continuing Care in Scotland's local authorities revealed a worrying issue. More than half of the responses to the request for information in 2017 were 'information not held' or 'data not recorded'.

Any data not being recorded by either local authorities or the Scottish Government is a huge failure in our corporate parenting responsibility to this group of children and young people. These children's lives are our responsibility and a government is always judged by how it treats its most vulnerable groups in society.

The Scottish Government only records information relating to care experienced young people and their outcomes up to the age of 19. Scotland now cares for these young people up to the age of 21 in care and up to and

inclusive of 25 in the community. Legislation regarding data collection for this cohort should therefore be in line with the age 25 criteria so that we can assess if the Continuing Care provision is meeting the expectations of the young people who we care for, and whether this group goes on to achieve more positive outcomes.

Sustainability

In response to question two of the FOI, several of the 22 responders highlighted concerns over the sustainability and capacity of the Continuing Care provision.

Many of the responders indicated that local authorities are experiencing a rise in the number of looked-after and accommodated young people. Currently it can be asserted that the Continuing Care provision is not being adequately funded and is placing unnecessary pressure on already stretched council budgets. Due to an absence of ring-fenced funding for the provision, many local authorities are using the funding allocation to alleviate pressures on other services which have been affected by local funding cuts.

Financial implications:

Social Work Scotland has expressed concerns over the financial implications of the Continuing Care provision, as it believes the financial memorandum does not take into account the true cost of the policy. While the full implications are not yet known, Social Work Scotland has committed to further consultation with its membership to identify where specific issues lie (Social Work Scotland, 2018: 1).

From the responses to the FOI request sent to local authorities, it became apparent there is an issue of converting resources. One local authority has converted foster care placements to 'Continuing Care' placements to meet the provision's requirements. What we mean by this is that current foster carer providers are being encouraged to de-register as 'foster care providers' and re-register as 'continued support carers' so that the young person in their care can stay up to the age of 21.

Foster carers have also expressed concern that the weekly payment they receive as a continued support carer is half of what they received as a foster carer. As a consequence, if the foster care funding for a young person is

stopped at 16, there is a huge gap leading to carers paying for the living costs of that young person out of their own pocket.

In January 2018, the Fostering Network published a consultation response to the Scottish Independent Care Review. The foster carers who responded to the Fostering Network's national survey expressed both confusion and concerns around Continuing Care in Scotland. Concerns expressed were that Continuing Care was not always offered as an option by local authorities when young people become eligible, and foster carers were being encouraged to become Continuing Care providers without any of the implications explained to them by a professional. Foster carers also expressed concerns about being told they could face consequences such as being de-registered if they failed to offer Continuing Care to their young person past the age of 18 (Fostering Network, 2018: 17).

On the 17th of May 2018, three key questions in relation to the registration and de-registration of foster carers were submitted to the Scottish Government. The first question enquired how many people registered to become foster carers in each of the last five years. The response provided stated:

According to the Care Inspectorate Fostering and Adoption Statistical Bulletin 2016-17, there were 430 new foster carer households approved in the year up to 31st of December 2016 (down 7% from 464 households in 2015. The Care Inspectorate do not hold information on foster carer registrations prior to this.” (S5W-16225).

The second question submitted to the Scottish Government requested the number of foster carers who had de-registered in each of the last five years. The response provided stated:

“The Care Inspectorate have been collecting some information on foster carer de-registrations from 2015 and according to their Fostering and Adoption Statistical Bulletin 2016-17, between the 1st January 2016 and 31st December 2016, 382 foster carer households de-registered (9% of all registered at the start of the year) compared with 318 de-registrations in 2015 (8% of all registered at the start of the year).” (S5W-16224).

This is a key area of concern as it is only increasing the need for the recruitment of additional foster carers to meet the need of other young people

within the local authority's care. Many care experienced young people can wait quite some time to be placed with a foster carer. In previous years there has been a shortage of approximately 900 foster carers across Scotland and there is currently no national campaign focusing on recruitment. The issue of recruitment remains an individual local authority's responsibility.

Funding and capacity

Historically, local authorities have experienced capacity issues in accommodating their care experienced young people. To relieve a proportion of the capacity concerns, most local authorities have resorted to outsourcing care to private companies such as Care Visions and Five Rivers. Private care providers and related organisations have raised the price for the services they provide, and this has not been matched by proportionate increases in Scottish Government funding.

One example of this is the Scottish Social Services Council (SSSC), which raised its registration fees in 2017. The SSSC is responsible for registering individuals who work in childcare and with vulnerable groups. The SSSC stated the reasoning behind raising the registration fee was that the Scottish Government had historically subsidised 87% of the cost to register with the SSSC and the price of registration had not increased since the SSSC was established in 2001.

Given that capacity has not increased incrementally and further valuable resources have not been provided over the years, local authorities and individuals have no other option but to continue paying the increased fees, with more and more looked-after young people being placed in the care of private care providers, often outwith their own local authority areas.

Allocation of funding and expenditure

Question 3 a) and b) of the FOI request was asked regarding the annual allocation and expenditure of funding for Continuing Care since the introduction of the provision on the 1st of April 2014.

In local authority areas such as Dundee City, East Ayrshire, Stirling, Clackmannanshire, Moray and Orkney Islands, the Continuing Care provision can be classified as unsustainable in its infancy. After collecting and analysing

the data from the request for information, it became clear that the aforementioned councils had either overspent the amount allocated to them from the Scottish Government, or had not received enough additional funding to cover the true costs of implementing the provision.

It is also apparent from the research undertaken that the true cost of Continuing Care is disguised due to the rising fees that private care providers charge local authorities, as well as the issue of converting current care placements to accommodate young people staying in care longer. As the provision is still on a roll-out basis being offered to 20-year-olds from the 1st of April 2018, the cost of the provision and the take-up by young people is expected to rise again. With no guarantee of increased funding for the councils mentioned, the provision is in danger of failing, coupled with a small rise in young people being looked after. Proactive measures must be taken by the Scottish Government before the provision experiences a financial crisis.

Eligibility

In questions four and five of the FOI sent to all local authorities, information was requested regarding how many care experienced young people were eligible for the Continuing Care provision. In addition, the request also asked how many young people had requested or been offered Continuing Care in their local authority.

Across 20 local authority areas, 3,117 looked-after young people were found to be eligible for the Continuing Care provision. Responses to questions four and five of the FOI request revealed that only 177 had requested or been offered access to the provision: that means less than 6% of those entitled to support were receiving it. These figures exclude numbers from Glasgow which were unavailable due to the apparent cost of collating the data.

Further research is required regarding the eligibility issue to understand exactly what the funding allocated is being spent on by local authorities. Focus should be placed on the cost of individual care placements with private care providers, how much this costs annually, and the cost of placing a young person outwith their own local authority area.

Data tables

Q1. Continuing Care funding issues

Draft proposals to the Scottish Government in regard to the scrutiny of the Continuing Care Provision set out in Part 11 of the Children and Young People (Scotland) Act 2014.

Areas of concern	Local authority responders (22/32)
<u>Funding not ring fenced:</u>	5
<u>Demand outstripping current funding and resources:</u>	8
<u>Funding allocation being used to relieve other financial pressures:</u>	4
<u>Roll-out approach placing increasing strain on local authority budgets:</u>	11
<u>Young people not offered Continuing Care but are eligible:</u>	5
<u>No additional funding allocated:</u>	2
<u>Converted local authority foster placements to Continuing Care placements</u>	1

Source: FOI data received July 2017

Q2. Local authorities' concerns over Continuing Care implementation

Whether the local authority has identified concerns in regard to the funding provision of Continuing Care, in relation to the council's allocated budget.

This question to local authorities provided a platform to express their concerns regarding implementation of the provision and whether local authorities can cover the costs.

Local authority:	Concerns:
<u>Stirling Council</u>	<i>"The cost of providing the Continuing Care provision is currently double the budget allocated, with numbers predicted to rise in future years this will only increase the pressure on Children & Families budgets."</i>
<u>Perth and Kinross Council</u>	<i>"To meet demand of the Continuing Care provision, the recruitment of additional foster carers and supported lodging providers will be required to provide a range of positive options for eligible young people. If all of the young people are assessed as eligible (25 in the first year) and request Continuing Care, then this will put a strain on both our fostering services and financial resources."</i>
<u>Moray Council</u>	<i>"We are over budget with the small numbers already in care and more are expressing an interest in continued care. We are aware that it will become a significant issue, as more young people engage with this."</i>
<u>Dundee City Council</u>	<i>"In terms of the number of young people Dundee City Council currently has in placements who are eligible to request Continuing Care, we have identified financial pressures in relation to these placements."</i>
<u>East Dunbartonshire</u>	<i>"This was raised as a concern at budget meetings and would have an impact on the budget. No provision was made (or budget adjustments done in 16/17) also budget setting papers for 17/18 there is no specific mention of Continuing Care or a provision for it. We did not receive any direct funding nor was a budget adjustment done and it doesn't look like anything specific has been allocated for 17/18."</i>

**North
Lanarkshire**

"I can advise that the actual costs of Continuing Care are greater than the amounts received as detailed above. However, these costs are not held in a format that renders them readily available and to provide the information sought would exceed the amount prescribed for the purposes of Section 12 of the Freedom of Information (Scotland) Act 2002."

Source: FOI data received July 2017

Q3. Continuing Care funding allocation and expenditure

a). How much the local authority receives annually to implement the Continuing Care provision.

b). How much the local authority spends annually to implement the Continuing Care provision.

<u>Local authority:</u>	<u>Funding allocated:</u>	<u>Expenditure over the last financial year:</u>
<u>Renfrewshire</u>	£238,000	£238,000
<u>Dumfries and Galloway</u>	No ring-fenced funding	Not paid from one set budget (Information Not Held)
<u>North Ayrshire</u>	£257,000	£257,000
<u>East Ayrshire</u>	£258,000	Exceeded amount received
<u>West Lothian</u>	£168,000	£0 currently
<u>Stirling</u>	£50,000	£103,000
<u>South Lanarkshire</u>	£609,000	£213,000 allocated for Continuing Care
<u>Shetland Islands</u>	Not aware of ring fenced grant	£120,000
<u>Perth and Kinross</u>	£386,000	£36,162
<u>Orkney Islands</u>	No additional funding received	N/A
<u>Moray</u>	£68,000	£70,268
<u>Midlothian</u>	£154,000	Information Not Held
<u>Highland</u>	£207,000	Information Not Held
<u>East Lothian</u>	£64,200	£64,200
<u>Dundee City</u>	£664,000	£1.5million (projected expenditure £3 million over the next year: 2018)
<u>Clackmannanshire</u>	£88,000	£189,000
<u>East Dunbartonshire</u>	Refused to provide information/ no funding allocated	No information provided/ No funding allocated
<u>Glasgow City</u>	£569,000	System not designed to provide requested information (Information Not Held)

<u>Aberdeenshire</u>	£118,000	None
<u>Falkirk</u>	£197,000	£483,740
Total:	£4,095,200/ £5 million	£4,562,370

Source: FOI data received July 2017

Q4 & 5. Eligibility and take-up

How many care experienced young people in your local authority area are eligible for the Continuing Care provision.

How many care experienced young people have been offered or have requested to remain in care under the Continuing Care provision.

Local authority:	Eligible for Continued Care:	Requested or offered:
<u>Renfrewshire</u>	16	12
<u>Dumfries and Galloway</u>	89	0
<u>North Ayrshire</u>	16	16
<u>East Ayrshire</u>	23	0
<u>West Lothian</u>	46	3
<u>Stirling</u>	14	10
<u>South Lanarkshire</u>	83	83
<u>Shetland</u>	35	0
<u>Perth and Kinross</u>	23	9
<u>Orkney</u>	6	Fewer than 5
<u>Moray</u>	20	Fewer than 5
<u>Midlothian</u>	13	6
<u>Highland</u>	57	1 (was not eligible)
<u>East Lothian</u>	71	0
<u>Dundee City</u>	54	7 (not technically eligible but deemed in best interests to receive provision)
<u>Clackmannanshire</u>	43	8
<u>East Dunbartonshire</u>	16	2
<u>Glasgow City</u>	2,418	Unable to provide information
<u>Aberdeenshire</u>	35	6
<u>Falkirk</u>	39	5
Total:	3,117	177

Source: FOI data received July 2017

Conclusion

This report is not exhaustive. We don't have the resources of Scotland's civil service or the expertise of Scotland's world-leading universities. But what we do have is a passion for Scotland's care experienced young people.

Throughout this paper, we have evidenced three key aspects of their lives. Firstly, that they are far more likely to die than their non-care experienced peers. Secondly, that if they live, their lives will be poorer both in terms of their health and economic outlook.

Finally, we have demonstrated beyond all doubt that their lives don't count in public policy terms because we don't count them. We don't record either their lives or deaths properly, and the absence of data means the absence of public policy to improve their life chances.

We hope that the Scottish Government, MSPs, campaigners and practitioners reading this report will be moved to act in response; moved to either demand change or be the ones delivering it. Together we can stop care experienced young people falling through the cracks.

There are ten recommendations in this report for action. We'll continue our work to fight for real change and deliver real change. We'd like you to join us.

Thank you for taking the time to read this.

Kez & Ashley, July 2018

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