

Draft General Comment 27 – Children's Rights to Access to Justice and Effective Remedies

Young Advisors Group – Children and Young People's Commissioner Scotland

December 2024

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.

This response has been written on behalf of the Young Advisors Group (YAG) who support the Commissioner and expresses their views on access to justice and effective remedies. For the Commissioner's position on the draft General Comment 27, please refer to the office's written submission, published in August 2024¹.

The YAG is currently supporting the Commissioner's work relating to school education. This is in line with the Commissioner's strategic priorities, identified following extensive consultation with children and young people in Scotland. The YAG are a diverse group of children aged 12 to 17, from all across Scotland. They are consulted on the work of the office, including planning engagement work with children and young people and have accompanied the Commissioner on visits to children in schools and other settings, co-presenting events (including online assemblies which reach thousands of children across Scotland) and attending parliamentary events to raise awareness of interests which are important to children in Scotland.

The following response is based quotes from a conversation with a group of YAG members, who were asked to reflect on the experiences of their friends and peers as well as their own experiences. Given the current focus on children's experiences in education, we concentrated on their views on children's rights to access to justice and effective remedy in schools. This is an experience that the whole group shared and could connect with on a practical level.

"It's something children should feel comfortable doing because it's our place that we spend most of our time in."

"It just really depends, it depends because there are some teachers who like some students so it just depends what teacher."

¹ <https://www.cypcs.org.uk/resources/gc27-aug-24/>

“I’ve never heard a story of a complaint actually being listened to and considered until somebody gets their parents involved and even then nothing happens.”

Children spend a large proportion of their lives in schools. This is where many first experience rights to justice and effective remedy, in the way their complaints are dealt with by teachers and schools. Yet many children experience school as somewhere they are not listened to and where they have no agency. Where their rights are infringed and their complaints are ignored.

Children in Scottish state schools² have the same rights to complain as their parents, or any member of the public, with all local authorities using the Scottish Public Sector Ombudsman’s (SPSO) model complaints procedure³. This is a two-stage internal complaints process (initial complaint and review) with a right of review to the SPSO. Earlier this year, the SPSO launched guidance on Child Friendly Complaints⁴.

What do you think children would complain about?

As an introduction to the session, we asked the group what issues they thought children would raise, were they to make a complaint. They identified a range of issues including:

- Tests and the stress of tests
- The length of the school day
- The pressure of homework
- Teachers’ attitudes and behaviour
- Quality of teaching
- Extra-curricular activities

What do children think about justice and effective remedies?

“I think it does really depend on the school but I know that a lot of schools will not neglect your thoughts but kind of push them aside and say “yeah we’re trying to sort that out but we’ve got a lot of other things and maybe you can sort it out by yourself””.

Some schools had better systems in place than others, but children weren’t always confident complaints were effective.

“My school has year councils and pupil councils and I think in the last couple of years it is a really effective way of getting word out about the different issues that we’re noticing.”

“It does depend on the school, but in my school there’s lots of anonymous ways to put in your concern... but there’s a lot of complaints [where] they didn’t fix anything.”

² Some of our YAG attend independent schools, who have their own procedures.

³ <https://www.spsso.org.uk/the-model-complaints-handling-procedures>

⁴ <https://www.spsso.org.uk/child-friendly-complaints>

The YAG also reflected that sometimes there were blockages which prevented schools from acting on a complaint.

"They also just can't a lot of the time."

"There could be an issue with not enough resources or enough people to run something like that but that's something I think pupils would like to change."

"People put in complaints, well worded. There was a whole movement last year to get some action done [redacted]. We put in a massive campaign but nothing happened. Even if they want to do things they can't. I'd go and speak to a teacher and they'd say "oh we already have about 50 complaints [redacted] but they can't do anything"⁵

They felt that it was important that children were able to complain and that a good complaints process could benefit the school as a whole.

"It's not easy for teachers to know everything that is going on for us because they see the school differently from the way we do."

"I think in a school if there is a problem, the first ones to notice it would be the children because they are directly affected by it."

"I think problems piled on problems, it can become really overwhelming for the child and I think in general, for the bigger picture as well, if this is happening with lots of different people, it'll just turn into one big issue for the school to deal with and that can be a lot harder to fix."

"[If school had acted] at the start, when they first realised that there was something wrong... could make a big difference in how things are handled, so it's just really important that children know that in school, that school isn't a place where they can't speak up when they feel they need to."

What are the barriers for children to access justice and get effective remedy?

The group were not sure that they would be taken seriously.

"It doesn't feel like it's our place to say that the school is doing something wrong."

"At this point, complaining feels like it's not going to matter, so no one does even if they need to."

"Maybe they don't even look at it for all we know."

⁵ This quote has been redacted as the specific issue would risk identifying the child.

They knew that complaining wasn't an easy thing to do, especially for children.

"I think it's hard for children to make a complaint. It can feel awkward. It's not the easiest thing to go down to guidance or to speak to the teacher and to tell them that you think this is wrong and this is an issue because they don't know how the teacher will respond."

"For a lot of schools and a lot of children it's not seen as the norm to go and feel like you're able to tell teachers about how you are feeling and if there is an issue."

The reactions of school staff were important. Positive relationships were empowering.

"The teachers' attitudes, some are easy to talk to and if you have a question it's fine but you also don't know how they are going to react..."

"It's really important that children know that their voice is heard in schools, because if they feel that their opinion doesn't matter to the teachers, they are not going to want to go forward and tell them."

Bad experiences can prevent children from accessing their broader rights.

"[my friend] was complaining that her additional arrangements weren't in place and [the teacher] took it as personal offence and made her life awful for a year... Of course she's not going to complain if that's how the school and complaint system works."⁶

Some felt that other children's complaints might not be taken seriously.

"We're treated better by most of the staff and maybe there is a bit of trust but it's also just bias I think. If a kid is problematic and annoying one time the teachers just give up on them and they don't trust them, even years later."

"I think it's a massive problem at my school, if me and my friends who are all prefects go down and make a complaint it still doesn't go very far but it gets so much further than people who the staff don't like. If those pupils even walk into the guidance base and try to make a complaint they will just get screamed at."

"Depending on who it is the teacher might automatically think that it's just a bad behaved child, which isn't right."

"There could be favouritism when it comes to things like friendship problems and teachers are trying to decide how best to support it - if you've got a teacher who really likes this other kid that you're trying to

⁶ Disabled children in Scotland are entitled to special arrangements, such as use of technology or extra time, for examinations.

sort out the issue with, they could have more sympathy [with them] because they like them more."

Finally, the attitudes of other children could be a barrier to making a complaint.

"This is more of a problem on the kids part but there is a bit of a social weirdness about making a complaint. That's not the teachers' fault."

What do children need to access justice and effective remedy if their rights got violated?

We asked the group what support they thought children needed to be able to make a complaint.

"I think that what would be really helpful is if there was a system and the kids knew how that was going to work – say like an online form to start the process and if the teachers proved that they were trustworthy and that something would come of it."

"If there were clear steps and the kids trusted the teachers that they wouldn't do anything without their consent and knowledge then people would feel more comfortable making complaints because it's quite a scary process because you don't know what they will do with the information."

They had some ideas about how complaints processes could be improved and particularly liked the idea of peer-led approaches.

"Pupil councils and year councils are a really good way for children to feel like their voice is heard by the teachers but they are also in a group setting where they can talk to each other and share their opinions with each other."

"I think if the year groups are picking up one thing, it's a lot more likely for the teachers to notice that as a big problem. It's not only affecting the children who have brought it up."

"I think for children they feel a lot more confident if they are in a group that they can talk with instead of speaking up about something on their own. That can be a scary thing to do, especially to a teacher who they might not know too well."

But in many cases, children's complaints were only taken seriously when their parents became involved.

"The only time I have heard of somebody winning a complaint, it was being put in the wrong level for maths, their Mum showed up at the school and [intervened] that's the only way."

“In S1 I had this teacher who was not very nice to me and he called me some names so I went and reported it to my support pastoral teacher and I didn’t hear anything so I told my parents and my parents told the school, so my mum came into the school and went straight to the headteacher.”

Finally, we asked them whether they thought a child who made a complaint would get an answer. None of them thought that a child would definitely get a response.

“It depends on who made the complaint.”

Awareness of existing rights to complain

At the end of the session, we asked the group if they were aware of the local authority complaints process and how it applied to their school. None were. We explained the SPSO model complaints process to them and provided them with further information about it. As some of the issues raised had related to teacher behaviour and teaching quality, we also told them about the General Teaching Council Scotland’s (GTCS) Fitness to Teach process. Children have the same right to refer a teacher to this as their parents and the GTCS have recently consulted on how to support children to participate in the process⁷, the Commissioner’s office responded to that consultation.⁸

Conclusion

Although the members of the YAG involved in this response were a small group, they represented a wide range of experiences in their own lives and those of their friends. They acknowledged that they themselves were among the children most likely to be heard and reflected that other children faced greater barriers to remedy. They were sensitive to issues affecting schools’ ability to act on complaints and the challenges faced in some schools. But they also described a system where none of them were sure they would even receive a response to a complaint.

For further information, please contact Megan Farr, Policy Officer at megan.farr@cypcs.org.uk or 07803 874 774

⁷ <https://www.gtcs.org.uk/fitness-to-teach/fitness-to-teach-rules-review>

⁸ <https://www.cypcs.org.uk/resources/gtcs-fitness-to-teach-rules-review/>