Legal Aid Reform

Response from Together (Scottish Alliance for Children's Rights) to Scottish Government's consultation

October 2026

About Together (Scottish Alliance for Children's Rights)

Together (Scottish Alliance for Children's Rights) is an alliance that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) and other international human rights treaties across Scotland. We have over 600 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs and interested professionals. The views expressed in this submission are based on wide consultation with our members but may not necessarily reflect the specific views of every one of our member organisations. Views expressed separately should also be taken into account.

Introduction

Together (Scottish Alliance for Children's Rights) welcomes the opportunity to comment on Scottish Government's proposals for legal aid reform.

Our response draws upon the UN Convention on the Rights of the Child (UNCRC), guidance from the UN Committee, evidence from children and young people, learning from our Rights Empowered partnership with Clan Childlaw, alongside wider evidence from our members.

Our response offers a children's human rights perspective, reflecting on the commitments Scotland made in passing the UNCRC (Incorporation) (Scotland) Act 2024 ('UNCRC Act').[1] Both the Scottish Legal Aid Board and Scottish Government are "public authorities" within the meaning of the UNCRC Act. They are therefore bound by the section 6 duty to act compatibly with children's rights – including their right to participate in decisions (Article 12), to act in the best interests of the child (Article 3), and non-discrimination (Article 2).

We have focused on question 16 (access to legal aid for organisations), recognising that the availability of funding for public-interest cases is central to whether children have access to an effective remedy.

1 UNCRC (Incorporation) (Scotland) Act 2024. https://www.legislation.gov.uk/asp/2024/1/contents/enacted [Date accessed: 20.01.25].

We call on the Scottish Government to:

- **Ensure all children have access to free, confidential, independent legal advice and assistance, can access justice and challenge decisions that affect their rights.**
- **Create a clear funding route for organisations to bring or intervene in public-interest cases, recognising that it will often not be in children's best interests to shoulder the burden of proceedings;**
- **Protect children and organisations from prohibitive costs, including adverse expenses.**
- **Ensure children have access to child-friendly, accessible information and independent advocacy.**

Diversifying delivery

Q16. Do you consider that the scope of legal aid in Scotland should continue to be focused primarily on individuals, or are there circumstances in which non-natural persons should be eligible for support?

We support Clan Childlaw's position that access to individual legal aid must be strengthened and that, in certain circumstances, legal aid should also be available to organisations and community groups.

Together's State of Children's Rights Reports, Rights on Track monitoring, Priority Children's Rights Issues report and Rights Empowered project with Clan Childlaw have all highlighted barriers to children's access to justice. These include difficulties in obtaining legal aid, funding cuts and limited access to independent advocacy. Our members have also been clear that access to justice depends not only on the formal availability of legal aid, but on whether children can navigate systems, understand information, obtain trusted support and participate in decisions that affect them.

In its 2023 Concluding Observations, the UN Committee on the Rights of the Child (UN Committee) called on the UK and Scottish Governments to ensure that all children have access to "legal support and representation in addition to remedies, including by removing barriers faced by children in disadvantaged situations and expanding the types of support provided under the legal aid budget".[2] General Comment 27, adopted by the UN Committee just last month, reinforces the need to remove financial and practical barriers through measures including free legal aid and safeguards against financial risk in public interest cases.[3] It also recognises the role of supportive adults and organisations in enabling access to justice. Similarly, in General Comment 5, the

2 CRC/C/GBR/CO/6-7: Para: 17.
3 CRC/C/GC/27.

UN Committee states: “For rights to have meaning, effective remedies must be available to redress violations….Children’s special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives”.[4] The Council of Europe’s Guidelines on Child-friendly Justice likewise require justice processes to be rights-respecting, accessible, age-appropriate, timely and responsive to children’s needs.[5]

Children and young people have told us that raising concerns about their rights can be difficult. Complaints procedures may feel intimidating and inaccessible, and children may be afraid to speak up, worried about being labelled a ‘troublemaker’, or made to feel at fault for complaining.[6] [7] These concerns are even more acute for cases that reach court.

Children and young people’s accounts reflect what we are learning through our Rights Empowered project with Clan Childlaw. Requiring an individual child to carry a strategic case can expose them to stress, repeated recounting of harm, disruption to education and family life, and possible re-traumatisation. It can also create tension between the child’s immediate interests and the wider objective of securing a precedent for others. As such, it is often not in a child’s best interests to shoulder the burden of being a party to (strategic) litigation alone. Allowing legal aid to be accessible to organisations, particularly when these are able to represent the views and experiences of a wider group, would allow progressive developments in various areas of law to be made without undue burden on individual applicants.

The UNCRC Act made important progress by establishing a “sufficient interest” test for standing rather than a narrower “victim” test. This recognises that, in some circumstances, it may be more appropriate or desirable for an organisation - rather than an individual child - to shoulder the burden of raising legal proceedings. Together members strongly advocated for and welcomed this approach. However, our Rights Empowered project with Clan Childlaw is showing that this more permissive rule on standing is weakened unless it is supported by access to legal aid for organisations. If organisations must fund solicitors, advocates and court fees themselves while facing an uncapped risk of adverse expenses, the Act’s access-to-justice provisions will remain beyond the reach of many organisations and the children they support.

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4 CRC/GC/2003/5: Para: 24.
5 Council of Europe (2010). Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice. https://rm.coe.int/16804b2cf3 [Date accessed: 13.10.26].
6 Together (2023). State of Children’s Rights Report.
https://www.togetherscotland.org.uk/media/3266/socrr23_final.pdf [Date accessed: 13.10.26].
7 Together (2024), Concept note for a General Comment on Children’s Rights to Access Justice and to Effective Remedy. https://www.togetherscotland.org.uk/media/3758/gc27_response_final.pdf [Date accessed: 13.10.26].

Conclusion

The passage of the UNCRC Act was a landmark moment in Scotland's children's rights journey. Its provisions allowing organisations with sufficient interest to bring proceedings were warmly welcomed – but will be effective only if those organisations can access clear funding routes without jeopardising their financial position. The same consideration applies to provisions allowing the Children and Young People's Commissioner Scotland and the Scottish Human Rights Commission to bring or intervene in proceedings (sections 11 and 12, UNCRC Act).

We also encourage Scottish Government to consider Together's broader positions on access to justice for babies, children and young people, as set out in:

- Together (2026), Identifying six high-priority children's rights issues (copy provided to Scottish Government, Children's Rights Team).
- Together (2025), Response to call for submissions on the draft of General Comment No. 27.
- Together (2024), Concept note for a General Comment on Children's Rights to Access Justice and to Effective Remedy.
- Together (2022-25), The Rights Detectives and Tiny Rights Detectives projects.

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