



This briefing is part of a three year project funded by the Baring Foundation to build the capacity of the voluntary sector to use children's rights arguments in their policy and public affairs work. It explores the barriers and solutions to using children's rights approaches. It is based on interviews and a roundtable with human and children's rights experts from NGOs across the UK and Europe, as well as individuals from large children's charities and the homelessness and mental health sectors. It is also based on CRAE's experience of working in this field since 1991.

Why do children need rights?

Although there was some disagreement about whether children should have rights when the UN Convention on the Rights of the Child (CRC) was drafted in 1989 and this view still exists today to a certain extent, on the whole it is now broadly accepted that children should have their own set of rights.¹ This is reflected by the fact that the CRC is the most widely ratified UN Convention.

Children need their own rights because:

- They are separate and unique to adults
- They need special protection because of their vulnerability and developing maturity
- They have special developmental needs and evolving capacities
- They are sometimes less articulate than adults
- They are less likely to be taken seriously, and have less power

'We need to move children's rights forward from policy so it is everything - the fabric of what we do.'
Individual from large children's charity

What are the principles of a children's rights approach?

We asked human and child rights experts what they thought the key principles of a children's rights based approach are. They said:

- Children's best interests are always central to the process
- The child's voice is at the centre
- The child's views are taken into account and given due weight
- It gives accountability to a group that often have no voice
- It takes a holistic approach which looks at the whole child, e.g. not their status as a migrant or a victim of CSE
- It uses a set of binding international standards for all children
- It is a human rights based approach specifically for children
- It is a legal and moral framework designed for children
- It enables the state to be held to account on how it treats children

Our research

We interviewed 16 people to explore the barriers and solutions to using a children's rights approach to policy. These people were mixture of children's and human rights policy and legal experts from across the UK and Europe, policy experts from large children's charities and the homelessness and mental health sectors. We then tested our findings at a roundtable event with 22 individuals from the same sectors, most of whom had not been interviewed as well.

How common is use of a children's rights approach to policy?

From our research, we tried to ascertain how common use of a children's rights approach to policy was. Unsurprisingly we found that only organisations consisting of children's rights experts who had children's rights as part of their core ethos or aims were currently using an explicit children's rights approach to policy. The reasons for this are explored in the rest of this briefing. However, this meant that other organisations felt they did not always need to take a children's rights based approach, particularly in a difficult external context: *'People think that Unicef, CRAE have the rights language covered.'* Individual from large children's charity

If organisations did take a child rights based approach, they made clear that the CRC was not at the core of everything they did; it was just one lever: *'The CRC is more part of the toolkit than the single panacea.'* Individual from large children's charity.

They were more likely to use the CRC in legal casework, strategic litigation, or for lobbying on a piece of legislation - many parliamentarians, particularly peers, are also lawyers so it was felt that using rights language had more traction with this group.

A children's rights based approach was also seen as being more common in certain charity sectors, for example refugee, criminal justice or Lesbian, Gay, Bisexual, Transsexual and Questioning (LGBTQ sectors). Again the reasons for this are explored more below.

We found that on the whole only the explicitly rights based organisations were using the CRC, its General Comments² and the 2016 Concluding Observations (COs)³ in their work. Organisations said that they only found the COs useful in their lobbying when they were specific. This highlights the importance of organisations being involved in the CRC reporting process and ensuring precise and relevant recommendations: *'We have found the CO on prohibiting use of B&B accommodation for families past the six week legal limit very useful in our national and local lobbying.'* Individual from homeless charity

What are the benefits of using a children's rights approach to policy?

We asked interviewees what the benefits were of using a children's rights approach to policy.

Using human rights to frame children's rights

As the CRC has not been fully incorporated into our domestic legislation, broader human rights frameworks were perceived as being very useful as the courts use the CRC to interpret the European Convention on Human Rights (ECHR), incorporated through the Human Rights Act 1998, in cases concerning children. The duty on public authorities to comply with the ECHR has also led to positive changes to children's rights protection without the need to go to court.⁴

Case example

Cameron Mathieson, a deceased child (by his father Craig Mathieson) (Appellant) v Secretary of State for Work and Pensions (Respondent) [2015] UKSC 47

Cameron's father, Mr Mathieson, challenged the regulations governing Disability Living Allowance (DLA) that mean that a child (aged under 16) stops receiving DLA after their 84th day of admission as an inpatient in an NHS hospital. The Supreme Court ruled that these regulations are discriminatory against disabled children (in breach of article 14 of the ECHR).

This case found that the Government had breached its obligation to treat children's best interests as a primary consideration under Article 3(1) of the CRC. The Supreme Court confirmed that European Convention rights must be interpreted in 'harmony' with international human rights law – therefore the CRC.

Participants told us that human rights were useful in framing children's rights and creating a common language. Its long history and tradition in the UK were also perceived as being popular with some decision makers and the public.

Interviewees outlined the importance of human rights as a practical universal framework, not an individual's own moral compass which can lend objectivity to policy and advocacy. Finally, they commented that in relation to mental health, human rights can be a useful counterbalance to rights being taken away e.g. the deprivation of liberty.

Benefits of a CR approach

The CRC was seen as a uniquely powerful tool in advancing children's rights. It is a common global framework which provides a basis for international accountability. It sets out a binding, universal minimum standard for how children should be protected and treated. Its status as an international convention which all but two countries across the world are signed up to was seen as a clear strength.

'The CRC can be that extra lever – it's the UN!'
Child rights expert

The ECHR and other human rights treaties were not developed with children specifically in mind unlike the CRC. As a result they do not contain a number of key principles and protections which are of crucial importance for children. For example there is no best interest or welfare formula for children in the ECHR (as is included in article 3 of the CRC) and no child participation rights. The inclusion of economic, social and cultural rights in the CRC was felt to be particularly relevant for children.⁵ Experts outlined the importance of the CRC as *'a whole continuum of rights for children'* that looks at the child holistically along their developmental journey to adulthood. Interviewees also told us that children's rights were perceived as "safer" than broader human rights and capture the imagination more, which is particularly beneficial in the current political climate.

People also commented that a well-being/welfare/needs based framework, which is a more common approach for children's policy and more explicitly linked to our legislation (The Children Act 1989), is sometimes seen as more acceptable to policy makers. This could be because a rights based framework puts the child on an equal footing to adults and provides a clearer accountability mechanism, which could be seen as unpalatable. See below for more discussion.

However, welfare is also *'an interpretative principle in the context of the rights of children'*, whereas the concept of rights is *'an objective legal entitlement'*.⁶ Further, while the Children Act 1989 is a limited piece of legislation in relation to children, the breadth of the CRC means governments are accountable on a raft of obligations for under-18s. The formal UN reporting process also provides additional public affairs and media hooks. This can help put pressure on the Government in the run up to the UK examination and afterwards to implement the COs.

Finally interviewees highlighted the benefits of the evolving and changing nature of the CRC itself as it is continually interpreted through General Comments, the COs and jurisprudence from Optional Protocol 3 (OP3). The UK hasn't ratified OP3, which establishes a complaints mechanism

for individuals to the UN Committee regarding a breach of their CRC rights. However jurisprudence from the UN Committee from such cases are a hugely powerful tool in interpreting the CRC. This makes it constantly adaptable and relevant for lobbying purposes. The high level nature of the CRC was also seen as part of these benefits but interviewees acknowledged that this can equally present a challenge to policy makers in engaging with it as it can be regarded as *'too top level'*.

What are the barriers to using a children's rights approach?

We asked our interviewees what the perceived barriers were to using a children's right approach amongst those who they are trying to influence e.g. government officials and parliamentarians, and those who affect who they influence and how they operate e.g. the media, and the public. We also asked about barriers amongst staff in their own organisations.

Too technical and lack of understanding

The first common complaint was that the CRC itself is too legalistic and technical. The language of children's rights was felt to be unnecessarily complicated which put people off using it in their policy work, e.g. use of words like 'duty bearer', 'Concluding Observations' etc.

Non-expert interviewees felt that using a human rights or children's rights approach made sense in legal case work or strategic litigation but did not necessarily add value in policy or advocacy work and could over complicate issues and be detrimental to an organisation's policy objectives: *'It's something you could include in a briefing as a techy point but it's not something that would be a major plank of our briefing.'* Individual from large children's charity

There was also felt to be a lack of understanding of the CRC, its surrounding procedures and a children's rights approach in general amongst the public, decision makers and those in the children's sector. This was not helped by the remote nature of a UN Treaty and a Committee of experts making it seem more distant and complicated than it is: *'If you had to sum it up, it'd be misunderstanding and general ignorance from the public.'* Children's Rights Expert

CRC not incorporated into domestic legislation

The fact that the CRC is not incorporated into UK law and England also does not have a public sector statutory duty to have due regard to the CRC, as in Scotland and Wales, was seen as a key barrier to using the CRC as a lobbying tool.⁷ In particular, this means the Government and the courts have limited legal, policy or political imperative to act in accordance with the CRC and implement its Concluding Observations. Because the CRC is not binding in domestic law, organisations commented that they were unclear how to make effective use of it in their lobbying.

This also means there are very few references to the CRC in our guidance or policies on children and some references have been taken out in recent years due to the Government's desire for less detailed guidance. However, the Convention is binding in international law for States that have ratified it. As the UK ratified the CRC in 1991, it should be adhering to its principles and standards and ensuring the relevant laws, policies and procedures are in place to ensure this happens.

Interviewees also felt that a shift away from centralised Government policy making, what is perceived as unnecessary "red tape" and legal duties meant there is little appetite amongst politicians for any additional legislative duties related to the CRC such as incorporation or Child Rights Impact Assessments. This was a key reason given by the Government for rejecting an amendment for a due regard duty to the CRC during the passage of the Children and Social Work Act 2017.

Interviewees also commented that Government Officials see the CRC as 'too woolly' as it is an overarching international framework of minimum standards for how states should treat their children and as result struggle to see how it can be integrated into our laws and policies.

Toxic anti-human rights and international rhetoric

The biggest barrier to taking a children's rights or human rights approach was seen to be the pervasive anti-human rights agenda and narrative, common amongst some politicians and media. Interviewees told us that their organisations were reluctant to use human rights arguments as this risked shutting doors with the current Government and some media organisations:

'You don't want to be labelled a woolly lefty in the current environment.' Individual from large children's charity

Particularly if organisations delivered services on behalf of the Government or if they received large amounts of funding from them, then there was a feeling that they *'didn't want to rock the boat'* by using language that is not acceptable or going to be helpful.

The toxic anti-human rights rhetoric is also being intensified by Brexit which has further exacerbated anti-international/European feeling including about the ECHR and, by association, the CRC. Research backs up this finding: *'The dominant media narrative linked human rights with "undeserving" groups and used them as a proxy for anti-European views.'*⁸

Interviewees outlined that, again perpetuated by the press, human rights are only perceived as unconditional *'freebies for undeserving people'* that you do not have to earn and are not something for everyone. Again this is echoed in research: *'There was substantial opposition in the media to applying the fundamental principles of human rights to everyone; instead, minority groups were regularly presented as undeserving of human rights protections.'*⁹ However they point out that *'The media does influence people's attitudes to human rights, but it is out of step – and far more negative – than public opinion on the issue.'*¹⁰

There is also a perception in the media and articulated amongst a few interviewees that *'with rights come responsibilities'* and this was not the case for human rights as they were being used for *'undeserving groups who hadn't earned them'*. This is a rhetoric that has gained prominence with the proposed Bill of Rights.

Anti-international rhetoric and a feeling that *'why do we need international organisations telling us what to do?'* was also seen to be common amongst the public. Interviewees commented that: *'Internationally rights are ok but domestically it's not an issue or it complicates things or won't attract fundraising or the emotional response you want from the public.'* Individual from mental health charity

Questioning of the added value of rights

Because of such issues, people questioned the need to take a rights based approach in policy and what value it added: *'Why do you need to insert rights into a communication? Why do you need to say 'X has a right to housing' when you could just say 'X needs housing?'* Individual from homeless charity

One interviewee said: *'There is a feeling that if there is another way to talk about the issue that resonates, then why complicate the issue?'* Individual from mental health charity

In relation to using children's and human rights arguments about poverty and homelessness issues, interviewees spoke about overcoming a perception that human rights are only civil and political, not economic, social, and cultural and therefore that poverty is not a human rights issue. This is something that has also been documented in research.¹¹ People in the homeless sectors told us that they found relying on the Children Act 1989 and using the language of child protection, children's needs and welfare was more effective than using human or children's rights language.

Interviewees, however, saw a human or children's rights approach as being more appropriate for mental health, the other area of focus for this project. This was because the language of patient rights is already more commonly used and for example, when patients are detained in hospital, they are read their rights.

People from the general children's sector also felt that the language of safeguarding, needs and welfare work better than rights based arguments and our domestic legislation supports this: *'It just wouldn't really cross most people's mind to use rights based language in the education sector, particularly for the under 5s.'* Individual from large children's charity

Human rights only perceived as for particular groups

Such an approach was felt to have encouraged a view that rights based arguments are only used about certain groups seen as having less rights and therefore only commonly used by certain sectors e.g. about LGBTQ children.

'There is no way we would shy away from using rights-based language for LGBT groups for example.' Individual from large children's charity

The CRC and children's rights arguments were more commonly used in the refugee, trafficking or youth justice policy sectors. Some people suggested this is because there is more limited protection for these children in domestic law or it is more commonly flouted so they had to rely on international law. However interviewees were concerned that this perpetuates the myths spread by the press that human rights and children's rights are only for certain groups of "undeserving people" (as mentioned above) rather than that they are unconditional and for everyone.

Sustainability/expertise in the sector

Use of a children's rights approach to advocacy was seen to be closely linked to key individuals who were either knowledgeable about children's rights or an advocate for them as a policy tool. Interviewees were concerned that this was unsustainable for embedding such an approach across organisations and the children's sector. Only if there was buy-in at a senior level and senior management understood children's rights or cared about it, was it at the heart of an organisation's strategy and used as an approach to policy development.

Use was also linked to the background of professionals working in each sector, for example where there were lots of lawyers, they were more comfortable and aware of human rights and the CRC and therefore willing to use such arguments in policy work.

Understanding often limited to participation rights

Interviewees told us that children's rights are often perceived as purely about participation - predominantly article 12 - the right of the child to be heard. This means that decision makers often focus on this when trying to implement the CRC at the detriment of other articles. For example, an analysis of responses from local authorities suggested that their knowledge of the CRC is patchy and although there were examples of good participation work, this is not the same as embedding the provisions of the UNCRC.¹²

Shifting the balance of power to children

The final barrier was felt to be a general one - that a children's rights approach shifted the balance of power to children. It challenges the traditional perception of children as lesser than adults. Interviewees felt that decision makers and adults or parents were worried that if they prioritised children's best interests and views, *'what would this mean they can do?'* This is linked to two key myths about children's rights – that children's rights are incompatible with the developmental characteristics of childhood and family life¹³ and are perceived as perpetuating a 'nanny state' interfering with parental rights. However, the concepts of best interests and evolving capacities should be the basis on which children's rights and the interrelationship with their parents or carers rights are interpreted.¹⁴

How to embed a children's rights approach to policy making across your organisation

1. Mix public facing fundraising with behind the scenes more technical advocacy using children's rights.
2. Layer/tailor children's rights language – be tactical. Take on the right conversations in the right arena.

'It's not an either/or – it's in addition to humanitarian and welfare based arguments which can be the most compelling and grab emotions.' Child rights expert

3. Use the CRC reporting process to help people understand children's rights and build a community of advocates.
4. Use strategic communications and framing to change the narrative and attitudes amongst the public and press around children's rights.¹⁵ Decision makers and parliamentarians are very sensitive to the public.

'If we want to play the game, we need to play it with the rules they have set up, we can't change the rules.' Child rights expert

5. Use inclusive and unifying language that evokes emotions.
6. Use the values of human rights such as dignity and freedom. Talking about the tradition and heritage of human rights has been found to increase positivity among those who are uninterested in, or opposed to, rights.¹⁶

7. Emphasise the importance and value of children's rights to all children.
8. Do not use fact checking/myth busting around children's rights. People are rarely persuaded by purely fact-based arguments. Often, people ignore facts and evidence that does not fit with their existing thinking and this actually makes them remember the myth more.
9. Take people across your organisation (media, fundraising, senior management) on a journey to increase their confidence in using children's rights arguments. It takes time.
10. Do not only rely on court cases as examples of the CRC as these can be perceived as adversarial.
11. Be unapologetic. Children have rights that we must champion and Governments have obligations to promote, protect and prioritise children's rights.

'You have to keep using human rights arguments otherwise you don't advance it.' Human rights expert

12. Simplify the language of children's rights whilst still being true to its meaning.
13. Clearly articulate the added value of the CRC. How it can help Government to be more effective and what will be the impact for children as a result.
14. When working with parliamentarians, use clear case studies that highlight the importance of children's rights in their local constituency.
15. Consult with children on any policy development you undertake, ensure that the voice of children is reflected in your work and work with children in organisational campaigns as partners to achieve change.

How Government could further embed the CRC in policy making

16. The Government must not repeal or dilute the Human Rights Act.
17. The Government should incorporate the CRC into domestic legislation.
18. All public authorities should have a statutory duty to have due regard to the CRC when carrying out any of their functions.
19. The Government should introduce a mandatory, transparent system of Child Rights Impact Assessments to be used as a policy development and budgetary decision making tool at the beginning of the process.

Examples of how to take a children's rights approach to policy

'Children's rights is a philosophy like early intervention which affects everything.' Individual from large children's charity

See it, Say it, Change it!

The *See it, Say it, Change it!* project was set up by CRAE in 2015. The project supported children in England to tell their side of the story to the UN Committee as part of the 2016 examination of the UK. A steering group of 22 children aged 7 – 18 guided the project. Children were supported to engage in the CRC reporting process in a number of different ways including researching and writing an alternative report, attending and giving evidence at meetings with the UN Committee in Geneva and observing the UK Government examination.

Participation was central to the design of the project, which ensured children and young people could take the lead in research and project management with support from CRAE staff, increased visibility for young people and their views, and supported them to campaign on issues raised in the reporting process.

In 2016 the campaigning phase of the project began called *Change it!* This phase supports children and young people to campaign on an issue highlighted in the UN Committee's recommendations of their choice. CRAE staff supported the group to plan the recruitment of new members of the steering group and select a campaign issue through analysis of the UN Committee's recommendations and the political landscape. Through deliberative discussion and voting the group selected the use of temporary accommodation for homeless families as the focus of their campaign.

As a result of this project, many of the Committee's COs reflected the research and views of the children and how well their rights were being respected. They are now using these recommendations as a tool for policy change at a national and local level in relation to the use of temporary accommodation.

Using the CRC to prevent the building of new child prisons

In 2014 the Government announced it would build "secure colleges" as a new type of youth custody holding approximately 320 boys and girls, including children as young as 12. The plans, in the Criminal Justice and Courts Bill, raised questions about how children would be kept safe in these large institutions.

CRAE was particularly concerned by a provision which would allow staff to use force on children in order to "maintain good order and discipline." The use of force on children is dangerous. CRAE believes its use should be tightly regulated in legislation and only used in very limited circumstances.

CRAE worked with the Standing Committee for Youth Justice and the Howard League to influence Government and opposition policy on the Bill. Through joint briefings, meetings with Ministers, parliamentarians and public meetings in Parliament CRAE pushed for the plans to be dropped. Concerns about how children's rights would be affected (especially under CRC Articles 19, 37 and Articles 3 and 8 of the ECHR) were at the core of these activities. As well as working with members of the Bill Committee on an amendment for a children's rights duty on Secure College staff to protect the "best interests" of children in their custody, CRAE briefed the parliamentary Joint Committee on Human Rights (JCHR). The JCHR produced scrutiny reports which were highly critical of the plans and recommended the Government reconsider.

CRAE convened a broad coalition of NGOs to coordinate lobbying (including Liberty, NSPCC, Prison Reform Trust and others) resulting in 30 children's, youth justice and human rights organisations signing an open letter, published in the *Telegraph*, speaking out against the Secure College and the threat it presented to children's rights.

CRAE also commissioned legal advice on the CRC and child rights implications of the proposals to use force. This informed CRAE's discussions with civil servants and Ministers and a briefing produced for parliamentarians summarising the legal advice was widely distributed and

quoted. The possibility of a legal challenge on the basis of children's rights also influenced the Government's plans.

In March 2015 the Ministry of Justice announced plans for the secure college had been shelved indefinitely.

Endnotes

1. Fortin, J. (2005) *Children's Rights and the Developing Law, Second Edition* Cambridge University Press
2. **A General Comment** is a quasi legal document published by the UN Committee on the Rights of the Child which provides a detailed interpretation of an article or issue relating to the CRC, and provides guidance on the actions required by governments to ensure its implementation.
3. **The Concluding Observations** are the final recommendations made by the Committee on the Rights of the Child to each State after it is examined.
4. For example it has enabled a disabled girl to access transport to get to school, prevented a new born baby and her mum from being made homeless and enabled a young person to have a voice in order to be rehoused following abuse.
5. Fortin, J. (2005) *Children's Rights and the Developing Law, Second Edition* Cambridge University Press
6. Alistair MacDonald QC (2011) *The Rights of the Child: Law and Practice* Jordan Publishing Ltd
7. The Rights of Children and Young Persons (Wales) Measure 2011 requires Welsh Ministers to have 'due regard' to the UNCRC when exercising any of their functions, and the Children and Young People (Scotland) Act 2014 requires Scottish Ministers to give due consideration to ways in which the UNCRC can be better implemented in Scotland.
8. Equally Ours (2013) *Telling the Story of Everyone's Rights Everyday* Equality and Diversity Forum
9. Glasgow University Media Group (2012) *Talking about human rights: media, public and political discourses and public understandings*, quoted in Equally Ours (2013) *Telling the Story of Everyone's Rights Everyday* Equality and Diversity Forum
10. Equally Ours (2013) *Telling the Story of Everyone's Rights Everyday* Equality and Diversity Forum
11. Donald, A. and Mottershaw, E. (2009) *How other countries have used human rights to tackle poverty and how this could be applied in the UK* Joseph Rowntree Foundation
12. CRAE (2009) *Beyond Article 12: The local implementation of the UN Convention on the Rights of the Child in England*
13. Fortin, J. (2005) *Children's Rights and the Developing Law, Second Edition* Cambridge University Press
14. Alistair MacDonald QC (2011) *The Rights of the Child: Law and Practice* Jordan Publishing Ltd
15. For more on strategic communications and framing and human rights, see here: Equally Ours (2014) *How to Talk about Human Rights* Equality and Diversity Forum
16. Equally Ours (2014) *How to Talk about Human Rights* Equality and Diversity Forum

About CRAE

The Children's Rights Alliance for England (CRAE) works with 150 organisational and individual members to promote children's rights, making us one of the biggest children's rights coalitions in the world.

We believe that human rights are a powerful tool in making life better for children. We fight for children's rights by listening to what they say, carrying out research to understand what children are going through and using the law to challenge those who violate children's rights. We campaign for the people in power to change things for children. And we empower children and those who care about children to push for the changes that they want to see.

Find out more

Other briefings in this series:

'Summary of the 2016 Concluding Observations'
<http://www.crae.org.uk/media/118248/CRAE-Briefing-UN-Committee-Rights-of-the-Child-Concluding-Observations-2016.pdf>

'Summary of the 2016 Concluding Observations on the General Measures of Implementation'
<http://www.crae.org.uk/media/121610/crae-cos-gmi-briefing-2017.pdf>

Further reading

'The UN Committee's Concluding Observations'
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en

'State of Children's Rights 2016'
<http://www.crae.org.uk/publications-resources/state-of-children%E2%80%99s-rights-in-england-2016-report/>



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