

**Scottish Public Services Ombudsman  
Child Friendly Complaints Principles Consultation  
Response of the Children and Young People's Commissioner Scotland.**

**March 2024**

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Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights.

The Commissioner is fully independent of the Scottish Government.

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We welcome SPSO's commitment to ensure children in Scotland have access to child friendly complaints processes and the introduction of these Child Friendly Complaints Principles. Complaints processes are an important mechanism through which children can seek remedy for rights violations. However, they are principally designed for adults and as a consequence are not accessible to children. Those children whose rights are most at risk face the most barriers in accessing complaints processes. These principles have the potential to improve the accessibility of complaints mechanisms to children but must be accompanied by meaningful change to existing processes. We are, of course, happy to discuss our comments with you.

## **Principle 1 - For Everyone Under 18**

### **1. How well do you think we have explained this principle?**

Partly clear

### **2. Is there anything you think would help explain this principle better?**

These principles are about giving children access to a statutory function, without discrimination.

Throughout the principles, the terms complaint and concern are used seemingly interchangeably. While we acknowledge others have expressed the view that use of the term "complaint" may act as a barrier to children. We do not agree. Complaint is the word used by the Committee on the Rights of the Child in their Concluding Observations<sup>1</sup>, we consider that the term concern is not clear enough and could be interpreted as indicating that children's "concerns" are not to be treated as seriously as adults' complaints, or that it is for adults to determine whether the child is raising a "complaint" to which the principles apply, or a concern to which they do not. This is particularly significant given that complaints made by children will be less likely to be

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<sup>1</sup> UN Committee on the Rights of the Child, 2023. Concluding Observations on the United Kingdom of Great Britain and Northern Ireland. <https://digitallibrary.un.org/record/4013807>

made in a recognised and formal manner (e.g. by letter or email). These principles must therefore refer to **complaints made by children** not concerns and ensure that complaints are properly identified however they are made.

The UNCRC gives children have the right to have access to the same complaints mechanisms as adults and to have their complaints dealt with on the same basis as adults – that should underpin these principles which outline the basis on which this right can be realised<sup>2</sup>.

It would be useful to also include Article 2, the right to non-discrimination, in the description of this principle. Article 2 says that children should not be discriminated against on the basis of any characteristics, for example sex, national or social origin, or disability. It also means that children should not be discriminated against on the basis of being a child.

## **Principle 2 – Focused on Children’s Best Interests**

### **3. How well do you think we have explained this principle?**

Partly clear

### **4. Is there anything you think would help explain this principle better?**

It should be remembered that the rights contained within the UNCRC, as with all human rights are indivisible, interdependent and mutually reinforcing<sup>3</sup>. To interpret what is in a child’s best interests, professionals must carefully consider the rest of the rights set out in the UNCRC. Whilst the best interests of the child is one of the general principles of the UNCRC, there is nonetheless a risk of it being interpreted in a somewhat paternalistic way which divorces it from the rest of the Convention, restricts children’s assertion of their rights and reinforces the power imbalances these principles intends to address. We expressed this concern, for example, in relation to the Education (Scotland) Act 2016<sup>4</sup>. It should also be noted that Article 3(1) refers to actions undertaken by “public or private social welfare institutions, courts of law, administrative authorities or legislative bodies” and requires them to “systematically consider[...] how children’s rights and interests are or will be affected by their decisions and actions”<sup>5</sup>. We would recommend that this is reviewed with reference to the Committee on the Rights of the Child’s General Comment 14 on the best interests of the child<sup>6</sup>.

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<sup>2</sup> UN Committee on the Rights of the Child. 2003. General measures of implementation of the Convention on the Rights of the Child. <https://cypcs.org.uk/wpcypcs/wp-content/uploads/2021/02/General-Comment-5.pdf> Part V

<sup>3</sup> UN General Assembly. 2006. Resolution 60/251 [https://www2.ohchr.org/english/bodies/hrcouncil/docs/a.res.60.251\\_en.pdf](https://www2.ohchr.org/english/bodies/hrcouncil/docs/a.res.60.251_en.pdf)

<sup>4</sup> CYPCS. 2016. Education (Scotland) Bill Stage 3 briefing. <https://www.cypcs.org.uk/wpcypcs/wp-content/uploads/2020/02/Education-Scotland-Bill-Stage-3-MSP-Briefing.pdf>

<sup>5</sup> UN Committee on the Rights of the Child. 2003. General measures of implementation of the Convention on the Rights of the Child. <https://cypcs.org.uk/wpcypcs/wp-content/uploads/2021/02/General-Comment-5.pdf> Part I.

<sup>6</sup> <https://cypcs.org.uk/wpcypcs/wp-content/uploads/2021/02/General-Comment-14.pdf>

### **Principle 3 - Trusting and Inclusive**

#### **5. How well do you think we have explained this principle?**

Partly clear

#### **6. Is there anything you think would help explain this principle better?**

Our view is that the word “trusting” is not useful. Article 5 should be understood primarily as empowering children to exercise their rights, in line with their evolving capacities and with the support of their parents. We would suggest that this principle be changed to “Empowering and Inclusive”.

We do not think that the summary of Article 5 here captures the full meaning of the article or the Committee on the Rights of the Child’s interpretation. If the intention is to simplify the language to aid understanding, we do not think it achieves that.

In particular, we feel that it risks an over-emphasis on the rights of parents. The UNCRC, as a whole, was groundbreaking in recognising a direct relationship between children and the state, challenging prior presumptions that parents have right of ownership over the child.<sup>7</sup> Article 5 frames and contextualises parents’ rights in relation to their responsibilities and duties as parents “to provide **appropriate** guidance and direction” in the context of a child’s evolving capacity” to exercise their rights on their own behalf. As Gerison Lansdown emphasises, the word appropriate is vitally important – it establishes a direct relationship between the child and the State<sup>8</sup>.

We recommend that this section be drafted with greater emphasis on the purpose of parental rights, responsibilities and duties, the evolving capacities of the child and enabling children to access complaints processes. In addition to Lansdown, we recommend the discussion of this issue by Tobin and Varadan<sup>9</sup>.

We refer to our previous comment about the use of the words “concern” and “complaint” being used inconsistently.

### **Principle 4 – Centred on Children’s Voices**

#### **7. How well do you think we have explained this principle?**

Mostly clear

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<sup>7</sup> Holmberg and Himes, 2000. Quoted in Lansdown, G. 2005. The Evolving Capacities of the Child. Unicef Innocenti Research Centre. <https://www.unicef-irc.org/publications/384-the-evolving-capacities-of-the-child.html>

<sup>8</sup> Lansdown, G. 2005. The Evolving Capacities of the Child. Unicef Innocenti Research Centre. <https://www.unicef-irc.org/publications/384-the-evolving-capacities-of-the-child.html>

<sup>9</sup> Tobin, J and Varadan, S. *Article 5 The Right to Parental Direction and Guidance Consistent with a Child’s Evolving Capacities* in Tobin, J. 2019. *The UN Convention on the Rights of the Child*. Oxford University Press.

## **8. Is there anything you think would help explain this principle better?**

In this case, the summary of article 12 has added context, in the final sentence, which is not in the original text but is contained within General Comment 12 on the right to be heard. We suggest that this is moved into another part of the section, to avoid confusion. This is particularly the case for the phrase “the child’s day-to-day home life” – the articles within the UNCRC contain duties on the state but this could be interpreted to suggest that parents have a duty to give due weight to their child’s views.

Whether or not the consent of a child would be necessary to progress a parents’ complaint is a complex issue. Whilst it is appropriate to do this where a child has capacity, there is a risk that obtaining this consent can become a barrier to parents exercising rights on behalf of their child, particularly for younger or disabled children. The concept of evolving capacities in Article 5, discussed above, is important here and it may be more appropriate for this paragraph to be included under the previous principle. In any case, it needs to be clear that consent will be sought “where appropriate” i.e. where the child has capacity to do so and where consent is meaningful (for example where an authority is under a legal obligation to progress an issue in a particular way, it would not be appropriate to seek the child’s consent, instead the child should be kept informed in an age-appropriate and respectful way).

## **Principle 5 – Kind and Supportive**

### **9. How well do you think we have explained this principle?**

**Partly clear**

### **10. Is there anything you think would help explain this principle better?**

We do not think it is appropriate to reference Article 13 in relation to this principle. Article 13 relates to children’s right to “seek, receive and impart information and ideas of all kinds” as part of public discourse, rather than in administrative proceedings such as a complaints process.

Article 12 would be the appropriate article for this principle. Ensuring children feel comfortable and are supported to express their views is an important part of Article 12. In the Lundy Model of participation, Space refers not just to physical spaces but more broadly to the types of opportunities children are given to form and express their views.<sup>10</sup>

We would prefer terms like “respect” and “dignity” to “kindness”. One of the most significant paradigm shifts made by the UNCRC was to recognise children as rights holders and active agents in their own lives, not as passive recipients of adult benevolence. The terminology used in the principles should reflect that.

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<sup>10</sup> Lundy, Laura. *The Lundy model of child participation*.  
[https://commission.europa.eu/system/files/2022-12/lundy\\_model\\_of\\_participation.pdf](https://commission.europa.eu/system/files/2022-12/lundy_model_of_participation.pdf)

## **Principle 6 – Confidential**

### **11. How well do you think we have explained this principle?**

Partly clear

### **12. Is there anything you think would help explain this principle better?**

It must be clear to children that a complaints process, or any adult working with them, cannot give a promise of absolute confidentiality. We welcome the attempt here to do so but believe it needs to be strengthened to make this clearer, but also to be clear that the threshold for sharing that information will be a risk of harm and that the information will be shared through appropriate child protection processes. It may also be necessary to share information if there is a specific legal duty to do so – for example a referral to the Children’s Reporter.

It is not appropriate to share details of a complaint made by a child with capacity with their parents or carers, even those with parental responsibilities, without their consent. An active decision was taken during the drafting of the UNCRC to recognise the child’s individual right to privacy, even from parents, in line with their evolving capacities as outlined in Article 5<sup>11</sup>. The threshold for interfering with the child’s Article 16 rights is a risk of harm and in that case child protection policies should be followed. Where involvement of a parent or other carer is thought to be necessary or desirable, this must be discussed with the child and their consent sought.

## **Principle 7 – Educational about Rights**

### **13. How well do you think we have explained this principle?**

Partly clear

### **14. Is there anything you think would help explain this principle better?**

As with the reference to Article 5 above, our view is that the interpretation of Article 18 here risks an overemphasis on parental involvement in complaints and could result in decisions which run counter to the rights of the child. It is not even particularly relevant to these principles, which about how public authorities in Scotland give effect to children’s right to access effective remedy independently. We suggest that Article 18 be removed.

Article 42 refers to “the principles and provisions of the Convention” and should be interpreted broadly, for example to include awareness of alternative routes to remedy, including those contained within section 7 to 10 of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. As the Scottish Government’s draft Statutory Guidance on Part 2 of the Act acknowledges

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<sup>11</sup> Whalen, C. (2022). Article 16: The Right to Protection of Privacy. In: Vaghri, Z., Zermatten, J., Lansdown, G., Ruggiero, R. (eds) Monitoring State Compliance with the UN Convention on the Rights of the Child. [https://link.springer.com/chapter/10.1007/978-3-030-84647-3\\_11](https://link.springer.com/chapter/10.1007/978-3-030-84647-3_11)

“litigation can play an important role in realising child rights and also has the potential more broadly to positively influence practice, policy and law”<sup>12</sup>.

We would welcome a commitment for information about alternative routes to remedy to be included as part of the principles underpinning child friendly complaints processes.

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<sup>12</sup> Scottish Government, 2024. UNCRC (Incorporation) (Scotland) Act 2024 - part 2: statutory guidance. <https://www.gov.scot/publications/statutory-guidance-part-2-uncrc-incorporation-scotland-act-2024/pages/4/>