



**Office of the Children's Commissioner:
Comments on Draft General
Recommendation on Girls' and
Women's Right to Education**

June 2014

About the Office of the Children's Commissioner

The Office of the Children's Commissioner (OCC) is a national public sector organisation led by the Children's Commissioner for England, Dr Maggie Atkinson. We promote and protect children's rights in accordance with the United Nations Convention on the Rights of the Child and, as appropriate, other human rights legislation and conventions.

We do this by listening to what children and young people say about things that affect them and encouraging adults making decisions to take their views and interests into account.

We publish evidence, including that which we collect directly from children and young people, bringing matters that affect their rights to the attention of Parliament, the media, children and young people themselves, and society at large. We also provide advice on children's rights to policy-makers, practitioners and others.

The post of Children's Commissioner for England was established by the Children Act 2004. The Act makes us responsible for working on behalf of all children in England and in particular, those whose voices are least likely to be heard. It says we must speak for wider groups of children on the issues that are not-devolved to regional Governments. These include immigration, for the whole of the UK, and youth justice, for England and Wales.

The Children and Families Act 2014 changed the Children's Commissioner's remit and role. It provided the legal mandate for the Commissioner and those who work in support of her remit at the OCC to promote and protect children's rights. In particular, we are expected to focus on the rights of children within the new section 8A of the Children Act 2004, or other groups of children whom we consider are at particular risk of having their rights infringed. This includes those who are in or leaving care or living away from home, and those receiving social care services. The Bill also allows us to provide advice and assistance to and to represent these children.

Our vision

A society where children and young people's rights are realised, where their views shape decisions made about their lives and they respect the rights of others.

Our mission

We will promote and protect the rights of children in England. We will do this by involving children and young people in our work and ensuring their voices are heard. We will use our statutory powers to undertake inquiries, and our position to engage, advise and influence those making decisions that affect children and young people.

The United Nations Convention on the Rights of the Child

The UK Government ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1991.¹ This is the most widely ratified international human rights treaty, setting out what all children and young people need to be happy and healthy. While the Convention is not incorporated into national law, it still has the status of a binding international treaty. By agreeing to the UNCRC the Government has committed itself to promoting and protecting children's rights by all means available to it.

The legislation governing the operation of the Office of the Children's Commissioner requires us to have regard to the Convention in all our activities. Following an independent review of our office in 2010 we are working to promote and protect children's rights in the spirit of the recommendations made in the Dunford report and accepted by the Secretary of State.

In relation to the current consultation, the articles of the Convention which are most relevant to this area of policy are:

Article 2.1: States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, 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.

Article 19.1: States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Article 28.1: States Parties recognize the right of the child to education, with a view to achieving this right progressively and on the basis of equal opportunity

Article 29.1: States Parties agree that the education of the child shall be directed to:

¹ You can view the full text of the United Nations Convention on the Rights of the Child on the Office of the United Nations High Commissioner for Human Rights website at: <http://www2.ohchr.org/english/law/crc.htm>. A summary version, produced by UNICEF, is available at: http://www.unicef.org/crc/files/Rights_overview.pdf

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

Article 34 States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

The response below has therefore been drafted with these articles in mind. This is not a comprehensive listing of the issues. In general, we have focused on issues identified within the concept note where the Office of the Children's Commissioner has undertaken relevant work.

Our comments

The Office of the Children's Commissioner welcomes the opportunity to contribute to this timely and important piece of work.

Education is every child's right. Despite recent global progress, too many children do not realise this right. Girls account for 31 million of the 57 million children worldwide who are out of primary school. In many countries, girls face multiple disadvantage and discrimination, which means that they are less likely to enrol in education, and more likely to drop out before completing school².

In England, gender parity in school enrolment and completion has been substantially achieved, with 100% enrolment of 5-14 year olds in school³.

Girls' attainment largely exceeds that of boys, with girls outperforming boys in virtually all key indicators of performance:

- at 10/11 years, girls outperform boys in reading and grammar, punctuation and spelling, and have equal attainment in mathematics⁴,
- at 15/16 years, girls outperform boys against every standard performance indicator⁵.

Girls are much less likely than boys to be excluded from school: our report 'They Never Give Up on You' showed that in 2009/10, boys accounted for 78% of permanent exclusions and 75% of fixed term exclusions, and that boys with special educational needs, from poorer and some specific ethnic minority backgrounds were particularly likely to be excluded.⁶

Nevertheless, challenges remain in securing the full realisation of girls' right to education. These include ensuring every girl, whatever her background can realise her right to an education which fulfils her potential, that girls are safe and respected in school, and that schools play their part in protecting girls from violence and abuse.

For this reason, we warmly welcome the intention (Concept Note, paragraph 5.1) to "recalibrate the concept of the right **to** education to consider a broader notion that also includes the rights **within** education and the rights **through** education." We believe that this will ensure the General Recommendation

² Envisioning education in the post-2015 development agenda: Global Thematic Consultation on Education in the Post-2015 Development Agenda, Executive Summary, http://www.unicef.org/education/files/Post-2015_EN_web.pdf, Unicef 2013

³ UK Country Tables 2013, OECD, www.oecd.org

⁴ National curriculum assessments at key stage 2: 2012 to 2013, Department for Education, 2013, <https://www.gov.uk/government/publications/national-curriculum-assessments-at-key-stage-2-2012-to-2013>

⁵ GCSE and equivalent attainment by pupil characteristics in England, 2012/13, Department for Education, March 2014, <https://www.gov.uk/government/publications/gcse-and-equivalent-attainment-by-pupil-characteristics-2012-to-2013>

⁶ 'They Never Give Up on You', School Exclusions Inquiry Year 1 report, Office of the Children's Commissioner, 2012

offers authoritative guidance which continues to be relevant and challenging in countries where gender parity has largely been achieved in enrolment, completion and attainment.

We would like to make five suggestions for the Committee to consider in developing the Draft General Recommendation. References are to paragraphs in the concept note.

1. The Right to Education in International Legal Instruments (paragraph 3.2)

The United Nations Convention on the Rights of the Child (UNCRC) offers a firm foundation for guidance on the objectives and content of girls' education. The broad scope of the UNCRC's provisions on discrimination (Article 2), and the objectives of education (Article 29 and General Comment number 1 (2001)) set out a vision for education which is child-friendly, fulfils children's potential and realises their dignity and rights. The UNCRC offers the basis an ambitious agenda for gender equality and girls' empowerment.

Recommendation 1: OCC recommends that greater focus is given to the provisions of the UNCRC in developing guidance in the General Recommendation on girls' right to education.

2. Disadvantaged groups of girls (paragraph 5.3)

Even in contexts such as the UK where gender parity has largely been achieved in access to education and attainment, specific groups of girls may face disadvantage and barriers to realisation of their rights

For example,

- Although a large majority of children excluded from school are boys, there is still wide variation in the likelihood that a girl will be excluded from school, depending on her background. In 2009/10, a girl from a Black Caribbean background, who was eligible for Free School Meals, and identified as having Special Educational Needs (SEN) at School Action level was 20.72 times more likely to be excluded than a girl from a White British background, no Special Educational Need and not eligible for Free School Meals.
- Girls who are looked-after by the state (local authorities) face substantial educational disadvantage. In 2013, 19.6% of 'looked after' girls achieved the 'benchmark' measure of five or more GCSE passes at grades A*-C or equivalent including English & mathematics. Although this outstripped the performance of 'looked after' boys, attainment for this group of girls was much lower than the equivalent for girls in the wider population (63.5%) and for all children (58%)⁷.

⁷ Outcomes for children looked after by local authorities, Department for Education Statistics, April 2014, www.gov.uk/government/publications/outcomes-for-children-looked-after-by-las

Recommendation 2.1: OCC agrees with the priority given to facilitating access to education for disadvantaged groups of women and girls (Concept Note paragraph 5.3). We suggest that access to education for all girls should be a priority at least through to the end of secondary school. In addition, we suggest that it is made clearer that states should have arrangements in place to monitor and make progress towards equality of opportunity, attainment and outcomes for different groups of girls (and boys), as well as equality of access. Recommendation 2.2: Specific attention should be given to girls who are in the care of the state.

3. Alternative Learning Programs (paragraph 3.2.9)

In England, girls of compulsory school age who are not enrolled in mainstream education are likely to be enrolled in alternative education provision: these settings include

- Alternative Provision (including Pupil Referral Units) which caters for children who have been excluded or who cannot attend mainstream school for other reasons, including children with behaviour issues, those who have short- or long-term illness, school phobics, teenage mothers, pregnant teenagers, or pupils without a school place;
- Special and Residential Special Schools (for children with special educational needs and/or disabilities),
- Education provision for children in the youth secure estate.

OCC has not carried out extensive work on education provision in these contexts. However, in many of these settings, girls often make up a small minority of pupils, and where many children have experienced high levels of disadvantage, disruption and violence in their lives. Our programme of visits into the youth secure estate and our Inquiry into Child Sexual Exploitation in Gangs and Groups indicates that girls often face risks in these settings, that girls are not always provided with a safe and nurturing environment within which they can learn, and that the educational and social provision which is on offer may lack relevance to girls.

Recommendation 3: We suggest that the importance of alternative educational provision which is relevant, accessible and safe for girls is highlighted.

4. Rights within education (paragraph 5.4)

OCC agrees with much of the focus of this section, including the need to avoid sex segregation and to ensure that girls are able to access the full curriculum, including all subjects and sport.

The concept note highlights the importance of ‘protecting the safety of the educational environment’ (para 5.4.2) and to ‘develop curricula that reduce stereotypes that foster Violence Against Women’. However, there is no mention of a requirement to provide girls and boys with appropriate relationships and sex education.

In 2013, the Committee on the Elimination of Discrimination against Women recommended that the UK should

“Consider introducing mandatory age appropriate education on sexual and reproductive rights in school curricula, including issues on gender relations and responsible sexual behaviour, particularly targeting adolescent girls⁸”.

The OCC strongly supports this recommendation. Schools have a vital role in enabling pupils to develop healthy relationships, including sexual relationships, that are respectful, and a curriculum that does not tackle these issues leaves them at risk of not fulfilling their duty in that regard. Under the new curriculum (from September 2014), there is a clear expectation that schools in England will deliver Personal, Social and Health Education (PSHE), including Relationships and Sex Education (RSE). However, this is not a requirement in law, and the content of these classes is left up to the school, within broad parameters. Ofsted (England’s school inspectorate) has found that this subject is one of the least well taught in England’s schools⁹. This can lead to girls and young women not understanding their rights in sexual relationships.

Evidence from the OCC’s Inquiry into Child Sexual Exploitation in Gangs and Groups shows that many teenagers are confused at what constitutes consent. Research commissioned by this office reveal that young people generally understand what is meant by consent to sex, but have a very limited understanding of what getting consent involves. Consent was frequently understood in terms of a straightforward ‘yes’ or ‘no’, with a limited understanding of the way in which contextual factors, such as coercion and vulnerability, can impede someone’s ability to give or withhold consent. In this research, young people described how the ways in which their understandings, knowledge and expectations of sex were shaped by pornography, sexualised imagery in popular culture and gender stereotypes¹⁰.

⁸ Committee on the Elimination of Discrimination against Women: “Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland”, July 2013

⁹ ‘Not yet good enough: personal, social, health and economic education in schools’, Ofsted, 2013, www.ofsted.gov.uk/resources/not-yet-good-enough-personal-social-health-and-economic-education-schools

¹⁰ Coy, M. et al, “Sex without consent, I suppose that is rape”: How young people in England understand sexual consent”, A report commissioned for the Office of the Children’s Commissioner’s Inquiry into Child Sexual Exploitation in Gangs and Groups, Child and Woman Abuse Studies Unit, London Metropolitan University, November 2013, www.childrenscommissioner.gov.uk/info/csegg1

The need for reliable information and education, delivered in a safe environment accessed by all children, such as their school, is incontrovertible.

The provisions of the UNCRC are also clear on the need to protect children's rights through the provision of adequate education and information on sexual and reproductive health:

'It is the obligation of States parties to ensure that adolescent girls and boys, both in and out of school, are provided with, and not denied, accurate and appropriate information on how to protect their health...this should include information on...safe and respectful social and sexual behaviours'¹¹.

'sexual and reproductive health education should include self-awareness and knowledge about the body...and should include content related to sexual health and wellbeing, including information about body changes and maturation process'¹².

Recommendation 4: OCC strongly recommends that relationships and sex education is highlighted within the general recommendation as an essential element of a curricula which reduces stereotypes that foster VAW (para 5.4.4).

5. Protecting the Safety of the Educational Environment (paragraph 5.4.2)

The concept note rightly highlights the importance of action to address sexual harassment and abuse in schools.

In the UK, the impact of bullying and sexual harassment on girls in school has been highlighted by a number of stakeholders.¹³

There are also concerns that some schools in England may be slow to act where children – particularly girls, but also boys – cease attending school and there is a possibility that they are at risk of abuse or violence.

For example,

- In 2011, the parliamentary home affairs select committee concluded that there was “clear evidence that many schools are not fulfilling their statutory responsibilities with regard to forced marriage”, including a “disturbing link between children missing from formal education and victims of forced marriage and a lack of follow up from the authorities in

¹¹ UN Committee on the Rights of the Child, General Comment No.4 on Adolescent Health, 2003

¹² UN Committee on the Rights of the Child, General Comment No.15 on Article 24 of the UNCRC, March 2013

¹³ “Women's equality in the UK – A health check”: Shadow report from the UK CEDAW Working Group assessing the United Kingdom Government's progress in implementing the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), April 2013 www.thewomensresourcecentre.org.uk

many cases”¹⁴

- The OCC’s work on Child Sexual Exploitation has highlighted absence from school as one of a number of ‘warning signs’ that a child may be being sexually exploited.

In order for schools to be safe spaces for girls, it is important to create the conditions at school in which everyone is alert to the signs that a child may be at risk or is a victim of sexual exploitation or abuse and that there is a climate of belief and respect that gives the child or young person the confidence to tell a trusted person about their experience.

The OCC recommends a ‘whole-school’ approach to safeguarding children from sexual exploitation and abuse. The essential components of a whole-school approach are

- universal, high-quality relationships and sex education provided for children of all ages
- training for all school staff on the importance of taking a whole-school approach and on the warning signs of abuse
- targeted early intervention with, and arranging safe activities for, young people who are vulnerable to exploitation and abuse
- speedy responses to dealing with harmful attitudes, sexual bullying and harassment at the school
- partnerships with external agencies and agreed referral procedures when children are at risk of, or experiencing, sexual exploitation

Recommendation 5: OCC recommends that the General Recommendation highlights the role that schools can have in protecting girls from violence and abuse, both beyond and within school, and the value of a whole-school approach in protecting children.

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¹⁴ Home Affairs Committee - Eighth Report, Forced marriage, May 2011, <http://www.publications.parliament.uk/pa/cm201012/cms>