



CHILDREN AND FAMILIES BILL: Written evidence from UNICEF UK

Introduction

UNICEF UK is an integral part of the United Nations Children's Fund. UNICEF is mandated by the UN General Assembly to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential. UNICEF is guided by the UN Convention on the Rights of the Child (UNCRC) and strives to establish children's rights as enduring ethical principles and international standards of behaviour towards children.

1. Summary

1.1 Independence is the defining feature of human rights institutions for children. It is their main strength and source of legitimacy and authority. International standards, known as The Paris Principles, are standards that *a*ll National Human Rights Institutions, including the Children's Commissioner for England, should meet as they provide benchmarks against which the independence of the proposed Children's Commissioner for England should be assessed. Gaps or shortcomings identified during the previous accreditation process for the Office of the Children's Commissioner for England (OCCE) as established under the Children Act 2004 can serve as a road map or template to strengthen the status of the reformed Children's Commissioner for England in order to ensure full membership of the European Network of Ombudspersons for Children (ENOC). This submission argues that the following improvements should be introduced:

- Involvement of Parliament in the selection, appointment and dismissal of the Children's Commissioner
- Financial autonomy by involving a committee of Parliament

2. International standards for independent human rights institutions

2.1 As United Nations Member States built the international human rights framework after the Second World War, they early on identified independent national human rights institutions (NHRI) as important mechanisms for the realisation of rights. The concept of such institutions therefore evolved in the context of human rights and culminated with the adoption of the Principles relating to the Status of National Human Rights Institutions – commonly called the Paris Principles – by the United Nations General Assembly in 1993. The UN Committee on the Rights of the Child then embraced this model to fit child-specific institutions.

2.2 The Paris Principles¹ are an international set of standards for the mandate, functions, composition, methods of operation and quasi-jurisdictional competence of national human rights institutions. They are an authoritative instrument for establishing independent institutions and assessing their conformity to international human rights law. They draw their status from their endorsement by the United Nations General Assembly, but also from their explicit recognition in more recent human rights treaties. They constitute the standards against which the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights and the European Network of Ombudspersons for Children (ENOC)² rank and accredit institutions. Official recognition of compliance with the Paris Principles enables national institutions to participate fully in international and regional associations.

2.3 The Paris Principles set out what a fully functioning NHRI is and identify six main criteria that these institutions should meet to be compliant:

- Mandate and competence: a broad mandate based on universal human rights standards;
- Autonomy from Government;
- Independence guaranteed by statute or constitution;
- Pluralism, including through membership and/or effective cooperation;
- Adequate resources; and
- Adequate powers of investigation.

2.4 The establishment of a mechanism for monitoring the status of children's rights was foreseen from the outset as an implementation tool for the Convention on the Rights of the Child (CRC). Although the CRC does not explicitly refer to independent human rights institutions, General Comment No. 2³ identifies their establishment as a component of the general obligation on State Parties to implement Article 4 of the CRC.⁴ According to the Committee, every state needs an independent institution able to independently and effectively monitor, promote and protect children's rights.⁵

3. An independent Children's Commissioner for England

3.1 UNICEF UK warmly welcomes the reforms to the role of the OCCE introduced in the Children and Families Bill, Part 5, and the proposed legislation's close adherence to the recommendations in the Dunford Review⁶. The Bill takes forward a number of recommendations dealing with the question of mandate and competence, pluralism and adequate powers of investigation. However, the legislation should be further strengthened to ensure that the status of the OCCE meets international standards on independence (appointment and dismissal) and funding (adequate resources and financial autonomy).

¹ Adopted by the UN General Assembly in its Resolution 48/134 of 1993

² ENOC an association of 41 independent children's rights institutions in 32 countries, and includes in its membership the Northern Ireland Commissioner for Children and Young People (NICCY), the Scottish Commissioner for Children and Young People (SCCYP), and the Children's Commissioner for Wales
<http://www.crin.org/enoc>

³ http://www2.ohchr.org/english/bodies/crc/docs/GC2_en.doc

⁴ Committee on the Rights of the Child (2002). General Comment No. 2., op. cit., para. 1.

⁵ Committee on the Rights of the Child (2002). General Comment No. 2., op. cit., para. 7.

⁶ <https://www.education.gov.uk/publications/eOrderingDownload/Cm-7981.pdf>

3.2 The current version of the OCCE is not a full member of the ENOC due to its lack of independence. The OCCE is one of only seven children's rights institutions given associate membership status and therefore excluded from the General Assembly of ENOC. The children's commissioners from Northern Ireland, Scotland and Wales are full members of ENOC.

3.3 The Children and Families Bill does not change the existing arrangements from Children Act 2004, which are as follows:

CHILDREN ACT 2004,
2004 C. 31, Schedule 1, Section 1

3 (1) Appointment

"The Children's Commissioner is to be appointed by the Secretary of State"

3 (7) Dismissal

"The Secretary of State may remove the Children's Commissioner from office if he is satisfied that he has—

- (a) become unfit or unable properly to discharge his functions; or
- (b) behaved in a way that is not compatible with his continuing in office."

7 Funding

"The Secretary of State may make payments to the Children's Commissioner of such amounts, at such times and on such conditions (if any) as the Secretary of State considers appropriate"

4. Appointment and dismissal of the Children's Commissioner

4.1 The appointment and dismissal processes play a critical role in defining the independence of the institution and its ability to influence policies and practices. In order to meet the international standards and best practice the legislation must provide for greater Parliamentary involvement in the appointment and removal of a Commissioner.

- The legislation should set out broad criteria to which the Secretary of State should have regard in making an appointment and should require the Secretary of State to have due regard to the views of Parliament in relation to candidates.
- The Commissioner should only be removed from office for limited reasons prescribed by law, and Parliament should be involved in any decision to dismiss a Children's Commissioner.

4.2 In the Children and Families Bill, the Commissioner is appointed by the Secretary of State and can be removed by the Secretary of State in an almost arbitrary way. Although in practice there may be a pre-appointment hearing of the Secretary of State's chosen candidate (which is not a matter for statutory regulation), the draft clauses make no provision for any parliamentary involvement in the Commissioner's appointment or removal. Such an arrangement clearly has the potential to undermine the independence of the Office.

4.3 Although the model followed in this Bill – appointment by the executive branch — is a practice in some countries, it raises challenges as the Children's Commissioner

monitors the body that has appointed him. Appointment by Parliament is considered a better guarantee of independence as the process is more transparent. In many countries the process involves a combination of Parliament and the executive branch, and that is the model we are proposing to be applied here. UNICEF UK sees no reason why the OCCE should not be reformed along the lines of best international practice (e.g. Belgium, Ireland, Poland, or Croatia).

4.4 The UK Government has accepted Parliament's involvement in agreeing the job description/person specification for the post and holding a pre-appointment hearing with the preferred candidate prior to their formal appointment, but this too falls below the best international standards. The involvement of Parliament should be enshrined in statute, and there is an example of this in the UK. In Scotland, both the Commissioner for Children and Young People and the Scottish Human Rights Commissioner are appointed by the Scottish Parliament and can only be removed by the Scottish Parliament.

4.5 Clause 7 of the Children and Families Bill gives the Secretary of State exclusive authority to dismiss the Children's Commissioner on widely defined grounds. UNICEF UK believes that protection from arbitrary dismissal is crucial to independence. The United Nations have affirmed that the founding legislation should specify, in detail, the circumstances under which a commissioner may be dismissed and that the mechanism for dismissal should be independent of the executive.⁷ The UN Sub-Committee on Accreditation has further noted that "Dismissal should not be allowed based on solely the discretion of appointing authorities".⁸

4.6 Parliament should help ensure the Children's Commissioner has sufficient and secure funds to carry out his or her functions.

5. Budget allocation for the Children's Commissioner

5.1 The legislation should contain a provision requiring the Secretary of State to provide the OCCE with such sums as appear reasonably sufficient for the purpose of enabling it to perform its functions. In order to secure stability and autonomy, Parliament should be involved in determining the OCCE's funding for a minimum three-year period, and ideally for a parliamentary term.

5.2 The Non-Departmental Body (NDPB) model being used by the Government, which entails a Framework Agreement between the Department and the Commissioner, is not an appropriate model for national human rights institutions. The degree of financial control exerted by the Government through the Framework Agreement can give rise in practice to real inconsistencies with the requirement in the Paris Principles that National Human Rights Institutions should not be subject to financial control which might affect their independence. This is not to say that there should be no accountability for spending public money. As a publicly-funded body the OCCE must be accountable for how they spend their funds. The difficulty lies in devising satisfactory arrangements for such accountability which do not destroy the independence of the OCCE by making the Children's

⁷ National Human Rights Institutions, UN, OHCHR, 2010

⁸ Ibid., page 42

Commissioner effectively subject to the control of the Government which provides the funding.

5.3 The Paris Principles set out what a fully functioning NHRI is and identify six main criteria that these institutions should meet to be successful, including adequate resources. The UN monitoring body specifies that: "Adequate funding should, to a reasonable degree, ensure the gradual and progressive realization of the improvement of the institution's operations and the fulfilment of its mandate."⁹

5.4 The Paris Principles and the best international practice suggest the following model:

- The source and nature of funding for the OCCE should be identified in the law
- Parliament should be involved
- The funding should be secure, that is, protected against arbitrary reduction for the period it covers.

5.5 General Comment No. 2 states in addition that the IHRIC has to have adequate infrastructure, funding staff, premises and "freedom from forms of financial control that might affect their independence."¹⁰ A large number of the Committee on the Rights of the Child's concluding observations over the years point to the lack of adequate funding of IHRICs, hampering the effective functioning of the institution as such. The funding of the office should be removed from political control and be guaranteed over a given period.

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⁹ The Sub-Committee on Accreditation, General Observations, para 2.6, June 2009

¹⁰ Committee on the Rights of the Child, General Comment No. 2, 15 November 2002, CRC/GC/2002/2, par. 10.