



MILLION

11 MILLION's Submission to the Joint Committee on Human Rights' Inquiry on Children's Rights

13 February 2009



"The 11 MILLION children and young people in England have a voice"

Children's Commissioner for England, Professor Sir Albert Aynsley-Green

1. Who are we?

11 MILLION is a national organisation led by the Children's Commissioner for England, Sir Al Aynsley-Green. The Children's Commissioner is a position created by the Children Act 2004.

2. Introduction

The UK Government reported to the UN Committee on the Rights of the Child in 2008. As part of the reporting process, the four UK Children's Commissioners submitted a joint report to the UN Committee¹. This response is based on that report which, along with submissions from NGOs and children, directly influenced the UN Committee's Concluding Observations.²

3. Positive Progress

3.1 We agree with the UN Committee that there have been positive developments and improvements in children's lives since the UK reported in 2002. These include the Children Act 2004, Every Child Matters (ECM) and the Children's Plan. We believe that these are significant changes which will take time to embed fully, though some results are already manifest e.g. improved access to childcare, the Sure Start and children's centre programmes, extended schools and investment in youth services. The ambition of the Children's Plan to make England the best place in the world for children to grow up is one we strongly support.

3.2 However, it is clear from the Committee's 124 recommendations that more needs to be done to enhance, promote and safeguard the rights and best interests of children and to ensure that children's rights are at the heart of policy-making in the UK.

4. Discrimination against Children

4.1 11 MILLION shares the UN Committee's concerns about "*the general climate of intolerance and negative public attitudes towards children, especially adolescents... including in the media*"³. The Children's Commissioners' report raised concerns about the negative portrayal of young people, with 71% of media stories on them being negative and a third of articles being about crime. Young people feel the media represent them as anti-social, to be feared, selfish, criminal and uncaring.⁴ The Government shares these concerns and we welcome Aiming High for Young People⁵ and endorse Government initiatives, like National Youth Week, and other approaches, challenging the negative views of young people.

¹ UK Children's Commissioners' Report to the UN Committee on the Rights of the Child, June 2008, available at www.11MILLION.org.uk

² Committee on the Rights of the Child, Considerations of Reports Submitted by State Parties under Article 44 of the Convention, Concluding Observations, United Kingdom of Great Britain and Northern Ireland, 3 October 2008, CRC/C/GBR/CO/4

³ Committee on the Rights of the Child, op.cit, para. 24

⁴ YouthNet and the British Youth Council, Respect? The Voice Behind the Hood (2006)

⁵ Department for Children, Schools & Families & HM Treasury, Aiming High for Young People: A ten year strategy for positive activities (July 2007)

4.2 The Committee highlighted how this intolerance “*may often be the underlying cause of further infringement of their rights*”,⁶ in particular, the right to freedom of movement and peaceful assembly. Related to this the Committee condemned the use of Anti-Social Behaviour Orders (ASBOs), dispersal zones and the use of “mosquito devices.” We support the Committee’s recommendations that the Government should reconsider the use of ASBOs, “mosquito devices” and that they should “*take urgent measures to address the intolerance and inappropriate characterisation of children, especially adolescents, within society, including the media.*”⁷

4.3 As highlighted by the Committee, the forthcoming Equality Bill offers a legislative opportunity to enhance children’s protection from discrimination and thereby promote their rights and outcomes. Including under-18s in the Bill’s proposed age discrimination prohibition and age strand of the single public equality duty is crucial to achieving this goal. We are pleased that the Government has signalled that it is willing to seriously consider this latter proposal.⁸

5. Disabled Children

We welcome the measures that the Government has taken to better meet the needs of children with disabilities, in particular Aiming High for Disabled Children⁹ and the Children and Young Persons Act 2008, which include greater investment, improved services, short breaks and transition support. We support the Committee’s recommendation that the Government should “*develop a comprehensive national strategy for the inclusion of children with disability in society*”. Along with the Committee, we would like the Government to ratify the UN Convention on the Rights of Persons with Disabilities.

6. Education

6.1 11 MILLION welcomes the progress made by Government in seeking to reduce inequalities in educational outcomes. However, educational inequalities persist and England has one of the highest associations of social class with educational performance in the OECD.¹⁰ We remain particularly concerned about educational outcomes for poor white boys, Afro-Caribbean pupils and Gypsy and

⁶ Committee on the Rights of the Child, op.cit, para. 24

⁷ Committee on the Rights of the Child, op.cit., para. 25.

⁸ A more detailed analysis of age equality in the context of children may be found in 11 MILLION’s Submission to the Joint Committee on Human Rights on the Equality Bill, 2 December 2008 at www.11MILLION.org.uk.

⁹ Department for Education and Schools and HM Treasury, Aiming High for Disabled Children: Better support for families (May 2007).

¹⁰ K Hansen & A Vignoles A ‘The United Kingdom education system in a comparative context’ in S Machin & A Vignoles (eds.) *What is the Good of Education?* (2005) Princeton University Press; 51% of pupils in England not eligible free school meals achieved five or more GCSEs grade A*-C in 2007/08 compared with 24% of pupils who were eligible – Source: Department for Children, Schools and Families (DCSF) Attainment by Pupil Characteristics, England 2007/08, November 2008.

Traveller children, children who are looked after and children with SEN.¹¹ We support the Committee's recommendation that Government should "*strengthen its efforts to reduce the effects of the social background of children in their achievement at school*".¹² We are very pleased that the Government has considerably invested in education and improved standards and levels of attainment. We particularly support the Narrowing the Gap initiative, 21st Century Schools¹³ and the Gifted and Talented programme and believe these will result in real progress. We also hope that implementation of the Children and Young Persons Act 2008 will result in improvements to the educational attainment of children in care.

6.2 Inequalities are also evident in school exclusion rates with a clear correlation between social disadvantage and exclusion. There has been little progress in reducing exclusions. Gypsy and Traveller children have the highest permanent exclusion rates and are over three and half times more likely to be excluded than other children, and pupils with statements of special educational needs are over nine times more likely to be excluded.¹⁴ Children in care are over seven times more likely to be excluded from school than the rest of the school population.¹⁵ We support the Committee's recommendation that exclusions from school should be a "means of last resort" and their use reduced.

6.3 We welcome the Government's investment and measures to improve provision and outcomes for children with SEN,¹⁶ which represents progress towards the Committee's recommendation of investing "*considerable resources in order to ensure the right of all children to a truly inclusive education*".¹⁷

6.4 11 MILLION supports the new duty in the Education and Skills Act 2008, requiring governing bodies of maintained schools to invite and consider the views of children and hope this will result in greater participation of children in schools.

6.5 We welcome the Government's support of various initiatives to address bullying, but it is concerning that 39% of children report being bullied at school.¹⁸ We hope that the National Healthy Schools Programme's *Anti-Bullying Guidance*, produced in partnership with 11 MILLION, will be a helpful resource for schools.

¹¹ Department for Education and Skills, *Ethnicity and Education: The Evidence on Minority Ethnic pupils*, DfES Research Topic Paper: RTP01-05 (2005); R Cassen & G Kingdon G, *Tackling Low Educational Achievement*, (2007) Joseph Rowntree Foundation.

¹² Committee on the Rights of the Child, *op.cit.*, para. 67a).

¹³ Department for Children, Schools & Families, *21st Century Schools: A World-Class Education for Every Child* (2008).

¹⁴ DCSF, *Permanent and Fixed Period Exclusions from Schools in England 2006/07*, June 2008

¹⁵ DCSF, *Outcome indicators for children looked after, twelve months to 30 September 2007 – England*, April 2008.

¹⁶ "Balls announces new action and investment of £38 million for children with special educational needs" (11 December 2008), www.dcsf.gov.uk.

¹⁷ Committee on the Rights of the Child, *op.cit.*, para. 67d).

¹⁸ OFSTED, *TellUs3 Survey*, October 2008.

We welcome the Government's commitment to strengthen bullying complaints procedures.

6.6 We share the Committee's concern that the right to complain regarding educational provision is restricted to parents, representing a particular problem for looked after children. We support the Committee's recommendations that children without parental care should have a representative to defend their best interests and that children should have the right to appeal against their exclusion as well as the right to appeal to the special educational needs tribunal.

7. Child Poverty

7.1 11 MILLION supports the Government's commitment to end child poverty by 2020 and we welcome the plans to introduce legislation to end child poverty.¹⁹ However, legislative reform on its own will not be enough and it has been estimated that a further £3 billion²⁰ needs to be invested to meet the Government's target of halving child poverty by 2010. Over the last two years there has been a rise in the number of children in poverty and there are currently 3.9 million children (30%) living in poverty in the UK.²¹ More attention needs to be given to reduce the extent of in-work poverty and to ensure there are safeguards for the minority of parents unable to work either due to ill health, disability or the caring needs of their children. The UN Committee raised concern about the Government's strategy not being sufficiently targeted at those groups of children in most severe poverty.

7.2 While inequality has fallen faster in the UK than other countries, it still has one of the highest levels of income inequality in the developed world²² and in 2008 income inequality in the UK was at its highest level since the late 1940s.²³ More needs to be done to address the structural causes of poverty, including the high levels of inequality (income, health and educational) in the UK.

8. Criminalisation of children

8.1 We are concerned that children are increasingly being drawn into the formal criminal justice system for minor offences and behaviour that in the past would not have been defined as criminal and/or would have been dealt with through informal means. Since 2002, the number of under-18 year olds involved with the criminal justice system has risen by 27%.²⁴ This is at a time when the juvenile

¹⁹ Child Poverty Unit, Ending Child Poverty: making it happen (2009).

²⁰ End Child Poverty, www.endchildpoverty.org.uk; D Hirsch, What will it take to end child Poverty? Firing on all cylinders, 2006, Joseph Rowntree Foundation. This report estimated £4 billion was needed to reach the target of halving child poverty by 2010, with the Government committing almost £1 billion in the 2008 budget, a further £3 billion is needed to reach the target.

²¹ Department for Work and Pensions Households Below Average Income (HBAI), 1994/95-2006/07 (2008).

²² Organisation for Economic Cooperation and Development, Growing Unequal? Income Distribution and Poverty in OECD Countries (2008)

²³ Institute for Fiscal Studies, Poverty and inequality in the UK: 2008 (2008)

²⁴ IPPR, Communities can hold youth to account and reduce re-offending, June 2008, <http://www.ippr.org.uk/pressreleases/?id=3180>

crime rate remained stable. This rise has been partly attributed to the police “Offences Brought to Justice” targets, the expansion of pre-court sanctions²⁵ and the Government’s anti-social behaviour measures, particularly ASBOS.²⁶ The Committee expressed concern about the use of ASBOs on children and recommended *“an independent review on ASBOs with a view to abolishing their application to children”*.²⁷

9. Children in detention

9.1 The youth justice system in England has a poor record of compliance with the UNCRC and the best interests of the child are not sufficiently reflected in youth justice policy, legislation and practice. The high numbers of children in custody in England has been criticised by the UN Committee and by the Human Rights Commissioner.²⁸ It is troubling that a quarter of children in custody have learning disabilities, a third with major mental health needs, 12% are locked up for breach and a third for non-violent offences.²⁹ We support the Committee’s recommendation that the Government should *“develop a broad range of alternative measures to detention”* and that the principle of detention to be used as a last resort should be established as a *“statutory principle”*.³⁰ 11 MILLION welcomes the Government’s Youth Crime Action Plan and its focus on a more welfare based approach and the emphasis on early intervention and prevention.

9.2 We support the Committee’s recommendation that the Government should *“provide a statutory right to education for all children deprived of their liberty”*.³¹

9.3 The Children’s Commissioners raised serious concerns that 30 children have died in custody since 1990 yet there has never been a public inquiry. Child Death Overview Panels now have responsibility for reviewing the death of every child, including those in custody. We would like reports of children who die in custody to be made public and for them to be considered by LSCBs as part of the Serious Case Review process. The same should apply to children who suffer serious injury whilst in custody, including self-inflicted injury.

9.4 The Children’s Commissioners, the UN Committee and Commissioner for Human Rights have expressed serious disquiet about the over-use of physical control and restraint on children in custody. While we welcome the Government’s commitment to reduce the use of restraint in response³² to the independent

²⁵ Professor Rod Morgan, Summary Justice: Fast – but Fair, Centre for Crime and Justice Studies, August 2008.

²⁶ Committee on the Rights of the Child, op. cit., para 79b).

²⁷ Committee on the Rights of the Child, op.cit., para. 80.

²⁸ Thomas Hammarberg, Commissioner for Human Rights, Memorandum: Rights of the child with focus on juvenile justice (2008) Council of Europe.

²⁹ Prison Reform Trust, Criminal Damage: why we should lock up fewer children (2008).

³⁰ Committee on the Rights of the Child, op.cit., para.78b).

³¹ Committee on the Rights of the Child, op.cit., para.78e).

³² The Government’s Response to the Report by Peter Smallridge and Andrew Williamson of a Review of the Use of Restraint in Juvenile Secure Settings (December 2008) TSO.

review of restraint,³³ we are disappointed that the opportunity was not taken to ensure compliance with the UNCRC. A further regret is that the review did not result in the withdrawal of restraint methods that deliberately inflict pain, e.g. pain distraction techniques. The review falls short of the Committee's recommendations that *"restraint should only be used as a last resort exclusively to prevent harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished"*.³⁴

9.5 We are also disappointed at the narrowness of the review and the failure to set it within the wider context of how children are treated in the youth justice system, including custody. There are increasing numbers of vulnerable children being locked up in unsafe environments with high levels of self-harm and bullying, intimidation and violence and who are being subject to the degrading treatment of restraint and strip-searching.³⁵ There is an urgent need to review the way we deal with children in trouble with the law.

9.6 The restraint review failed to take account of a recent judicial review,³⁶ which quashed the Secure Training Centre (Amendment) Rules and found that restraint for the purpose of good order and discipline is in breach of article 3³⁷ and article 8³⁸ of the ECHR. A further judicial review³⁹ identified the importance of the UNCRC in relation to the use of restraint on children and questioned the findings of the restraint review, identifying that it was based on a number of false assumptions.⁴⁰ There is an urgent need for clarity on the impact of these judgments on the use of restraint across the juvenile secure estate.

10. Asylum

10.1 The Children's Commissioners' report identified that children seeking asylum experience serious breaches of their rights and that immigration control takes priority over human rights obligations to these children and their families. We hope that the removal of the reservation to article 22 of the UNCRC signals a commitment from Government to considerably improve the treatment of these children, and that their human rights and best interests will be given greater precedence. We also welcome the Government's commitment to change legislation to make the UK Borders Agency (UKBA) subject to a duty to promote the welfare of children. 11 MILLION is working with the UKBA to achieve positive change and ensure the best outcomes for asylum-seeking children.

³³ P Smallridge & A Williamson, Independent Review of Restraint in Juvenile Secure Settings (2008) Ministry of Justice & Department for Children, School & Families.

³⁴ Committee on the Rights of the Child, op.cit., para. 39.

³⁵ HM Chief Inspector of Prisons for England and Wales, Annual Report 2005/06 (2007).

³⁶ R (C) and the Secretary of State for Justice [2008] EWCA Civ882.

³⁷ Article 3 of the ECHR – Freedom from torture or inhuman or degrading treatment or punishment.

³⁸ Article 8 of the ECHR – Right to respect for private and family life.

³⁹ R (on the application of Carol Pounder) v HM Coroner for the North and South Districts of Durham and Darlington [2009] EWHC 76 (Admin).

⁴⁰ Ibid, para. 42.

10.2 11 MILLION is highly concerned about the damaging impact of detention on children and their parents and we would like to see an end to the unnecessary detention of children for immigration purposes. Detention of children is not always being used as a measure of last resort or for the shortest appropriate time and it is troubling that the length of detention has been increasing. 11 MILLION has found that the best interests and welfare of the child are not given sufficient priority in the decision to detain or to continue detention. In addition, children have told us that the arrest process is an extremely distressing experience and it is unacceptable that some children are transported in vans without breaks or access to food. While asylum-seeking children continue to be detained there is a need for major improvements to the immigration removal centre, particularly in the provision of health care and mental health support.

10.3 We agree with the Committee's recommendation that the benefit of the doubt should be applied to age disputed cases and that expert guidance should be obtained on how to determine age.

10.4 The best interests principle must be of paramount consideration in the decision to return children and we agree with the Committee that there need to be greater safeguards in place when children are being returned, *"including an independent assessment of the conditions upon return, including family environment"*.⁴¹ The UN Committee and the Children's Commissioners recommend the appointment of guardians for separated children. We welcome the UKBA's Code of Practice⁴² and 11 MILLION is engaged in ongoing dialogue with UKBA on the issue of safe returns.

10.5 11 MILLION supports the Committee's recommendation that section 2 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 should be amended *"to allow for an absolute defence for unaccompanied children who enter the UK without valid immigration documents."*⁴³

11. Awareness of the UNCRC

Awareness of the UNCRC is very low. We support the Committee's recommendation that the Government should *"ensure that all of the provisions of the Convention are widely known and understood"* by children, parents and professionals and the Convention should be included in the national curriculum and in professional training. 11 MILLION is working with DCSF to take steps to improve awareness and knowledge of the Convention across England.

12. Recommendation

11 MILLION would like the Government to produce an action plan addressing how they will take forward the 2008 UN Committee on the Rights of the Child's Concluding Observations.

⁴¹ Committee on the Rights of the Child, op.cit., para.71f).

⁴² UK Border Agency, UK Border Agency Code of Practice For Keeping Children Safe From Harm (2008).

⁴³ Committee on the Rights of the Child, op.cit, para. 71g).