

Human Rights of Children in the Social Care System in England: Call for evidence response – September 2025

Legal Framework

1. *To what extent are Convention rights protected in the children's social care system, particularly:*

- *The right to respect for private and family life, Article 8 ECHR (for example in relation to sibling separation and relocation).*

The Children's Wellbeing and Schools Bill, if enacted in its current form, will place a duty on local authorities to hold family group decision making meetings, unless inappropriate in exceptional circumstances. These meetings should be an opportunity to discuss with the family how the child or young person can be best cared for, including the possibility of kinship care.

The Bill, currently progressing through Parliament, should therefore strengthen the ability of the social care system to respect Article 8 of the Human Rights Act 1998 (HRA) (it being the domestic incorporation of the ECHR) and the right to a private and family life.

Equally, the UN Convention on the Rights of the Child (UNCRC) provides that children who cannot live with their family must be protected and looked after by the government (Article 20).

Article 8 of the ECHR ('right to respect for private and family life') must be considered alongside Article 20 of the UNCRC. Additionally, the needs and best interests of the child or young person must always be centred in decision making. For example, an adult family member's Article 8 HRA rights must not eclipse the Article 8 HRA rights of the child, nor their Article 20 UNCRC rights, even if this means that the child should become looked after.

- *The right to liberty and security, Article 5 ECHR (for example in relation to Deprivation of Liberty orders).*

The current parameters and protections regarding Deprivation of Liberty orders (DoLs) are vast. This is necessary to promote best interest decisions for children and young people, even when these decisions do not align with the right to liberty and security; non-exhaustively, for example, if a child or young person is at risk of significant harm to themselves a DoL may be appropriate.

A DoL may also be appropriate if it is the only way to keep a young person safe from the actions of others; for example, in cases of child criminal exploitation (CCE) or child sexual exploitation (CSE).

While DoLs can be important to keep children and young people safe, other organisations have done in-depth work on how the system might better meet the needs of CYP subject to DoLs and RCPCH considers it important that this in-depth work is taken into consideration. For example, the Nuffield Family Justice Observatory in 2023 (www.nuffieldfjo.org.uk/wp-content/uploads/2023/09/CHILDR1.1.pdf)

- *The right to a fair trial, Article 6 ECHR (for example in relation to access to justice and legal advice).*

[N/A]

- *The protection against discrimination in the enjoyment of Convention rights, Article 14 ECHR.*

It may be useful to consider specific groups in answer to this question, and to consult specialist organisations accordingly. For example, organisations that work with unaccompanied children and young people seeking asylum and refuge (CYPSAR) may question whether this group is free from discrimination in how they progress through the system as a looked after child.

Other specific groups could include children and young people: with disabilities; who have been involved in criminality; who are 16-18 years old.

- *The right to an effective education, Article 2, Protocol 1 ECHR.*

Currently, virtual head teachers and schools monitor and support the education of children and young people in care.

Education, health and care plans (EHCPs) do not seamlessly cross borders when children and young people in care move out of area, however, creating delays in accessing support and adding barriers to education.

Children and young people in care might move out of area for a variety of reasons, such as housing or placement availability. Their plans and supports should apply to their new area without delay. This applies to EHCPs and other documents that facilitate care for children and young people.

To expand on our answer this question, it may be necessary to for the inquiry to define what an 'effective education' is for different age and stage groups of children and young people.

2. If the UN Convention on the Rights of the Child were to be incorporated into domestic law in England, to what extent would that affect the protection of the human rights of children supported by or in the social care system?

Children's rights are human rights.

Incorporation of the UNCRC into domestic legislation in England would bring with it more power to bring about change for the benefit of all children, including those supported by or in the social care system. The domestic incorporation of the UNCRC would bring with it an ability for children in England to use this legislation in the Courts in England to advance their legitimate interests. This would be significantly advantageous to children generally, and specifically those supported by or in the social care system where promotion and protection of their rights is so essential.

Children in Scotland (where the UNCRC has been domestically incorporated as the UNCRC (Incorporation) (Scotland) Act 2024) have said time and time again that putting their rights into law is an important demonstration of how the country values children and young people. There is no reason to suspect that children in England would see the situation any differently and want parity with their peers in Scotland. Incorporation of the UNCRC would show children and young people that their rights are important; that they will be meaningfully protected; and that they will be taken seriously. This is more likely than not to contribute to a society where children are better valued, better treated, and better able to provide the social scaffolding to support future generations of children, when they become adults.

The domestic incorporation of the UNCRC rights would provide, explicitly, that children's rights are universal, inalienable, indivisible and interdependent. Every area of government policy affects children to some effect. Domestic incorporation of the UNCRC would explicitly recognise that childhood – being a special time of life where significant support and protection is required – is a crucial time upon which future adult society is founded.

An incorporation Act in England would enable children to seek legal remedy – thereby achieving justice for themselves and potentially other children in society – if actions or inactions towards them (either actual or intended) are incompatible with the UNCRC requirements. Such an approach has got to be a key part of resetting the way in which society views children (which will have intergenerationally positive impacts in the future).

3. Do you believe there should be changes to legal protections for care experienced people? Could there be any potential drawbacks of making such changes on the basis of care experience?

There are several arguments for and against making 'care experience' a protected characteristic, and it is a debated topic among professionals without consensus.

For example, if care experience were to become a protected characteristic, this could ensure that services are adapted to meet the needs of care leavers and care experienced adults.

On the other hand, the change to a protected characteristic formalises care experience on an individual's record. Unlike other protected characteristics, which are inherent characteristics of the individual or something they have chosen, care experience is not usually chosen by the individual and nor is it usually something that is inherent. It is a decision made in the best interests of the child or young person. A care leaver or care experienced adult may not want to have 'care experience' on their record as a protected characteristic; most children and young people in care want to be treated the same as their peers.

If 'care experience' were to become a protected characteristic, it may therefore be advantageous for it not to be a mandatory part of an individual's record. They could then choose whether to declare their care experienced status.

Alternatively, other more nuanced policy solutions may be able to have the same positive impact for children and young people as making 'care experience' a protected characteristic, without the drawbacks.

4. Do any human rights concerns arise from the disabled children's social care framework? If so, what are they?

[N/A]

Accommodation

5. To what extent are there human rights concerns about the accommodation available to children in care? Are there particular concerns in relation to available accommodation for unaccompanied asylum-seeking children?

Children and young people aged 16+ may be placed in semi-supported lodgings before they have achieved the cognitive maturity to manage their own needs. This decision does not meet their right to a family life, security or accommodation.

Families could be better supported to care for children and young people with additional needs. This would help family units to remain together, rather than children and young people being placed in a residential home. Note that residential homes may be appropriate for children and young people with significant needs, however.

Kinship care

6. *What human rights considerations arise from both formal and informal kinship care?*

Kinship care can uphold a child or young person's right to a family life and identity, but they may be subject to the same adverse environmental and socio-economic factors that they already experience.

Additionally, if care experience were to become a protected characteristic, this may not apply to a child or young person in formal or informal kinship care.

Criminal Justice

7. *To what extent are children with care experience overrepresented within the criminal justice system? If they are overrepresented, what are some of the driving factors for this?*

Children and young people with care experience are overrepresented in the criminal justice system. Driving factors include:

- Unmet/undiagnosed communication disorders
 - Unmet neurodisability needs
 - Adverse childhood experiences (ACEs)
 - Developmental trauma
 - A lack of multiagency and multimodal interventions to meet the child or young person's needs as early as possible, allowing their outcomes to worsen over time
 - A lack of emphasis within the social care system on early intervention.
- Professionals will commonly see children and young people who have been in the social care system all their lives, but have not received meaningful interventions and supports to ensure that they can still flourish from childhood and into adulthood. Instead, these children and young people may be more likely to make poor life choices compared to their peers, which may then lead to involvement in criminality and other adverse outcomes

Training and understanding

8. To what extent is there a clear understanding by organisations, individuals, and public authorities, about statutory duties owed to children in the social care system, as well as the individual entitlements of these children? Do social workers, as well as others involved in providing support to children in care, receive adequate human rights training?

Statutory duties are relatively well understood, which is positive. Additionally, the voice of the child is often built into social care and health processes; for example, corporate parenting boards have representatives or co-chairs that are children and young people.

Many local authorities use the Lundy Model of child and young person engagement. This is a right-based framework that aims to ensure meaningful engagement and decision making with children and young people, rooted in Article 12 of the UNCRC. Local authorities also have children in care councils and care leaver forums.

These are good developments which should be encouraged.

On the other hand, the understanding of corporate parenting responsibilities outside social care is often very limited. The long term impact of pre- and post-care experiences on adults is also often poorly understood. This applies to all fields including health.

Some delays to legislation amendments have added to gaps in understanding; for example, the review of Promoting the Health of Looked After Children was anticipated for 2016 but has not yet been published.

As a more general point, children and young people in care are often subsumed into safeguarding within health settings (eg ICBs). It is very important that they are defined and addressed as a separate group, with their own vulnerabilities, needs and services. There are more children in care than on child protection plans; staff with expertise specific to children in care are paramount to meet the needs of these children and young people.

Complaints and remedies

9. To what extent are there clear and effective complaints mechanisms, as well as effective remedies, to deal with human rights issues arising in children's social care system?

[N/A]

Good practices

10. Are there examples of good practices that protect and promote human rights in children's social care systems from devolved nations or other countries, which could improve the system in England?

The following may be useful examples of good practice:

- The Charter on the Rights of Children and Young People in Healthcare Services in Australia: awch.org.au/wp-content/uploads/2018/10/kids-rights-in-healthcare-australian_version_final_210911web.pdf
- Scotland: What does the 2024 UNCRC (Incorporation) (Scotland) Act Mean for Care Experienced Children and Young People?
<https://www.whocaresscotland.org/news/what-does-the-2024-uncrc-incorporation-scotland-act-mean-for-care-experienced-children-and-young-people/>