

Independent Review of the Office of the Children's Commissioner - Call for Evidence

Response Form

The closing date for this call for evidence is: 4
October 2010

Your comments must reach us by that date.

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If you want all, or any part, of your response to be treated as confidential, please explain why you consider it to be confidential.

If a request for disclosure of the information you have provided is received, your explanation about why you consider it to be confidential will be taken into account, but no assurance can be given that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

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Please tick if you want us to keep your response confidential.

Reason for confidentiality:

Name Claire Lilley, Policy Adviser

Organisation (if applicable) NSPCC

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London
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If your enquiry is related to the call for evidence you can contact the review secretariat by email: review.occ@education.gsi.gov.uk or telephone 0207 340 7454.

If you have a query relating to the consultation process you can contact the Consultation Unit by email: consultation.unit@education.gsi.gov.uk or telephone: 0870 000 2288.

Please complete this section if you are responding as an individual.

Please select **ONE** category which best describes your role.

| | | |
|---|--|---|
| <input type="checkbox"/> Parent/carer | <input type="checkbox"/> Volunteer working with children | <input type="checkbox"/> School/college staff |
| <input type="checkbox"/> Children's service staff | <input type="checkbox"/> Voluntary organisation staff | <input type="checkbox"/> Youth worker |
| <input type="checkbox"/> Child/young person | <input type="checkbox"/> Other (please specify) | |

Please complete this section if you are responding for an organisation.

Type of organisation

Please select **ONE** category which best describes your organisation.

| | | |
|---|---|---|
| <input checked="" type="checkbox"/> National voluntary organisation | <input type="checkbox"/> Local voluntary organisation | <input type="checkbox"/> Local authority |
| <input type="checkbox"/> Children's service | <input type="checkbox"/> School/college | <input type="checkbox"/> Other (please specify) |

Please Specify:

The NSPCC:

The National Society for the Prevention of Cruelty to Children (NSPCC) is the UK's leading charity specialising in child protection and the prevention of cruelty to children. The NSPCC aims to end cruelty to children in the UK over future generations. In pursuit of our vision we will:

- Create and deliver services for children which are innovative, distinctive and demonstrate how to enhance child protection most effectively
- Provide advice and support to ensure that every child is listened to and protected

- Provide advice and support to adults and professionals concerned about a child and if necessary take action to protect the child
- Work with organisations which work with children to ensure they effectively protect children and challenge those who do not
- Campaign for changes to legislation, policy and practice to ensure they best protect children
- Persuade everyone to take personal responsibility for preventing cruelty to children
- Inform and educate the public to change attitudes and behaviours towards children
- Use our statutory powers as necessary to protect children.

Alongside the Children’s Rights Alliance for England and all other major children’s charities the NSPCC has long advocated for an independent champion of children’s rights in England on a par with those established in the remainder of the UK and elsewhere in Europe.

Region

Please select the region you are based in.

| | | |
|--|--|---|
| <input type="checkbox"/> North West | <input type="checkbox"/> North East | <input type="checkbox"/> Yorkshire and Humberside |
| <input type="checkbox"/> West Midlands | <input type="checkbox"/> East Midlands | <input type="checkbox"/> East of England |
| <input type="checkbox"/> South West | <input type="checkbox"/> South East | X London |
| <input type="checkbox"/> Other | | |

Please provide your telephone number if you are content to be contacted about your response.

Claire Lilley
Policy Adviser
Tel: 020 7825 7459

1 How do you know about the Children's Commissioner? Please tick any of the following that apply:

(If you tick 'Haven't previously heard of the Commissioner' please go straight to question 5)

| | | |
|--|---|----------------------------------|
| <input checked="" type="checkbox"/> Work | <input type="checkbox"/> Children's group/organisation | <input type="checkbox"/> TV |
| <input type="checkbox"/> Radio | <input type="checkbox"/> Paper or magazine | <input type="checkbox"/> Website |
| <input type="checkbox"/> Other | <input type="checkbox"/> Haven't previously heard of the Commissioner | |

Comments:

Work in the children's sector since 2004 would have benefited from:

- an independent voice for children, with ministers foregoing their power to direct the office holder's inquiries;
- a statutory requirement of the office holder to promote and protect the rights of children.

2 Are enough children and young people aware of the role of Children's Commissioner? Please explain your answer and suggest what, if anything, could be done to increase their awareness.

| | | |
|------------------------------|--|-------------------------------------|
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | <input type="checkbox"/> Don't Know |
|------------------------------|--|-------------------------------------|

Comments:

In contrast to countries with a longer tradition of promoting the views and interests of children and young people there appears to be little awareness among England's children and young people of the role and responsibilities of the Commissioner. There is no reliable quantitative research with respect to this point, but from our daily discourse with children receiving services this seems to be the case: it falls to us to provide this information

The UN Committee on the Rights of the Child Concluding Observations in 2008 (paras 20 and 21) are pertinent in this regard. The Committee was concerned that there is no systematic awareness-raising about the Convention and that the level of knowledge about it among children, parents or professional working with children is low. Furthermore, the Committee regretted that the Convention is not part of the curriculum in schools. The Committee recommended that the UK further strengthen its efforts, to ensure that all of the provisions of the Convention are widely known and understood by adults and children alike, inter alia by including the Convention in the statutory national curriculum, and that UK ensure that its principles and values are integrated into the structures and practice of all schools.ⁱ

Despite this strong recommendation the Office of the Children's Commissioner is not even mentioned in either the Key Stage Three or Key Stage Four curriculum for Citizenship.ⁱⁱ

The Children Act 2004 requires the Commissioner to 'take reasonable steps to involve children in the discharge of his function...and in particular to ensure that children are made aware of his function and how they may communicate with him'. We are unclear what is meant by the phrase 'reasonable steps' and would prefer to see clear duties placed on the Commissioner to systematically involve children and young people in his/her work. Children are involved in the selection of their Commissioner, but there is no requirement for government to do this, that is to exemplify a commitment to Article 12 of the UN Convention, to respect the views of 'the child'.

Given the very low awareness of children's rights, a key function of the Commissioner's office should be to promote awareness and understanding about children's rights and the CRC, particularly among children and young people themselves.

The key messages, complaints and information which the Commissioner gains in the process of ongoing consultation with children and young people should, subject to data protection and confidentiality issues, be shared with relevant agencies so that the learning is shared, and where appropriate, policy and practice can be improved accordingly.

In addition to the information gained from formal consultation exercises with children and young people, the Commissioner should also consider the key messages from other sources of information about children's views and experiences, for example ChildLine data.

3 How great an impact do you think the Office of the Children's Commissioner has had on the lives of children and young people? Please explain your answer.

| | | |
|---|---|-----------------------------------|
| <input type="checkbox"/> Significant impact | <input type="checkbox"/> Quite significant impact | <input type="checkbox"/> Not sure |
| <input checked="" type="checkbox"/> Some impact | <input type="checkbox"/> Very little or no impact | |

Comments:

The NSPCC considers the Office of Children's Commissioner for England has the potential to be an important vehicle, both for advocating children's rights and for challenging government and other agencies when those rights are breached. The effectiveness of the role is dependent on the mandate conferred. But the existing office in England has insufficient powers and independence from government; in order to be effective and to champion children's issues some fundamental changes are needed.

During the passage of the Children Act 2004, in which the Office of the Children's Commission was established, the then Conservative opposition in both the Lords and the Commons argued strongly for a clearer, rights-based mandate for the Commissioner and more independence from Government. We wholeheartedly supported these arguments at the time. In the Lords, amendments strengthening the mandate and powers were added to the Bill with cross-party support, but the Labour government majority in the Commons removed them. Tim Loughton, then the Shadow Children's Minister, described the legislation as providing 'a rights-lite Commissioner'.ⁱⁱⁱ

A confident government welcomes independent watchdogs. To be influential, a commissioner needs to have a close working relationship with government but also actual and perceived independence from it. Children, by virtue of their special dependent status and lack of political power, have a special need for a strong and independent advocate. Children's positive and optimal development is crucial not only for them, but also for the wellbeing of the whole society. An institution able to offer authoritative, independent, informed and evidence-based advice is of great value to government.

The NSPCC believes the principal functions of the Children's Commissioner for England should be strengthened. The Commissioner should be a visible and vocal advocate for children's human rights, with children being aware of the post and understanding how it can support them. Given the very low awareness

of children's rights, a key function of the office should be to promote awareness and understanding about them – particularly among children and young people themselves. England's 11 million children represent a significant proportion – almost a fifth – of its population. High-profile recognition of and respect for their human rights would enable them more effectively to participate in our 'Big Society' in a manner which is appropriate to their age and development and would help to engage them in a positive way.

The Commissioner's mandate as a 'champion for children' currently falls far short not only of the expectations of non-governmental organisations^{iv}, but also and particularly of the government's international obligations in terms of its ratification of the United National Convention on the Rights of the Child (UNCRC).

Positively affecting the lives of children and young people

Many countries which score highly in child wellbeing indices, such as Sweden, Norway and New Zealand, have a strong rights focus and have strong children's champions.

In the Scandinavian countries children's ombudsmen/champions have made a positive impact not only on national policy and legislative programmes, but also on communities, neighbourhoods and individual attitudes towards children and young people. They help to ensure that children's best interests underpin local arrangements and activities, making them inclusive, and attentive to their needs and rights.

Case study: Norway^v

In 1981 Norway was the first country in the world to establish an independent Children's Ombudsman with a statutory duty to protect children and their rights. In 1995 the Norwegian government published a report evaluating the progress of the Children's Ombudsman. It found that:

- It had helped to place children higher up the political agenda;
- Children were aware of the office and its functions;
- It had been instrumental in promoting acceptance of the idea that children have rights and are entitled to be heard;
- Its work in disseminating information about children's rights had improved the position of children in the law.

Case study: Sweden

In Sweden, the Children's Ombudsman has taken action to encourage local authorities to implement the UNCRC since 1995. When this work began, just seven per cent of municipalities had discussed the UNCRC. By 1999, the figure had risen to 64 per cent.^{vi} A Committee of Inquiry set up by the Swedish Government in 1998 to examine the work of the Ombudsman found that it had directly contributed to the implementation of the Convention on the Rights of the Child, and had been effective in promoting children's rights.^{vii}

4 Please provide any specific examples of where you feel the Children's Commissioner (or the Children's Commissioner's Office) has been effective or ineffective, using the boxes below to show whether your example(s) relate(s) to all children, a group of children or an individual child.

| | | |
|---------------------------------------|---|--|
| <input type="checkbox"/> All children | <input checked="" type="checkbox"/> A group of children | <input type="checkbox"/> An individual child |
| <input type="checkbox"/> Other | | |

Comments:

The powers to launch formal inquiries into agencies that provide services for children, including the authority to enter institutions, gain access to records and documents and to question individuals, including children and young people, have been well used by the Office of the Children's Commissioner to raise awareness of the damaging effects of detaining children in immigration removal centres. In 2005, the Commissioner used his powers to gain access to Yarl's Wood Immigration Removal Centre in order to launch an inquiry into the experiences of children detained there. The inquiry complemented previous HMS inspections focusing on the unique experiences and overall wellbeing of children held in immigration detention. The inquiry made clear recommendations to government and the managers of Yarl's Wood on how the facility could be improved to enhance children's wellbeing, including the adoption of simple measures such as not detaining children on their way to school; providing them with information about how long they are likely to be held; providing opportunities for children to express their views; establishing child-friendly complaint mechanisms; providing play facilities in the reception areas, and reviewing the security arrangements to reduce the number of times children had to be searched.^{viii}

A second example of how the Children's Commissioner used their existing (limited) powers to positive effect came in 2008, when he intervened in a case challenging new rules which permitted staff in secure training centres (STCs) to physically restrain children in order to ensure 'good order and discipline' (in addition to their existing powers to use restraint to prevent injury, escape or property damage). After the High Court found that there was no human rights breach and refused to quash the new rules, the Children's Commissioner for England and the Equality and Human Rights Commission intervened to lend support to a child (AC) at the Court of Appeal. The court quashed the rules because they breached the European Convention on Human Rights, violating children's right to protection from inhuman and degrading treatment, as well as their right to a private life. This is an example of how the Commissioner's powers were used to constructive effect, on this occasion on behalf not only of

one particular child but also on behalf of all children who have been subject to the use of restraint in STCs.

5 Should the Office of the Children's Commissioner have a specific remit to promote children's rights (at present the Commissioner is expected to take account of the United Nations Convention on the Rights of the Child)? Please explain your response.

X Yes

No

Don't Know

Comments:

Yes.

Section 2(1) of the Children Act 2004, which establishes that the function of the Children's Commissioner is 'promoting awareness of the views and interests of children', is unsatisfactory because it renders the Commissioner a weak instrument of representation and protection for children. We consider that this should be changed so that the Commissioner has a more substantial remit and thus a stronger mandate to promote children's human rights as articulated in the UN Convention on the Rights of the Child (and its optional protocols). This Convention has universal global ratification (with the exception of USA and Somalia) and is the most comprehensive statement of children's rights.

Currently, the Children's Commissioner is required to 'have due regard for' the United Nations Convention on the Rights of the Child (UNCRC), but this does not go far enough towards protecting the rights of children in England. In contrast, the three Children's Commissioners for Wales, Scotland and Northern Ireland are required to safeguard and promote the rights and interests of children using the framework of the UNCRC.^{ix} Adopting the same approach in England would provide the Commissioner with a wider remit and a stronger basis for responding to, and promoting, the specific rights that are established under the UNCRC.

The need for a rights-based approach is underlined in the Committee on the Rights of the Child's 2002 General Comment number two, which specifically concerns the role of independent national human rights institutions in the promotion and protection of the rights of the child, and which makes it clear that a rights-based approach is required:

'It is the view of the Committee that their mandate should include as broad a scope as possible for promoting and protecting human rights, incorporating the Convention on the Rights of the Child, its Optional Protocols and other relevant international human rights instruments - thus effectively covering children's

human rights, in particular their civil, political, economic, social and cultural rights.^x

It is the NSPCC's view that the remit and responsibilities of England's Children's Commissioner and their office should be more closely tied to the UNCRC. The UK government ratified this Convention in 1991 under a Conservative administration, granting all children a comprehensive set of economic, social, civil and political rights and is therefore bound to uphold and implement the rights contained within it. It is their obligation under the UNCRC to '*undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention*', including the establishment of independent national human rights institutions to promote the implementation of children's rights. The office of Children's Commissioner in England office does not currently meet the standards set out for all Commissioners, whether with regard to:

- The UN's agreed essential characteristics of national human rights institutions (NHRIs) in the Principles relating to the Status of National Institutions ("The Paris Principles")
- or
- The UN Committee on the Rights of the Child's key requirements of NHRIs for children, particularly in their General Comment number 2.

Nor, although it is an associate member, does it meet the standards for independent children's rights institutions as set out by the European Network of Ombudspersons for Children (ENOC).

It is especially important that the Office of the Children's Commissioner have a specific remit to promote children's rights because the rights of children are routinely omitted from other legislation. For example, in the 2010 Equality Act^{xi}, schools and children's homes have been specifically excluded from the age element of the Public Sector Equality Duty (PSED). In addition, the first 'limb' of the PSED does not apply to children, explicitly excluding children and young people from legal protection from unfair discrimination on the grounds of age.

The current legislative framework for the work of the Children's Commissioner is to fulfil the aims of the Every Children Matters (ECM) framework, as Section 2(3) of the Children Act 2004 identifies the following five main areas that the Commissioner should be particularly concerned with:

- children's physical and mental health;
- the protection of children from harm and neglect;
- education and training;
- the contribution made by children to society; and
- children's social and economic well-being.

It would be preferable to root the work of the Commissioner and their office in the independent rights framework articulated in the UNCRC, so that the rights of children are promoted and safeguarded independently of how any single government might seek to act.

Children's Commissioners across the UK should operate within the guiding framework of the UNCRC, which is far more appropriate given its focus on rights, rather than the Every Child Matters targets which are indicators of wellbeing.

We urge the government to restore the vision of all those who, at that time, voted in favour of a rights-based commissioner, by creating a Children's Commissioner with the powers and mandate to fulfil the UK's obligations to children under the UNCRC.

Case study: Children's Commissioner in New Zealand

The Office of Children's Commissioner in New Zealand adopted a rights-based approach to its work from its inception in 1984^{xii}. This approach has been effective in securing notable improvements in the treatment of children and young people. For example, the handling of complaints from parents and children is a major part of the Office's business. The Commission has used specific complaints as a vehicle to highlight broader deficiencies in child protection and bring about change. In 1991, the Children's Commissioner received a complaint from parents about a drug search procedure used in a local high school, which involved children removing their clothes in front of members of staff. The Commissioner investigated the incident and reported that the searches did not meet several aspects of the New Zealand Bill of Rights, nor the school's own charter^{xiii}. The Commissioner used the incident to make recommendations to the Ministry of Education about the need to increase awareness of student's rights in schools and of inappropriate disciplinary methods.

6 Is there anything you think the Children's Commissioner's office should be doing which they are not doing at present, or which they should stop doing?

X Yes

No

Not sure

Comments:

Independence

The current situation, in which the Secretary of State for Education controls the funding, appointment and dismissal of the Commissioner, and is able to require them to undertake inquiries, is problematic and undermines the autonomy of the office. The fact that the Commissioner reports to Parliament through the Secretary of State, and that the Secretary of State can amend individual reports, is unsatisfactory.

In 2002, the UNCRC's General Comment number 2 stated that, 'It is the view of the Committee that every State needs an independent human rights institution with responsibility for promoting and protecting children's rights. The Committee's principal concern is that the institution, whatever its form, should be able, independently and effectively, to monitor, promote and protect children's rights.'^{xiv} In their Concluding Observations in 2008, the UN Committee on the Rights of the Child welcomed the establishment of the Children's Commissioner, but said it 'is concerned that their independence and powers are limited and that they are not established in full compliance with the Paris Principles.'^{xv}

There would be a number of advantages to making the Commissioner accountable to Parliament rather than to a government department. This would give the office greater independence and allow Parliament a stronger role and greater responsibility for the Commissioner's office and for children's rights more generally. Accountability to Parliament rather than government would serve to limit any potential for, or perception of, political interference. There are examples in the UK and Europe where this is the case. In Scotland, for example, the post of Children's Commissioner is appointed by the Queen on the nomination of the Scottish Parliament and can be removed if there is a resolution of the Parliament voted for by not less than two-thirds of votes cast. Other posts that can report directly to Parliament include the Parliamentary and Health Service Ombudsman and the Information Commissioner.

In addition, the Commissioner must also be free from any financial influence that might affect their independence. The fact that Commissioner's budget is determined by the Department for Education, which may attach conditions to the funding, rather than being automatically allocated, is of concern. It denies the Commissioner full autonomy and has the potential unduly to influence their work and its benefit to England's children.

Inquiries held by the Commissioner

We would like Section 4(1) of the Children Act 2004 to be deleted. This states, 'Where the Secretary of State considers that the case of an individual child in England raises issues of relevance to other children, he may direct the Children's Commissioner to hold an inquiry into that case'. It gives the

Secretary of State the power to direct the Children's Commissioner to hold an inquiry. It is important for the authority of the Children's Commissioner that the office should be free to determine its own workload and priorities, particularly in relation to which inquiries the office undertakes. The Secretary of State should be able to recommend that the Commissioner undertakes an inquiry into an issue, but the final decision on undertaking inquiries should rest with the Children's Commissioner.

Further, in order to conduct effective inquiries, the Commissioner needs additional powers, such as the power to subpoena witnesses.

In addition, we would like Section 3(3) of the Children Act 2004, which requires the Commissioner to consult the Secretary of State before holding an inquiry, to be deleted. In their joint submission to the UN Committee on the Rights of the Child the four UK commissioners^{xvi} stated that they were unclear as to what the procedure would be if the Secretary of State were to object to an inquiry. This Section of the Act denies the Commissioner autonomy and does little to assure children, parents and organisations representing children that the Commissioner's office is free from government interference.

Supporting legal action on behalf of children

Accessing justice through the court system is often more difficult for children than adults. There is, therefore, a strong case for the Commissioner to have the power to assist children with legal action in exceptional circumstances. The NSPCC considers that the Commissioner should have the power to participate in legal proceedings in their own name, as the Equality and Human Rights Commission is able to do. Children's Commissioners in many European countries, including the Northern Ireland Commissioner for Children and Young people (NICCY), already have the power to initiate and intervene in court cases; in addition, the Commissioners in Wales and Northern Ireland can provide financial and other assistance for a child to bring legal proceedings.

UNCRC compliance

The Office of the Children's Commissioner should be the body mandated to monitor legislation, policy and practice in England for its compliance with the UNCRC, whose Committee stated in 2008 that it, 'remains concerned at the lack of a body mandated to coordinate and evaluate a comprehensive and effective implementation of the Convention throughout the State party'. Our preference would be for a model similar to that which exists in Sweden, in which the Ombudsman for Children has a mandate to monitor the implementation of the UNCRC. The Ombudsman submits bills for legislative changes to the Swedish Government and promotes the application of the UNCRC in the work of government agencies, municipalities and county councils.

Governments' duty to respond to reports

The Children Act 2004 does not contain a legal requirement on the Government

to respond to the conclusions and recommendations from a Commissioner's inquiry indicating what action, if any, is to be taken. This contrasts with the Children's Commissioners for Wales and Northern Ireland and is a requirement we would recommend.

Remits of the Children's Commissioners in the UK

The remits of the Children's Commissioners in England, Northern Ireland, Scotland and Wales differ widely from one another. These variations mean that children's rights are not equally protected throughout the UK. All children should have a strong Commissioner to ensure their rights and best interests are protected.

7 Should the Children's Commissioner focus mainly on the interests of all children or mainly on vulnerable children? Please explain your answer.

| | | |
|--|---|--------------------------------|
| <input checked="" type="checkbox"/> All children | <input type="checkbox"/> Mainly vulnerable children | <input type="checkbox"/> Other |
| <input type="checkbox"/> Don't Know | | |

Comments:

The work of the Children's Commissioner should focus on all children, because, as noted by the UNCRC in their general comment 2002:

'While adults and children alike need independent national human rights institutions to protect their human rights, additional justifications exist for ensuring that children's human rights are given special attention. These include the fact that children's developmental state makes them particularly vulnerable to human rights violations; their opinions are still rarely taken into account; most children have no vote and cannot play a meaningful role in the political process that determines governments' response to human rights; children encounter significant problems in using the judicial system to protect their rights or to seek remedies for violations of their rights; and children's access to organisations that may protect their rights is generally limited.'^{xvii}

At the same time, Commissioners 'should proactively reach out to all groups of children, in particular the most vulnerable and disadvantaged, such as (but not limited to) children in care or detention, children from minority and indigenous groups, children with disabilities, children living in poverty, refugee and migrant children, street children and children with special needs in areas such as culture, language, health and education.'^{xviii}

Another reason that the Commissioner should not focus solely on 'vulnerable' children is that this would limit his/her ability to prevent children becoming

vulnerable in the first place. 'Vulnerability' and 'disadvantage' are not static concepts. Many children may go through a period of vulnerability in their lives, during which time they may meet the criteria set out in Section 17 of the Children Act 1989; they may then cease to be vulnerable, or their vulnerability might intensify.

Circumstances that could increase the risk of vulnerability include abuse, maltreatment and poverty, as well as parental divorce, bereavement, their sexual orientation, being bullied, and many other factors. In addition, the Office of the Children's Commissioner must proactively seek opportunities to hear the voices of different groups of 'invisible' children, such as children with a disability or very young children.

8 Should the Children's Commissioner have more powers to act directly on behalf of individual children and young people? Please explain your answer and include examples of when this might be appropriate.

X Yes

No

Don't Know

Comments:

Yes. The NSPCC would like Section 2(7) deleted from the Children Act 2004 to be deleted. This prohibits the Commissioner from conducting an investigation into the case of an individual child (although s/he is permitted to do so if instructed by the Secretary of State). We consider that the Commissioner should only take on individual cases in exceptional circumstances, but that s/he must have the power to consider individual complaints and carry out investigations, including those submitted on behalf of, or directly by, children. Any legitimate restrictions to this could be written into legislation.

Whilst we do not recommend that the Commissioner should seek out individual cases of children's rights infringements, in the process of consulting and listening to the views of children, it is likely that concerns will be raised with the Commissioner or to his/her staff from children who consider that their rights have been infringed, or that they have experienced discrimination or unfair treatment from an agency or authority. In order to avoid duplication, the first response from the Commissioner's office should be to explain to young people the processes that exist to help them resolve the issue. If the Commissioner receives a high number of complaints about a particular service, area or department the office should have the remit to challenge that agency to review and improve its practice. In essence, the Commissioner should be able to investigate individual cases where all other available domestic complaints mechanisms have been exhausted or where in the view of the Commissioner there is no adequate mechanism to remedy an alleged breach of children's

rights, or where a general principle is at stake.

The UN Committee on the Rights of the Child is very clear on this point: in General Comment number 2 they state that: 'National human rights institutions must have the power to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by children. In order to be able to effectively carry out such investigations, they must have the powers to compel and question witnesses, access relevant documentary evidence and access places of detention.' In addition, in their Concluding Observations in 2008, the same Committee reiterated that the Children's Commissioner be 'independent in compliance with the Paris Principles, and mandated, *inter alia*, to receive and investigate complaints from or on behalf of children concerning violations of their rights.'

The Children's Commissioners in Wales and Northern Ireland already have this power.

9 a) Do you know the work of individuals or organisations in England that carry out a similar role to the Children's Commissioner? If yes, please provide details.

Yes

No

Don't Know

Comments:

The Children's Rights Director in Ofsted is an important, but distinct, office that exists to represent the interests of children and young people who are cared for by the state. Its functions are to advise and assist the Chief Inspector in relation to the Chief Inspector's duty when performing his functions... to have regard to:

- The need to safeguard and promote the rights and welfare of children
- Views expressed by relevant persons about activities within his remit... in particular by ascertaining the views of children (and, where appropriate, their parents) about those activities, and reporting such views to the Chief Inspector

The Children's Rights Director also informs the Chief Inspector of any matters in relation to the rights and welfare of children that he considers significant.

9 b) Please say whether this is (or would be) helpful or unhelpful and explain why.

Helpful

Unhelpful

Don't Know

Comments:

It is important that the Children's Rights Director should continue to exist alongside a Children's Commissioner for England as the office performs a distinct function of safeguarding the protection and welfare of children in the care of the state, helping to ensure that the state discharges its obligations to them effectively.

10 Could the role of the Office of the Children's Commissioner be carried out more effectively if it were merged with another organisation? Please explain your answer.

Yes

No

Don't Know

Comments:

The key reform which would enable the role of the Office of the Children's Commissioner to be fully effective would be for the legal basis of its function to be substantially revised, principally to include the duty to safeguard and promote the rights of children, and to make it truly independent of government. The question of whether it should be separate, or integrated with another institution with a broad human rights mandate, is secondary to this when devising strategies to improve its effectiveness, although the latter would be likely to compromise its effectiveness.

We therefore consider that the Office of the Children's Commissioner should remain a distinct and separate entity.

Over the last decade, the international human rights framework has evolved towards more specialisation, with human rights standards of a general nature progressively complemented by instruments aimed at protecting the rights of specific groups (women, children, people with disabilities, migrant workers, etc). The rationale is that protecting human rights in general is not sufficient to address the specific rights of groups which are less visible and often excluded from decision-making, more vulnerable to specific rights violations, and less

able to claim their rights due to marginalisation and exclusion.

Children, by virtue of their age, are similarly invisible, and always excluded from the UK's democratic decision making processes. Thus, the maintenance of a separate Children's Commissioner, with an enhanced mandate, is our preference.

Another strong argument in favour of child-specific independent institutions is that state institutions and legislation are usually focused on the rights of adults (as we evidence above with regard to the Equality Act 2010), and are thus often poorly accessible to children. The UN Committee on the Rights of the Child General Comment No. 2 provides details on making institutions child-appropriate in their functioning, approach and activities, and direct accessibility to children and the special measures and approaches needed to ensure these things are essential.

In Europe, the vast majority of independent institutions for children's rights exist separately to other human rights institutions, having been established alongside them. In the EU, only Hungary and Portugal have a system in which the Children's Commissioner is part of a broader human rights ombudsman.^{xix}

Were the Office of the Children's Commissioner to be merged with another organisation, which is not our preference, it should continue to exist as a separate entity within such an organisation. However, we would be concerned in such a scenario that the best interests of children would be subsumed or lost within an adult rights framework, and competing agendas; there would be strong potential for tensions between adults' and children's interests, which can sometimes be in conflict. Children deserve a distinct body to uphold their rights and act in their best interests.

11 If you wish to add any further comments about the role or powers of the Children's Commissioner, that you feel may be helpful to the review, please insert them in the box below.

Comments:

England was the last administration in the UK to create the Office of Children's Commissioner. Not only does the current mandate of the Commissioner fall far short of international standards, it has a weaker mandate than the Commissioners in Wales, Scotland and Northern Ireland. The absence of any obligation to safeguard and promote the rights of children, which is the principal aim of the three other Commissioners, is conspicuous by its absence.

As the Children's Legal Centre commented in 2003 when the powers of the Children's Commissioner were originally being debated: "To be a 'champion', the Commissioner must have powers that are truly independent from Government and that go beyond the ability to conduct research or carry out a survey of children's views. Children need someone who can act effectively where Government or Government bodies are proposing to act or are acting in a way that violates their rights or adversely affects their interests. Without teeth, the Commissioner will provide little added value to the work already being carried out by NGOs to promote and protect children's rights, interests and views."^{XX}

For further information, please contact Claire Lilley, Policy Adviser at Claire.lilley@nspcc.org.uk or on 0207 825 7459.

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

Please acknowledge this reply X

All public consultations are required to conform to the following criteria within the Government Code of Practice on Consultation:

Criterion 1: Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2: Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3: Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4: Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5: Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6: Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7: Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Thank you for taking time to respond to this consultation.

Completed questionnaires and other responses should be sent to the address shown below by 4 October 2010.

Send by post to: Consultation Unit, Department for Education, Area GB, Castle View House, East Lane, Runcorn, Cheshire WA7 2GJ.

Send by e-mail to: evidence.occ@education.gsi.gov.uk

<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

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- ii <http://curriculum.qcda.gov.uk/key-stages-3-and-4/index.aspx>
- iii Hansard, 2 Nov 2004: column 200.
- iv Harvey, R., A 'right' failure: the Government's vision for a Children's Commissioner for England, *childRIGHT* No.202, pp.5-6
- v Taken from UNICEF, Independent Institutions: Protecting Children's Rights, *Innocenti Digest*, No. 8, June 2001. See <http://www.unicef-irc.org/publications/pdf/digest8e.pdf>, which credits the following as its source: *The Ombudsman for Children and Childhood in Norway, Norwegian Official Report, Ministry of Children and Family Affairs, Oslo, 1996*
- vi UNICEF, Independent Institutions: Protecting Children's Rights, *Innocenti Digest*, No. 8, June 2001. See <http://www.unicef-irc.org/publications/pdf/digest8e.pdf>
- vii Taken from UNICEF, Independent Institutions: Protecting Children's Rights, *Innocenti Digest*, No. 8, June 2001. See <http://www.unicef-irc.org/publications/pdf/digest8e.pdf>, which credits the following as its source: *Inquiry into the Role and Function of the Children's Ombudsman in Sweden: Summary, Swedish Government Official Report No. 1999:65, 1999.*
- viii Aynsley-Green, A. (2005) Report of a Visit to Yarl's Wood Immigration Centre, 11 Million: London.
- ix See: The Commissioner for Children and Young People (Northern Ireland) Order 2003, Section 6; Commissioner for Children and Young People (Scotland) Act 2003, Sections 4 and 5; Children's Commissioner for Wales Act 200, Section 2.
- x UN Committee on the Rights of the Child, General Comment number 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child, 2002, para 8.
- xi The Equality Act, 2010, Part 4, Schedule 18.
- xii Barrington, J. (2004) *A Voice for Children: The Office of the Commissioner for Children in New Zealand 1984-2003*. Wellington, Dunmore Press Ltd. p.47.
- xiii Barrington, J. (2004) *A Voice for Children: The Office of the Commissioner for Children in New Zealand 1984-2003*. Wellington, Dunmore Press Ltd. p.40.
- xiv UN Committee on the Rights of the Child, General Comment number 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child, 2002.
- xv UN Committee on the Rights of the Child, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, October 2008.
- xvi http://www.childrenscommissioner.gov.uk/force_download.php?fp=%2Fclient_assets%2Fcp%2Fpublication%2F74%2FCommissioners_report_to_UNCRC.pdf
- xvii UN Committee on the Rights of the Child, General Comment number 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child, 2002, para 5.
- xviii UN Committee on the Rights of the Child, General Comment number 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child, 2002, para 15.
- xix Collated from www.ombudsmen.org 17 September 2010.
- xx Harvey, R. (2003) *ChildRIGHT* A toothless watchdog: shortcomings of the mandate for the Children's Commissioner.