

Equality and Human Rights Commission

Following Grenfell:

children's

rights



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Commission

This briefing focuses on children's rights, including their scope of protection, case law and their relevance to Grenfell. It forms part of a series explaining human rights issues raised by the Grenfell Tower fire: the right to life, adequate and safe housing, inhuman or degrading treatment, equality and non-discrimination, children's rights and access to justice.

What are children's rights and what is their source in international law?

Children's human rights are protected through the same international treaties that protect the human rights of adults, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the European Convention on Human Rights (ECHR). The UK Government has signed up to these treaties and is bound by their provisions under international law. The ECHR is binding in domestic law as it is incorporated into our law by the Human Rights Act 1998.

There is also an international treaty that applies exclusively to children: the Convention on the Rights of the Child (CRC). The CRC is the first international instrument to set out the full set of rights applicable to children. It recognises that children are entitled to special protection and assistance, and that children are rights-bearers in their own right. It is the most widely ratified human rights treaty.¹

The CRC became binding for the United Kingdom under international law in 1991. Although the UK Government has neither directly incorporated the CRC into domestic law, nor ratified the third optional protocol to the CRC, which would allow children to bring individual complaints to the UN Committee on the Rights of the Child, the CRC has been interpreted and applied in domestic case law. There are also a number of pieces of domestic legislation, which give effect to children's rights. These include the Children Act 1989, the Children Act 2004, the Human Rights Act 1998 (which makes the ECHR directly enforceable in courts), and the Equality Act 2010. All of this legislation defines a child as a person under the age of 18.

¹ 196 out of the 197 UN member states have ratified it, the United States being the only exception (although it has signed it).

What do children's rights mean in practice?

The CRC contains four fundamental principles that should form the basis of all decisions and actions by Government that directly or indirectly impact on children:

- **Protection from discrimination** (art. 2): States are obliged to protect children from discrimination 'irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status'. This means that Government and public authorities must not only refrain from discriminating against any child on any of these grounds, but they also need to take proactive steps to ensure equal opportunities for all children to exercise their rights. The Equality Act 2010 puts a responsibility on public authorities – the Public Sector Equality Duty – to have due regard to the need to eliminate discrimination and promote equality of opportunity. Advancing equality of opportunity may require measures to remove or minimise disadvantage associated with a protected characteristic (see our [briefing on equality and non-discrimination](#)).
- **Best interests of the child** (art. 3): The best interests of the child must be the primary consideration in all actions, including all legislative, administrative and judicial proceedings, concerning children. Any justification of a decision must show that the best interests have been explicitly taken into account. The best interest principle is threefold:
 - It is a right in itself: a child has a right to have their best interests assessed and taken as a primary consideration whenever a decision is taken concerning them.
 - It is an interpretative legal principle: the interpretation that most effectively serves the child's best interest should be chosen wherever a legal provision is open to more than one interpretation.
 - It is a rule of procedure: whenever a decision is made that will affect children, or a specific child, the decision-making process must include an evaluation of the impact of the decision on the child or children and whether the decision is in their best interest.

The best interest principle is partly reflected in the UK Children Acts. The Children Act 1989 states 'the general duty of every local authority [...] to safeguard and promote the welfare of children within their area who are in need'. Similarly, the Children Act 2004 states that local authorities, including

private service providers, must ensure that ‘their functions are discharged having regard to the need to safeguard and promote the welfare of children’.

- **The right to life, survival and development** (art. 6): Every child has an inherent right to life and states have an obligation to ensure the survival and development of all children. The development of the child is ‘a holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological and social development’.² This principle is also protected in part by ECHR art. 2 (incorporated into domestic law through the Human Rights Act 1998).
- **The right to be heard** (art. 12): Every child, of any age, has the right to freely express their views in all matters affecting them, and for those views to be given due weight in accordance with the child’s age and maturity. A child must be given accessible information about this right, and about how their participation in decision-making will take place, its purpose and its potential impact. Simply listening to the child is insufficient. The views of the child have to be considered seriously when the child is capable of forming their own views, and active participation in decision-making on matters affecting them needs to be facilitated. The UK case law concerning a child’s right to be heard predominately arises out of family law and school disciplinary cases. There are guidelines concerning the evidence of children where the court has decided that such evidence is needed.³

In addition to these general principles, the CRC includes a number of other substantive human rights for children. For example: the right to the highest attainable standard of health and the treatment of illness and rehabilitation (art. 24); the right to a standard of living adequate to their physical, mental, spiritual, moral and social development (art. 27); the right to education (art. 28); the right to rest, leisure, play, and recreational activities (art. 31); and, specific rights of children seeking asylum (art. 22) and disabled children (art. 23).

How are children’s rights being given effect in the UK?

Besides legislative measures and the consideration in case law set out above, children’s rights can be advanced in various different ways. We have repeatedly called on the UK Government to enhance the status of the CRC in domestic law and

² UN Committee on the Rights of the Child, [General Comment No. 5, CRC/C/GC/5](#) [accessed: 9 December 2018].

³ See, for example, the [Family Justice Council’s Guidelines in Relation to Children Giving Evidence in Family Proceedings](#) (2011) and the [Guidelines for Judges Meeting Children who are Subject to Family Proceedings](#) (2010) [both accessed: 9 December 2018].

adopt a comprehensive plan to implement the recommendations of the UN Committee on the Rights of the Child.

In 2010, the UK Government committed to pay due consideration to the CRC when developing new policy or legislation.⁴ However, in practice, this has been inconsistent. Following the examination of the UK by the UN Committee on the Right of the Child, in 2016, the Department for Education, the lead department on the CRC, set out a 'framework of actions' which includes:

- **raising awareness** on child rights across the public sector,⁵ and
- carrying out **child rights impact assessments** of Government policy and legislation or other decisions that can have an impact on children.⁶

In 2016, the UN urged the UK Government to introduce a statutory obligation at the national and devolved levels to conduct a child rights impact assessment when developing laws and policies affecting children.⁷

In Wales⁸ and Scotland,⁹ ministers and public authorities have **duties to have due regard** to children's rights, which are enforceable in the courts. But these duties do not give children the right to seek help in the courts if their rights are violated.¹⁰

Further potential measures relate to **public budgeting**: states should mobilise sufficient revenue and allocate the maximum of available resources to make children's rights a reality for all children, including by taking a child rights-based and participatory approach to budget decisions. Government should identify particularly disadvantaged children who require special assistance and use public budgets to implement such measures.¹¹

⁴ Sarah Teather (Minister of State, Department for Education) 6 December 2010 *WMS: Children's Commissioner Review C7WS*; see also Minister for Vulnerable Children and Families, Children and Social Work Bill 2017, 12 January 2017, HC 220.

⁵ The Department for Education launched, on Universal Children's Day on 20 November 2018, a [comprehensive children's rights training package](#) [accessed: 7 December 2018].

⁶ [Template for child rights impact assessments](#) published on 20 November 2018 [accessed 17 December 2018].

⁷ UN Committee on the Rights of the Child (2016), [Concluding Observations on the UK, CRC/C/GBR/CO/5](#), para. 10 [accessed: 9 December 2018].

⁸ Rights of Children and Young Persons (Wales) Measure 2011.

⁹ Children and Young People (Scotland) Act (2014). Scottish Ministers have to report to Parliament every three years on the progress made, and how they plan to meet them going forward.

¹⁰ See also Unicef UK (2017), ['Briefing: The case for child rights impact assessments in England'](#) [accessed: 9 December 2018].

¹¹ UN Committee on the Rights of the Child (2016), [Concluding Observations on the UK, CRC/C/GBR/CO/5](#), para. 13 [accessed: 9 December 2018].

Children's rights in action

There is a lot of jurisprudence relating to children's rights at international and domestic level. A few examples are provided below.

In 2018, the **European Committee of Social Rights** held that France's treatment of unaccompanied children violated their rights to housing, health, social and medical protection, and to social, legal and economic protection. The Committee found, among other things, that the shelter, assessment and allocation system fell short of international standards, particularly with regards to the housing of unaccompanied children in hotels for weeks or months without support from trained personnel and without access to basic services. The Committee also found that delays in appointing a guardian and the failure to enrol them in schools were incompatible with the European Social Charter (see *EUROCEF v France*).

In 2017, the **UK Administrative Court** found a local council liable in damages to a young child, who had been accommodated in temporary homelessness accommodation in another borough, for breach of her right to education (which is contained in UK law through the Human Rights Act). The sending authority also has to liaise with the education department of the receiving borough, to ensure that the receiving borough has put (or will put) working arrangements in place to maintain educational continuity for the child, in line with the need to safeguard a child's educational welfare (see *R (E) v London Borough of Islington [2017] EWHC 1440 (Admin)*).

In 2016, the **UN Committee on the Rights of the Child** called on the UK to:

- strictly implement the legal prohibition of prolonged placement of children in temporary accommodation, and
- take measures to reduce homelessness and to guarantee all children access to adequate housing that provides physical safety, adequate space, protection against the threats to health and structural hazards, including cold, damp, heat and pollution, and accessibility for disabled children.

See 'Concluding Observations on the UK 2016, CRC/C/GBR/CO/5'.

In 2015, the **UK Supreme Court** considered whether the benefit cap was in breach of children's rights. The majority of the court found that the cap was not compatible with the Government's obligation to treat the best interests of the child as a primary consideration. Lady Hale said 'it cannot possibly be in the best interests of the children affected by the cap to deprive them of the means to provide them with adequate food, clothing, warmth and housing, the basic necessities of life' (see *R (SG) v Secretary of State for Work and Pensions [2015] UKSC 16*).

Courts have, in interpreting ECHR rights, said that these rights, where they belong to a child, must be seen in the context of the best interest principle. Before making a decision, a decision-maker should first identify what the child's best interests are. When making a decision, the proportionality of the adverse impact of such a decision on the interests of a child must be assessed (see *Stevens v Secretary of State for Communities and Local Government* [2013] EWHC 792 (Admin), *Collins v Secretary of State for Communities and Local Government* [2013] EWCA Civ 1193).

In 2011, in the **UK Supreme Court**, Lady Hale referred to the best interest principle as 'a binding obligation in international law' and noted that 'the spirit, if not the precise language, has also been translated into our national law', citing section 11 of the Children Act 2004 as placing a duty upon a wide range of public bodies to carry out their functions having regard to the need to safeguard and promote the welfare of children' (see *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4).

How are children's rights relevant to Grenfell and the work of the Grenfell inquiry?¹²

Prior to the Grenfell Tower fire

There are a range of children's rights issues that arose prior to the Grenfell Tower fire and that should be considered by the inquiry:

- Did the responsible authorities know, or should they have known, that there was a real and immediate risk to children's rights to life and health if a fire were to occur in Grenfell Tower? If so, what preventive action was taken? See our [briefing on the right to life](#).
- When allocating homes to families, to what extent were the best interests of the children in Grenfell Tower identified, assessed and taken as a primary consideration by the responsible authorities? To what extent were the needs of disabled children taken into account when allocating housing to families?

¹² The scope of the inquiry is set out in the [terms of reference and list of issues](#), both of which are available online [accessed: 7 December 2018].

- Did the responsible authority assess the impact on children, in particular disadvantaged children, and their rights whenever it made budgetary or other policy decisions regarding Grenfell Tower?
- In what ways were the children in Grenfell Tower made aware of their rights? Were children living in Grenfell Tower able to meaningfully participate and be heard regarding their living conditions, or any other issue that they identified as relevant?

During the Grenfell Tower fire

We have concerns around responsible authorities' compliance with children's rights to life, health and housing, and protection from discrimination during the fire. The inquiry should examine the extent to which the death of, or injury to, children, in particular disabled children, was the result of a failure to provide the child with adequate and safe housing, and with special care and assistance during the fire.

After the Grenfell Tower fire

The children's rights issues that have arisen after the fire relate to the provision of health care (including counselling and rehabilitation) and of safe and adequate housing, the right to education, the right to be heard and participate in decision-making, and the prevention of death, injury, and illness:

- Have the responsible authorities conducted a thorough assessment of the impact that the fire has had on the child victims? Have these children been consulted on what information and support services they need? What measures have authorities taken to meet those requirements?
- Have child survivors received appropriate health care? In particular, have they been provided with rehabilitative and therapeutic services, such as confidential counselling? Have the children and their caregivers been promptly and adequately informed of the availability of such services?
- Have the responsible authorities assisted caregivers in ensuring children's right to a standard of living adequate for their physical, mental, spiritual, moral and social development, where such assistance is needed to meet children's essential needs, for example, nutrition and clothing?
- Have all children, including disabled children, been provided with adequate and safe housing that protects their private and family life (including cooking facilities, for example) since the fire? Did authorities make sure that families

with children were not placed in temporary accommodation beyond the legal six-week limit?^{13 14} See our [briefing on the right to housing](#).

- When allocating new homes to families made homeless due to the fire, to what extent were the best interests of the children identified, assessed and taken as a primary consideration by the responsible authorities?
- Does the new housing provide facilities for leisure, play and recreational activities, to protect the children from stress, social exclusion, prejudice or discrimination?
- How have the responsible authorities ensured that children affected by the fire have not had their education disrupted?

The inquiry process

- Has meaningful participation of children in the inquiry been facilitated? Specifically, how has the inquiry ensured that the vulnerable witness protocol is not a barrier to participation by children?
- Have children affected by the fire been given accessible information about their right to express their views freely, about the inquiry proceedings, and about how their participation will take place?
- How will the inquiry communicate that it has seriously considered the views of children impacted by the fire?

Further information on [our work following the Grenfell inquiry](#) is available on our website.

If you have any queries on human rights in relation to the Grenfell Tower fire, please contact grenfell@equalityhumanrights.com.

¹³ Homelessness (Suitability of Accommodation) (England) Order 2003; Homelessness (Suitability of Accommodation) (Wales) Order 2015.

¹⁴ See also Children's Rights Alliance for England (2017), '[Change it! Children speak out on homelessness](#)' and '[Using children's rights in homelessness policy](#)' [accessed: 9 December 2018].

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Published: December 2018