



**The House of Lords Select Committee on the Children and Families Act 2014:
Call for written evidence
submission by Children's Rights Alliance for England**

About us

The Children's Rights Alliance for England (CRAE), part of Just for Kids Law, works with over 100 members to promote children's rights and monitor government implementation of the UN Convention on the Rights of the Child.

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.

Introduction

We welcome the inquiry into the Children and Families Act 2014. This submission focusses on question 7. The Children's Rights Alliance for England coordinated the campaign for the establishment of the Children's Commissioner for England (the Children's Commissioner) and chaired the Alliance for Reform of the Children's Commissioner, which undertook significant work to strengthen the Children and Families Act 2014 during its parliamentary passage.

Inquiry question 7: *Does the Children's Commissioner have the correct remit and powers? Are the correct accountability structures in place to ensure they discharge their duties effectively?*

Children are particularly vulnerable to human rights abuses because of their developmental state, because they are rarely listened to when they need help, and because they cannot seek change by voting and face difficulties in using the courts. Therefore, children need a strong champion for their rights.

In its General Comment No. 2 on independent human rights institutions for children,¹ the UN Committee on the Rights of the Child (the UN Committee) has emphasised the importance of the role of an independent human rights institution for children in ensuring full implementation of the UN Convention on the Rights of the Child. It also sets out the standards for the establishment, remit and appointment of these institutions, reflecting the UN Paris Principles for the national human rights institutions,² if they are going to be truly effective in fulfilling its purpose.

We very much supported provisions in the Children and Families Act 2014, which strengthened the Children's Commissioner for England and gave it a rights-based mandate. The reforms took forward

¹ UN Committee on the Rights of the Child (2002) *General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child*

² The UN General Assembly (December 1993) *Principles relating to the Status of National Institutions (the Paris Principles)*

many of the recommendations in the Dunford Review³ and also sought to address the concerns and recommendations raised by the UN Committee in its 2008 Concluding Observations on the UK that the UK Children's Commissioner's "*independence and powers are limited and that they are not established in full compliance with the Paris Principles.*"⁴

However, despite the positive reforms made by the Children and Families Act, we believe the legislation needs to be further strengthened to ensure we have a Children's Commissioner with the sufficient functions, powers and independence to effectively promote the full realisation of children's rights and hold the Government to account when it is failing to live up to its obligations under the CRC. Below we set out some particular areas where we believe further legislative reform is necessary.

1. Enhancing the independence of the Children's Commissioner for England

1.1. We welcomed the increased independence of the Children's Commissioner introduced by the Children and Families Act 2014. In particular, amendments made to the legislation which set out how inquiries could be initiated by the Commissioner and the omission of the requirement for them to consult the Secretary of State before holding an inquiry.⁵

1.2. We were also pleased to see amendments which strengthened the tenure and appointment of the Children's Commissioner. In particular, limiting the Children's Commissioner's term to six years and not allowing reappointment following this period.⁶

1.3. However, in order for the Children's Commissioner to effectively champion children's rights, their independence must be strengthened further. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has stressed that '*Independence is perhaps the most important principle*' for national human rights institutions (such as the Children's Commissioner).⁷ The fact that the Children's Commissioner is appointed by, can be dismissed by, and has its funding set by the Secretary of State, gives rise to a potential source of pressure on the activities of the Children's Commissioner. It is therefore crucial that safeguards are put in place to guard against any such potential interference.

1.4. The Act states that the Children's Commissioner is to be appointed by the Secretary of State. Such an arrangement significantly undermines the independence of the post. In our view, international best practice is for the Children's Commissioner to be appointed by Parliament. However, we acknowledge that such an approach would be highly unusual in our public appointments system.

1.5. At the very least, in order to avoid the risk of political appointments, we believe the legislation needs to be reformed further and should set out broad criteria to which the Secretary of State should have regard in making an appointment (see, for example, paragraph 2(1) of Schedule 1 to the Equality Act 2006) and, as recommended by the Dunford

³ Dunford, J (2010) *Review of the Office of the Children's Commissioner (England)*

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/176457/Cm-7981.pdf

⁴ UN Committee on the Rights of the Child (2008) *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* <https://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

⁵ See Schedule 5, Section 1(2) and 1(3) (inquiries), *Children and Families Act 2014*.

⁶ See Schedule 5, Section 7(b) and 7(c) (appointment and tenure of Children's Commissioner), *Children and Families Act 2014*.

⁷ OHCHR (2010) *National Human Rights Institutions*, p. 39.

Review, should require the Secretary of State to have due regard to the views of Parliament in relation to candidates for appointment. We do not believe that the current parliamentary pre-appointment scrutiny procedure is sufficient to ensure that the views of parliamentarians are fully taken into account or that the appointment procedure ensures that appointments are not political. Parliament should also be involved in drafting the job description and person specification for the role.

1.6. We are concerned that the Government is still able to direct the Children’s Commissioner to carry out an inquiry, as highlighted recently when the Minister of State at the Department for Levelling Up, Housing and Communities and Minister for Equalities requested the Children’s Commission to undertake an independent review into contemporary family life in Britain.⁸ The involvement and direction of the Government has the potential to undermine the independence of the Children’s Commissioner and the subsequent inquiry findings as well as divert time and resources away from other children’s rights issues which the Children’s Commissioner believes is of more importance.

1.7. We believe that the Act should be amended to require the Secretary of State to refrain from interfering in the work of the Children’s Commissioner which would mirror the legislation which established the Equality and Human Rights Commission.⁹ During the parliamentary passage of the Act the Government argued that such an amendment was not necessary as the legislation already provides a rights-based remit and removes provisions to allow the Secretary of State to direct its work. However, this did not go as far as an explicit prohibition on interference. Whilst we welcomed assurances from the Government at the time that it would not interfere when the Children’s Commissioner decides on his or her priorities, we argued that such an assurance does not bind future Governments, as would a clear legislative statement to this effect. We still believe this to be the case.

1.8. We believe the Act should be amended to:

- a. *Provide for greater Parliamentary involvement in the appointment and removal of a Commissioner:* For example, the legislation should require the Secretary of State to have due regard to the views of Parliament in relation to candidates for appointment, and Parliament should be involved in any decision to dismiss a Children’s Commissioner.
- b. *Help ensure the Children’s Commissioner has sufficient funds to carry out his or her functions:* Legislation should contain a provision requiring the Secretary of State to provide the Children’s Commissioner with such sums as appear reasonably sufficient for the purpose of enabling it to perform its functions.¹⁰
- c. *Ensure that the Secretary of State is required to refrain from interfering in the work of the Children’s Commissioner.* Such an amendment could mirror the legislation which established the Equality and Human Rights Commission.

2. Extending the definition of vulnerable children

⁸ Children’s Commissioner (17 March 2022) *Commission from Government: Children’s Commissioner Family Review* <https://www.childrenscommissioner.gov.uk/2022/03/17/commission-from-government-childrens-commissioner-family-review/>

⁹ Schedule 1 paragraph 42(3) of the Equality Act 2006

¹⁰ A similar provision can be found in the Equality Act 2006, Schedule 1, paragraph 38.

2.1. We welcomed the reforms which require the Children's Commissioner to have particular regard to specified groups of vulnerable children when carrying out their functions,¹¹ and allows the Commissioner to provide advice and assistance to those groups of children.¹² These additional responsibilities apply to looked after children, care leavers, children in boarding school and children receiving social care services. However, we believe the definition should have been extended in the Act to include children living in custody and separated children who are seeking asylum or have been trafficked who are also particularly vulnerable.

2.2. We are concerned that this may prohibit the Commissioner from giving advice and assistance to individual children from these additional groups. We do not think there was an adequate justification for not extending the powers to cover children in other circumstances who are also deprived of contact with their families within the Act.

3. Strengthening the powers and functions of the Children's Commissioner

3.1. We believe that the Act should have granted the Children's Commissioner all those powers which a national human rights institution (NHRI) should have, as set out in the Paris Principles adopted by the UN General Assembly¹³ and in General Comment No. 2 of the UN Committee on the Rights of the Child.¹⁴

3.2. We believe the Act should have conferred the following additional functions on the Children's Commissioner:

- a. Raising public awareness of children's rights: The Children's Commissioner should promote knowledge of and respect for the human rights of children.
- b. Monitoring the extent to which children's rights are realised: The Children's Commissioner should be required to publish an annual report that examines the state of children's rights in England, providing recommendations for action by Government and others.
- c. Initiating and participating in legal proceedings
- d. Mandate: The Children's Commissioner should work to protect and promote the full range of rights, for all children, including those contained in other international human rights instruments and domestic legislation.

4. Strengthening the involvement of children in the work of the Children's Commissioner

4.1. Given the Children's Commissioner's role to promote and protect children's rights, it is vital that children are involved in all aspects of its work in line with Article 12 of the CRC.¹⁵

¹¹ See Part 6, Section 2(4) (primary function) and Section 2B(3) (involving children in the discharge of the primary function), and Section 7B(5) (business plans), *Children and Families Act 2014*.

¹² See Part 6, Section 2D(1) (provision of advice and assistance to certain children in England), *Children and Families Act 2014*.

¹³ UN General Assembly (December 1993) *Paris Principles*.

¹⁴ UN Committee on the Rights of the Child (2002) *General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child*

<http://www2.ohchr.org/english/bodies/crc/comments.htm>.

¹⁵ Article 12 of the United Nations Convention on the Rights of the Child states the following:

1. State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

4.2. We welcomed provisions requiring the Children’s Commissioner to ‘take reasonable steps’ to involve children in its work and to consult children in respect of individual aspects of its work.¹⁶ We also welcomed the particular regard to the specified groups of vulnerable children.¹⁷

4.3. However, the Act does not provide any transparency or accountability over the extent to which the Children’s Commissioner has complied with the expectation that they will take children’s views into account. Therefore, further steps still need to be taken to strengthen the involvement of children.

4.4. We believe the legislation needs to be further reformed so that:

- wherever there is a duty to consult children, a corresponding obligation to have due regard to their views is also included and;
- require the Children’s Commissioner to report on the extent to which it has had regard to children’s views.

5. Accountability structures

5.1. We welcomed the strengthening of accountability structures in the Act, for example, section 7A, 7B and 8.¹⁸ However, we believe accountability structures could be strengthened to ensure the Children’s Commissioner discharge their duties effectively. This could be, for example by:

- More regular parliamentary scrutiny by Select Committees, including the Joint Committee on Human Rights, but also scrutiny by other Select Committees which focus on issues affecting particular groups of children, for example the Justice Committee on the work of the Children’s Commissioner in relation to children in prison.
- A strengthening of the role, remit and make-up of the advisory board to ensure members have relevant expertise on children’s rights and the implementation of the CRC.
- Sufficiently regular reviews by the Cabinet Office as part of its review of public bodies, which ensure involvement of those with expertise on children’s rights and children and young people themselves.

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2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

¹⁶ See Part 6, Section 2B(2b) (involving children in the discharge of the primary function), *Children and Families Act 2014*.

¹⁷ See Part 6, Section 2B(3) (involving children in the discharge of the primary function), *Children and Families Act 2014*.

¹⁸ See Part 6, Section 7A (advisory board), Section 7B (business plans) and Section 8 (annual reports), *Children and Families Act 2014*.