

Universal Periodic Review: UK 4th Cycle

Children's access to justice

Suggested questions for the UK:

- What steps are being taken at UK and devolved level to provide enforceable remedies to children whose CRC rights have been breached?
- What steps are being taken at UK and devolved level to ensure the availability of child-friendly complaints processes (formal and informal), free specialist legal services and independent advocacy services for children?

Suggested recommendations for the UK:

- UK and devolved governments should ensure all children whose rights are breached or who are in contact with public services have access to child-friendly complaints processes, including independent advocacy. Children should be involved in the design and creation of a comprehensive complaints mechanism that meets their needs.
- UK and devolved governments should ensure all children have access to free, confidential, independent legal aid and assistance, and can access justice and challenge decisions which affect their rights.
- UK and devolved governments should ensure civil society organisations with 'sufficient interest' can raise legal proceedings on children's rights grounds.

Child-friendly complaints processes

Complaints structures at UK and devolved level are designed for adults and inappropriate for children who find them intimidating, lengthy and inaccessible.¹ Children say there is a lack of child-friendly information, difficulties in accessing independent advocacy, and that they can face intimidation if they make a complaint - especially children who are marginalised or from a minority ethnic background.²

Most children in England don't have a statutory right to advocacy and although children in care do, in practice, barriers to accessing advocates results in these children not always knowing their options or expressing their wishes and feelings.³ The recent Independent Care Review recognised that "advocacy is an afterthought in the current system" but its recommendation that advocacy be comprehensive and an opt out service came at the expense of important safeguarding procedures.⁴

¹ Together, State of Children's Rights Report 2022, p 122 [socrr-22_final.pdf](#)

² Who Cares? Scotland (2020). Response to the Equality and Human Rights Committee Call for views on United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill. <https://bit.ly/31VPAeO> [Date accessed: 17.1.22], Who Cares? Scotland (2020). Navigating the world of rights, p.29. <https://bit.ly/3ukvDdm> [Date accessed: 19.1.22].

³ Children's Rights Alliance for England (2020) England Civil Society Submission to the United Nations Committee on the Rights of the Child to inform its List of Issues Prior to Reporting (LOIPR)

⁴ See <https://www.justforkidslaw.org/news/reflections-independent-care-review-final-report>

In Wales, whilst good progress has been made to ensure that children in care have access to an independent advocate, gaps remain for other children who could benefit from an advocate to help them overcome barriers in respect of their physical and mental health, as well as their education.⁵

In Scotland, draft legislation to incorporate children's rights will require Scottish Government to set out what it is doing to promote child-friendly complaints processes and ensure children's access to justice.⁶ The Bill will also give the Children's Commissioner and Scottish Human Rights Commission powers to intervene and bring legal proceedings on children's rights grounds. However, this legislation is not yet into force following a UK Supreme Court ruling that found the Bill had gone beyond the powers of the Scottish Parliament.⁷ There have been no similar developments in England.

UK and devolved governments must do more to embed child-friendly complaints procedures and independent advocacy otherwise children's human rights cannot be adequately protected and enforced.⁸

Legal aid

Recommendations 134.115 and 134.154 have not been adequately implemented. There are serious concerns that current legal aid systems are reducing children's access to justice. Children are expected to traverse a complex system with forms, guidelines and processes that have not been adapted to their needs. Children are expected to complete detailed financial assessment forms that are unsuitable for school-aged children with no income and produce extensive documentation to support their applications. These complexities deter children from contacting solicitors and organisations from referring them. The result is that children who urgently need legal help are unable to access it.⁹

In Scotland, a parent/carer's financial circumstances may be taken into account in certain situations. These circumstances may render the child ineligible for legal aid. This is particularly problematic in situations where the child is in contention with their parent/carer. Many children will not seek legal aid if that means having to disclose to their parent/carer that they have done so.¹⁰ Civil society organisations have made a range of recommendations on how access to legal aid and legal advice could be improved.^{11 12}

In England and Wales, legal aid is still unavailable for many children and families, and the Exceptional Case Funding Scheme is woefully inadequate.¹³ Since 2013, at least 6,000 children each year have been denied free legal advice and representation (the figure could be as high as 15,000).¹⁴ This affects many children, including those unlawfully excluded from schools and is hard to access in SEND appeals. Following judicial review, immigration matters for separated children were brought back into scope of legal aid, but care

⁵ Senedd Children, Young people and Education Committee (2017) Report into the inquiry into statutory advocacy provision <https://senedd.wales/laid%20documents/cr-ld10918/cr-ld10918-e.pdf>

⁶ Sections 11(ba)-(bb). [UNCRC \(Incorporation\) \(Scotland\) Bill](#).

⁷ [Reference by the Attorney General and the Advocate General for Scotland – United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Bill](#). [2021] UKSC 42.

⁸ Access to Justice as a Human Right, Francesco Francioni, OUP Oxford, (2007), introduction https://books.google.co.uk/books?id=dmxCAGAAQBAJ&pg=PP11&ots=xFbK_VgxL&dq=access%20to%20justice%20and%20human%20rights&lr&pg=PP40#v=onepage&q=access%20to%20justice%20and%20human%20rights&f=false

⁹ Clan Childlaw (2022). [Consultation on Scottish Legal Aid Board's approach to financial eligibility assessment and Children's Rights Alliance for England \(2020\) England Civil Society Submission to the United Nations Committee on the Rights of the Child to inform its List of Issues Prior to Reporting \(LOIPR\)](#)

¹⁰ Clan Childlaw (2022). [Consultation on Scottish Legal Aid Board's approach to financial eligibility assessment](#).

¹¹ Clan Childlaw (2022). [Consultation on Scottish Legal Aid Board's approach to financial eligibility assessment](#).

¹² A list of options available in Scotland for legal advice for individuals who experience a violation of their rights can be found here, Mhairi Snowden, Access to Justice, Human Rights Consortium, Feb 2020 <https://hrscotland.org/wp-content/uploads/2020/02/access-to-justice-petition-hrcs-views-6-feb-2020.pdf>

¹³ The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) overhauled the legal aid system: from April 2013 legal aid was no longer available for employment, education (except for cases of special educational needs), non-asylum immigration, private family law, many debt and housing cases, and most welfare benefits cases.

¹⁴ Coram Children's Legal Centre (2018) Rights without remedies: Legal aid and access to justice for children https://www.childrenslegalcentre.com/wp-content/uploads/2018/05/Rights-without-remedies_Final.pdf

leavers are excluded from its remit, as are immigration cases for children in families and separated children once they have turned 18. More positively, in 2021, the UK Government commissioned an Independent Review of Criminal Legal Aid,¹⁵ which recommended that the criminal legal aid fees payable in the Youth Court should be increased to reflect the importance of this work. The UK Government is currently consulting on a range of proposals to help to provide better quality legal representation for children in the Youth Court.¹⁶

In Northern Ireland it is our experience that applications for legal aid in cases with children’s rights implications have a high rate of denial in the first instance which is often overturned when appealed. This creates unnecessary delays in the substantive case being taken forward which can have wide ranging implications for the individual child, given the nature of such cases are often in relation to some of the most vulnerable children and young people in our society.

Further, a barrier exists in that children cannot apply for legal aid on their own and so for specific demographics of young people (e.g. homeless children and young people, those estranged from their parents etc.) additional barriers are created in that they are required to find an adult prepared to act as a *next friend* in the legal aid application. Additionally, legal aid for advice and assistance is heavily restricted and of particular note, it does not cover representation at Special Educational Needs and Disability Tribunals (SENDIST).

Further, the SENDIST does not have a power to order the remedy of compensation for disability discrimination in education. A child who has faced grave and sustained discrimination such as barriers of access to education or failure to provide reasonable accommodations will not be compensated and typically will only receive remedies such as an apology or staff training.

Recommendations referenced from the UK’s UPR 2017 (3rd cycle)

134.115	Adopt effective measures to combat crimes based on religious hate and facilitate access to justice to minority groups	Angola A/HRC/36/9/Ad d.1 - Para. 3	Supported
134.154	Ensure the accessibility of appropriate legal aid to safeguard access to justice for all, particularly for the most marginalized groups in society	Netherlands A/HRC/36/9/Ad d.1 - Para. 3	Supported

About us

Children’s Rights Alliance for England (CRAE)

CRAE works with around 100 members to promote children’s rights and monitor government implementation of the CRC in England. See: www.crae.org.uk Contact: king@crae.org.uk

Together (Scottish Alliance for Children’s Rights)

Together is an alliance of almost 500 NGO and individual members that works to improve the awareness, understanding and implementation of the CRC in Scotland. See: www.togetherscotland.org.uk Contact: juliet@togetherscotland.org.uk

¹⁵Bellamy, C. (2021) Independent Review of Criminal Legal Aid

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041117/clar-independent-review-report-2021.pdf

¹⁶ Ministry of Justice (2022) Response to independent review of legal aid <https://www.gov.uk/government/consultations/response-to-independent-review-of-criminal-legal-aid/response-to-independent-review-of-criminal-legal-aid>

Wales UNCRC Monitoring Group

The Wales UNCRC Monitoring Group is a national alliance of non-governmental and academic agencies tasked with monitoring and promoting the CRC in Wales. It is currently facilitated by Children in Wales, the national umbrella organisation. See: www.childreninwales.org.uk Contact: sean.oneill@childreninwales.org.uk

Children's Law Centre

The Children's Law Centre is a registered charity and specialist children's human rights centre in Northern Ireland, founded on the principles enshrined in the CRC. See: www.childrenslawcentre.org.uk Contact: fergalmcFerran@childrenslawcentre.org