



Children's
Rights Alliance
for England

FAQ - Full Answer



“My mother read my diary. She found out that I’d pretended to be at school when I was really out with friends. Now she’s taken my mobile away and said I can’t go out at all for a month. I’m 12. Don’t I have any rights?”

The law sees you as more and more able (with age and maturity) to make and be responsible for your own decisions, but also views you as needing protection and reliant on your parents. Your relationship with your mother therefore involves a balance between her rights and responsibilities towards you and your own rights.

Parental responsibility

The law in England and Wales provides that responsibility for the care and protection of children is with their parents (and carers or guardians), with their powers limited in certain areas by law.

Parents (and carers or guardians) have a legal responsibility for their children referred to as parental responsibility. Parental responsibility is defined as: *‘all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property’* (section 3(1) Children Act 1989).

More than one person can have parental responsibility at the same time (section 2(5) Children Act 1989) so parental responsibility is often shared between several people, for example a mother and a father.

Where this is the case, unless there is specific legislation requiring the consent of the other(s), each person is allowed to make decisions about the child without checking what the other(s) think first (section 2(7) Children Act 1989). What this tends to mean is that each person is consulted about major decisions, but everyday decisions are decided by the person caring for the child at the time.

Parental responsibility ends:

- when a young person reaches 18;
- when a young person between the age of 16 and 18 marries;
- where responsibility has been granted through a residence order or special guardianship order, when that order is discharged or expires;



- where responsibility has been granted under a parental responsibility order or agreement, any person with parental responsibility for a child (with permission of the court) can apply to court to have it ended.

In general, your mother (as well as anyone else with parental responsibility for you) has the power to make decisions about you and the way you live your life: where you live, your schooling, your religious upbringing, what straightforward medical treatment you should have, who you should have contact with. It also means she has responsibility for feeding and clothing you, your wellbeing and looking after you.

However, parental responsibility is also subject to the principle of a child's best interests. Section 1(1) of the Children Act 1989 requires that where the court makes a decision in relation to the upbringing of a child the best interests of the child are treated as paramount and so the interests of parents (or others) must come second to those of the child. As explained in a House of Lords case in 1970 what this means is that '*when all the relevant facts, relationships, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interests of the child's welfare*' (J v C (an infant)).

It also means that as you get older, your mother should use her parental responsibility in a way that reflects your developing capacity and maturity. In current law, as a result of the House of Lords' decision in Gillick v West Norfolk and Wisbech Area Health Authority (unless a law says something different about a particular situation) the right of parents to make decisions for and control their children reduces as the child becomes more mature and more capable of making up their own mind on the issue in question.

Do you have a right to privacy in relation to your diary?

Article 8 of the Human Rights Act 1998 (HRA) offers general protection from interference with a person's private and family life, home and correspondence.

Interference may be justified, however, in certain circumstances:-

- if it is in accordance with the law; and
- is for a good reason (set out in Article 8(2)) - these include protection of health and morals, protection of freedom and rights of others and the prevention of disorder and crime;



Children's
Rights Alliance
for England

FAQ - Full Answer



- it is necessary - i.e. the interference must not go further than is necessary to achieve the objective.

A child's right to privacy is specifically recognised under Article 16 of the [United Nations Convention on the Rights of the Child](#) (UNCRC), which states: '*No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation...The child has the right to the protection of the law against such interference or attacks!*'. According to the UN Committee on the Rights of the Child (in their 2004 report on Japan), this includes privacy in "personal correspondence and searching of personal affects" and so would include a diary.

However, both the HRA and the UNCRC only bind public bodies and not individuals and so there is still no right to protection from invasion of privacy by individuals, such as your mother.

Whilst any English legislation would need to be interpreted in a way that is consistent with the HRA and UNCRC's provisions, there is no specific English law that protects your right to privacy from your mother.

This means you do not have any legal right to protection against your mother reading your diary. It is very much a matter for your mother whether she chooses to do so.

Do you have a right to miss school?

The fact your mother found out you have missed school is important under the Education Act 1996.

By law, as you are of compulsory school age, your mother (as your parent) is responsible for making sure you receive efficient full-time education suitable to your age, ability and aptitude and to any special educational needs you may have, by regular attendance at school (or by making other arrangements which provide a suitable full-time education) ([section 7](#)).

Compulsory school age at the moment is between 5 and 16 years old ([section 8\(2\) and \(3\)](#)).



Children's
Rights Alliance
for England

FAQ - Full Answer



Your mother is responsible for making sure you receive an education, not only by registering you at a school, but once registered at a school by making sure you attend regularly.

Section 444 of the Education Act deals with a child's failure to attend school. Sections 444(3) and 444(4) set out the few circumstances in which you may miss school (without action being taken against your mother):

- ♦ you are absent with the school's permission;
- ♦ because you are ill or there is some other reason that cannot be avoided;
- ♦ for religious reasons - for example, a religious holiday or event;
- ♦ because the school is not within walking distance of your home and the local authority has not arranged a way for you to get to school, made boarding arrangements or found you a school nearer to home

If your mother does not make you attend school regularly she is committing an offence and the local authority could take action against her (section 444(1)).

Although the penalty would be greater if she knew you were not going to school and was not trying to make you go, your mother would still be guilty of the offence even where she was unaware of you not going.

Parents who do not know their child is not attending school can be fined up to £1,000 (section 444(8)).

Parents who do know can be fined up to £2,500 or given up to 3 months in prison (or both) and made to attend counselling or guidance as part of a parenting order (section 444(8A)).

Punishment/Discipline

Your mother is taking away your mobile phone and banning you from going out for a month as a form of punishment for missing school. As your mother has a wide discretion as to how she disciplines you, you are unlikely to be able to do anything about this.

Your mother can discipline you as she sees fit, so long as she does not do anything which causes you significant harm or puts you at risk of significant harm.



Children's
Rights Alliance
for England

FAQ - Full Answer



The Children Act 1989 introduced the idea of significant harm. It says that the local authority should take action where it has reasonable cause to suspect a child is suffering, or likely to suffer, significant harm ([section 47](#)).

In this context, “harm” means any of the following:-

- ill-treatment (both physical and non-physical)
- harm to physical or mental health
- harm to physical, intellectual, emotional, social or behavioural development ([sections 105\(1\)](#) and [31\(9\)](#))

The Children & Young Persons Act 1933 also makes it a crime for anyone with a child’s charge or care to ‘*wilfully assault, ill-treat, neglect, abandon or expose the child in a manner likely to cause unnecessary suffering or injury to health*’ ([section 1\(1\)](#)).

These provisions, however, do not prevent a parent from handing out a “reasonable” physical punishment at home ([Children Act 2004, section 58](#)). However, your mother must not smack you in a way that leaves bruising, grazing, cuts or swellings, or do anything more serious to cause you physical harm.

The UNCRC protects children from all forms of physical or mental violence (Article 19) and from torture or other cruel, inhumane or degrading treatment or punishment (Article 37), but it does not specify what forms of discipline or punishment parents should use. Unfortunately, the UNCRC as a whole is not currently part of UK law. This means you cannot bring a case to court simply because you believe your rights in the UNCRC have been breached; you can only refer to them and ask the court to take them into account if you are claiming an English law has been broken. In addition, the obligations in the UNCRC apply only to the state (i.e. the Government) and public bodies (like your local council) and not individuals like your mother.

Similarly, under the [European Convention on Human Rights](#) (ECHR) torture or inhuman or degrading treatment or punishment is banned (Article 3). The European Court of Human Rights has made clear that in considering whether this has taken place the courts are under an obligation to take into account factors such as ‘*the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health*’ of the child ([A v The United Kingdom](#)). The Human Rights Act 1998 makes the rights in the European Convention on Human Rights part of UK law, but like the UNCRC, you can only use the act to bring a case against the Government or public



Children's
Rights Alliance
for England

FAQ - Full Answer



bodies. Other bits of English law should be interpreted in a way which meets the standards in the European Convention on Human Rights, if possible.

So long as she does not cause you significant harm, therefore, your mother has a lot of freedom in how to discipline you, the form of punishment and in what circumstances.

Mobile Phone

You can as a child legally own a mobile phone, but you don't have a legal right to one.

Article 13 of the UNCRC protects a child's right to freedom of expression, making it clear this right includes the right to freedom to get and share information and ideas of all kinds through any media of the child's choice. It also grants children the right to obtain safe, reliable and understandable information from the mass media (Article 17). There is a similar right in the ECHR (Article 10). However, as with the right to privacy, the UNCRC's provisions do not apply in the personal family context. In addition, as there is no English law giving you the right to have a phone, there is no law to interpret in keeping with your human rights.

Whether your mother allows you to have a mobile phone in the first place and the circumstances in which she might take it away from you are ultimately for her to decide depending on a whole range of factors such as your age, your maturity and the need for you to have a mobile.

Being Grounded

The same is true of grounding you. The UNCRC does give you the right to meet people and to gather in public unless there are legal restrictions (Article 15) as well as the right to rest, play and leisure and to participate freely in cultural life and the arts, appropriate to your age (Article 31).

However, like the other UNCRC rights mentioned earlier, the courts cannot enforce these rights against your mother, unless there is some relevant English law you can ask the court to interpret in a way which reflects the UNCRC.

In English law there is an offence of false imprisonment. Someone will usually be considered to be falsely imprisoned when their freedom of movement from a particular place is unlawfully and intentionally or recklessly restrained (*R v*



Children's
Rights Alliance
for England

FAQ - Full Answer



Rahman), a case in which a father bundled his 15 year-old daughter into a car against her will to take her back to Bangladesh where she was from originally) – in other words a person is stopped from moving as they want to by being unlawfully detained.

A parent can in theory be considered to have unlawfully restrained their child. But, as the court made clear in the *Rahman* decision, whether they have done and whether they are guilty of an offence is a question of fact in each case, as is the relevance to give to the child's lack of consent. What is important is whether your mother has overstepped her right to use normal parental control - whether the circumstances or period of the ban on going out goes beyond reasonable parental discipline.

A court is very unlikely to take the view that your mother's way of disciplining you is unreasonable, provided she is not breaking any laws. For example your mother must let you leave the house to go to school, and could not physically restrain you in order to keep you in the house.

Participation

The UNCRC gives you a right to express your own views in decisions which affect you. Article 12 states that once a child is capable of forming their own views, they have the right to express those views in all matters affecting them, their views being given due weight in accordance with their age and maturity.

This does not mean, however, that you can tell your mother what to do. It means your mother (and other adults) should listen to your opinions and involve you in decision-making when making choices that affect you. The UNCRC appreciates that your participation must be suitable for your age and level of maturity.

Article 12 applies to decisions made within the family home. It would therefore be worth you talking to your mother and explaining to her how you feel about the punishments she has imposed. But the decision is hers at the end of the day and, provided she is not breaking the law, you would have no way of making her do what you want - of making her either end the ban on going out or give you your mobile back.