

The story so far

The Report

UK Children's Commissioners' Midterm Report to the UK State Party on the UN Convention on the Rights of the Child

November 2011

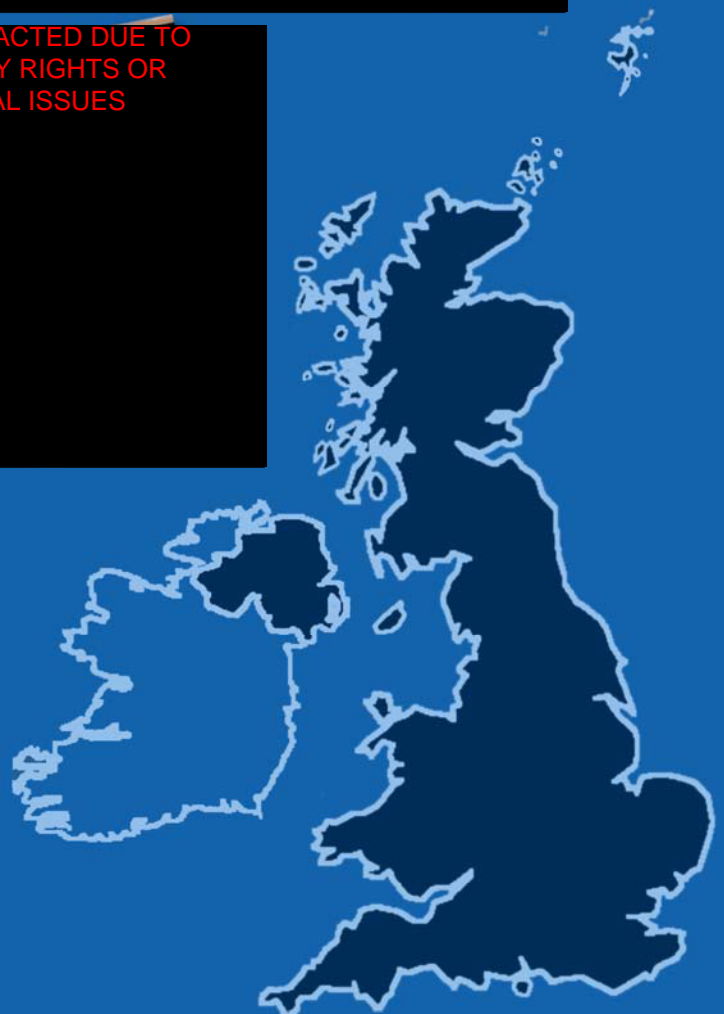
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The UK Children's Commissioners



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Please note: In this document, 'children' refers to children and young people.

Introduction

We, as the four Children's Commissioners from the United Kingdom, are pleased to mark the International Day of the Child 2011 by publishing our midterm report on the United Nations Convention on the Rights of the Child (UNCRC) to the UK Government and devolved administrations.

It is 20 years since the UK Government ratified the UNCRC, a Convention which provides for internationally binding minimum standards for all children and young people in the UK. An important part of ensuring accountability to these standards is the Convention's reporting cycle, which requires the UK Government, as the State Party, to report on its progress to the UN Committee on the Rights of the Child every five years.

The last UK reporting process to the Committee concluded in 2008 and, following the publication of our hard-hitting evidence report to the UN Committee, we made a collective commitment to press continually for the full realisation of children's rights in England, Northern Ireland, Scotland and Wales.

This midterm report, and the associated evidence, has been written in the context of our continued and ongoing dialogue with each UK administration and tier of government. It is not a comprehensive assessment of every Article in the UNCRC. Instead we have collected evidence and focused our work on five areas: participation, disabled children, child poverty, children seeking asylum and juvenile justice. Where there is evidence we affirm progress but where there is demonstrable lack of improvement in children and young people's lives, we must voice our concerns.

We have seen very real progress made in some areas by each administration since 2008. We welcome the UK Government's commitment to ending child detention for immigration purposes and its serious engagement in the review of alternatives to child detention with us as Commissioners.

We are also pleased to acknowledge the significant step taken by Welsh Government to pass a landmark piece of legislation which sees Wales become the first country in the UK to make the UNCRC part of its domestic law. Ministers in Scotland have also shown their commitment to children's rights with their recent intention to enshrine in law their duty to have due regard to the UNCRC. In Northern Ireland we welcome developments to review youth justice and to improve child protection through the establishment of a Safeguarding Board and welcome the opportunity to work with the newly elected Northern Ireland Assembly members to advance children's rights. Given the progress in the three devolved administrations this provides the opportunity for Westminster to follow their example. Recent discussions in the UK Parliament indicate that progress in Westminster is a real possibility.

We are aware that there have been considerable challenges since 2008 and the UK continues to experience significant economic and social change. Whilst we appreciate that tough decisions may be required, we are seriously concerned that those most vulnerable in society will face, and are facing, disproportionate hardship.

The UN Committee in 2008 outlined concerns at the lack of clarity over budget spend on children in the UK. Without this, it is difficult to monitor the impact of spending cuts on children. However, it is clear that the cuts are already impacting on key children's

services across the UK including youth services, social services and education. It is vital that children are made visible in national and local budgets and that vital children's services are protected.

All too often consideration around children and young people's rights are absent. No one can foresee the future but we urge that the UK State Party assesses and gives serious and due consideration to the rights, needs and best interest of children and young people in the decision-making and legislative process.

At the heart of our concerns outlined within this report are the high levels of persistent poverty across the UK. In 2008, we stated in our joint report that we considered it unacceptable that a country as wealthy as the UK had 3.8 million children (one in three) living in relative poverty. As this report outlines, this figure has not changed. In fact, there is now a very real danger that this figure will increase. The changes being implemented as a result of the Welfare Reform Bill, including the reduction in support for childcare, the impact of the current intention to pay Universal Credit in a single payment with a potential cap on benefit levels and the introduction of conditionality in benefit payments have the potential to drive more vulnerable children, young people and their families into poverty. We therefore strongly urge the UK Government to reconsider the impact of these reforms. Poverty pervades every aspect of children's lives. Not only does it diminish childhoods but limits children and young people's aspirations and restricts their future opportunities.

We as independent children's champions have a duty to hold the UK Government and its devolved administrations to account. We also have a responsibility to promote and protect children's rights across the UK. Whilst there has been progress in relation to children's rights we are still seeing children and young people being failed.

Between now and the start of the next reporting cycle in January 2014 we will continue to establish the facts, analyse the data and garner the lived experiences of children and young people to help make sure the UK State Party takes seriously its obligation.

We call on the UK State Party to make children's rights a reality; to use the next three years to improve the lives and experiences of each and every child; and make a commitment to everyone in the UK that children are valued. As Commissioners we promise - in return - to support the UK State Party when progress is made and appropriately criticise when it does not.

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England

There has been positive, but limited, political progress on promoting elements of the UNCRC and on its general implementation. For example, to mark the 20th anniversary of the UNCRC in 2009, the former Government published two documents: UNCRC: Priorities for Action¹ and a UK-wide ministerial level commitment: Working Together Achieving More.² In March 2010, the former Government published a detailed analysis on how the UNCRC is reflected in law and implemented in England.³ This was the first time UK Government had published such documents stating its plans and intentions.

Following on from this development, we welcomed the coalition Government's pledge in May 2010 to end the detention of children for immigration purposes, and implementation of a new removals process in 2011.

An independent review of the Children's Commissioner's office was undertaken by Dr John Dunford last year.⁴ The Government accepted Dr Dunford's recommendations for a new Office of the Children's Commissioner for England to be established with a duty to promote and protect children's rights. The Government is currently consulting on their plans for the future of the office. We hope that a Paris Principle compliant office with a clear rights based remit will be in place by the time of the next State Party Report to the UN Committee on the Rights of the Child.

The Minister of State, Sarah Teather, has also publicly committed the Government to giving "due consideration" to the UNCRC when making new policy and legislation. Although it does not extend to a commitment to undertake child rights impact assessments we will look to hold the Government to this commitment.

However economic and spending decisions continue to pose a significant threat to the realisation of children's rights, and the progress noted above will not result in improvements to children and young people's realised rights and welfare if key services and support are cut.⁵ Indeed there is increasing evidence that public spending cuts have had a significant impact on the provision of services. In addition, the social unrest seen in several English cities during August 2011 poses many challenges and opportunities for children and young people and we will continue to advocate children's rights especially in areas where these may be threatened by policy makers' reaction to economic or social events.

¹ DCSF (2009), United Nations Convention on the Rights of the Child: Priorities for Action. <https://www.education.gov.uk/publications/eOrderingDownload/01099-2009BKT-EN.pdf>

² DCSF (2009), Working Together, Achieving More - A joint commitment to take action in response to the UN Committee on the Rights of the Child's Concluding Observations. <https://www.education.gov.uk/publications/eOrderingDownload/01084-2009BKT-EN.pdf>

³ Report by DCSF to JCHR The United Nations Convention on the Rights of the Child: How legislation underpins implementation in England (March 2010). <http://webarchive.nationalarchives.gov.uk/20100415085344/http://www.dcsf.gov.uk/everychildmatters/download/?id=8075>

⁴ Department for Education, 12 July 2010 Written ministerial statement on the independent review of the Children's Commissioner for England. <http://www.education.gov.uk/inthenews/inthenews/a0061716/written-ministerial-statement-on-the-independent-review-of-the-childrens-commissioner-for-england>

⁵ For example of stories that exemplify the impact of cuts see *Close to Crisis: Frontline service cuts for disabled children*, briefing by Every Disabled Child Matters http://www.ncb.org.uk/edcm/close_to_crisis_frontline_service_cuts_for_disabled_children.pdf

Northern Ireland

Following the publication of the 2008 Concluding Observations, the Office of the First Minister and Deputy First Minister (OFMDFM), in partnership with Northern Ireland's Commissioner for Children and Young People (NICCY) and the Children's Law Centre, produced a young people's version to inform children and young people. In Autumn 2009 OFMDFM consulted with children and young people in relation to the 2008 Concluding Observations, and in response, in November released a list of priorities. While this was welcomed, it was notable that there has been to date no action plan published or evidence of how the priorities have been taken forward.

NICCY understands, however, that the Northern Ireland Executive is in the process of producing a document which outlines the current position for children in Northern Ireland against each of the 2008 Concluding Observations. This will then be used as a framework for incorporating actions to deliver the Concluding Observation priorities into the forthcoming 2011-14 Children and Young People Strategy Action Plan.

Subsequent to elections in May 2011 and the new Northern Ireland Assembly mandate, the development of the 2011-15 Programme for Government provides an important opportunity to outline the new Executive's commitment to delivering on the UNCRC. The devolution of justice and policing to the Northern Ireland Executive in April 2010, and the subsequent and ongoing Review of Youth Justice also provide the Executive with new opportunities to respond to the 2008 Concluding Observations.

Scotland

The Scottish Government was the first in the UK to respond to the 2008 Concluding Observations by publishing a comprehensive document outlining the Government's commitment to work towards the UN Committee on the Rights of the Child's recommendations. The document, "Do the Right Thing", was also informed by a consultation with the children's sector in Scotland. In 2010 the Scottish Government, Scotland's Commissioner for Children and Young People (SCCYP) and Together (the Scottish Alliance for Children's Rights), established a Scottish Child Rights Implementation Monitoring Group to provide ongoing scrutiny of the Government's progress towards meeting the recommendations made by the UN Committee.

The 2007 devolution of decision-making in Scotland from the Scottish Government to the local authorities and the accompanying end of ring-fenced funding, has led to a disparity in the way children's issues at local authority level are prioritised and funded. We have witnessed some progress in giving children's issues a higher priority, mainly in the areas of protection, education and health in the second round of Single Outcome Agreements (SOAs) between central and local government in Scotland, which reflect local priorities and priorities set at a national level. However, there are areas where there is a lack of consistency in terms of priorities. For instance, the prioritisation of issues related to disability, mental health, children's rights and domestic abuse in many local authorities' SOAs remains a cause of concern⁶. In this context it is essential to put in place monitoring and reporting processes, which would enable Scotland's compliance with Article 4 of the UNCRC.

In September 2011 the Scottish Government published its Consultation on Rights of Children and Young People Bill. The Bill will establish in law the responsibilities of the Scottish Ministers to have due regard to the UNCRC when exercising any of their functions. The Bill will ensure that all Scottish Government policy and legislation takes account of the rights of children and young people. Scotland's Commissioner for Children and Young People has welcomed this new commitment by the Scottish Government as a useful starting point and will work to ensure the maximum impact of the Bill through the passage of the legislation.

⁶ Information obtained from Children's Voluntary Sector Policy Officers' Network (2010). Single Outcome Agreements for Scottish Local Government, 2009-10. A thematic analysis by the Children's Voluntary Sector Policy Officers' Network. Edinburgh: Children's Voluntary Sector Policy Officers' Network. http://www.sccyp.org.uk/uploaded_docs/single%20outcome%20agreements.pdf

Wales

In 2009, the Welsh Government produced an action plan to address the 2008 Concluding Observations. The plan addresses 16 priorities which were agreed between Government and Non Governmental Organisations.

An Implementation Support Network with representatives inside and outside Government has also been established to support the monitoring process, looking at measuring performance and outcomes as well as ensuring that the action plan remains relevant.⁷

The other key development in Wales is the Rights of Children and Young Persons (Wales) Measure 2011. The Measure imposes a duty upon all Welsh Ministers to have due regard to the rights and obligations in the UNCRC and its Optional Protocols. This represents another first for Wales, in the year in which it marks the tenth anniversary of the establishment of the first Children's Commissioner in the UK.

The national policy context has generally been positive, for instance the Children and Families (Wales) Measure 2010 which has provisions relating to child poverty, participation and family services. However, questions remain about the consistent implementation of national law and policy.

The Welsh Government's new legislative programme contained a number of notable bills. The Social Services (Wales) Bill will provide particular emphasis on integrated services, including for families with complex needs and looked after children. There was also the announcement of a Children and Young Persons (Wales) Bill, which, according to Wales' First Minister will:

'...build on the Children's Rights Measure introduced during the last Assembly, and expand the role of the Children's Commissioner for Wales.'

⁷ Welsh Assembly Government (2011) Getting it Right: UNCRC Action Plan for Wales 2009-2014. http://wales.gov.uk/docs/dfm/minutes/childrenandyoungpeople/110117uncrcreporte_n.doc

Participation in decision-making

Article 12: Respect for the views of the child

Every child has the right to say what they think in all matters affecting them, and to have their views taken seriously.

What the United Nations Committee on the Rights of the Child said in 2008

In 2008, the UN Committee made a number of recommendations relating to the issue of children's participation. Those included the need to promote, facilitate and implement, in both law and in practice, within the family, schools, and the community as well as in institutions and in administrative and judicial proceedings, the principle of respect for the views of the child. They also called on the UK Government and devolved administrations to support forums for children's participation and to continue to collaborate with civil society organisations to increase opportunities for children's meaningful participation, including in the media.

The Committee also made specific recommendations to Government to strengthen children's participation in all matters concerning school, classroom and learning which affect them. They also called on Governments to ensure that children who are able to express their views have the right to appeal against their exclusion as well as the right, in particular for those in alternative care, to appeal to the special educational needs tribunals.

In response, in the 2009 UK Action Plan the UK Government and devolved administrations committed to considering how to increase opportunities for participation, both in schools and colleges and in community settings.⁸

Priorities for action

R1. The Children's Commissioners call for new legislation to ensure that there are the mechanisms and structures in place in each UK administration to embed the right to participation in children's lives, and for such a commitment to be supported by participation training for all professionals who work with or for children.

Since 2008, some positive legislative changes have been made around children's participation, and now 24 per cent of children in Scotland believe politicians listen to them (although 30 per cent believe they do not listen to them at all).⁹ In Wales, the Children and Families (Wales) Measure 2010 provides a statutory basis for the participation of children in local authority decision-making.¹⁰ Across the UK, Governments have, in some spheres, legislated for, produced guidance, and in some cases funded participation activities.¹¹ Yet these initiatives have often been limited in scope and while some children have a say in some decisions that affect their lives, participation is not as yet fully embedded across all children's lives effectively and consistently. This is a particular

challenge in critical areas such as aspects of the youth justice system, safeguarding services and family law.¹²

The Children's Commissioners are concerned that the mainstreaming of children's participation has yet to happen and children report that their views are not sought, listened to or acted upon consistently. There is a need for both legislative change and clear leadership from national and local governments and other organisations so that participation is not dependent on individuals but becomes one of the underpinning principles of how all adults work with children.

The gap between the standards of Article 12 and children's experience needs to be addressed through a combination of national strategies and structures in each of the countries underpinned by legislation that ensures their right to participate.

If this aspiration is to be realised there is a clear need for professionals who work with or for children to have comprehensive training in children's participation. Therefore the Children's Commissioners believe that participation needs to be embedded within the pre-qualification training programmes for all adults who work with children along with materials to support participation in practice.

R2. Each administration in the UK must address the inconsistent provision of advocacy both within and across the four countries. This may require new legislation or a demonstrable action to implement and realise provisions already made in law.

The UK's Children's Commissioners are concerned that advocacy for children is inconsistently delivered across the four countries despite the existence of national standards and legislation in England and Wales.^{13 14} Where no legal right to advocacy exists – as is the case in Northern Ireland – there is a need to address this. Where the right exists there is a need to ensure that advocacy is accessible to all eligible children. There is now good evidence that demonstrates the negative outcomes for children that emerge when they are unable to have their voices heard.¹⁵

The Children's Commissioners recognise that providing access to advocacy for all children may be a long-term process.¹⁶ While limited legislation exists in different parts of the UK implementation is not fully realised and many groups of children currently remain outside the scope of the law. Therefore, within the long-term development towards realising this ambition the Children's Commissioners seek early action to ensure advocacy services are provided for the most marginalised and vulnerable children including disabled children. This must be a priority that each Government can achieve before 2014.

⁸ DCSF (2009), Working Together, Achieving More. <https://www.education.gov.uk/publications/standard/Integratedworking/Page1/DCSF-01084-2009>

⁹ Youthlink Scotland (2009), Being Young in Scotland.

¹⁰ Children and Families (Wales) Measure 2010. <http://www.legislation.gov.uk/mwa/2010/1/contents>

¹¹ Children's Commissioners' UNCRC Midterm report 2011 - The Evidence.

¹² Davey et. al. for Office of the Children's Commissioner (2010) Children's participation in decision-making: a summary report on progress made up to 2010.

¹³ Brady L (2011) 'Where is my advocate? A scoping report on advocacy's services for children and young people in England. London. Office of the Children's Commissioner for England

¹⁴ Welsh Assembly Government (2003) National Standards for the Provision of Children's Advocacy Services Cardiff: Welsh Government. <http://wales.gov.uk/caec/publications/childrenandyoungpeople/advocacy/advocacystandardsen.pdf?lang=en>

¹⁵ Children's Commissioner for Wales (2011) Lost After Care Swansea Children's Commissioner for Wales. <http://www.childcomwales.org.uk/uploads/publications/250.pdf>

¹⁶ Welsh Assembly Government (2009) A Guide to the Model for Delivering Advocacy Services for Children and Young People Cardiff.

General Principles

R3. Each administration must pledge to continue to develop the effective participation of children in education. Every child in the UK should have a right to appeal against exclusion from school or a decision concerning their Special Educational Needs.

Whilst there has been some progress in developing children's participation in education,¹⁷ the UK's Children's Commissioners believe that further progress must be made. Whilst structures such as School Councils have been established (and are indeed mandatory in Wales) there is a need to embed children's participation in all aspects of learning and school. In England School Councils are only considered effective by two out of every five children¹⁸ and in Scotland only a minority of School Councils have been involved in making 'important' decisions.¹⁹ In Northern Ireland, the Children's Commissioner is currently working with the Department of Education to develop school council policy guidance. Children in Wales now have the right to make their own appeals to the Special Needs Tribunal for Wales as is the case in Scotland but this development is yet to be replicated across the other nations.²⁰ The right to appeal against exclusion from school should be established for all secondary school pupils across the UK.

R4. Each administration must effectively implement the right of children to participate in legal and court proceedings.

Evidence from the Family Justice Review in England and Wales highlights that in both public and private law proceedings children feel that their voices are not heard by adults who are making important decisions about their lives.²¹ This clearly demonstrates that children are not having their right upheld fully and causes anger and frustration for the children that their views are not sought. They feel disempowered and disappointed. Children also report not receiving adequate or clear information from adults that could help them to participate in such processes.²² The Children's Commissioners believe that the child's right to be heard must be consistently recognised and effectively implemented at all stages in the process and they call on Government and other agencies to act on the voices of children.

¹⁷ See for example, HM Inspectorate of Education Scotland (2009), Improving Scottish Education.

¹⁸ Office of the Children's Commissioner for England (2011), Children and young people's views of education policy.

¹⁹ Children in Scotland and University of Edinburgh (2010) Having a Say at School.

²⁰ Education (Wales) Measure 2009.
http://www.legislation.gov.uk/mwa/2009/5/pdfs/mwa_20090005_mi.pdf

²¹ Ministry of Justice (2011) Family Justice Review Interim Report March 2011: London: Ministry of Justice.
<http://www.justice.gov.uk/downloads/publications/policy/moj/family-justice-review-interim-rep.pdf>

²² Office of the Children's Commissioner for England (2011c) Do more than listen. Act. London: Office of the Children's Commissioner for England.
http://www.childrenscommissioner.gov.uk/content/publications/content_514

Children with disabilities

Article 23: Children with disabilities

A child with a disability has the right to live a full and decent life in conditions that promote dignity, independence and an active role in the community. Governments must do all they can to provide free care and assistance to children with disability.

What the United Nations Committee on the Rights of the Child said in 2008

The Committee welcomed initiatives designed to realise the rights of disabled children, but raised concerns around the lack of a comprehensive national strategy for their inclusion into society. It called on the State Party to ensure programmes, services and legislation providing protection for them were effectively implemented.

The Committee noted that disabled children continue to face barriers to the enjoyment of their rights, in particular access to appropriate health services, leisure and play. The Committee expressed concern at the high proportion of children in alternative care and called for an assessment as to why this was the case, and a review of their care and treatment in these settings.

Other recommendations focused on the need for awareness raising on the rights and needs of disabled children to encourage their inclusion and prevent discrimination and institutionalisation. Identifying additional support needs and disabilities at an early stage was seen as crucial, as was the need for training for those working with disabled children – including teachers, social workers and medical professionals.

The Committee urged the Government to ratify the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol, and ensure continued compliance with other international standards on disability.

Priorities for action

R5. Services and support that enable disabled children to enjoy their rights must be protected from cuts in public expenditure.

The Children's Commissioners' joint report to the UN Committee (2008) highlighted barriers to appropriate services for disabled children. Insufficient progress has been made to tackle this issue, and the impact of public spending cuts may exacerbate problems of access to services. The Children's Commissioners note that despite central, devolved, and local government commitments that service reforms or spending decisions will not disproportionately affect disabled children there are growing concerns and evidence to the contrary. The Children's Commissioners do not believe that this is acceptable and that services for disabled children should be protected from further cuts.

R6. The UK Government and devolved administrations should develop comprehensive national strategies for the inclusion of disabled children into society.

The Children's Commissioners note the progress on improving the rights of disabled people since 2008. The Equality Act 2010 and ratification of the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol are welcome

examples. However, the Children's Commissioners are disappointed with the UK's education reservation on the Convention.

Whilst the devolved administrations have taken measures and have adopted programmes aimed at improving the protection of services for disabled children, co-ordinated progress has been limited across the four nations. Serious concerns remain about the implementation of the limited plans that exist. Implementation of comprehensive national strategies on disabled children is noticeably absent, and that services and policies developed specifically for disabled people do not always reflect the particular needs of children.

The Children's Commissioners call on each government to develop and implement a national strategy to ensure that disabled children across the UK benefit from a consistent and co-ordinated approach. Key to this will be finding non-intrusive ways to gather data about the amount of children requiring support and the nature of their disabilities. This should ensure services offered are appropriate and wide-ranging to meet the needs of each and every child who accesses them.

R7. Professional training programmes for staff working with disabled children must be developed and implemented as soon as possible.

Professionals often lack training, skills and experience in communicating with disabled children and in understanding the nature of their disabilities. While there has been some acknowledgement of this issue by some administrations there is an immediate need to ensure that all professionals are trained and equipped to serve disabled children to the highest possible standards.

To realise this aim the Children's Commissioners call on each government to ensure that a comprehensive training programme for all professionals working with disabled children is established. The training should be shaped by children's experiences in healthcare, education and social work settings and encourage professionals to consider how best to consult with and involve children in the arrangements for their care. The training should be at least partly delivered by disabled children and cover child protection issues specific to them.

R8. Children's right to be heard in issues affecting them must be promoted and protected by each government and administration.

The Children's Commissioners call for all disabled children to be included in decisions about their care in order to realise Articles 12 and 23 of the UNCRC. An advocacy service should be made available to children where they might otherwise find it difficult to express their views. Complaints mechanisms should be open and accessible to every child. At present this is not the case. Too many disabled children face a postcode lottery of support and provision. The Children's Commissioners believe each administration should particularly focus on providing support for children with communication difficulties and those living away from home.

Child poverty

Article 27: Adequate standard of living

Children have a right to a standard of living that is good enough to meet their physical and mental needs. Governments should help families who cannot afford to provide this.

Article 4: Protection of rights

Governments must do all they can to fulfil the rights of every child, including taking action to the maximum extent of their available resources.

What the United Nations Committee on the Rights of the Child said in 2008

The Committee recognised the reduction in the numbers of children living in poverty up to 2008 and the actions that had contributed to this. It remained alarmed at levels of child poverty and was concerned that Government strategy did not focus on children in the most severe poverty.

The importance of providing an adequate standard of living was emphasised. The Committee recommended the Government set targets to eliminate child poverty by 2020 in legislation, with measureable indicators and a focus on those children most in need of support. The legislation should be effectively implemented, combining family support with the delivery of direct support, particularly nutrition, clothing and housing.

While acknowledging increased expenditure on children, the Committee noted this had been insufficient to eradicate poverty or to tackle inequalities. The lack of consistent budgetary analysis and child rights impact assessments made it difficult to determine how much was spent on children. It recommended Government allocates resources to children to the maximum available, focussing on eradicating child poverty and reducing inequalities.

The Committee noted a gap in the realisation of children's rights for children in poverty. They connected this to inadequate provision of services for poor children and families. They were concerned that some children may be taken into care because of families in crisis situations due to poverty, that unequal access to health services results in poorer health outcomes for poor children, and that social background continues to impact significantly on educational results.

Priorities for action

R9. The UK Government and devolved administrations should fully implement the Child Poverty Act 2010.

The Children's Commissioners note that, since their 2008 report, child poverty (using a 60 per cent of the median income AHC) has not fallen and in some parts the levels have increased.²³ The historic commitment to reduce child poverty by half by 2010 was not achieved.

While the Child Poverty Act has been a very welcome development its implementation to date has been somewhat less positive.²⁴ Each of the national strategies has significant

weaknesses, commonly around the translation of the policy intent into delivery against targets.²⁵ Moreover, the Children's Commissioners are concerned at the weakening of key aspects of the Act, notably the delay in the establishment and role of the Child Poverty Commission and the reporting requirements on UK Government and devolved administrations.

It is critical that the strategies are fully implemented and that the Act is not diluted. They should particularly address those children most significantly impacted – those in severe poverty and/or in persistent poverty.²⁶ Data must be collected to ensure severe child poverty and persistent child poverty can be monitored.

R10. Sufficient financial resources should be allocated to tackling child poverty across the UK, funding services targeted at the most disadvantaged, and increasing the household income of poor families.

It is evident from the lack of recent progress that insufficient resources have been dedicated to this goal.²⁷ Both the UK Government and the devolved administrations must direct additional financial resources to tackling child poverty, and must clearly identify this spending within government budgets. This should allow spend on poor children to be monitored, and an assessment of whether this is to the maximum extent of available resources.

Central to the implementation and monitoring of strategies must be impact assessments on new policies and programmes on child poverty – not only those intended to address child poverty, but other policies affecting their lives, perhaps more indirectly.

The Children's Commissioners are particularly concerned at developments in relation to reform of the welfare system including the Welfare Reform Bill 2011.²⁸ Despite benefit levels having been consistently below poverty thresholds and Minimum Income Standards, benefit levels are being frozen or reduced, and additional conditionality is being introduced. A child rights impact assessment of each of these changes would demonstrate that the likeliest outcome will be increased child poverty. These changes in the system will impact on children both in workless households and among 'working poor' households, and must be reconsidered in the light of the commitments outlined in the Child Poverty Act 2010.

(CPAG) and CPAG Scotland for briefings and statements. <http://www.cpag.org.uk/>.

²³ Joyce, R., Institute of Fiscal Studies (2011), *Poverty projections between 2010–11 and 2013–14: a post-Budget 2011 update*; and Brewer et al, Institute of Fiscal Studies (2010) *Child and Working-Age Poverty from 2010 to 2013*. <http://www.ifs.org.uk/bns/bn115>

²⁶ NPI and Save the Children (2011) *Severe Child Poverty: Nationally and Locally*.

²⁷ Save the Children (2010) *A Child Poverty Strategy 2011-2014 Recommendations for the UK government: No child left behind*.

²⁸ For critique of current welfare reform plans see Child Poverty Action Group (CPAG) and CPAG Scotland for briefings and statements. <http://www.cpag.org.uk/>.

²³ Department for Work and pensions (DWP) (2011) *Households Below Average Income Report*.

²⁴ For critique of the implementation of the Act see Child Poverty Action Group

Basic Health and Welfare

R11. Governments must prioritise services for poor children to address the wide range of inequalities in health and educational outcomes they experience.

The UN Committee expressed concern at the ways poor children were discriminated against in terms of service provision and the fulfilment of their rights. In particular they raised concern around three areas: family support, health and education.²⁹ The negative outcomes experienced by children in poverty reflect more significant problems they face, including significant challenges in accessing services.

At a time of cuts in public services, governments must prioritise provision of services to the most disadvantaged children, notably those experiencing poverty. Furthermore, close scrutiny of accessibility of services for children should be maintained to ensure barriers for children experiencing poverty are identified and overcome. There should be a particular focus on costs of accessing services, which should be waived for children in poverty.

²⁹ UN (2008) Committee on the Rights of the Child, Forty-ninth session, consideration of reports submitted by State Parties under Article 44 of the Convention. Concluding Observations: United Kingdom of Great Britain and Northern Ireland.

Special Protection Measures

Children seeking asylum

Article 22: Refugee children

If a child is a refugee or seeking refuge, governments must ensure that they have the same rights as any other child. Governments must help in trying to reunite child refugees with their parents. Where this is not possible, the child should be given protection.

Article 35: Abduction

Governments must ensure that children must not be abducted, sold or trafficked in any form.

What the United Nations Committee on the Rights of the Child said in 2008

The UN Committee highlighted concerns regarding the lack of action against negative public perceptions in relation to Article 2, non-discrimination. However, their main focus was on Article 22. The Committee was concerned about the detention of asylum-seeking and migrant children and inadequacies in the process and decision-making with regard to the age-disputed cases of unaccompanied minors. The Committee called on the UK State Party to ensure safeguards are in place to protect children's welfare following their return, and to consider the appointment of guardians for unaccompanied asylum seekers and migrants.

On Article 35, the Committee recommended the effective implementation of the Council of Europe's Anti-trafficking Action Plan and full ratification of its Convention on Action against Trafficking in Human Beings.

Priorities for action

R12. That the UK Government, in partnership with devolved administrations, should implement and evaluate the new arrangements for family removals and safeguarding against the UNCRC and international standards.

There has been significant policy and legislative progress in relation to Article 22. The removal of the UK Government's reservation was a significant and welcome step.³⁰ In May 2010 the UK Government addressed one of the Committee's main criticisms, announcing it would be ending the detention of children for immigration purposes.³¹ Plans for the new system were published in March 2011.³² The Government's proposals as outlined may fall short of an end to detention, but it has yet to be seen whether the new process meets the requirements of Article 37(b) or fulfils the recommendation of the Committee in 2008.

The UK's Children's Commissioners welcome the intention of section 55 of the Borders, Citizenship and Immigration Act 2009, that places a duty on the UK Border Agency (UKBA) to have arrangements in place to safeguard and promote the welfare of children in discharging its functions. This legislation and

accompanying guidance could have a significant impact on realising children's best interest (Article 3), but as recent court judgments highlight implementation still has some way to go.³³

To demonstrate that both these beneficial policy developments have led to improvements, the UK State Party will need to show how it is monitoring and evaluating the process and implementation of section 55. The Children's Commissioners would expect this to include obtaining the views of children subject to removal.

R13. The UK Government should undertake a thorough review of the current arrangements for determining age with a view to ensuring that unaccompanied children seeking asylum are treated as such and afforded their rights as children.

This was a Children's Commissioners' recommendation in 2008 and remains a priority.³⁴ Little or no progress has been made on this issue.³⁵ As a result of there being no statutory guidance for local authorities in determining age in any UK jurisdiction it is no surprise that evidence suggests that authorities do not consistently give the benefit of the doubt to a young person claiming to be a child.³⁶ The role and responsibilities of the UKBA, local authorities and health professionals needs to be clarified and established as soon as possible.

R14. Sufficient funding should be given to local government and appropriate authorities to ensure that children and young people have access to appropriate services, including guardians and independent legal advice.

While there are many high quality services across the UK for refugee and asylum seeking children, the Children's Commissioners are concerned that difficult spending decisions may impact disproportionately on these.³⁷ It is imperative that their funding is safeguarded if the State Party's commitment to the UNCRC is to be realised.³⁸ This concern was raised by the Children's Commissioners in 2008 and remains important given the current economic climate.³⁹

³³ See cases referred to in the letter from Immigration Law Practitioners Association (ILPA) to the Chief Executive of the UK Borders Agency, Jonathan Sedgwick, *Re: The Welfare and Best interests of Children* (18.03.11). Also the judgement delivered by the Supreme Court in *ZH (Tanzania) –v- SSHD* (2011, UKSC 4).

³⁴ (June 2008) *UK Children's Commissioners Report to the UN Committee on the Rights of the Child*, R93.

³⁵ *IMB Harmondsworth* (April 2011) Paper delivered to the Refugee Children's Consortium Detention sub-group 8 April 2011; Refugee Council (April 2011) *Presentation delivered to the Refugee Children's Consortium Detention sub-group 8 April 2011*.

³⁶ Local Authorities in England and Wales currently rely on following Supreme Court judgements – *UKSC 8 (2009) R (on the application of 'A')(FC) (Appellant) –v- London Borough of Croydon (Respondents) and R (on the application of 'M')(FC) (Appellant) –v- London Borough of Lambeth*.

³⁷ British Refugee Council (2011) *Evaluation of the SMILE project*.

³⁸ See for example, Equality and Human Rights Commission (2010), *Refugees and Asylum Seekers – A review from an equality and human rights perspective*; Children's Society (2008), *Living on the edge of despair – destitution amongst refugee and asylum seeking children*.

³⁹ (June 2008) *UK Children's Commissioners Report to the UN Committee on the Rights of the Child*, R98.

³⁰ For impact of this announcement see: <http://www.unicef.org.uk/Archive/UK-Government-withdraws-reservations-to-UNCRC/>

³¹ Cabinet Office (May 2010), *The Coalition: our programme for government*. See also Deputy Prime Minister's statement to the House of Commons on December 16, 2010 and *Ending Child Immigration detention* House of Commons Library, Home Affairs Section, note SN/HA/5591 laid on 21 December 2010.

³² See UKBA announcement 28 February 2011: <http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2011/march/03new-family-returns-process>

Special Protection Measures

Access to independent help, advocacy and advice is crucial given the vulnerability of this group of children.⁴⁰ Each UK administration should provide access to a legal guardian who would be appointed as soon as an unaccompanied asylum seeking child is identified. Arrangements should be maintained until the child reaches 18 or has permanently left the UK. The provision of a guardian for these children is vital. No progress has been made by the UK Government on this front.⁴¹ However, the Children's Commissioners welcome the pilot project supported by the Scottish Government, launched in 2010, and wish to see all administrations following this example.⁴² The Northern Irish Children's Commissioner is part of a working group that is exploring a guardianship model.

R15. The UK Government should monitor its commitment to the Council of Europe's Convention on Action against Trafficking in Human Beings.

The Children's Commissioners welcome the UK Government's ratification of the Council of Europe Convention on Action against Trafficking in Human Beings. However, further progress is needed as there has been no accompanying formal monitoring mechanism put in place.⁴³ Of equal concern is the lack of ambition to improve the identification and protection of child victims and the capacity to investigate and successfully prosecute child trafficking offences demonstrated in the UK Government's Human Trafficking Strategy, which, by its nature only covers England and Wales.⁴⁴ We do recognise the Welsh Government action to improve understanding, followed by appropriate services responses, but this progress needs to be consistent across all parts of the UK.⁴⁵ The Scottish Government should lead and coordinate the work on child trafficking in Scotland, including the facilitation and promotion of a multi-agency response to child trafficking at the local level.⁴⁶

⁴⁰ The importance and standards expected of State Parties is set out in Communication from the Commission to the European Parliament and the Council (May 2010) *Action Plan on Unaccompanied Minors (2010 – 2014)* SEC (2010)534.

⁴¹ For example see Explanatory Memorandum dated 28 May from Damien Green, Immigration Minister to European Scrutiny Committee discussion on the EU Action Plan. <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmeuleg/428/428i80.htm>

⁴² For details of the Scottish Government's guardianship pilot with Aberlour see: <http://www.aberlour.org.uk/scottishguardianshipservice.aspx>

⁴³ The Commissioners have noted their disappointment at Statements made by the UK Government in the House of Commons that they believe existing arrangements are compliant with the EU Directive on preventing and combating trafficking in human beings and protecting its victims. See *Hansard May 9 2011, Column 976*.

⁴⁴ Home Office (2011) *Human Trafficking: the Government's Strategy*.

⁴⁵ SSIA, All Wales child Protection Review Group, (2010) *All Wales Protocol: Safeguarding and Promoting the Welfare of Unaccompanied Asylum Seeking and Refugee Children*.

⁴⁶ Scotland's Commissioner for Children and Young People and the Centre for Rural Childhood at UHI Perth College (2011) *Scotland: A safe place for child traffickers? A scoping study into the nature and extent of child trafficking in Scotland*.

Special Protection Measures

Juvenile justice

Article 37: Detention

No child shall be tortured or suffer other cruel treatment or punishment. A child shall only ever be arrested or put in prison as a last resort and for the shortest possible time. Children must not be put in a prison with adults and they must be able to keep in contact with their family.

Article 39: Rehabilitation of child victims

Children neglected, abused, exploited, tortured or who are victims of war must receive special help to help them recover their health, dignity and self-respect.

Article 40: Juvenile justice

A child accused or guilty of breaking the law must be treated with dignity and respect. They have the right to help from a lawyer and a fair trial that takes account of their age or situation. The child's privacy must be respected at all times.

What the United Nations Committee on the Rights of the Child said in 2008

The Committee had concerns regarding youth justice including the age of criminal responsibility being too low, cases where children could be tried in an adult court, high rates of custody, high numbers on remand, children in custody not having the right to a statutory education, proposed removal of reporting restrictions for 16 and 17 year olds facing criminal proceedings, and the provisions of the Counter Terrorism Bill applying to children. Recommendations sought to address these issues and ensure that the State Party complied with international standards especially Articles 37, 39, and 40 of the UNCRC.

The Committee was concerned about Anti-Social Behaviour Orders (ASBOs) in particular the ease with which they were issued, the broad range of prohibited behaviour, and the fact that breach of an order is a criminal offence with potentially serious consequences. ASBOs were not seen as being in the best interests of the child (Article 3) and could contribute to entry into the criminal justice system. There was concern that most ASBOs were imposed on children from disadvantaged backgrounds. The Committee recommended the State Party review ASBOs with a view to abolishing their application to children.

Priorities for action

R16. The UK Government and devolved administrations must take immediate steps to re-orientate the juvenile justice system in each country in order to ensure the non-criminalisation of children and young people through a focus on prevention and diversion.

The Children's Commissioners note the significant difference between youth justice systems in different parts of the UK. England, Northern Ireland and Wales are about to undergo changes that may impact considerably on the delivery of youth justice in these jurisdictions.⁴⁷ The Children's Commissioners call for greater emphasis to be placed on preventing offending, and diversion away from the formal system. The reduction in recent years of the number of children entering the youth justice system and custody (in England and Wales) may, in part, be the result of

the Youth Justice Board's (YJB) investment in a range of early intervention and diversionary schemes.⁴⁸ Similarly, the youth justice system in Northern Ireland is committed to alternatives to prosecution through a range of incremental disposals which divert children away from formal criminal processing, including youth conferencing.⁴⁹

However, the Children's Commissioners are disappointed that England and Wales still have one of the highest rates of child imprisonment in Western Europe, and that schemes such as those in Northern Ireland continue to have problems in terms of their effectiveness, particularly in diverting children away from the formal criminal justice system.⁵⁰ The Children's Commissioners urge the Governments in Westminster, Belfast and Cardiff to respond to the significant body of evidence that demonstrates how contact with the formal criminal justice system and acquiring a criminal record has a significant negative impact on a child's entire life, and is ineffective in terms of re-offending.⁵¹

The Children's Commissioners agree that the Scottish children's hearing system is more effective in diverting children away from prosecution, yet even in Scotland there is no consistent national approach to prevention and diversion, and key approaches such as Getting It Right For Every Child (GIRFEC) are not applied consistently. Greater efforts must be made in every country to divert children away from the courts and/or children's hearing system.⁵²

R17. The UK Government and devolved administrations must work with relevant agencies to ensure that there is consistency and continuity of services for children and young people in the youth justice system and the wider community, especially in accessing mental health and education services.

While the correlations between education, offending and re-offending are well documented the Children's Commissioners are concerned about the consistency and provision of education in secure settings and continuity with services in the community.⁵³ In Northern Ireland, children in custody do not have a statutory right to access the Northern Ireland Curriculum, whilst in England a young person in custody can lose their Special Educational Needs statement. In Scotland the duty to provide education under the Prisons and Young Offenders Institutions (Scotland) Rules 2006 is not strong enough. The Children's Commissioners are concerned about the quality and breadth of education available in custody and believe Government has a role in ensuring an improvement in the information exchange both between custodial settings and between custodial settings and the community.

⁴⁸ Youth Justice Board (YJB), (2011) Youth Justice Annual Workload Data 2009/10 (D126)

⁴⁹ Northern Ireland Office (2004) *Evaluation of Youth Justice Agency Services*

⁵⁰ Prison Reform Trust (PRT) (December 2010 and June 2011) *Bromley Briefings Prison Factfile*; NICCY (2011) *Submission to the Youth Justice review Consultation*.

⁵¹ For a summary of the evidence see PRT/ Out of Trouble (2011) *Reducing child imprisonment conference papers*: <http://www.outoftrouble.org.uk/learn/library/publications/reducing-child-imprisonment-conference>

⁵² McAra, L and McVie, S, (2007) *Youth Justice? The impact of system contact on patterns of desistance from offending*, *European Journal of Criminology*, 4 (3) 315 – 45.

⁵³ YJB (2006) *Barriers to engagement in education, training and employment*.

⁵⁴ Office for standards in education, child services, and skills (Ofsted) (2010) *Transition through detention and custody: arrangements for learning and skills for young people in custodial or secure settings*.

⁴⁷ For example, see Ministry of Justice (December 2010) *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*.

Special Protection Measures

The Children's Commissioners believe there is sufficient evidence to suggest the provision of mental health services for children drawn into the youth justice system is not good enough in any part of the UK.⁵⁵ Concerns are expressed about the inadequacy of child and adolescent mental health service provision both in custodial institutions and the wider community.^{56 57} It is the responsibility of each Government to tackle the wide variation in the type, level and quality of measures put in place to support the emotional wellbeing and good mental health of children in the youth justice system and specifically for children who are in custody.

R18. Each Government must take immediate action to ensure that every child in custody is treated humanely and that their rights are respected.

The UK State Party is signatory to the UN's Optional Protocol to the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (OPCAT) and bound by international agreement to ensure the humane treatment of children in custody. While the Children's Commissioners acknowledge the commitment to this principle in all four jurisdictions, the experiences of those in custody would suggest that far more needs to be done. The Children's Commissioners note with concern documented reports detailing the negative experiences of children in custodial settings across all four jurisdictions. They are particularly concerned about the overuse and inconsistent application of physical control and restraint, strip searching and segregation, as well as limited access to an advocate. The Children's Commissioners believe such treatment is unacceptable. Every Government must do everything in its power to tackle this immediately.

⁵⁵ For example, see Criminal Justice Inspection Northern Ireland (2010) *Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland*.

⁵⁶ Harrington, R., and Bailey, S. (2005) Mental health needs and effectiveness provision for young offenders in custody and in the community.

⁵⁷ Berelowitz, S. and Hibbert, P. (2011): "I think I must have been born bad" - Emotional wellbeing and mental health of children and young people in the youth justice system
Available at:
http://www.childrenscommissioner.gov.uk/content/publications/content_503

Conclusion

We will hold true to our commitment to the UN Committee in 2008 to continue to independently assess and monitor the State Party's progress.

We will keep on pressing our Governments to ensure all children's rights are fully understood and enjoyed across the UK.

We will continue to advise the UK State Party on developing policy and practice with children's rights and best interests at their heart.

And finally and most importantly, we will always speak up when we see new or enduring violations and breaches of children's rights.

General Principles: Participation in decision-making

R1. The Children's Commissioners call for new legislation to ensure that there are the mechanisms and structures in place in each UK administration to embed the right to participation in children's lives, and for such a commitment to be supported by participation training for all professionals who work with or for children.

R2. Each administration in the UK must address the inconsistent provision of advocacy both within and across the four countries. This may require new legislation or a demonstrable action to implement and realise provisions already made in law.

R3. Each administration must pledge to continue to develop the effective participation of children in education. Every child in the UK should have a right to appeal against exclusion from school or a decision concerning their Special Educational Needs.

R4. Each administration must effectively implement the right of children to participate in legal and court proceedings.

Basic Health and Welfare: Children with disabilities

R5. Services and support that enable disabled children to enjoy their rights must be protected from cuts in public expenditure.

R6. The UK Government and devolved administrations should develop comprehensive national strategies for the inclusion of disabled children into society.

R7. Professional training programmes for staff working with disabled children must be developed and implemented as soon as possible.

R8. Children's right to be heard in issues affecting them must be promoted and protected by each government and administration.

Basic Health and Welfare: Child poverty

R9. The UK Government and devolved administrations should fully implement the Child Poverty Act 2010.

R10. Sufficient financial resources should be allocated to tackling child poverty across the UK, funding services targeted at the most disadvantaged, and increasing the household income of poor families.

R11. Governments must prioritise services for poor children to address the wide range of inequalities in health and educational outcomes they experience.

Special Protection Measures: Children seeking asylum

R12. That the UK Government, in partnership with devolved administrations, should implement and evaluate the new arrangements for family removals and safeguarding against the UNCRC and international standards.

R13. The UK Government should undertake a thorough review of the current arrangements for determining age with a view to ensuring that unaccompanied children seeking asylum are treated as such and afforded their rights as children.

R14. Sufficient funding should be given to local government and appropriate authorities to ensure that children and young people have access to appropriate services, including guardians and independent legal advice.

R15. The UK Government should monitor its commitment to the Council of Europe's Convention on Action against Trafficking in Human Beings.

Special Protection Measures: Juvenile justice

R16. The UK Government and devolved administrations must take immediate steps to re-orientate the juvenile justice system in each country in order to ensure the non-criminalisation of children and young people through a focus on prevention and diversion.

R17. The UK Government and devolved administrations must work with relevant agencies to ensure that there is consistency and continuity of services for children and young people in the youth justice system and the wider community, especially in accessing mental health and education services.

R18. Each Government must take immediate action to ensure that every child in custody is treated humanely and that their rights are respected.



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