

Barnardo's NI Response to
'Progressing a Bill of Rights for Northern Ireland'

Introduction

1. Barnardo's works with 8,000 children and their families every year in Northern Ireland and provides over 40 distinct services across local communities. Our services include family centres, fostering, youth justice work, work with disabled children, work with ethnic minority children as well as support services for children leaving care and other disadvantaged children and young people.
2. We welcome this opportunity to respond to 'Progressing a Bill of Rights for Northern Ireland' published by the Northern Ireland Human Rights Commission in April 2004. This new publication responds to the various comments and criticisms received by the Commission following the publication in September 2001 of its consultation paper 'Making a Bill of Rights for Northern Ireland'.
3. This response will reflect the focus of Barnardo's work and deal only with issues pertinent to children and young people. The new publication outlines the proposed rights and obligations relating to children in Section 12. Therefore, while this response will deal mostly with Section 12, areas of overlap between children's rights and those of other members of the community will be commented upon where deemed appropriate.

General comments

4. Barnardo's notes the Commission's decision to reduce in length the Section 12 provisions specific to children. While the Commission explains the rationale behind this as being an attempt to refer within Section 12 to only those rights specific to children which cannot be mainstreamed into other sections, there remains the possibility that the mainstreaming of rights relevant to children into other sections of the Bill might result in a more limited potential in the recognition of those rights for children. This may effectively undermine the applicability to children of other relevant rights recognised within the proposed Bill of Rights.
5. While agreeing with the need for a combined approach to the protection of children's rights, Barnardo's is cautious in its approval for the way in which such an approach has been adopted by the Commission. We are concerned that specifically significant areas in relation to children may effectively be given less protection as a direct consequence of the new streamlined approach taken by the Commission.

6. Barnardo's does not believe that the section currently devoted to children reflects the rights required to be made available to children within the ethos of the United Nations Convention on the Rights of the Child (UNCRC). In view of the continued uncertainty as to the direct application and enforceability of the UNCRC within the Bill of Rights, Barnardo's considers it prudent to maintain a comprehensive but concise children's section which provides rights for children and places obligations on public bodies to promote and protect children's rights.
7. In light of the streamlining of the section relating to children, this response does not confine itself solely to those questions asked by the Commission in seeking feedback on certain issues.

Specific Comments

8. Barnardo's welcomes the continued inclusion that the best interests of the child shall be the paramount consideration in all actions concerning children (Section 12 (1) (b) (*Section 10 (a) (2)*)) and acknowledges that this will provide for the children of Northern Ireland a higher standard of protection than that afforded at international level by the United Nations Convention on the Rights of the Child which provides that the best interests of the child be a primary consideration.
9. In the absence of a provision to the contrary, and, in light of the removal of the sentence that attached the best interests approach to Section 12 rights only, it is assumed that the best interests of the child being paramount will pervade all rights and obligations applicable to children. Barnardo's are hopeful that, as it is worded, the correct interpretation of the words of Section 12 1(b) facilitates the application of the principle to the rights of all children irrespective of the location of those rights within the proposed Bill.
10. Barnardo's advocates strongly for the participation of children in all matters of concern to them. The provision on participation, (Section 12 (2) (*Section 10 (b) (2)*)) in its modified form, places the emphasis on the right of the child to attempt to enforce effective participation rather than the obligation being placed on the State to ensure the child's right to participate. Both these areas were covered in the 2001 draft and it is regretful that the State obligation is absent in the 2004 draft.
11. The inclusion of a section relevant only to children within the draft Bill emphasises the particular vulnerability of children within the community. This vulnerability is also apparent by the failure, at times, to adequately inform children of their rights. The disadvantage to children within a rights based culture is further compounded by the possibility that they may fail to have at their disposal the approach required to advocate for even their most basic needs. It is open to suggestion that the sophisticated approach required when seeking to enforce a right places a much higher burden on the individual than seeking to enforce an obligation.

12. Barnardo's considers that the failure to place the obligation on the State to ensure effective participation, as the proposed new draft would, results in a fundamental gap in the provision and development of rights to children. The absence of a mandatory participatory obligation on the State can only have a negative effect on the interpretation, implementation and enforcement of the rights of children under Section 12 or any other right relevant to them within the draft Bill.
13. Barnardo's consider that the right to participation provided to children under Section 12 will not place participation at the heart of children's programming or care and service provision. Barnardo's is of the opinion that only by placing an obligation on the state to supplement the right of children to participation in all matters of concern to them can true and effective child participation be achieved.
14. In direct response to the Commission's question as to where the child's right to maintain family relations should be included in the proposed Bill of Rights (Section 12 3 (a) – (d)), Barnardo's believes, for the reasons set out in paragraphs 4 and 5 above, that this provision should remain within the children's section of the Bill.
15. The 2001 proposals included a provision that every child had the right to be protected from all forms of physical, emotional or mental violence. This provision has been removed from the children's section and placed, in an age and gender-neutral way, within Section 6 on the "Right to be Protected from Violence". Section 6(1), although potentially all inclusive, fails to specifically mention neglect or specify how a vulnerable child may be protected by the State in attempting to maintain or achieve its "dignity and physical integrity". Barnardo's would encourage the Commission to reflect on the appropriateness of this provision for children and would encourage the Commission to include in any future draft Bill the original 2001 proposal.
16. Barnardo's welcomes the proposal in Section 6(3) that bullying in schools is prohibited and that legislative changes are made to ensure all violence, whoever aimed at, is prohibited.
17. With reference to the age of criminal responsibility, Barnardo's would welcome the continued existence of the State duty to undertake to keep the age of criminal responsibility under review. This was included in the 2001 proposals but is absent in the 2004 proposals.
18. Barnardo's is concerned about the removal of the specific rights of children to a fair trial. All provisions relating to a fair trial are now included in Section 8 "Right to a Fair Trial". It is apparent following the European Court's decision in *T v UK* and *V v UK* (2000) that the developing case-law identifies the need for and the dangers of ignoring the specific needs of children within the criminal justice system. Barnardo's would welcome the re-introduction of the

comprehensive and age-appropriate proposal contained in the 2001 draft document.

19. Proposals relating to children in detention have also been mainstreamed into Section 7 “Right to Liberty”. Children are specifically referred to in Section 7 (7) but the rights given to children within this Section do not reflect the 2001 proposals. Although in 2004 the child has the right, if not convicted of an offence, to be separated from children who have been convicted, no corresponding provision prevents children from being placed with adults. As it stands under the 2004 proposals, children would have no right to be separated from adults in detention. This right has been removed.
20. Also no longer present in 2004 is the child’s right to privacy and respect for his/her correspondence, and the right to prompt access to appropriate legal and medical assistance and pastoral care. Broadly similar provisions are included in Section 7 but are not age specific and are worded less strongly than the rights afforded to children under the 2001 proposals.
21. Unlike in 2001, the 2004 proposals no longer have the *caveat* that detention of a child “must occur only in exceptional circumstances and in accordance with the law...[and]...shall be used only as a measure of last resort and for the shortest appropriate period of time” (previously Section 10 (e) 4 in the 2001 draft). These reflect the minimum rights set out in Article 37/40 of the UNCRC and the Beijing Rules, but have been removed from the 2004 document.
22. Barnardo’s would encourage the Commission to retain the proposals set out in section 10 (e) 1-6 of the 2001 draft relating to children in conflict with the law. The retention of these proposals would afford children subjected to the criminal justice system greater protection and would ensure that in this particular respect, international standards relating to children are adhered to.
23. The entirety of the provisions on a child’s right to play has been removed in the 2004 proposals. No explanation is provided by the Commission for the removal of a right so inherently fundamental to the growth, development and general socialisation of a child. In response to the 2001 proposals, Barnardo’s advocated strongly for the inclusion of a right to play.
24. Recent research by the University College London (March 2004)¹ highlighted the benefit of unstructured play to children. This echoes findings by the British Medical Journal in 2001 that “opportunities for spontaneous play may be the only requirement that young people need to increase their physical activity.” In light of the health and welfare concerns surrounding obesity following the Health Select Committee’s Report, it is imperative that the right to play is included as an obligation on the State to encourage promotion and participation in all activities

¹ *Making Children’s Lives More Active*, Roger Mackett, Centre for Transport Studies, UCL March 2004.

that constitute “play”. Provisions for a Right to Play are also directly related to Section 15 discussed below.

25. The right to health care area has also been removed from the children’s section. A narrower, less child centred provision is included in Section 15 on “Social, Economic and Environmental Rights”.
26. Whilst it may be considered that children automatically fall within the term “everyone”, Barnardo’s considers it a more cautious approach if the rights peculiar to children are recognised in a child focused way. For example, the 2004 proposals fail to give specific rights to children seeking information in relation to sexual or reproductive matters. It may be better in the long-term to afford these rights “to all, including children” to minimise children being excluded within this or any other provision by a later judicial decision on the Bill of Rights. This also furthers Barnardo’s argument in seeking to retain as many rights specific to children within their own section. It will be much harder for children to be excluded from any rights apparently afforded to “everyone” if children are actually specifically mentioned.
27. The 2004 proposal within Section 15 contains the following:

“Everyone has the right to the highest attainable standard of physical and mental health and well-being”

and

“The State shall take appropriate measures to address health problems specific to children and to promote the health and health of children”

Barnardo’s believes it would perhaps be more appropriate for the enormous problem of the lack of appropriate psychiatric care for children to be dealt with directly. Barnardo’s would further welcome within this section an obligation being placed on public bodies to treat issues adversely affecting a child’s mental health and to promote and protect a child’s mental well-being.
28. The economic rights of children have been removed from the children’s section. There is no specific reference to children’s economic rights in section 15 on Social Economic and Environmental Rights. This fails to reflect the provisions contained in of Article 10 (3) of the Covenant on Economic, Social and Cultural Rights, which seeks to protect children from economic and social exploitation. In the absence of this stated protection, it will fall to those interpreting the provisions of the Bill to read into it this protection for children. Barnardo’s would welcome the legal and procedural clarity to be gained by specifically attaching social and economic rights to children in the Bill of Rights.

Conclusion

29. Barnardo’s welcomes the continued existence of a separate section relating to children within the Bill of Rights. Concern exists, however, into the appropriateness of the current approach of extensively mainstreaming rights that

require to be specifically addressed to and aimed at the promotion and protection of the well-being of all children.

