Protecting Children’s Rights in a Crisis:

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Abstract

This research exploring human rights of children in the Scottish care system had three aims. Firstly, it aimed to evidence how Care Experienced children’s rights had been impacted by the COVID-19 pandemic and policy responses to it. Secondly, it sought to understand how much the Scottish Government’s policy responses to the pandemic had been founded in a human rights-based approach and aligned to the PANEL principles of participation, accountability, non-discrimination, empowerment, and legality. Finally, it uses the learning from this analysis to make policy recommendations on how children’s rights can be better safeguarded, both during the pandemic and long-term. This examination was done through thematic analysis of key reports produced on Care Experienced children’s experiences during the pandemic by established children’s rights organisations independent from the Scottish Government. The evaluation revealed that violations of the legal rights of children in care has been worsened by the pandemic, often by a lack of guidance or consideration by this group, enabled by a lack of an approach to policy development based in participation and non-discrimination. Children in care were experiencing significant challenges with accessing mental health treatment, maintaining their contact with family, using digital technology to participate in education and formal processes relating to their care, and living in a care environment adapting general guidance to their particular circumstances. In particular, there have been serious rights violations for children deprived of their liberty. Recommendations were made under the thematic headings, encouraging Care Experienced children to be prioritised in restriction easing, ensuring access to digital technology, tailored educational support and mental health treatment. Recommendations on upholding rights and accountability were also made, which focussed on improving the use of Children’s Rights Impact Assessments and understanding of care within government. The research concludes by calling on policymakers and duty bearers to reflect on how they can incorporate the learnings and recommendations of this work to build back a better society for everyone.
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1. Introduction

“I think it would be a fairer and equal society if rights were being upheld, more children and young people would be a lot happier and be a lot more willing to share when something has gone wrong.”
- Care Experienced young person (Who Cares? Scotland, 2020; 41).

Human rights are the basic rights and freedoms that every person in the world, no matter their age, gender, race, beliefs, or family circumstances. They can be thought of as a group of things which every person needs to be safe, healthy, and have the chance to live a happy life (Children and Young People’s Commissioner Scotland, n.d.). They are interwoven and interdependent – the infringement of one threatens all others and their overarching aim (Unicef, n.d.; McCall-Smith, 2019).

During our childhood we rely on adults to uphold our rights for us. Children have the right to be free from inhuman treatment, the right to be as healthy as possible, the right to participate in decision-making processes. For rights to be realised then, children should live lives free of violence, with access to medical care and nutritious food, in a society which takes measures to empower children to be heard (McCall-Smith, 2019).

The United Nations created a number of treaties to secure human rights such as the 1948 Universal Declaration of Human Rights, all of which apply to children, yet children have specific needs adults do not. Without the same political or economic power as adults, children would struggle to access a justice system designed for adults to secure and fight for their own rights (Boyle, 2021). The UK Equality Act (2010) protects against age discrimination but does not include children.

It wasn’t until 1989 that the United Nations acted in recognition of the additional investment required to uphold children’s rights and established a further Convention on the Rights of the Child (UNCRC) to broaden and strengthen the rights children have, recognise their particular needs as children, and enhance the actions governments and adults around the child must take to protect them.

The UK ratified the UNCRC in 1991 and Scotland is in the process of becoming the first country in the UK to incorporate the convention into domestic law, with legislation
that goes much further than most other models of incorporation\(^1\) (Unicef, 2020). This will enable children to bring public bodies to court should they violate their rights. It is both progressive and frustrating that this is required, but is of particular value when considering Care Experienced young people (Boyle, 2021; National Taskforce for Human Rights, 2021).

Taking children into the care of the state - whether under a compulsory or voluntary supervision order at home, with relatives, with foster carers, or in a residential home, secure unit, or young offenders institution - may protect them from harm (Article 19, 33, 34, 35, 36, 37, 39)\(^2\), with the most common reasons for referrals to the Children’s Reporter in 2018-19 being abuse and neglect, and parents having substance misuse issues (SCRA, 2020; 9). But it also violates their right to respect for family life (Article 9, Article 18) and is a traumatic event in its own right. Because of the risk to human rights, Article 20 of the UNCRC places additional obligations to provide special protection and assistance to a child deprived of their family environment.

Being raised by the state is a very different childhood; one that teaches children about bureaucracy, systems, and procedures, that often expels children around their seventeenth birthday on average, with poor mental health, few life skills or qualifications, and no place to call home and return to for support when life’s challenges arise (Medes and Mosehuddin 2006; CELCIS, 2011; A Way Home Scotland Coalition, 2019). I know this first-hand as a Care Experienced adult who spent years in foster, kinship, and residential care with other young people and around the edges of the child protection system. In recognition of this, there are specific rights within the UNCRC that apply to children in care. However as Vice-Chair of Who Cares? Scotland, a national advocacy charity for Care Experienced people, I know in

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\(^1\) The UNCRC Incorporation (Scotland) Bill will most notably ensure public authorities act compatibly with the UNCRC and report on their actions to meet the UNCRC every three years, give courts the powers to decide if legislation is compatible with the UNCRC and Scottish Government the powers to change laws if they are not, requires Scottish Government to publish a Children’s Rights Scheme and review how it is working annually, and gives powers to the Children’s Commissioner and Scottish Human Rights Consortium to take legal action in their own name to protect children’s rights (Boyle, 2021; Scottish Parliament, 2019).

\(^2\) The full text of the preamble and first 42 articles of the United Nations Convention of the Rights of the Child are included at Appendix A, which can be found on page 59. A child friendly summary version of these rights is included at Appendix B, which begins on page 78.
my head and my heart that these rights are commonly violated and that the statistics for this population are distressing. There is a human rights framework that should protect children, but in practice, it’s failing in its remit.

Experiencing adverse childhood experiences (ACEs) and trauma as a child increases our risk of poor physical and mental health, with people who have experienced four or more ACEs being fourteen times more likely to have been a victim of violence over the last year, sixteen times more likely to have used crack cocaine or heroin and twenty times more likely to have been incarcerated at any point in their lifetime than their peers with no such events in their childhood (Public Health Wales, 2018; 7). These and other risk-taking behaviours, often pursued as an ‘escapist’ coping mechanism by people without stable and supportive relationships to rely on in difficult times, often cause the over-representation of people who were cared for as a child by the state in homelessness shelters, psychiatric wards, prisons (Herman et al, 2011; Aldwin and Revenson, 1987). Too often these issues are considered private, and down to the choices an individual has made, but the volume of incidents should lead us to see them as a public, and structural issue, with a structural response needed from duty bearers (Wright, 1993; van Oorshot and Halman, 2000; Leonard, 2013; Independent Care Review, 2019).

Children raised by local authority structures are at a much greater risk of premature death as a child and later in life after they have left care than their non-care experienced peers (Greenwood, 2017; Care Inspectorate, 2020). Children in care have not benefitted from the general decline in mortality risk over time and as adults are much more likely to die of unnatural causes such as self-harm, overdose, suicide, and fatal accidents (Murray et al, 2020).

Despite these unacceptable results, the care system in Scotland is estimated to cost the public taxpayer £942,000,000 annually, with an additional £198,000,000 spent by other universal services supporting the unmet needs of care experienced adults later in life (Independent Care Review, 2020; 13,14). The economic investment made is not impacting on the life chances of these young people. In 2019 twenty-two young people left care with their destinations being recorded by those who had been caring for and supporting them in the absence of a parental primary caregiver as ‘Unknown’ (Scottish Government, 2020; 9). Scotland’s people should know this and want to demand better for the children whose upbringing they are paying for. We know from the testimonies
of Care Experienced people who were ‘lucky’ to find a placement where they became a part of a loving family for life that it does not have to be this way.

Slowing the COVID-19 transmission has mandated and placed additional pressure on struggling support systems. Children in care have historically told us that they want to have choice over their care, to have relationships with relatives important to them protected, to have therapeutic support, to have opportunities to follow their passions, to hold lasting and loving relationships with the adults that come into their life, to live without discrimination from their communities (Independent Care Review, 2019). These issues can all be rooted back to the numerous violations of human rights Care Experienced children have been experiencing for years. This dissertation seeks to understand how measures to control COVID-19 transmission have affected this, and how the Scottish Government’s actions align with their commitment to human rights.
2. A Note on Terminology

The terminology and jargon used in the care sector is confusing and evolving.

A child in care could be in a foster care placement, residential children’s home, living with a relative (kinship care), living with their parents subject to close social work involvement (looked after at home), or in a secure care institution. It is very common for children to experience multiple placements and more than one type of placement. Children who are adopted are no longer legally considered to be in care. A child in care is formally referred to as a Looked After Child (LAC), or a Looked After and Accommodated Child (LAAC) and can stay in care until their twenty-first birthday.

The United Nations Convention on the Rights of the Child (UNCRC) applies children’s rights to all under eighteen years of age however Scots law contains several complex and confusing definitions of childhood, set at a range of different age thresholds (CYPCS, 2020). Scotland’s Commissioner for Children and Young People (CYPCS) was created by the Scottish Parliament in 2003 in line with international principles to protect and further how children in Scotland experience their rights. The Commissioner has legal powers³ to investigate cases affecting the human rights of individuals or groups of children and young people and scrutinise proposed and existing policy and legislation for improvement. The Commissioner’s remit for Care Experienced young people extends to the age of twenty-one, reflecting the additional obligations the state owes these young people and the additional risks to their human rights (CYPCS, 2018; 10-11).

The term Care Leaver is typically recognised to mean a young person who was in care and now they are not, however in the law and therefore often in practice, this is defined as a young person who was in care for three weeks or more and was in care on or after their sixteenth birthday. This excludes someone after-care support who was in care for twelve years and then returned home at fifteen years old.

³ under the Commissioner for Children and Young People (Scotland) Act 2003. Its powers are set for further expansion under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill. The Commissioner is funded by the Scottish Parliament and operates entirely independently, although it often works closely with the United Nations and other international rights bodies. This means the Government cannot decide what it should or should not do.
This is very convoluted, and more so for the children who are living in this system and navigating these terms and labels attached to them.

The label as a LAC is widely rejected and resented amongst people who have been in care, and the term ‘Care Experienced’ has been claimed over the last decade during a surge of activism which catalysed the creation of the Scottish Independent Care Review in 2014. As the movement of this population has grown and begun to claim its identity, history, and failures they experienced as a child, the term and its spirit has spread globally and is used in government policy (Brady et al., 2019; Bakketeig et al., 2020, McShane, 2018; Who Cares? Scotland et al. 2018; Voyce Whakarongo Mai, n.d.; Create Foundation, n.d.; Knas Hemma, n.d.4).

The term can be compared to the events in which outdated, formal or clinical terms have been replaced with more inclusive, community-owned and therefore less offensive terms, such as the transition from ‘Homosexuals’ to ‘LGBT+ community’, ‘Coloured’ to ‘Black’, and ‘Native American’ and ‘American Indian’ to ‘Indigenous people’ in popular terminology (Mandisi, 2009; Bird, 1999). LAC is the convenient acronym professionals scribble down when writing about us to save time. That is not what we deserve to be reduced to (Connolly, 2018).

The term Care Experienced community is used by this population and the organisations who work beside them with the most inclusive and celebratory range possible, welcoming people of all ages who have been in care, from all types of placements, for all lengths of time and including those who have been adopted5. The New York Times and Associated Press affirms that the proper names of “nationalities, peoples, races, tribes” are capitalised (Tharps, 2014). Many Care Experienced people and organisations capitalise the C and E to formally recognise the community as an identity group. This is particularly useful from a campaigning perspective.

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4 These sources illustrate the use of the term care experience in Scotland, England, Wales, Ireland, Denmark, Norway, Sweden, USA, Australia, New Zealand, in the United Nations Headquarters in Switzerland, and by Prime Minister Jacinda Arden and First Minister Nicola Sturgeon.

5As the legal framework still uses other terms besides Care Experienced such as Looked After and Care Leaver they are still necessary in some contexts where services differentiate between different legal situations of care experience in order to provide support. New terms are needed that are developed by Care Experienced people and provide the clarity necessary for legal definitions.
While it may feel abstract to think of this group in this way, it must be recognised that this population experience discrimination for their background in state care and have a shared history that permits a unification. This is one way that private issues can become public concerns.

Care has existed since the beginning of organised society (Gavin, 2021). Their practice has evolved as we can see from historic evidence reports published by the Scottish Child Abuse Inquiry (SCAI), but we still place children in residential schools of similar size to historic orphanages and rehome them with strangers often wealthier than their biological family (Gavin, 2021; The Care Inspectorate, 2016; Kibble, 2021). While we may now only relocate children across the country, to a young child that can feel as far as the journeys Care Experienced children used to take on ships to the colonies to work as late as the 1960’s (Sen, 2021). The then Prime Minister Gordon Brown MP offered a formal apology to all victims of these resettlement schemes (Walker, 2009; Wallis, 2010; BBC, 2018).

This dissertation will explore the impact of COVID-19 on the rights of children who are in care away from their families - Looked After and Accommodated Children – as there are distinct needs of children in kinship care and looked after at home too broad to cover in this work with justice.

It is written by a Care Experienced adult for Care Experienced children and seeks to further empower the young people who have contributed to the literature used here and amplify their voices, beliefs, and experiences. Therefore, the terms Care Experienced children, children with care experience and children in care will be used throughout and should be understood to be referring here to children (under eighteens) who during the COVID-19 pandemic have been living in foster, residential or secure care.
3. A Review of the Literature

This chapter reviews existing literature on the rights of children in care, the importance of human rights for wellbeing, common rights violations Care Experienced children experience, and how the COVID-19 pandemic has been impacting on this. As these areas are under-researched, knowledge is drawn from across academia, public bodies and the third sector to present as full a picture as possible, and one which includes views of people with care experience.

3.1 The Importance of Rights

The preamble of the UNCRC states that “the child should grow up in… a family environment, in an atmosphere of happiness, love and understanding” (UNCRC, 1989).

“For any adult there is no more important responsibility than loving, nurturing and valuing a young person that's in your care, and that's true for parents for their own children, for guardians, for carers, but that's equally true for the state.”

- Rt Hon. Nicola Sturgeon MSP, First Minister of Scotland, 2019

While the right to be happy, to have friends, to feel loved are all unquantifiable measures that cannot be legislated for, it is vital to remember that the overarching aims of the 54 articles are to create the conditions, resources protections and freedoms that a child needs to flourish (Unicef, 2018).

This is not achieved in practice in Scotland yet, although the commitment from the First Minister and recently concluded Independent Care Review to realise this ambition of the UNCRC is strong (Independent Care Review, 2019).

In 2018-19, Care Experienced people came together in Glasgow on a public demonstration with signs bearing slogans such as ‘we need love, not a system’ because the current structures are not fulfilling their rights and creating the conditions for loving relationships to grow (BBC News, 2019; Sutherland, 2019). Many duty
bearers approach children’s rights like lawyers and view them as something to be considered and met individually, when what is needed is to approach children’s rights as most parents implicitly do and prioritise creating a safe and nurturing environment (Freeman, 1998; Independent Care Review, 2019).

Maslow’s Hierarchy of Needs theory is widely recognised; it details the steps we build on from our most basic physiological needs right up to reaching our full potential. Maslow’s hierarchy in the real world is not as linear as it appears; many people are frequently achieving some areas of some levels and not others out of necessity and circumstances, such as poverty and homelessness (Everly, 1995). The UNCRC encompasses all of Maslow’s identified needs and presents them as an indivisible set.

While our rights being respected can enable growth to reach full potential at the peak of Maslow’s triangle, infringement of them can lead individuals down a similar but less well-known ‘triangle of trauma’. This triangle illustrates a path from adverse childhood experiences to neurological/social/health problems, and ultimately to premature death.

It is vital that children’s rights are understood as central to their wellbeing, growth and development, and their life chances and are not overlooked in the response to protect their wellbeing from the very specific threat of the coronavirus (Tisdall and Kay, 2015).

Children’s rights and children’s wellbeing are conceptually and politically different – wellbeing improves with incorporating children’s relationships, with being aspirational and maximising available opportunities, and is difficult to quantify in practice. Children’s rights are minimum standards which do not easily incorporate important matters for children such as friendship and love, yet are politically powerful, backed by law, and able to hold duty bearers accountable (Kay and Tisdall, 2015; 807). Children’s rights are the essential foundation for children’s wellbeing to flourish.

The international human rights system does not just provide minimum standards to ratify. It places obligations on states to take action respect, protect and fulfil rights. UNCRC Article 4 requires states to take all appropriate legislative, administrative, and other measures for the implementation of rights. In relation to economic, social and cultural rights, states must use available resources to the maximum extent possible to fulfil these. Rights such as an adequate standard of living, the highest attainable standard of health and an education which develops a child to their fullest potential, are standards that must be progressively realised.
In delivering these rights the UNCRC requires a participative approach (Article 12) that decisions should be made in the best interest of the child (Article 3) and that Care Experienced children are entitled to special protection and assistance (Article 20). For example, Social Work Scotland’s *Framework for Decision Makers to help children in care maintain a contact with their families during the COVID-19 pandemic* (2021) instructs professionals that face-to-face family contact between children and their families can still proceed ‘where it is considered essential to the child’s wellbeing’, however it also reminds professionals later on that ‘where there is a condition of contact attached to a CSO/ICSO… the implementation of that condition remains a legal requirement.’

### 3.2 The Legislative Landscape

On 31 July 2019, Scotland had 14,015 young people in care - less than 2% of the country’s child population (Scottish Government, 2019). In addition to the UNCRC, these children have several legislative protections.

The 1995 Children Act strengthened the UNCRC’s intentions and defined the rights and responsibilities of parents. The Children and Young People (Scotland) Act 2014 raised the age young people could stay in care from eighteen to twenty-one, required better support for care leavers, and named all public bodies as ‘Corporate Parents’, with the policy intention that staff ask themselves ‘would this be good enough for my child?’ when supporting people with care experience (Scottish Government, 2018). The Children (Scotland) Act 2020 when brought into force will strengthen the routes through which children’s voices are heard and valued in family court cases and better support siblings in care to be able to live together or maintain a strong relationship.

Scotland is a progressive nation, with some of the strongest rights globally for people experiencing homelessness, a voting age lower than other parts of the UK, an aspiration to be a world frontrunner in gender equality, and a globally-leading model of UNCRC incorporation (Watts, 2014; McCall-Smith, 2019; Mooney and Scot, 2016;

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6 A CSO/ICSO is a Compulsory Supervision Order/interim Compulsory Supervision Order for a child made by a judge, placing them in care. Supervision orders are regularly reviewed by a Children’s Hearing panel.
National Advisory Council on Women and Girls, 2019). The recent root-and-branch Independent Care Review has cross-parliamentary support for its implementation and was unique in its participatory and inclusive approach. Beyond the intentions and policy documents however, the day-to-day experiences and outcomes of the children in the care system must become world-leading too if Scotland is to truly fulfil the ambitions to ‘get it right for every child’ (GIRFEC) and become ‘the best place in the world to grow up’ (Scottish Government, n. d.; Children and Young People (Scotland) Bill memorandum, 2013).

While the measures taken in the early stages of the pandemic were required to protect lives, the UN has warned of “grave physical, emotional and psychological effects of the COVID-19 pandemic on children”. States are required to ensure any interference with human rights is lawful, necessary, and regularly reviewed, in addition to utilising all available resources to the maximum scope to fulfil children’s social, cultural and economic rights. There must be accountability on the Scottish Government to do this and ensure children’s rights to a say in decisions being made about their lives and right to special care and protection living in care are respected.

3.3 Common Challenges to Care Experienced Children’s Rights

The potential of UNCRC Incorporation to add a legal armour of protection to children whose rights are infringed will be lost if the processes around this are not easily accessible and child friendly. Children in care report that utilising complaints processes are already too complicated, take too long to be resolved, and feel that they mostly become about protecting the organisation they are complaining about rather than listening to the child’s specific problem and positively engaging with them to resolve it (Who Cares? Scotland, 2020).

The right of the child to have their views about their care heard (Article 12, UNCRC, 1989) is incredibly challenging for a child in a system of bureaucracy to uphold by themselves. Independent advocacy is highly valued by children to help understand their options, have their rights and entitlements met, and their opinions and complaints taken seriously.
“The most common word used by a young person without an advocate is ‘fine’.”

- Children’s Panel member (Who Cares? Scotland, 2016; 19)

Data from a national advocacy provider for Care Experienced people shows that the top issues advocates are asked for help with are:

1. Having a say in a legal decision being made
2. Contact with parents
3. How their day-to-day care is going (care planning)
4. Contact with siblings
5. Issues with their education.

(Who Cares? Scotland, 2019; 10)

Approximately 85% of children are only ever referred to the children’s reporter on care and protection grounds (SCRA 2020; 2)\(^7\). In spite of the potential for poor care records to have obscured these horrors (MacNeil et al, 2017), it is well documented through numerous inquiries and reviews over the past thirty years that hundreds of children were subjected to abuse while in care (Orkney Inquiry, 1991; Skinner, 1992; Kent, 1997; Utting, 1997; Waterhouse, 2000; Edinburgh Inquiry, 1999; Fife Inquiry, 2002; SCAI, 2020). The Scottish Child Abuse Inquiry is currently taking evidence from Care Experienced adults on incidents up to 2014.

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\(^7\) SCRA is the Scottish Children’s Reporter Administration. If someone is concerned about a child or young person and believe they might need a Compulsory measures of social work supervision, they will make a referral to the Children’s Reporter. The Children’s Reporter then decides whether the young person should go to a Children’s Hearing. At a Children’s Hearing it may be decided that a child should no longer live at home. Children come into contact with the children’s reporter for a broad range of reasons, including because there are concerns they are not being cared for properly at home and may be suffering from abuse or neglect, because there are concerns about some aspect of the child’s behaviour such as not attending school or misusing alcohol, or because the child has broken some aspect of the law. It is important to recognise that whatever the initial reason for the referral, most of which are not offending related, the unmet needs and rights of these children will be similar in many cases, and the Children’s Reporter will look at the child’s circumstances and needs as a whole. About 26% of the children referred to the SCRA each year are then referred to the Children's Hearings System and will have a social worker and be entitled to advocacy under Section 122 of the 2011 Children's Hearings (Scotland) Act. This is considered the threshold of Care Experience by many.
There is sustained and substantial evidence that the public authority is failing in its duty to safeguard the rights of every child. It is essential that children can participate in decisions about them, feel empowered and access independent relationship-based advocacy, and that those responsible for their care are appropriately held accountable for their decisions and performance. It is because of, rather than despite of, the intense pressures and changes the pandemic is catalysing for our care services, that this is needed now more than ever.

3.4 Care Experienced Children’s Rights during the Pandemic

For what may be the first time for many, the general population has had some experience of what it may be like to be a child in care; to have their daily routines mandated by the state, loss of control and uncertainty being dominant causes of anxiety, contact with family limited or prohibited, and potential food insecurity and mental health challenges (Independent Care Review, 2019; Sutherland, 2019). Still, this does not mean this crisis has been easier for our most vulnerable young people who often were already facing such barriers to leading a ‘normal’ life.

The Scottish and UK Governments made explicit that children moving between the homes of two separated parents were exempt from the ‘stay at home’ restrictions (Scottish Government, 2020; BBC, 2020). Guidance for children in care was not produced until later and contact arrangements have been disrupted anyway by the closures of community centres, a depleted workforce due to shielding, and frontline care-workers being forced to navigate difficult decision-making. General guidance does not apply itself well to state care and practical complexities to keep both the children and staff safe.

Some foster carers terminated their child’s placements to reduce their own family’s exposure risk, forcing young people leave care before they were ready and requiring them to present to their council as homeless, despite the ban on evictions legislated for 18 March 2020 to protect against homelessness (Who Cares? Scotland, 2020). Many Care Experienced young people are not protected by the Coronavirus Act (Scotland) 2020 evictions ban because they typically sign occupancy agreements (often presented as House Rules) for accommodation funded by social work. They
therefore do not have the same rights as renters with tenancy agreements (Shelter Scotland, n.d.;).

Since the adoption of the UNCRC in 1989 the United Nations Committee on the Rights of the Child has issued a number of General Comments to help interpret the Convention in line with societal and technological developments.

General Comment Number 24 replaced General Comment 10 from 2007 on children’s rights in the child justice system to reflect the changing understanding of child and adolescent development, evidence of effective practices such as restorative justice, and concerning trends relating to the minimum age of criminal responsibility (MACR) and the persistent use of deprivation of liberty against children and young people, a group in which children in and on the edges of the care system are significantly over-represented in (CYPCS, 2021). Notably, while the comment encourages countries to raise the MACR to at least 14 years, Scotland’s MACR remains one of the lowest in the world at 8, with the 2019 decision to raise it to 12 years still to be implemented (CYCJ, 2019).

5th February 2021, the UN Committee for the Rights of the Child adopted General Comment 25 on ensuring children’s human rights apply in a digital environment (Livingstone, 2020). This is especially welcome news for Care Experienced children and care leavers, who are frequently digitally excluded due to lack of technology or funding to secure internet provision. There is a clear relationship between those who do not use the internet and poorer mental health and lifestyle activeness, regardless of other socioeconomic and demographic factors, as well as exclusion from many employment, educational and social opportunities (Kahn, 2021; McGhee and Roesch-Marsh, 2020). The Scottish Government has since committed £5 million to the Connecting Scotland programme which aims to get the most digitally excluded people online, specifically identifying care leavers, however this programme is only beginning a year after the first lockdown (Together, 2020).

70% of children in care are estimated to be struggling compared to 10% of the general child population (Smeddle, 2020). Despite this, many are unable to access treatment until they reach severe crisis (Wilson, 2020; Independent Care Review, 2019; 51). Throughout the pandemic children have shared that one of their biggest challenges has been their mental health, with too much time alone causing rises in anxiety and
depression, yet mental health services have been even harder to access (Barnardos, 2020; Wilson, 2020). This twofold effect seriously questions how the government can meet children’s rights to ‘the highest attainable standard of health and to facilities for the treatment and rehabilitation of health’ (Article 24).

Children have the right to support for their family if it would avoid being taken into care and to a regular review of their situation if they are living away from family (Articles 18, 25). Family separation can only be justified if it is necessary for the best interest of the child and the child’s views must be heard and taken seriously (Articles 9, 12). In Scotland, this formal process takes place through the Children’s Hearings System (CHS), bringing together the child, their relevant professionals, relatives and a panel of CHS volunteers.

The Coronavirus (Scotland) Act 2020 included measures to extend the period in which emergency reviews must be carried out, allows hearings to take place online although this presents barriers for many young people in being able to fully participate, and does not require panel members of different sexes. Children are not given an option whether they would rather have their hearing held face-to-face or virtually. Children are no longer required to attend their hearing either, although decisions can be appealed for 42 days after (Clan Childlaw, 2020). This is infringing on children’s rights to have a say in their care, to special protection and assistance, and also to be protected from harm due to a decrease in community interaction (Articles 12, 19, 20; CYPICS, 2020).

Emergency home learning is disruptive to every child’s right to education and their family. For children in care moving between placements or living in residential homes potentially with many other children attending different schools and studying at different levels, the progress they can make to keep up with their classmates is likely to be less. The Standards in Scotland’s Schools Act (2000) requires all children in care to be considered to have additional support needs (unless there is sufficient evidence to show they would not benefit from this) as individually tailored support can help children experiencing significant difficulties to get the best from their school education (s6(1A)). I was unable to find any literature detailing how carers or teachers were being supported to meet this legal right for Care Experienced children at home.
A common issue for young people in care is restrictions on their internet access, often blocked partially or completely to protect them from any possibility of internet exploitation. Some local authorities have bans on certain websites, including Facebook, Instagram, WhatsApp and Zoom, making it challenging for young people in their care to stay connected to their peers (McGhee and Roesch-Marsh, 2020). Additionally, young people in residential homes are often sharing devices, or unable to afford mobile data top-ups. The data divide across social classes was debated in Westminster Parliament 18th January 2021 yet children in the government’s care were not mentioned. Charities report data poverty being a top issue among care leavers (Life Changes Trust, 2020; CELCIS, 2020; Who Cares? Scotland, 2020). It was concerning that I was unable to find more literature examining this issue.

This could be because the rights and freedoms of children are being much more severely restricted in many residential settings. While some residential homes’ COVID-19 responses have benefitted their children, for example staff moving into residential homes to reduce shift turnover and infection has provided more welcome stability for the children they care for (Cameron, 2020). In other homes all children have been required to self-isolate in their bedrooms any time a worker showed symptoms, and had meals left outside bedroom doors by adults in full personal protective equipment (Who Cares? Scotland, 2020).

Residential care has required balancing protecting the children and workforce from the risks of coronavirus whilst also maintaining a supportive, caring, and relaxed home environment. In Polmont Young Offender’s Institute where two thirds of the boys have care experience, young people have at times been kept in their rooms for over twenty hours a day and had extended periods without face-to-face contact with relatives, social workers, or lawyers (Lightowler and Adamson, 2020). Besides violating rights to interact with peers, to education, voice, and others, (Articles 8, 12, 15, 31) “the imposition of solitary confinement of any length on children constitutes a cruel, inhuman or degrading treatment which violates Article 7 of the International Covenant on Civil and Political Rights and Article 16 of the Convention Against Torture”.

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3.5 The Role for this Research

The pandemic has required drastic action to protect physical health, but the measures taken will undoubtedly have a long-lasting impact on these locked-down generations’ mental health, their family relationships, and their educational/employment journey, as a non-exhaustive list. Children in care who already faced additional barriers need increased protection and support during this time to ensure they do not fall even further away from their peers.

The majority of the literature I came across referred to the care leaver population – broadly, those who have left care and are under twenty-six years of age. The volume of coronavirus-related research for this group was positive to see as they face enormous challenges and injustices (A Way Home Scotland, 2019; Independent Care Review, 2019). However, it was concerning there were not more examples of academics and professionals actively engaging with younger children living in a system which, like all our public services, has been required to make a series of rapid policy and practice changes with less planning and scrutiny than we would usually expect. This dissertation draws together much of these children’s voices and experiences from available literature and evaluates them collectively before making recommendations.

4.1 Materials

A thematic analysis of the impact of Covid-19 on Care Experienced children’s human rights will be carried out by assessing five documents. The materials were selected to provide a well-rounded insight into the pandemic’s impact and government action on the lives of children in Scotland’s care system. They have been produced by established organisations that aim to represent the views of children and progress human rights in Scotland; their independence from the Scottish Government means that their work can be critical yet aims to disrupt and progress social policy.

These are:

1. **Analysis of Scottish Government’s Response to UN Committee’s Recommendations**

   - An independent assessment of how Scotland’s COVID-19 responses were impacting children was carried out by the Observatory of Children’s Human Rights Scotland, funded by the Children’s Commissioner, due to concerns emergency legislation had not been assessed for UNCRC compatibility (CYPCS, 2020). This was published 16 July 2020 and has 64 pages.

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8 The Scottish Alliance of Children’s Rights, known as Together, works to improve the awareness, understanding and implementation of the United Nations Convention on the Rights of the Child (UNCRC). Their membership is made up of a range of children’s charities, from small local playgroups through to large international charities, alongside individuals, academics and professionals with an interest in children’s rights (Together, n.d.)
3. The Impact of COVID-19 on the Care Experienced Community II

- Charity Who Cares? Scotland’s report published May 2020 provides 38 pages of data from Care Experienced people calling their newly established Covid-19 helpline for a range of issues, including advocacy, counselling and financial support.

4. The Impact of COVID-19 on the Care Experienced Community III

- a second 12-page report published March 2021 reports the experiences Care Experienced people have shared with Who Cares? Scotland while seeking help almost a year into the crisis.

5. Devalued by Forces Beyond your Control

- Barnardos’ 21-page report published May 2020, shares lockdown experiences and future hopes from children in care, Care Leavers, Asylum Seekers and Refugees, Young Carers, Young Parents, LGBTQ+ young people, and young people with disabilities. Its inclusion enables a better understanding of how children in care are being specifically impacted.

4.2 Methodological Approach

The thematic analysis was carried out in the recognised stages of familiarisation, initial coding, intensive coding, and coding synthesis and underpinned by a human rights-based approach (Glaser, 1978; Creswell, 2009). This meant methodically using a framework of international human rights standards to ensure that children’s human rights are central to the analysis and recommendations formed.

The Scottish Human Rights Commission set out five underlying principles important in operationalising a human rights-based approach. These are:

- **Participation**: children should be involved in decisions that affect their rights.
- **Accountability**: how children’s rights are being affected should be monitored and remedied when infringements occur.
Non-discrimination and equality: all forms of discrimination are eliminated. People who face the biggest barriers to their rights being upheld (such as Care Experienced children) are prioritised.

Empowerment: children are fully supported to understand their rights and be involved in developing policies and practices that affect them.

Legality: the legal rights set out in international and domestic laws are always respected.

The use of these PANEL principles will direct focus to the structural causes and injustices which prevent Care Experienced children’s rights from being fully considered and fulfilled and increase scrutiny on those with responsibility for protecting these (SHRC, 2020; Shelter, 2019). This approach should enable clear recommendations to be formed where legal rights are being denied and empower Care Experienced children to be active participants in the decision-making about their care.

The UNCRC Incorporation Bill will require public bodies to produce child-friendly versions of materials relating to children (Scottish Parliament, 2021). In respect of this best practice, child-friendly summaries of the UNCRC articles, the UN’s specific recommendations to governments regarding COVID-19, and this dissertation are included at Appendix B, C and D.

4.3 Justification of Research Method

It is essential that anyone working with, and for, children considers what good participation work looks and feels like, and commits the time to deliver this and follow-up after (Staples et al., 2019; 198-199; Children in Scotland, n.d.).

The opportunity to participate in a piece of research must be extended to all children who meet the essential criteria, in this case, being in care – it is the researcher’s responsibility to make activities that are appropriately engaging and ensure all children are treated fairly and given the time and support they need to share what they want to (Staples et al., 2019; Youth Link Scotland, n.d.). Participants must understand their rights, and that participation is their choice, and should feel valued, respected, and
listened to – this includes researchers keeping in touch with news from the results of the research (ibid).

COVID-19 restrictions have necessitated this to be a desk-based project. These circumstances lend themselves well to using secondary data, as collecting data from children remotely and fully meeting the participation principles above would be challenging; it would be ethically irresponsible to attempt this without a suitable adult present to provide a safe space for children should they wish to access it and progress any child protection concerns. It would be negligent for the University to allow me to conduct one-to-one research with vulnerable participants without evidence of my competency to do so in a safe and trauma-informed way.

Therefore, a thematic analysis of reports centring Care Experienced children’s voices experiences of Covid-19 was the method adopted for this work. The cumulative 157 pages provides enough data for a rich and detailed analysis of how the pandemic has and continues to impact on Care Experienced children’s rights.

4.4 Reflexivity of the Researcher

Rights can be interpreted subjectively but most conceptions are embedded within the care and protection system and much of what is written about them is by people involved in service delivery. This heavily shapes the understanding of them, and without the UNCRC yet being legally enforceable, there is a struggle to have it taken seriously by every practitioner.

Many assumptions don’t go far enough in terms of what it means to fully enjoy your rights as a Care Experienced person, and there is a pervasive social stigma around care which influences public expectations around our entitlements and rights (Murray, 2021). This negative systemic narrative is powerful and causes internalised low self-esteem for many. People who do not highly value themselves will not demand high quality services and support.

I have critically engaged in discussions around children’s rights and deconstructed the difference between a childhood in care and a family home with Care Experienced peers and supportive professionals. I understand which parts of my experience are particular to me and which are widespread failures. The reference points I now have
has helped me think beyond a prejudiced position rooted in my own childhood to an intersubjective position held by a community of activists.

As a result, my view of fulfilling rights is probably closer to the spirit of what is intended within the UNCRC and international rights treaties. My perspective is a strength enabling me to deconstruct that systemic narrative and is of benefit to this research, rather than a weakness to mitigate against.
5. Analysis of Findings

This section reviews the thematic analysis findings.

It is structured by first using the PANEL principles to highlight how the COVID-19 response approach was not grounded in human rights. It then evidences the five key themes from the evidence analysed in order to examine how the rights of children in care in Scotland have been affected.

Remedies to these issues are then proposed in section 7.

5.1 PANEL Principle-Based Decision-Making

The materials evidenced a lack of consideration to rights-based decision-making during the pandemic. This has been reviewed against each PANEL principle.

5.1.1 Empowerment

Measures to ensure children were able to share their views on policy being developed and understand the decisions being made were overlooked.

Most young people relied on TV and social media to keep up with pandemic measures, which many reported as confusing and anxiety-inducing, particularly with conflicting messages and politics between the UK and Scottish Governments.

5.1.2 Non-discrimination

Discrimination can be indirect, and unintentionally disadvantage minorities by a lack of knowledge of the realities of their lives. Regardless, duty bearers have a responsibility to consider how their decisions may negatively impact vulnerable groups like children in care and take mitigating actions accordingly. The analysis made clear that the specific needs of children in care were not adequately considered in COVID-19 responses. The care system has been adapting guidance available to the complex circumstances of state care in different ways and improvising with varying levels of success and harm.
5.1.3 Participation

Some of the discriminatory effects of policies produced during the pandemic could have been offset had children and young people in care been consulted during their development. Children living in care must be a part of the solutions the care system adopted, yet the evidence analysed provides no indication that this has taken place anywhere.

5.1.4 Accountability

A significant number of recommendations in the materials were aiming to increase scrutiny and accountability of decision-makers, as this has been significantly relaxed during the crisis to the detriment of children in care. Consequently, ensuring rights and accountability is also contained in the recommendations section at 6.2.

5.1.5 Legality

Children in care have numerous rights in law and the UNCRC which governments are obligated to ensure are upheld in a participatory, empowering, and non-discriminatory way. The materials evidence a significant range and quantity of rights breaches during the pandemic, with children most notably facing challenges in enjoying their legal rights to mental health treatment and support, choice and agency over their care, education, contact with family, and the challenges of digital exclusion and living in care settings under the restrictions (Articles 3, 12, 15, 17, 20, 24, 25, 27, 28, 29, 31).

These violations are discussed in more detail below in the five key themes the thematic analysis revealed. Themes appear in order of how often they were raised throughout the literature, beginning with worsening mental health and a lack of support.

Theme 1 - Mental Health and Support

Restrictions to protect public health from the coronavirus disease have worsened the mental health of the most vulnerable children in our country as they have been further separated from their networks.

77% of Who Cares? Scotland survey respondents reported having less or much less support from professionals and care providers. 73% said they were unhappy with the support available to them during lockdown.
The lack of support has led to an increase in serious mental health issues and risky behaviour such as absconding, which puts care experienced children at an increased risk of criminalisation due to the bureaucracy they are raised in.

86% of Who Cares? Scotland respondents said their mental health had become worse or much worse than before lockdown. The helpline has increasingly received calls from young people feeling suicidal.

Children widely have been widely unable to access timely mental health care. There has been no ringfencing of services or prioritisation for children living in particularly challenging circumstances such as in care during this time. Digital responses are not a universal solution without universal provision of technology and internet access.

Social networks were identified as useful by those who had them, however most felt the pandemic had amplified how isolated and independent they were as young people separated from their families. Child-friendly communications, such as Young Scot's, and explanation of the restrictions by someone like a social worker were highly valued to reduce anxiety and isolation.

**Theme 2 - Restrictions and Being in Care**

Barnardos’ report covers multiple disadvantaged groups. The voices of Care Experienced people within it differs from other groups by raising issues with a lack of support, worsening mental health being unable to see their family, and being uncertain of how this will affect their placement and transition from care. It usefully highlights the unique circumstances children in care live in away from a parent and under the care and regulations of the state.

The Scottish Government report they ‘work closely with Police Scotland… to resolve any issues as they arise for those caring for looked after children and young people’. This was concerning as most family households don’t engage police to resolve parenting issues. This criminalisation of children in care is discriminatory and catalyses inequalities for this population later in life (CYCJ, 2019).

Children deprived of their liberty were not considered for release as the UN recommended, and have spent long periods in isolation, unable to access healthcare or showers at times (Recommendation 8, Articles 9, 18, 25, 37, 40). Despite the
Scottish Government’s commitment to introduce mobile phones to these institutions a three-month delay at the beginning of the pandemic and a ban on external visitors severely restricted young people’s rights to remain in contact with their social worker, family, and access health care, their education, and their mental health.

Together has highlighted that several of the Government’s CRWIAAs produced during the pandemic do not consider vulnerable groups - in particular, sixteen- and seventeen-year-olds in secure care or Polmont Young Offenders Institution (YOI). Together raises further concerns in relation to these children deprived of their liberty being treated as adults. Despite the UN asserting that government must maintain basic services for children (Recommendations 4, 5) some children in Polmont YOI were unable to access showers and physical or mental health care during lockdown (Article 24). The legality of this is unclear.

Theme 3 - Family Contact and Placements
Some children have enjoyed responses to the pandemic increasing their contact with family, whether this is because there are fewer practical barriers to online contact or because they have been placed at home for longer durations of the lockdown to reduce household mixing between their family and carers. However, if these arrangements were suitable, it should have been done before COVID-19 in the child's best interests.

Other children have been upset by the lack of physical contact with their family and feel they have become more distant from them. Some children living at home do not want to be there and are worried about placement security.

56% of Who Cares? Scotland survey respondents reported having none or little support from family and friends. 76% said they felt much less or a bit less connected to their family and friends.

Guidance is not detailed enough to ensure all children benefit from the intended spirit of them, regardless of where they live. For example, the Scottish Government produced clear guidance to set out that where parents did not cohabit, children would be permitted to travel between households to preserve their relationships and right to family life but did not consider Care Experienced children until later in the crisis.
The Scottish Government says in their response to Recommendation 7 – protecting vulnerable children that they ensured NHS health boards were clear that children with learning disabilities and autism were exempt of the ‘no visitors’ policy (Article 23). There is no explanation provided as to why this policy does not equally apply to children with learning disabilities or autism in care units or YOI.

**Theme 4 - Voice and Formal Processes**

Digital communication has also caused a significant decrease in participation in formal processes such as hearings. Many of these significant changes affecting children in care right now are being done without the child’s voice being considered.

Child protective services and hearings must continue with children still being able to participate in these formal processes relating to their care (UN Recommendation 6). While the systems have been streamlined and appear less bureaucratic to operate in the pandemic, there also appears to be a reduction in the participation and empowerment of young people and the accountability of service providers. Together raises concerns that changes to the Children’s Hearing System have impacted on Care Experienced children’s rights to a fair hearing and due processes, access to justice, deprivation of liberty, contact and family life and participation in formal processes (Articles 4, 9, 12, 18, 20, 21, 25, 37, 40).

The UN requests that governments consider children’s rights and ‘any restrictions are necessary, proportionate and kept to an absolute minimum’. While the Scottish Government has committed to this the full text of their response states that they are only carrying out Child Rights and Wellbeing Impact Assessments (CRWIA) for ‘key policies and legislation’. These assessments should be carried out on every policy change to ensure governments are acting in the best interests of children, upholding their rights and consulting their views on the creation of policies which affect them (Articles 3, 4, 12). This also raises concerns about the non-discriminatory nature of alternative exam-grading processes, given that Care Experienced students are subject to teacher prejudice and unconscious biases.

These rights infringements show that the covid-19 pandemic is severely impacting on children in care’s ability to participate in decisions being made about them and the accountability those responsible for their care are subject to at this time.
Theme 5 - Digital Exclusion and Education

Children report digital exclusion as they have no or shared access to a computer or mobile or are putting themselves into debt with pay-as-you-go mobiles and are worried about falling further behind at school from which they are not receiving the support they need to learn.

Children in care during the initial peak of the pandemic were being affected by a lack of access to suitable technology to engage in education, contact and formal processes such as hearings, poorer mental health and relationships with their families, carers and workers feeling strained, and their contact arrangements being disrupted without a suitable alternative in place and no solution in sight.

Numbers of vulnerable children eligible to attend school are low and children with additional support needs (disproportionately children in care) are not getting the assistance they need to fully realise their right to an education.

The Scottish Government has responded to many of the UN’s recommendations, to ensure children are still able to access their rights to education, rest, leisure, recreation, cultural and artistic activities, while respecting social distancing guidelines (Recommendations 3 and 2), by supporting digital platforms. This includes the Parent Club website, support and opportunities for young carers hosted by the Young Scot website, and funding charity YouthLink Scotland to work with youth workers across the country transitioning to online engagement. It is positive to see that these rights (Articles 15, 28, 29, 31) are being taken seriously and held in equal importance as others, such as access to food and healthcare (Articles 24, 27). However, participation depends on young people’s access to the internet. These policy responses are not non-discriminatory as they are disproportionately inaccessible to children with disabilities, living in poverty, in overcrowded homes, who are refugee or migrant children, or children who are in care. Rapid actions to address digital poverty are needed alongside these measures to protect children in adverse circumstances from further disadvantage.

This research shows how children in care, while surrounded by a mass of legislation, policies, frameworks, and professionals more than possibly any other vulnerable group, can be overlooked, neglected, and poorly respected by those with a duty of care towards them. The pandemic has not created the environment for rights violations and inequality, but exacerbated it, despite combatting its effects and ‘building back better’ being a priority of almost every organisation with an interest in children’s wellbeing.

As discussed earlier, the Scottish Government is already using several policy tools to improve outcomes for Care Experienced people in Scotland. One of Scotland’s 13 National Performance Indicators is to ensure ‘we grow up loved, safe and respected so that we realise our full potential’ (National Performance Framework, 2018).

This priority is reflected in the work of, but not limited to, the:

- Getting It Right For Every Child strategy,
- Equally Safe (prevention of violence against women and girls) strategy,
- Fairer Scotland duty,
- Child Poverty Action Group,
- commitment to Corporate Parenting in the 2014 Children and Young People Act
- 2016-2021 Homelessness and Rough Sleeping Action Group,
- 2017 Widening Access Commission,
- commitment to satisfy the Independent Care Review’s 2019 findings within ten years,
- 2020 Children’s Act,
- ongoing Drug Deaths Taskforce,
- ongoing Human Rights Taskforce and proposed future human rights bill,
- legal incorporation of the UNCRC
- as well as ad hoc measures committed to in the Programme for Government, such as council tax exemption for legally-recognised Care Leavers (Sutherland, 2021).
While there are substantive legal rights in place, the state has an obligation to ensure them in a way that is participative, empowering, and non-discriminatory. There must be accountability and resulting consequences for duty bearers who do not respect this. Responses to decades of evidence of poor outcomes for this community are not yet translating into the daily realities for the current generation of children the state decided it could provide better childhoods for.

Viewing the Scottish Government’s responses to the coronavirus emergency through a child and human rights-based lens highlights serious failures to protect the baseline rights internationally recognised as essential to children’s wellbeing. Regardless of the visionary commitments and long-term strategies altogether aspiring to make Scotland ‘the best place in the world to grow up’, the intentions of these have not been demonstrated during the crisis (Articles 2, 3, 4).

This report provides recommendations for immediate action that could be implemented simultaneously with ongoing strategies to address the key themes discussed in the Findings section.

This section provides recommendations under the themes synthesised from the analysis of the key materials selected to better protect the rights of children in care in Scotland during the pandemic and enable better long-term outcomes.

7.1 Mental Health and Support

i. Care Experienced children must be able to have timely access to trauma-informed mental health services tailored to people with experience of care.

(N and L of PANEL, Articles 24, 39).

Immediate investment is needed in mental health services to support people with trauma and loss. Children in care should be a priority access group for this treatment and supported through a trauma-informed lens that recognises their unique challenges and vulnerability living away from their family.

ii. Children deprived of their liberty must have continued access to the important adults in their lives and those who can independently ensure their needs are being met.

(P, A, N and L of PANEL, Articles 1, 2, 3, 4, 6, 12, 19, 20, 24, 25, 31, 40).

Children in secure care and young offenders’ institutions must be able to communicate with their social worker, advocate, health professionals and key family relationships for both their mental, emotional and physical wellbeing. This communication should include regular face-to-face visits and inspection of the facility caring for them to ensure their basic needs and rights are being met. Additional powers for the Children’s Commissioner to be able to enter places of detention as part of an investigation are essential.
iii. Professionals must engage with and support children in their care beyond for specific meetings or tasks.

(P and E of PANEL, Article 20).

Care experienced children spoke about the isolation and lack of human connection they experienced. Professionals must check-in and support their young people beyond when they are required to for goal-based purposes such as preparing for a hearing. Face-to-face contact should resume as soon as possible. Mentoring or befriending relationships should be explored for children wherever possible, as well as recognising the importance of children being able to connect and maintain relationships with their peers at school, in their neighbourhood and other Care Experienced young people.

7.2 Restrictions and Being in Care

iv. Care Experienced children and young people must be a group whose needs and rights are prioritised in easing of restrictions

(P and N of PANEL, Article 3, 8, 20).

The Scottish Government recognise that they must ensure rights infringements occur only for as short as possible yet children in care whose rights are threatened much more than the general population and are entitled to special protection and assistance are not being thoroughly considered by all policymakers to prevent further marginalisation. This planning should be done in partnership with Care Experienced children and young people and will allow professionals to plan and children to be reassured, with no rights infringements occurring longer than necessary because of unclear guidance.

v. COVID-19 information must be understandable to young people and consider the particular needs and circumstances of children in care.

(E and N of PANEL, Articles 3, 5, 8, 20).

Guidance must be provided for care settings to prevent blanket approaches being adopted. Care Experienced children should be prioritised in the easing of restrictions. Guidance must be accessible to children and people with complex needs, and
professionals should support young people to understand the restrictions. Additional measures necessary to keep carers and children safe must be the responsibility of the adults and not the children, for example if personal protective equipment is necessary, it should be worn by the staff entering and leaving their workplace, and not the children in their care-home.

vi. **Policing of restrictions should be done through a care-experienced lens and prevent unnecessary criminalisation or further traumatisation of children in care.**

(N and L of PANEL, Articles 3, 20, 37).

Understanding of the context children in care are experiencing them in, and of their particular vulnerabilities that may cause running away from care or intense feelings of loneliness. The Coronavirus (Scotland) Act 2020 was amended to protect 16- and 17-year-olds from receiving fixed penalty notices but this does not protect young people in care from the broader criminalisation they experience by living in a formal care setting.

7.3 **Family Contact and Placements**

vii. **Face-to-face contact arrangements with family must be prioritised in the easing of restrictions.**

(N and L of PANEL, Articles 3, 9, 20).

Despite welcome guidance from Scottish Government and Social Work Scotland, contact arrangements have been largely left up to the discretion of carers and social workers. Contact arrangements have been disrupted to different extents across local authorities and care providers, to the detriment of young people’s mental health and relationships. Prioritising this activity when easing restrictions will ensure guidance is clear and every child’s legal right to spend time with their family is respected.
viii. **Physical contact with another household must not require an asymptomatic child to isolate.**

(L of PANEL, Articles 3, 9, 10, 15, 18, 20, 23, 28 31).

Physical family contact, moving between placements or local authority areas must not result in mandatory isolation for a child with no symptoms. Safety precautions such as wearing Personal Protective Equipment and staying in the same building or room for extended periods must be the responsibility of the staff in their workplace, not the children in their home.

ix. **Decisions to alter a child’s contact arrangements or placement, including placing them at home with family for an extended period must be scrutinised and managed to a high standard, informed by the child’s views and guarantee placement security.**

(P, A, E and L of PANEL, Articles 3, 9, 12, 20, 21, 25).

No child’s placement should change or end because of coronavirus, decisions should be made in the child’s best interest only and with the child’s views in full consideration. Logistics of responding to the pandemic must not force young people into situations they feel uncomfortable in or prevent young people from returning to a place of safety.

7.4 **Voice and Formal Processes**

x. **There must be national provision of independent advocacy which Care Experienced children are entitled to utilise and be made aware of.**

(P and E of PANEL, Articles 12, 15).

Advocacy must be relationship-based, and financially, structurally and psychologically independent. There must be a duty on social workers and carers to regularly explain the role and offer of advocacy available to children in their care to help them share their views.
xi. Children in care must have options on how they would like to share their views and participate in a meeting.

(P, N and E of PANEL, Articles 3, 12).

Children are required to attend meetings designed for an adult world. Adaptations during COVID-19 have not been any more child-centred, and have increased anxiety and reduced participation in decisions affecting their life. Children should have options for how they share their views, for example by face-to-face physically distanced meetings, digital meetings with in-person support, working with an advocate in advance and choosing not to attend, writing letters, using an app to share their views, ensuring they have the digital means and skills to fully participate in an online meeting, and attending a digital meeting with in-person support from one professional.

xii. All public bodies and care providers should have child-friendly complaint policies.

(P, A, N and L of PANEL, Article 3, 12, 19).

Children share that when their rights are not respected, it is difficult to challenge. The process of raising a complaint or issue must not discriminate against age and be accessible to all.

7.5 Digital Exclusion and Education

xiii. Access to digital technology and the internet must be recognised as essential to children's educational, social and emotional needs in the 21st century. Rapid provision of digital technology is required during the COVID-19 crisis.

(P, A and N of PANEL, Articles 13, 15, 16, 17, 31).

Digital access is essential for young people's education, connection to peers and family, mental health supports, information about the public health emergency, employment and keeping informed of local opportunities and support. There is a role for schools and the Care Inspectorate in making sure every child in care is provided
with the necessary equipment to realise their rights to an education, information, connection, and privacy.

xiv. Access to the internet and digital devices must belong to the child, not the placement. It should move with them and continue as they leave education or care.

(N and E of PANEL, Article 28, 29, 316).

If corporate parents are to acknowledge the importance of digital connection and ensure their children all have access to the internet, this must not be hindered by a change of placement, local authority, returning home or connected to their education or employment status. Connecting each child with a digital device for its lifetime rather than assigning a number to a care home for example is an important distinction in truly safeguarding young people from digital poverty.

xv. The attainment gap between Care Experienced pupils and others must be prevented from widening further by creative solutions to continue to provide the pastoral, educational and financial support young people need to engage with their education.

(P, N and L of PANEL, Article 3, 12, 20, 2, 28).

The uptake of school places during lockdown has been low among pupils in care. Reasons for this are not well-evidenced but the pandemic must not further disadvantage Care Experienced pupils. Children must be aware of their right and encouraged to choose to continue to attend school and continue to receive the level of pastoral and ASN support they previously did. Private tuition, home visits from teachers, recruitment of additional care workers and other solutions children propose should be explored individually with each child.

7.6 Upholding Rights and Accountability

xvi. Reactive policy making in response to evidence from young people, frontline workers, research and third sector.

(P, A and L of PANEL, Articles 3, 4, 12, 41)
The pandemic has required rapid action from Government in ways unrivalled in our lifetime. It is understandable that things may not have been got right the first time, particularly as it has not been possible to afford all measures the usual standard of scrutiny and rigour. It is imperative that there is also a streamlined process for the Scottish Government to hear about these issues and the flexibility to address them in a timely manner also.

xvii. **Scottish Government to direct public bodies and encourage private organisations to treat Care Experience as a protected characteristic under section 58(1)(c) of the Children and Young People (Scotland) Act 2014 and perform Equality Impact Assessments accordingly and amend the data collected to be more useful.**

(P, A, N and L of PANEL, Articles 3, 4, 12, 41)

Public bodies have a duty to carry out CRWIAs on policies to assess and mitigate against any potential impacts for children’s rights and wellbeing. Often these assessments do not achieve the intended spirit as employees carrying them out do not have particular knowledge of care to consider the impact of a policy on children in care. Similarly, the experiences and priorities of these groups are not well captured in national data collection.

Any organisation can choose to voluntarily change their internal policies to treat Care Experience as a protected characteristic and take positive action to support this group (Equality and Human Rights Commission and Who Cares? Scotland, 2018). This will increase awareness of the barriers facing Care Experienced children and adults, mitigate against these in policy development and improve data collection informing policy.

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9 Under section 58(1)(c) of the Children and Young People (Scotland) Act 2014, all 24 public bodies named as Corporate Parents have a duty to promote the interests of Care Experienced young people. The statutory guidance on corporate parenting makes it clear that this duty includes taking action to tackle the discrimination faced by care experienced young people. This means that discrimination based on care identity has been recognised at a statutory level in Scotland, and corporate parents have a duty to tackle that discrimination. One of the most powerful and meaningful ways that a corporate parent can tackle the discrimination faced by care experienced young people, is by formally recognising care experience and committing to non-discrimination and non-harassment on this basis.
xviii. Training for parliamentarians, civil servants and public sector workers on the utilisation and importance of Children’s Rights and Wellbeing Impact Assessments for accountability and upholding the UNCRC, which they have a responsibility to. Training on Corporate Parenting duties is also required.

(A and L of Panel, Articles 3, 4, 41, 42, CRC General Comment 510)

The ‘othering’ of Children and Families policy into a silo of its own and in particular, policy relating to children in care, diminishes accountability and responsibility on decision makers with duties to these children, despite the legislative tools available. Better training of policymakers and those who hold them to account will result in improved policies, practice, and experiences for children.

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10 General Comment 5 refers to general measures of implementation. Part 1.9 reflects that “The general measures of implementation identified by the Committee and described in the present general comment are intended to promote the full enjoyment of all rights in the Convention by all children, through legislation, the establishment of coordinating and monitoring bodies - governmental and independent - comprehensive data collection, awareness-raising and training and the development and implementation of appropriate policies, services and programmes. One of the satisfying results of the adoption and almost universal ratification of the Convention has been the development at the national level of a wide variety of new child-focused and child-sensitive bodies, structures and activities - children’s rights units at the heart of Government, ministers for children, inter-ministerial committees on children, parliamentary committees, child impact analysis, children’s budgets and “state of children’s rights” reports, NGO coalitions on children’s rights, children’s ombudspersons and children’s rights commissioners and so on” (UN, 2003; 3).
8. Conclusions

8.1 Summary of Findings

The pandemic has necessitated rapid responses unlike anything before in our lifetime. It has put immense pressure on policymakers, on politicians, on frontline workers and statutory services, and it is important to acknowledge that everyone is undoubtedly trying to do to their best. Our children are also experiencing significant challenges, worsening mental health, disrupted education and relationships and their rights to participate in decisions being made about them and be empowered to understand their rights is more crucial than ever.

This research illustrates how the rights of children in care have become more frequently violated during the pandemic and ignored by policy, despite the legal duty of the state to uphold them and ensure it is acting in a way that promotes the equality of vulnerable groups.

This work evidenced how Scotland has several leading initiatives and long-term strategies to support children’s wellbeing and rights, and most notably have made significant steps towards remedying the inequalities children, young people and adults with experience of the care system face (Article 41). It also found that responses to the public health crisis have not mirrored the spirit of more carefully thought-out policy and legislation in Scotland and has not been subject to the same accountability procedures necessary to ensure adults are acting in the best interests of the child and considering their views in decisions affecting them (Articles 3, 12).

8.2 Limitations of the Research

There was a concerning lack of academic literature about the experiences of children living in care during the pandemic, although there was much more available for young people who had recently left the care system. This limited the researcher’s ability to discuss academic perspectives on the research question however the increased use of grey literature from organisations involved in the frontline experiences of care, such
as the Children’s Commissioner and national advocacy charity Who Cares? Scotland, arguably enabled children’s voices to influence this research more directly.

It is important to acknowledge though that the data analysed from these organisations are unlikely to be representative of every child in care as young people who are content with their circumstances and are not experiencing severe violations of their rights are much less likely to be in contact with these organisations looking for support.

Literature available also frequently discussed both children in care and care leavers without clearly distinguishing whether the experience described was that of someone still in care or not. I relied on my extensive personal knowledge and understanding of care experience to interpret whether the ‘speaker’ was in care or a care leaver, and not relevant to my research. For example, poverty was a significant worry among care leavers but was not yet relevant to children living in state care.

I reviewed the demographic of participants where available to assess the proportion of respondents living in care before deciding whether to engage with the literature. Nonetheless there could be errors in my assessment of what data was relevant to my research focus.

Ideologically, this would have been primary research with Care Experienced children participating from a range of placements, local authorities, and ages. However if this method had been possible, the topic of children’s rights during a pandemic would not have been relevant to explore.

### 8.3 Wider Implications for Policymakers and Society

There is no greater responsibility of the government than the children it assumes responsibility for.

The UNCRC is a floor, not a ceiling, on which governments must ensure all children can stand at all times in order to thrive. However challenging, these rights cannot waver when a crisis occurs, but upheld more strongly than ever. Full and direct incorporation of the UNCRC will give children and their advocates the legal grounds to challenge when these rights falter, however like much of the Scottish Government’s strategies, this vision will take time to become reality for those who need it most.
This report makes 18 immediately actionable measures that would enable the Scottish Government to better meet its legal duty to uphold children’s rights both in a crisis and long-term. I urge policymakers and duty bearers to consider these as the country begins to plan its recovery and fairer future society.

The inequalities in this country between the most privileged and the children the state assumes care for are shameful and both costly in terms of public finance and human lives. Conversations on building back better and creating a fairer society must be non-discriminatory and take a human rights-based approach to this, empowering those who are most marginalised and furthest away from power to participate and create legally binding solutions which, pandemic or not, our government can be held accountable to delivering on.

“[I would like the [post-pandemic world to be] an inclusive world. The pandemic has shown the rest of the population what it is like to lose control over your life, to be devalued by forces beyond their control in a world that does not play to your strengths. Do not forget that you got a taste of my world and do not expect me to live in a world that you did not like.”

- young person in care (Barnardos, 2020; 32).
9. References


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Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,
Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in Articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in Article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”,

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:
PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.
With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

**Article 5**

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

**Article 6**

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

**Article 7**

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

**Article 8**

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

**Article 9**
1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child’s place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

**Article 10**

1. In accordance with the obligation of States Parties under Article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation
of States Parties under Article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

**Article 11**

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

**Article 12**

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

**Article 13**

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or
(b) For the protection of national security or of public order (ordre public), or of public health or morals.

**Article 14**

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

**Article 15**

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

**Article 16**

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

**Article 17**

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or
her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of Article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children’s books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of Articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or
exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

**Article 20**

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.

**Article 21**

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child’s status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child’s care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin;
(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

**Article 22**

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organisations or nongovernmental organisations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

**Article 23**

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible
child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child’s condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child’s achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

**Article 24**

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

   (a) To diminish infant and child mortality;

   (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

   (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and
through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27
1. States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

**Article 28**

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

   (a) Make primary education compulsory and available free to all;

   (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

   (c) Make higher education accessible to all on the basis of capacity by every appropriate means;

   (d) Make educational and vocational information and guidance available and accessible to all children;

   (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

**Article 29**

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or Article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State. Article 30 In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to
enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

**Article 31**

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

**Article 32**

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

   (a) Provide for a minimum age or minimum ages for admission to employment;

   (b) Provide for appropriate regulation of the hours and conditions of employment;

   (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

**Article 33**

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances. Article 34 States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States
Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;
(b) The exploitative use of children in prostitution or other unlawful sexual practices;
(c) The exploitative use of children in pornographic performances and materials.

**Article 35**

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

**Article 36**

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare. Article 37 States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

**Article 38**
1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict. Article 39 States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

**Article 40**

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees: (i) To be presumed innocent until proven guilty according to law; (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence; (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians; (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality; (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law; (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used; (vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

**Article 41**
Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

**Article 42**

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.
Appendix B – Child Friendly Summary of Children’s Rights

Article 1: everyone under 18 has these rights

Article 2: all children have these rights

Article 3: adults must do what’s best for me

Article 4: the Government should make sure my rights are respected

Article 5: The Government should respect the right of my family to help me know about my rights

Article 6: I should be supported to live and grow

Article 7: I have a right to a name and to belong to a country

Article 8: I have a right to an identity

Article 9: I have a right to live with a family who cares for me

Article 10: I have the right to see my family if they live in another country

Article 11: I have the right not to be taken out of the country illegally

Article 12: I have the right to be listened to and taken seriously

Article 13: I have the right to find out and share information

Article 14: I have the right to have my own thoughts and beliefs and to choose my religion with my parents’ guidance

Article 15: I have the right to meet with friends and to join groups

Article 16: I have the right to keep some things private

Article 17: I have the right to get information in lots of ways, so long as it’s safe

Article 18: I have the right to be brought up by both parents if possible

Article 19: I have the right to be protected from being hurt or badly treated

Article 20: I have the right to special protection and help if I can’t live with my own family

Article 21: I have the right to have the best care if I am taken into care or adopted

Article 22: If I am a refugee, I have the same rights as children born in that country

Article 23: If I have a disability, I have the right to special care and education
Article 24: I have the right to good quality health care, to clean water and good food

Article 25: If I am not living with my family, people should keep checking I am safe and happy

Article 26: My family should get the money they need to help bring me up

Article 27: I have the right to have a proper house, food and clothing

Article 28: I have the right to an education

Article 29: I have the right to an education which develops my personality, respect for others’ rights and the environment

Article 30: I have a right to speak my own language and to follow my family’s way of life

Article 31: I have a right to relax and play

Article 32: I should not be made to do dangerous work

Article 33: I should be protected from dangerous drugs

Article 34: Nobody should touch me in ways that make me feel uncomfortable, unsafe or sad

Article 35: I should not be abducted, sold or trafficked

Article 36: I have the right to be kept safe from things that could harm my development

Article 37: I have the right not to be punished in a cruel or hurtful way

Article 38: I am not allowed to join the army until I am 15

Article 39: I have the right to get help if I have been hurt, neglected or badly treated

Article 40: I have the right to get legal help and to be treated fairly if I have been accused of breaking the law

Article 41: Where our country treats us better than the U.N. does we should keep up the good work!

Article 42: Everyone should know about the UNCRC.

(taken directly from Children and Young People’s Commissioner for Scotland, n.d.)
Appendix C – A summary of the UN Committee recommendations to States Parties to respect and protect the rights of children during the COVID-19 pandemic.

1. Consider the health, social, educational, economic and recreational impacts of the pandemic on the rights of the child
2. Explore the alternative and creative solutions for children to enjoy their rights to rest, leisure, recreation and cultural and artistic activities
3. Ensure that online learning does not exacerbate existing inequalities or replace student-teacher interactions
4. Activate immediate measures to ensure that children are fed nutritious food
5. Maintain the provision of basic services for children including healthcare, water, and sanitation and birth registration.
6. Define core child protection services as essential and ensure that they remain functioning and available, including home visits when necessary, and provide professional mental health services for children living in lockdown.
7. Protect children whose vulnerability is further increased by the exceptional circumstances caused by the pandemic.
8. Release children in all forms of detention, whenever possible, and provide children who cannot be released with the means to maintain regular contact with their families.
10. Disseminate accurate information about COVID-19 and how to prevent infection in languages and formats that are child-friendly and accessible to all children.
11. Provide opportunities for children’s views to be heard and taken into account in decision-making processes on the pandemic.

(Observatory of Children’s Human Rights Scotland, 2020; p20).
Appendix D: Child Friendly Summary of this Report

Who wrote this?
This report was written by a Care Experienced adult as part of her university coursework. She chose to do research on how the coronavirus pandemic was affecting children in care and their human rights because she was worried children in care were not being thought about enough by the people making decisions about lockdown restrictions.

What is it about?
Children have rights that must always be respected by adults. They are like rules, which say things like that children must be able to see their family, be able to go to school, to see a doctor, to not be hurt or badly treated, and to be listened to. These rules are called articles, and you can see a list of them on page 76 and 77.

Why was it written?
She knew that people who have been in care often don't have as much support from family as other people and this can make it harder for them to do well in education, to look after their mental health, and to achieve what they want to with their life.

She was worried coronavirus would make this even harder for children in care at the moment and wanted to investigate it and make recommendations to help stop this from happening.

Where did the information come from?
She did this by reading as much as she could find about children’s rights, children sharing their experiences of being in care during the pandemic, and reports by charities like Who Cares? Scotland and Barnardos, the Scottish Government, the Commissioner for Children and Young People in Scotland, and a group called Together, which lots of different people who want to protect children’s rights are a part of to work as a team.
She then thought about whether what the reports said were happening to children was what should be happening.

This is what she found and what she said should happen:

**Children in care are struggling with their mental health**

**Children are finding it very hard to live in care and follow the restrictions**

**Mental health services should make sure they understand what its like to be in care and can help care experienced children quickly**

**if children in care break the restrictions, maybe to leave their placement or go to see family or friends, the police should be understanding and safely support them home. They should not arrest them.**

**if care homes need to do extra things to keep everyone safe like isolate more often or wear masks and gloves, it should be the staff who do this and not the young people**

**the government should make sure news on coronavirus is easy for children to understand. professionals should support children to know and follow the new rules.**

**adults in children's lives should make sure they keep in touch to chat and make sure they are okay and not just when there is a meeting or task**

**covid-19 should not stop children living in secure care or young offenders institutions from having their rights met and being able to see their family, social workers and advocates**
the Care Inspectorate should make sure every child in care as suitable technology and access to the internet to be able to keep up with school, friends and family and keep some things private.

 Lots of children's contact arrangements to see family has been disrupted.

 Every children in care being able to see, visit and hug their family must be one of the first things to be allowed again as coronavirus restrictions reduce.

 Changes to family contact must only happen with the child's support and not affect their placement. The child can return to the placement whenever they like.

 Carers must not ask children who have been in another household isolate if they have no symptoms.

 Every child in care should be given digital technology that they keep after they leave care.

 Some children are having issues getting to use digital technology and keep up with school.

 Every Care Experienced child should have the option to have a relationship with an adult who volunteers as a mentor or befriender and can provide extra support to young people facing challenges.

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 The Care Inspectorate should make sure every child in care as suitable technology and access to the internet to be able to keep up with school, friends and family and keep some things private.
adults making decisions don't always think about Care Experienced children's needs

the government are making a lot of decisions very quickly because of the pandemic. They need to make sure they also listen to young people and charities so they can quickly fix any policies that aren't working

procedure should require adults to consider care experience every time they write a policy and think about other equality groups, like gender and age.

children are finding it harder to share their views in online meetings

Children should be able to choose how they want to participate in a meeting, for example, by attending in person, attending online with one supportive adult with them, by writing a letter to be read out, or having the meeting in person with physical distancin and masks.

adults should have better training on children's rights and care experience to make better decisions

independent advocacy should regularly be explained and offered ro every Care Experienced child to help them share their views
Where can I get help?

If you would like to know more about children’s rights or need advice you can go to the Children and Young People’s Commissioner website at https://cypcs.org.uk/ call them for free on 0800 019 1179 or email inbox@cypcs.org.uk.

If you have been or are in care and are having a problem you would like some help with, you can get free independent advocacy from Who Cares? Scotland. Visit their website https://whocaresscotland.org to request advocacy, call their helpline Monday to Friday 12pm to 4pm on 0330 107 7540 or email hello@whocaresscotland.org.

Clan Childlaw provide free legal advice and representation for children and young people. Visit https://www.clanchildlaw.org to message them or call them for free on 0808 129 0522 Monday to Friday 9am to 5pm.

If you would like to talk to someone confidentially about any issues you have or any difficult feelings this report may have brought up you can call Childline for free at 0800 1111 between 7.30am and 3.30am Monday to Friday and between 9am and 3.30am Saturday to Sunday. Or message a counsellor privately online at https://www.childline.org.uk/.

If you would like to talk to the person who wrote this, you can email Megan at megnsutherland@outlook.com or find her on twitter @meganisfine.