

Edward Timpson MP,
Minister of State for Children and Families,
Department for Education,
Sanctuary Buildings,
20 Great Smith St,
London SW1P 3BT

13 September 2016

Dear Minister,

Concluding Observations of the UN Committee on the Rights of the Child 2016

As you know, by ratifying the Convention on the Rights of the Child (CRC), the UK accepted an obligation, binding as a matter of international law, to respect, protect and fulfil all the rights it contains. The UN Committee on the Rights of the Child (UN CRC) recently examined the UK's implementation of the CRC, and has issued its Concluding Observations on improving children's rights in the UK.¹ These Concluding Observations represent the authoritative interpretation of the action required by the UK Government to implement its obligations towards children. The Equality and Human Rights Commission (EHRC) submitted written evidence to UN CRC,² and made oral representations. We were pleased to see many of our recommendations reflected by UN CRC.

Under the Equality Act 2006, the EHRC is required to promote understanding of, and encourage good practice with regards to all human rights. In accordance with this mandate, we look forward to working with you and your officials to implement the Concluding Observations. The Department for Education has a key role in implementing the UN CRC recommendations and influencing other Government departments to drive improvements in children's rights. During the examination, the

¹ Committee on the Rights of the Child, Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/5, 03/06/16, available at: http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/GBR/CRC_C_GBR_CO_5_24195_E.docx (Hereafter, 'UN CRC, Concluding Observations')

² Children's rights in the UK: Updated submission by the Equality and Human Rights Commission to the United Nations Committee on the Rights of the Child in advance of the public examination of the United Kingdom's implementation of the Convention on the Rights of the Child, April 2016, available at: <https://www.equalityhumanrights.com/en/file/18726/download?token=mXNH6S2D>, and Children's rights in the UK, Equality and Human Rights Commission Submission to the United Nations Committee on the Rights of the Child on the United Kingdom's Implementation of the Convention on the Rights of the Child, August 2015, available at: <https://www.equalityhumanrights.com/en/file/4636/download?token=9fz57Alz>

UK delegation suggested that it would develop an action plan to follow up the UN CRC concluding observations. This would be an important step and in line with EHRC's recommendation for the UK Government to adopt a National Action Plan for Human Rights. The EHRC would welcome the opportunity to work with the UK Government to shape this plan and advise on its effective delivery. I enclose the areas the EHRC has prioritised for our own follow-up work with the UK Government in relation to reserved matters and those applicable to England. I should be grateful if you would let me know your plans are in each of these areas. The EHRC will also be writing to the Scottish and Welsh Government in relation to our priorities in devolved areas.

We welcomed the constructive engagement we enjoyed with your officials during the examination, and through the cross-government treaty monitoring working group, which the EHRC chairs. We commend the commitment and dedication of those who worked on the CRT and were sorry to learn that they have moved on to other positions since the examination. We would be very interested in learning what resources will be allocated to ensure that the Concluding Observations are implemented across Government.

The EHRC is developing a series of activities to support implementation of the recommendations made by UN CRC. This includes giving evidence alongside the Children's Commissioner for England at a session held by the Joint Committee on Human Rights on 14 September. Our programme also includes a parliamentary event on 17 October with the Children's Rights Alliance for England and the Office of the Children's Commissioner. The event will be co-chaired by the Rt. Hon. Harriet Harman MP for the Joint Committee on Human Rights and Tim Loughton MP for the All Party Parliamentary Group for Children. I very much hope you will accept our invitation for you to attend this event and speak to the Department for Education's plans for following up on the UN CRC recommendations.

Yours sincerely,



David Isaac
Chair

Letter copied to the Rt Hon Justine Greening, Secretary of State for Education and Minister for Women and Equalities; and the Rt Hon Harriet Harman, Chair of the Joint Committee on Human Rights.

EHRC priorities for implementation of the Concluding Observations of the UN Committee of the Rights of the Child 2016

Enhancing the status of the Convention on the Rights of the Child

While the EHRC welcomes the UK Government's commitment to give due consideration to the Convention when making new policy or legislation in principle, in our view, in practice, this commitment has proved to be neither adequate nor enforceable. For example, our submissions to the UN CRC outlined how the UK Government had failed to give due consideration to the Convention when developing the Modern Slavery Bill, the Legal Aid, Sentencing and Punishment of Offenders Bill, and the Welfare Reform and Work Bill. UN CRC subsequently recommended that the UK "introduce a statutory obligation at national and devolved levels to systematically conduct a child rights impact assessment when developing laws and policies affecting children."³ Given the existing policy commitment, we consider that now is the time to give effect to this commitment in practice via a legislative duty.

The EHRC was pleased to see that the Department for Education's (DfE) child rights impact assessment of the Children and Social Work Bill provided a detailed assessment of the children's rights implications of the different measures in the Bill with regards to policy intention, impacts on children, consultation with children and compliance with different CRC articles and relevant UN CRC recommendations. It is crucial that this kind of analysis happens for all Bills and policies, whether or not they are projected to have a positive impact on human rights. We would welcome your sharing this good practice with your colleagues across Government to set the standard for other departments and agencies.

The EHRC agrees with the Joint Committee on Human Rights (JCHR) that it will be important for the DfE to consider the recent Concluding Observations of the UN CRC in its further analysis of the impact of the Bill, and that the Bill provides an immediate opportunity to enhance the status of the CRC through the inclusion of a duty on public authorities to have due regard to the CRC when exercising their functions in relation to children.⁴ The EHRC considers that this duty should be UK-wide, while respecting devolution, and that it should apply to any body exercising public functions, in respect of all of their functions affecting children. The due regard duty should encompass a duty to conduct child rights impact assessments for new legislation and policy. We would support amendments to the Bill to this effect.

In addition to this, we consider that the UK Government should publish options to further enhance the status of the CRC in domestic law through other mechanisms, including a consideration of access to domestic remedy at the national level,

³ UN CRC, Concluding Observations, para 9(a)

⁴ Joint Committee on Human Rights. Letter from the Rt Hon Harriet Harman MP to Lord Nash on the Children and Social Work Bill, 13/07/16, available at: http://www.parliament.uk/documents/joint-committees/human-rights/correspondence/2016-17/160713_Lord_Nash_re_Children_and_Social_Work_Bill.pdf

increased scrutiny of legislation and policy, and mechanisms to hold decision-makers to account for breaches of the CRC.

Child poverty and social security reform

The EHRC shares UN CRC concerns about the high incidence of child poverty in the UK, and reiterates the recommendation to “set up clear accountability mechanisms for the eradication of child poverty, including by re-establishing concrete targets with a set timeframe and measurable indicators”.⁵ The EHRC hopes the delayed launch of the UK Government’s new Life Chances strategy will provide the opportunity for it to be used to further a range of children’s rights. The strategy should: cover the UK as a whole while respecting differing devolution contexts; contain a mechanism to ensure that public authorities responsible for implementing it have due regard to the best interests of the child; and be accompanied by a comprehensive child rights impact assessment and a “tracking system for the allocation and use of resources for children” and for groups of children in disadvantaged or vulnerable situations.⁶

In terms of previous legislation, in our view, the impact assessments for the Welfare Reform and Work Act 2016 did not adequately consider children’s rights. The EHRC would therefore highlight, for an urgent response, the recommendation of the UN CRC for the UK to “[c]onduct a comprehensive assessment of the cumulative impact of the full range of social security and tax credit reforms introduced between 2010 and 2016 on children”, and to revise the reforms where necessary to ensure the best interests of the child are a primary consideration.⁷

Mental health

The EHRC has highlighted gaps in the implementation of children’s right to health and that funding is being cut to crucial children’s mental health services in England and Wales, whilst demand for these services is rising. We welcome that the Policing and Crime Bill 2016 will address the concern of UN CRC about the detention of children with mental health needs in police cells. We also urge the UK Government to implement the UN CRC recommendations for the collection of comprehensive data on child mental health, rigorous investment in child and adolescent mental health services, and the development of therapeutic community-based services for children with mental health conditions.⁸

Education

In its submissions to UN CRC, the EHRC highlighted a range of attainment gaps at GCSE level in England and Wales. The EHRC agrees with the recommendation by UN CRC that the UK should “[e]nhance its efforts to reduce the effects of the social background or disabilities of children on their achievement in school and to

⁵ UN CRC, Concluding Observations, para 70(a)

⁶ UN CRC, Concluding Observations, para 12

⁷ UN CRC, Concluding Observations, para 70(c) and 70(d)

guarantee the right of all children to a truly inclusive education”.⁹ Young people with disabilities and special educational needs and lesbian, gay or bisexual young people are more likely to experience bullying than other children in England. UN CRC recommended that the UK should “[i]ntensify its efforts to tackle bullying and violence in schools, including through teaching human rights” and that it should “ensure that meaningful sexual and reproductive health education is part of the mandatory school curriculum for all schools”.¹⁰ To this end, the EHRC encourages the new Ministerial team at the Department for Education to reconsider making Personal, Social and Health Education (PSHE) a statutory requirement for all schools in England and to make provision for teaching in relation to human rights.

Asylum-seeking, refugee and migrant children

In line with the UN CRC’s recommendation to “[c]ease the detention of asylum-seeking and migrant children”¹¹ we advise that the UK Government must only detain asylum seeking and migrant children as a last resort and for the shortest possible period of time. If the closure of Cedars pre-departure accommodation leads to an increase in detention of children for immigration purposes, this will not be in the best interests of children. The UK Government should renew its commitment to ending immigration detention of children, and set out its plans on how it will do so in the context of the closure of Cedars.

The EHRC is also concerned that the age assessment of young asylum seekers continues to be carried out on a subjective basis by immigration officers. We agree with the recommendation of the CRC that the UK Government should “[c]onduct age assessments only in cases of serious doubt through multidisciplinary and transparent procedures”.¹²

There are also concerns about provisions in the Modern Slavery Act 2015 for the identification and support of child victims. We agree with the recommendations made by UN CRC to “[e]stablish statutory independent guardians for all unaccompanied and separated children” in the UK.¹³

Access to justice

The issue of access to justice is one that has been raised in all of the recent treaty body reviews of the UK, including the UN CRC.¹⁴ The EHRC has highlighted the reduced scope of legal aid in England and Wales brought about through the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). These reforms present obstacles to children’s access to justice in areas including non-asylum

⁹ UN CRC, Concluding Observations, para 72(a)

¹⁰ UN CRC, Concluding Observations, para 48(a) and 64(b)

¹¹ UN CRC, Concluding Observations, para 76(d)

¹² UN CRC, Concluding Observations, para 76(c)

¹³ UN CRC, Concluding Observations, para 76(b)

¹⁴ The issue was raised in the recommendations made on the UK by the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women, and the Committee on the Elimination of Racial Discrimination.

immigration, education, prison law, and private family law. The exceptional cases funding scheme to provide funding in cases where individuals' human rights could be breached is not functioning as intended, and the process for apply for this funding is not accessible to children.

The UK Government promised a review within 3-5 years of LASPO taking effect in April 2013. A review of the impact of these reforms on children is crucial and should be "expedited" so that the UK Government is in a position to respond to the concerns already raised by treaty bodies and are likely to be raised again at the Human Rights Council during the Universal Periodic Review of the UK in May 2017. It should consider the children's right to be heard in proceedings that affect them, and should "guarantee effective participation of children."¹⁵

Youth justice

The UN CRC, the UN Committee against Torture and the UN Human Rights Committee have all made recommendations for the UK Government to raise the minimum age of criminal responsibility to bring it into line with international standards. The Youth Justice figures 2014/15 show that the use of restraint has increased as has the number of injuries caused as a result.¹⁶ Policy guidelines on use of restraint only as a last resort are not followed in practice. All forms of youth detention permit the use of segregation, including for purposes of order and discipline, and the National Preventive Mechanism has found that some children in Young Offenders Institutions are subjected to solitary confinement.

The ongoing Taylor review of the youth justice strategy provides an opportunity to implement crucial UN CRC recommendations on raising the age of criminal responsibility, abolishing the use of restraint for disciplinary purposes and ensuring that it is only used as a last resort, and removing all children from solitary confinement and inspecting the use of segregation.¹⁷ Where necessary, the scope of this review should be extended to address these issues.

¹⁵ UN CRC, Concluding Observations, para 30(b)

¹⁶ Ministry of Justice and Youth Justice Board, Youth Justice Annual Statistics 2014 to 2015, January 2016, available at: <https://www.gov.uk/government/statistics/youth-justice-annual-statistics-2014-to-2015>

¹⁷ UN CRC, Concluding Observations, para 39 and 78