



Scotland's Commissioner Landscape: A Strategic Approach Inquiry

About Together (Scottish Alliance for Children's Rights)

Together (Scottish Alliance for Children's Rights) is an alliance that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) and other international human rights treaties across Scotland. We have over 550 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs and interested professionals. The views expressed in this submission are based on wide consultation with our members but may not necessarily reflect the specific views of every one of our member organisations.

Introduction

Together (Scottish Alliance for Children's Rights) welcomes the opportunity to comment on Scottish Parliament's inquiry into Scotland's Commissioner's Landscape. This response centres on the role of Commissioners in promoting and protecting children's human rights so primarily focuses on the Children and Young People's Commissioner (CYPCS) rather than the entire Commissioner landscape. As stated by the UN Committee on the Rights of the Child ('UN Committee'):

"Independent national human rights institutions are an important mechanism to promote and ensure the implementation of the [UNCRC], and the Committee on the Rights of the Child considers the establishment of such bodies to fall within the commitment made by States parties upon ratification to ensure the implementation of the [UNCRC] and advance the universal realisation of children's rights".¹

As such, our response offers a children's human rights perspective in line with the commitment Scotland has recently made to the realisation of children's human rights through the *UNCRC (Incorporation) (Scotland) Act 2024*.² It draws on key articles of the UN Convention on the Rights of the Child (UNCRC), guidance given by the UN Committee's General Comments on the nature and function of National Human Rights Institutions (NHRIs) specifically for children and young people, the unique position of children and young people in society and the previous work of the CYPCS that reflects this. Our response argues that CYPCS provides real value to Scotland's children and young people and must maintain its independent function to promote and safeguard their human rights.³

In line with Scotland's commitment to children's rights as demonstrated through the *UNCRC (Incorporation) (Scotland) Act 2024*, and the commitment shown by Parliamentarians in involving children and young people at every stage of its passage, we would urge the Finance and Public Administration Committee to put children and young people at the centre of any proposed changes to the Commissioner Landscape that could have an impact on the protection of their rights.

¹ [CRC/GC/2002/2](#): Para: 1.

² *UNCRC (Incorporation) (Scotland) Act 2024*. <https://www.legislation.gov.uk/asp/2024/1/contents/enacted> [Date accessed: 11.03.24].

³ Section 4, *Commissioner for Children and Young People (Scotland) Act 2003*. <https://www.legislation.gov.uk/asp/2003/17> [Date accessed: 11.03.24].

We call on Scottish Parliament to:

- **Protect the independent nature of the Children and Young People’s Commissioner Scotland and specific focus of monitoring and implementing children’s rights,**
- **Continue to reflect the UNCRC and UN Committee’s guidance and requirements for an effective Children and Young People’s Commissioner.**
- **Ensure that children and young people are at the heart of any discussions on changes to the Commissioner landscape.**

Commissioner landscape

The Commissioner landscape has evolved since devolution, with seven commissioners in operation and one more recently being agreed to by Parliament. Several additional commissioners are now also being proposed.

1. Why is the Commissioner model chosen over other approaches, such as a public body or government department, and why do you consider there has been such a growth in Commissioners in recent years?

The UNCRC and UN Committee guidance are clear that to effectively implement the UNCRC, state signatories must ensure an independent NHRI that has specific focus on the monitoring and implementation of children’s rights:

“It is the view of the Committee that every State needs an independent human rights institution with responsibility for promoting and protecting children’s rights. The Committee’s principal concern is that the institution, whatever its form, should be able, independently and effectively, to monitor, promote and protect children’s rights. It is essential that promotion and protection of children’s rights is “mainstreamed” and that all human rights institutions existing in a country work closely together to this end.”⁴

Together (Scottish Alliance for Children’s Rights) strongly advocated on the need for a Children’s Commissioner for Scotland and provided an active role in providing evidence to the Education, Culture and Sport Committee inquiry into the issue in 2001.⁵ ⁶ The need that existed back in 2003⁷ when the Scottish Parliament passed the *Commissioner for Children and Young People (Scotland) Act 2003* is arguably stronger than ever 21 years later. The independence of the role of the Children’s Commissioner is of particular importance and was highlighted as such in the UN Committee’s Concluding Observations to the UK in 2016:

“The Committee welcomes the increased independence of the Children’s Commissioners in the four devolved administrations of the State party and the many initiatives that they have taken to ensure the promotion and protection of the rights of the child.”⁸

Across Together’s membership – and more widely across generations of children and young people who have grown up with a dedicated Children’s Commissioner in post – there continues to be strong support

⁴ [CRC/GC/2002/2](#): Para: 7.

⁵ Scottish Parliament (archive, no date). Committee Bill – A Children’s Commissioner for Scotland, Scottish Parliament archive. <https://archive2021.parliament.scot/visitandlearn/Education/15872.aspx> [Date accessed: 11.03.24].

⁶ Education, Culture and Sport Committee (archive, no date). Background Information - Education Culture and Sport Inquiry, <https://archive.scottish.parliament.uk/business/committees/historic/education/inquiries-01/edc-sev.htm> [Date accessed: 11.03.24].

⁷ Elsley, S. (2002). ‘A Children’s Champion for Scotland’, *Scottish Journal of Residential Care*, 43-45.

⁸ [CRC/C/GBR/CO/5](#): Para: 14.

for the role and office of CYPCS. This is accompanied by an extensive evidence-base as to the impact such a role has on children's experiences of their rights. As a result, it is understandable that there are increasing demands for wider independent Commissioner roles.

2. What are the implications of this growth on Scotland's finances, other organisations, and wider society?

The implications of the CYPCS on wider society can be seen through previous CYPCS research and calls to action, which have given attention to children and young people's issues, particularly those whose rights are most at risk, resulting in their experiences and views being considered when important decisions have been made by Scottish Government and Scottish Parliament. This gives further justification to protecting the independent and specialist nature of CYPCS, to continue to give voice and attention to the groups of children and young people who too often get overlooked and whose rights are most at risk.

The third CYPCS in post, Bruce Adamson, published a significant report of the office's first investigation which focused on local authority guidance around restraint and seclusion after carrying out research which revealed unmonitored and inconsistent use of these practices against children in schools across Scotland. It was laid before the Scottish Parliament in pursuance of section 11(4) of the *Commissioner for Children and Young People (Scotland) Act 2003* in 2018⁹ and made important recommendations including measures to ensure restraint is used as a last resort,¹⁰ better participation of children and young people in the creation of policies relating to restraint and seclusion and that their views are taken into account in investigations carried out by the Care Inspectorate.¹¹ The recommendations made by CYPCS helped to secure a Scottish Government commitment to strengthen national guidance,¹² as well as galvanising efforts by grass-roots campaigners. The CYPCS investigation and findings were clearly visible in Daniel Johnson MSP's consultation on a *Proposed Restraint and Seclusion (Prevention in Schools) (Scotland) Bill*.¹³ While this Member's Bill seeks to protect children from inappropriate restraint in school settings, it has the potential to act as a catalyst for legislation to end the misuse of restraint in other settings – such as justice, residential care and health settings.

Another significant piece of research was conducted by the first Children and Young People's Commissioner Scotland, Kathleen Marshall, and laid before the Scottish Parliament in pursuance of section 12 of the *Commissioner for Children and Young People (Scotland) Act 2003* in 2008.¹⁴ Marshall reviewed the law and policy around children who have parents in prison to examine its effectiveness in respecting children's rights with the inclusion of children's voices about their own experiences. In her report she revealed that children with a parent in prison are invisible victims of crime, and that their voices were often hidden partly due to the shame and stigma children felt associated with imprisonment. The report made recommendations to Scottish Parliament to promote respect for this specific group of children and their rights. As a result, the rights of children affected by parental imprisonment are far more understood, not just in Scotland but at an international level.^{15 16} This shows how the CYPCS role

⁹ CYPCS (2018). *No Safe Place: Restraint and Seclusion in Scotland's Schools*. <https://www.cypcs.org.uk/resources/no-safe-place/> [Date accessed: 11.03.24].

¹⁰ *Ibid*.

¹¹ *Ibid*, pp43-44.

¹² Scottish Government (2019). *Response to FOI request: Deputy First Minister to Children's Commissioner on No Safe Place report* <https://www.gov.scot/publications/foi-19-00474/> [Date accessed: 11.03.24].

¹³ *Proposed Restraint and Seclusion (Prevention in Schools) (Scotland) Bill*. <https://www.parliament.scot/bills-and-laws/proposals-for-bills/proposed-restraint-and-seclusion-prevention-in-schools-scotland-bill>

¹⁴ SCCYP (2008). *Not seen. Not heard. Not guilty. The rights and status of the children of prisoners in Scotland*. <https://dera.ioe.ac.uk/id/eprint/9399/2/Not%20Seen%20Not%20Heard%20Not%20Guilty%20compress.pdf> [Date accessed: 11.03.24].

¹⁵ UN Committee (2011). *Report And Recommendations of the Day of General Discussion on "Children Of Incarcerated Parents"*, <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/Discussions/2011/DGD2011ReportAndRecommendations.pdf> [Date accessed: 11.03.24].

¹⁶ *Recommendation CM/Rec(2018)5*.

has not only used its powers to reveal the previously 'hidden' experiences and rights of specific groups of children but has also used experiences from Scotland to positively impact international developments in children's human rights.

These are just some of the important independent pieces of work that CYPCS has carried out in advocating for embedding children's participation, ensuring those whose rights are most at risk can influence the decisions that affect them and opening conversations with Scottish Government and the international community about improving frameworks and practice to better respect and protect children's human rights.

3. Currently, there is a mix of regulatory, investigatory, rights-based, and policy-focused Commissioners in Scotland.

What should the role of Commissioners be and which should report directly to Parliament (and why)?

Article 4 of the UNCRC says state signatories must take appropriate administrative measures for the implementation of the UNCRC and General Comment no.2 states that the establishment of NHRIs specifically for the promotion and monitoring of its implementation, including children's commissioners, falls within this commitment.¹⁷ The UN Committee has identified essential elements and minimum standards the NHRIs should have to achieve effective implementation including compliance with the Paris Principles.^{18 19} In its latest recommendations, the UN Committee made clear to the UK and Scottish Government that full compliance with the Paris Principles should be ensured, including regarding funding, personnel selection and appointment process for Children's Commissioners.²⁰

In aligning with the Paris Principles,²¹ the role of CYPCS should remain as set out in the provisions of the *Commissioner for Children and Young People (Scotland) Act 2003*, including:

- **Protecting and promoting rights, to include promoting awareness and understanding; reviewing law, policy and practice; promoting best practice and conducting research** (s.4(1), Commissioner for Children and Young People (Scotland) Act 2003): According to the UN Committee, the best approach for an effective NHRI is that it must have a specific focus on children's rights.²² There are additional justifications for an independent NHRI for children and young people including their unique position in society as not having the right to vote, compared to adults.²³ According to the UN Committee, an independent NHRI will ensure children's human rights are given special attention which is necessary due to their unique phase in life which can make them more vulnerable to human rights violations as well as being overlooked in decision making compared to adults.²⁴
- **Investigation** (Ss7-9): The work done by previous CYPCS on behalf of children and young people, giving attention to children and young people whose rights are most at risk through investigative research and calls to action to the Scottish Parliament are more justification to protect the

¹⁷ [CRC/GC/2002/2](#).

¹⁸ [CRC/GC/2002/2](#): Para: 2.

¹⁹ UNGA (1993). *Principles relating to the Status of National Institutions (The Paris Principles)*.

<https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris> [Date accessed: 11.03.24].

²⁰ [CRC/C/GBR/CO/6-7](#): Para: 13(b).

²¹ UNGA (1993). *Principles relating to the Status of National Institutions (The Paris Principles)*.

<https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris> [Date accessed: 11.03.24].

²² [CRC/GC/2002/2](#): Para: 6.

²³ [CRC/GC/2002/2](#): Para: 5.

²⁴ [CRC/GC/2002/2](#): Para: 5.

CYPCS's independent and specialist nature which will be discussed further in the following question.

- **Involving children and young people** (s.6): The UNCRC obliges states to listen to the voices of children and young people, ensure their opinions are given due weight,²⁵ and must protect their best interests and ensure they are at the forefront of all decisions that affect them in every situation.²⁶ Therefore, states must provide children and young people a specialist independent NHRI to listen to and represent their voice in all decisions that affect them.
- **Reporting to Parliament** (s.10): The Paris Principles set out the responsibility of NHRIs to report to Parliament and other bodies on any matters concerning the promotion of protection of human rights. The principles also set out guarantees around appointment to ensure independence from government. This includes a key role for parliament and limiting the involvement of any government departments to a solely advisory, rather than decision-making, capacity.

Looking across the entire model of Commissioners, do you consider it to be a coherent approach? What, if any, improvements could be made to the Commissioner landscape in the future to ensure a coherent and strategic approach?

As set out in our response to Scottish Government's consultation on a new Human Rights Bill for Scotland, Together supports additional powers being granted to the Scottish Human Rights Commission (SHRC) and CYPCS to help secure maximum protection for children's human rights.²⁷ The proposed powers include the ability to bring or intervene in civil proceedings under the Human Rights Bill (building on similar provision in the UNCRC Act 2024) and new investigatory powers. Mirroring powers for the SHRC and CYPCS would improve the Commissioner landscape, ensuring a coherent and strategic approach.

Governance, accountability, and scrutiny

The Commissioners under consideration as part of this inquiry are entirely separate to Government. The Scottish Parliamentary Corporate Body provides governance and oversight, and Commissioners are accountable to Parliament, including through scrutiny by the relevant Parliamentary committees.

4. Are the existing governance and oversight arrangements adequate and, if not, what improvements are required?

Together commends the recent Independent Review of SHRC's governance arrangements.²⁸ Consideration should be given as to how to apply the learning and findings from this review to the equivalent arrangements for CYPCS.

In line with Article 12 UNCRC, Together would like to see an enhanced role for children and young people in recruiting, scrutinising and holding the CYPCS to account, as well as oversight of the work that the CYPCS carries out on their behalf.²⁹ In terms of recruitment of the Commissioner, Together would urge the Scottish Parliamentary Corporate Body (SPCB) to involve children and young people at every stage

²⁵ Article 12, UNCRC.

²⁶ Article 3, UNCRC.

²⁷ Together (2023). *A Human Rights Bill for Scotland: Consultation Response from Together (Scottish Alliance for Children's Rights)*, see Q31-32. https://www.togetherscotland.org.uk/media/3488/hrb_draftresponse_final.pdf [Date accessed: 11.03.24].

²⁸ Scottish Human Rights Commission (2023). *Scottish Human Rights Commission: Independent Governance Review*. <https://www.scottishhumanrights.com/news/scottish-human-rights-commission-independent-governance-review/> [Date accessed: 11.03.24].

²⁹ Article 12, UNCRC.

from drafting and revising the job description through to shortlisting, interviewing and selection. Together would like to bring SPCB's attention to a model recruitment pack that Together published in 2005 that sets out how children and young people can be involved at every stage of recruitment.³⁰

5. How appropriate are existing lines of accountability and how does the process work in practice? What other accountability models should be considered?

Not answered.

6. To what extent is the current model of Parliamentary committee scrutiny of the performance and effectiveness of how Commissioners exercise their functions appropriate?

Not answered.

Value for money and effectiveness of current approach

7. Does the current Commissioner model in Scotland deliver value for money?

Not answered.

8. Are the processes for setting and scrutinising the budgets of each Commissioner adequate?

Together supports and promotes the principles of human rights budgeting and would welcome embedding this model in the Commissioner landscape. As set out in our response to Scottish Government's consultation on a new Human Rights Bill for Scotland, SHRC's current resources are not sufficient for it to play its full role in advancing human rights in Scotland.³¹ It is crucial that in granting additional powers to SHRC and CYPSC (under the Human Rights Bill or UNCRC Act 2024), that these powers are accompanied by sufficient resource to ensure they can be implemented effectively. We refer the Committee to the further details in Human Rights Consortium Scotland's response, which Together has endorsed.³²

9. To what extent is there overlap and duplication of functions across Commissioners, and across other organisations in Scotland and how can this be avoided?

As stated above, according to the UNCRC and General Comments the CYPSC should be independent.

The *UNCRC (Incorporation) (Scotland) Act 2024* gives equivalent powers to SHRC and CYPSC.³³ Where legislation is creating powers for both Commissioners, strong communication and co-ordination will be essential to maintain CYPSC's independent functions while working closely together to ensure that no child or young person falls through the cracks.

In our response to Scottish Government's consultation on a new Human Rights Bill for Scotland, we noted concerns raised by HRCS, Amnesty and The ALLIANCE around the interaction of proposed investigatory powers for the Scottish Public Services Ombudsman (SPSO) and investigatory powers held

³⁰ Together & Save the Children (2005), *The Recruitment Pack: involving children and young people in the selection of staff*. <https://togetherscotland.org.uk/pdfs/The%20Recruitment%20Pack%202008.pdf> [Date accessed: 11.03.24].

³¹ Together (2023). *A Human Rights Bill for Scotland: Consultation Response from Together (Scottish Alliance for Children's Rights)*, see Q31. https://www.togetherscotland.org.uk/media/3488/hrb_draftresponse_final.pdf [Date accessed: 11.03.24].

³² Human Rights Consortium Scotland (2023). *Response to the Scottish Government's "A Human Rights Bill for Scotland consultation"*. <https://hrcscotland.org/wp-content/uploads/2023/10/Final-HRCS-Consultation-response-to-Scottish-Human-Rights-Bill.docx> [Date accessed: 11.03.24].

³³ Sections 11-12, *UNCRC (Incorporation) (Scotland) Act 2024*. <https://www.legislation.gov.uk/asp/2024/1/contents/enacted> [Date accessed: 11.03.24].

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by CYPSC and SHRC.³⁴ Any changes to SPSO's remit in this area should take care not to impede on the functions of the commissioners.

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³⁴ Q29 https://www.togetherscotland.org.uk/media/3488/hrb_draftresponse_final.pdf