

September
2010

*State of
Children's
Rights in
Scotland*

Together



About Together

Together (formerly known as the Scottish Alliance for Children's Rights) seeks the full implementation of the UN Convention on the Rights of the Child (UNCRC) in Scotland. With over 90 members throughout Scotland, our aims are to:

- Promote the importance of children's rights in order to highlight issues of concern to policy makers, the media and the general public, and to disseminate information on the UNCRC;
- Establish links with statutory agencies and other bodies to ensure the monitoring and promotion of the full implementation of the UNCRC in Scotland through policy and legislative mechanisms and good practice;
- Provide a focal point for non-governmental organisations in Scotland on children's rights issues, and in the preparation of reports to the UN Committee on the Rights of the Child on the progress of the UK governments implementing in the UNCRC.

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Executive Summary

¹ Scottish Government (2009). *Do the Right Thing*.

The *State of Children's Rights* report 2010 provides a non-government perspective on the progress made in Scotland towards implementing the United Nations Convention on the Rights of the Child (UNCRC) since the launch of the Scottish Government's UNCRC action plan, *Do the Right Thing*.¹ It explores the key success and difficulties experienced by children's organisations in enabling children and young people to enjoy the rights enshrined in the UNCRC, and provides recommendations as to how further progress can be made.

The report was compiled and produced by Together following wide consultation with 54 children's organisations between May and July 2010. It is a culmination of the feedback received, alongside further research into issues that were highlighted as being of particular priority.

Background

² Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4).

The UN Committee last examined the UK government's progress in 2008, making a series of recommendations (known as *Concluding Observations*)² setting out where they believed the UK was falling short of fully implementing the UNCRC.

In September 2009, the Scottish Government published *Do the Right Thing*, an action plan addressing some of the UN's *Concluding Observations* and providing a list of twenty one priority actions that the Scottish Government was committed to undertaking in the short to medium term.

Aim

The aim of the report is to highlight the key difficulties and successes in implementing the UNCRC in Scotland, and to:

- recommend the next steps that should be taken to improve children's rights in Scotland;
- provide a point of referral against which future efforts can be assessed.

Key Findings

Despite the Government's clear commitment in the action plan to realise children's rights in Scotland, there are many aspects of their strategy where there is scope for improvement. The key problem identified by children's organisations is how to give this work priority and show that it has brought about positive outcomes for children. Children's organisations are concerned that Concordat presents some difficulties in ensuring that children's rights remain on both national and local agendas. Children's rights receive negligible attention in local authority Single Outcome Agreements and, as a result, success in implementing the UNCRC across Scotland is patchy.

The current financial climate is already impacting on many children's organisations and many already do not have sufficient funds to develop their work. Great concern was raised about whether or not there would be adequate resources available within Scottish Government to support the actions identified in *Do the Right Thing*.

Successes

The *State of Children's Rights* report identifies a number of successes and areas of good practice that should be acknowledged and expanded upon to improve the implementation of the UNCRC in Scotland:

- Scottish Government's support of children-led campaigns such as *Being Young is Not a Crime*³ and *Give Me a Chance*⁴, which aim to tackle discrimination and challenge the negative portrayal of children and young people, is welcomed and should be continued.
- Scottish Government's *Getting It Right* approach to improve outcomes for children and young people is welcomed. Children's organisations believe that the approach of early intervention and good multi-agency working can be used to improve the implementation of children's rights in many areas, including training of professionals, increasing participation of children and young people, improving outcomes for looked after children, providing better child protection, and improving the age assessment procedures for unaccompanied asylum-seeking children.

³ *Being Young is Not a Crime*
(www.syp.org.uk/campaigns/byinac/byinac.htm)

⁴ *Give Me a Chance Campaign*
(www.give-meachancescotland.org)

Recommendations

The *State of Children's Rights* report identifies a number of steps that should be taken to improve the implementation of the UNCRC in Scotland, referred to in the report as 'recommendations'. The overarching recommendations are:

- Scottish and UK Government should take measures to bring all legislation in line with the UNCRC through its incorporation into UK and Scots Law. Without incorporation, the Concordat will continue to cause difficulties in ensuring the effective local implementation of the UNCRC across Scotland;
- Scottish Government must properly resource and co-ordinate efforts to ensure the actions identified in *Do the Right Thing* are properly implemented across Government departments and local authorities and ensure their good intentions are turned into realities;
- Whilst it is recognised that difficult decisions have to be made in the current financial climate, Scottish Government should ensure that its commitment to ensuring the rights of children and young people is stronger than ever. Particular attention should be paid to enabling the most vulnerable children and young people to enjoy their rights, including children with a disability, Gypsy/Traveller children, young carers and looked after children.

Together is committed to working with its members and partners, including Scotland's Commissioner for Children and Young People and the Scottish Government, to monitor progress made in taking forward these recommendations over the next year.

ARTICLE 1 - DEFINITION OF THE CHILD

EVERYONE UNDER THE AGE OF
18 HAS ALL THE RIGHTS IN THE
CONVENTION

Chapter

1

Introduction

Introduction

The United Nations Convention on the Rights of the Child (UNCRC) spells out the basic human rights that children everywhere must have: the right to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life. The four core principles of the UNCRC are non-discrimination; the best interests of the child; the right to life, survival and development; and respect for the views of the child. In 1991, the UK Government signed up to the UNCRC, undertaking to reflect its principles in UK policy and legislation.

State parties to the UNCRC are required to submit reports approximately every five years to the UN Committee on the Rights of the Child, which consists of eighteen children's rights experts from around the world. The State Party reports are to review the measures taken to ensure the rights enshrined in the UNCRC are being enjoyed by children in the reporting country. The UNCRC reporting process also encourages children's organisations, children's commissioners and specialised agencies such as UNICEF to submit reports to show their view of the government's record in implementing the rights sets out in the UNCRC.

Together (formerly the Scottish Alliance for Children's Rights) was set up in 1996 with a remit to promote the full implementation of the UNCRC in Scotland. Together is the co-ordinating body for the NGO report for Scotland, with members ranging from leading national and international non-governmental organisations to local playgroups and individuals, all sharing a commitment to promoting and advocating for children's rights in Scotland.

Although the UK Government has overall responsibility for the implementation of the UNCRC, the Scottish Government has devolved responsibility for many of the areas covered – specifically health and social care, education, housing and youth justice – whilst the UK government retains reserved powers for tax, benefits, immigration and asylum.

The UN Committee last examined the UK government's progress in 2008, making a series of recommendations (known as *Concluding Observations*) setting out where they believed the UK was falling short of fully implementing the UNCRC. The *Concluding Observations* make 142 separate recommendations that cover many aspects of children's lives.

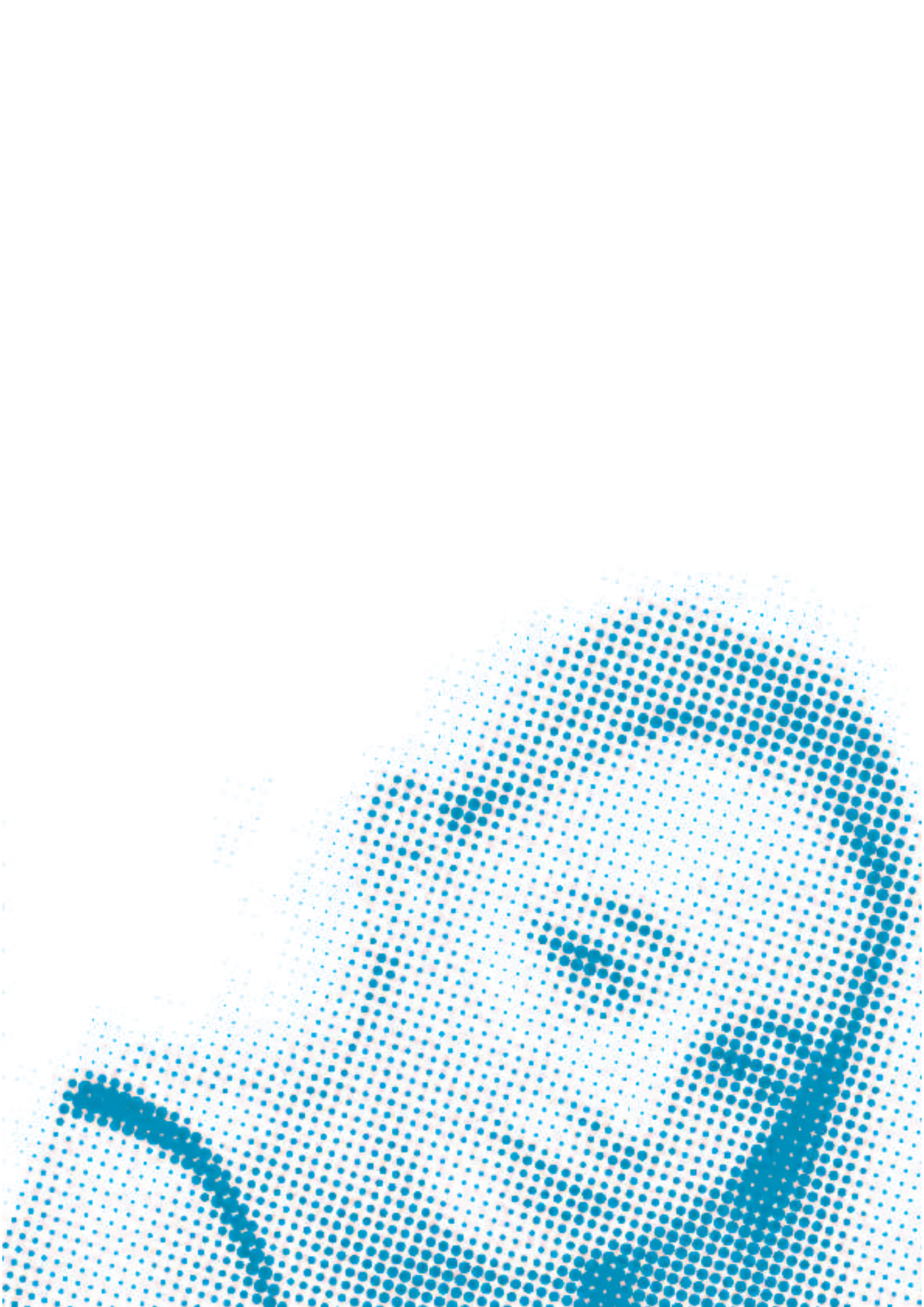
In September 2009, the Scottish Government published *Do the Right Thing*, an action plan addressing some of the UN's *Concluding Observations* and providing a list of twenty one priority actions that the Scottish Government was committed to undertaking in the short to medium term. Professor Lothar Krappmann, a member of the UN Committee, attended the launch of *Do the Right Thing* and welcomed the Scottish Government's commitment to improving the implementation of the UNCRC.

The aim of the *State of Children's Rights* report 2010 is to provide a non-government perspective on the extent to which policy and practice in Scotland has progressed since the launch of *Do the Right Thing*. It provides a means through which Scottish Government progress can be monitored and evaluated, ensuring that the momentum gathered through the last UNCRC reporting round is not lost and that children's rights are at the heart of the policy agenda.

The report has been compiled following wide consultation with children's organisations throughout Scotland, and alongside some local authorities and health boards. 54 organisations responded to a detailed online survey which looked at their experience of how well each of the UN's *Concluding Observations* were being implemented, alongside the progress they felt Scottish Government was making in each of the actions identified in *Do the Right Thing*. This report is a culmination of the feedback received, alongside further research

into issues that were highlighted as being of particular priority. Neither the *Concluding Observations* nor *Do the Right Thing* cover all breaches of children's rights so this report attempts to cover some of these omissions, particularly focussing on the experiences of children with a disability. Together was not able to obtain submissions from some specialist organisations, including those working in the field of private fostering, mental health wellbeing and with victims of trafficking, or around the issue of the use of physical restraint in residential childcare settings. Further effort must be put into identifying and working alongside these organisations so that the 2011 report can be even more comprehensive.

Together hopes that through the production of an annual *State of Children's Rights* report, the gap between policy and implementation will be brought together, and that all children in Scotland will soon be able to fully enjoy their rights as enshrined in the UNCRC.



Chapter

2

General measures of implementation

Incorporation of the UNCRC into UK and Scots Law

UN Concluding Observation

- The Committee remains concerned that the principles of the Convention are not duly taken into account in all pieces of legislation throughout the country and that the State party has not incorporated the Convention into domestic law nor has ensured the compliance of all legislation affecting children with it. The Committee recommends that the State party continue to take measures to bring its legislation in line with the Convention.⁵

⁵ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). Nos 11,12

Together has joined the Rights of the Child UK (ROCK), a UK-wide coalition seeking the incorporation of the UNCRC into UK and Scots law. To date, both the UK and Scottish Government has rejected the idea of incorporating the UNCRC into domestic law. This has resulted in the patchy implementation of the UNCRC throughout Scotland and the UK, as demonstrated throughout this report.

Rec

UNCRC Incorporation Recommendations:

Scottish and UK Government should take measures to bring all legislation in line with the UNCRC through its incorporation into UK and Scots Law.

UN Concluding Observation

- Adopt a comprehensive action plan to implement the UNCRC in cooperation with public and private sectors.⁶

⁶ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No. 15

Scottish Government Action

- Ongoing monitoring of the UNCRC in Scotland and development of UK-wide work;
- Taking forward priority areas for action in *Do the Right Thing*;
- Monitoring and reporting on progress against each action;
- Considering how other sources can be used to gather data and monitor progress.⁷

⁷ Scottish Government (2009). *Do the Right Thing*. Action no. 1.

The publishing of the Scottish Government's UNCRC Action Plan *Do the Right Thing* in September 2009 has been wholeheartedly welcomed by children's organisations in Scotland. The cooperative and inclusive approach the Scottish Government's children's rights team took to the development of the action plan can be highly commended. Scottish Government deserve credit for producing the first ever UNCRC-driven action plan in the UK, identifying key actions that they will take to address the UN Committee's 2008 *Concluding Observations*.

Despite the Government's clear commitment in the action plan to realise children's rights in Scotland, there are many aspects of their strategy where there is scope for improvement. The key problem identified by children's organisations is how to give this work priority and turn the good intentions into realities.

Key concerns raised in our consultation include:

- Ambiguous actions and a lack of clarity about the way forward
- A lack of ongoing monitoring and evaluation mechanisms
- Difficulty in co-ordinating responsibilities across national and local government
- Lack of resources to take actions forward

Ambiguous actions

Many of the proposed actions are ambiguous, rather than specific actions that can easily be measured and evaluated. Terminology such as 'consider' is repeatedly used. Examples include "*consider a trial of children's rights impact assessments*"⁸, "*consider what further actions we can take to encourage private foster carers to register with local authorities*"⁹ and "*consider issues around children with disabilities as part of the ongoing review of child protection guidance*".¹⁰ Although we welcome the fact that these issues are raised, many children's organisations were disappointed by the language used. The ambiguous way in which some of the actions are expressed could be read as a lack of commitment to truly address the issues raised by the UN committee in their *Concluding Observations*.

⁸ Scottish Government (2009). *Do the Right Thing*. Pg10

⁹ Scottish Government (2009). *Do the Right Thing*. Pg32

¹⁰ Scottish Government (2009). *Do the Right Thing*. Pg34

A lack of ongoing monitoring and evaluation mechanisms

The actions identified are not time limited and follow-up evaluation mechanisms are not properly addressed within *Do the Right Thing*. There is no prioritisation of actions or timescales given. This will make it difficult to show whether or not practice around a particular action has improved.

Co-ordinating responsibilities across national and local government

It is the responsibility of many areas of Government, from local to national, and of many aspects of civil society, to address the UN Committee's *Concluding Observations*. In *Do the Right Thing* it is unclear who is responsible for achieving the changes outlined. It overlooks the wider context in which health and social services can and do contribute to meeting Scotland's obligations under the UNCRC. Moreover, it does not look at how actions can be translated to work on a local authority level.

The Concordat between central and local government in Scotland was introduced in 2007 with the objective of devolving decision making to local authorities and their strategic partners. It was hoped this would mean that councils could be more responsive to local needs. However, much ring fenced funding was removed, and children's organisations have raised concerns at the difficulties presented in ensuring that children's rights remain on both national and local agendas. As part of the Concordat, local authorities have each produced a Single Outcome Agreement (SOA), in which they set out how they will work future towards improving outcomes for the local population. However, research shows that children's rights receive negligible attention in the SOAs.¹¹ Only in one SOA is there an explicit reference to the UNCRC. Also, despite the Government's commitment, children's rights do not feature in any of the national indicators or local outcome indicators.

Areas of good practice within local authorities were highlighted in our consultation, such as the Fife Council Partnership's Children's Rights Strategy¹², which contains an action plan with key priorities and a framework for monitoring and evaluation. Examples like this need to be highlighted to other local authorities to encourage good practice elsewhere.

The UNCRC Partners Group, co-ordinated by the Scottish Government's Child Rights Team, was generally heralded as a success. The Group enabled partners from different sectors to co-ordinate their approach to implementing the UNCRC. It was generally felt that the Child Rights team makes a strong effort to coordinate and facilitate meetings between the relevant stakeholders, decision makers and policy leads to work on specific issues. However, the team within Scottish Government operates on an extremely limited budget with only one staff member working exclusively on general measures of implementation. As a result their efforts have limited effect and there does not seem to be a coordinated approach to implementation across government departments and local authorities.

Lack of resources

Great concern was raised by children's organisations about whether or not there would be adequate resources available to support the actions identified in *Do the Right Thing*.

As budgetary allocation to children is currently not disaggregated, nor is there adequate statistical data collected on children, it is impossible to assess what budget has been allocated to implement the actions in *Do the Right Thing*, or to see what impact any impending cuts may have.

The current financial climate is already impacting on many children's organisations,

¹¹ Children's Voluntary Sector Policy Officers' Network (2009). *Single Outcome Agreements for Scottish Local Government 2009-10 - a thematic analysis*.

¹² Fife Council (2010) *Fife Children's Rights Strategy & Action Plan*.

particularly small children's organisations and civil society organisations that are working to promote the UNCRC and already do not have sufficient funds to develop their work. Children's organisations raised concerns about the lack of funding to provide specific services to children (particularly those affected by disability). They also stated cases where support is being cut for all except the most critical of services.

Rec

UNCRC Implementation Recommendations:

Together should initiate an annual Scottish Parliament debate on UNCRC implementation to ensure Scottish Government is accountable to actions outlined in *Do the Right Thing*;

Scottish Government should explore how budgets can be disaggregated by the category of 'children';

Scottish Government should ensure that effective evaluation frameworks are used in the production of the interim progress report for *Do the Right Thing 2012*;

The Child Rights Team within Scottish Government should be properly resourced to enable improved coordination of actions across Government departments.

¹³ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland, Ireland* (CRC/C/GBR/CO/4). No. 19

¹⁴ Scottish Government (2009). *Do the Right Thing*. Action no. 2.

UN Concluding Observation

- Conduct regular Child Rights Impact Assessments.¹³

Scottish Government Action

- Promote children's rights across Scottish Government;
- Look at experience of those who have used the SCCYP Child Rights Impact Assessment tool to help develop policy within the Scottish Government and whether/how it should be adapted for wider use;
- Consider trial of Child Rights Impact Assessments in a section of the Scottish Government.¹⁴

Children's rights impact assessments are a tool for measuring the potential impact of new policies and laws on children and their rights. Experience within children's organisations in Scotland shows that Child Rights Impact Assessments are not regularly carried out within national or local government, or within the NGO sector. Children's organisations working in many settings, such as criminal justice or additional support for learning were not aware of any Child Rights Impact Assessments being carried out within their area of work. Others have seen Child Rights Impact Assessments being conducted selectively. For example, Families Outside has been working with others to promote the use of Child Rights Impact Assessments in court, given the (substantial and often unrecognised) impact that criminal justice decisions have on children and families. But they have found it difficult to get funding to pilot such assessments, despite the willingness of some courts to do so.

Concerns were raised about the lack of Child Rights Impact Assessments on all budget cuts to children's services. With the Concordat agreement children's services are competing against many other priorities and without Child Rights Impact Assessments, the rights of children are likely to be seriously compromised.

Equality impact assessments have a legal force and are often in place. There is no equivalent legal force for child impact assessments and with the added dynamic of the Concordat, there is little means by which Child Rights Impact Assessments can be enforced within local authorities.

Rec

Child Rights Impact Assessment Recommendations:

Scottish Government should make Child Rights Impact Assessments a statutory requirement and encourage strong leadership from senior officials to ensure children's rights are integral to all policy-making at a local and national level;

SCCYP should pro-actively engage with policy-makers at all levels to ensure children's rights are integral to all policy-making. This should include looking at the effectiveness of the SCCYP Child Rights Impact Assessment tool and ensuring that it is useful, necessary and to be used as a matter of course.

Case Study: *Families Outside – promoting Child Rights Impact Assessments in court*

Families Outside is a national charity in Scotland that works exclusively on behalf of families affected by imprisonment. More recently this has included promotion of the rights of children when a family member goes to custody. Imprisonment of a family member has a dramatic impact on the whole family but particularly on children. Imprisonment can create a 'grief response' including withdrawal, acting out, poor performance in school, substance misuse, regressive behaviour such as bedwetting, and mental health problems. Unlike a bereavement, however, children of prisoners will be subject to bullying, and the stigma of having a family member in prison may prevent them from seeking help. They may also be unable to speak with other family members about it, as many will try to hide the true situation.

Concluding Observation 19 (2008) from the UN Committee on the Rights of the Child is to “conduct regular Child Rights Impact Assessments”. The impact of a Child Rights Impact Assessment (CRIA) for decisions in court would be to make judges aware of the impact of their decisions on children who are innocent of any crime. This may prevent custody for borderline cases; where custody is the only viable option, the courts could offer relevant information and support.

In 2008, the Scottish Commissioner for Children and Young People recommended that Child Impact Assessments be used in court. Since then, Families Outside has worked closely with the Commissioner to promote this recommendation, joined by Action for Children, Barnardo's, and Children in Scotland and supported by Members of the Scottish Parliament.

Despite this, support has not been universal. The Justice Committee rejected a proposed amendment to the Criminal Justice & Licensing Bill that would have required the use of the CRIA for sentencing decisions, primarily on the (erroneous) grounds that Social Enquiry Reports were adequate to highlight such issues. Families Outside works towards the recognition and alleviation of the impact of the criminal justice process on people other than the offender, but no formal mechanisms are in place to ensure this.

In South Africa, the case of *S v M* in the Constitutional Courts now requires judges to take female offenders' family circumstances into account where they are primary carers. The case in question prevented a single mother who was a repeat offender from going to prison on the grounds that this impacted unfairly on her four children. This approach has yet to be used in Scotland.

UN Concluding Observation

- Reinforce adequate and systematic training about the UNCRC for all professional groups working for and with children.¹⁵

Scottish Government Action

- Promotion and awareness-raising of UNCRC, including training of professionals who work with children.¹⁶

¹⁵ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4)*. No. 21

¹⁶ Scottish Government (2009). *Do the Right Thing*. Action no. 3.

Children's organisations in Scotland share concerns about the lack of training on the UNCRC for professionals working with children. It is striking that in Scotland children's rights training is not mandatory for many professionals working with children (for example, for those within the justice system). There are a few areas of good practice, such as the training on *Getting It Right* and the funding awarded to the Children's Parliament to develop and deliver training on children's rights. The new resource for teachers on the Learning and Teaching Scotland website¹⁷ has been welcomed. Despite areas of success like these the overall view is that training is still extremely patchy.

¹⁷ Learning and Teaching Scotland website (www.ltscotland.org.uk)

One organisation suggested that the *Getting It Right* approach of early intervention and good multi-agency working should be adopted in training for anyone working with children and families. As well as putting training in place it is essential that the key professionals receiving the training are empowered to meaningfully incorporate it into their professional lives. Children's organisations are aware of a significant number of documents on a range of children's rights but feel they are not being translated into action on the ground. Although work on children's rights is being actively supported in some areas such as healthcare, research shows that this is still not reaching out to key professionals. For example, research currently being conducted at the University of Edinburgh, which is not yet in the public domain indicates that paediatricians consistently self report that they have not received any training in human rights. Other specific concerns were raised about professionals whose work involves, but is not solely concerned with, children such as legal professionals, housing officers and senior managers across the board. Anecdotal evidence shows that some professionals do not believe the UNCRC is relevant to children in Scotland and is more to protect children in developing countries and warzones.

Children's organisations working on both local and national levels stated that they lacked funding for providing their staff with training on the UNCRC. They also raised concerns that some staff found it difficult to find the time to participate in training. They called for more online resources in simple, accessible language that they can use to relate the key principles of the UNCRC to their work.

Some children's organisations felt that the training and awareness-raising about the UNCRC was being driven forward more by children's organisations than by the Government. Several gave examples of how they raise awareness about children's rights in their training and resources for other professionals such as teachers, social workers, carers, parents, youth workers, residential staff, volunteers and childminders.

There has been no noticeable movement on the Scottish Government's commitment to identify what training on the UNCRC currently takes place among professionals.¹⁸ Children's organisations have made it clear that only the systematic and mandatory training of

¹⁸ Scottish Government (2009). *Do the Right Thing*. Action no 3

professionals , which goes beyond information-giving into the heart of awareness, deeper learning and culture change, will ensure that children's rights are seen as an integral part of the care and support of children in Scotland.



UNCRC Training Recommendations:

Scottish Government should put in place a comprehensive strategy to take forward its commitment to work with partners to promote and raise awareness of the UNCRC among professionals working with children;

Scottish Government, SCCYP and Together should identify professional training bodies independent of Scottish Government and promote the training of professionals working with children and families;

Together should continue to develop, expand and raise awareness of its online children's rights resource library at www.togetherscotland.org.uk .



Chapter

3

General principles

UN Concluding Observations

- Ensure full protection against discrimination on any grounds, taking urgent measures to address the intolerance and inappropriate characterisation of children;
- Ensure full protection against discrimination on any grounds, including by strengthening awareness-raising and other preventative activities against discrimination;
- Take all necessary measures to ensure cases of discrimination against children in all sectors of society are addressed effectively¹⁹.

¹⁹ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4)*. No. 25a, b, c.

²⁰ Scottish Government (2009). *Do the Right Thing. Action no. 4.*

Scottish Government Action

- Tackle negative perceptions of children and young people²⁰.

The key issues raised by children's organisations around non-discrimination concerned:

- Children, young people and the media
- Discrimination and children with a disability
- Discrimination and looked after children
- Discrimination and young Gypsy/Travellers.

Children, young people and the media

As recognised by the UN Committee, children and young people continue to be negatively represented in the media. The UN committee believes that this is leading to a growing intolerance of children within society, despite Scottish Government-funded campaigns by organisations such as the Scottish Youth Parliament and Who Cares? Scotland to raise awareness of the stigma they face. Children are routinely portrayed as being a problem for society, with mainstream media coverage polarising between stories about children as either being 'high achievers' or 'problem children', referring to anti-social behaviour and offending.²¹ When it comes to celebrating children's achievements and contributions and promoting their rights, the media is often silent. In a study into national UK newspapers, articles about children's rights and equality made up only 1.8% of all articles about children.

²¹ Children's Rights Alliance England (2009). *Children's rights and equality in the newspapers.*

Current debate over Scotland's relationship with alcohol is an example of children being portrayed as a 'problem' for society. Young people are often classified as the primary perpetrators of anti-social behaviour and alcohol-related crime. Much less attention is given to the impact of parental and other adults' alcohol misuse on children. It is estimated around 65,000 children are living with a problem drinking parent and many more are affected by parent's binge drinking. The effects of passive drinking on children include low self confidence, isolation, poor social skills, lack of care, caring responsibilities, and poverty.²²

²² Scottish Youth Commission on Alcohol (2009). *Recommendations.*

In their consultations, children's organisations receive a consistent message from children that they feel the media portray an unfair stereotype of them. In a survey by the Scottish Youth Parliament, 87.7% of MSYPs rate the media's perception of young people as being 'negative' or 'very negative', with not a single respondent rating coverage as being 'positive' or 'very

positive'. The MSYPs saw this as being harmful to the way young people are viewed by the general public. Children's organisations felt that the unfair portrayal of children in the media could indirectly impact on Government policy decisions.

Discrimination and children with a disability

There was a particular focus on children with a disability in the feedback received. There is no mention in the Scottish Government's action plan of tackling the particular stigma and discrimination against children with a disability. The for Scotland's Disabled Children Campaign have found many examples of children with a disability in Scotland who are facing discrimination, suggesting that they are amongst the most marginalised of all children. Key issues for children with a disability that have been highlighted by the campaign include bullying, exclusion from activities and decision making processes and a lack of reasonable adjustments being made at school to accommodate their needs.²³ Even within Scottish Government's own promotional materials and publications about children's rights in general, children with a disability rarely feature in mainstream publications aside from areas specifically referring to children with a disability. This is representation at its most basic level and failure to include children with a disability as children first and foremost is lamentable.

²³ www.fsdco.org.uk/to-better-lives/education/case-studies/case-study-1

Discrimination and looked after children

Discrimination and looked after children was also an ongoing theme in responses from children's organisations. Research shows the impact of stigma and low expectations on children in residential care.²⁴ Scottish Government's endorsement and financial support for the Who Cares? Scotland national anti-stigma campaign *Give Me a Chance*²⁵ was welcomed by many children's organisations. The campaign aims to help dispel the myths associated with being in care and promote positive images of looked after children. However, it was recognised that to inform and change attitudes and culture, and therefore impact effectively, this work must be long term. Scottish Government's continued financial support for this work is welcomed.

²⁴ *Who Cares Scotland* (2008). *Caring About Success - Young People's Stories*.

²⁵ *Give Me a Chance Campaign* (www.give-meachancescotland.org)

Discrimination and young Gypsy/Travellers

Young Gypsy/Travellers still feel that they experience widespread prejudice and there is little evidence of any campaigns specifically aimed at addressing this discrimination. Children's organisations working directly with young Gypsy/Travellers are acutely aware of the discrimination faced on a daily basis by this community. Recent research shows that young Gypsy/Travellers are routinely discriminated against in their access to healthcare, education and safety and protection from violence.²⁶ There are however some examples of work being undertaken to support young Gypsy/Travellers to raise awareness of their needs and experiences. *respectme*, Scotland's Anti-bullying Service, have recently worked with young Gypsy/Travellers to develop anti-bullying materials and have given them the opportunity to speak at their national conference. Article 12 Scotland is supporting groups of young Gypsy/Travellers to lobby local and national Government to address law, policy and practice that doesn't currently take into account the cultural needs of the community.

²⁶ *Article 12 Scotland* (2010). *Getting It Right for Young Gypsy Travellers*.

Non Discrimination Recommendations:

Scottish Government should continue to challenge the negative portrayal of young people in the media, by supporting children-led campaigns such as “*Being Young is Not a Crime*” and “*Give Me a Chance*”;

Scottish Government should ensure that positive images of children from all backgrounds, including children with a disability and young Gypsy/Travellers, are included in reports, communications and promotional materials and should avoid the tokenistic use of marginal groups;

Children’s organisations should encourage individual media to sponsor and support initiatives that celebrate children’s achievements and contributions to society.

Case Study: *Scottish Youth Parliament – Being Young is Not a Crime*

The *Being Young is Not a Crime* campaign was inspired by a desire to address a major priority for young people – discrimination against young people. When we consulted with young people the vast majority felt that they were looked on negatively by the general public, and very negatively by the media, with a perception that they were seen as “*hoodie-wearing thugs*” and as a problem rather than part of the solution.

The campaign aimed to see young people’s largely positive contribution reflected by media coverage and society. The stated ambition was to see a situation where “*young people are portrayed fairly and accurately in the media and are viewed as positive contributors to society by the general public.*”

Being Young is Not a Crime was designed as an ‘*umbrella*’ campaign to capture many different aspects of the Scottish Youth Parliament’s work. Its three key strands were to tackle the negative portrayal of young people in the media; challenge: discriminatory policy and practice and promote positive policy and practice particularly by encouraging the involvement of young people in the creation of such policy; and to showcase positive images of young people.

The main campaign event was staged at the Scottish Youth Parliament’s National Sitting in March 2009, with the highlight being the ‘*Dunfermline Tea Party*’ in Kingsgate Shopping Centre, which directly showcased positive aspects of young people with our members introducing themselves to the public. They offered free cups of tea and a chat with an MSYP to shoppers to show off the many positive qualities that young people have that go unreported in the media. Over 100 young people took part spreading positive messages with an extremely positive response.

A sub-campaign on Votes at 16 was developed and other activities including work with young people to try create their own news reports turning negative stories into positive ones.

UN Concluding Observation

- Address UN Committee's concerns that there has been little progress in enshrining article 12 in education law and policy and that insufficient action has been taken to ensure the rights in article 12 are applied to children with disabilities;
- Promote, facilitate and implement, in legislation as well as in practice, within the family, schools and the community as well as in institutions and in administrative and judicial proceedings, the principle of respect for the views of the child.²⁷

²⁷ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No. 32, 33a.

Scottish Government Action

- Advocacy services for children and young people;
 - Participation of children and young people in schools.²⁸
-

²⁸ Scottish Government (2009). *Do the Right Thing*. Action nos. 6, 7.

Several children's organisations commented that across the voluntary and public sector there is improved understanding amongst professionals of the need to involve children in decisions that affect them. The existence of Scotland's Commissioner for Children and Young People (SCCYP) was seen as a real commitment in auditing progress in implementing the UNCRC, and the *Right Blether* as a welcome consultation into the views of children.

Concerns were raised that in many cases youth participation is only a tick box exercise and that for those who are disabled or disengaged it can be tokenistic or even non-existent. Some children's organisations stated that in their experience of providing advocacy services for young people, they found that although young people might be consulted in decisions that affect their lives, their views might not result in action due to financial considerations. The overall view was that more needs to be done to embed the right to participation on the ground in local service delivery and day-to-day practice and that Scottish Government need to pay particular attention to ensure that the views of vulnerable, less able and less engaged children are taken into account.

General

The introduction of the *Getting It Right* principle of putting the child at the centre, listening to their views and involving them in decision making is highly commendable, and is beginning to be taken on by Local Authorities. For example, the *Big Shout* is Fife's multi agency partnership approach to supporting youth participation.²⁹ It supports local and regional youth forums and pupil councils, a regional youth panel and involvement in the Children's Parliament and Scottish Youth Parliament.

²⁹ *The Big Shout* (www.thebigshout.com)

Despite areas of progress like this there was however a general feeling from children's organisations that many professionals in education, health and social work continue to exclude children from decisions which affect them.

Within education, the *Standards in Scotland's Schools Act 2000* and the *Additional Support for Learning (Scotland) Act 2004* provide a basis for making pupils' participation rights a reality. However, there is not rigorous enough monitoring or enforcement of their

³⁰ www.childrensparliament.org.uk/assets/new/pdfs/cp_gathering.pdf

³¹ *Having a Say at School* (www.havingasay-atschool.org.uk)

implementation. At a recent gathering of the Children's Parliament, 50 children reflected on their experiences and aspirations for Scotland's schools.³⁰ In broad terms they felt that children are not adequately involved in discussing aspects of teaching and learning. This view is supported by Children in Scotland and the University of Edinburgh which recently completed a 3 year study of pupil councils throughout Scotland (including primary, secondary, independent and special schools). This study revealed that nearly 90% of Scottish schools have a pupil council to give students a voice in school life, but that very few of these councils had been involved in high-level decision-making on curriculum, staffing or governance.³¹ However, the future looks brighter thanks to the *Curriculum for Excellence*, a key aspect of which is about actively involving pupils in decisions about their learning.

Some children's organisations felt that youth participation within statutory organisations tended to be sporadic and dependent on there being staff with a specific role to support children to have a say. It was seen as vital to find creative ways to enable children's meaningful involvement, and to bear in mind that some children might not be able or keen to do questionnaires or surveys. The *Getting It Right* approach clearly enshrines the child's voice at every stage of assessment and planning and where this has happened children themselves have felt that this helps with their behaviour and learning.

Disability

A common view of children's organisations is that the right of children with disabilities to express their views is poorly respected by many agencies in Scotland, particularly children with complex support needs or communication needs. It is hoped that *Getting It Right* will address this failing but there is still anecdotal evidence to suggest that children with a disability are still not being involved in planning, assessment and decision making processes.

Concerns were raised that parents of children with a disability are often excluded from decisions involving their child that other parents may take for granted. Examples were raised of children with a disability being excluded from consultations due to the additional resources and assistance needed to consult with them. Cases were cited where children with a disability had not been able to participate due to the cost of providing speech and language support or access to computers, for example.

Looked-after children

An analysis by Who Cares? Scotland looked at how well the rights of children who are looked after away from home were being respected. It is clear, from how children described specific situations and concerns they experienced that the duty to promote and protect some children's rights is sometimes falling short. Three rights stood out to be of particular concern: the rights to participation, contact with family and protection from harm. Children do not always feel listened to or have their views taken into account in all matters affecting them, both while in care and after having left care. Concerns were raised that Children's Rights Officer posts for supporting looked after children are being reduced across Scotland. This is likely to affect further how well their views are represented and heard.

Advocacy

Children's organisations expressed the view that access to advocacy is patchy, depending on where the child or young person lives and what particular needs they have. Specific concerns were expressed with regards to advocacy provision for looked-after children, children with disabilities and Gypsy/Travellers.

³² Elsley (2010). *Advocacy makes you feel brave*. Scottish Government

³³ Scottish Government (2009). *Do the Right Thing*. Action no. 6,

The publication of Scottish Government's scoping exercise *Advocacy Makes You Feel Brave*³² in January 2010 was welcomed by children's organisations. However disappointment was expressed that Scottish Government had yet to publish a response to the report's findings, nor started to "prepare a national plan of action to improve the quality, consistency and availability of advocacy support" as detailed in *Do the Right Thing*.³³

With regard to the development of the *Children's Hearings (Scotland) Bill*, children's organisations welcomed the focus on ensuring the voice of the child is heard and is central to decision-making. However children's organisations expressed disappointment that children's entitlement to advocacy support did not feature in the draft bill laid before the Scottish Parliament. It was felt that this was a lost opportunity to enshrine the right to advocacy support as a proactive and practical measure which can ensure the meaningful participation of vulnerable children in formal decisions which can have far-reaching impact on their lives.

There was a general feeling that the only way to really enshrine the participation of all children effectively into Scottish culture is to incorporate it into law. Laws such as the *Education (Additional Support for Learning) (Scotland) Act*, which places a duty on local authorities to seek and take account of children's views, are to be welcomed. However children's organisations felt that the Act was still not strong enough around participation and that the legal duties remained largely non-existent or weak.

Rec

Participation Recommendations:

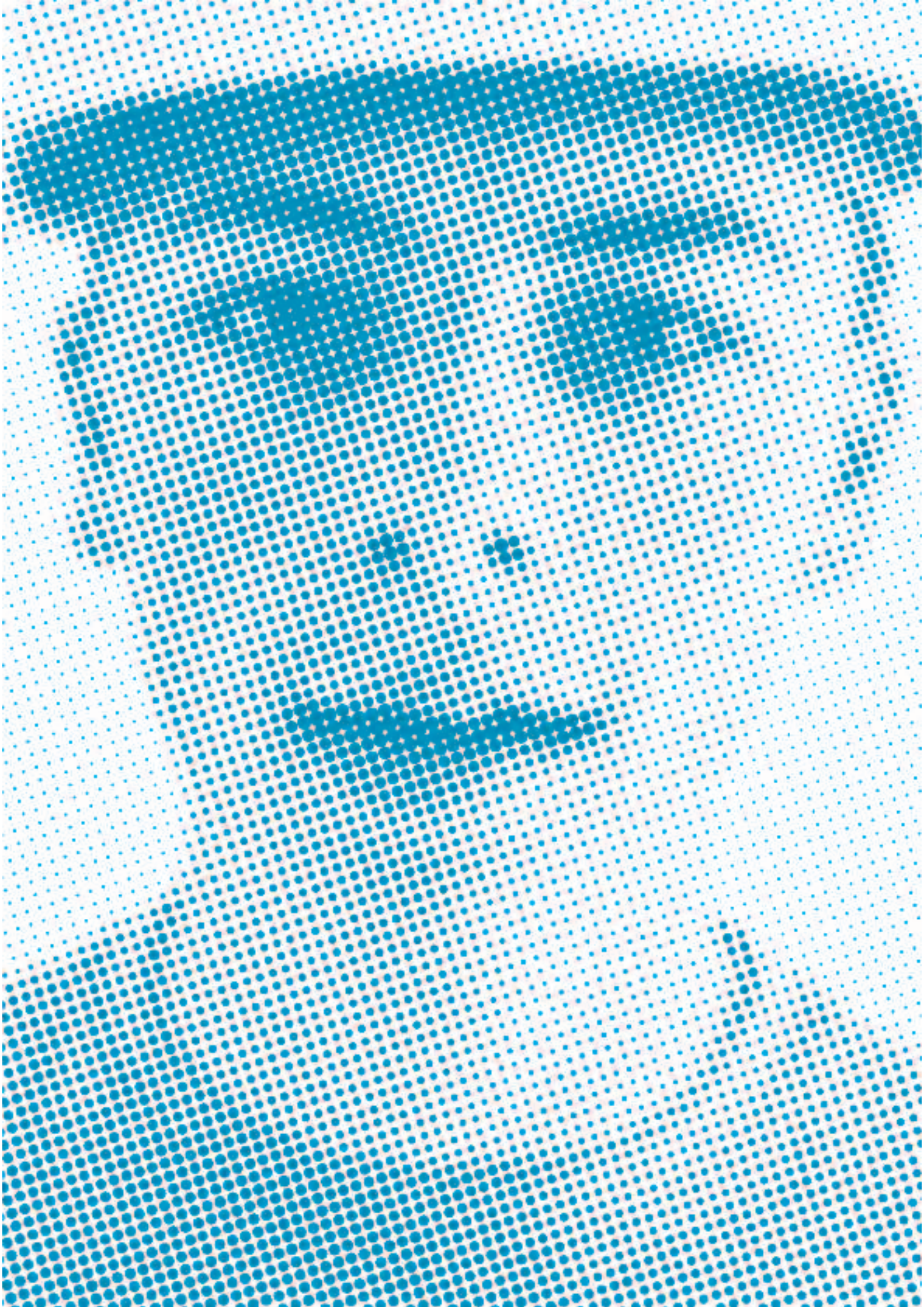
Scottish Government should promote creative ways of involving children as part of the *Getting It Right* approach to ensuring meaningful participation of all children.

Children with a disability should be given better access to the assistance they need to participate, such as speech and language support and computers.

Local authorities should ensure that any essential cuts in Child Rights Officers posts do not impact on the ability of children to meaningfully participate. Other relevant staff must receive training on children's rights.

Scottish Government should work with children to develop of standards for advocacy services.

Scottish Government should fulfil their commitment to develop national strategies for advocacy support for children.



Chapter

4

Civil rights and freedoms

UN Concluding Observations

- Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of legal defences;
- Ensure that corporal punishment is explicitly prohibited in schools and in all other institutions and forms of alternative care;
- Promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to raising public awareness of children's right to protection from all corporal punishment and to decreasing public acceptance of its use in childrearing.³⁴

³⁴ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4)*. No. 42a, b, c.

The current law in Scotland does not give children the same protection from assault as it gives to adults. Although, *Do the Right Thing* makes a commitment for Scottish Government to “promote positive forms of parenting” there is no commitment to ban the physical punishment of children.

Children’s organisations are concerned that the current acceptability of physical punishment within Scots’ law hampers attempts to protect children because it is difficult to draw the line between legal chastisement and physical abuse. This was reflected in the report into a case of serious child abuse in the Western Isles which spoke about difficulties in intervening to reduce physical punishment because the parents had a legal right to do so.³⁵ In 2008/09 over 2800 children spoke to counsellors at ChildLine Scotland about physical abuse as their main problem, representing the third most common problem children talked to the helpline about in this period.

³⁵ Social Work Inspection Agency (2005). *An inspection into the care and protection of children in Eilean Siar*.

A 2007 survey of parents³⁶ found that the vast majority (89%) preferred to discuss issues calmly with their child when issues arose. However, a fifth of parents said they had smacked or hit their child at least once or twice in the past year, while over a third (36%) had threatened to do so. Just under a third of Scottish parents believe that children should not be smacked in any circumstances, 63% believe that “smacking is not a good thing but sometimes parents need to do it” and only a small proportion (7%) think there is nothing wrong with smacking to teach a child right from wrong.

³⁶ Ipsos MORI (2007). *Telephone interviews with 1250 parents in Scotland*.

The UK is one of only five EU countries not to have introduced a ban on smacking. Since the 2007 survey, three more European Union countries have banned the corporal punishment of children.³⁷ Law reform to abolish all corporal punishment of children is now seen as an obligation under international law by both European and United Nations human rights monitoring bodies. In April 2010, the Council of Europe – which monitors compliance with the European convention on human rights – criticised the UK because it has still not banned smacking.

³⁷ Netherlands (2007), Portugal (2007), Spain (2007).

Given this change in international opinion, children’s organisations feel it is time for Scottish Government to revisit the issue of corporal punishment. Although there is a feeling that new legislation to ban corporal punishment would be a step in the right direction, concerns were raised that it could not be effectively enforced on a generation unable to conceive of how to teach their children how to behave without it. Scottish Government has so far provided very little assistance on offering alternative forms of discipline and their leaflet, *Children, Physical*

Punishment and the Law, provides little information on alternative forms of discipline.

The majority of children's organisations felt that the way forward would be for Scottish Government to fund an initiative to promote positive parenting whilst also further researching public opinion to see if the change in international opinion is also reflected in Scotland. It was hoped that given alternative forms of discipline, a ban on corporal punishment could soon be effectively enforced.



Corporal Punishment Recommendations:

Scottish Parliament should pass legislation that would make all physical assault of children unlawful, including within the family;

Scottish Government should fully resource a public information campaign to promote positive, non-violent parenting techniques and create a culture in which hitting children is never acceptable;

Scottish Government should conduct further, up-to-date research into public attitudes to corporal punishment.

UN Concluding Observation

- Assist parents/guardians in child-rearing responsibilities.³⁹

Scottish Government Action

- Promote positive forms of parenting;
- Launch a campaign, as part of the *Early Years Framework*, aimed at supporting parenting skills and promoting the value of parenting.⁴⁰

³⁹ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No. 45a

⁴⁰ Scottish Government (2009). *Do the Right Thing*. Action nos. 9, 18.

Parenting skills is beginning to become a topic for more mainstream discussion, but children's organisations felt that Scotland is still some way off ensuring people have the skills and understanding they need when they begin parenthood. A ParentLine Scotland caller survey in 2007 revealed that parents feel that external pressures such as isolation, anxiety, social pressure and confidence that are the greatest difficulties in parenting. *Ready Steady Toddler*⁴¹ and *Ready Steady Baby*⁴² were commended in terms of educating parents in child development. However, children's organisations called for a significant increase in the promotion of positive parenting on a national level that specifically promotes positive ways of rearing children and demonstrates the benefits and improved behaviour that results.

Scottish Government's *Early Years Framework*⁴³ was welcomed, although great concern was raised about how it would be affected by the current financial climate and whether "*rhetoric would become reality*". Particular concern was raised about the difficulty in moving resources from crisis intervention towards early years and early intervention and about the Framework's dependence on local authorities and other partners.

Although there is some support for parents of younger children, parents of teenagers have very few places to turn for support. Children's organisations noted that they receive many enquiries from parents of teenagers but there are very few sources of direct face to face support to signpost them to.

Many cases of good practice at a local authority level were raised and heralded as examples that should be followed. These included:

- Glasgow City Council's investment in the universal parenting programme, *Triple P*, providing access throughout the city in community venues.
- Fife Council's *Play @ Home* scheme, which helps parents give their child a healthy start in life.
- NHS Lothian and the four Lothian local authorities' investment in *Triple P* and piloting the Family Partnership Project among teenage mothers.

There were calls for these programmes to be extended, with more support for a national roll-out.

⁴¹ *Ready Steady Toddler* (www.readysteadytoddler.org.uk)

⁴² *Ready Steady Baby* (www.readysteadybaby.org.uk)

⁴³ Scottish Government (2008). *The Early Years Framework*



Positive Parenting Recommendations:

Scottish Government and Local Authorities should work together to ensure provision of a spectrum of family support services available in every community in Scotland, including the provision of positive parenting education.

Article 20:

If a child cannot be looked after by their family, governments must make sure that they are looked after properly by people who respect the child's religion, culture and language.

Chapter

5

Family environment and alternative care

UN Concluding Observations

- The too frequent move between places for children in alternative care as well as the scarce possibility of contact between them and their parents and siblings;
- Monitor status of children in kinship homes, foster care, pre-adoptive homes and other care institutions;
- Assess why so many children with disabilities are in long-term institutional care and review this;
- Initiate contact proceedings for all children separated from their family;
- Prepare children for transition to adulthood through training and education programmes.⁴⁴

⁴⁴ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No. 44f, 45e,f,g,h

⁴⁵ Scottish Government (2009). *Do the Right Thing. Action no. 11.*

Scottish Government Action

- Improve outcomes for looked-after children, including supporting corporate parenting, challenging stigma/ reducing discrimination and improving support for care leavers.⁴⁵

Progress in improving the treatment and welfare of looked-after children has been mixed. Scottish Government Ministers have made a public commitment to target support for looked after children with the stated objective being to reduce the inequalities they experience and improve their life outcomes. Scottish Government has been actively developing policies around looked after children, but in most areas, it is too early to properly assess their resulting impact.

Over the last few years it has produced a series of policy documents which focus on this specific group of children, including the corporate parenting guide *These Are Our Bairns*⁴⁶, with the overall message that “*We Can and Must Do Better*”.⁴⁷

Following the *National Residential Child Care Review* in 2009, Scottish Government set up a national Looked After Children Strategic Implementation Group to take forward key parts of this policy agenda, with a commitment to improve outcomes for both children currently looked after and those who have already left care.

Through *Getting It Right*, Scottish Government is seeking to improve outcomes for all children through a shift in culture, systems and practice which in turn puts the child at the centre and helps children to achieve their full potential.

Ongoing monitoring and evaluation of these policies is essential to assess what impact they have in reducing the number of children coming into care and improving the lives of looked after children.

Contact with family

Although family contact is an essential element of care planning for looked after children an analysis by *Who Cares? Scotland*⁴⁸ shows that contact with family has been the mostly

⁴⁶ Scottish Government (2008). *These are Our Bairns - a guide for community planning partnerships on being a good corporate parent*

⁴⁷ Scottish Executive (2007). *Looked After Children & Young People: We Can and Must Do Better*

⁴⁸ Who Cares? Scotland (2010) *Get It Right Now, Annual Review 2009-10 and Who Cares? Scotland (2009) Reaching Higher, Annual Review 2008-09*

commonly cited issue among looked-after children for the past two years. Distance, staff shortages, slow decision-making and logistics were all stated as obstacles that prevent looked after children from being able to see siblings placed separately across the country. Children want more support to maintain family ties, including more contact, unsupervised contact or an improved environment for their visit.

Care placements and planning

Care placements and care planning more generally was the second top concern for children in 2009 to 2010 in the Who Cares? Scotland analysis. Looked after children do not always get a placement that matches their specific needs and may be far from family and familiar surroundings. Many reported feeling uncertainty about the future, making them anxious, and affecting their behaviour, education and everyday life.

Children's organisations reported that looked after children were specifically asking for support to challenge placement decisions and for greater involvement and consultation in any placement moves.

Transition to adulthood

When children leave care, support can be inadequate. Research shows that many young people in Scotland are leaving care aged 16 or 17 and are ill-prepared to cope with the challenges facing them.⁴⁹ Problems include getting into rent arrears, becoming involved with drugs/alcohol, difficulties with neighbours, threat of eviction which sometimes leads to homelessness, and difficulties sustaining education. The Who Cares? Scotland analysis shows that the prospect and reality of leaving care is a source of acute anxiety for many.

Although all looked after young people should have a *Pathway Plan* to identify training and education needs in relation to living skills, their plans are not always completed until after their move to independence. Many young people feel unprepared to leave care and do not fully understand the options available to them. Children's organisations report of inconsistent use and understanding of *Pathway Planning*, and significant differences in how throughcare and aftercare support and services are provided between local authorities

⁴⁹ Scotland's Commissioner for Children and Young People (2009). *Sweet Sixteen - Is Life Any Sweeter?*

Rec

Looked After Children Recommendations:

Scottish Government should put in place a framework to enable the ongoing monitoring and evaluation of policies affecting looked-after children to see what impact have in reducing the number of children coming into care, and improving the lives of looked after children;

Scottish Government should provide better support to improve contact proceedings for children separated from their family;

Scottish Government should ensure better involvement of looked after children in placement decisions and moves;

Scottish Government should initiate training to address the inconsistent use and understanding of *Pathway Planning* within local authorities;

A consistent, effective approach to throughcare and aftercare support should be applied throughout local authorities.

Scottish Government Action

- Improve support for young carers so they can become successful learners, confident individuals, effective contributors and responsible citizens.⁵⁰

⁵⁰ Scottish Government (2009). *Do the Right Thing*. Action no. 10.

Issues affecting young carers were not specifically raised in the UN Committee's *Concluding Observations*. However, following concerns raised by children's organisations, Scottish Government included an action for young carers in *Do the Right Thing*. This specific focus on young carers was widely welcomed by children's organisations.

Children's organisations share a concern that there are still not the specialist or mainstream human and financial resources available to meet the needs of young carers or of the professionals working with them. Young carers often remain hidden from mainstream support services and their right to education, participation, play and even healthcare can often be compromised.

Community care packages still rely on young carers taking on additional responsibilities, yet the young carers themselves are often excluded from discussions and are not involved in the decisions that affect them. Anecdotal cases were stated of young carers in education being given part-time timetables if their circumstances were deemed to be "difficult to manage", and of being pressured to leave full-time education early to "help them cope".

⁵¹ Scottish Government (2010) *Getting it Right for Young Carers - Strategy for Scotland 2010-2015*

Children's organisations welcomed Scottish Government's young carers' strategy for Scotland, *Getting it Right for Young Carers*⁵¹, and hope it will help to ensure that the specialist and mainstream resources needed by young carers are soon in place.

Rec

Young Carers Recommendations:

Scottish Government should prioritise the actions outlined in *Getting It Right for Young Carers* to inform the development of enhanced provision of dedicated services for young carers and increase capacity and awareness within mainstream services.

UN Concluding Observations

- Establish mechanisms for monitoring the number of cases and the extent of violence, sexual abuse, neglect, maltreatment or exploitation, including within the family, in schools and in institutional or other care.
- Ensure professionals working with children are trained in their obligations to report and take appropriate action in suspected domestic abuse cases affecting children.⁵²

⁵² Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4)*. No. 51a, b.

Scottish Government Action

- Development of improved systems for collating and understanding information relating to the neglect and abuse of children.⁵³

⁵³ Scottish Government (2009). *Do the Right Thing*. Action no. 20.

Although children's organisations reported seeing an improvement in child protection awareness, particularly through *Getting It Right*, police and health initiatives, it was felt that a lot more could be done. Calls were made for the child protection system to be more about the child and their experience of it.

It was felt that Scottish Government's existing mechanisms for monitoring the number of cases and the extent of violence, sexual abuse, neglect, maltreatment or exploitation are not sufficient. For example, the Scottish Crime Survey does not ask children or young people their experiences of violence and there are significant gaps around recording where alcohol or drugs have played a role in child protection cases.

Examples of good practice were given, such as a multi-agency approach to domestic abuse in the Scottish Borders which includes ensuring greater awareness of the impacts on children and ensuring that they are provided with support. Within Glasgow there exists a domestic abuse court which fast tracks cases and works in close partnership with victims and children by providing advocacy support. This service is not available across the country. Dependent upon which local area, some child protection committees have mandatory awareness-raising in domestic abuse for key staff.

⁵⁴ Scottish Government (2008). *National Domestic Abuse Delivery Plan for Children and Young People*

Despite such areas of success there is still a long way to go in terms of ensuring professionals are trained appropriately. The aims of the *National Domestic Abuse Delivery Plan*⁵⁴ have been welcomed, although concerns were raised about the continuity of funding after March 2011.

Rec

Child Protection Recommendations:

Scottish Government should prioritise their work to develop improved systems for collating and understanding information relating to the neglect and abuse of children and include guidance and training to ensure effective use of procedures by professionals to reduce risk of poor practice.



Chapter

6

Basic health and welfare

UN Concluding Observations

- Ensure legislation providing protection for persons with disabilities, as well as programmes and services for children with disabilities, are effectively implemented;
- Provide training for professionals working with children with disabilities, such as medical, paramedical and related personnel, teachers and social workers;
- Develop a comprehensive national strategy for the inclusion of children with disabilities in society;
- Undertake awareness-raising campaigns on the rights and special needs of children with disabilities, encourage their inclusion in society and prevent discrimination and institutionalization.⁵⁵

⁵⁵ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No. 53a,b,c,d.

⁵⁶ Scottish Government (2009). *Do the Right Thing*. Action no. 14.

Scottish Government Action

- Improve outcomes for children with disabilities, including work on promoting flexible support for families, improving children's participation and ensuring that their additional support needs in school are met.⁵⁶

Serious concern was expressed by children's organisations about the ability of children with disabilities to enjoy their full rights under the UNCRC. For example, children's organisations cited cases where children absent from school due to sickness are not able to access their rights to an education on an equal footing with their peers in other local authority areas. Another case brought to our attention involved a young person with Crohn's disease who was prevented from taking part in a school trip because of his disability. Furthermore, it has been raised numerous times that many children with disabilities are not enjoying their right to participation under Article 12. One organisation highlighted a case where the parents of a disabled child had been viewed as not accepting their child's disability because they encouraged their participation in mainstream life.

There is increasing concern about current cuts in health services to children and in particular to vulnerable children, for example nursing care at home for children with a disability. Examples were given of parents of children with a disability being refused services on the grounds of a lack of funding, including appropriate incontinence products not being provided, children not being able to access to toileting, and home schooling not being provided for those too ill to attend school.

For Scotland's Disabled Children has revealed that funding allocated by the Scottish Government to local authorities to enhance the lives of children with a disability has not been used for that purpose.⁵⁷ Outcomes for children with disabilities are still very poor in very many local authorities and in many cases are not measured at all. Not enough action is currently being taken at a local level to prioritise children with disabilities in Single Outcome Agreements.

Children's organisations are disappointed that Scottish Government have not directly addressed the UN's concluding observation to develop a "comprehensive national strategy" for the inclusion of children with disabilities in society. It is only through such a strategy that the needs of children with disabilities can be addressed. A national strategy would help to

⁵⁷ for Scotland's Disabled Children (2009) *Missing Millions*

ensure that regulations are interpreted to the same standard across local authorities and health trusts. One welcome first step towards this goal is the commitment made by the Minister for Children and Early Years to lead a strategic review of how Scotland supports children with a disability and their families.

The issue of the training of healthcare and education professionals is raised repeatedly. The Scottish Government's action plan falls short of the UN Concluding Observation to "provide training for professionals working with children with disabilities". Although on a local basis some healthcare trusts are working on raising the profile of children's rights Scotland needs a coordinated approach to training all professionals working with children. Children's organisations highlighted certain professions where further training on children's rights was required, including healthcare professionals working in adult wards which admit children and education professionals working with children with a disability.

Action for Sick Children Scotland uses the EACH Charter to promote the healthcare rights of children and young people.⁵⁸ Children's organisations welcome Scottish Government's recommendation of the Charter in 'Delivering a Healthy Future: An Action Framework for Children and young People in Scotland'⁵⁹ as a standard against which NHS Boards can assess their Child Health Services. For Scotland's Disabled Children will be launching Charter for Scotland's Disabled Children in September 2010 which commit local authorities and health boards to meet all their statutory obligations towards children with a disability and their families. The EACH Charter and Charter for Scotland's Disabled Children will be key in addressing the issues faced by children with a disability raised in this report. Children's organisations would like to urge local authorities and health boards to sign up to both Charters.

⁵⁸ European Association for Children in Hospital (2001). EACH Charter

⁵⁹ Scottish Executive (2007) Delivering a Healthy Future - An Action Framework for Children and Young People's Health in Scotland

Rec

Children with Disabilities Recommendations:

Scottish Government should work with relevant bodies to co-ordinate a national child rights training programme for professionals working with children with disabilities;

The fundamental strategic review of how children with a disability are supported should culminate in the production of a national strategy for children with disabilities;

Local authorities and health boards should sign up to the EACH Charter and the for Scotland's Disabled Children Charter to show their commitment to meet their obligations to children with a disability under the UNCRC.

Case Study: Charter for Scotland's Disabled Children

for Scotland's Disabled Children (fSDC) is a coalition campaigning for rights and justice for disabled children and young people. Its liaison project, which is funded by the Scottish Government, aims to turn the good intentions of government policy and legislation into better lives for children, young people and their families. The coalition has 55 member organisations and over 1000 supporters.

The fSDC liaison project has recently worked with local authorities and health boards to develop a Charter for Scotland's Disabled Children. From September 2010, local authorities and health boards will be invited to sign up to the Charter and commit to meeting all their statutory obligations towards children with a disability and their families.

The Charter will help to address concerns raised by children's organisations in the *State of Children's Rights* report. Among its 10 commitments, it specifically includes:

- Putting children with a disability at the centre of designing, planning and delivering services;
- Knowing how many children with a disability live in the area and using this information to plan and design services;
- Ensuring all staff receive disability equality training and have the appropriate competences to work with children with a disability.

In an analysis of responses from professionals at *Getting It Right for Every Disabled Child* conference held in Stirling, a traffic light system was used to determine progress on meeting the ten commitments: red = not doing it at all; orange = partially doing or working towards; green = doing it. The following responses were received:

"We put the disabled child or young person at the centre of designing, planning and delivering services for him or her." Mostly green, some oranges and no reds.

"We know how many disabled children and young people live in our area and use this knowledge when planning and designing services." Mostly red or orange.

"All our staff receive disability equality training and relevant staff have the appropriate specialist training and core competencies to work with disabled children." No reds, more oranges than greens.

The Charter will be a key way of ensuring services for children with a disability take full account of their rights under the UNCRC, and that the standard of services for children with disability are acceptable. Local authorities and health boards are urged to sign up to the Charter as soon as it is launched in September.

6.2

Child Poverty

UN Concluding Observations

- In accordance with article 27 of the Convention, adopt and adequately implement legislation aimed at achieving the target of ending child poverty by 2020, establishing measurable indicators for their achievement.⁶⁰

Scottish Government Action

- Tackle child poverty, for example through expanding eligibility for free school meals, helping families claim the benefits and tax credits they are entitled to and increasing financial support to school leavers.⁶¹

⁶⁰ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4)*. No. 65a

⁶¹ Scottish Government (2009). *Do the Right Thing*. Action no. 17.

Research by Save the Children reveals that 95,000 children across Scotland live in severe poverty, this being 9% of all Scottish children.⁶² The research highlights that progress on reducing the number of children living in severe poverty in Scotland is not being made and that severe child poverty remains a major concern.

Children’s organisations welcome the UK Government’s *Child Poverty Act 2010* and that it contains duties on the Scottish Government to act to end child poverty. Giving legal force to the commitment to eradicate child poverty by 2020 is a major opportunity to shape and drive policy. The Act will compel current and successive Scottish and UK Governments to account for what they are doing to achieve the goal of eradicating child poverty and make tackling child poverty a priority. Children’s organisations acknowledge that legislation alone will not produce the action required to eradicate child poverty. The law needs to be supported by policy and resources.

The *Child Poverty Strategy* provides an opportunity to review and build on the Scottish Government’s current approach and address any gaps. Key gaps raised by children’s organisations include:

- Providing available, flexible and affordable childcare;
- Reducing educational inequalities;
- Creating universal free school meals for all children, rather than just through “*expanding eligibility*” as detailed in the action plan. This would help many families and remove one layer of stigma from their lives.

Children’s organisations welcome the Scottish Government’s commitment in the action plan to increase benefits advice and uptake to ensure families do not miss out on the benefits and tax credits to which they are entitled. It is essential that this advice also empowers families to challenge poor decision-making and administration relating to claims.

The impact of the *Child Poverty Act 2010* is limited by the Concordat. Scottish local authorities and their partners are not legally required to take action to eradicate child poverty. Children’s organisations believe that statutory duties would be the most efficient way of ensuring local authorities and their community planning partnerships play an active role and drive progress to end child poverty at local level. The Concordat will mean that the monitoring progress at a local – and thus national – level will be difficult. Experience has shown that the *National Performance Framework* and *Single Outcome Agreements* are ineffective at monitoring children’s rights issues and there is concern that local authorities will not be accountable for their part in ending child poverty in Scotland.

Rec

Child Poverty Recommendations:

The drafting of the *Child Poverty Strategy* should be used as an opportunity to review and build on the Scottish Government’s current approach and address any gaps identified NGOs;

Scottish Government should introduce statutory duties on local authorities and their community planning partnerships to ensure that child poverty is tackled at a local level.

Article 31:

Every child has the right to relax, play and join in a wide range of cultural and leisure activities.

Chapter

7

Education, leisure and cultural activities

UN Concluding Observations

- Strengthen efforts to reduce the effects that children's social background has on their achievement in school;
- Invest additional resources to ensure the rights of all children to a truly inclusive education, including those from disadvantaged, marginalised and school distant groups;
- Ensure that all children out of school get alternative quality education;
- Intensify efforts to tackle bullying and violence in schools, including through teaching human rights, peace and tolerance.⁶³

⁶³ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4)*. No. 67a,b,c,f.

Scottish Government Action

- Support the delivery of the *Curriculum for Excellence* Education and wellbeing experiences and outcomes.⁶⁴

⁶⁴ Scottish Government (2009). *Do the Right Thing*. Action no. 16.

Overall, children's organisations think that work with Learning and Teaching Scotland on GLOW, *Curriculum for Excellence* and the *Outdoor Learning Framework* is good and supporting real changes in schools. However, concerns were raised that GLOW is not accessible enough to the voluntary sector.

Social background

Children's organisations feel that the Scottish Government action plan does not go far enough in setting realistic actions as to how social background effects a child's achievement in school. Success is patchy, and tends depend on the ethos and culture of the school, local authority and in terms of what local voluntary sector provision might be available.

Some children's organisations put a particular focus in their response on the effects that coming from a Gypsy/Traveller background has on achievement. It is increasingly the case that anecdotal reports from staff working with Gypsy/Traveller families find that the full spectrum of additional support needs are not being recognised by education authorities and that the service is not being adequately resourced to ensure a Gypsy/Traveller child's right to an education (i.e. one considered by families to be appropriate and relevant to their child's needs). Research carried out up to 2006 suggests that children being educated outwith school settings are unlikely to experience a quality education.⁶⁵ Although *Curriculum for Excellence* is welcomed by designated teachers of Gypsy/Traveller children, staff capacity is under considerable strain. Anecdotal evidence describes some education authorities as limiting their responsibility to those children on school rolls and therefore school distant populations may well find that the little they have received in the past will be further limited in the times to come.

⁶⁵ Article 12 (2010). *Getting It Right for Young Gypsy Travellers*

Additional Support Needs

The *Additional Support for Learning (ASL) Act* is commended by a number of children's organisations as being an excellent act for children, made even better by recent amendments to it. However, the issue of patchy implementation across Scotland arises again, due to

central Government's inability to hold local authorities to account as a result of the Concordat. Implementation problems have been exacerbated by budget cuts, both current and looming.

Although the Act provides for the additional support needs for children in school, several children's organisations questioned the extent to which these are adequately met.

Scottish Government was commended by children's organisations for funding Children in Scotland's service, Enquire, which provides information and advice about children's rights under the ASL Act.

Tackling bullying and violence in schools

Scottish Government was commended for providing funding to respectme, Scotland's Anti-bullying Service. respectme's service is embedded in a children's rights approach and has been externally evaluated as being "robust and credible".⁶⁶ Scottish Government was also commended for supporting the Scottish Anti-Bullying Steering Group which includes a range of voluntary sector representation and is working on a National Approach on bullying.

⁶⁶ McKenna & Holland (2010). *respectme External Evaluation* (unpublished)



Education Recommendations:

Scottish Government should target resources to ensure that *Curriculum for Excellence* and *Getting It Right* are effective in addressing inequalities in the educational attainment of children from disadvantaged backgrounds, including those living in poverty, looked after children, Gypsy/Traveller children, children with disabilities and those with additional support needs.

7.2

Play

UN Concluding Observations

- Strengthen efforts to guarantee the right of the child to rest and leisure, engagement in play and recreational activities appropriate to their age and free participation in cultural life and the arts. The State party should pay particular attention to provide children, including those with disabilities, with adequate and accessible playground spaces to exercise their play and leisure activities.⁶⁷

⁶⁷ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). No. 69

Scottish Government Action

- Continue to work with Inspiring Scotland on a possible venture philanthropy fund to support play; in partnership with the Care Commission, Play Scotland and the police, lead a debate on understanding and balancing the benefits of play against risk.⁶⁸

⁶⁸ Scottish Government (2009). *Do the Right Thing*. Action no. 18.

⁶⁹ Russell and Lester (2009). *Children's Right to Play: an examination of the importance of play in the lives of children worldwide*

Research shows that play does improve outcomes for children and has an important role in increasing a child's quality of life.⁶⁹ However, concerns about having something to do and being able to play safely in public spaces was raised a number of times by children's organisations. It has been raised by children through countless consultations and Scotland still has a long way to go. The Children's Parliament is currently working with International Play Association Scotland to capture children's views on their right to play and what adults need to do to help this happen.

Concerns were raised that although play does feature significantly in the Scottish Government's *Early Years Framework*, there are few mechanisms in place to actually implement the aspirations.

Disappointment was expressed that the Inspiring Scotland venture philanthropy fund referred to in *Do the Right Thing* to support play seems to have been used to improve the infrastructure of Inspiring Scotland and that a low number of play projects, mainly in the west of Scotland, have been supported. The short-term funding provided has resulted in a lack of sustainability among play projects.

⁷⁰ Go Play Fund (www.inspiringscotland.org.uk/home/go-play)

Children's organisations felt that the *Go Play*⁷⁰ fund was based on poor quality initial research. Geographic groupings were considered but not the groups of children likely to suffer from least access to play therefore particularly excluded groups, including children with a disability, were not prioritised. There are very few places which can facilitate play for children with disabilities, particularly for children with the most profound additional support needs, except in some special schools and particular organisations such as The Yard Adventure Centre in Edinburgh; Buddies in Glasgow; Capability Scotland; and some special schools.

Rec

Play Recommendations:

Scottish Government should put in place mechanisms to ensure the commitments to play in the *Early Years Framework* are effectively implemented.

Scottish Government should provide support to play projects for children with the most profound additional support needs.

Case Study: *Buddies Club Playscheme Glasgow*

“It should be noted that children at play are not playing about; their games should be seen as their most serious minded activity.”

Montaigne 1533-92

Buddies Club Playscheme was started by a group of parents in October 1994. They all had children affected by disability who had no social outlets. What started as a Sunday Club run by volunteers in a church hall now has After School (5 days per week), Evening Youth Clubs, Holiday playschemes, community outreach and the original Sunday club. All of these are for children affected by disability; many have very complex needs. Buddies now has a large, well-trained, staff team to support their needs and aspirations. Immense support is also given to ‘the whole family’.

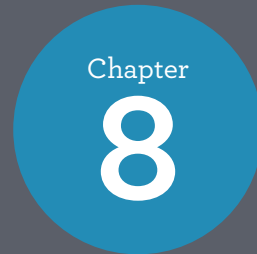
Buddies gives children respite from parents and a chance to make friends and do ordinary things. It is not normal for children to spend all their lives with their parents. Buddies is very much their club. This sense of belonging benefits the whole family by giving a small sense of “normality” to everyone’s lives.

If asked “*What would you do if you did not attend Buddies?*” children always give the reply “*NOTHING!!*” Children are always very excited about going to Buddies and the proof of need and success is shown in the numbers who have been with Buddies since October 1994 and are now in their twenties. Without access to social outlets these children would be prisoners in their homes.

Buddies is finding it increasing difficult to meet the rising demand for its service, and its waiting list has doubled in recent years. Buddies receives no direct funding from the Scottish Government and was unsuccessful in its application to the *Go Play* fund. Although Glasgow City Council has been very supportive with consistent grants over the past four years, social work funding has been reduced over 3 years by 60%.

It is clear from the growing waiting list that not all children with significant needs are able to realise their right to play (UNCRC Articles 31 and 23). If funding continues to be cut, Buddies’ services could be in jeopardy and some of the most vulnerable children in Glasgow will be further excluded.





Special protection measures

UN Concluding Observations

- Address concerns, as also acknowledged by the Human Rights Committee, that asylum-seeking children continue to be detained, including those undergoing an age assessment, who may be kept in detention for weeks until the assessment is completed;
- Address concerns that there is a lack of data on the number of children seeking asylum;
- Address concerns that there is no independent oversight mechanism, such as a guardianship system, for an assessment of reception conditions for unaccompanied children who have to be returned;
- Intensify efforts to ensure that detention of asylum-seeking and migrant children is always used as a measure of last resort and for the shortest appropriate period of time, in compliance with article 37(b);
- Consider the appointment of guardians for unaccompanied asylum seekers and migrant children;
- Provide disaggregated statistical data on the number of children seeking asylum, including those whose age is disputed;
- Give the benefit of the doubt in age disputed cases of unaccompanied minors seeking asylum, and seek experts' guidance on how to determine age.⁷¹

⁷¹ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* (CRC/C/GBR/CO/4). Nos. 70a,b,c, 71,a,c,d,e

⁷² Scottish Government (2009). *Do the Right Thing*. Action no. 19.

Scottish Government Action

- Better support for unaccompanied asylum seeking children.⁷²

Detention

The recent announcement by the new UK Government that they are committed to ending the detention of children for immigration purposes has been welcomed by children's organisations. A subsequent ministerial announcement on 19 May 2010 stated that children would no longer be detained at the Dungavel House Immigration Removal Centre in Scotland with immediate effect. Whilst positive, this means that children and their parents will continue to be forced to undertake long stressful journeys from Scotland to be detained in England until the UK Government meets its commitment to end the detention of children.

The UK Government has been conducting a review of the detention of children and families for immigration purposes and many children's organisations have submitted responses with results expected to be announced in autumn 2010 and any changes implemented by March 2011.

The Scottish Government has led, developed and funded the Family Returns Pilot with Glasgow City Council and the UK Border Agency to test what they hope will be a more humane removal process for children and families in Scotland. The project is its infancy and is still ongoing. Evaluation reports will be published in 2011 which will enable children's organisations and Scottish Government to fully assess the success of the pilot.

Legal representation

There is ongoing concern surrounding the availability of quality and timely legal representation for unaccompanied asylum seeking children, many of whom may have been trafficked, and for asylum seeking families. Children's organisations are still experiencing frustrations that children may not be made fully aware of the realities of the asylum system at the outset and are not fully empowered to actively participate in their claims for asylum in Scotland through a lack of understanding.

Age assessment

Young people who arrive in the UK and claim asylum stating they are under 18 years of age are often age disputed by immigration authorities and treated as adults. The process adopted to assess a young person's age is of huge concern in that there is no consistent process around how this is conducted by social workers. There is no guidance on age assessments specific to Scotland. This is imperative because of the different child specific legal architecture in Scotland. There needs to be a thorough review of age assessment practice and procedure. This must include consultation with experts, including NGOs, and the production of guidance to ensure consistent practice, ongoing training and a thorough monitoring procedure. Scottish Government must ensure age assessment procedures are embedded in a holistic assessment consistent with *Getting It Right* and rolled out across Scotland.

Data collection

There remains a grave lack of knowledge into how many young people are in Scotland seeking asylum. This includes a lack of knowledge about the profile and locus of separated and undocumented children in Scotland. The centralised statistics used are often inconsistent and inaccurate, much of it is simply guess work.

It is essential that Scottish Government is able to collate and disseminate Scottish-specific statistics on looked after and accommodated young asylum claimants to ensure there are adequate specialist resources made available to them. This must include ensuring that all separated / trafficked children are known of, so they can be protected and given access to relevant services appropriate to their needs.

Guardianship

The Scottish Government was commended for its support of the Guardianship Project, jointly managed by the Scottish Refugee Council and Aberlour Childcare Trust. The Scottish specific model of independent advocacy for separated children aims to help separated children navigate the complex paths of immigration and welfare processes. The Pilot Project was launched in June 2010 and will be operational in August 2010. Scottish Government has played an instrumental role in setting up this pilot, actively encouraging its development and sitting on the Advisory Panel.

Children's organisations feel that the Guardianship Project will naturally lead to greater insight into the locus and profile of separated children in Scotland. However, children's organisations were cautious to herald this as being a long-lasting success as the pilot project is limited and will not cover all areas of Scotland.

Asylum and Refugee Children Recommendations:

UK Government should immediately end the detention of all asylum seeking children;

Scottish Government should ensure the availability of appropriately trained high quality legal representation in all dispersal areas;

Scottish Government should ensure that Scottish-specific age assessment tools, templates, guidance, procedures are embedded in a holistic assessment consistent with *Getting It Right*; and that Scottish specific training is widely available to ensure consistent practice across Scotland;

Scottish Government should collate and disseminate Scottish-specific statistics on young asylum claimants to ensure there are adequate specialist resources made available to them;

Scottish Government should continue its welcome support for the Guardianship Project.

Case Study: Guardianship Project

In response to the UNCRC's Concluding Observation in 2008 to "Consider the appointment of guardians to unaccompanied asylum seekers and migrant children" the Scottish Government committed themselves to "*Work with the Scottish Refugee Council and other local partners to develop a pilot scheme to provide independent advocacy support to separated children.*"⁷³

⁷³ Scottish Government (2009). *Do the Right Thing*. Action no. 19.

Over several months in 2009 the Scottish Government worked closely with Scottish Refugee Council, who entered a joint partnership with Aberlour Child Care Trust, to develop a Scottish specific model of independent advocacy of guardianship with the aim of helping separated children navigate the complex paths of immigration and welfare processes. The pilot is the first of its kind in the UK and has generated considerable attention in Scotland, the rest of the UK and Europe and has received backing from the UK Border Agency and Glasgow City Council. Young separated children including victims of child trafficking were involved in all aspects of developing this project from an initial consultation evening event held by the Scottish Government to recruiting the guardians. The Scottish Guardianship Pilot Project was launched on 9 June by Cabinet Minister Mike Russell and was made possible by generous funding from the Scottish Government, the Big Lottery Fund, the Paul Hamlyn Foundation and the Diana Fund.

This is one example of where the Scottish Government have shown commitment to improving the lives and rights of this very vulnerable group of children.

UN Concluding Observations

- Raise the minimum age of criminal responsibility in accordance with the Committee's general comment No. 10, and notably its paragraphs 32 and 33;
- Ensure that children in conflict with the law are always dealt with in the juvenile justice system and never tried as adults in ordinary courts, irrespective of the gravity of the crime they are charged with.⁷⁴

⁷⁴ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4)*. Nos. 78a,c.

⁷⁵ Scottish Government (2009). *Do the Right Thing, Action no. 21*.

Scottish Government Action

- 16-17 year olds in the youth justice system – deliver on the priorities of Preventing Offending by Young People: A Framework for Action.⁷⁵

The raising of the age of criminal prosecution from eight years to twelve years old in September 2009 was welcomed. However, concerns were expressed about the age of criminal responsibility remaining at eight years old. This results in children being left with criminal records from their childhood that affect the rest of their lives. Children may accept guilt to an offence at the age of 9 years old without realising what implications this may have in their later life.

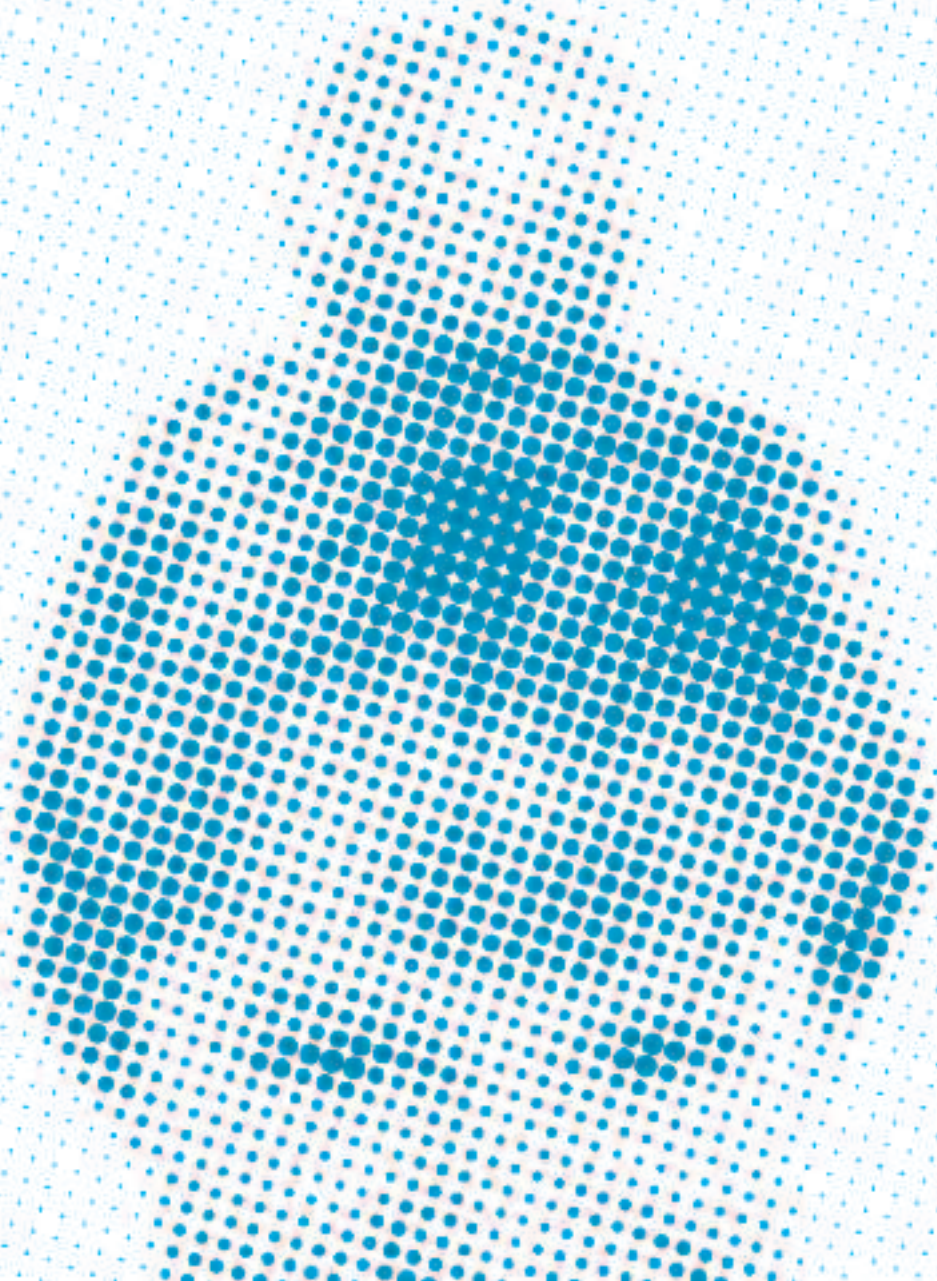
On the whole, the Children's Hearings System was well regarded by children's organisations. Concerns were raised that a child as young as eight years old could still theoretically be tried in an adult court for some offences.

Rec

Children in Conflict with the Law Recommendations:

The minimum age of criminal responsibility should be raised considerably.

No child under the age of 18 should be tried as an adult in Scotland



Chapter

9

Summary of Recommendations

Summary of Recommendations

Overall Recommendations:

- Scottish and UK Government should take measures to bring all legislation in line with the UNCRC through its incorporation into UK and Scots Law. Without incorporation, the Concordat will continue to cause difficulties in ensuring the effective local implementation of the UNCRC across Scotland;
- Scottish Government must properly resource and co-ordinate efforts to ensure the actions identified in “*Do the Right Thing*” are properly implemented across Government departments and local authorities and ensure their good intentions are turned into realities;
- Whilst it is recognised that difficult decisions have to be made in the current financial climate, Scottish Government should ensure that its commitment to ensuring the rights of children and young people is stronger than ever. Particular attention should be paid to enabling the most vulnerable children and young people to enjoy their rights, including children with a disability, Gypsy/Traveller children, young carers and looked after children.

UNCRC Incorporation Recommendations:

- Scottish and UK Government should take measures to bring all legislation in line with the UNCRC through its incorporation into UK and Scots Law.

UNCRC Implementation Recommendations:

- Together should initiate an annual Scottish Parliament debate on UNCRC implementation to ensure Scottish Government is accountable to actions outlined in *Do the Right Thing*;
- Scottish Government should explore how budgets can be disaggregated by the category of 'children';
- Scottish Government should ensure that effective evaluation frameworks are used in the production of the interim progress report for *Do the Right Thing 2012*;
- The Child Rights Team within Scottish Government should be properly resourced to enable improved coordination of actions across Government departments.

Child Rights Impact Assessment Recommendations:

- Scottish Government should make Child Rights Impact Assessments a statutory requirement and encourage strong leadership from senior officials to ensure children’s rights are integral to all policy-making at a local and national level;
- SCCYP should pro-actively engage with policy-makers at all levels to ensure children’s rights are integral to all policy-making. This should include looking at the effectiveness of the SCCYP Child Rights Impact Assessment tool and ensuring that it is useful, necessary and to be used as a matter of course.

UNCRC Training Recommendations:

- Scottish Government should put in place a comprehensive strategy to take forward its commitment to work with partners to promote and raise awareness of the UNCRC among professionals working with children;
- Scottish Government, SCCYP and Together should identify professional training bodies independent of Scottish Government and promote the training of professionals working with children and families;
- Together should continue to develop, expand and raise awareness of its online children's rights resource library at www.togetherscotland.org.uk .

Non Discrimination Recommendations:

- Scottish Government should continue to challenge the negative portrayal of young people in the media, by supporting children-led campaigns such as "*Being Young is Not a Crime*" and "*Give Me a Chance*";
- Scottish Government should ensure that positive images of children from all backgrounds, including children with a disability and young Gypsy/Travellers, are included in reports, communications and promotional materials and should avoid the tokenistic use of marginal groups;
- Children's organisations should encourage individual media to sponsor and support initiatives that celebrate children's achievements and contributions to society.

Participation Recommendations:

- Scottish Government should promote creative ways of involving children as part of the *Getting It Right* approach to ensuring meaningful participation of all children.
- Children with a disability should be given better access to the assistance they need to participate, such as speech and language support and computers.
- Local authorities should ensure that any essential cuts in Child Rights Officers posts do not impact on the ability of children to meaningfully participate. Other relevant staff must receive training on children's rights.
- Scottish Government should work with children to develop of standards for advocacy services.
- Scottish Government should fulfil their commitment to develop national strategies for advocacy support for children.

Corporal Punishment Recommendations:

- Scottish Parliament should pass legislation that would make all physical assault of children unlawful, including within the family;
- Scottish Government should fully resource a public information campaign to promote positive, non-violent parenting techniques and create a culture in which hitting children is never acceptable;
- Scottish Government should conduct further, up-to-date research into public attitudes to corporal punishment.

Positive Parenting Recommendations:

- Scottish Government and Local Authorities should work together to ensure provision of a spectrum of family support services available in every community in Scotland, including the provision of positive parenting education.

Looked After Children Recommendations:

- Scottish Government should put in place a framework to enable the ongoing monitoring and evaluation of policies affecting looked-after children to see what impact have in reducing the number of children coming into care, and improving the lives of looked after children;
- Scottish Government should provide better support to improve contact proceedings for children separated from their family;
- Scottish Government should ensure better involvement of looked after children in placement decisions and moves;
- Scottish Government should initiate training to address the inconsistent use and understanding of *Pathway Planning* within local authorities;
- A consistent, effective approach to throughcare and aftercare support should be applied throughout local authorities.

Young Carers Recommendations:

- Scottish Government should prioritise the actions outlined in *Getting It Right for Young Carers* to inform the development of enhanced provision of dedicated services for young carers and increase capacity and awareness within mainstream services.

Child Protection Recommendations:

- Scottish Government should prioritise their work to develop improved systems for collating and understanding information relating to the neglect and abuse of children and include guidance and training to ensure effective use of procedures by professionals to reduce risk of poor practice.

Children with Disabilities Recommendations:

- Scottish Government should work with relevant bodies to co-ordinate a national child rights training programme for professionals working with children with disabilities;
- The fundamental strategic review of how children with a disability are supported should culminate in the production of a national strategy for children with disabilities;
- Local authorities and health boards should sign up to the EACH Charter and the for Scotland's Disabled Children Charter to show their commitment to meet their obligations to children with a disability under the UNCRC.

Child Poverty Recommendations:

- The drafting of the *Child Poverty Strategy* should be used as an opportunity to review and build on the Scottish Government's current approach and address any gaps identified NGOs;
- Scottish Government should introduce statutory duties on local authorities and their community planning partnerships to ensure that child poverty is tackled at a local level.

Education Recommendations:

- Scottish Government should target resources to ensure that *Curriculum for Excellence* and *Getting it Right* are effective in addressing inequalities in the educational attainment of children from disadvantaged backgrounds, including those living in poverty, looked after children, Gypsy/Traveller children, children with disabilities and those with additional support needs.

Play Recommendations:

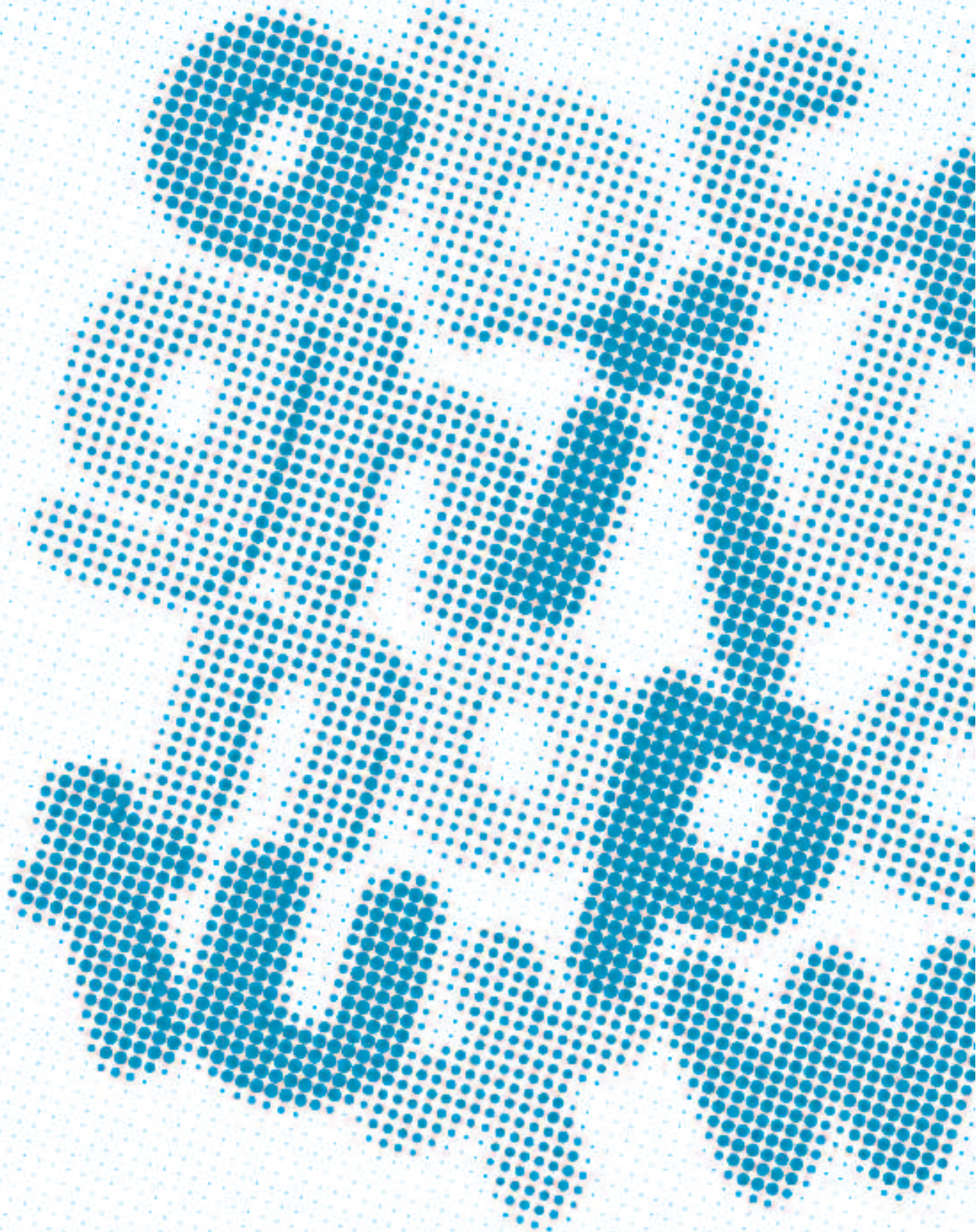
- Scottish Government should put in place mechanisms to ensure the commitments to play in the *Early Years Framework* are effectively implemented.
- Scottish Government should provide support to play projects for children with the most profound additional support needs.

Asylum and Refugee Children Recommendations:

- UK Government should immediately end the detention of all asylum seeking children;
- Scottish Government should ensure the availability of appropriately trained high quality legal representation in all dispersal areas;
- Scottish Government should ensure that Scottish-specific age assessment tools, templates, guidance, procedures are embedded in a holistic assessment consistent with *Getting It Right*; and that Scottish specific training is widely available to ensure consistent practice across Scotland;
- Scottish Government should collate and disseminate Scottish-specific statistics on young asylum claimants to ensure there are adequate specialist resources made available to them;
- Scottish Government should continue its welcome support for the Guardianship Project.

Children in Conflict with the Law Recommendations:

- The minimum age of criminal responsibility should be raised considerably.
- No child under the age of 18 should be tried as a adult in Scotland.



Appendices

1-3

Appendices

Appendix 1: UNCRC Concluding Observations 2008

The following list contains the UN *Concluding Observations* that children's organisations were asked to comment on in the *State of Children's Rights* survey. Children's organisations were only asked to comment on *Concluding Observations* that were of relevance to their area of work. *The State of Children's Rights* report is based on their responses. Only *Concluding Observations* referred to in this report are included in this appendix. For a full report of the UNCRC *Concluding Observations* (2008) for the UK, visit www.togetherscotland.org.uk.

UN Observation 15

Adopt a comprehensive action plan to implement the UNCRC in cooperation with public and private sectors. Ensure adequate budget allocations and follow-up evaluation mechanisms for the plan to regularly assess progress achieved/ potential deficiencies.

UN Observation 17

Ensure all established Commissioners are independent, in compliance with the Paris Principles and mandated to receive and investigate complaints from, or on behalf of, children concerning violations of their rights. More info on Paris Principles at www.crin.org/Law/instrument.asp?InstID=1029.

UN Observation 19

Conduct regular Child Rights Impact Assessments to evaluate how proportionate budget allocation is to the realisation of policy developments and the implementation of legislation.

UN Observation 21

Reinforce adequate and systematic training of all professional groups working for and with children, in particular, law enforcement officials, immigration officials, media, teachers, health personnel, social workers and personnel of childcare institutions. Further strengthen efforts to ensure all provisions of UNCRC are widely known and understood by adults and children alike.

UN Observation 23

Encourage the active and systematic involvement of civil society in promotion and implementation of children's rights.

UN Observation 25a

Ensure full protection against discrimination on any grounds, taking urgent measures to address the intolerance and inappropriate characterisation of children, especially adolescents, within society and the media.

UN Observation 25b

Ensure full protection against discrimination on any grounds, including by strengthening awareness-raising and other preventative activities against discrimination, and if necessary, take affirmative actions for vulnerable groups such as Roma and Irish Travellers' children.

UN Observation 25c

Take all necessary measures to ensure cases of discrimination against children in all sectors of society are addressed effectively, including with disciplinary, administrative or penal sanctions.

UN Observation 27

Take all appropriate measures to ensure the principle of the best interests of the child, in accordance with article 3 of the Convention, is adequately integrated in all legislation and policies which have an impact on children, including in the area of criminal justice and immigration.

UN Observation 29

Use all available resources to protect children's rights to life, including by reviewing the effectiveness of preventive measures. Introduce automatic, independent and public reviews of any unexpected death or serious injury involving children – whether in care or in custody.

UN Observation 31

Treat Taser guns and AEP's as weapons subject to the applicable rules and restrictions and put an end to the use of all harmful devices on children.

UN Observation 32

Address UN Committee's concerns that there has been little progress in enshrining article 12 in education law and policy and that insufficient action has been taken to ensure the rights in article 12 are applied to children with disabilities.

UN Observation 33a

Promote, facilitate and implement respect for views of the Child.

UN Observation 33c

Continue to collaborate with civil society organisations to increase opportunities for children's meaningful participation, including in the media.

UN Observation 35

Reconsider the ASBO and other measures such as the mosquito device insofar as they may violate the rights of children to freedom of movement and peaceful assembly.

UN Observation 37a

Ensure in both legislation and practice that children are protected against unlawful or arbitrary interference with their privacy, including by introducing stronger regulations for data protection.

UN Observation 37b

Intensify efforts, in cooperation with the media, to respect the privacy of children in the media, especially by avoiding messages publicly exposing them to shame, which is against the best interests of the child.

UN Observation 37c

Regulate children's participation in TV programmes, notably reality shows, to ensure that they do not violate their rights.

UN Observation 39

Ensure restraint against children is used only as a last resort and exclusively to prevent harm to the child or others, and that all methods of physical restraint for disciplinary purposes are abolished.

UN Observation 42a

Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of legal defences.

UN Observation 42b

Ensure that corporal punishment is explicitly prohibited in schools and in all other institutions and forms of alternative care.

UN Observation 42c

Promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to raising public awareness of children's right to protection from all corporal punishment and to decreasing public acceptance of its use in childrearing.

UN Observation 42d

Provide parental education and professional training in positive childrearing.

UN Observation 45a

Assist parents/guardians in child-rearing responsibilities

UN Observation 45c

Take into account children's views and provide them with complaints mechanisms.

UN Observation 45d

Ensure support to children with one or both parents in prison, maintaining their contact with the parent(s) where in best interests and preventing stigmatisation and discrimination.

UN Observation 45e

Monitor status of children in kinship homes, foster care, pre-adoptive homes and other care institutions.

UN Observation 45f

Assess why so many children with disabilities are in long-term institutional care and review this.

UN Observation 45g

Initiate contact proceedings for all children separated from their family.

UN Observation 45h

Prepare children for transition to adulthood through training and education programmes.

UN Observation 47

Speed up adoption processes that are in best interests of child and take into account their cultural background.

UN Observation 51a

Establish mechanisms for monitoring the number of cases and the extent of violence, sexual abuse, neglect, maltreatment or exploitation, including within the family, in schools and in institutional or other care.

UN Observation 51b

Ensure professionals working with children are trained in their obligations to report and take appropriate action in suspected domestic abuse cases affecting children.

UN Observation 51c

Strengthen support for victims of violence, abuse, neglect and maltreatment to ensure they are not victimised again during legal proceedings.

UN Observation 51d

Provide access to adequate services for recovery, counselling and other forms of reintegration.

UN Observation 65d

Given that an adequate standard of living is essential for a child's physical, mental, spiritual, moral and social development, and that child poverty affects infant mortality rates, access to health and education, and everyday quality of life of children, reintroduce a statutory duty for local authorities to provide safe and adequate sites for Travellers (in accordance with article 27).

UN Observation 67a

Strengthen efforts to reduce the effects that children's social background has on their achievement in school.

UN Observation 67b

Invest additional resources to ensure the rights of all children to a truly inclusive education, including those from disadvantaged, marginalised and school distant groups.

UN Observation 67c

Ensure that all children out of school get alternative quality education.

UN Observation 67d

Use the disciplinary measure of permanent or temporary exclusion as a last resort only, reduce the number of exclusions and get social workers and educational psychologists in school in order to help children in conflict with school.

UN Observation 67e

Make sure children without parental care have a representative who actively defends their best interests.

UN Observation 67f

Intensify efforts to tackle bullying and violence in schools, including through teaching human rights, peace and tolerance.

UN Observation 67g

Strengthen children's participation in all matters of school, classroom and learning which affect them.

UN Observation 67h

Ensure that children who are able to express their views have the right to appeal against their exclusion as well as the right, in particular for those in alternative care, to appeal to special educational needs tribunals.

UN Observation 69

Strengthen efforts to guarantee the right of the child to rest and leisure, engagement in play and recreational activities appropriate to their age and free participation in cultural life and the arts. The State party should pay particular attention to provide children, including those with disabilities, with adequate and accessible playground spaces to exercise their play and leisure activities.

UN Observation 70a

Address concerns, as also acknowledged by the Human Rights Committee, that asylum-seeking children continue to be detained, including those undergoing an age assessment, who may be kept in detention for weeks until the assessment is completed.

UN Observation 70b

Address concerns that there is a lack of data on the number of children seeking asylum.

UN Observation 70c

Address concerns that there is no independent oversight mechanism, such as a guardianship system, for an assessment of reception conditions for unaccompanied children who have to be returned.

UN Observation 71a

Intensify efforts to ensure that detention of asylum-seeking and migrant children is always used as a measure of last resort and for the shortest appropriate period of time, in compliance with article 37 (b).

UN Observation 71b

Ensure that UK Border Agency appoints specially-trained staff to conduct screening interviews of children.

UN Observation 71c

Consider the appointment of guardians for unaccompanied asylum seekers and migrant children.

UN Observation 71d

Provide disaggregated statistical data on the number of children seeking asylum, incl. those whose age is disputed.

UN Observation 71e

Give the benefit of the doubt in age disputed cases of unaccompanied minors seeking asylum, and seek experts' guidance on how to determine age.

UN Observation 78a

Raise the minimum age of criminal responsibility in accordance with the Committee's general comment No. 10, and notably its paragraphs 32 and 33.

UN Observation 78c

Ensure that children in conflict with the law are always dealt with in the juvenile justice system and never tried as adults in ordinary courts, irrespective of the gravity of the crime they are charged with.

UN Observation 78h

Adopt appropriate measures to protect the rights and interests of child victims or witnesses of crime at all stages of the criminal justice process.

Appendix 2: Summary of *Do the Right Thing* actions

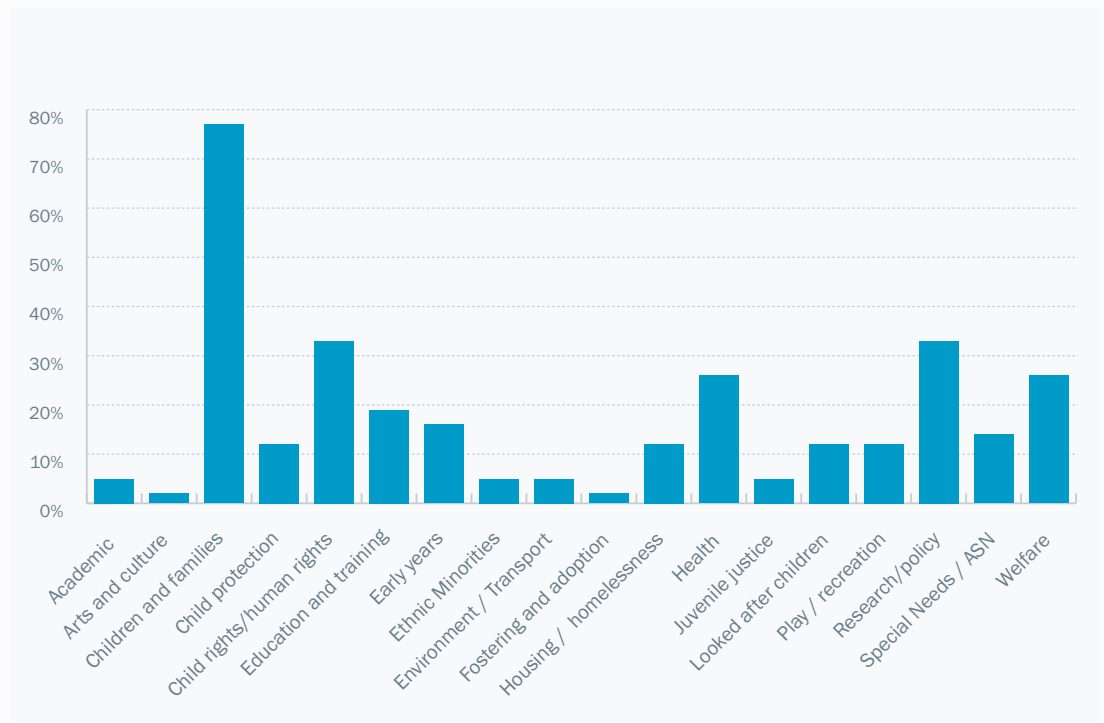
The following list contains the Scottish Government actions outlined in *Do the Right Thing* that children's organisations were asked to comment on in the *State of Children's Rights* survey. Children's organisations were only asked to comment on the actions that were of relevance to their area of work. The *State of Children's Rights* survey is based on their responses. For further details on each of the actions, refer to *Do the Right Thing*.⁷⁶

⁷⁶ Scottish Government (2009) *Do the Right Thing*

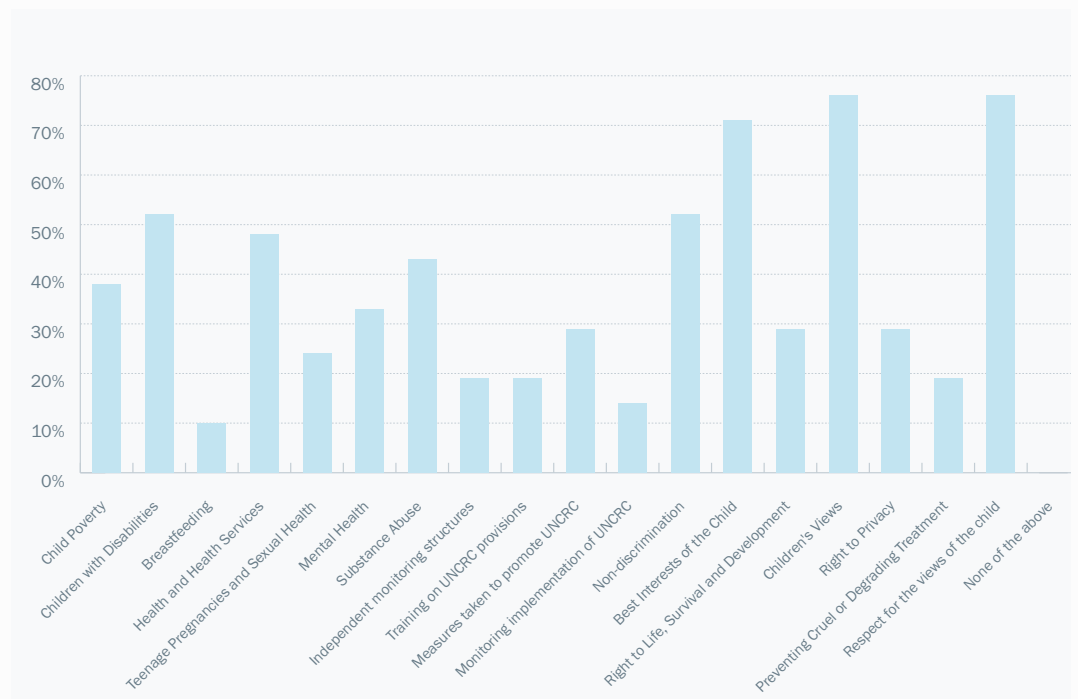
- Action 1.** Ongoing Monitoring of the UNCRC in Scotland and development of UK-wide work.
- Action 2.** Promoting children's rights in the Scottish Government.
- Action 3.** Promotion and awareness raising of UNCRC, including training of professionals who work with children.
- Action 4.** Tackling negative perceptions of children and young people.
- Action 5.** Gypsy/Traveller children and young people.
- Action 6.** Advocacy services for children and young people.
- Action 7.** Participation of children and young people in schools.
- Action 8.** Mosquito Devices.
- Action 9.** Promote Positive Forms of Parenting.
- Action 10.** Young Carers.
- Action 11.** Improve outcomes for looked after children and young people.
- Action 12.** Children of Prisoners.
- Action 13.** Private Fostering.
- Action 14.** Children with Disabilities.
- Action 15.** Improve outcomes for teen parents.
- Action 16.** Support the delivery of the *Curriculum for Excellence* health and wellbeing experiences and outcomes.
- Action 17.** Child Poverty.
- Action 18.** Play.
- Action 19.** Better support for unaccompanied asylum seekers.
- Action 20.** Child Trafficking and Sexual Exploitation.
- Action 21.** 16 and 17 year olds in the youth justice system.

Appendix 3: Information about Contributing Organisations

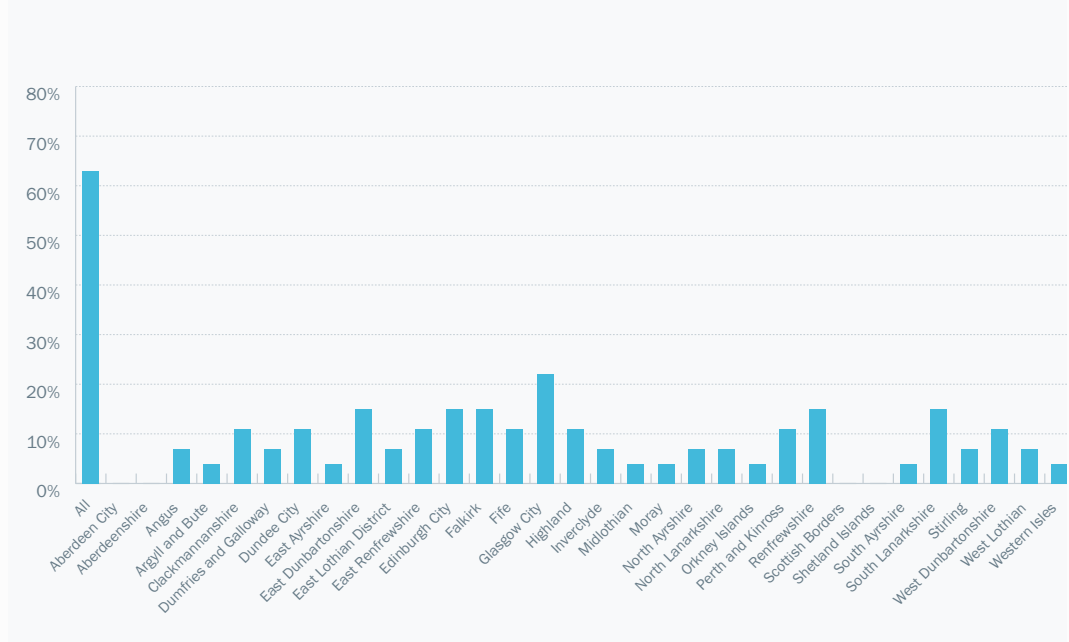
Main Area of Activity



Themes Covered



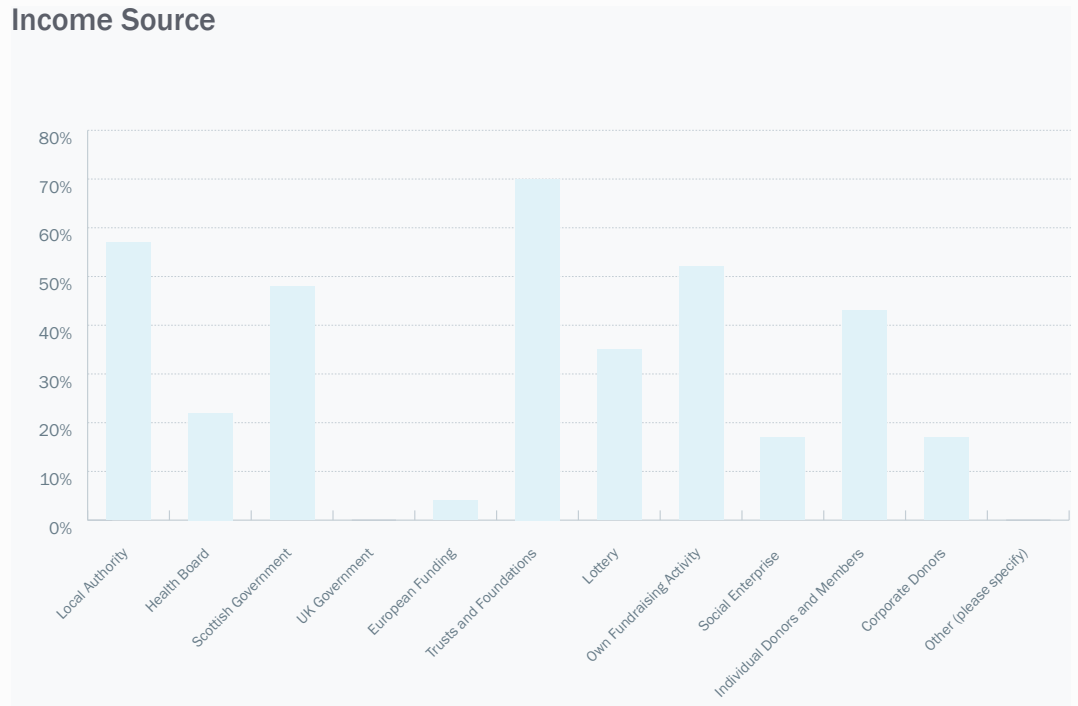
Local Authority Area



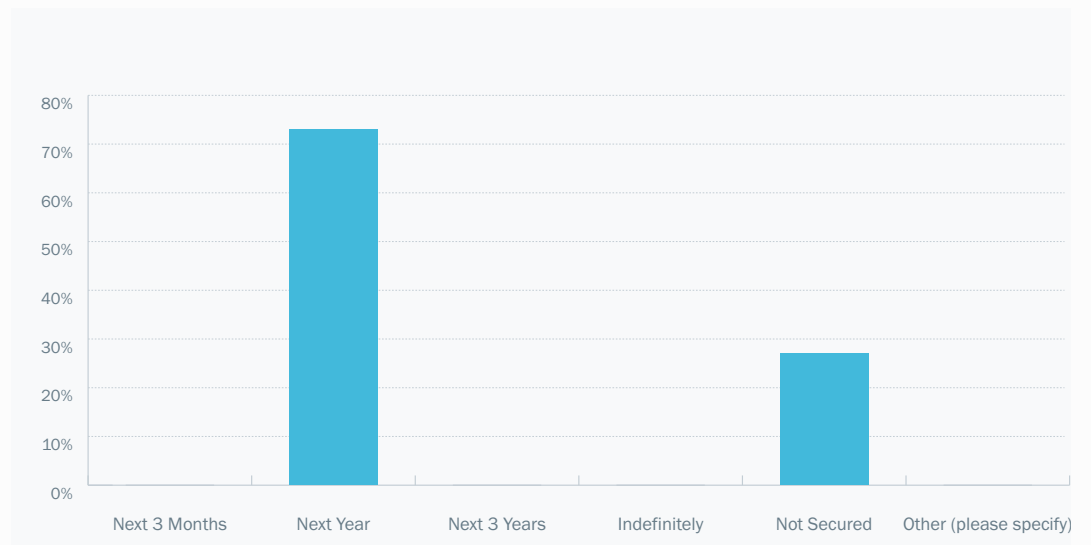
Turnover



Income Source



Income Security



Appendix 4: Credits

Thanks go to the following organisations for sharing their experiences to inform the preparation of this report. Thanks also to the remaining children's organisations that contributed to the preparation for this report, but did not wish to be credited.

Contributing Children's Organisations

Action for Sick Children (Scotland)	Jordanhill Out of School Service
Article 12 in Scotland	LGBT Youth Scotland
Barnardo's Scotland	Moray Carers Project
Buddies Club Playscheme Glasgow West	National Def Children's Society (NDCS) Scotland
Care and Learning Alliance	North West Carers Centre
Child Poverty Action Group in Scotland	Play Scotland
ChildLine	Quarriers
Children 1st	respectme, Scotland's Anti-Bullying Service
Children Are Unbeatable	Save the Children Scotland
Children in Scotland	Schools Out Shotts After School Club
cl@n childlaw (Community Law Advice Network)	Scottish Network of Alcohol Practitioners for the Young
Connecting Young Carers HCCF	Scottish Refugee Council
Dyslexia Ayrshire	Scottish Women's Aid
Families Outside	Scottish Youth Parliament
fSDC liaison project	Shelter Scotland
Glasgow South West Carers Centre	Skye & Lochalsh Community Care Forum - Young Carers
Grampian Society for the Blind	The Children's Parliament
Highland Children's Forum	UNICEF UK in Scotland
Includem	West Lothian Young Carers Partnership
International Play Association	Who Cares? Scotland
International Play Association (IPA) Scotland	

Other contributors

City of Edinburgh Council - Children's Rights Office	NHS Lothian
Edinburgh University	Women and Children's Directorate - NHS
Fife Children's Rights Strategy Steering Group	

Thanks

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Glossary of Terms

Child / children refers to person/s under 18 unless otherwise stated

Children's organisations refers to non-governmental organisations in Scotland unless otherwise stated

The Committee - United Nations Committee on the Rights of the Child

CRIA - Child Rights Impact Assessment

FSDC - for Scotland's Disabled Children

Getting It Right - Getting it right for every child is a Scottish Government programme that aims to improve outcomes for all children and young people

MSYP - member of the Scottish Youth Parliament

NGOs refers to non-governmental organisations in Scotland unless otherwise stated

SCCYP - Scotland's Commissioner for Children and Young People

UNCRC - United Nations Convention on the Rights of the Child

‘Working to promote the
full implementation of
the UN Convention on
the Rights of the Child
in Scotland’
September 2010



together

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Children's Rights

Together

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