United Nations Convention on the Rights of the Child (UNCRC): Progress Report 2020-2023

The Scottish Legal Aid Board

www.slab.org.uk

CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014

Duties of Public Authorities in Relation to the United Nations Convention on the Rights of the Child (UNCRC):
Progress Report 2020-2023

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Introduction

The Scottish Legal Aid Board (SLAB) is the national funding body for most solicitor and advocate delivered publicly funded legal services.

We are a Non-Departmental Public Body (NDPB) of the Scottish Government and were established in 1987. The Scottish Government is responsible for the overall direction of legal aid policy, which finds expression in rules and regulations which form an extensive and complex body of legal aid legislation.

Legal aid in Scotland is primarily designed around case-by-case funding for services provided by solicitors and others instructed by them, such as advocates and experts. This is known as judicare.

Most services paid for through the Legal Aid Fund are delivered by judicare through the private sector. The third sector and our own in-house legal services also deliver case-by-case services but on a much smaller scale.

A small amount of funding also provides direct grants administered by us for projects to deliver targeted legal and advice services.

United Nations Convention on the Rights of the Child

The UNCRC recognises children's capacities as autonomous rights holders with the ability to identify and claim rights on their own behalf. Established in 1989, the **UN Convention on the Rights of the Child** is a core human rights treaty which sets out an internationally agreed framework for the rights of all children and young people.

Children and young people have long been considered to require special attention in respect of their rights because of their particular vulnerabilities and their reliance on adults. Even though they are autonomous rights holders, children and young people are generally dependent on others to give effect to their rights. These rights are set out in the 54 Articles and three Optional Protocols of the UNCRC.

Part 1 (section 2) of the Children and Young People (Scotland) Act 2014 ("the Act") places a duty on a range of public authorities (including all local authorities and health boards) to report, “as soon as practicable” after the end of each three year period, on the steps they have taken to secure better or further effect of the requirements of the United Nations Convention on the Rights of the Child (UNCRC).

Format of the report

This update has been organised to reflect the clusters of articles as has been recommended for reporting purposes, which are listed in the appendix to this report.

Under the relevant clusters, the report includes reflections on how we secure better or further effect the requirements of the UNCRC.

It then goes on to detail specific actions we have taken in 2020-23 that are relevant to the clusters.

How do we contribute generally?

Not all the UNCRC articles have direct relevance to us. There are several limitations imposed by the legislation that governs us and the levers we must fulfil the duties in the convention are consequently restricted.

Nevertheless, a wide range of work we do directly or indirectly furthers the goals of the UNCRC.

First and foremost, our primary purpose is to manage access to legal aid funding, making decisions on applications for legal aid and assessing and paying accounts that meet the cost of advice and representation by solicitors and advocates and other services engaged by those providers. This financial support includes cases involving children. Services paid for by legal aid enable people to enforce or protect their rights, resolve disputes, and defend themselves when the state and others act against them. It also allows people to manage their personal affairs and relationships.

Our Civil Legal Assistance Office (CLAO) is a small network of three offices staffed by solicitors employed by SLAB. CLAO offers advice and representation on a wide range of civil legal matters that can include children's hearings, child protection and related family law work.

We work closely with other justice sector partners including Children's Hearing Scotland where we strive for improvements for the benefit of all users of the system, including children.

It is through all this work that we endeavour to fulfil the duties set out in the articles of the Convention.

Cluster (i): General measures of implementation; Cluster (v): Family environment and alternative care

How we secure better or further effect of the requirements of the UNCRC in these areas

We are committed to the implementation of UNCRC rights, through complying with rights provisions and duties within the 2014 Act and other relevant legislation and policy as identified.

The services that we fund enable access to the legal system and therefore that associated rights are protected. For example, Children's Legal Aid is available for anyone under 16 or someone who is 16 or 17 if the children's hearing has placed them on a compulsory supervision order.

We operate direct legal services to clients through our Civil Legal Assistance Office (CLAO) and the Public Defence Solicitors' Office (PDSO).

Through their work children's rights are being safeguarded in the civil and criminal courts and the Children's Hearings system.

Our action in 2020-23

We provided access to judicare and direct advice

Judicare

We processed 25,600 applications for Children's Legal Assistance. 3,947 applications for Children's Legal Aid were made by applicants aged 17 years or younger.

We processed 11,793 applications for Criminal Legal Aid and 9,308 applications for Civil Legal Aid from applicants aged 17 years and younger.

Civil Legal Assistance Office

The CLAO took on child related cases through their work with Children's Hearings, Child Protection and Family Law where a Public Law Duty was engaged.

CLAO had 48 Children's Legal Assistance grants for clients under the age of 18 most of which were in relation to Children's Hearings.

Most of the clients CLAO act for in children's hearings are not the child themselves but may be a parent or older sibling over the age of 18 thus indirectly supporting the effective operation of the justice system in respect of matters affecting children and their rights. CLAO had 428 such grants.

CLAO had eight grants for family cases where the client was under 18.

The CLAO acts for adults in case categories where there is a possibility a child may be involved. Data on whether a child is involved is not possible to determine so we consider the case categories where there was an increased likelihood that a child might be either involved or affected by the outcome of a case.

For example, CLAO may act in defending an eviction order for a family. From April 2020 to March 2023 there were 625 grants of Civil Legal Assistance for such cases.

Public Defence Solicitors' Office

The PDSO acted in cases involving children and are on the duty scheme for Children's Hearings and attend police station interviews when required. There were 146 such grants of Criminal Legal Assistance to persons under the age of 18.

We provided access to grant funding

We funded two projects with Scottish Women's Aid.

One project was focussed on helping women who are the victims of domestic abuse, and a second project involves SLAB's Civil Legal Assistance Office referring SWA clients to solicitors, ensuring they have access to legal advice.

In many cases, referrals to these projects involved family and child related matters.

We carried out research

We conducted a survey of solicitors who deliver children's legal aid. The survey covered a range of topics related to solicitors' experiences, and future expectations, of delivering children's legal aid. The research objectives were to:

- Profile children's solicitors and children's firms
- Increase understanding of the services children's solicitors provide
- Explore how solicitors are responding to change in the children's justice system,
  and their expectations, opportunities, or barriers in relation to further change
- Identify what training and learning opportunities solicitors use and want
- Explore how solicitors engage with others in the children's/justice system, and for what purposes.

There were 129 respondents to the survey. Although the majority (80%) expect to be doing this work in three years' time, very few (8%) have solicitors who work full time in this area.

46% felt there were the right number of children's solicitors working in their local area and 7% felt there were too many.

86% took on both child and adult clients.

Most respondents engaged directly with other professionals involved in children's hearings, with 87% having contact with professionals involved in the hearings system, and 43% attending multidisciplinary training or events including other professionals involved in children's hearings.

Future Action

We will be carrying out research on adult recipients of legal assistance for children's panels hearings to explore the experiences of adults who have used Children's Legal Assistance.

Cluster (iii): General principles of the UNCRC

How we secure better or further effect of the requirements of the UNCRC in these areas

Although PDSO and CLAO only occasionally interact directly with children, they work in close partnership with other agencies which include Children's Hearing Scotland, the Police, Scottish Courts and Tribunal Service, and relevant local authority social work departments, parents, guardians, and other authorised adults.

On the occasions when direct contact with a child is required then written correspondence is adapted to simplify language and ensure the child understands the processes they are involved with. We provide information, correspondence, and

guidance in an accessible and easy to read format and we also make additional reasonable adjustments if required.

We are legally required under the Equality Act (2010) to consider equality in our day-to-day business. We are required to demonstrate that we pay due regard to the three aims of the public sector equality duty (PSED):

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not.

Every three years we publish Equality Outcomes that help us fulfil our duties.

Our action in 2020-23

We delivered against our relevant Equality Outcomes

One of our Equality Outcomes was to 'gather and use equality data to inform our policies and improve our services'. We overhauled the way we gather equality data from legal aid applicants and for direct clients of our solicitor services.

We developed an applicant module in our system where applications are submitted to us (Legal Aid Online). This allows us to collect information about those applying for legal aid to tailor our services and respond to protected characteristics.

We implemented a new case management system for CLAO and PDSO which captures applicant equality data and any communication needs of the applicants in line with our corporate policy. We provided guidance to explain why the collection of equalities data is important to us and how we are going to use it. Understanding our customers' needs helps us improve our service.

We carried out and published Equality Impact Assessments

Our duties under PSED also include ensuring that our policies and practices are subject to equality impact assessments. This enables us to show that we do not discriminate in the delivery of our services.

These assessments include the impact on children and young people from marginalised groups. Equalities Impact Assessments were carried out for a wide range of policies, which included:

- Customer Communication and Support Services
- Civil Legal Aid Means Assessment
- Family Friendly Policy
- Accounts Assessment
- Customer Service Policy
- Systems Letters.

Full details on all EqIAs can be seen on our website here.

We carried out policy reviews

We regularly review key policies and in the 2020-23 period consultations were carried out for policies which yielded feedback relevant to the needs of children.

We consulted to on how we assess financial eligibility in civil legal aid. If someone applies for legal aid and they are in a relationship, that person's financial position must also be considered.

The consultation highlighted the difficulty of having a relationship scrutinised as part of an application for legal aid. The legal aid legislation places a duty on us to bring the resources of a person owing an obligation of aliment to a child applicant into an assessment unless it would be unjust or inequitable to do so.

It was noted that children can be in contention with those who owe an obligation of aliment to them or may not be safe with those who financially support them or their families. As a result of the consultation, we have reviewed our policy making it clear that in the scenarios described by respondents, resources will not be aggregated.

Where consultation feedback highlights issues relating to children, we will give it due consideration and review our policies and procedures accordingly.

We provided training for our staff

Our Civil Legal Assistance Office staff attended information and training sessions covering various topics relating specifically to children and young people.

These included the following:

- The annual Law Society of Scotland Family Law Conference, which covers child law updates
- Secure Accommodation within the Children's Hearings System, delivered by CLAN Child Law
- Supporting young people with anxiety, delivered by Children 1st
- Family Actions in the Sheriff Court, delivered by Sheriffs in the family court (covers contact and residence actions and thus child law)
- Understanding Domestic Abuse and Developing a Trauma-Informed Practice, by Scottish Women's Rights Centre
- Lawyers for Children Roundtable, delivered by Clan Childlaw and the Child Law Network
- Family Law Update which includes updates regarding the Children's Hearings System and child law, delivered by Professor Kenneth Norrie, University of Strathclyde.

Our staff provided training for others

In-house staff expertise within CLAO was offered to deliver training on:

- An overview of Scottish Child Protection Procedures – from initial child protection investigation stage to adoption/permanence, including children's hearings
- Section 11 of the Children (Scotland) Act 1995 (contact and residence cases) and protective orders to Ross-shire Women's Aid.

Future Action

For the 2023-26 reporting period we are intending to incorporate Children's Rights and Wellbeing Impact Assessments into our policy making process and work has already begun on piloting a template.

Cluster (iv): Civil rights and freedoms

How we secure better or further effect of the requirements of the UNCRC in these areas

Our information materials are available in a range of formats and in specific settings to meet the needs of individual children and young people. In relation to our discharge of our functions under our governing legislation, children and young people are not subject to any form of treatment, which is deemed to be inhuman or degrading, and the legal aid system (including the duty solicitor schemes we manage) provides access to legal and other assistance in instances where they are detained.

Our information sharing is proportionate and appropriate and complies with the Data Protection Act while recognising a child's right to privacy. Collection and use of Personal Data is done in accordance with the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018 and any other applicable data protection law in the United Kingdom.

We provide individuals with privacy information at the time we collect their personal data. We have a privacy policy which explains how we use any personal information we collect.

Our action in 2020-23

We reviewed and updated our Complaints Handling Procedure

We deal with complaints in line with the Scottish Public Service Ombudsman's model procedure.

This was updated in April 2021 and we made the necessary changes to our own procedures. The key change was that we must now agree the points of complaint and outcome sought with the complainant at the start of the complaint.

Children can also access and use this procedure.

We developed and launched a Customer Service Policy

Our Customer Service Policy was published in 2022.

This sets out a range of standards that our customers, including children, can expect in their dealings with us. This includes around the way we communicate, our performance and how we treat people.

We developed and launched a Customer Communication Support Needs Policy

Some of our customers require additional support from us to effectively communicate with us, such as needing an interpreter for a conversation with us or a translation of correspondence we have sent to them. In 2022 we put several services in place to assist those customers, which include children. The communication support services included:

- interpreting (face-to-face, remote video and telephone) – from English into a wide range of spoken languages and into English from other languages
- translation and transcription services – from English into a wide range of spoken languages and into English from other languages
- text to braille – or other tactile or touch formats
- speech to text (audio) including tape recordings and other electronic media
- text to speech (audio) including tape recordings and other electronic media, audio and video
- video to text
- issuing letters in different formats, such as in a larger font size or different coloured paper.

Future Action

We will implement a child friendly complaints procedure in line with the planned model to be consulted on and developed by the Scottish Public Services Ombudsman.

Cluster (viii): Special protection measures

How we secure better or further effect of the requirements of the UNCRC in these areas

We uphold a child's rights via participation directly in the Children's Hearings System in Scotland either through the funding of legal representation, through the availability of our direct legal services and also through participation in the Children's Hearing Improvement Partnership (CHIP).

The CHIP is a multi-agency group chaired and coordinated by the Scottish Government. It brings together partners from across the Hearings System including charities, justice sector partners and government agencies and its focus is on change and improvement within the Children's Hearings System.

We provide a register of interpreters and translators to assist solicitors seeking such a service for their clients.

Our action in 2020-23

We delivered against our relevant Equality Outcomes

One of our Equality Outcomes was aimed at ensuring people with disabilities and people who speak languages other than English can access our services and funding of appropriate communication support with ease.

Progress towards this was achieved by improving the accessibility of our website and written communications.

We carried out policy reviews

In terms of the wider legal aid system our guidance states that interpreters and translation costs are chargeable as outlays on accounts. No prior approval is required unless the outlay(s) incurred exceed £3,000 in civil and children's legal aid and £2,000 in Criminal legal aid (excluding VAT).

We reviewed and consulted on our policy on prior approval of unusually large expenditure in 2022 a result of which indicated that we would need to carry out further research to better understand family therapy work and its place with the legal assistance regime before amending our current policy.

The full guidance on language interpreting and translating can be read here.

Appendix
UNCRC Clusters

I General measures of implementation

Article 4	implementation obligations
Article 41	respect for existing standards
Article 42	making Convention widely known
Article 44(6)	making reports widely available.

II Definition of a child

Article 1.

III General principles

Article 2	non-discrimination
Article 3(1)	best interest to be a primary consideration
Article 3(2)	State's obligations to ensure necessary care and protection
Article 3(3)	standards for institutions services and facilities
Article 6	the right to life, survival and development (also: VI Basic health and welfare)
Article 12	respect for the views of the child.

IV Civil rights and freedoms

Article 7	right to name, nationality and to know and be cared for by parents
Article 8	preservation of child's identity
Article 13	freedom of expression
Article 14	freedom of thought, conscience and religion
Article 15	freedom of association and peaceful assembly
Article16	protection of privacy
Article 17	child's access to information, and role of mass media
Article 37(a)	right not to be subjected to torture or other cruel, inhuman, or degrading treatment or punishment.

V Family environment and alternative care

Article 5	parental guidance and child's evolving capacities
Article 18(1) and (2)	parental responsibilities and State's assistance
Article 9	separation from parents
Article 10	family reunification
Article 11	illicit transfer and non-return
Article 27(4)	recovery of maintenance for the child
Article 20	children deprived of their family environment
Article 21	adoption
Article 25	periodic review of placement and treatment
Article19	protection from all forms of violence
Article 39	rehabilitation and reintegration of victims of violence (see also: VIII - Special protection measures).

VI Basic health and welfare

Article 6	right to life, survival and development (see also: III – General principles)

Article 18(3) support for working parents
Article 23 rights of disabled children
Article 24 right to health and health services
Article 26 right to social security
Article 27(1)-(3) right to adequate standard of living.

VII Education, leisure and cultural activities
Article 28 right to education
Article 29 aims of education
Article 31 right to leisure, play and participation in cultural and artistic activities.

VIII Special protection measures
A - Children in situations of emergency
Article 22 refugee children
Article 38 children and armed conflict
Article 39 rehabilitation of child victims (see also: V Family environment and alternative care)
B - Children involved with the system of administration of juvenile justice
Article 40 administration of juvenile justice
Article 37(a) prohibition of capital punishment and life imprisonment
Article 37(b)-(d) restriction of liberty
Article 39 rehabilitation and reintegration of child victims (see also: V Family environment and alternative care)
C - Children in situations of exploitation
Article 32 child labour
Article 33 drug abuse
Article 34 sexual exploitation
Article 35 sale, trafficking and abduction
Article 36 other forms of exploitation
D - Children belonging to a minority or an indigenous group
Article 30 right to share culture, language, and religion with other people in that group.