

# Developing a Universal Definition of ‘Care Experience’

## SUBMISSION TO SCOTTISH GOVERNMENT CONSULTATION

*22 January 2025*

### INTRODUCTION

Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services and as a result those who receive those services. As an organisation and across our members we are committed to service improvement and ongoing development based on evidence and research on how we can best meet the needs of those we work with and particularly those who experience the greatest challenges and barriers to their wellbeing and lives.

Social Work Scotland represent social work leaders across Scotland. The profession is based on the principles of human rights, reflecting the value of all individuals and upholding their rights<sup>1,2</sup> This is expressed in the SSSC Codes of Practice<sup>3</sup> and in the BASW code of ethics. These underline the inherent worth and dignity of all people, demonstrated in practice through relationships, and promotion of self-determination, participation and wellbeing.

This means that social justice and advocating for the wellbeing and rights of those who are most disadvantaged, including children, is part of the context within which we operate, balancing often-complex issues of competing rights.

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<sup>1</sup> <https://www.ifsw.org/what-is-social-work/global-definition-of-social-work/>

<sup>2</sup> [SSSC Codes of Practice - Scottish Social Services Council](#)

<sup>3</sup> [Code of Ethics | BASW](#)

Social work also spans the children, adult and justice arenas. We therefore appreciate the opportunity to comment on proposals for a legal definition of care experience as something which, while linked to the Promise, impacts on all ages and areas of social work practice.

Our response is based on consultation and discussion with our membership which covers senior leaders in social work, including Chief Social Work Officers, service and team managers from across the country in both local authorities and third sector involved in delivery of services to children and adults.

## **BACKGROUND**

### **Government Consultation Background and Outline**

*The purpose of this consultation is to seek your views on the need for a universal definition of 'care experience' and what the potential impacts of this could be.*

*The Promise tells us that while it is not a legal term, 'care experience' is a term that has a special and different meaning for many of the people who identify with it. This includes infants, children and young people, and adults who may choose to identify as 'care experienced'. Reasons for this could include that they feel it describes the situation that they have grown up in, or that this describes an understanding of their personal identity. However, not everyone who could identify as 'care experienced' will choose to do so for a number of reasons, including that for some people it may feel like a stigmatising term.*

*The Promise also tells us that a universal definition of 'care experience' will help to normalise care as more people can understand and relate to it. In Scotland, there are a number of rights and entitlements that are designed to support people with experience of care as children, young people and adults. The Promise explains that there must be a more universal, commonly understood definition so that everyone can understand these rights and entitlements fully*

*In response to our commitment to keep The Promise, The Scottish Government Keeping the Promise Implementation Plan set out the cross-Government actions and policies that will be taken to bring about the transformational change required to keep the Promise by 2030. This includes a commitment to work with partners across Scotland, including The Promise Scotland, to develop a universal and inclusive definition of 'care experience' so that more people can understand and identify with it.*

*This consultation is part of a wider package of consultation and engagement taking place in 2024 on areas of work being progressed to keep the Promise. This includes a number of public consultations:*

- *Moving on from care into adulthood*
- *Children's Hearing Reform*
- *Future of Fostering*

### **Consultation Section 1: Developing a Universal Definition of 'Care Experience'**

*A definition provides a collective understanding of the meaning of a word or phrase. A universal definition would mean that there is a single description that everyone understands to be the meaning of a word or phrase.*

*The Promise tells us that the term 'care experience' has meaning for many people and that it can be helpful as an understanding of personal identity and in understanding shared experiences.*

*As well as providing a sense of identity, there are existing supports and entitlements available to people with care experience, particularly young people with care experience. This is relevant in areas such as education, including further and higher education. However there is not currently one cross-sector definition which is commonly understood and used in practice; or that acknowledges the individual experience of care that different people can have.*

*This means that eligibility for existing supports is not currently connected by a universal definition. This means that while eligibility for some existing supports may be linked to legal provisions<sup>1</sup>, such as having been 'looked after'<sup>2</sup>, the wording used to define who is eligible to access support can vary between different organisations.*

*For example, the definition of 'care experience' published by Universities Scotland and the definition used by the Care Inspectorate are worded differently, but could, in practice, cover the same individuals so they can access certain rights and entitlements. However, the lack of a concise and shared definition might cause confusion about who is included with both service providers and those with experience of care.*

*Examples of existing supports for people with care experience where the organisations administering support determine eligibility using their own definitions include:*

- [\*Support for Care Experienced Students.\*](#)

*Since the 2017/18 Academic Year, SAAS have been administering a bespoke bursary for students who have care experience. The Care Experienced Students Bursary (CESB) is available to students with care experience studying a full-time undergraduate course of Higher Education or a full-time course of Further Education. Students with care experience in Higher Education who need help with their accommodation costs during the summer period may also be eligible to apply for the Summer Accommodation Grant. The CESB is available to students who have experienced a range of types of care including kinship care and having been 'looked after' at home, however local authority involvement is required.*

- [\*Care Experienced Children and Young People Fund\*](#) (Scottish Government)

*The Care Experienced Children and Young People Fund is a targeted resource provided to local authorities to support children and young people with care experience from birth to the age of 26. The term 'care experienced' refers in this context to anyone who has been or is currently in care at any stage in their life, no matter how short, including adopted children and young people who were previously 'looked after'.*

*The care may have been provided in one of many different settings such as in residential care, foster care, kinship care, or through being 'looked after' at home with a supervision requirement. This could include children and young people who are on the edges of care and who need support in order to avoid becoming care experienced. The funding is provided to local authorities and aims to improve the educational outcomes and experiences for children and young people with care experience.*

*As well as national level funding and support, there is local level funding and nonfinancial support available to people with care experience, which is managed by,*

for example, local authorities or higher and further educational institutions which use operational definitions and eligibility to set out who is able to access this.

- [Funded early learning and childcare for two-year-olds with a care experienced parent](#)  
As well as their duty to provide access to funded early learning and childcare (ELC) to all eligible pre-school children (including care experienced two-year-olds), local authorities have powers to provide discretionary access to funded ELC to any other child, as they see fit. Scottish Government and COSLA agreed in 2021 that all local authorities will use these discretionary powers to provide early access to funded ELC to the children of care experienced parents, when the child turns two. Statutory guidance for local authorities provides high level guidance that they should use of a wide definition of 'care experience', and a pragmatic and sensitive approach to establishing eligibility. ([Eligible 2 year olds - Early learning and childcare: statutory guidance](#))

## **Existing Support for Children and Young People with Care Experience**

There are existing supports that people with care experience are entitled to at different stages of their journey through care. As set out below, these are aligned to statutory definitions and the legislation also sets out duties and responsibilities on the organisations that are legally required to provide support.

### **'Looked After'**

Section 17(6) of the [Children \(Scotland\) Act 1995](#) ("the 1995 Act") sets out that certain references in that Act to a child who is "looked after" by a local authority, refer to a child -

- for whom they are providing accommodation under section 25 of the Act;
- who is subject to a compulsory supervision order or an interim compulsory supervision order and in respect of whom they are the implementation authority (within the meaning of the [Children's Hearings \(Scotland\) Act 2011](#), "the 2011 Act");
- who is subject to an order in accordance with which, by virtue of regulations made under section 33(1) of the Act or section 190 of the 2011 Act (effect of orders made outwith Scotland), they have responsibilities as respects the child, or
- in respect of whom a permanence order has, on an application by them under section 80 of the [Adoption and Children \(Scotland\) Act 2007](#), been made and has not ceased to have effect.

*Section 24 of the Children (Care and Justice) (Scotland) Act 2024* also inserted a new section 17A into the 1995 Act, with the effect that children detained in secure accommodation under certain criminal justice provisions are treated as “looked after” children.

*There are many different reasons as to why children and young people may come into contact with the care system, but they will all require support that recognises their experiences, and to help them to thrive into the future.*

*The term ‘looked after at home’ is used where a child is looked after at home, there is a supervision requirement in place and support is being given to the child and their family by the local authority, rather than separating the child from their family. ‘Looked after away from home’ is a term that describes where a child is being cared for away from their family home in one of the care settings described later in this paper.*

*Our ‘looked after children’ policy is part of Getting It Right For Every Child (GIRFEC). GIRFEC is the Scottish Government’s national approach to improving outcomes and supporting the wellbeing of children and young people. It is our commitment to provide all our children and their families with the right support at the right time, so that every child and young person in Scotland can reach their full potential.*

*GIRFEC provides the universal and consistent framework for practitioners, together with families, to assess a child or young person’s needs, identify their strengths and any challenges they face, and consider the most appropriate offer of timely, coordinated support.*

### **Corporate Parenting**

*The Children and Young People (Scotland) Act 2014 (“the 2014 Act”) makes provision for corporate parenting. This refers to the formal and local partnerships between all services responsible for working together to meet the needs of looked after children, young people and care leavers.*

The 2014 Act introduced new duties and responsibilities for [Scottish public bodies defined as corporate parents](#), effective from April 2015. A good corporate parent will want the best outcomes for their looked after children, accept responsibility for them, and make their needs a priority. To help public services be good corporate parents, we have published:

- *statutory guidance on corporate parenting*
- *guidance for councils and community planning partnerships on being a good corporate parent*
- *Corporate parenting - turning legislation into practice together report*

## **Care Leavers**

A 'care leaver' is a young person who ceased to be 'looked after' on, or at anytime after, their sixteenth birthday. In legislation, this is outlined in Guidance on Part 10 (Aftercare) of the 2014 Act, as defined above, and also reflected in section 29 of the 1995 Act on aftercare.

Local authorities have a statutory duty to advise, guide, and assist care leavers until their nineteenth birthday and a power to do so until their twenty-sixth birthday. Section 29 of the 1995 Act requires local authorities to carry out a needs assessment for each young person who ceases to be looked after on, or after, their sixteenth birthday, with a view to determining what advice, assistance and support the authority should provide. The 2014 Act introduced 'continuing care' provision and extended the entitlement to aftercare support for people leaving care up to their twenty-sixth birthday. Care leavers are also eligible for Care Leaver Council Tax Exemption until they are 26 years of age.

Statutory definitions linked to duties and entitlements make it clear to the practitioners and people who support care experienced people, as well as people with care experience themselves, what help and support they can legally access and should be offered. It also makes it clear who has legal rights or duties to support care experienced people, ensuring that they remain accountable for doing so.

Following the outcome of this consultation, consideration will be given to how any universal definition of 'care experience' might interact with existing legislative definitions, duties and requirements to support people with experience of care.

## **Potential Impacts of a Universal Definition of ‘Care Experience’**

*This consultation is seeking views on the potential advantages and disadvantages of developing a universal definition of ‘care experience’. Potential advantages of introducing a universal definition could include that it provides clear, national direction and a single description of what is meant by ‘care experience’. The Promise tells us that some people with experience of care feel that this carries a sense of stigma. Changing and improving the language of care is a key part of normalising this language and ensuring that it is used in a considerate and consistent way. This is particularly important for practitioners and wider organisations in taking a trauma-informed approach. A universal definition of ‘care experience’ could also provide a potential route towards increasing access to rights and entitlements that some people with experience of care are currently unable to, or have difficulty in, accessing.*

*There could, however, be disadvantages to developing a universal definition of ‘care experience’. This could include that it is felt adding another definition to the care landscape could complicate this further and add confusion around the supports and entitlements available at different stages of a person’s journey through care.*



## QUESTIONS

### Question 1

*Do you agree or disagree that there is a need for a universal definition to describe 'care experience'?*

Agree strongly

Agree

Neither agree nor disagree

**Disagree**

Disagree strongly

Please give reasons for your answer.

While our members can see benefits in clarity of understanding and consistency of use of the term 'care experienced' there is no particular support for creating a legal definition of care experience. Members note that the term should be considered to describe what it is – experience of being in the state care system - and as such any attempt to a definition beyond that would simply make the landscape more complex and potentially more challenging for young people and professionals supporting them to navigate.

### Question 2

*What are your views on the potential advantages of developing a universal definition of 'care experience'?*

Please explain your answer below.

SWS is of the view that clarity of understanding of what it means to be 'in care' would be a positive position to reach but that achieving this is less about written definition and more closely linked to matters such as public perception, media portrayal and a tendency in the care sector to at times use the term inappropriately. Care experience is also not a term that is universally seen as positive by either young people or wider society. While perceptions of care continue to be viewed negatively in many areas, the term will

continue to be experienced as stigmatising by many, and this has been verbalised by many young people with whom our member's work.

Whilst appreciating that the drive in the Promise for a definition of the term comes from many of these factors, SWS and our members are strongly of the view that this is unnecessary. The words already express what it is – anyone with experience of state care – and provide a simple factual platform from which to work to address the wider issues of lack of understating in wider society.

### **Question 3**

*What are your views on the potential disadvantages of developing a universal definition of 'care experience'?*

Please explain your answer below.

Please see response to Question 2.

There is a real risk that creating a definition increases confusion, focuses on negatives and complicates the landscape. This is particularly the case if there are moves to amend the definition of looked after (the current legal term for what was previously referred to as being 'in care')

SWS members note in the Questions 5 and 6 relating to the definition of looked after that considering extending that definition in order to increase access to support available to care experienced individuals is a dangerous consideration and step. State intervention in a child's life is a significant and very serious action to take and is rightly not something that should be sought if not required for a child's wellbeing and safety. It is not a label to be sought to enhance and ensure future access to funding or supports.

### **Question 4**

*Do you have any views on the definition of 'Care Leaver' as set out in the consultation paper?*

Please explain your answer below.

The definition of 'care leaver' is well understood and applied and aims to ensure that those young people who are looked after in the transition to adulthood period have

access to the specific additional supports that may ensure their wellbeing as they move into adult life. It does not apply to individuals who left care earlier, as those young people will have the support of the families they returned to, or a 'new' family eg if they have been secured in a family setting via other legal means of achieving permanence such as adoption or a Section 11 order which removes the child from the care system – though those individual may have access to aftercare.

SWS members are however aware that any changes to looked after definitions or the creatin of a definition of care leavers may impact on care leaver definitions, and eligibility, and would ask that any proposed changes be subject to further consultation and consideration to ensure there are no unintended consequences, and that the resource to meet any changes is available and funded.

#### **Question 5**

*Do you have any views on the statutory definition of 'Looked After' as set out in the consultation paper?*

Please explain your answer below.

As noted in our response to Question 3, the definitions of looked after and care experienced are closely linked – a looked after child is 'in care' and therefore care experienced now and in the future.

This is a clear and easy to understand definition and SWS and our members would caution care in any consideration of changing a well understood and logical position. We additionally reiterate our earlier point of the seriousness of the state intervention in a child's life to the extent that the child is removed form parental care

#### **Question 6**

*What experience of care would you expect to be covered by any definition of "care experience"? Please choose all that apply.*

Looked After at Home X

Kinship Care (looked after children who have been placed with kinship carers by the local authority) X

Kinship Care (non-looked after children who live with a kinship carer, these children may be subject to an order under [Section 11 of the Children \(Scotland\) Act 1995](#) or may be living in a completely private arrangement with extended family, with no local authority involvement )

Foster Care X

Residential Care X

Residential Special School X

Supported Accommodation

Secure Care X

Adoption

Other – please provide details

Please explain your answer below.

For the sake of analysis of responses, we have ‘ticked’ places where children often live if they are looked after, and would therefore *always* be care experienced,

However, SWS would strongly suggest that the wrong question is being asked – firstly there is a confusion of type of placement (foster care, supported accommodation) and legal status (looked after, adopted) in the list, and secondly, a child is not given looked after status, and therefore the current and future care experienced label, as a result of the place where they reside but by reason of the legal order to which they are or were subject.

We would note that young people subject to an adoption order, Section 11 KCO or placed in supported accommodation *may* also be care experienced - if they were previously looked after, or in the case of some young people living in supported accommodation, still looked after. We provide more explanation below:

*Adoption:* Most adoptions in Scotland are the result of a child being placed by the local authority with prospective adoptive carers who then petition for an adoption order. There are rightly strict and detailed thresholds, processes and governance surrounding adoption which is the most severe level of intervention in a child’s life.

These adopted children would therefore meet the ‘care experienced’ definition as they were previously looked after/in care.

However, a few adopted children may not have been looked after prior to their adoption eg some of those adopted from abroad. While not entirely private arrangements – there are national and local government duties around checks and home studies – prospective inter-country adoptive parents source and are responsible for such arrangements and often pay significant sums to enable the process and legal requirements to be completed in both the country of birth and in Scotland.

These adopted children therefore may or may not be care experienced depending on their preadoption context.

*Children subject to a Section 11 KCO.* A child subject to a Section 11 KCO is not looked after, and the state has no locus in their care – though there may be a duty to provide various supports. There are many reasons for a kinship carer seeking a Section 11 Kinship Care Order (KCO) in relation to a child, and only if the child was previously looked after would they have experience of care and therefore be ‘care experienced’ eg

- The child may previously have been looked after with the kinship carer, and the carer supported by the local authority to apply for a KCO. In that scenario the child would be care experienced as they have previously been ‘in care’.
- The child may be living with a kinship carer who has been granted, independently, a Section 11 KCO but earlier in their life, the child was looked after at home. In this scenario the child is ‘care experienced’.
- The kinship carer may have applied directly themselves for a Section 11 KCO with no previous local authority intervention and the child has not been in the care of the local authority. In that scenario the child has not previously been in care and would not be care experienced.
- The kinship carer may have applied for a section 11 KKCO. A child may have had contact with social work/local authority but not been looked after or accommodated. In this scenario the child would not be care experienced as they were not looked after/in care.

We provide those examples to illustrate that legal status now or in the past determines experience of care rather than the placement ‘type’, and that trying to determine care experienced status by placement type leads to confusion and complexity. The Children

and Young People (Scotland) Act 2014 Part 13 Guidance provides further clarification around kinship care.

*Supported Accommodation:* Supported accommodation takes a range of forms and a young person may be looked after while living in supported accommodation if they are subject to an order and placed there by the local authority or not be looked after and support is being provided via other routes eg housing.

*Unaccompanied asylum seekers* are often placed in supported accommodation. If allocated via the National Transfer Scheme, they arrive in Scotland as looked after children and would therefore always have 'experience of care'. If spontaneous arrivals, then the local authority has a duty to accommodate them under section 25 – though if aged 16 or over the agreement of the young person to being looked after is we understand, required.

Unaccompanied asylum seekers have the same rights and status as other looked after children.

## **Question 7**

*Do you have any other comments about a proposed universal definition of 'care experience'?*

Please explain your answer below.

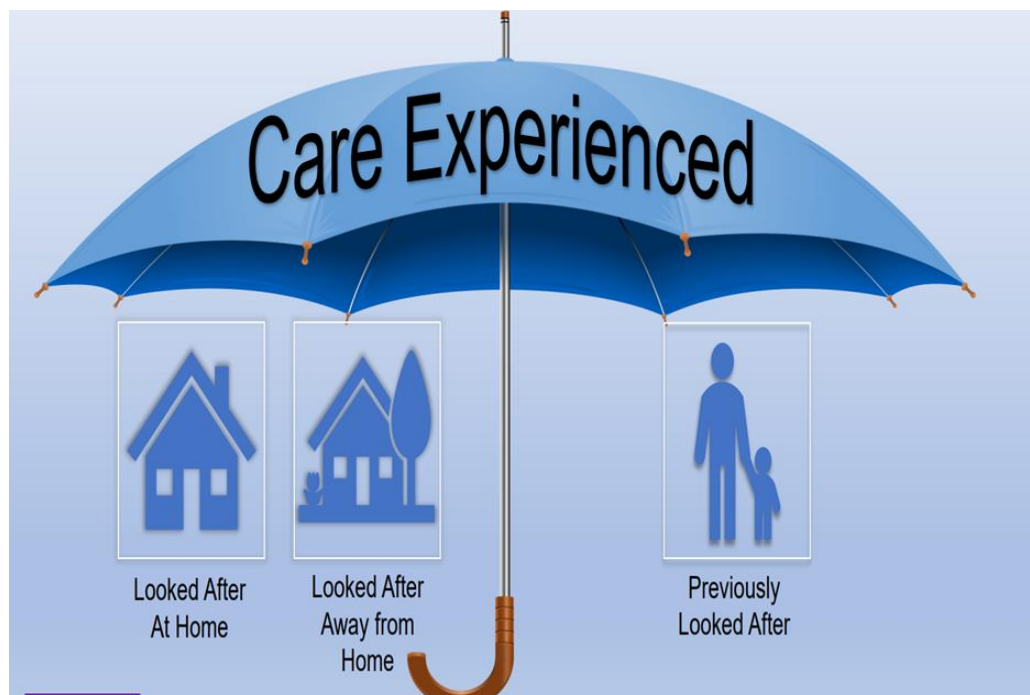
Please see our responses to earlier questions.

In summary SWS are of the view that to create a definition of care experience is to likely to result in confusion, and that it is dangerous to dabble with the related definitions of looked after and care leaver which are well understood and clear. A simple way forward is to consider care experience as 'experience of care' ie having now or in the past been looked after by the state.

Falkirk Champions Board created and had approved in April 2024 their own illustration and definition of care experience as part of their work to have care experience considered as a protected characteristic by the council. This is shared below with permission and

illustrates the ease with which a definition can be utilised without any formal/legal changes which could result in unintended complications and confusion.

*The term care-experienced in Falkirk refers to anyone who has been or is currently in care or from a looked-after background at any stage in their life, including adopted children who were previously looked-after. This care may have been provided in one of many different settings such as in residential care, foster care, kinship care, or through being looked-after at home with social work support.*



## **Consultation Section 2: Wider Language Relating to Care**

*While this consultation is mainly focused on considering an approach to defining 'care experience', The Promise tells us that language is important in normalising care experience and can address stigmatising assumptions, attitudes and behaviours that can impact on all areas of a child or young person's life, now and into the future. This includes overly formal language such as technical language, legal language or acronyms, which does not resonate with many people with care experience. The Promise tells us that for children, unintentional use of professionalised language can compound a sense of them being*

*different, and they told the Care Review it can feel belittling and have an impact on their sense of self.*

*We know that since publication of The Promise, many areas have developed language of care guidance and changed practice to move away from some terminology. This includes:*

- *Each and Every Child - A key priority of the Each and Every Child initiative is to work alongside people with lived experience to explore the reframing techniques when they speak about care experience and the care system. A key part of this work is to raise awareness of framing and its potential to who have experience of care across Scotland.*
- *Language in the Children's Hearings System - Our Hearings Our Voice are working on a project to improve language in the Children's Hearings System. They've created a group called 'Language Leaders', which includes young people and professionals who work in the Hearings System. They want to ensure that all children who attend Hearings are supported to understand and be included, by changing the use of written and spoken language.*
- *Language of Care: Clackmannanshire Council Language Policy – A Language Policy for Clackmannanshire was developed through a Participation Network to address reframing the language of care. It includes key themes such as 'easy to understand' and 'non-judgmental'.*
- *Write Right About Me: Aberdeen's multi-agency records improvement work | Aberdeen City Council - Write Right About Me (WRAM) is a multi-agency improvement team aimed at developing ways of writing about children, young people and adults so that their voices are more strongly heard, and they can exercise their rights in their records.*

*There may be an opportunity to develop a national approach to set the direction for language, which is nurturing and encouraging to children and young people with care experience*

### **Question 8**

*Do you have any comments on the existing language of care?*

*Please explain your answer below.*



The current use of language is well considered and detailed with examples of work to update and adjust language reaching back to before the Promise which provide a useful focus and impetus to the work.

SWS is a sponsor and supported of many of these efforts and are particularly linked to the work of Each and Every Child, Language in the Hearing system, and Champions Boards across the country.

### **Question 9**

*Do you have any suggestions on potential ways to change and improve the language of care?*

Please explain your answer below.

Language change is a cultural as well as a practice process and there are already many good illustrations of commitments to changing language in care to be more child focused, clear and understandable, and practice which is achieving this. Our members are happy to share this wherever this is helpful

### **Question 10**

*Are you aware of good practice to change and improve the language of care?*

Please explain your answer below.

Yes – extensively. See above