

Review of the Office of the Children's Commissioner (England)

John Dunford
November 2010



Department for Education

Review of the Office of the Children's Commissioner (England)

Presented to Parliament
by the Secretary of State for Education
by Command of Her Majesty

December 2010

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Letter to Rt Hon Michael Gove MP, Secretary of State for Education

Independent Review of the Office of the Children's Commissioner

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30 November 2010

Rt Hon Michael Gove MP
Secretary of State for Education
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Dear Michael,

I am pleased to enclose a copy of my report in response to your letter of 12 July which asked me to conduct an independent review of the office, role and functions of the Children's Commissioner for England. The opening chapter of the report is devoted to the importance of the Children's Commissioner's role. While there is room for improvement in the current model, I do not doubt the need for such a role in modern society.

You also asked me to look in particular at the powers, remit and functions of the Children's Commissioner, the relationship with other related functions supported by Government and value for money, and I have devoted a chapter of the report to each of these.

I have sought to obtain the views of a wide cross-section of people involved with children and young people. Everyone involved in giving evidence has been very generous with their time and extremely helpful. I should like to offer them my thanks through this letter.

I have had the benefit of discussing the issues with many key people and organisations who work with or on behalf of children and young people. This includes meeting representatives of the House of Commons Select Committee for Education, the Joint Parliamentary Committee on Human Rights and the All Party Parliamentary Group for Children. A list of the main contributors is attached at appendix 3.

I have visited the Office of the Children's Commissioner and the Office of the Children's Rights Director to obtain a clearer understanding of what they do and how they do it. I have also visited the Children's Commissioners in Northern Ireland, Scotland and Wales, and the Ombudsman for Children in Ireland to see how their roles and responsibilities compare with those of the Commissioner in England.

To supplement these visits, I commissioned an international comparative study, which has looked at the remit, functions, governance and impact of Children's Commissioners across the world. I have also visited two, UNICEF accredited, Rights Respecting Schools to understand better the positive impact of a rights-based education.

I issued a call for evidence on the date the review was announced which led to the submission of over 200 formal responses, including some detailed and valuable reports from the voluntary sector, schools, unions and experts in child welfare.

I am particularly indebted to the many children and young people who have contributed to the review. The Department for Education's Children and Youth Board helped me design, and canvassed responses for, an online survey, to which I received over 700 responses. Over 100 children and young people have contributed in other ways. I have also had the privilege of discussing the issues with several groups of children and young people around the country in a variety of settings. I am particularly grateful for their input and to those who made it possible.

I should very much like to tell children and young people how I have reflected their views in my report and also what will happen as a result. I would therefore recommend that a child-friendly version is published alongside your response.

My report includes 46 recommendations, which are strongly backed by the evidence. I am confident that collectively they would make a substantial difference to the effective operation and impact of the Children's Commissioner and support this country's

implementation of the UN Convention on the Rights of the Child. They have the potential to reach far beyond the day-to-day role of the Commissioner and into the lives of children and young people, and ultimately even into the fabric of society. I commend them to you and look forward in due course to hearing how you plan to proceed.

With all good wishes,

A handwritten signature in black ink, appearing to read 'John', is centered within a light gray rectangular box.

John Dunford

Executive Summary

On 12 July 2010, the Secretary of State for Education announced to Parliament that I would be conducting an independent review of the office, role and functions of the Children's Commissioner for England. I was particularly asked to look at the Commissioner's powers, remit and functions, the relationship with other Government funded organisations carrying out related functions, and value for money.

My call for evidence attracted over 200 responses from adult organisations and individuals and over 700 responses from children and young people. I also built up my evidence base from discussions with organisations that work with and for children and young people, discussions with MPs and peers, visits to the Children's Commissioners in all four countries of the UK and Ireland and the Children's Rights Director's office, and an international review carried out by the Centre for Child and Family Research at Loughborough University.

This summary sets out my headline conclusions on each of the key issues that emerged during the course of the review.

Chapter 1: A unique role

The UK is a signatory to the United Nations Convention on the Rights of the Child (UNCRC) and England needs a Commissioner with adequate powers in order to meet its obligations under this Convention. The argument for having a Children's Commissioner is that children are generally more vulnerable than adults and are therefore more likely to have their rights abused.

The Children's Commissioner has had a significant impact on the lives of some children and young people. However, the overall impact has been disappointing. This is in large part due to the limited remit set out in the 2004 legislation and a failure to establish credibility with Government and other policy makers.

The recommendations in this report strengthen the remit, powers and independence of the Commissioner, which will set the Commissioner apart from the many children's organisations and provide the Commissioner with a unique role.

Awareness of the Commissioner among children and young people is disappointing. More must be done to raise the Commissioner's profile. This should be achieved through having greater impact and taking advantage of the associated publicity.

Chapter 2: Powers, remit and functions of the Children's Commissioner

Children and Young People's Rights The UK cannot be compliant with the UNCRC unless England has a rights-based Children's Commissioner, as is the case in the rest of the UK. Legislation should be introduced to make the Children's Commissioner responsible for promoting and protecting children's rights in line with the UNCRC.

Rights Respecting Schools demonstrate how children who learn about their rights also learn to respect the rights of others. A rights-based approach thus helps to create good citizens.

Focus Article 2 of the UNCRC is clear that the Convention applies to all children up to the age of 18. However, within this remit the Commissioner should have a particular focus on vulnerable groups.

Credibility My recommendations for stronger focus and greater impact will lead to the Commissioner having increased credibility. This credibility will be further strengthened by the Commissioner speaking publicly on the basis of evidence and will ensure that the Government, public bodies and civil society will listen.

Casework The Children's Commissioner must be able to investigate individual cases that have wider significance, but must not become overburdened by individual casework. The Commissioner should not become a final point of appeal when other appeal mechanisms have been exhausted. The Commissioner should make better use of the existing power to monitor and review complaints mechanisms and advocacy services.

Independence It is fundamentally important that the Children's Commissioner is independent. Recommendations to reinforce independence include: removing the requirement to consult with the Secretary of State before undertaking an inquiry; introducing direct reporting to Parliament; and a single seven-year term of office.

Additional powers The current powers of the Commissioner are broadly sufficient. Many new powers that have been proposed in evidence do not need specific legal authority to carry them out. A new power is recommended for the Commissioner to undertake impact assessments of proposed legislation. There should be a reciprocal duty on Government to have regard to and respond to any recommendations. A new duty is

recommended for the Commissioner to report to the UN Committee on the Rights of the Child on progress on the implementation of the UNCRC in England.

Responsibility for the devolved administrations In principle, children's commissioners should be responsible for the interests of children and young people who normally reside in their countries. If possible, this principle should be enshrined in law. There is also potential for the Commissioners to work more closely together on issues of UK-wide importance.

Chapter 3: The relationship with other organisations

The Children's Commissioner must strike the right balance between maintaining independence and working with civil society. The Office has not always got this balance right.

Merger options have been considered. Giving the Children's Commissioner a statutory remit to promote and protect children's rights makes it difficult to justify retaining a separate Children's Rights Director (currently within Ofsted). A merger between the two is recommended, with safeguards built in to protect the interests of vulnerable children covered by the CRD's remit. A merger with the Equalities and Human Rights Commission and closer integration with a civil society organisation has been ruled out.

Chapter 4: Value for money

The Office of the Children's Commissioner (OCC) is not expensive compared to other countries, but so far has not provided value for money. That is largely due to the flaws in the present model and the way it has been implemented. The proposed new model would not be any more expensive and should provide good value for money in future. The OCC should develop robust performance measures to be able to assess the impact of its activities over time.

The Government should ensure that the new merged body has adequate resources to fulfil the stronger role proposed in this review.

Chapter 5: A Children's Commissioner for England

A new Office of the Children's Commissioner for England (OCCE) should be established (by merging the OCC with the Office of the Children's Rights Director). It should be compliant with the Paris Principles. New governance structures should be put in place to ensure that the strategic direction and priorities of the organisation are open to appropriate external challenge and support. The new organisation will meet the three Cabinet Offices tests of technical expertise, impartiality and independence.

Chapter 1: A unique role

Section (a) The need for a children's commissioner

My remit letter states that the Government *'is committed to the United Nations Convention on the Rights of the Child (UNCRC) and believes it is vital that children and young people have a strong, independent advocate to champion their interests and views and to promote their rights'* and defines my task as making *'recommendations that would improve the impact and effectiveness of the role'*.

Although this implies that the Coalition Government supports the principle of a children's commissioner, I have not taken this for granted as the remit letter also places my review in the wider context of the Government's *'commitment to increase accountability and review the cost of quangos'*. While my review has been under way, the Cabinet Office has undertaken a parallel review of arms length bodies and this led to the announcement on 12 October that 192 quangos would be cut, 118 merged and a further 171 substantially reformed.

My report therefore begins by considering the case for having a Children's Commissioner for England.

Evidence

There was a general presumption among the many organisations I have met that the Children's Commissioner's role should continue in some form.

Although the survey did not specifically ask whether the Children's Commissioner should continue to exist, over 40 respondents commented on this point. Of these, 21 respondents, mostly national organisations, emphasised the importance of retaining the Children's Commissioner. They considered it essential for children in England to have a champion able to listen to their views, speak out for them and protect their rights. For example, the British Association of Social Workers argued that *'it is absolutely critical at a time that represents so much change, that this work continues and that the rights of children are both championed and embodied by a Children's Rights Commissioner in England'*. Similarly the Royal College of Paediatrics and Child Health (RCPCH) noted that *'the establishment of the Office of the England Children's Commissioner is a milestone achievement and a vital*

catalyst of change'. Baroness Walmsley also wrote to me, emphasising '*an absolute requirement for an independent Children's Commissioner for England ... with the responsibility of promoting the UNCRC and ensuring our Government fulfils its obligations under the Convention*'.

Not everyone was in agreement. Twenty respondents to the online survey, mostly individuals or people working on the frontline of children's services, view the OCC as an unnecessary quango which, in the current economic climate, represents a drain on the public purse. For example, one headteacher argued that the money used to fund the Commissioner could be put to better use in other areas; and a lawyer who acts on behalf of children describes the Commissioner as '*a huge waste of money and a typical example of grand sounding government which lacks purpose and efficacy save in terms of media coverage*'.

Young people themselves regard the role as highly important and symbolic. They also see it as a means through which their voices can be heard. This was a recurring theme in responses to the online questionnaire and at the workshops. Children and young people want a Commissioner who will listen to them and represent their views at a national and, perhaps most importantly, an influential level. This is well illustrated by the following quote from a young person at one of my workshops: '*If a young child on its own is protesting for their rights they're not really going to get heard are they? Because I don't think, personally, they'd be treated as equally as an adult would if they had the same problems. So it's good that they've got someone higher there, someone who will actually listen and can actually be a voice for us*'.

Reflections on the evidence

I have been presented with many reasons why children and young people need someone with statutory backing to promote and protect their interests. The most compelling are that:

- children and young people are more vulnerable to human rights violation than adults;
- children's needs and interests are often not on the radar of policy formers or decision makers and are usually given lower priority than the needs and interests of adults;
- they do not have the same means as adults to bring about systemic change through voting or taking part in the political process; and
- they usually find it more difficult than adults to access the judicial system or use other legal means of redress.

The OCC has certain unique characteristics that support this role:

- its statutory basis gives the Children’s Commissioner greater legitimacy when representing children’s interests than any other non-governmental organisation (NGO) in the field;
- it has powers that allow it to investigate concerns in depth: a legal right of entry to services and residential settings; and the power to speak privately with children with their agreement;
- the role has international recognition – most European nations and many countries across the world have a children’s commissioner or its equivalent;
- it represents all children and young people rather than just a specific group.

A few organisations fulfil some of these functions. The Equalities and Human Rights Commission (EHRC), in particular, is responsible for promoting and protecting equal opportunities and human rights. However, the OCC is the only body that fulfils them all.

The UN Committee on the Rights of the Child (which examines the progress made by countries in meeting their obligations set out in the Convention) has consistently recommended that, in order to meet its obligations under the UNCRC, the UK must establish children’s commissioners in all four nations. It would be an odd situation in the UK if Northern Ireland, Scotland and Wales each had a children’s commissioner but England did not. In her letter to me, Baroness Walmsley cites the current exclusion of the Commissioner for England from the European Network of Ombudspersons for Children (ENOC) (due to the relative lack of powers and lack of independence) as *‘humiliating for this country and lets down our children’*.

Any perceived weakening of the Government’s commitment to the UNCRC reduces the UK Government’s ability to use the Convention on the international stage when it seeks to improve the lives of children and young people in other countries, including when there are concerns about their treatment.

Conclusions

The days of children being seen and not heard are long gone and we should be doing as much as possible to ensure that they play a positive role in society and are protected from harm. In England, the Children’s Commissioner is uniquely placed to represent their interests and bring about improvements in their lives.

It is important to draw a distinction between the principles behind the Children’s Commissioner and how the role is both defined in legislation and works in practice.

The current model has numerous shortcomings that I have detailed elsewhere in this report. However, while I accept that it should not continue in its current form, there is no question that the role of the Children's Commissioner should exist, albeit on a different statutory basis. Scrapping it would have significant implications for children's lives and for the UK's international standing.

Recommendations

1.1 There should continue to be a Children's Commissioner for England.

Section (b) Impact

My remit letter asks for advice on what impact the children's commissioner role has had. My assessment relates to the impact of the office and is not a commentary on the individuals who have held the role of commissioner, although their personalities and experience will naturally have influenced how the role has been carried out.

Evidence

My online survey asked how great an impact the OCC has had on the lives of children and young people and asked for specific examples of where the OCC has been effective or ineffective.

There were 176 responses to this question, as follows.

9 (5%)	Significant impact
21 (12%)	Quite significant impact
58 (33%)	Not sure
34 (19%)	Some impact
54 (31%)	Very little or no impact

Several examples were given of activities that have benefited all or large numbers of children. These included:

- challenging negative stereotyping of young people through initiatives such as Takeover Day where children spend a day with adults in their workplace. The initiative has grown each year and the last one held on 12 November 2010 involved an estimated 1,000 organisations and 40,000 children and young people;

- championing the interests of children when their rights have been infringed. The best example of this is the Buzz Off campaign, which called for a ban on the use of ‘mosquito’ alarm systems that emit a high frequency sound, audible only to minors, which were used in public places to stop young people ‘loitering’. Several supermarket chains have banned this equipment from their premises as a result of the OCC’s campaign, as have some local authorities and police forces;
- gathering children’s views on a variety of topics. The OCC has told us that it has responded to 14 consultations and calls for evidence in the last six months and they expect to feed children’s views into forthcoming reviews, for example on the commercialisation of childhood and child poverty; and
- providing independent input into the report for the Committee on the Rights of the Child on the UK’s implementation of the UNCRC in 2008.

I have also been given examples of OCC activities that have highlighted a significant issue and/or resulted in improved conditions for specific groups of children. By far the most frequently cited example is the action taken to improve the situation for child asylum seekers. Using his powers of entry, the Commissioner visited the Yarl’s Wood Immigration Removal Centre and reported on the prison-like conditions under which children were being held. As a result, the Government has announced its intention to end the detention of children for immigration purposes, including the closure of the family unit at Yarl’s Wood. The OCC has also campaigned against the use of x-rays to determine the age of young refugees and asylum seekers.

Other examples include the Commissioner’s campaign against the practice of placing children and young people in adult psychiatric wards (highlighted in the *‘Pushed into the Shadows’* report), which resulted in a change in legislation; and the highlighting of the treatment of young people in custody, especially the practice of transporting them with adult prisoners.

The OCC itself has drawn my attention to several other areas of activity where it believes it has made a positive impact. These include: for children in detention, securing the end of routine strip-searching and the use of ‘safe cells’ and ‘safe garments’ for children who self-harm; a report on children and families who have difficult relationships with social services; evidence from children and young people on the impact of allowing the media into family courts; plus numerous reports and several legal interventions.

Despite these successes, a substantial proportion of respondents either felt that the OCC had had little or no impact or weren’t sure. The reasons given for this were: the low public

profile of the Commissioner, failure to publicise the Commissioner's achievements, confusion about the remit of the post and lack of involvement with the OCC's work.

The Commissioner's role was felt to be ineffective by 11 per cent of respondents. The use of ASBOs (anti-social behaviour orders) was given as an example of ineffectiveness, on the grounds that, despite the Commissioner taking an active interest, many young people were still being held in the youth justice system for non-criminal activity. Others cited the lack of an inquiry regarding deaths of young people in custody.

Reflections on the evidence

The Children's Commissioner has unquestionably had impact, particularly through the campaigns and initiatives summarised above. However, the general impression I have gained from discussions during the review is one of disappointment. Enthusiasts have cited the same few examples, while those who are more sceptical argue that these are a poor return on nearly six years of work and had expected better.

A widely held view is that the model was flawed from the outset and consequently destined to fail. Problems identified include: the fact that the Commissioner was not given a duty to promote and protect children's rights, which resulted in him having lower status and authority than his counterparts in other countries; a lack of independence; a lack of power to make things happen; and reticence on the part of the Government to give due recognition to the role and proper consideration to the views and rights of children and young people.

Notwithstanding these flaws in the model, it has become clear to me that the OCC has not gone about its business in the most productive and effective way.

Some of consultees' disappointment stems from the high expectations they hold for the role and the huge range of issues in which the Commissioner could become involved. It is understood that the OCC does not have the capacity to investigate every issue that comes to its attention and it must therefore prioritise and limit what it does. However, there is less understanding of how the OCC has arrived at its priorities or the rationale behind them, and consequently there is no sense of ownership for them outside the OCC. From my visit to the OCC offices and from talking to consultees, it is evident that the process of prioritisation and business planning has not been coherent or transparent.

A number of consultees have drawn my attention to high-profile media interventions by the Children's Commissioner which they argue were ill-judged and undermined the credibility of the role. In some cases, the Commissioner has made assertions or offered opinions without providing the supporting evidence. While it is important for the

Commissioner to champion the interests of children and be an outlet for their views, this does not mean that the Commissioner can speak authoritatively on any subject relating to children.

This is in marked contrast to the esteem in which Commissioners elsewhere in the UK are held, as indicated by my visits to their offices and meetings with their government and/or parliamentary sponsor teams. The other Commissioners have similar powers and resources at their disposal, but through having expert knowledge of the subject, grounded in evidence, they have had more influence and the role is more widely respected.

Conclusions

The OCC has had some significant achievements on specific issues. However, the impact on the vast majority of children and young people has been negligible.

Most stakeholders are disappointed by the OCC's overall performance, which was perhaps inevitable in view of the limited remit, lack of respect and commitment on the part of the Government and restrictive legislation.

The OCC must gain respect through basing its advice on evidence. But equally, government, policy-makers and service providers must be receptive to that advice; otherwise the OCC cannot be effective, nor have impact.

Commissioners in England have undermined their position by appearing to express personal views. In contrast, the commissioners in Northern Ireland, Scotland and Wales have been active in the field of children's rights over long periods and have ensured that their views are supported by evidence, including the views of the young people that they represent.

Recommendations

- 1.2 It is essential that the Commissioner should command respect and speak with authority. This needs to be reflected in the job description and person specification for the post.
- 1.3 The OCC should be more inclusive and transparent in its planning processes so that its priorities are more widely understood.
- 1.4 National and local government and civil society must accept that the Commissioner will raise challenging issues and should welcome this as a way of improving services for children and young people. This needs to be embedded in custom and practice rather than enforced through legislation.
- 1.5 The Commissioner should only express views publicly that are supported by research or other evidence and/or are a reflection of the views of children and young people.

Section (c) Awareness

My remit letter asks how the role of the Children's Commissioner can '*be configured to ensure that children and young people are more aware of it*'.

Evidence

Overall awareness

Out of 707 children and young people who responded to my online questionnaire, only 156 had heard of the Children's Commissioner. Of these, only 38 per cent (60 out of 156) were correctly able to describe her role. Some believed that the Children's Commissioner was able to change laws relating to children and direct the Government to do things. Others thought that the Commissioner existed to help children with their problems. There was a strong view that the Commissioner should be widely known and accessible.

Many responses can be summed up in the following quote from one young respondent to the online questionnaire: '*It is a good idea [to have a Children's Commissioner] as long as the Government really does use [him/her] properly and does not just have ... a figurehead. Children should know who the decision-makers are and be able to raise views direct, and be consulted about matters which affect them. As long as the Children's Commissioner is a worthwhile way of getting children and young people's voices heard, then there should be lots of active promotion of*

the role of the Commissioner in all the places that children and young people would go e.g. schools, colleges, universities, youth clubs, the internet etc.'

Only 14 per cent (26 out of 180) of the responses to the online survey for adults had not previously heard of the Children's Commissioner. However, this sample is likely to be largely self-selecting. Most respondents said that they knew about the Children's Commissioner through their work, particularly those in the voluntary sector or organisations working with and for children. Other respondents tended to associate the role with specific campaigns such as Yarl's Wood or Takeover Day.

Most adult respondents (78 per cent of the 131 who commented) believed that not enough children and young people are aware of the role of Children's Commissioner. It is felt that the role of schools in raising awareness and understanding of the Commissioner has not been properly utilised. Very few of the 60 headteachers who responded to the online survey had had any interaction with the OCC, or any information about its role and remit, so most had been unable to pass on information to their pupils. Among young people aged 11 to 16 who were surveyed as part of the Ipsos Mori Schools Omnibus Survey in 2006, 11 per cent of respondents had heard of the Commissioner and in 2007 and 2008 the figure was 9 per cent.

Other reasons given for the lack of awareness among children and young people were: a lack of visibility in children's media, the limited impact on most children's lives, the complexity of some of the issues, and a lack of child-friendly literature to explain them.

Improving awareness

I received many helpful suggestions from children and young people about how to raise the profile of the Children's Commissioner and increase awareness and understanding of the role. Notable suggestions included: briefing the children's workforce, generating positive publicity about the Commissioner's successes, (especially those involving lots of children), running roadshows, regional events and outreach, and appointing young communication advisors to produce child-targeted marketing using social media, children's television programmes and competitions.

As noted above, schools are viewed as an ideal place to publicise the Commissioner through a range of communication channels such as: themed assemblies, posters and leaflets in communal areas and links to the Commissioner on school websites. It was suggested that the topic should be included in the national curriculum, possibly through citizenship lessons or within the wider context of personal, social and health education. This would be a means of reaching the majority of children and through them their parents and carers.

Respondents also identified a key role for other organisations (including the Commissioner's strategic partners, voluntary organisations, local networks and partnerships) in promoting the Commissioner's work and drawing it to the attention of children with whom they come into contact.

Several organisations have argued that impact is more important than profile. In practice, the two should be mutually reinforcing. It is no coincidence that the OCC's high profile achievements relate to issues that have been well researched and where it has achieved results. One 17 year old respondent told me that *'the government has tarnished its relationship with the youth to the degree that I doubt anyone particularly trusts the Children's Commissioner. Get some genuine results. Then people will care.'*

Some children with whom I discussed this wondered if the Commissioner should be someone closer to their age who has had recent experience of life from their perspective and to whom they can relate. However, other young people recognised the importance of the Commissioner speaking with authority and having influence with the people who can make a difference. On balance, the latter was thought to be more important.

Reflections on the evidence

The lack of awareness and understanding is disappointing. Children need to be aware of the OCC and understand its purpose in order for the Commissioner to have currency as the children's champion. The OCC has evidently put a great deal of effort into raising its profile, but the re-branding of the organisation into '11 Million' is widely assumed to have backfired. One respondent commented that *'the '11 Million' brand seemingly turned the office into just another children's organisation, and distanced the post from its legislative foundations – therefore removing its uniqueness'*. I am confident that the decision earlier this year to remove the '11 Million' branding and focus public attention back on the Children's Commissioner, which is a brand with wider national and international recognition, will prove to be the right one.

The context in England is markedly different to other parts of the UK, where children's commissioners are better known. For example, the Scottish Commissioner's 'A Right Blether' campaign has been well publicised and has provided an opportunity for him to visit many schools and meet youth groups. I recognise that this is easier to do in a smaller community. The Commissioner for England cannot hope to replicate this in 25,000 schools across 152 local authorities and must therefore adopt a more strategic approach that draws on the support of local allies and champions.

Some respondents have suggested a system of local commissioners working to raise the profile of the national office. Others have highlighted the importance of links with

Children's Rights Officers (CROs) and/or advocacy officers within local authorities. The OCC has recognised the importance of these links through, for example, its current project designed to promote effective practice and networking between local CROs in the south-east of England and the piloting of young commissioners in the north-east of England. The Commissioner has told me that the OCC has informal links with a network of individuals who work on children's engagement. However, the OCC would benefit from a more planned and systematic approach to using this network.

I fully support the proposals for greater involvement by schools and would welcome the introduction of discussions about the role of the Commissioner and the UNCRC in schools. The two Rights Respecting Schools I visited have managed creatively to make the UNCRC a centrepiece of school life and the results were very impressive. In this context, I had a thought provoking discussion with some pupils in Years 8 to 10 and observed one Year 6 group having a very sophisticated discussion about some complex, but important issues, relating to fairness in society.

Raising the OCC's profile does not need to be a costly enterprise. The Diana Award illustrated this point with examples of how it had garnered press interest in the considerable achievements of its many award holders and used its networks of young people and award alumni. The OCC needs to be equally creative in how it publicises its achievements, including using the communication channels of other organisations, youth councils, youth clubs and local authority youth services.

Conclusions

The role of the Children's Commissioner is so far known and understood by only a small minority of children in England.

The OCC should aim to further raise its profile, but this will best be achieved through having impact and publicising achievements. Other methods, such as advertising or holding meetings around the country, are likely to be less fruitful in achieving this aim.

The OCC should make more astute use of national media, especially child-friendly channels. This does not require paid-for publicity. The term Children's Commissioner is a strong brand in its own right and should command media attention.

The OCC should continue to build relationships with CROs, schools, youth organisations and the voluntary sector and encourage them to feature the Children's Commissioner in their own publicity. They will be more willing to do this if the OCC is seen to have impact.

Schools should provide opportunities for the UNCRC and the role of the Commissioner to be discussed. Those who lead the sessions should have a good understanding of children's rights.

Recommendations

- 1.6 The OCC should work to raise its profile, but this should not be an objective in its own right. The main aim should be to improve impact and thus awareness and understanding of the UNCRC.
- 1.7 The OCC should make better use of a wide range of regional and local communication channels with children and young people, including schools and voluntary and youth organisations.
- 1.8 The OCC should aim to establish a national network based on closer collaboration with CROs or their equivalent within local authorities.
- 1.9 The OCC should concentrate on making an impact and use the media astutely to publicise its achievements and the issues it is raising.

Chapter 2: Powers, remit and functions of the Children's Commissioner

This chapter deals with several specific issues that were raised in my remit letter or that have emerged during the review.

Section (a) Children and young people's rights

Evidence

My remit letter asks for '*advice on how best to serve the interests of children and promote their rights.*'

My online survey asked whether the Children's Commissioner should have a specific remit to promote children's rights. Out of 180 responses to this question, 70 per cent said yes and 14 per cent said no.

Those who said yes anticipated that the benefits would include:

- increased awareness of rights amongst children;
- consolidating the duty to promote rights in one central figure or champion;
- addressing inadequate standards of services for children;
- giving the Commissioner for England parity with other Commissioners across the UK.

The survey result has been endorsed almost without exception in the discussions I have had with national organisations and parliamentarians. The joint submission from Children's Rights Alliance for England (CRAE) and twelve other signatories, for example, criticises the statutory basis of the OCC in the Children Act 2004 and makes clear that the Commissioner needs to have rights-based powers in order to do an effective job on behalf of children, particularly the most vulnerable.

Professors Nigel Thomas and Andy Billson of the University of Central Lancashire make the point that the UNCRC is different from other Conventions, being '*based on an understanding of children's vulnerability and developing capacity*'. Thus, they believe, the work of human rights institutions for children should be focused on the rights set out in the UNCRC.

The small proportion of respondents opposed to giving the Children's Commissioner a focus on children's rights gave various reasons for this. Some felt that it would be unnecessary duplication, as other bodies such as the Children's Rights Director (CRD), CRAE and local children's champions already carry out this role. Others felt that it was the place of parents to make children aware of their rights and that giving this role to the Commissioner could undermine the parent/child relationship.

The Association of School and College Leaders (ASCL) and other respondents are concerned about creating an 'I know my rights' culture among young people. This was viewed as a particular risk for schools, where it was considered that Article 12 of the UNCRC (the right of children to express an opinion on decisions that affect them and for adults to take the views into account) had sometimes undermined teachers' authority in the classroom and made it harder for them to maintain discipline. It has been argued that the Children's Commissioner should also have a role in promoting children's responsibilities.

Some people and organisations pointed out that many adults have negative perceptions of children and young people that are reinforced by how they are portrayed in the media. The Diana Award described this as '*a nervousness that young people are out of control*' and '*a fear that if children and young people are enabled to play a fuller role and take responsibilities, they will take over or run amock*'. In his evidence to me, Sir Al Aynsley-Green, the first Commissioner, stated that he saw countering these negative perceptions as an important part of his role and explained that it had triggered the introduction of Takeover Day.

Reflections on the evidence

It is clear to me that this country cannot be compliant with the UNCRC, as my remit letter states that the Government wishes to be, unless the Children's Commissioner has a statutory role to promote and protect children's rights.

The issue of children's rights is emotive and complex. Nonetheless, there is a striking degree of unanimity in the evidence presented to me that the statutory basis of the Children's Commissioner should refer to children's rights, in place of their views and interests. There is also a strong implication in much of the evidence that the lack of a clear focus in the work of the OCC over the last six years has in part been due to the lack of clarity in the legislation.

I fully accept the argument that children need a strong body to uphold their rights, since children, particularly those who are vulnerable, need protection to avoid serious damage to them that not only blights their childhood but often sets a pattern for a depressingly predictable future as vulnerable adults. I also acknowledge that those who are particularly

vulnerable are often the least able to recognise the rights of others. I therefore accept the premise that the rights of individual children should be protected and unconditional and should not be subject to them having first fulfilled their responsibilities.

While accepting that children's rights are unconditional, it is pertinent to point out, as school leaders and young people themselves have done and as UNICEF does in a summary leaflet on the UNCRC, that within these rights lies the responsibility to respect the rights of others. The right not to be bullied, for example, carries within it the responsibility to respect the rights of others not to be bullied. In the same way, the right to be listened to encompasses the responsibility to respect the right of others to be listened to.

The responsibilities inherent in these rights do not need to be enshrined in legislation. However, it is incumbent on the Children's Commissioner to articulate the status and contribution of children as young citizens and to point out, as UNICEF does in its leaflet, how all young people have a role in upholding the rights of others.

Pursuing a rights-based approach in this way should not create new risks for government or people working in frontline services. Commissioners and government officials in the devolved administrations have welcomed the greater clarity that a rights-based approach gives them. They recognise that a greater awareness and understanding among children, of what their rights under the UNCRC mean in practice, will enable children to understand better the rights of others and to play their part as young citizens. The Welsh Assembly Government document *'Children and young people: rights to action'* argues that *'Children and young people should be seen as young citizens, with rights and opinions to be taken into account now. They are not a species apart, to be alternately demonised and sentimentalised, nor trainee adults who do not yet have a full place in society'*.

I heard similar arguments from representatives of the Diana Award, which was set up in 1999 to recognise and celebrate young people who go that extra mile to make an outstanding contribution to their communities and society. Over 30,000 children and young people have received the award and provide an inspiring example to others. The Diana Award states in its evidence that *'early recognition and encouragement for children and young people can be life-changing. It can turn around their lives and lead them down a path that offers an opportunity of playing a role in society as an active and valuable citizen'*. I have found this to be true in my own experience as a headteacher.

My visit to two Rights Respecting Schools demonstrated to me how the emphasis on rights in a school can be matched by a similarly strong policy on the exercise of responsibilities and respect for others. On the next page I have included a copy of a wall chart from Wildern School in Hampshire which illustrates this point admirably. These schools – and the 1,500 or so others in the UNICEF Rights Respecting Schools award scheme – are consciously producing good citizens. Children in these schools learn about their own rights and, in doing so, have a greater appreciation of the rights of others. Research findings from a three-year qualitative study undertaken by the Universities of Sussex and Brighton and published by UNICEF UK in November 2010 indicate that teaching children about their rights can reduce exclusions and bullying, improve teacher-pupil relationships, raise attainment and make for more mature and responsible students.



The UNCRC is unequivocal in its support for family life. Whilst seeking to protect children from unacceptable forms of parenting, the Preamble states that: ‘...*the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community*’.¹ This is reinforced by the Articles of the Convention: Article 5 states that governments should respect the responsibilities, rights and duties of parents; Article 8 encourages governments to do everything possible to protect family life; and Article 18 encourages governments to do all they can to help parents look after children well and states that parents are the most important people in children’s lives. There is also a responsibility on parents always to do what is best for children.

The experience of Rights Respecting Schools is that greater awareness and understanding of children’s rights can strengthen family bonds and the relationship between the school and parents. The parents I met during my visits to the two schools were all extremely positive about the impact of the rights respecting approach on their children’s attitudes towards school and home life.

1 UN Convention on the Rights of the Child: Preamble

My conclusion that the Children's Commissioner should have the responsibility of promoting and protecting children's rights in relation to the UNCRC begs the question whether this should be in addition to, or instead of, the current requirement under the Children Act 2004 for the Commissioner to be concerned with the views and interests of children in relation to the five *Every Child Matters* (ECM) outcomes.

Although widely accepted as important principles for those educating and looking after children, the five ECM outcomes are a political construct produced by the Government at a particular time, whereas the UNCRC has the permanence of an international treaty. Unlike the seven core aims in Wales, which are seen as a summary version of the UNCRC, the relationship between the ECM outcomes and the UNCRC is unclear. It would be possible for the Government to place the five outcomes alongside the statute on rights, but I believe that this would be unnecessary and my recommendation is that the five outcomes, irrespective of how they may be used for other purposes, should be dropped from the Children's Commissioner legislation.

Conclusions

The Children's Commissioner should be responsible for promoting and protecting children's rights in line with the UNCRC.

Children's rights under the UNCRC are unconditional. A child does not lose his/her rights even if s/he has violated the rights of others.

As well as promoting children's rights, the Children's Commissioner should promote respect for the rights of others.

More schools should consider becoming Rights Respecting. Through a better understanding of rights, respect and responsibilities children will learn better how to act as young citizens.

Many children and young people already make an outstanding contribution to their local communities. The role of the Children's Commissioner should include raising awareness of this.

Recommendations

- 2.1 The Children Act 2004 should be amended so that the basis for the work of the Children's Commissioner becomes 'to promote and protect the rights of children as set out in the UNCRC'.
- 2.2 The Children's Commissioner should encourage children and young people to respect the rights of others.
- 2.3 The UNCRC should replace the five *Every Child Matters* outcomes within the statutory framework for the Children's Commissioner.
- 2.4 More schools should consider joining the UNICEF Rights Respecting Schools Award scheme.

Section (b) Focus

Evidence

The Secretary of State asks whether the Commissioner should have a remit for all children or only the most vulnerable.

I received 188 responses to this question in my online survey. Of these, 70 per cent state that the Commissioner should focus on all children. This was similar to the responses I received to the online questionnaire for children and young people. The reasons given were: that all children are outside the democratic process and therefore need someone to champion their rights; and that, while not all children are regarded as vulnerable, they are more likely to have their rights violated than adults.

One young person gave me a good example of this. He suggested that if an equivalent of the 'mosquito' device had been developed to prevent adults from gathering, there would have been uproar.

Respondents also argued that it would be a backward step for the Commissioner not to have a role in tackling the intolerance and negative portrayal of children in the media.

In the survey, 44 respondents (23%) stated that the Children's Commissioner should focus on vulnerable children, mainly because other children could rely on their parents to look after their interests. However, some qualified their responses by saying that it depended on what was meant by 'vulnerable' and pointed out that some groups of vulnerable children are already well represented by other organisations.

There is a concern that if we try to define the remit of the Commissioner too tightly, there will be some children who will fall outside the usual definitions of 'vulnerable' and will therefore be omitted, such as runaways and street children.

The OCC has covered this issue in its submission as follows: *'while it is possible to define vulnerable groups of children, attempting to do so in legislation would be extremely difficult and leave other groups unprotected. A rights-based approach to the work ... would provide a framework that can realise the balance between monitoring the welfare of the general population, identifying the needs of the marginalised, and protecting the welfare of the vulnerable.'*

The international evidence suggests that children's commissioners in most countries have a remit for all children, but focus mainly on vulnerable groups. In Scotland, Wales and Northern Ireland, the commissioners have a remit for all children, but their work naturally leads them to focus resources and attention on the most vulnerable. The indication is that there is no tension between the two, except where the commissioner has a tightly defined role. For example, it is argued that in New Zealand the statutory role to monitor and report on services for children has resulted in a strong focus on child protection issues at the expense of wider interests.

Reflections on the evidence

Article 2 of the UNCRC makes clear that the Convention applies to all children regardless of their circumstances or background. There is consequently a strong case for giving the Children's Commissioner a role in relation to all children.

Giving the Commissioner a stronger role in relation to the promotion of children's rights, including raising awareness and understanding of the UNCRC and children's rights and responsibilities, also implies a role in respect of all children – and adults too. This approach is endorsed by most organisations that have contributed to the review, including the OCC itself.

There is a strong view that most of the OCC's activities, particularly where it is conducting investigations, will relate to vulnerable groups of children and young people. I agree with this, but I am not convinced that it would be helpful to try to reach an agreed definition of vulnerability because: firstly, I suspect it would be impossible to get everyone to agree on the definition; secondly, it is important for the OCC to have freedom to plan and prioritise in line with its strategic objectives and resources; and thirdly, it must be able to identify, investigate and report on new issues or rights violations as they emerge.

Conclusions

The OCC should have a remit for all children. This is consistent with Article 2 of the UNCRC, most overseas counterparts, and with what the OCC does already.

The OCC will want to have a particular focus on vulnerable groups of children, but it must decide on which groups to focus as part of its business planning process. That process should be coherent and transparent, take account of the wider context and be informed by the views of children and young people and NGO partners.

There is one qualification to this conclusion: children who are currently covered by the remit of the Children's Rights Director (CRD) at Ofsted will require a particular focus to ensure that their needs and interests do not become marginalised. This is discussed further in chapter 5.

Recommendations

2.5 The Children's Commissioner should have a remit to promote and protect the rights of all children but, within this remit, the Children's Commissioner should ensure that there is a strong focus on issues relating to the most vulnerable children.

Section (c) Casework

Evidence

The Children Act 2004 specifies the circumstances in which the Commissioner can carry out investigations into individual cases. Such investigations are only permitted when the Commissioner is using powers of inquiry and only if the case raises issues of public policy of relevance to other children.² Investigations into individual cases as part of the Commissioner's general functions are prohibited.³

The Paris Principles include guidelines for institutions that are authorised to hear and consider complaints concerning individuals, but these only apply where institutions have been given this role. These guidelines describe the institution's role in those circumstances as:

- seeking an amicable settlement through conciliation;
- informing the complainant of their rights and the remedies available, and promoting access to them;

² Children Act 2004 Section 3(1)

³ Children Act 2004 Section 2(7)

- hearing complaints or referring them to another competent authority; and
- making recommendations on the implications for policy or legislation.

In its reports on individual countries, the UN Committee on the Rights of the Child has consistently called upon Commissioners to have the authority to undertake the role in this way. This has been reinforced in the Committee's General Comment 2, where it states that institutions '*must have the power to consider individual complaints and petitions*'.⁴

My online call for evidence asked whether the Commissioner should have more powers to act directly on behalf of individual children and young people.

This proposition was supported by 45 per cent of respondents, with some noting that this would bring the English Commissioner's role in line with the other UK Commissioners.

However, some felt that the powers should only be used in certain circumstances, for example:

- where there is no adequate mechanism for complaint or where other complaint mechanisms have been exhausted;
- in cases of extreme need where services have failed;
- in cases of national significance that could set precedents for the wider child population;
- for specific groups of vulnerable children including asylum seekers, children with disabilities or those subject to child protection procedures.

On the Commissioner's powers in respect of individual casework, 26 per cent were of the view that this should not be increased. Some argue that many other organisations already have this remit. For example, the Association of Directors of Children's Services refers to the '*huge number of checks on local government including inspection, the ombudsman and individual roles within local authorities...*' Others argue that casework is better handled locally. Some believe that most children are supported by their parents and that interference by the Commissioner could undermine parental authority.

Others believe that the 'burden of casework' would be at the expense of the Commissioner's strategic role and would lead to reduced impact. For example, the RCPCH stresses that it '*is important that the England Children's Commissioner is not consumed with individual cases ... as this may be at the expense of achieving maximum impact for children and young people*' and UNICEF UK states that it does '*not believe it would be the*

4 UN Committee on the Rights of the Child: General Comment No. 2 (2002) CRC/GC/2002/2

most effective use of the Commissioner's role to increase the powers in such a way that creates an obligation on the Commissioner to take up all complaints lodged. It is appropriate to create a power which enables the Commissioner, at his/her discretion, to take up individual cases where the issues are of national or strategic influence or where there is a general principle at stake and a vulnerable group of children is concerned'.

International evidence on the question of casework is varied. Some countries, notably Ireland and Norway, give their Commissioner the title of Ombudsman, although in the case of Norway this does not mean that individual casework is handled. In other countries, notably England, Scotland, Denmark and Sweden, the Commissioner is not expected to handle complaints made by individual children. Other countries fall somewhere between the two approaches.

Some respondents have argued that the Commissioner should be able to investigate individual complaints when all other processes have been exhausted. For example, the NGO Co-ordinating Group recommends that the Commissioner should have this power where there is no adequate mechanism to remedy an alleged breach of children's rights or where a general principle is at stake. The NGO Group also argues for stronger enforcement powers, including the use of legal proceedings and the right to provide financial or other assistance to individuals.

Two related issues have been highlighted. Firstly, under Section 2(2)(a) of the Children Act 2004, the Commissioner has the power to review the operation of complaints procedures as far as they relate to children and some argued that this power should be used to greater effect. For example, RCPCCH advises that the OCC should have a duty '*to strengthen local and national mechanisms, to act directly on behalf of individual children and young people*'. ENOC standards state that children themselves should be involved in the design and review of complaints procedures and advice and advocacy systems. Secondly, respondents highlighted the importance of the Commissioner referring individual cases to other organisations or signposting the help they can offer.

Reflections on the evidence

I am clear that a full ombudsman role is not appropriate. Commissioners that have tried to undertake a substantial casework function have confirmed that it has swamped their other more strategic work and reduced their impact. For example, the Ombudsman for Ireland and the Commissioner for Wales dealt with 912 and 220 cases respectively last year, but they both told me that they are seeking to reduce the number of cases they deal with directly each year and are referring more individuals on to other organisations better

placed to support them. The Ombudsman for Ireland has also felt it necessary to petition for additional staff to manage her caseload of investigations and complaints.

I see no reason for retaining the legal clause which prevents the Commissioner from investigating individual cases. In practice, the OCC has undertaken some in-depth investigations that have been prompted by individual cases. For example, the strategic investigation into the plight of asylum seeking children at Yarl's Wood arose from an individual case that had been brought to the attention of the British Association of Social Workers which, in turn, drew it to the attention of the Commissioner. The same is true of other investigations that the OCC has undertaken and I believe that this is entirely appropriate.

I have not been persuaded that the Commissioner needs enforcement powers. It cannot be right that an external body has the power to impose its judgement over a policy owner or service provider. Even the Local Government Ombudsman (LGO) does not have a legal power to enforce implementation of his recommendations. He does not regard this as a problem as it means that all the LGO's recommendations must be objective and well-evidenced so that they are hard to deny or resist. The result is almost 100 per cent compliance with the LGO's recommendations by the organisations to which they are directed.

Turning to the possibility that the Commissioner might initiate and intervene in legal proceedings or represent or provide financial assistance for children, whilst I would not rule this out, I would expect the OCC to commit resources for this purpose only very rarely and only where the case has national significance. I understand that the Commissioner in Northern Ireland took her government to court on the issue of smacking and that this resulted in substantial costs being claimed against her office. This example illustrates the risks involved. It is imperative that the Children's Commissioner does not expose the OCC to liabilities that could jeopardise other parts of the business plan or that would cause the Commissioner to seek additional public funding.

The Commissioner for England should however be prepared to offer independent advice to the courts on matters relating to children's rights and the application of the UNCRC. I am not suggesting that this should apply to all legal cases, as this could become as burdensome as undertaking the casework itself. The OCC should only be expected to offer advice in cases that the courts regard as having wider significance.

In England, I believe that complaints and casework are in most cases better dealt with at local level, for example by local authorities, the NHS, police authorities and schools, or ultimately by the LGO.

A better use of the OCC's resources would be to review and monitor the availability and accessibility for children of advocacy and complaints arrangements. The Children's Commissioner's general functions already provide a power that allows this activity to be undertaken.⁵ The OCC has contributed to an investigation by Children England on the operation of children's complaints procedures and has reviewed and reported on complaints procedures in a few specific areas, such as complaints systems in schools in 2007 and in youth justice secure settings. However, I believe this is an area where the OCC could have wider impact.

Conclusions

To act effectively the Commissioner must not be overburdened with individual casework. The OCC is not resourced to carry out such a role and there is no prospect of resources becoming available in the foreseeable future on the scale that would be necessary.

The Commissioner should have discretion to investigate a small number of individual cases that have wider significance, reflecting its strategic priorities and having regard to the effective use of resources.

The Commissioner should not become a *de facto* court of appeal when all other legitimate routes have been exhausted or have the power to adjudicate or enforce implementation of a decision.

When appropriate, the Commissioner should signpost children to complaints mechanisms and advocacy services.

The Children's Commissioner should take action to monitor and review complaints and advocacy arrangements.

Recommendations

- 2.6 The Children's Commissioner should have the power to investigate cases affecting individual children, provided that they have strategic significance.
- 2.7 The OCC must not duplicate casework carried out by other organisations and the process for selecting cases should be transparent.
- 2.8 The Commissioner should monitor and report on the availability and effectiveness of all complaints and advocacy services as they relate to children.

5 Children Act 2004 Section 2(2)(c)

Section (d) Independence

Evidence

Although my online survey did not ask a direct question about independence, around a quarter of respondents have raised it as an issue. Their perception is that the Children's Commissioners in England have been hampered in their role through not being sufficiently independent from government. The NGO Co-ordinating Group argues that *'interference from Government would seriously undermine the integrity and effectiveness of the Office. This is letting down our children and young people, wasting public funds: why establish a body that replicates the working practices of other organisations'*.

Respondents believe that a number of factors have reduced the Children's Commissioner's independence:

- The Children's Commissioner must consult the Secretary of State before holding an inquiry.⁶
- The Secretary of State has the power to direct the Commissioner to hold an inquiry.⁷
- It is open to the Secretary of State not to publish a report submitted to him by the Children's Commissioner following an inquiry, or to publish it in an amended form.⁸
- The OCC's budget is determined by the Secretary of State for Education and the Commissioner is personally accountable to the public accounting officer (the Permanent Secretary of the Department for Education) for the probity of the OCC's expenditure and adequacy of its financial management arrangements.
- The Commissioner is appointed by the Secretary of State for a term not exceeding five years⁹ with the possibility of one further five-year term. The appointment process has also been a contentious issue.
- It is feared that the Secretary of State may have the power to remove a Commissioner who is too challenging of Government policy.

There have been several suggestions about how independence could be enhanced. For example, the Fostering Network argues that the Children's Commissioner *'should be independent of Government, free to institute inquiries without the agreement of government, and should be able to report his/her findings to Parliament'*. The NGO Group proposes an annual report to Parliament on implementation of the UNCRC in England, consulting with children and young people in the process. The Professional Association for Children's Guardians, Family Court Advisers and Independent Social Workers (NAGALRO) states

6 Children Act 2004 Section 3(3)

7 Children Act 2004 Section 4(1)

8 Children Act 2004 Section 4(4) and 4(5)

9 Children Act 2004 Schedule 1(3)

in its submission that the Commissioner '*must be transparent and accountable with minimum bureaucracy and should be directly accountable to Parliament through an appointed board. The reconstitution of the Office of the Children's Commissioner as an independent stand-alone agency would ensure the necessary independence from government, avoid undue influence from sectional interests and provide political impartiality and demonstrable transparency*'.

Reflections on the evidence

The concerns about independence must be addressed because otherwise the Commissioner will lack public confidence and credibility.

I should emphasise, however, that I have found no evidence that the Commissioner's independence has been compromised and I believe that the concerns are based more on perception than reality. Discussions about this with the previous and present Commissioners and their officers have not revealed any instances of Government interference. The nearest example was the only time the previous Commissioner consulted the Government on a proposal for a formal inquiry and requested additional funds to carry it out. The Government declined to provide the necessary additional funding. The Secretary of State has never directed the Commissioner to conduct an inquiry and it is difficult to envisage the circumstances when this power might be needed.

Although Children's Commissioners in the devolved administrations have similar lines of accountability and reporting to Government, their independence does not appear to be an issue. The Commissioner in Wales, for example, reports to the Assembly through the First Minister, but nobody doubts that his reports are independent. This is at least partly due to the respect accorded to the Commissioner in Wales, with the Assembly holding an annual plenary debate and the Government issuing a formal response to the recommendations in the Commissioner's annual report.

The Commissioners in Northern Ireland, Scotland and Wales all tell me that they meet regularly with departmental officers and Ministers and are happy to raise issues and make proposals informally rather than always resorting to formal channels or the media. My impression is that they have shown greater political acumen than the Commissioners in England. At the same time, I recognise that it has been easier for them because of the esteem in which their posts are held. It seems likely that the concerns about independence would not have been raised if the Commissioner's role and advice had been accorded the same degree of importance by the Government in England as elsewhere.

The principle of independence would be reinforced if the Commissioner were able to submit reports direct to Parliament at the same time as submitting them to the Secretary of State. This would increase Parliament's awareness of issues being raised by the

Commissioner and would open them up to wider debate if necessary. It would also remove any suggestion that the text of the report had been moderated before publication. The Government or other relevant bodies should be required to issue a written response, within a reasonable timeframe, explaining what action they plan to take in respect of the Commissioner's recommendations.

It is for Parliament to decide how the Children's Commissioner should report to it. As the Select Committee covering all children's issues, the Select Committee on Education would be likely to have the main role, but the Select Committees on Justice, Health and Home Affairs, as well as the Joint Committee on Human Rights and the All Party Parliamentary Group on Children will also be likely to take a close interest in the work of the OCC and may well wish to call the Children's Commissioner to give evidence or to discuss the annual report. Like HMCI,¹⁰ the Children's Commissioner would be expected to appear regularly before the Education Select Committee.

There is also scope for the OCC to accomplish more through its annual report. In previous years, the annual report comprised a summary of the Commissioner's activities over the year, together with a detailed account of expenditure and financial management and auditing arrangements. The reports do little to raise the Commissioner's profile or standing; this is a missed opportunity. The annual report should showcase the OCC's achievements, especially in terms of impact, and highlight and make recommendations on issues in relation to children's rights that it has uncovered. The reporting process would be further strengthened by a requirement for the Government to respond with a written statement to Parliament. If this were used as the basis for an annual debate in Parliament, as recommended by the UN Committee on the Rights of the Child and as happens in Wales, the report – and thus the OCC – would have even greater impact.

There should be a requirement for parliamentary involvement in the process of appointing the Children's Commissioner. This should entail a pre-appointment hearing and an opportunity for the Select Committee to raise concerns directly with the Secretary of State if he chooses not to accept its recommendations. The committee should also have an opportunity to consider and comment on the job description prior to the Children's Commissioner's post being advertised. I believe that these arrangements would have avoided the criticisms that were levelled at the appointment process for the present Commissioner.

I see little risk of the Commissioner's position being compromised as a result of the Secretary of State holding a legal power to dismiss the post-holder. This power can only be used in the event of the Commissioner becoming unfit or unable properly to discharge

10 HM Chief Inspector of Education, Children's Services and Skills

his/her functions; or having behaved in a way that is not compatible with him/her continuing in office. These are very high hurdles and would be open to legal challenge in the event of their misuse.

I support the NGO Co-ordinating Group's proposal for a single seven-year term for the Commissioner. In its 2007 report 'Ethics and Standards', the Public Administration Select Committee recommended a single non-renewable term of office, commenting: '*... The most effective safeguard against concerns that regulators' independence may be influenced by a desire for reappointment is to provide for a reasonably lengthy single non-renewable term. In our view this term should not be more than seven years (nor less than five years)*'. The Commissioner for Wales is appointed for a seven-year term and I understand that Scotland is also considering moving to a seven-year term of office.

I do not believe it is possible for the OCC to have complete financial independence. Nor is there any evidence to suggest that the Department for Education (DfE) overseeing its budget has disadvantaged the OCC or restricted its activities. I have considered the option of funding the OCC through Parliament. There are a few precedents for this (e.g. the Information Commissioner is paid out of the Consolidated Fund and the amount is specified by a resolution of the House of Commons) but the bodies concerned tend to perform a parliamentary or regulatory function and are therefore not directly comparable.

One possible improvement would be to give the OCC notification of its budget for three years, thereby allowing it to plan its business and finance with a greater degree of certainty. Members of the OCC's Audit and Risk Committee have told me that they would welcome this and it has also been cited in the evidence to my review as another way to give the Commissioner more control over the OCC's strategic planning.

Conclusions

A widely-held perception is that the Children's Commissioner is not fully independent. However, there is no evidence that in practice the Commissioner's role or activities have been compromised by government action.

Consideration should be given to strengthening the Commissioner's independence, especially in respect of reporting arrangements and the appointments process.

Recommendations

- 2.9 The requirement for the Commissioner to consult with the Secretary of State prior to undertaking an inquiry should be removed.
- 2.10 The Secretary of State's power to direct the Commissioner to undertake an inquiry should be removed.
- 2.11 Parliament should consider how it might have a role in the appointment process for the Children's Commissioner. The relevant select committee should be consulted on the job description and have the opportunity to make recommendations at the pre-appointment stage. The Secretary of State must have regard to the committee's recommendations.
- 2.12 The Commissioner should be appointed for a single seven-year term.
- 2.13 It is for Parliament to decide how the Children's Commissioner should report to it. The Commissioner should submit reports simultaneously to Parliament and the relevant Secretary of State. The Government should respond, within a reasonable timescale, with a written statement to Parliament on the action to be taken in response to the recommendations.
- 2.14 The Commissioner should submit a report to Parliament at least once a year. The OCC's annual report should highlight and make recommendations on issues in relation to children's rights.
- 2.15 The Commissioner should receive a three-year budget with the freedom to determine how best to use it to meet the OCC's established priorities.

Section (e) Additional powers

Evidence

Several organisations, including the NGO Co-ordinating Group, have suggested additional powers and duties that would enable the Commissioner to carry out her role more effectively. Some of these have already been covered in the sections on casework and independence.

It is evident that, generally, there is a good deal of misunderstanding about the Commissioner's existing powers. Many respondents suggested adding powers that already exist. Others suggested adding powers to do something for which the Commissioner does not need specific legal authority (e.g. commissioning and undertaking research,

cooperating with other organisations or referring children who wish to make a complaint to the appropriate investigating authority).

The following proposals merit further consideration:

- a requirement for Government Ministers to consult with the Children's Commissioner during the preparation of laws and policies affecting children;
- a power to require the Government to undertake children's rights impact assessments;
- a duty to review the availability and operation of statutory complaints and whistle-blowing procedures and arrangements for independent advocacy;
- a duty to monitor and publish findings from formal investigations and inspections affecting children carried out by other bodies; and
- a duty to report every five years to the UNCRC.

I comment on each of these proposals below.

Reflections on the evidence

The first proposal could have the effect of requiring the Government to consult the Children's Commissioner about any proposed law or policy that had implications for children, no matter how inconsequential. This could result in delays to the parliamentary process and could have significant resource implications for the OCC. The Commissioner must therefore be allowed to target those new laws or policies that most affect children. I am also opposed in principle to turning any of the Commissioner's powers into duties as this would reduce the Commissioner's independence.

It follows, therefore, that the Commissioner should have a power to assess the impact of new laws or policies and that the Government should not be under a duty to consult the Commissioner. In practice, however, a mechanism should be found to ensure that the Commissioner is alerted to new policies or laws early enough in the process for his/her advice to make a difference.

The proposal that the Commissioner should conduct impact assessments should follow the same principle, i.e. this should be a power for the Commissioner rather than a duty for the Government. This power would be strengthened by the wider requirement I am recommending, for Government to have regard to any recommendations the Commissioner may make and to issue a response.

I do not agree with a duty to monitor and publish findings from formal investigations and inspections as, again, this could prove too burdensome for the OCC. The Commissioner's

general powers already give him/her the discretion to carry out such activity, and this should continue to be the case.

There is one exception to my general principle that no new duties should be imposed on the Children's Commissioner. The Commissioner's role in monitoring progress in implementing the UNCRC is of paramount importance. There is already an expectation within the UN Committee, Government and the OCC that the Commissioner will provide an independent report to the Committee's five-yearly review of the UK. Indeed, this has happened in practice. However, I believe it would be helpful to cement this expectation in legislation so there is no doubt of the Commissioner's role or authority to contribute to the process in this way.

The OCC would be more effective if there was greater recognition and understanding of the Commissioner's powers. Sir Al Aynsley-Green gave me an example of an occasion when he had tried to use his power under Section 2(8) of the Children Act 2004 to hold a private conversation with a young person in custody, but had been refused because the officials working at the frontline were unaware of it. There is a role for government (national and local) in raising awareness of the Commissioner's powers across the workforce. There is also an important message here for the OCC itself in respect of the Commissioner's profile.

Conclusions

The Commissioner's existing powers should remain in force and be used in respect of the proposed new duty to promote and protect children's rights.

The Commissioner should have a new power to review or undertake impact assessments in respect of proposed legislation but not a duty to assess all legislation.

Recommendations

- 2.16 The Commissioner should have an additional power to undertake an assessment of the impact on children of new policies or proposed legislation. A mechanism should be found to ensure that the Commissioner is alerted to new policies or laws early enough in the process for his/her advice to make a difference. Those responsible should be required to have regard to the Commissioner's conclusions and recommendations and issue a written response.
- 2.17 National and local government should raise awareness across the public sector of the role of the Commissioner and his/her powers.
- 2.18 The Commissioner should have a duty to report to the UN committee on progress in England for the five-yearly scrutiny of the UK Government's implementation of the UNCRC.

Section (f) Responsibility for devolved administrations

Evidence

Although the legal details vary a little, the children's commissioners in Northern Ireland, Scotland and Wales have broadly the same responsibility to promote and protect the rights of all children who are residents of their countries. However, under the terms of the devolution settlement, the UK Government retains responsibility for reserved (i.e. non-devolved) matters, including immigration and asylum, child poverty and children in the military. The responsibility for these issues sits with the Children's Commissioner in England.

The devolved administrations and their commissioners are opposed to this in principle and argue that the rights of children who happen to be in non-devolved situations need protection through them. This raises a number of challenges.

It is unhelpful that the Children's Commissioner in England does not have a duty to promote and protect children's rights and is therefore regarded as having an inferior role compared to the other commissioners; and that some of the commissioners have powers to undertake casework whereas others do not.

It also raises technical complications about which children's commissioner has the legal authority to support which children in which circumstances. For example, it is often very difficult to disentangle non-devolved issues such as child poverty from devolved issues such as education or housing. This has at times led to duplication of effort and

operational clashes where both commissioners have tried to investigate the same case. It also increases the potential for an important issue to slip between two commissioners.

In practice, the commissioners in Northern Ireland, Scotland and Wales have tried to work around these difficulties and do what they think will be best for the children concerned. All have given examples of where they have proceeded with investigations involving non-devolved issues, especially in relation to child immigration, in which the respective commissioner has taken up the matter with the UK Border Agency directly rather than going through the Children's Commissioner in England. The Children's Champion team at the UKBA told the review that they have experience of working with the Offices of the Children's Commissioner in both Scotland and Wales to good effect. There is no reason to conclude that this would not be the case in other scenarios.

Reflections on the evidence

To seek the involvement of the Children's Commissioner in England on matters relating to non-devolved issues appears to be creating an additional layer of bureaucracy, slowing down investigations and adding to the administrative burdens for each of the commissioners' offices. It adds to confusion around the remit of each office holder and their subsequent responsibilities. If the commissioners themselves are unclear where they should be stopping activities and handing over to the other, it does not bode well for the children and young people who have to navigate their way to the correct person.

UK-wide agencies such as the UKBA appear to be content to deal directly with each of the commissioners in matters relating to children in their country without deferring to the Commissioner for England, so it seems sensible that the legal loophole should be closed.

During my visit in Edinburgh, members of the Scottish Parliament Corporate Body (SPCB) expressed concerns over the additional resources that would be required by each commissioner to take on non-devolved matters. However, none of the children's commissioners themselves cited this as a major concern.

Although they are linked together as members of the British and Irish Network of Ombudsmen and Children's Commissioners (BINOCC), the evidence presented to me suggests that the children's commissioners in England, Northern Ireland, Scotland and Wales do not work together closely.

The Commissioner for Scotland emphasised that the BINOCC group has agreed a common protocol and he has found BINOCC to be a useful peer reference group. I would like to see increased communication and better relationships between the

commissioners in this vein. The Commissioner for Scotland has also suggested that the four commissioners could carry more weight with governments by joining forces to bring national policies in line with the UNCRC and I agree with this point.

Conclusions

In principle, the Commissioner for England should have a remit to promote and protect the rights of children only in England. Similarly, in principle, the commissioners for devolved administrations should have a comparable remit for children and young people who are residents of their countries, including for non-devolved issues. The position could be improved in practice through careful planning and closer collaboration between the commissioners. It would be desirable to enshrine this principle in changes to legislation, but all UK governments would first need to consider the wider implications.

Children's commissioners for England, Northern Ireland, Scotland and Wales should liaise closely and regularly to coordinate their activities, maximise their impact across the UK and share effective practice.

Recommendations

- 2.19 The children's commissioners in devolved administrations should in principle be responsible for all relevant matters in respect of children and young people who normally reside in their countries. All UK governments should consider the legal and practical implications of putting this recommendation into practice and implement the option that best captures it in spirit.
- 2.20 The OCCs in England and the devolved administrations should coordinate their investigations and share findings to ensure that the wider benefits are felt by all children in the UK and to avoid duplication of effort.

Chapter 3: The relationship with other organisations

Section (a) Relationships with the sector

Evidence

My remit letter asks if it is *'helpful or confusing for government to support organisations with complementary functions'*.

In my online survey I asked whether respondents were aware of any organisations carrying out a similar function to the OCC. The response was inconclusive, with 38 per cent stating they were aware of such organisations, 34 per cent unaware and 28 per cent unsure. Suggestions from the first group included specific bodies (e.g. the CRD, CRAE, Ofsted, Barnardos, National Children's Bureau (NCB), NSPCC and the Children's Society) and more general bodies (e.g. local charities, schools and advocacy organisations).

The CRD is thought to bear closest comparison with the Children's Commissioner, although his role is strictly limited to children living in care and residential establishments inspected by Ofsted, on which he advises HMCI. In practice, the CRD approaches his role differently, collecting and presenting the views of children and young people without placing any interpretation upon them or making recommendations. Several of his reports have been held up as excellent examples of how to present impartially the views of children and young people – for example, his report on *'Fairness and Unfairness'*, which was mentioned in HMCI's 2009-10 report. The CRD is evidently highly regarded for his work within this limited remit, although a few respondents questioned how much impact his organisation has had.

CRAE is also thought to have a similar role although it is seen as more of a campaigning organisation and it lacks the legal power, authority and resources of the OCC. Other children's voluntary organisations were cited as being effective at campaigning, research or advocacy.

Many organisations I consulted identified the EHRC as a natural partner, although this hardly registered in the online survey. I met with representatives of the EHRC, who confirmed that the remit for their organisation covers all age groups. EHRC has begun

some scoping work to identify how it can best serve the interests of children and young people, although this is currently on hold.

My online survey also asked whether it is helpful or unhelpful to have organisations with complementary functions. Out of 107 responses, 47 per cent thought it was helpful, while 18 per cent found it unhelpful. It was generally considered that any organisation that worked to improve the lives of children was a good thing. Some respondents argued that having multiple organisations led to multiple perspectives that help to stimulate debate and ultimately improve outcomes for children. It was suggested that the knowledge, research and experience of these other organisations should also inform the work of the OCC.

Respondents who thought that having other organisations doing similar work to the OCC was unhelpful were concerned about duplication, efficient use of resources and the confusion it might cause to those trying to access services.

Reflections on the evidence

The field of children's rights and interests is evidently very crowded. The UK undoubtedly benefits from a strong civil society, but this strength can also be a weakness if individual organisations pursue their own agendas and do not work well together. It is accepted that the OCC is in a unique position in having the power and legal authority to represent children and young people. However, the voluntary sector has not taken sufficient advantage of this, nor has the OCC worked closely enough with the voluntary sector to gather evidence or make use of its expertise.

In 2005, the OCC and the OCRD developed a protocol for joint working, but its main purpose seems to have been to set boundaries and avoid duplication rather than take advantage of each other's activities and expertise. Despite their shared interests, I have not seen any evidence of close working between the two organisations.

Similarly, I have found it surprising that the OCC and the EHRC have not formed a closer working relationship, despite the fact that EHRC's remit covers children and it has undertaken several activities with children as the focus. Examples of these include guidance for young people on knowing their rights and a series of youth related projects, including Project 1000 which involves a community of young people across the country debating and promoting fairness and respect.

The OCC has held some joint discussions with EHRC, particularly in helping to develop EHRC's scoping work. However, there is potential for greater collaboration, in particular through petitioning the EHRC to use its legal power of enforcement in extreme cases

where they fall within its remit and where the OCC considers that there is a need to enforce compliance. The EHRC should consult the OCC when dealing with matters relating to children.

Another potential partner is the LGO. The LGO's role is to investigate complaints from members of the public (including from and on behalf of children and young people) alleging they have suffered injustice as a result of maladministration. The LGO deals with some 80,000 complaints per year. The LGO's jurisdiction covers all local authorities, police authorities, school admission appeals panels and a range of other service providers.

Contact between the OCC and the LGO has been very limited. However, LGO data could be extremely helpful to the OCC in identifying themes and issues, assisting prioritisation and business planning, and in monitoring the adequacy of local complaints and advocacy arrangements.

The OCC could also benefit from closer interaction with local children's rights and advocacy officers. This would support its planning and monitoring work but could be used as a way of raising the Commissioner's profile.

Conclusions

The OCC has found itself in a somewhat awkward position between the Government and civil society. It has rightly strived to maintain its independence, but this has resulted in the OCC often appearing to be in isolation or duplicating NGO activity.

The OCC should develop a more sophisticated relationship with other partners through making better use of their expertise and information and actively collaborating on matters of mutual interest.

Recommendation

- 3.1 While continuing to maintain its independence, the OCC should establish more fruitful partnerships with organisations that have complementary roles.

Section (b) Options for closer working (including merger options)

My remit letter asked *'how the Children's Commissioner role should relate to other government-funded organisations which cover similar functions, such as the CRD within Ofsted'*.

Evidence

My online survey asked if the role of the OCC could be carried out more effectively if it were merged with another organisation. The results were inconclusive. Half of the

respondents felt they didn't know enough to be able to answer, 27 per cent were opposed and 23 per cent were in favour of a merger.

The two main points offered against a merger were that it could compromise the OCC's independence and its ability to question and challenge other organisations; and that it could dilute the role, weaken the profile of the Commissioner or divert resources to competing priorities.

Few respondents mentioned the possibility of a merger with the EHRC, although it is an option that has been considered in other countries. Those that did, argued that it is the obvious choice, given that the EHRC has a similar universal human rights focus and is Paris Principles compliant. However, whenever I raised this possibility in discussion, the very strong view was that it would result in children's issues becoming marginalised. There was a more favourable reaction to the prospect of the two organisations remaining separate but working more closely together.

A few respondents also favoured a merger with the CRD. The advantages were seen as: the two organisations benefiting from sharing capacity and expertise, extra resource, financial savings and ending confusion over overlapping responsibilities. There was also support for the option of keeping the two organisations separate, but co-locating them in order to maximise value for money through sharing central services. However, respondents maintained that it would be inappropriate for the Commissioner to be part of Ofsted, as this would change the focus of the OCC and make it more difficult to challenge the parent body.

In its submission to the review, OCC itself has proposed that *'the Commission should incorporate the Children's Rights Director and all attached functions'*. I have had discussions about this option with the OCC, CRD and HMCI.

Reflections on the evidence

Children's Rights Director

If the Government accepts my recommendation that the OCC should become the leading agency in promoting and protecting children's rights, it becomes very hard to justify retaining a separate publicly funded CRD within another organisation (Ofsted). Their functions would still be different, but they would overlap to a considerable degree and it would not be sensible or efficient to leave the two roles as they are.

I am conscious that there are several potential pitfalls from combining the two roles:

- Some people have argued that merger or integration would result in a reduced focus on children in care.
- OCRD is a highly respected organisation. A visit to its offices and my meeting with staff demonstrated that it is already streamlined and operating efficiently. It would be essential to ensure that any integration between the two organisations did not reduce the quality of its output.
- While the current Director does not seek to influence policy makers through high-profile intervention, he has established effective networks for influencing.
- The Director makes good use of his contacts within Ofsted. He meets regularly with HMCI to update her on children's views and issues and this information is used to inform the inspection programme.
- Being a member of Ofsted adds weight to his evidence and arguments.
- OCRD currently uses Ofsted's operational support functions, so transferring the OCRD from Ofsted into a partnership with OCC is unlikely to lead to savings in that area.

I regard none of these issues as insurmountable. There are considerable arguments in favour of a merger between the two organisations. In particular, the strengths and powers of each organisation could be used to enhance the functions currently carried out by the other. It should also be possible to avoid the above risks, provided that the new organisation is set up in the right way. I discuss this in greater detail in chapter 5.

Equality and Human Rights Commission

My remit letter asked '*what the advantages and disadvantages are of merging the role of Children's Commissioner with wider human rights functions (e.g. lessons learned from Scotland or France)*'. My consideration of this option has been made more difficult because the EHRC has itself been under review. However, this has not prevented me from reaching a conclusion.

In principle, there are several potential advantages to some form of merger between the new OCC and EHRC: they would both have a remit for children's rights; they both report to the UNCRC; they have complementary duties and powers. Combining the two would result in a single organisation overseeing rights issues from a multi-dimensional, multi-age perspective: balancing the competing rights of individuals in different age groups; looking at issues affecting whole families; and making it easier to deal with rights issues relating to transition from childhood to adulthood that might otherwise fall between the two organisations.

In practice, however, most people with whom I have discussed this option say that it would be a disaster, citing various precedents where the focus on child-related functions has been significantly reduced or lost as a result of incorporating a child-focused organisation within an organisation that has a predominantly adult focus. Several people gave the National Health Service as an example and referred to the following quote from Sir Ian Kennedy:

“ Within DH [Department for Health], children and young people must compete for priority and attention against powerful other interests and needs, not least of older people, who have significant political clout”.¹¹

Others have suggested that since the EHRC took over the role and functions of the Disability Rights Commission in 2007, the focus on disability rights issues has diminished significantly. EHRC representatives explained that disability issues remained a priority for the organisation but, along with other thematic issues, they have been integrated into the work of all EHRC departments in order to mainstream the issues across the whole organisation. This approach has evidently not inspired confidence among some external observers.

Two other countries, Scotland and France, have looked at this question recently.

The SPCB Supported Bodies Committee has looked in detail at the question of whether the Scottish Commissioner for Children and Young People (SCCYP) should be absorbed into the Scottish Human Rights Commission (SHRC), mainly for the purpose of streamlining administration.¹² The findings are very similar to points raised in evidence to this review.

The Committee considered that the arguments finely balanced. However, it concluded that there was insufficient evidence to justify structural changes at that time and therefore did not recommend the creation of a single rights body.

The position in France is somewhat different. The international research team discovered that the Upper House of France's Senate has adopted a bill that will establish a single human rights defender. Subject to the usual parliamentary process, this would result in a merger between the offices of the Ombudsman for Discrimination and Equality and the Ombudsman for Children. The politics of this are still being played out, so it is too soon to say what the detailed arrangements or their impact will be.

11 Para 4.13, Getting it right for children and young people. A Review by Sir Ian Kennedy: September 2010

12 Review of SPCB Supported Bodies Committee 1st Report 2009 (session 3)

Arguments against having a single rights body in Scotland were:

- Reduced benefit to children – it was feared that the rights and interests of children could be lost in a broader organisation. There might also be competing interests between the rights of children and the rights of adults.
- Loss of international standing – the UN had complimented Scotland on setting up the office of the Children’s Commissioner. There was a reluctance to take what would be perceived as a backward step, especially one which was out of kilter with other countries in the UK.
- Less accessible to children – there was a concern that a new rights body would not be child-friendly. Some of the ways in which the SCCYP engages with children and young people are effective because they are fun.
- No value for money gain – there was no evidence that merger would add real value. It was not clear that efficiency savings could best be achieved through structural changes.
- Potential for lack of resources – the SHRC had a huge amount to do and resources were already stretched.
- No precedent – no other country has opted to include the Children’s Commissioner role within a wider human rights body.

Arguments for having a single rights body in Scotland were:

- Commonality of functions – both bodies have a general duty to promote awareness and understanding of rights, review the law and promote best practice. It was noted that the SHRC could consider children's rights within its existing remit.
- Retention of functions – the views of a single rights body might carry greater weight than the SCCYP. It could clarify some grey areas such as reserved/devolved functions and transitional issues.
- Protection for children's interests – the risk of children's interests becoming lost in a wider organisation could be avoided if a children's representative continued to have a statutory role, the budget was safeguarded and there was greater transparency in the planning and reporting processes.
- Benefits to users – the particular interests of children could be mainstreamed across all functions of the organisation, e.g. disabilities, gender, race, equalities.
- Value for money – some operational costs were duplicated across the two bodies. Immediate savings could be made if the two bodies merged (however, they were not judged significant enough to justify the upheaval to the two organisations).
- Benefits for staff – a merger would provide more flexibility and opportunities for staff to share expertise.
- Future proofing – potential to encompass other functions in future – such as an Older People's Commissioner.

A voluntary sector organisation

I have also considered the option of combining the OCC remit or function with a voluntary organisation. While there could be some advantages from sharing administrative facilities and expertise, economies of scale and joint research, there would be several disadvantages:

- The NSPCC is currently the only voluntary body to have statutory powers, which enable it to act to protect children at risk. A voluntary organisation could therefore not take on the functions of the OCC without setting a new legal precedent.
- Conflicts of interest would inevitably arise. A voluntary organisation would have to rebalance or subdue its own priorities to fit in with those of the OCC.
- Close identification with a voluntary organisation with a particular campaigning agenda would undermine perceptions of the OCC's independence.

Conclusions

Closer integration with another organisation would lead to economies of scale and potential savings.

There is a strong argument for merging the OCC with the CRD, thus creating a single combined organisation. Neither organisation should be seen as incorporating the other. There should be a genuine partnership of functions, brought together under a single leadership and management team, within a shared corporate structure. This cannot be done within Ofsted and should be a separate body.

With a new remit to promote and protect children's rights, the OCC's remit would be more closely aligned with that of the EHRC. The OCC should not be absorbed into EHRC. However, the two organisations should work together more closely in future, supporting each other's business planning, undertaking joint activities and collaborating on their use of powers.

Recommendations

- 3.2 The OCC should not be absorbed into another organisation.
- 3.3 The new Children's Commissioner for England should incorporate the functions and responsibilities of both the Children's Commissioner and the CRD.
- 3.4 The CRD's functions should continue to be provided for in legislation in order to safeguard the interests of children within his remit.
- 3.5 A close and systematic working relationship should be retained with Ofsted so that each organisation can benefit from the exchange of strategic information and appropriate links are maintained with the inspectorate.
- 3.6 Merger of OCC with EHRC is not recommended although the two organisations should work together more closely and they should keep each other informed about ongoing issues.

Chapter 4: Value for money

Introduction

My remit letter asked the extent to which *'the Children's Commissioner's current remit, functions and resources provide value for money.'* I have found this difficult to assess for a variety of reasons:

- Much of the OCC's remit is designed to bring about long-term, progressive and systemic change rather than quick fixes.
- The OCC's remit cannot be judged purely in financial or quantitative terms. As HM Treasury itself recognises, the net present value of an organisation needs to be *'considered alongside other significant factors that have not been possible to sensibly value'*.¹³
- It is difficult to draw a direct and conclusive link between cause (action the OCC has taken) and effect (what has happened as a result), partly because the OCC has sometimes worked on the same issues as other organisations and also because the effectiveness of implementation is largely within the gift of decision makers and service providers.
- Arguably some of the OCC's best work has been under the radar. I have been given some examples of 'behind the scenes' activity where the OCC has quietly gone about its business and used influence and argument to achieve change. The impact or value for money of this work is unlikely to register in any measures of performance.

Despite these qualifications, in view of my earlier comments in chapter 1 about lack of impact, it is hard to reach any conclusion other than that the OCC has so far not provided value for money. However, if the new model I am recommending is adopted and is made to work effectively, the OCC would provide good value for money. I have used this chapter to report on the OCC's financial and operational arrangements and suggest how these might be improved.

Adequacy of funding

In order to be compliant with the Paris Principles, the OCC must have *'an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose*

13 "Value for money and the valuation of public sector assets" H M Treasury 2008

of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence'.¹⁴

The following table shows how the OCC's budget compares with those of other countries.

Figure i) International comparison of OCC budgets and population numbers¹⁵

	England	Northern Ireland	Scotland	Wales	Denmark	France	Ireland	New Zealand	Sweden
Total budget	£3m	£1.7m	£1.3m	£1.8m	£0.7m	£2.7m	£2.3m	£1.4m	£1.7m
Budget per child	£0.24	£3.74	£1.30	£1.83	£0.59	£0.20	£1.89	£1.27	£0.86

By international standards, England sets a low budget per head of child population. Some respondents have argued that at only 24p per child the OCC in England represents very good value for money. One member of the DfE Children and Youth Board pointed out that it represents less than a bar of chocolate per child.

Funding per head is important because it determines the extent to which the OCC can raise its profile with children and young people and engage with local or individual issues. At the same time, much of the OCC's work is strategic and on that basis its budget appears more consistent with the budgets of other countries.

Financial management

During the course of the review, I spent a day at the OCC offices, meeting staff and members of the Audit and Risk Committee and gathering documentation. I have no reason to doubt that the OCC satisfies Government requirements in terms of process and propriety. The Audit and Risk Committee maintains regular controls over expenditure and oversees the audit and accounts. Each year, in its annual report, the Commissioner has published a remuneration report, a statement of internal control, an audit certificate and a financial statement giving a detailed breakdown of expenditure.

I do, however, have concerns about the Commissioner's lack of accountability as a result of having corporate sole status. In practice this means that she has autonomy over the objectives she sets the organisation and how the organisation uses its budget. It also seems wrong that she appoints members of the Audit and Risk Committee whose role is

14 Paragraph 5 of Paris Principles A/RES/48/134

15 Taken from annual reports and data provided by the International Evidence Review (Childhood Wellbeing Research Centre, Loughborough University)

to hold her to account for the financial controls and expenditure of the organisation. My understanding is that the status of corporation sole was conferred on the Commissioner partly in response to precedents and to reinforce the independence of the role. In this instance, however, I believe it has been unhelpful. I return to this subject again in chapter 5.

I am not suggesting that there has ever been any impropriety in the OCC. Far from it. Nonetheless, the organisation has made some strategic decisions that are widely regarded as giving poor value for money. Examples include the re-branding of the OCC to '11 Million' and the location of the OCC in expensive central London premises. Having a more strategic external challenge to these decisions might have resulted in different outcomes.

In both cases, the laudable intention was to raise the profile of the OCC and reinforce the importance of the role. But I have argued elsewhere that the best way to raise profile is through having impact and I know from my own experience that influence is not dependent on being located in expensive premises. I would even question whether the OCC needs to be based in London.

A further consideration is the Commissioner's salary of £140,000, plus expenses, which seems excessive, especially in the current economic climate and in relation to the size of the OCC. In contrast, the commissioners for Northern Ireland, Scotland and Wales each receives an annual salary in the range of £75,000-£95,000.

Use of resources

The following table provides an overview of the OCC expenditure over the past five years, including a breakdown of broadly how much was spent on different types of activity. I also attach at appendix 6 a chart showing the current OCC structure, including the number of staff employed for each purpose.

Figure ii) OCC's net expenditure 2005-06 to 2008-10¹⁶ (£,000)

	2009-10	2008-09	2007-08	2006-07	2005-06
Staffing	1,479	1,605	1,523	1,404	1,141
Projects	536	360	479	549	266
Admin	1,025	1,065	945	1,044	339
Overall net expenditure	3,032	2,973	2,870	3,009	1,713

16 OCC annual reports 2005-06 to 2009-10

The OCC spends roughly a third of its budget on administration and corporate support. Corporate and administrative posts account for 9 out of 25 of the posts in the organisation, although some of these are part-time. OCC recognises that this is untenable in the long-term. It has also begun actively to explore the potential for sharing corporate services with other partners.

The OCC currently has five members of staff devoted to communications. In view of the general lack of awareness of the Children's Commissioner and negative media reporting, it does not appear that these staff are being used to best effect. There may be scope for some savings here or, in the light of foregoing comments, a switch to activities that achieve impact.

Only two members of staff are wholly devoted to increasing participation. One plans and manages participation work, which is undertaken by other members of the OCC or in collaboration with external partners. The other is working on a project to improve collaboration and networking between participation officers in local authorities in the south-east. The timing of this project is unfortunate, given that local authority budgets are under such pressure and it is feared that participation work will not be a priority for them. That is an argument for greater interaction between the OCC and local CROs or advocacy officers in future, including via their national association.

Six members of staff in the OCC are responsible for policy work, which should represent the core of the OCC's activities. Even then, I am not convinced that all members of this team are working on activities that add real value. For example, one policy area is education, which is focusing on: encouraging good practice on participation in schools, fairness in the admissions system, fairness in the exclusions system and teaching quality. While these are important issues, it is not clear what OCC sees as its role in these areas or how it is adding value to the work being done by other organisations with greater expertise and resources.

I have drawn the following conclusions from this analysis:

- The OCC has been prevented from giving good value for money from its activities because of a lack of focus and clear objectives. There is a need for a sharp review of policy objectives.
- Some OCC activities duplicate, rather than complement, the work of other organisations.
- The financial and staffing structure needs to change in order to maximise impact by giving greater focus to core activities rooted in policy. A focus on policy issues related to children's rights would make the OCC's involvement much more relevant.

Monitoring of performance

The OCC has set itself a variety of performance indicators over the years, but these have either been ambiguous or have related to inputs or outputs rather than outcomes. They have also changed from one year to the next, thus preventing an assessment of progress and performance over time.

As illustration, the OCC's 2009-10 business plan identified five strategic performance indicators:

- To show that we have made a significant difference to the lives of children and young people by promoting effectively their views.
- To target, within our resources, a finite range of policy areas, working with others in partnership to achieve maximum impact.
- To develop a wide-ranging body of knowledge about the experiences and challenges children and young people face.
- To ensure children and children's organisations help to shape and drive our strategies and priorities.
- To show that we are delivering an efficient and effectively managed organisation.

The present Commissioner has introduced more robust organisational performance management arrangements. For example, the 2010-11 business plan includes ten more sharply defined performance indicators and related targets and these are monitored regularly by the leadership team. This is a step in the right direction, but I believe that more needs to be done to monitor the OCC's performance and progress over the five years of its strategic plan. I recognise that this must be done in a way that does not stifle either a flexible response to emerging issues or achievements that cannot be easily measured. However, I believe it will be important for the OCC to develop a set of measurable performance indicators, if necessary based on proxy indicators, for reporting to Parliament.

Marketing and advertising

My remit letter asks how the recent restrictions placed on Government marketing and advertising impact on the budget and spending commitments of the OCC.

In practice, the answer is very little. The OCC has devoted around £85k per year to marketing and advertising, but this comprises a number of individual elements: media activity and website (£30k), Takeover Day (£25k) and a Young People in the Media project (£30k).

Under the current Cabinet Office restrictions, OCC is unable to undertake any paid-for advertising or marketing without seeking a dispensation from the DfE. The DfE can consider the business case for any such expenditure up to £25,000, but proposals above this amount additionally require Cabinet Office approval.

I have stated in chapter 2 that as an independent organisation, the OCC should be able to carry out its responsibilities with the minimum of interference from Government. While I still believe that to be right in principle, I understand that in practice other independent publicly funded organisations are bowing to the pressure of the times and are complying with the restrictions. While the OCC should be free to decide its own spending priorities, it should exercise restraint in using its budget for paid-for publicity.

Scope for savings

My remit letter specifically asks whether the Children's Commissioner needs a dedicated office to make a success of the role. I am clear that the answer to this must be yes. The Commissioner would have little impact acting as a lone figurehead for children's rights. It is inconceivable that the new role described in chapter 5 for the Children's Commissioner for England could be carried out effectively without a dedicated office.

My remit letter also asks *'how any recommendations for strengthening functions or powers can be achieved in a cost-effective way'*. It is difficult to offer a precise answer, as some of my recommendations would require legislative change, while others could be introduced very quickly. The OCC should anticipate its new role by continuing with its process of restructuring, shifting the balance of activity from operational and communications work to policy and participation. Under its existing powers, the OCC can also begin to increase its focus on children's rights and the UNCRC. Early consideration should also be given to closer working and collaboration with the CRD.

I recognise that the Government is interested in closer working between publicly funded bodies in order to achieve economic efficiencies. I do not rule out the possibility of the OCC sharing some operational support functions (such as IT services, HR and payroll and wider finance and administrative services) with another organisation, provided that this does not prejudice the OCC's independence or its ability to challenge the partner organisation. Such services should be commissioned and contracted through open and transparent procedures.

The option of sharing premises would need to be considered more carefully. All the commissioners I have visited have been in self-standing, child-friendly premises and I believe this reinforces the perception of independence and helps to define the commissioners' public profile. However, the premises do not have to be expensive.

The Commissioner for Wales, for example, has his office on an industrial estate outside Swansea. Several members of the OCRD staff work from home and I see no reason why this arrangement should not apply for some OCC staff too.

I have also looked briefly at the possibility of the OCC supplementing its income from other sources. I understand that this was considered under the previous Commissioner and some work was done to develop a charitable arm, although the idea was eventually dropped. I believe this was the right outcome as any kind of sponsorship could compromise the OCC's independence. As a general principle, I would argue that any funding that the OCC receives should not risk compromising its independence or judgement.

The annual budgets of the OCC and OCRD are £3m and £800,000 respectively, giving a combined annual budget of £3.8m. It should be noted that:

- the CRD currently receives operational support from Ofsted. I envisage that this would be withdrawn if the OCRD is relocated to the same premises as the OCC;
- the majority of OCRD staff work from home.

There is undoubtedly potential for savings against the combined budget. However, it should also be noted that my recommendations will lead to new cost pressures and these should be taken into account when the OCC budget is determined. The following table gives an indication of how potential savings and costs might balance out and it does not suggest that there will be an opportunity for significant savings without reducing the scope and effectiveness of the new organisation.

Figure iii) Possible savings and pressures in finances on a new organisation

Possible savings	New pressures
Efficiency savings already achieved in 2010-11	Creation of a new OCCE, including merger between OCC and CRD, will have some up-front costs
Move from 1 London Bridge to cheaper premises and more home-working	New staffing pressures will arise from: <ul style="list-style-type: none"> ● the need for increased policy expertise on children’s rights and UNCRC; ● an increase in children and young people participation work; ● child-proofing new policies and draft legislation; ● monitoring adequacy of complaints and advocacy arrangements, plus investigation of individual cases; ● offering expert advice in legal cases
Reduced communications activity	
Nugatory policy work removed – freeing up staff time	
Merger between OCC and CRD – any duplication of roles should be removed	
Sharing of operational support and outsourcing of non-core activities	All the above could be met through redeploying and retraining existing staff but there may also be some recruitment costs in some cases

New pressures arising from the change in role and remit should be offset against savings achieved from cutting out nugatory work and reducing and/or sharing operational functions. It would be disappointing if the Government accepted all my recommendations but then underfunded the OCC so that it was unable to implement them effectively.

Conclusions

The OCC budget costs only 24 pence per child annually in England. It has not provided value for money so far, but if my recommendations are implemented it will have the potential for greater impact at lower cost.

The OCC should be subject to greater external challenge on its expenditure plans and how these link to strategic priorities and the business plan.

The OCC’s progress in its strategic objectives should be monitored by reference to performance indicators reflecting desired outcomes.

The OCC should restructure in order to give greater focus to core activities and reduce expenditure on communications and corporate services. These should be outsourced if there are cheaper and better alternatives to in-house provision.

Recommendations

- 4.1 The OCC should rebalance its organisational structure and budget to do more focused policy work on children's rights issues and in areas where other organisations do not or cannot operate.
- 4.2 The OCC should improve its effectiveness and value for money through:
 - better marshalling of resources within the organisation;
 - outsourcing;
 - making better use of activities conducted by other organisations;
 - reducing operational costs through merger with the OCRD.
- 4.3 The OCC should develop a set of strategic performance indicators based on outcomes relating to the strategic objectives of the new combined organisation.
- 4.4 In regard to Government restrictions on marketing, while the OCC should be free to decide its own spending priorities, it should exercise restraint in using its budget for paid-for publicity.
- 4.5 The Government should provide adequate funding to allow the OCC to carry out its new and extended role effectively.

Chapter 5: A Children's Commissioner for England

This final chapter presents a summary of how a new Office of the Children's Commissioner for England might operate in future and addresses the remaining questions in my remit letter.

Section (a) A new design and role for a Children's Commissioner for England

My reflections on the role and effectiveness of the OCC throughout this report signal the need for a re-launch. Most of the people and organisations I have consulted do not have confidence in the current model and are looking for an OCC with a higher profile, more influence and greater impact. I do not believe that this can be achieved through tinkering around the edges and I am therefore arguing for legislative change and a new approach.

The new role of an Office of the Children's Commissioner for England (OCCE) should be strategic and involve broadly the following activities:

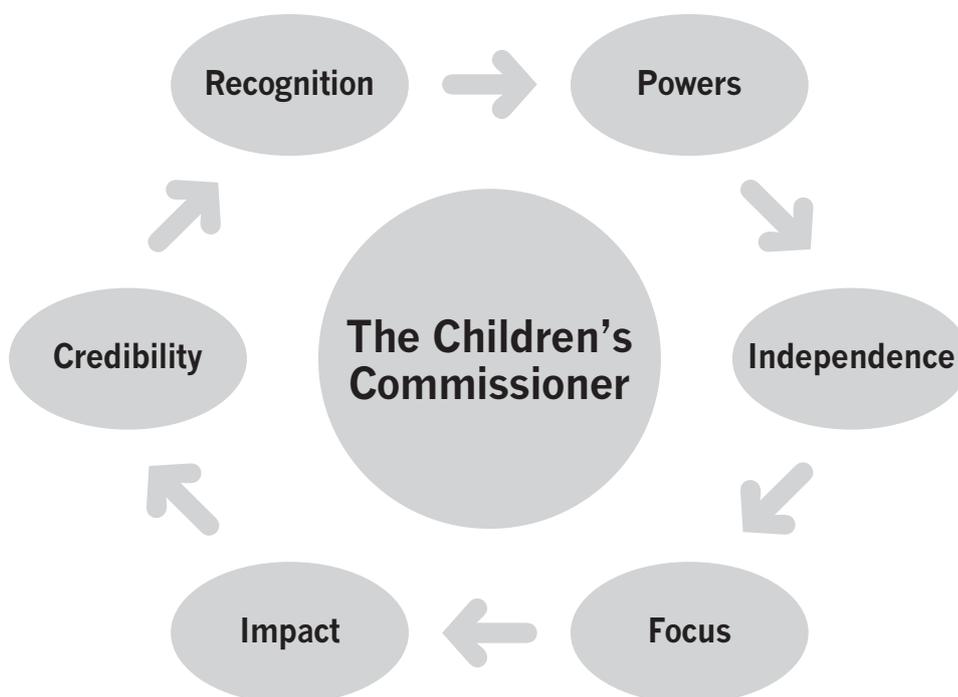
- promoting and protecting the rights of children under the UNCRC;
- becoming the recognised authority and advising on children's rights issues, based on the evidence collected through gathering children's views, commissioning or undertaking research, conducting investigations or using research from elsewhere;
- advising policy makers on the implications of their policies for children's rights and, in particular, undertaking impact assessments of new legislation;
- ensuring that children have a say and are listened to on matters affecting their rights;
- acting as a central point of advice and referral for children who believe their rights are being violated;
- investigating and reporting on individual complaints, but only where they have wider implications;
- providing expert advice to legal proceedings relating to children's rights, but only where they have wider significance;
- monitoring the accessibility and adequacy of complaints and advocacy services for children and recommending improvements;

- helping children to understand their rights and their responsibility to respect the rights of others;
- promoting public awareness and understanding of the importance of children's rights and responsibilities;
- raising public awareness of children's contributions to society;
- reporting to the UN Committee on the Rights of the Child.

Incorporating the strategic approach outlined above and my proposed changes to the governance and powers of the Office (as described in section b of this chapter), the Children's Commissioner should be refocusing its activities to improve impact and increase the credibility of the role.

My recommendations point to a new positive model, a 'virtuous circle', in which the effectiveness, credibility and public recognition of the Children's Commissioner are boosted by its new remit, powers and structure.

Figure iv) The 'virtuous circle' driving the new OCCE



The CRD sees the proposal to merge his office with that of the Children's Commissioner as both a risk and an opportunity. He is adamant that the merger should not result in a reduced focus on children in care. He is also concerned that his strong links with other parts of Ofsted should not be lost. At the same time, he believes that the merger may serve to strengthen the capacity and effectiveness of both organisations.

To this end, he has proposed the following legislative measures:

- The current legislative functions of the CRD should be retained, albeit transferred from Ofsted to the new OCCE.
- The remit should reflect the CRD's current remit by relating to children in the following groups:
 - children looked after or accommodated by any local authority;
 - children receiving, or qualifying to receive, any social care service from, or commissioned by, a local authority;
 - children resident in any establishment registered, or qualifying for registration, under part 2 of the Care Standards Act 2000;
 - children resident in any school or college to which Section 87 of the Children Act 1989 applies; and
 - children who are placed for adoption.
- The remit should be expanded to include young people who have left the care of any local authority and who are in receipt of, or qualified to receive, any service or support from a local authority.
- The powers related to the CRD function should be strengthened. This would be achieved partly through the Children's Commissioner's powers automatically becoming available to the CRD following the proposed merger. In addition it is proposed that:
 - local authorities should be required to report back on a review case, or freeze implementation of a decision, about an individual child, pending the outcome of a case review, on the request of the CRD; and
 - the CRD should be under a duty to recommend an authority to undertake child protection enquiries under Section 47 of the Children Act 1989 if the CRD considers that a child or young person is suffering or is likely to suffer significant harm.
- There should be, for the purpose of these functions, a continued right of access to Ofsted databases or information required for the purpose of consultation, enquiry or casework and a power to make recommendations to Ofsted for inspection or to make recommendations to the appropriate regulatory bodies.

I agree with the principles behind these recommendations from the CRD.

The CRD has also proposed that the OCCE should retain the remit to conduct limited casework in what he describes as an 'ombuds-lite' capacity. This is not consistent with my

recommendation in chapter 2 that the Children's Commissioner should not become an ombudsman or take on a general casework function. In this case, however, there is an argument for ensuring that the vulnerable children who fall within the CRD's remit have access to extra protection in respect of their safety, rights, welfare, social care or residential provision. I am persuaded that this aspect of the CRD's remit should be retained and become part of the responsibilities of the new OCCE. Many of the powers already held by the Commissioner or recommended in this report should be relevant and helpful. It should be assumed, for example, that a report from the OCCE to a body in respect of an individual case should be responded to within a reasonable timeframe.

One proposal from the CRD with which I do not agree is that the OCCE should have a power to require local authorities to provide children's social care services in response to its recommendations. This proposal is not consistent with the general principle I have adopted throughout this report, that the more the organisation uses evidence to support its recommendations, the harder it will be for bodies not to comply with them. I recognise that in extreme cases, evidence may not be enough in itself. However, if the circumstances demand it, the OCCE could petition the EHRC to use its enforcement powers or resort to legal action within its powers, in line with my conclusions in chapter 2.

A further consideration raised by the CRD is that his remit goes beyond the UNCRC to UK legislation where that legislation is stronger and offers greater protection to the vulnerable young people in his remit. I believe it is appropriate for his functions to continue to work in this way.

This has caused me to reflect on whether the same arrangement should apply to other aspects of the Children's Commissioner's remit. Article 41 of the UNCRC states that '*nothing in the present Convention shall affect any provisions which are more conducive to the realisation of the rights of the child and which may be contained in national or international law*'. It is therefore appropriate that the Children's Commissioner's remit recognises this.

Conclusions

I hope that the changes I am recommending in this report can be achieved quickly. This is partly because of the uncertainty some of them will create for the OCC and OCRD in respect of their structures, priorities and ways of working. But more importantly, I believe we are at a significant point in relation to children's rights and the value we place on children and young people in our society.

I have sensed enormous optimism among the children and young people to whom I have spoken and who have submitted evidence. They see this review as a real opportunity to increase the extent to which they are treated as young citizens and for their views to be

given the necessary weight and respect they deserve. I hope that we can all take advantage of this momentum.

Recommendation

- 5.1 The new role of the Children's Commissioner for England should be strategic and should include the activities at the beginning of this section.

Section (b) Governance and accountability

Evidence

The issue of governance and accountability has been discussed briefly in chapter 2 in the context of independence. While some organisations have argued that the OCC must be both independent, and be seen to be independent, others have highlighted the risk of the OCC becoming cut off from other organisations that could work with it. Some consultees have reported that in its initial phase the OCC had involved partner organisations in helping to define its strategic policy themes, but that this practice has since been discontinued. The result is that potential partners have no real understanding or ownership of the OCC's priorities or business objectives and this has contributed to the general sense of disappointment in its performance described in chapter 1. My discussions with OCC officers have reinforced the impression that business planning is largely an internal process; and other organisations have argued that the OCC's effectiveness has been hampered by a lack of external scrutiny and challenge.

The independence of the Children's Commissioner is further complicated by the legal status of the post as corporation sole. It technically means that the Children's Commissioner has autonomy over the strategy and direction of the organisation and how she carries out her role. The past and present Commissioners have told me that on occasions this has left them feeling isolated and exposed.

A further consequence of corporation sole status is that it has placed an artificial barrier between the Children's Commissioner and the chief executive who oversees the operational management of the organisation. In effect, this places the two individuals on opposite sides of the organisation, potentially with different roles and agendas. This need not be a problem in practice if the individuals concerned are completely in tune with one another, but it has been suggested to me that a different structure would avoid that organisational risk.

Reflections on the evidence

A duty to promote and protect children's rights will require expert knowledge and understanding of technical and practical issues that the OCC does not obviously possess at present. In this new role the Commissioner could benefit greatly from being supported and challenged by external people. This could be achieved in a variety of ways but as a minimum I would expect the Commissioner to establish an executive board to assist with the business planning process and to monitor progress and impact. I understand that something similar was tried in Norway, but this has been abandoned as it was found to be too bureaucratic. Clearly it is essential to avoid this risk and I would therefore suggest that the board need meet no more than necessary to fulfil its functions.

I have considered whether the board should have executive status or be advisory. In my view the board should be more than just a reference group for the Commissioner to listen to or ignore as she sees fit. At the same time, the board should not impinge on the overall independence of the Commissioner, who under the new model would report directly to Parliament, and who should therefore have the final say in determining the priorities and objectives of the organisation.

The model at Ofsted, as set out in the Education and Inspections Act 2006, provides a useful starting point. The Ofsted Board has a function relating to the determination of strategic priorities, objectives and targets as well as ensuring that functions are performed efficiently and effectively. It has to undertake these functions for the purpose of encouraging improvement of activities and the efficient and effective use of resources.

The board of the OCC could take on a similar role. Non-executive positions to Ofsted's board are public appointments and fall within the remit of the Office for the Commissioner for Public Appointments. In principle I would recommend that a similar process is followed for the Commissioner's Board. However, the composition of the board should also comply with the Paris Principles requirement for institutions to include representatives of the following:

- NGOs with children's rights expertise;
- academic and other experts;
- Parliament.

The Paris Principles also state that government departments could be represented, but only in an advisory capacity.

The appointment of the chair and members is more complicated and mirrors difficulties around independence in the appointment of the Commissioner. Unlike Ofsted, where

appointments are made by the Secretary of State, it would be desirable to include a role for Parliament in the process. The Government and Parliament will need to consider whether this is feasible for the OCCE board and how it might best be achieved.

Conclusions

While it is important that the Children's Commissioner can operate independently, it is equally important that the business planning process is transparent and involves external people.

The Children's Commissioner should be guided and supported by (but not accountable to) an executive board.

Corporation sole status has proved unhelpful and has led to a weakness in the strategic planning of the Commissioner and a detachment between the Commissioner and the office. The Children's Commissioner should be indivisible from the OCCE. In practice, this means that the Commissioner should become responsible for all functions of the office and how it operates. Thus, it should be for the Commissioner, advised by the board, to determine what staffing structure will best meet the statutory requirements and objectives of the OCCE.

Recommendations

- 5.2 The Children's Commissioner should retain personal responsibility for the delivery of the functions set out for the Office in legislation and be personally accountable to Parliament via the reporting processes discussed in chapter 2.
- 5.3 The Children's Commissioner should receive support and challenge from a board that is compliant with the Paris Principles and is based on the model at Ofsted.
- 5.4 The board should provide strategic direction, offer challenge to the business planning process, and monitor progress and impact.
- 5.5 The Children's Commissioner should not have corporation sole status. The Commissioner should be the chief executive of the new organisation.

Section (c) Compliance with the Paris Principles

The Paris Principles (attached at appendix 8) are a set of minimum standards relating to national human rights organisations that were adopted by the UN General Assembly in 1993. I am confident that the recommendations in my report can deliver a Commissioner

that is compliant with them. However, the new model arguably needs to go further. In 2002, the UN Committee on the Rights of the Child released a set of minimum requirements for children's commissioners.¹⁷ These build on the Paris Principles and suggest a commissioner based on the following:

Mandate and powers

- The OCC must have a broad legislative mandate for the promotion and protection of children's rights.
- Its powers should include the ability to hear any person and obtain any information document necessary for this purpose.

Establishment process/resources

- The OCC must be consultative, inclusive and transparent, initiated and supported at the highest levels of Government, the legislature and civil society.
- It must have adequate infrastructure, funding, staff and premises to operate effectively and discharge its powers.
- It must be free from financial controls that could be used to restrict its independence.

Pluralistic representation

- The OCC should include representation from NGOs involved in the promotion and protection of children's rights, as well as academic experts.
- Government departments should only be involved in an advisory capacity.
- The Commissioner should be appointed through an appropriate and transparent process.

Providing remedies for breaches of children's rights

- The OCC must have the power to consider and investigate individual complaints in respect of children's rights.
- It must have the power to compel and question witnesses, and access relevant documents and places of detention.
- It should be under a duty to ensure that children have effective independent advice, advocacy and complaints procedures.
- It should be able to undertake mediation and conciliation of complaints if appropriate.

17 UN Committee on the Rights of the Child – General Comment 2 (2002)

- It should have the power to support children taking cases to court and for the OCC to take its own cases forward.

Accessibility and participation

- The OCC should be accessible and proactively reach out to all children but with a particular focus on the most vulnerable and disadvantaged.
- The Children's Commissioner should have the right to talk in private to children in residential care.
- The OCC should promote respect for the views of children and involve children in its activities.
- The Children's Commissioner should be able to report directly and independently on children's rights to the public and to parliamentary bodies.
- Parliament should hold an annual debate in respect of children's rights and the Government's compliance with the UNCRC.

Reflections on the evidence

The current model of the OCC fulfils some of the above standards, but it is deficient against both the Paris Principles and the Committee's recommendations in others, notably the absence of a statutory remit for children's rights and its apparent lack of independence. I have argued that the OCC should retain all its existing powers and any other aspect of its role that is already Paris Principles compliant.

The recommendations throughout this report cover all other aspects of compliance with the Paris Principles. However, it has not been just a matter of saying that a minimum standard should or should not be adopted. As the Loughborough University study at appendix 5 shows, the standards have been interpreted in different ways in different countries; what may work in one, may not work in another.

My recommendations are designed to fit the English context and the prevailing economic climate. I would highlight two standards where I have argued for a measured approach. Firstly, the OCC must be fully accountable for its use of public funds, but this should be done in a way that does not constrain its independence; and secondly, the OCC should take up individual cases only where they have wider implications or relate to the functions associated with the role of the CRD.

Conclusions

The current model of the Children's Commissioner falls short of the Paris Principles in some respects and this has hindered its progress and effectiveness. The recommendations in this report are designed to result in compliance with the Paris Principles.

Recommendation

5.6 The Children's Commissioner for England should be given a role that is compliant with the Paris Principles and consistent with the UN Committee on the Rights of the Child's General Comment 2, taking account of the current context for England and the prevailing economic climate.

Section (d) The Cabinet Office Tests

In my remit letter, the Secretary of State asked me specifically to assess whether the role of the Children's Commissioner meets the three Cabinet Office tests against which all arms length bodies have been reviewed. I have considered this both in relation to the current model and the model I am proposing for the Commissioner. My conclusions are as follows.

Does the Office of the Children's Commissioner perform a technical function?

Assessment: **Yes**

As currently configured under the remit set out in the Children Act 2004, it is difficult to argue that the Commissioner fulfils a technical function. The remit to promote the views and interests of children could in theory be carried out by anyone without any technical expertise.

An independent Commissioner with a remit to promote and protect children's rights is a very different matter as it would fulfill the technical function demanded by the UK Government's ratification of the UNCRC. To fulfill this remit, the OCCE will need to have a significant level of professional technical expertise in the UNCRC and children's rights. This will be needed both in order to provide technical advice in legal cases and on draft legislation and to conduct research. There will also need to be an understanding of these matters across a broad range of backgrounds, including social care, health, education and youth justice for the purpose of providing advice to government and other policy makers. Skilled practitioners will also be needed to ensure that the Commissioner is able to ascertain and accurately report on the views of children and young people.

Does the Office of the Children's Commissioner need to be politically impartial?

Assessment: **Yes**

Political impartiality is absolutely fundamental to the OCC both as currently configured and as set out in my recommendations. To be effective the Commissioner must be seen to speak with an authority that would be seriously undermined should they become directly linked to the Government's agenda or to a wider political campaign. To this end many Commissioners across Europe have policies that prevent them from joining any wider campaign or petition, however sympathetic they may be to the cause, and ensure that when they need to raise an issue with Parliament they ensure that they do so with all political parties.

Does the Children's Commissioner need to act independently to establish facts?

Assessment: **Yes**

It is of fundamental importance that the Children's Commissioner is both independent and perceived as such. Chapter 2 provides a more detailed discussion on the need for independence and makes recommendations for strengthening it.

Appendix 1: Secretary of State's remit letter



Rt Hon Michael Gove MP
Secretary of State

Sanctuary Buildings Great Smith Street Westminster London SW1P 3BT
tel: 0870 0012345 ministers@education.gsi.gov.uk

John Dunford
General Secretary
Association of School and College Leaders
130 Regent Road
Leicester
LE1 7PG

12 July 2010

A handwritten signature in black ink, appearing to read 'Rt Hon Michael Gove'.

I am announcing today that I have asked you to conduct an Independent Review of the Office, Role and Functions of the Children's Commissioner for England. I would like this review to make recommendations that would improve the impact and effectiveness of the role. I have asked you to undertake this review because of your wide practical experience of the realities of children's lives. I am most grateful to you for agreeing to lead it.

The education, health and wellbeing of children are vitally important for our society. This Government is committed to the United Nations Convention on the Rights of the Child (UNCRC) and believes it is vital that children and young people have a strong, independent advocate to champion their interests and views and to promote their rights.

The role of the Children's Commissioner was created by the Children Act 2004 to ensure that children and young people's voices are heard, and I acknowledge the work that the previous and current incumbents have done to promote children's interests. It is now more than 5 years since the first Commissioner took up office but the role and remit have not yet been reviewed. There is a continued debate about the remit of the post as compared to international and devolved administration counterparts, the public profile of the post and the impact it has had.

The Government has committed, in our coalition agreement, to increase accountability and review the cost of quangos and, therefore, I agree with the broad consensus that it is now time to take stock of the office, role and functions of the Children's Commissioner for England through a detailed and considered review. This will provide an opportunity for the Government to consider the views of a wide range of partners on how government can best promote children's interests – including the voluntary and private sector, commissioners and providers of children's services, the

current and previous Children's Commissioners and from children and young people themselves.

I would like this review to take a wide-ranging and independent look at the office, role and function of the Children's Commissioner. You will determine how you approach the issues, but I set out here three key aspects that I would like you to cover.

The powers, remit and functions of the Children's Commissioner:

I would welcome your recommendations on how best to serve the interests of children and promote their rights. What impact has the role had? What changes would be desirable to bring the role into line with the United Nation's "Paris Principles" for human rights organisations? How does the role compare with the approach taken in other countries across the UK and internationally? How can the role be configured to ensure that children and young people are more aware of it, and to better demonstrate Government's commitment to the UNCRC? Should it have a stronger and more active focus on vulnerable children?

The relationship with other related functions supported by Government

I would welcome your views on the relationship with other government-funded organisations which cover similar functions, such as the interface with the Children's Rights Director within Ofsted. Is it helpful or confusing for government to support organisations with complementary functions?

Value for Money

Given the current financial climate and our commitment to increase accountability and reduce the cost of Arms Length Bodies, it is particularly important that the review provide an assessment as to the extent to which the Children's Commissioner's current remit, functions and resources provide value for money including an assessment against the technical, transparency and impartiality tests set by Cabinet Office. Does the Children's Commissioner need a dedicated Office to make a success of the role? How can any recommendations for strengthening functions or powers be achieved in a cost-effective way? You should also consider the recent restrictions placed on Government marketing and advertising, and their relevance to the budget and spending commitments of the Commissioner.

Conduct of the Review

You will determine how the review will be conducted. I know you will ensure maximum opportunities to consult are taken, and consider the broad spectrum of opinions on this issue and welcome your plans to issue a formal call for evidence. I would like you to consider, in particular, how best to engage children and young people in giving evidence to the review and commenting on your recommendations. You would be welcome to use the Department's Children and Youth Board as one way of achieving this.

I am conscious that there are a broad range of views about this role. Cabinet Office guidance recommends that consultation should last for a period of at least 12 weeks. Particularly with the school holidays approaching, I would suggest that you allow for

such an exercise as part of your review. I would welcome an update on your thinking by mid-October with a full report by the end of November. I will then consider your recommendations and the implications for any further action by Government, including any legislative change.

The current role and functions of the Office of the Children's Commissioner will of course continue during the period of this review.

The Department will provide you with the necessary professional and operational support for the review, including a small secretariat. The Review will have a budget of up to £50,000 to cover your own costs and the costs of any external consultation and analysis you commission.

I look forward very much to your findings. I will be placing a copy of this letter in House Libraries

With every good wish,

A handwritten signature in black ink, appearing to read 'M. Gove', with a horizontal line underneath.

MICHAEL GOVE

Appendix 2: Background on the UN Convention on the Rights of the Child (UNCRC) and the Children's Commissioner

The UNCRC is the most widely ratified international human rights instrument. All United Nations member states, except for the USA and Somalia, have ratified the Convention. It is the only human rights treaty to include civil, political, economic, social, and cultural rights and sets out in detail the rights that define universal principles and norms for the status of children. It also takes into account the need for children to have special assistance and protection due to their vulnerability. Upon ratification, states commit themselves to respecting the rights laid out in the articles of the Convention.

The UNCRC was drafted over 10 years between 1979 and 1989, in response to growing demands for the rights of children to be protected under a dedicated treaty (rather than inclusion under the wider Universal Declaration of Human Rights 1948). On 20 November 1989, the governments represented at the General Assembly to the UN (which included the UK) agreed to adopt the Convention into international law. The UK signed the Convention on 19 April 1990, ratified it on 16 December 1991 and it came into force in the UK on 15 January 1992. Through ratification, the Government made a commitment to meet the provisions and obligations set out in the Convention and therefore to protect and ensure the rights of children.

Each national government is expected, by the UN Committee on the Rights of the Child, to have a dedicated office to promote and protect the rights set out in the Convention. The Paris Principles (appendix 8) list the responsibilities that this office should undertake.

The Welsh Assembly Government created the Office of the Children's Commissioner for Wales in 2000. The First Minister for Wales appointed the first Children's Commissioner in 2001. The Children's Commissioner for Scotland was established by the Commissioner for Children and Young People (Scotland) Act 2003 and the first Commissioner took up office in April 2004. The Northern Ireland Assembly introduced the Office of the Children's Commissioner in the Commissioner for Children and Young People (Northern Ireland) Order 2003 and the first Commissioner was appointed in October 2003.

Governments that ratify the UNCRC are expected to report to the UN Committee on the Rights of the Child every five years with details of their activities. In 2002, in response to the UK Government's submission, the Committee acknowledged the progress being made in Wales, Scotland and Northern Ireland, but recorded its deep concern that an independent human rights institution for children had yet to be established in England.

The UK Government took steps to introduce the Children's Commissioner for the UK (England) via the Children Act 2004. Sir Al Aynsley-Green took up the post in 2005. His successor, Dr. Maggie Atkinson was appointed in February 2010.

Summary of the UNCRC

All children and young people are equal rights holders. The UNCRC lists the rights that every child and young person should be guaranteed. All children have the same rights and it is the responsibility of both young people and adults to ensure that these rights are realised.

All children up to 18 years have:

- the right to life
- the right to a name and nationality
- the right to have their best interests considered by people making decisions about them
- the right to be with their parents or those who will care for them best
- the right to have a say about things that affect them and for adults to listen and take their opinions seriously
- the right to have ideas and say what they think
- the right to practise their religion
- the right to meet with other children
- the right to get information they need
- the right to special care, education and training, if needed
- the right to health care
- the right to enough food and clean water
- the right to free education
- the right to play and rest

- the right to speak their own language
- the right to learn about and enjoy their own culture
- the right not to be used as cheap workers
- the right not to be hurt or be neglected
- the right not to be used as soldiers in wars
- the right to be protected from danger
- the right to know about their rights and responsibilities

Source: Ombudsman for Children, Republic of Ireland

Appendix 3: How the review was carried out

The review was conducted over five months in 2010 from July to November.

I was supported by a small secretariat comprising Martin Howarth, Andrew Baxter, Jenny Briggs (from September) and Hannah Perrin (up to the end of August) and I am enormously grateful for the work they have done throughout this review.

A call for evidence was issued on 12 July and I sought evidence from people and organisations working with children and with the Children's Commissioner. At the same time, I used an online survey that asked:

- How do you know about the Children's Commissioner?
- Are enough children and young people aware of the role of Children's Commissioner?
- How great an impact do you think the Office of the Children's Commissioner has had on the lives of children and young people?
- Please provide any specific examples of where you feel the Children's Commissioner (or the OCC) has been effective or ineffective
- Should the OCC have a specific remit to promote children's rights?
- Is there anything you think the OCC should be doing which they are not doing at present, or which they should stop doing?
- Should the Children's Commissioner focus mainly on the interests of all children or mainly on vulnerable children?
- Should the Children's Commissioner have more powers to act directly on behalf of individual children and young people?
- Do you know the work of individuals or organisations in England that carry out a similar role to the Children's Commissioner?
- Could the role of the OCC be carried out more effectively if it were merged with another organisation?

I received over 200 formal responses to the online survey, many of which went beyond the detail originally requested. By far the largest proportion of these survey responses came

from schools or colleges, or from individuals working within them. Parents, local authorities and children services, voluntary organisations, universities and unions also completed surveys. I am grateful to the Consultation Unit at the DfE for analysing the responses.

During July, I launched a consultation for children and young people via an online questionnaire, which received over 700 responses (appendix 4 contains more information about these) and I also met several groups of children and young people.

I have held many meetings with key individuals and bodies that have had an active involvement with the Children's Commissioner or who work with or on behalf of children. A full list is set out in the table below.

4Children	Children's Rights Officers and Advocates (CROA)	National Children's Bureau (NCB)
Association of Directors of Children's Services (ADCS)	Children's Society, The	National Council for Voluntary Youth Services (NCVYS)
Association of Chief Police Officers (ACPO)	Diana Award, The	National Union of Teachers (NUT)
Association of School and College Leaders (ASCL)	EHRC	National Youth Agency
Barnardos	ENOC	NHS Confed
British Association of Social Workers (BASW)	Fostering Network, The	NSPCC
British Youth Council	Harrison Primary School	Ofsted
Catholic Education Service	Leicestershire County Council	Royal College of Paediatrics and Child Health
Children's Champion, UKBA	Local Government Ombudsman	Save the Children
Council for Disabled Children	Methodist Education	UNICEF UK
Children England	National Association of Head Teachers (NAHT)	Wildern School
Children's Rights Alliance for England (CRAE)	National Association of Schoolmasters Union of Women Teachers (NASUWT)	

I spent a full day at the OCC, meeting with staff and members of the Audit and Risk Committee. I have had several additional meetings with the Children's Commissioner and chief executive. The OCC submitted a comprehensive body of evidence which set out proposals for the future of the organisation. Similarly, I visited the OCRD and met all members of his team to hear about their work. Both organisations have been cooperative at all times during the review, and I have appreciated their openness and professionalism.

I travelled to Wales, Scotland and Northern Ireland to meet with the Commissioners and held discussions with members of their respective government sponsor teams. I also visited the Ombudsman for Children in Ireland. I commissioned an international comparison study from the Centre for Child and Family Research at Loughborough University and am grateful for their report in appendix 5 which outlines the findings.

I have also met with parliamentary groups: the All Party Parliamentary Group for Children; the Education Select Committee and the Joint Committee for Human Rights.

Appendix 4: Evidence from children and young people

In his remit letter, the Secretary of State asked me to seek the views of a wide range of partners on how government can best promote the interests of children, including the views of children and young people themselves.

How we collected the evidence

In planning how to collect the views of children and young people, I realised that many organisations are expert in this area and I wanted to enlist their help. I also wanted to obtain the views of a cross-section of children and young people, including from vulnerable groups. I therefore adopted three approaches:

- an online questionnaire;
- a series of workshops, where I was able to discuss the issues with children;
- the use of research evidence by other organisations.

Online questionnaire

The DfE's Children and Youth Board (CYB) helped me design the questionnaire. I am grateful to them and to the other organisations (including the Schools Council UK, UK Youth Parliament, St. John's Ambulance and local authority youth services) which circulated the questionnaire through their networks.

I received 707 completed questionnaires (347 and 360 from male and female respondents respectively). The age breakdown is shown in the following table.

Age	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	Total
Replies	1	2	8	12	21	37	26	45	54	69	142	128	78	35	13	17	19	707

In addition, I asked the Children's Rights Director to undertake a mini-survey on three consecutive weeks with his 'BeHeard' panel. I received between 35 and 41 responses to each of the three questions.

Workshop evidence

I am grateful to NCB and CRAE for organising a series of five three-hour workshops that were held around the country and involved a total of 46 children and young people (aged 10-19) drawn from a wide range of backgrounds. The CYB also ran a workshop on the Children's Commissioner as part of its annual residential meeting. I was pleased to take part in most of these sessions.

Research by other organisations

The CRD and the Council for Disabled Children gave me reports they had produced from researching children's views of their rights. With their NGO colleagues, CRAE ran a rights-focused survey that was completed online by children and young people.

The evidence

The overwhelming message from children and young people was the importance they attach to being heard and having their views considered by people who can make a difference to their lives. Consequently, they recognise the value of having a dedicated person or organisation to represent and defend their rights.

Of the 707 respondents to the online questionnaire, only 156 said they had heard of the Children's Commissioner, and fewer than half of those were able to accurately identify what the Commissioner does.

When asked about the impact of the Children's Commissioner to date, only 58 were able to answer at all, with 21 saying the Commissioner had had some impact and 37 saying that the Commissioner had not had any impact. Many considered that they should have a greater knowledge of the Children's Commissioner. For example, one 16 year old boy commented: *'I didn't know about the Children's Commissioner until I joined the school council and many people in my year don't know that there is a part of the government that exists to ensure children's views are heard: I feel that this is an issue which needs to be addressed.'* Some wanted more information and suggested that this could be covered in the school curriculum. A 12 year old girl suggested: *'If the children's commissioner is someone important we should be made aware of it through school assemblies or someone should come and discuss their role with us.'*

The majority of respondents did not consider themselves to have a voice beyond their own school or youth organisation. The idea of having a representative that could speak on their behalf to government (and have an impact) was seen as very much a positive step.

The questionnaires and workshop debates provided several ideas on the future of the role that have been incorporated into the main report especially in chapter 1 (section c). Workshop participants also mapped out the characteristics of their ideal Commissioner. I have included one of these pictures at the end of this appendix.

All groups agreed that it was important for children and young people to know what the Children's Commissioner is doing and to have the opportunity to contact him/her directly. They also want to know what changes the Commissioner achieves on their behalf. One participant was clear: *'I'd judge them on how well they've done and the people they've helped, what actual change they have made and how they've done those changes with limited funds.'*

There was a general consensus that the Children's Commissioner should be promoting children's rights and that responsibilities should be promoted alongside rights. A member of the CYB pointed out that everyone should take responsibility for supporting the rights of others. Another added that children need to know the 'limits' of their rights.

The OCRD research earlier this year on children's views on rights attracted 1,888 responses. Most of the respondents were living in care or in boarding schools. Participants were asked to prioritise the existing UNCRC rights and add in any other rights that they felt were important. The majority of respondents wanted a list of rights and responsibilities that apply to everyone, not just those who are living in difficult circumstances. The 'top ten' rights and responsibilities identified by this research are shown in the table below.

Top 10 Rights	Top 10 Responsibilities
1. To be protected from abuse	1. Responsibility for your own behaviour and actions
2. To have an education	2. Making use of your education
3. To be helped to keep alive and well	3. Showing respect to others
4. Not to be discriminated against because of race, colour, sex, disability, language or beliefs	4. Responsibility for your own safety
5. Not to be treated or punished in a way that is cruel or meant to make me feel bad about myself	5. Looking after others
6. Special help for any child with a disability	6. Looking after yourself
7. To have privacy	7. Your own health and hygiene
8. Not to be bullied	8. Carrying out your responsibilities around the house
9. To keep in touch with parents, grandparents, brothers and sisters if I want to and they want to, wherever we all live	9. Looking after the environment
10. To have private letters, phone calls, emails and messages kept confidential	10. Giving your opinion

The majority of responses asserted that the rights of children, particularly those in the care system, are not always respected. Many felt that they had no say in what happens to them.

Research by the Council for Disabled Children (CDC) found that children and young people with disabilities have difficulty making their views heard. They have concerns about a variety of issues, ranging from educational outcomes and life chances to accessing services and transition to adult services. They were worried about people's perceptions of young people with disabilities and how these might impact on the opportunities open to them.

Conclusions

I appreciate all the help I have received from children and young people and the organisations that have been involved in gathering their views.

The key messages from children and young people can be summarised as:

- few children know about the Children's Commissioner or what she does, but would like to;
- the Children's Commissioner should be more visible and accessible to children;
- children and young people do not feel fairly represented in decisions that affect them;

- children and young people want a commissioner with influence, but who listens to them and can represent them accurately;
- the Children's Commissioner should be someone who is in touch with young people and understands things from their perspective;
- the Commissioner should be able to demonstrate how s/he has made a difference;
- children and young people want to know more about their rights and feel that someone is responsible for protecting them.

The recommendations made in this report should help the Children's Commissioner meet these expectations and will serve to increase awareness of the role in future.

Appendix 5: International evidence

Summary of messages from the International Evidence Review

Emily R. Munro and Esmeranda Manful

Introduction

During August to October 2010 the Childhood Wellbeing Research Centre carried out an international scoping study on behalf of the OCC review. The first stage involved undertaking a literature review, scrutinising State Party reports, NGO reports and Concluding Observations of the UNCRC Committee. The second stage involved collecting and analysing data supplied by Commissioners and experts from a number of countries. The authors wish to thank all those who contributed, including ENOC and UNICEF's Innocenti Research Centre.

Key Findings

Independence from/accountability to Parliament or government

The international evidence review revealed that every country in this study had enacted legislation establishing the Office of the Commissioner. Institutions created by law have a better chance of being sustainable in the long run as they cannot be abolished by the government of the day.¹⁸

Accountability arrangements varied between provinces or states (where applicable) and the countries reviewed. Three main models operate.

1. Government model

The Children's Commissioner reports to the Minister and the budget is set by the Government. Countries or administrations operating this model include: England, Northern Ireland, Wales, Sweden and New Zealand.

2. *Mixed model*

Under this model the Children's Commissioner is accountable to Government but the Office's budget is set by Parliament. Denmark and five Australian territories have adopted this model.

3. *Parliamentary model*

The Children's Commissioner reports to, and has a budget set by, Parliament. Scotland, Catalonia (Spain), Victoria and Tasmania (Australia) are examples of regions that have employed these arrangements.

The Parliamentary model minimises the scope for the work of the Commissioner to be heavily influenced by the Government. However, it may be problematic if the Commissioner is isolated from key decision-making forums and channels of communication with policy makers are not open.

Part B – Evidence from individual countries

Australia

Background and key facts

- All six states and the two mainland territories have either a Commissioner or a Guardian for children and young people; New South Wales has both institutions.
- The Commissions are all independent institutions with specific legislation establishing the office; however, there are differences in their mandates. The majority promote the wellbeing of children. Australian Capital Territory and Queensland's mandate is to promote and protect the rights and wellbeing of children, whilst New South Wales' Guardian focuses on the best interest of the child.
- All of the Commissioners' work with children aged 0-17 years. Australian Capital Territory and New South Wales target all children and other areas focus on vulnerable children.
- Five out of the nine Commissioners can investigate individual cases, whilst the other four monitor trends in complaints.
- Their annual budgets range from £46,726.2 – £971,392 (75,481 – 1,569, 177 Australian dollars).

Case example: Office of the Commissioner for Children in Tasmania

Background and key facts

- The Office of the Commissioner for Children (OCC) in Tasmania was established in 2000 under the Children, Young Persons and their Families Act 1997.
- The Commissioner is an independent statutory officer appointed by the Governor of Tasmania. The mandate of the OCC is to promote the wellbeing of all Tasmanian children and young people. However, the Office recognises children with disabilities, minority ethnic groups, looked after children and those in the juvenile justice system as priority groups.
- The Commissioner's three priority functions are: reviewing and monitoring law and practice, obtaining children's views and raising awareness of children's rights.

Strengths and key differences from England

There is clear evidence that the Tasmanian OCC has been able to effect changes in policy and practice. Conditions to support this include the fact that the State is small; this has assisted in enabling the OCC to build good relationships with children and other organisations. The Commissioner also benefits from easy access to Government and the Minister for Children often seeks the advice of the OCC on key issues affecting children. They also meet regularly thus maximising the opportunities for recommendations to inform developments aimed at improving outcomes for children and young people. Examples include the development of a *Charter of Rights for Children in Out of Home Care*.

Canada

Background and key facts

- Canada does not currently have a national Children's Commissioner or Ombudsman; although in 2009 a private member's bill was tabled proposing the establishment of one.¹⁹
- There are Child Advocacy Offices in all Canadian provinces except for Prince Edward Island. Each agency with the exception of Alberta is independent.
- The Offices work independently to represent the rights, interests and viewpoints of looked after children. Each state has specific legislation on the establishment of the office.
- Every Office responds to complaints from looked after children (or their representatives) and they are all committed to further the voice, rights and dignity of this group. Some of the Offices also fulfil a broader range of functions, for example, British Columbia's Representative (Advocate) independently reviews and investigates deaths and critical injuries to children receiving services.²⁰

Strengths and key differences from England

The Children's Commissioner in England has a broad remit to promote awareness of the views and interests of all children, whereas in the Canadian provinces Advocacy Offices focus more narrowly on activities with and for looked after children.²¹ Work undertaken to explore similarities and differences in the impact of different Advocacy Offices in Canada suggests that, in general, higher levels of impact are associated with those that are: independent of government, have a wide mandate, strong statutory powers and a broad advocacy function and are exclusively focused on, and accessible to children. Strong leadership in the context of a receptive political culture is also important.²² It should be acknowledged that in England advocacy services are provided by children's social care or third sector organisations. The Children's Rights Director also has a statutory duty (under the Education and Inspections Act 2006 and the Children's Rights Director Regulations 2007) to ascertain the views of children living away from home or receiving social care services.

19 <http://marcgarneau.liberal.ca/affaires-parlementaires/projet-de-loi-c-418-loi-portant-creation-du-poste-de-commissaire-a-l'enfance-du-canada/>

20 Howe, B. (2009) Factors affecting the impact of child advocacy offices in Canada. *Canadian Review of Social Policy*, 62, p.17-33.

21 Note that some of the Offices do fulfil a broader remit too.

22 *ibid*

Catalonia (Spain)

There are various independent organisations in Spain which respond to violations of children's rights in the devolved regions. Three regions of Spain (Madrid, Catalan and Andalusia) are members of the ENOC.

Case example: Síndic de Greuges de Catalunya (Catalonia)

Background and key facts

- The Catalan Ombudsman's Office is charged with defending citizens' fundamental rights and public liberties. The Ombudsman for Children's Rights is the first deputy to the Catalan Ombudsman.
- The first Deputy Ombudsman for Children's Rights was appointed in 1997.
- The mandate of the Deputy Commissioner is to defend children's rights within public services (government, local councils and the Parliament of Catalonia); listen to children's complaints in relation to their living situation and determine whether they need to investigate to address deficits.
- Dealing with individual children's cases or complaints is its priority function.

Strength and key differences from England

The Catalan Ombudsman's Office has a mandate to defend the rights of all Catalonians. Children's rights' activities are therefore undertaken by an Office which has a broader human rights' remit. Being part of a human rights' institution affords opportunities to raise the profile of children's rights. However, there is a danger that the specific interests of children are sidelined, or budgetary constraints minimise capacity to engage in activities that directly influence the lives of children. Positively, data from Catalonia suggests that the Deputy for Children and her team are influential and able to promote children's rights actively.

The main function of the Ombudsman's Office is to deal with individual cases or complaints. In 2009, the Deputy for the defence of children's rights and her team dealt with over 700 complaints concerning education, child care, child protection and juvenile justice. Opinions vary as to whether reactive work such as this limits opportunities for the Office to influence children's rights more broadly. However, some of the Catalan Ombudsperson's recommendations concerning the Children's Rights and Opportunities Bill have been included in the Act. The government has also accepted a 'Code of Best Administrative Behaviour' developed by the Office.

Denmark

Background and key facts

- The National Council for Children is an independent national institution for children. It was established under Section 88 of Danish Act No. 453 of 10 June 1997 on the Rule of Law and Administration in Social Areas.
- The Council focuses on all aspects of children's lives but priority groups include: victims of bullying and abuse, minority ethnic groups and children in alternative care.
- Individual case work is explicitly excluded from the Council's remit.
- The Council has full membership status within ENOC.
- The annual budget of the Office is set by the National Parliament. It currently stands at £710.000 (DKK 6.3m), that is approximately £0.59 per child.

Strengths and key differences from England

The National Council for Children has a duty to monitor Denmark's compliance with the UNCRC. The National Council informs public debate on issues concerning children's rights and its broad advocacy function has made it quite a visible organisation in the country. The Council also collaborates on specific initiatives with governmental and non-governmental organisations. Such arrangements have attracted joint funding and enabled the Council to participate in a wider spectrum of initiatives than would have been possible if the Council had been working autonomously.²³

France

Background and key facts

- The National Ombudsperson for Children in France (Défenseur des Enfants) was established under Law No 2000-196 of 6 March 2000.
- The mandate of the Défenseur des Enfants was to defend and promote the rights of the child as defined by law or under the UN CRC.
- Preparations are under way to merge the Défenseur des Enfants with two other human rights organisations.

²³ The National Council for Children, 20.09.06 [accessed October 21, http://www.brd.dk/fles/Brd.dk%20Filbibliotek/Andet/ENOC_update_200906.pdf]

Strengths and key differences from England

More than 20,000 children, families or their representatives have contacted the Défenseur des Enfants since it was established in 2000. Issues tackled include visiting rights, conflicts in maintaining family ties after divorce, school problems, sexual abuse and troubles related to prison, police or absconding.²⁴ A national consultation 'Giving Young People a Say' was also undertaken and findings from this were presented on the 20th Anniversary of the CRC.²⁵

In June 2010 the Upper House of France's Senate adopted a bill that establishes the Human Rights Defender; a change designed to simplify public bodies. The Bill **merges the Ombudsman's Office, the High Authority against Discrimination and for Equality and the Ombudsman for Children's Office.**

Ireland

Background and key facts

- The Ombudsman for Children Act 2002 established the Commissioner's office as an independent state institution. Appointments are made by the Irish President; the first was made in 2004.
- The mandate of the Ombudsman for Children is to promote the rights and welfare of children.
- The office focuses on all children under the age of 18 years, a population of 1,056,947. The office also considers asylum seeking children, particularly those who are unaccompanied/separated from their parents or guardians.
- The Ombudsman has three main functions: the promotion of children's rights; the examination and investigation of complaints from children and young people or from adults on their behalf; and research and policy activities.
- There are certain exclusions to the investigatory powers of the Ombudsman. He cannot receive complaints regarding actions taken by public bodies in the administration of the law on asylum, immigration and naturalisation.
- The Ombudsman for Children's Office has full membership status within ENOC.
- The annual budget of the Office for 2009, set by the Department of Health and Children, was £2,000,920 (2.31 million), which is approximately £1.89 per child.

24 <http://www.tes.co.uk/article.aspx?storycode=6024148>; accessed 28-10-2010

25 Comment from Child Rights Officer; UNICEF Innocenti Research Centre, based on ongoing research for a global study on Independent Human Rights' Institutions.

Strengths and key differences from England

Preliminary findings from an ongoing study conducted by the UNICEF Innocenti Research Centre, suggest that Ireland's Ombudsman for Children Office is effective and benefits from an **open and participatory appointment process**. The Ombudsman has the authority to conduct preliminary examination of, and **investigations into, complaints made by or on behalf of an individual child**. The number of complaints received by the office has been increasing annually; over 900 complaints were received in 2009. However, much of the complaints and investigation team's work is concerned with directing callers to other agencies or services better placed to address their concerns or queries

Consistent with the position in other countries, including England, the recommendations of the Ombudsman are not legally binding. However, the 2002 Act provides that if the Ombudsman is **dissatisfied with the response of a public body following an investigation he may lay a special report before Parliament**. So far, the Ombudsman has not taken such a step with respect to any of its investigations as it has not been deemed necessary.

Raising awareness of children's rights and specifically the provisions of the UNCRC is part of the Ombudsman's statutory remit. This is done through its direct work with schools and youth groups and also through the engagement with public bodies through complaints and investigations. As part of its advocacy work, the office has produced a range of **educational materials on children's rights** and conducts a programme of visits for schools. The Ombudsman also works with ad hoc advisory groups of young people constituted to assist with particular projects, for example projects on separated children seeking asylum and on young people in detention.

New Zealand

Background and key facts

- The Office of the Children’s Commissioner for New Zealand was first established as an independent state institution in 1989. Its independence was reinforced in 2003 when a piece of legislation was enacted to give the Office Independent Crown Entity status. This means that the Office is not beholden to follow government policy and cannot be directed by the Minister.
- The Office of the Children’s Commissioner serves approximately 1.1 million children and young people up to the age of 18. Young people in state care or the juvenile justice system are recognised as priority groups.
- The two main functions of the Office are to monitor, assess and report on services provided under the Children, Young Persons and their Families Act 1989 (CYPF Act); and to advocate on behalf of children’s interests, rights and wellbeing. The office can also investigate individual child complaints.
- The annual budget of the office is set by Government and currently stands at £1,392,320 (2.2m New Zealand Dollars) or approximately £1.27 per child.

Strengths and key differences from England

In fulfilling its main functions the OCC analyses Management Information System data and reporting, visits sites and undertakes inquiries into policy and practice in specific areas. The Commission has a **reputation for being evidence based and rational and the work of the Office is welcomed by Ministers**. Recommendations on a wide range of issues have been adopted in the past year, including those concerned with inter-agency working between health and children’s social care in response to child maltreatment and gender mixing in residences. Targeted work with children in state care or juvenile justice allows staff to develop an in-depth knowledge and understanding of issues affecting this group of young people; however, this may also serve to narrow the Commissioner’s sphere of influence on wider children’s rights issues.

Northern Ireland

Background and key facts

- The Commissioner for Children and Young People (Northern Ireland) Order 2003 established the Commissioner's Office as an independent state institution.
- The mandate of the Commissioner is to safeguard and promote the rights and best interests of children and young people.
- The Commissioner is accountable to the Office of the First Minister and deputy First Minister. In turn, they are accountable to the Northern Ireland Assembly for the activities and performance of the Commissioner.
- The office serves around 381,000 children and young people under the age of 18. The Office's remit also extends to promoting the rights of disabled young people and those who have been looked after by local authorities until they reach the age of 21.
- Northern Ireland has full membership status within ENOC.
- The office operates with an annual budget of £1,765,000, or approximately £4.63 per child, which is set by the Office of the First Minister and deputy First Minister.

Strength and key differences from England

There is some divergence in the powers of the Children's Commissioners in the UK, although Northern Ireland's Commissioner is deemed to have the strongest powers and the English Commissioner the weakest.²⁶ Northern Ireland's Commissioner has the **power to conduct investigations into complaints made by a child** or young person as to whether their rights have been infringed by actions taken by a relevant statutory authority. However, it should be noted that these investigative powers are restricted to cases in which it appears that no other person or body is likely to provide such assistance or take such action. The Office has intervened in a Supreme Court case regarding the issue of precautionary suspensions.

The Children's Commissioner issues non-binding recommendations and therefore compliance is heavily dependent on the will of other actors. The legislation in Northern Ireland allows the Commissioner to seek information from an authority to allow her to determine whether recommendations from formal investigations have been implemented. If an authority has not complied they are required to provide a statement **outlining the reasons for non-compliance**.

²⁶ Rees, O. (2010) Devolution and the children's commissioner for Wales: challenges and opportunities. *Contemporary Wales*. p.52-70.

To support the Office's work to **monitor a range of statutory services**, including the provision of health and social care services to children and young people, **meetings are regularly held between the Commissioner's Office and Regional Health and Social Care Boards** to monitor developments in service provision. The Office also **engages positively with a number of statutory and non-statutory agencies**. Links such as these are identified as important in maximising the effectiveness of independent human rights institutions for children.²⁷

Norway

Background and key facts

- The office of the Ombudsman for Children in Norway was established as an independent state institution by Act No 5. An Ombudsman was first appointed in 1981.
- The mandate of the Ombudsman is to protect children and their rights.
- The Ombudsman has the power to investigate, criticise and publicise important matters to improve the welfare of children and young people.
- The Ombudsman is not permitted to deal with individual complaints.
- The Norwegian Office has full membership status within ENOC.

Strengths and key differences from England

Norway was the first country to establish a national Ombudsman for Children²⁸ and its approach is widely viewed as a model of good practice. The Office of the Ombudsman for Children is **independent, non-partisan and politically neutral** allowing it to criticise those who disregard children's interests regardless of political or other considerations.²⁹ The Ombudsman also benefits from the fact that Norway has a **culture which is supportive of children's rights** and advocacy offices³⁰ and the **majority of children are aware of the role of the organisation**.³¹ The Ombudsman's office has been successful in influencing **child welfare procedures and legislation** including

27 ENOC's Standards for Independent Children's Rights Institutions, 2001

28 Flekkoy, M (2002) The Ombudsman for children: Conceptions and developments. In B. Franklin (ed.) *The new handbook of children's rights: Comparative policy and practice* (pp.404-419). London: Routledge.

29 Flekkoy, M.G. (1989). The Norwegian Commissioner ("Ombudsman") for children. Practical experiences and future goals. In Verhellen, E. and Spiesschaert F. (eds) *Ombudswork for Children*, pgs 119 -132. Children's Rights Centre, Ghent University: Belgium.

30 Howe, B. (2009) Factors affecting the impact of child advocacy offices in Canada. *Canadian Review of Social Policy*, 62, p.17-33.

31 Melton, G. (1991) Lessons from Norway: The Children's Ombudsman as a voice for Children', *Case Western Reserve Journal of International Law*, 23, 197-254.

legislation banning physical punishment of children, representation of children's interests in all local planning and expanding the rights of hospitalised children.

Scotland

Background and key facts

- The Commissioner for Children and Young People (Scotland) Act 2003 established the Commissioner's Office as an independent state institution. The first Commissioner was appointed in 2004.
- Although the Commissioner's office works with all children, the following are identified as priority groups: looked after children, young people in the juvenile justice system, disabled children, minority ethnic groups, unaccompanied asylum seeking children, young carers, children of prisoners and children who are victims of human trafficking.
- Scotland has full membership status within ENOC.
- The Scottish Parliament sets the Office's annual budget. For 2010-11 this has been set at £1,350,000 or approximately £1.30 per child.

Strengths and key differences from England

The Scottish Commissioner's general function is to promote and safeguard the rights of children and young people up to age 18 or 21 if they have been looked after by the local authority. More specifically, the Commissioner must:

- Promote awareness and understanding of the rights of children and young people.
- Keep under review the law, policy and practice relating to the rights of children and young people with a view to assessing the adequacy and effectiveness of such law, policy and practice.
- Promote best practice by service providers.
- Promote, commission, undertake and publish research on matters relating to the rights of children and young people.

The Children and Young People (Scotland) Act 2003 also emphasises the importance of consulting and involving children. To facilitate this, the Commissioner's Office undertakes **Scotland-wide consultation events** which have a **direct influence on work programmes**. The first event involved approximately 16,000 children. **Standing groups of young people** have also been established to advise the Commissioner on specific policy issues, for example, young people's transitions from care to adulthood.

Scotland's Commissioner, like many of his international counterparts, submits an annual report outlining the work that has been undertaken by the Office to fulfil its functions. Recent amendments to legislation introduced a new requirement that the Commission must **lay a strategic plan before Parliament every four years**.

Sweden

Background and key facts

- The Swedish Ombudsman's Office was established as an independent institution under the Ombudsman for Children Act 1993. The first Ombudsman was appointed the same year.
- The mandate of the Ombudsman is to promote the rights and interests of children and young people as set out in the UNCRC.
- The office focuses on children and young people up to the age of 18; a population of about 2 million.
- The Ombudsman has the authority to require local and government bodies to supply information and can summon agencies to deliberate on issues; however, it cannot investigate or interfere in individual cases.
- Sweden has full membership status within ENOC.
- The office has as an annual budget of £1,716,910 (18.2m SEK) that is, approximately £0.86 per child.

Strengths and key differences from England

The Ombudsman for Children in Sweden monitors **the country's compliance with the UNCRC**. Monitoring the activities of all child-related agencies strengthens the Ombudsman's position as he becomes more knowledgeable on practice and policy-related issues and is therefore well-placed to advise the Government on child rights issues. The Ombudsman's office uses **child statistics as a tool for monitoring and reviewing services** to address the needs of groups of children. Children's participation is promoted through the establishment of **special expert councils of children and young people**. The Ombudsman also has **regular contact** with children through visits to schools and associations, letters and telephone hotlines.

USA

Background and key facts

- The USA has not ratified the UNCRC. Two arguments that are made against ratification are that it would undermine U.S sovereignty and interfere with parents' rights.³²
- The USA does not have a national Ombudsman for Children but several States have created Advocacy Offices underpinned by the Ombudsman Standards. These require that Offices are created by law, with a specified term of office, full investigative powers and access to records.³³
- The purposes of Ombudsman or Children's Advocacy offices are to:
 - Handle and investigate complaints from families or the public related to government services for children – this may include child protective services, foster care, adoption and juvenile justice services.
 - Recommend system-wide improvements to benefit children and families – often through production of annual reports to the Legislature, Governor and/or public.
 - Protect the interests and rights of children and families.
 - Monitor programmes, placements and departments responsible for providing children's services – which may include inspecting state facilities and institutions.³⁴
- Three models of Children's Advocacy offices have been identified. 1) The independent model has an autonomous ombudsman office which specifically handles issues relating to children 2) the semi-autonomous model in which the office operates as part of a state division of children and family services; and 3) an office with oversight function where the Ombudsman's office receives complaints regarding children and family services as part of its wider remit.³⁵

32 Rutkow, L. and Lozman, J.T. (2006) Suffer the Children?: A Call for United States Ratification of the United Nations Convention on the Rights of the Child. *Harvard Human Rights Journal*/Vol. 19 [assessed November 18th 2010 from <http://www.law.harvard.edu/students/orgs/hrj/iss19/rutkow.shtml#Heading379>]

33 Correspondence with Moira O'Neill, Candidate for PhD, School of Nursing – Yale University

34 Children's Ombudsman Offices; <http://www.ncsl.org/default.aspx?tabid=16391>

35 *ibid*

Case example: Tennessee Commission on Children and Youth (Independent model)

Background and key facts

- The Tennessee Commission on Children and Youth (TCCY) is an independent state agency whose primary mission is advocacy to improve the quality of life of Tennessee's children and families.
- The child population of Tennessee is 1,445,006 but the Advocate's Office targets its activity on the 8,401 children who are in state custody. The Office deals specifically with complaints from this latter group and attempts to resolve problems through mediation. The Office takes on individual children's cases.

Strengths and key differences from England

The TCCY has a major influence on decisions about legislation that may have an impact on children's rights. It is not unusual for legislators of the General Assembly to actively seek the Commission's position on draft legislation that will affect children before it is enacted and there is a willingness on the part of legislators to make amendments to respond to concerns identified by the TCCY. Such conditions maximise the opportunity for the Office to effect change.

TCCY has nine regional councils with approximately 2,500 members across Tennessee. The councils provide organisational structure for state-wide networking on behalf of children and families. They also address the needs of children and families at the regional level and offer local-level feedback to the Commission. These councils facilitate information sharing and provide training and networking opportunities for service providers, advocates and interested citizens. The work of the Councils makes the TCCY more visible in the State. The TCCY also collaborates with state agencies, juvenile courts and child advocacy groups to improve services to children. The office further provides **information** through its website and various publications and presentations to the public.

Wales

Background and key facts

- The Office of the Children's Commissioner for Wales was first established as an independent state institution under the Care Standards Act 2000. Its powers and functions at this time were relatively narrow in scope and applied only to children receiving regulated children's services in Wales. Soon after they were broadened under the Children's Commissioner for Wales Act 2001.
- The principle aim of the Office of the Commissioner is to safeguard and promote the rights and welfare of children. The Commissioner is required to pay special attention to the interests and views of marginalised groups, including (among others) children in public care, disabled children and young people and minority ethnic groups.
- The Commissioner's powers do not extend to non-devolved matters. So, for example, on issues such as asylum or immigration, the Commissioner may not assist or advocate on behalf of a child or undertake a review or examination.
- Wales has full membership status within ENOC.
- The Welsh Assembly Government set the annual budget for the Office of the Children's Commissioner at £1.837m.

Strengths and key differences from England

The Children's Commissioner for Wales was the first office of its kind in the UK. He has a remit to deal with individual cases. In 2009-10 he dealt with 220 cases.³⁶ This individual case work function is recommended by the UNCRC.³⁷ However, questions have been raised about whether this individual case work limits the Office's capacity to fulfil its broader functions including promoting children's rights more generally and engendering systemic change. Perspectives on this differ³⁸ but the Welsh Commissioner suggested that his: *'major concern has been about how we have focused on individual cases that have really*

36 Children's Commissioner for Wales -Annual Report & Accounts 09/10

37 UNCRC Committee Concluding Observation, 2008 <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

38 ENOC (2010) *ENOC Survey 2010 . The role and mandate of children's ombudspersons in Europe: Safeguarding and promoting children's rights and ensuring children's views are taken seriously* and; Rees, O. (2010) *Dealing with Individual Cases: An Essential Role for National Human Rights Institutions for Children?* *International Journal of Children's Rights* 18, p. 417-436; Rees, O. (2010) *Devolution and the children's commissioner for Wales: challenges and opportunities.* *Contemporary Wales.* p.52-70

*created some significant improvements in the lives of those individuals, but asking whether that has really levered in long-term systemic change for the children who will come after them’.*³⁹

The Children’s Commissioner has undertaken a range of activities designed to raise awareness of the Office and to communicate with children and young people. Examples include: a competition design logo for the Commissioner, ‘Backchat’ and the ‘School Ambassador’ schemes.⁴⁰ To ensure that the views of children from the wide geographic area are heard, the Commissioner’s Office annually recruits its youth advisory group from a different region to secure full geographic coverage.⁴¹ A small number of young people were also involved in an innovative independent evaluation of the Children’s Commissioner.⁴² This found that: the Office of the Commissioner has been very active in working on issues like complaints, whistle blowing and advocacy; he has spread the message of children’s rights and where children can get help; and he has provided a growing service of advice and support for individual children and their families.

How other OCCs achieve impact or compliance with their recommendations

Offices of Children’s Commissioners are relatively toothless bodies; they issue non-binding recommendations and therefore compliance is dependent upon the will of other actors. However, Northern Ireland’s Commissioner has the power to request information to enable her to determine whether an authority has complied with her recommendations and (where applicable) an authority must explain its reasons for non-compliance. Similarly, if Ireland’s Ombudsman for Children is dissatisfied with the response of a public body following an investigation she may lay a special report before Parliament.

Other OCCs’ role in evaluating impact and assessing new policy, practice or legislation

The priority Commissioners afford to evaluating or assessing new policy, practice or legislation varies across countries. This function is central to the work of some, including: New Zealand, Tasmania (Australia) and Commissioners from the devolved administrations in the UK.

39 Children’s Commissioner for Wales (2008) *The Children’s Commissioner for Wales: Achievements, Learning Points, the Benefit of Hindsight and the Beginning of a New seven Year Term* (paper submitted to the National Assembly for Wales Children and Young People Committee). Swansea: Children’s Commissioner for Wales.

40 Rees, O. (2010) Devolution and the children’s commissioner for Wales: challenges and opportunities. *Contemporary Wales*. p.52-70.

41 Ibid.

42 Thomas, N. et al., (2007) Evaluating the Children’s Commissioner for Wales.

Do any other OCCs assist in formulation of teaching programmes around children's rights?

The international evidence review revealed a small number of Offices, including Ireland and Catalonia (Spain), that have developed educational materials to promote children's rights. New Zealand's commissioner has undertaken work to improve school responses to bullying using inquiries and research, training seminars and advocacy.

Individual cases and power to investigate

England, Scotland, Denmark, Norway and Sweden do not handle complaints made by individual children. However, others (including Wales, Northern Ireland and advocacy offices in Canada and the USA) do have the power to deal with individual cases. This is seen to be an important way of improving individual young people's circumstances when their rights are violated. It may also assist with identification of systemic issues that Offices may wish to address.⁴³ Alternatively, however, dealing with individual cases and complaints may limit opportunities to undertake activities for the benefit of all children, although in part this depends upon the financial and human resources available.⁴⁴

How they achieve the right balance between all children and vulnerable children

The majority of the countries involved in the international evidence review indicated that promoting the rights of vulnerable children, including looked after children, those in the juvenile justice system, disabled children and minority ethnic groups was a priority. Responses did not suggest that Commissioners struggled to balance work with priority groups and all children, although New Zealand's Office, which monitors and reports on services, did feel that its work was sometimes put in a 'child protection box' which narrowed its sphere of influence.

Children and young people's participation

A range of strategies has been employed in different countries to promote children's participation, including: establishment of youth councils, web-based methods of communication, face-to-face meetings and surveys. Tasmania has a young people's consultative forum and Scotland has established several advisory groups to inform the

43 ENOC (2010) *ENOC Survey 2010. The role and mandate of children's ombudspersons in Europe: Safeguarding and promoting children's rights and ensuring children's views are taken seriously* and Comment from Children's Rights Officer: UNICEF Innocenti Research Centre and Rees, O. (2010) Dealing with Individual Cases: An Essential Role for National Human Rights Institutions for Children? *International Journal of Children's Rights* 18, p. 417-436; Rees, O. (2010) Devolution and the children's commissioner for Wales: challenges and opportunities. *Contemporary Wales*. p.52-70

44 Rees, O. (2010) Devolution and the children's commissioner for Wales: challenges and opportunities. *Contemporary Wales*. p.52-70.

Commissioner's work. The latter also undertakes national consultation events which inform the work programme.

Relationship with other organisations – especially human rights organisations

Cooperation with human rights institutions within the same country is essential. In federal Australia and Canada independent human rights institutions have found the opportunity to learn from each other's best practice, work together and advocate for the implementation of children's rights on the national stage.⁴⁵ ENOC's recent survey on the role and mandate of children's ombudspersons in Europe reveals that the majority of Offices have developed effective and positive relationships with other human rights organisations and Children's Rights NGOs.⁴⁶ For example, the National Council for Children in Denmark collaborates on child rights issues with the Danish Institute for Human Rights.

Impact

Determining the contribution that Children's Commissioners make to protecting and promoting the rights of children is challenging. In demonstrating their impact, Commissioners tended to provide data on the volume of individual cases dealt with (where applicable) or outline their contribution to specific legal, policy or practice developments. For example, the Saskatchewan Ombudsman's office influenced reform of the Education Act to prohibit corporal punishment in school. It also recommended changes to the Youth Drug Detoxification and Stabilisation Act to assure a treatment plan for detained youth.⁴⁷ Catalonia's Deputy Ombudsperson submitted a report on child protection to Parliament to inform the Catalan Children's Act.

Howe (2009) suggests that (in line with conventional wisdom) in general higher levels of impact are associated with Offices that are: independent of government, have a wide mandate, strong statutory powers and a broad advocacy function and are exclusively focused on, and accessible to, children. Strong leadership in the context of a receptive political culture is also important.⁴⁸

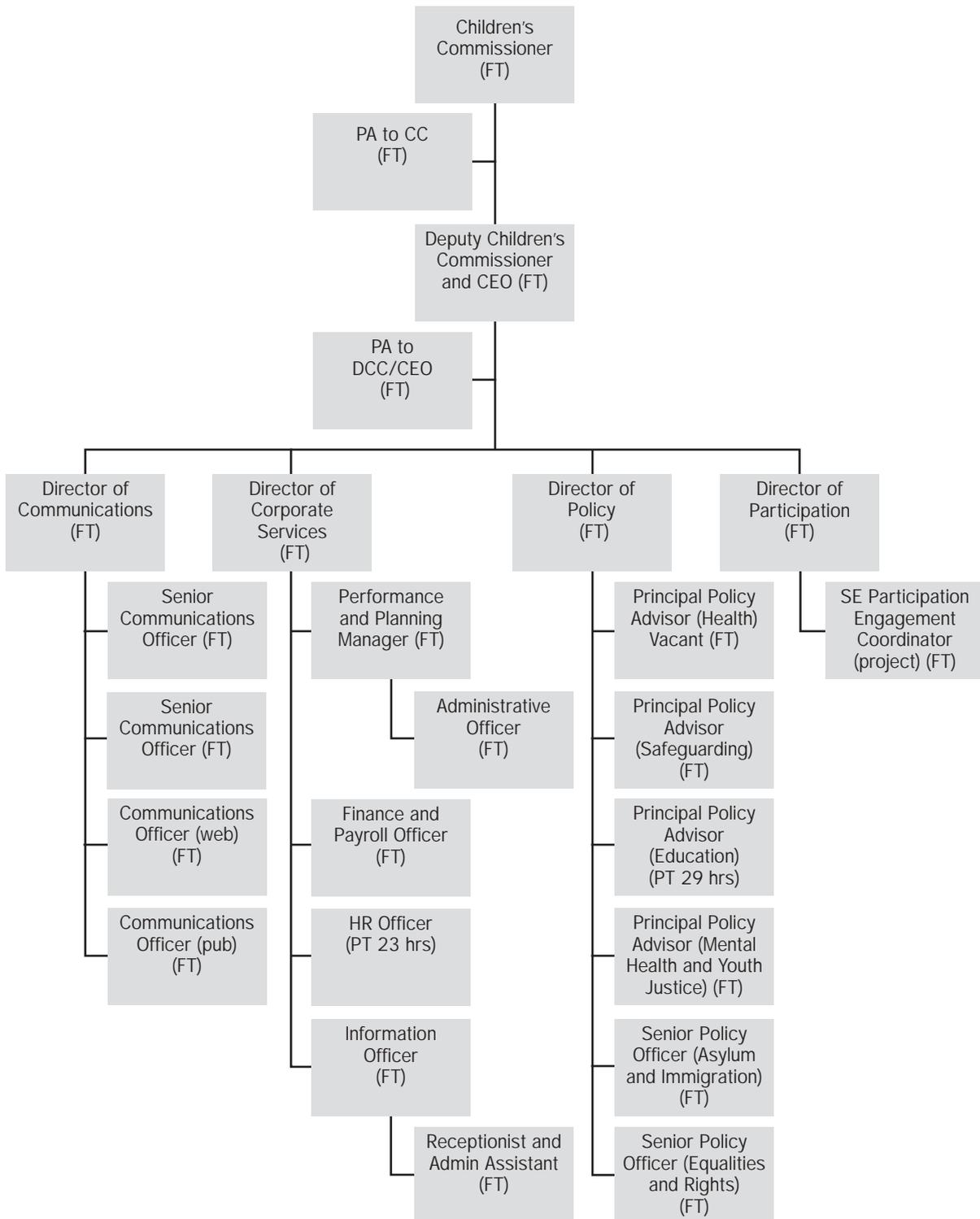
45 Comment from Children's Rights Officer: UNICEF Innocenti Research Centre, based on ongoing research for a global study in independent Human Rights' Institutions.

46 ENOC (2010) *ENOC Survey 2010. The role and mandate of children's ombudspersons in Europe: Safeguarding and promoting children's rights and ensuring children's views are taken seriously* and Comment from Children's Rights Officer.

47 Howe, B. (2009) Factors affecting the impact of child advocacy offices in Canada. *Canadian Review of Social Policy*, 62, p.17-33.

48 Howe, B. (2009) Factors affecting the impact of child advocacy offices in Canada. *Canadian Review of Social Policy*, 62, p.17-33

Appendix 6: Structure chart of OCC as at November 2010 (supplied by the OCC)



Appendix 7: Principles relating to the Status of National Institutions (The Paris Principles)

Adopted by General Assembly resolution 48/134 of 20 December 1993

Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
 - a. To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
 - (ii) Any situation of violation of human rights which it decides to take up;

- (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
- b. To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
 - c. To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
 - d. To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
 - e. To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;
 - f. To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
 - g. To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

- a. NGOs responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
 - b. Trends in philosophical or religious thought;
 - c. Universities and qualified experts;
 - d. Parliament;
 - e. Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).
2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.
 3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

- a. Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- b. Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- c. Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- d. Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly concerned;
- e. Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

- f. Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);
- g. In view of the fundamental role played by the NGOs in expanding the work of the national institutions, develop relations with the NGOs devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions with quasi-judicial competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, NGOs, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- a. Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- b. Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- c. Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- d. Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

Appendix 8: Glossary

Term	Description
'11 Million'	Alternative branding for the Office of the Children's Commissioner, introduced in 2006-7
BINOCC	British and Irish Network of Ombudsmen and Commissioners for Children
Civil Society	Collective term used to represent concerned parties in the voluntary, not-for-profit and non-public sectors
CRAE	Children's Rights Alliance for England (coalition of NGOs and charities with an interest in children's rights)
CRO	Children's Rights Officer
CYB	Children & Youth Board (Department for Education)
DfE	Department for Education
DH	Department for Health
EHRC	Equality and Human Rights Commission
ENOC	European Network of Ombudspersons for Children
HMCI	Her Majesty's Chief Inspector of Education, Children's Services and Skills (Ofsted)
HMIP	Her Majesty's Inspector of Prisons
LGO	Local Government Ombudsman
NCB	National Children's Bureau
OCC	Office of the Children's Commissioner
OCRD	Office of the Children's Rights Director (Ofsted)
Ofsted	Office for Standards in Education, Children's Services and Skills
SCCYP	Scottish Commissioner for Children and Young People
SHRC	Scottish Human Rights Commission
SPCB	Scottish Parliamentary Corporate Body
UNCRC	United Nations Convention on the Rights of the Child



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