

Consultation by the Office of the Children's Commissioner

A rights-based approach to education

What are the characteristics of an
education system which protects and
promotes children's rights?

About the Office of the Children's Commissioner

The Office of the Children's Commissioner (OCC) is a national public sector organisation led by the Children's Commissioner for England, Dr Maggie Atkinson. We promote and protect children's rights in accordance with the United Nations Convention on the Rights of the Child and, as appropriate, other human rights legislation and conventions.

We do this by listening to what children and young people say about things that affect them and encouraging adults making decisions to take their views and interests into account.

We publish evidence, including that which we collect directly from children and young people, bringing matters that affect their rights to the attention of Parliament, the media, children and young people themselves, and society at large. We also provide advice on children's rights to policy-makers, practitioners and others.

The post of Children's Commissioner for England was established by the Children Act 2004. The Act makes us responsible for working on behalf of all children in England and in particular, those whose voices are least likely to be heard. It says we must speak for wider groups of children on the issues that are not-devolved to regional Governments. These include immigration, for the whole of the UK, and youth justice, for England and Wales.

The Children and Families Act 2014 changed the Children's Commissioner's remit and role. It provided the legal mandate for the Commissioner and those who work in support of her remit at the OCC to promote and protect children's rights. In particular, we are expected to focus on the rights of children within the new section 8A of the Children Act 2004, or other groups of children whom we consider are at particular risk of having their rights infringed. This includes those who are in or leaving care or living away from home, and those receiving social care services. The Act also allows us to provide advice and assistance to and to represent these children.

Our vision

A society where children and young people's rights are realised, where their views shape decisions made about their lives and they respect the rights of others.

Our mission

We will promote and protect the rights of children in England. We will do this by involving children and young people in our work and ensuring their voices are heard. We will use our statutory powers to undertake inquiries, and our position to engage, advise and influence those making decisions that affect children and young people.

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The United Nations Convention on the Rights of the Child

The UK Government ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1991.¹ This is the most widely ratified international human rights treaty, setting out what all children and young people need to be happy and healthy. While the Convention is not incorporated into national law, it still has the status of a binding international treaty. By agreeing to the UNCRC the Government has committed itself to promoting and protecting children's rights by all means available to it.

The legislation governing the operation of the Office of the Children's Commissioner requires us to have regard to the Convention in all our activities. In relation to the current consultation, the articles of the Convention which are most relevant to this area of policy are:

Article 2: All rights apply to all children regardless of their personal circumstances and regardless of what they have done.

Article 3: The best interests of the child must be a primary consideration in all actions.

Article 4: Governments must do all they can to fulfil the rights of every child.

Article 5 Governments should respect the rights and responsibilities of families to direct and guide their children so that, as they grow, they learn to use their rights properly.

Article 12: Every child has the right to say what they think in all matters affecting them, and to have their views taken seriously.

Article 14 Children have the right to think and believe what they want and to practise their religion, as long as they are not stopping other people from enjoying their rights [...] The Convention supports children's right to examine their beliefs, but it also states that their right to express their beliefs implies respect for the rights and freedoms of others.

Article 16: Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes.

Article 23: Children with a disability have a right to special care and support.

¹ You can view the full text of the United Nations Convention on the Rights of the Child on the Office of the United Nations High Commissioner for Human Rights website at: <http://www2.ohchr.org/english/law/crc.htm>. A summary version, produced by UNICEF, is available at: http://www.unicef.org/crc/files/Rights_overview.pdf

Article 28: Every child has the right to an education [...]. Discipline in schools must respect children's human dignity. The Convention places a high value on education. Young people should be encouraged to reach the highest level of education of which they are capable.

Article 29: Children's education should develop each child's personality, talents and abilities to the fullest. It should encourage children to respect others, human rights and their own and other cultures. It should also help them learn to live peacefully, protect the environment and respect other people.

Article 31: Children have the right to relax and play, and to join in a wide range of cultural, artistic and other recreational activities.

Article 34: Governments must protect children from sexual abuse and exploitation.

Article 42: Governments should make the Convention known to adults and children. Adults should help children learn about their rights. The response below has therefore been drafted with these articles in mind. We do not propose to respond separately to every consultation question. Rather, we will respond where we feel the UNCRC gives us a locus to do so, and where our existing evidence base gives us a perspective. Throughout, we use the same section headings as in the consultation document.

Introduction

The primary purpose of the Office of the Children's Commissioner (OCC) is to promote and protect the rights of children and young people in England. The large majority of these children spend a substantial proportion of their life at school, and full time education is compulsory between the ages of 5 and 17. Those who are not in school should nevertheless receive a full-time education wherever they are.

Education is a right for all children. However, while at school, all children also have all of the other rights set out in the UN Convention on the Rights of the Child (UNCRC). They have the right to be kept safe from harm; to be listened to; to have their opinions taken seriously; to have decisions made in their interests; and for disciplinary measures in schools to respect their dignity. They also have a right to expect that the adults responsible for them will help them understand their rights and how to exercise them.

We believe that many schools in which pupils' rights are protected and promoted tend to be those in which attainment is high. In these schools, all members of the school community are treated with respect, and understand the relationship between rights and responsibilities to others. They are calm and orderly learning environments, where teachers can teach and children learn and reach their full potential without disruption.

OCC's work to date has led us to believe that there is a great deal of common ground across those working in education as to what an effective education system should be seeking to achieve. Moreover, while it may not be articulated in a language of 'rights', there is a large degree of consensus that education should be for the benefit of the child, should be broad and balanced, and should give them an understanding of how to prosper in the world. However, this lack of a shared, and articulated, understanding means that opportunities to improve the system are not fully exploited.

The purpose of this consultation is to look at how schools, as well as other organisations who deliver education services, can best promote and protect children's rights in what they do. We want to identify how the education system can achieve the goal. We also want to identify examples of best practice in schools and see how these could be spread more widely. Below, we seek to identify a set of characteristics which would be the cornerstones of an education system which protects and promotes children's rights, as set out in the UNCRC. The set of proposals contained in this document are the beginning of a discussion. We welcome views on their appropriateness. We also seek recommendations for exemplars of best practice, with views on how this can be spread more widely. In developing these proposals, we have drawn on a number of different evidence sources.

i. Discussions with those working in education within the Government and beyond

These have included discussions with Government departments and agencies, teachers' organisations, Local authorities and Academy sponsors, as well as those working in the charity sector.

ii. Children and young people

We have consulted over 100 children and young people from across England on what they consider to be the most important elements of their education. In addition, in parallel to this consultation, a separate exercise is being run to take the views of a broader section of young people.

iii. OCC research and project work

Finally, we have drawn on the evidence of OCC's work in education since the Office began to conduct investigations in this area in 2010. This work includes:

- a literature review and poll of over 2000 young people investigating their views of their education
- a set of best practice case studies for involving young people in the running of their school
- a two year Inquiry into school exclusions, which identified evidence of illegal exclusions taking place in schools
- best practice guidelines for how schools can ensure their students are safe
- An examination of the evidence regarding schools' compliance with admissions regulations.

Proposals for the characteristics of a rights-promoting education system: 'What do we want our schools to do?'

The education system should ensure that:

- **all** children should leave primary school functionally literate and numerate, and able to access a broad curriculum²
- **all** children are helped to maximise their progress and attain the highest possible level of qualification they can
- when young people leave formal education, they should be able to make an informed choice about the path they want to follow and have the opportunity to pursue qualifications which enable them to follow their chosen course. This may be into higher education, employment or further training
- education should be a fulfilling and enriching experience in and of itself, rather than solely a means to an end
- children and young people are able to make a positive contribution to the life of the school and their wider community. They should leave school able and prepared to continue to make this contribution to society
- education should not take up so much time that children are unable to exercise their right to pursue other leisure, cultural and play activities.

In order to realise these aims the education system as a whole must:

- provide learning opportunities that help each individual child fully develop and achieve skills that will prepare him/her for adult life
- in addition to high quality and rigorous academic disciplines education should provide children and young people with:
 - instruction on playing a full and positive role in society (citizenship), which includes an understanding of individual's rights and responsibilities
 - learning the non-academic skills, such as communication or teamwork, that young people need to successfully engage and participate in employment and their community

² Unless severe special need prevents it.

- opportunities to build emotional resilience and develop the skills and understanding of how to deal with emotional and relationship issues
- provide additional support to any child who needs it in order to achieve their full potential, regardless of their school or income level
- the education system should continually strive to narrow the gap in attainment of different groups of young people.

Schools are at the heart of the education system and so:

- should be orderly and calm places, where all children are safe, able to learn, and where there are high expectations of respect and behaviour from all members of the school community
- must acknowledge their responsibility for identifying where a child may be unsafe outside school, and take appropriate steps to make them safe
- should make decisions in the interests of the children they are educating
- should provide children and young people with the opportunity to have their voice heard, giving due weight and respect to their views in making decisions relating to their education

When things go wrong:

- If, for any reason, children are unable to attend school, they should receive an alternative form of education which allows them to achieve and develop in the same way as if they were in a mainstream school. This should cover all those unable to attend school, including, but not limited to:
 - those excluded from school
 - those who have long-term medical or mental health needs
 - young mothers
 - those in custody or detention
 - those newly arrived in the country and unable to access a school place.
- Where a child or group of children is let down by the system, children and parents should have a meaningful system of redress. This redress

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will only be meaningful if it:

- is independent of those operating the school system
- is run in the interests of the child and enables them to have their voice heard and given due weight
- possesses the powers to put right the harm caused by unlawful or unreasonable activity
- enables the system to learn from cases to make it less likely that they will be repeated.

Consultation questions

1. Do you agree with these proposals?
2. Are there any you do not feel are appropriate?
3. Are there any which should be added?
4. How should progress towards meeting these be measured?
5. How could these proposals be implemented in different educational settings?
6. How should the accountability system incentivise the achievement of these outcomes?
7. Are there examples of best practice in education which you would like to draw to our attention? How could this best practice be spread more widely?

Responding to the consultation

We would welcome responses to this consultation by close on Friday 26 September 2014.

Responses can be sent electronically to:

OCCEducation.CONULTATION@childrenscommissioner.gsi.gov.uk

If you have a query about this consultation, make it to the same address.