

Essential reading for Scotland's children's sector

October - November 2019 Issue 194

Children in Scotland magazine

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Edition
1989-2019
CELEBRATING
30 YEARS OF
THE UNCRC



 FULLINCORPORATION



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Children in Scotland
Level 1, Rosebery House
9 Haymarket Terrace
Edinburgh, EH12 5EZ
Telephone: 0131 313 2322
info@childreninscotland.org.uk
childreninscotland.org.uk

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Editorial
Editor: Jennifer Drummond
Managing Editor: Chris Small
Contributing editors:
Lisa Clark, Lynn Gilmour
(equalities & participation)

Advertising
Tracy Hope
T: 0131 313 8829
E: thope@childreninscotland.org.uk

Design
Cover design: Alan Tait
alanjait.co.uk
Additional design: Angus
Doyle (page 16-17)

Joint Acting Chief Executives:
Simon Massey
& Amy Woodhouse

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To contribute to *Children in Scotland Magazine* contact Jennifer Drummond, Editor:
T: 0131 313 8823/
E: jdrummond@childreninscotland.org.uk

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T: 0131 313 8829
E: membership@childreninscotland.org.uk
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Welcome...



Jennifer Drummond
@jen_drum
#CiSMagazine

...to our special UNCRC themed edition.

This year marks 30 years since the establishment of the United Nations Convention on the Rights of the Child – the human rights treaty which sets out and protects the rights of every child, no matter their race, religion or ability.

It is the most widely ratified human rights treaty in the world, which speaks volumes about the growing recognition of children and young people and their rights. I was delighted to get the opportunity to discuss progress with Dr Nigel Cantwell, one of the key contributors to the drafting of the treaty. (Interview - page 8).

So, how far have we come? The UK ratified the UNCRC in 1991 but has never fully incorporated it into domestic law, despite campaigners calling for it for years.

So, how far have we come?

The UK ratified the UNCRC in 1991 but has never fully incorporated it into domestic law, despite campaigners calling for it for years.

The closest Scotland has come is the Children and Young People (Scotland) Act 2014 – though that was heavily criticised for its diluted duties in relation to the UNCRC.

Most recently, First Minister Nicola Sturgeon committed to incorporation by the end of the current parliamentary term and a consultation on this has recently closed. But despite the positive noises, there is still no clear timeline.

Although there is some fantastic work being done up and down the country, research (and history) show that when there is a legally binding obligation to uphold rights, the chances of this happening is far greater.

I hope this issue is both a celebration and a call to arms – a report card on our progress so far which seems to read 'Trying hard, with some flashes of brilliance – but could do better.'

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Level 1
Rosebery House
Edinburgh
EH12 5EZ

Company Number: 017885
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The power of participation

The rights of women, children and young people who have experienced domestic abuse continue to be put at risk across Europe. But two approaches pioneered in Scotland could point the way to change, Sue McKellar explains



Photo credit: Stockphoto @bubaena

Involving children and young people in decisions that affect them is a requirement under the UN Convention on the Rights of the Child (UNCRC). It is frequently promoted as a core value in policy making and by institutional leaders and key practitioners. But, as adults, we seem to find it challenging to really listen when making decisions, particularly in formal decision-making about a child's wellbeing. As a result, we are making long-term and irreversible mistakes.

Increasingly we hear that some of our systems which are intended to keep children and young people safe, are in fact doing just the opposite.

In September, the Scottish Government introduced the Children (Scotland) Bill, which aims to better protect victims of domestic abuse and improve the way children's voices are heard in family cases. We are also making progress on incorporating the UNCRC into Scottish Law. In spite of these developments to promote and protect children's

rights, it is clear to those working with women, children and young people who have experienced domestic abuse that they continue to be put at risk through unsafe contact arrangements and inconsistency of practice.

"Children were being involved in decision-making but their voices ignored"

Current legislation states that when making decisions around child contact/residence and parental responsibilities and rights, the court should regard the welfare of the child concerned as its "paramount consideration". However, in practice children's interests continue to be put at risk. Contact is sustained with male perpetrators of domestic violence if they are deemed to be merely a 'good enough' father, despite previously threatening

behaviour, the children having expressed fear, or when we know the mother (and in turn the child's) safety is compromised.

Writing in the Journal of Social Welfare and Family Law last year following an analysis of court papers, researcher Kirsteen Mackay of the University of Edinburgh said that children had described their

experiences of child contact systems as making them feel unsafe, unwell, scared and powerless. Children were being involved in decision-making about contact, but their voices were being ignored.

This has to stop.

Partnership working in Europe

Children have told us repeatedly that they want to be involved in decisions that affect them. We need practical improvements to ensure the justice system is child-friendly, that those who work within the system are adequately trained to understand children's experiences of domestic abuse and children and young people have a choice and control over when and how they have contact with a perpetrator.

Scottish Women's Aid is pleased to be partners in the Improving Justice in Child Contact (IJCC) European partnership research project. Launched in 2018, working across eight organisations and five European countries, the project's goal is to improve participation of children and young people in decisions around child contact for families affected by domestic violence. Funded by the European Union's Rights, Equality and Citizenship Programme (2014 – 2020), it has two core strands of work:

- To find out what we can do better to listen seriously to children, and
- To work together on what we need to change to make children and women safer.

Scotland, considered to be at the forefront of pioneering participation and engagement with children and young people, have been chosen as the model of good practice. Partners will start by looking at two models which have already been explored in Scotland, adapting our Power Up/Power Down model and/or the implementation of a Court Contact Children's Rights Officer.

Power Up, Power Down, asked children and young people who have experienced domestic abuse to tell us what in our present justice system they think needs to change. They were made aware of their

rights outlined under the UNCRC and we also sought to embed the principles throughout. Their recommendations on how to improve the experiences of children and young people have influenced policy developments in family law, including the Children (Scotland) Bill.

The Court Contact Child Rights Officer (CRO) post originated in West Lothian Council. A social worker, based in the Domestic and Sexual Assault Team (DASAT), the CRO uses age-appropriate tools for helping children tell the Court what the child wants and why. They promote the views of the child, amplifies her/his voice, and offers support. West Lothian's Child Rights Officer have worked with children as young as 4 years old.

Facilitating meaningful participation

We know that for this work to be effective, children and young people must be co-producers in the project, with its priorities steered and shifted by them. Working directly with children and young people who have first-hand experience helps gain a fuller and clearer understanding of the issues, and allows for real change based on lived experiences.

Scottish Women's Aid is fortunate to work with Yello! - a group of young people who have experienced domestic abuse and who have had roles in participation groups across Scotland. They are uniquely positioned to advise partners on how best to involve and protect children and young people within their settings. Members have so far shared their views and expertise with each partner country on how to safely and meaningfully involve young survivors in the project. They have written and designed a comic strip and their blogs have been translated across Europe.

"I'm scared of him, but have to fight to not have contact with him. Why?"

Young person

Where next?

The project runs until November 2020 and will be evaluated at key points throughout. A stakeholder survey is currently being conducted, which will be repeated towards the end of the project, to identify and ensure support for a commitment to effective delivery. Learning will be shared within each partner country, across the project partners and with the public and stakeholders.

In Scotland, work will continue beyond this project to embed learning from Power Up/Power Down and a children's rights model in practice. We will act as facilitators to share learning and create a knowledge exchange as the project progresses. We will also support Yello! who will continue to be involved in the Children Scotland Bill, speaking directly to the Scottish Government and sharing their priorities and we hope will be involved in the dissemination of the project learning as an ongoing strand of work. Change needs to be more than just words on a page, led by listening to real, lived experience. We are pleased to be facilitating that.

Sue McKellar is Project Coordinator with Scottish Women's Aid

> Improving Justice in Child Contact project includes Scotland, Bulgaria, Cyprus, Portugal and Romania. Find out more at ed.ac.uk/education/ijcc

> Power Up/Power Down was a joint project between Scottish Women's Aid and the Children and Young People's Commissioner Scotland. womensaid.scot/project/power-up-power-down/

Case study

"Anything I said, she contradicted or said may have been an accident"

'A's father was a domestic abuser. She was 8 when they separated, and 12 when she shared her story

"I saw my dad for a few years after my parents separated. When I said that I didn't want to see him anymore, the courts brought in a court reporter. This is when a lot of it went wrong. The reporter had spoken to my dad first so when she spoke to me, she kept saying the things I had seen may have just been an accident. Anything I said, she contradicted. I told mum and asked why she didn't listen to me, because I spent an hour in there telling her about my life. I remember crying and telling the reporter that I used to cry when we were in the car because he would deliberately go fast and take his hand off the wheel. She dismissed it and made out I was mistaken. But I know he was trying to frighten me, because I would be crying for him to slow down, and he used to make it worse.

"After the bad experience with the reporter, I said I wanted my own solicitor but the reporter said 'no', that she was representing me. I was supposed to see her twice, but I refused to see her again as she wasn't listening to me. I knew that wasn't good enough, because if you go to court you should have someone there who is saying what you want them to say, not what they think happened. So, I decided to get my own solicitor. My mum told me that I could do that.

"After I spoke to the solicitor I went to speak to the sheriff. He wrote to me beforehand to tell me about our meeting [but] the letter seemed to be written for someone quite young. I think people expect children not to understand things, but we totally do. Visiting the sheriff was fine. The sheriff did listen to me and I didn't have to visit my dad again. If I had been listened to by the court reporter to begin with, I wouldn't have had to see the sheriff at all.

"I don't want anything to do with him but the sheriff said I have to speak to him every week. Phone calls were around two hours a night, making us unable to have dinner until very late, and miss out on after school activities.

"People shouldn't be forced to be put through what I was put through. What happened to me was terrible, I don't want to imagine what people worse off than I have got. I wish the reporter had listened to me the first time, so I wouldn't have had to pay a lot of money to get a solicitor. Nowadays, it feels like they don't take the child's view into account, but the views of the parent who seems more upset. What I really hope for is family law hearings to get better, and to give the children a good home life, unlike me, who had to fight for their right to have a say in my own life."



What better way than a Bill to mark the UNCRC's birthday?



@Bruce_Adamson
@CYPSCS

For our 25 Calls campaign, Bruce Adamson and young campaigner Ruby made a plea for children to be supported to become human rights defenders. One year on, he says Scotland is making progress in protecting and legislating for children's rights – but we aren't going far enough, fast enough

Being a human rights defender is more than just knowing about your rights and exercising them – it requires action. Bravely standing up, speaking out and demanding change. Children don't have the same political or economic power as adults, so demanding change takes even more bravery. As adults we need to address that power imbalance.

Children tell us how frustratingly slow political, legislative and social change can be, especially in a world where technological change happens so quickly. Yet, despite the difficulties they face, children all over Scotland are making a difference by defending their rights and the rights of others, and they need our support.

Last summer I found myself sitting in a large tree with then 9-year-old human rights defender Ruby. Ruby is all about action – she wants girls and boys to be encouraged equally to be adventurous

and is against all gender stereotyping. She was so incensed by the stereotypical images used in a clothing catalogue she wrote to them to challenge them. She told them their advertising was wrong, that girls want to adventure just as much as boys and that they need to have the right clothes to help them do that. Sparkles aren't practical, and skirts get caught in tree branches. So, we climbed a tree to talk about it. Ruby told me she wanted more children to learn advocacy skills and for the government and schools to support young human rights defenders to lead change. Together we made Call 13 of

Children in Scotland's 25 Calls campaign: to support children to become human rights defenders.

Young human rights defenders are at the heart of our work. We supported children and young people from the Children's Parliament, Scottish Youth Parliament and Who Cares? Scotland

to take an active role in the UN Day of General Discussion on 'Children as Human Rights Defenders' held in Geneva in September. We created Scotland's first Young Human Rights Defenders Action Group. Their *Promote, Protect, Defend* report outlines eight recommendations on how the Scottish Government, Parliament and public bodies can and should be supporting children as human rights defenders.

Almost half a year has passed since *Promote, Protect, Defend* was laid before the Scottish parliament and a whole year since the 25 Calls campaign was launched. In that time, we've seen some progress, but not nearly enough. The UN Convention on the Rights of the Child (UNCRC) turns 30 shortly and it's right that we take stock.

Through Green MSP John Finnie's leadership, along with the tireless campaigning of civil society groups and my office, Scotland will soon pass a law stopping the assault of children for the purpose of punishment. While we are one of the last countries in Europe

to protect children, we are the first in the UK and our work is inspiring others.

What does being a human rights defender mean to you?

EJ: I used to be shy, never spoke out, and now I'm expressing my opinions and taking part in groups and public speaking. As a human rights defender I speak out for families that have been impacted by imprisonment. However, all children and young people have the right to an opinion and being able to encourage people to speak up is really rewarding too. I'm passionate about children's human rights and will continue to stand up for others.

Eilidh: Working with the Commissioner's team has increased my confidence to speak out. I'm visually impaired. Recently I wrote to a bus company about an incident when I was trying to get a bus with my guide dog, Joel. I would usually have let it go but I now challenge when things are not right.

EJ and Eilidh are human rights defenders, working with the Commissioners' Office

to protect children, we are the first in the UK and our work is inspiring others.

After much debate and despite unprecedented intervention from the Council of Europe and the UN Committee on the Rights of the Child, our parliament voted to set the age of criminal responsibility at just 12; two years below the international minimum standard. Despite calls from the UN to at the very least commit to a higher age on a set timetable, the Scottish Government has only agreed to a review.

My office's investigation into restraint and seclusion in Scotland's schools in December 2018 showed there was no consistent approach to recording and monitoring restraint. The Scottish Government has failed to publish a human rights-based national policy to address this.

As co-chair of the Rights Work Group of the Independent Care Review I have worked with young care-experienced human rights defenders from across Scotland. It is their voices and experience that is driving the change needed to address failures in respecting their rights to family life, healthcare, education, housing, and justice.

Working with the Children's Future Food Inquiry and the Special Rapporteur on Extreme Poverty, young human rights defenders highlighted that we are not doing enough to address poverty as a human rights issue.

As part of the European Network of Young Advisers, young people from Scotland have demanded that more is done on mental health.

Time marches on.

In 2017 the First Minister made a long-awaited commitment to incorporate the UNCRC into Scots law. It is the most important thing we can do to protect children's rights in Scotland. The government has promised incorporation by 2021, but progress has been slow and their proposal in the Programme for Government sets out their intention not to introduce it until the last year of Parliament.

Along with Together (Scottish Alliance for Children's Rights) we convened a group of world-leading experts to draft a bill for incorporation, published and presented to government in November 2018. Despite this, nearly a year later the Government has not produced their own bill.

There is a significant risk that the Scottish Government might propose a suite of rights – essentially cherry-picking which it wants to include – or worse, rewriting the articles, thus breaking away from the international commitments made. This could be presented

as an improvement of the rights, but in reality, it will not offer the full protection of the Convention to children in Scotland and will lose the connection to the rich understanding of rights built up by the international community.

The legislation must make rights justiciable and it must fully and directly incorporate the UNCRC. It should be produced urgently to allow proper scrutiny by parliament before the session ends in early 2021. Further delay will set the bill up to fail as parliamentary time runs out. We're calling for a bill to be laid before the Scottish Parliament on the 30th anniversary of the UNCRC. What

better way is there for Scotland to celebrate?

The more children I talk with about their rights, the more I am reminded that our perception of time shifts with age. One theory is that we perceive time as a proportion of the time we have been alive. For a now 10-year-old like Ruby, one year equals a whole tenth of her life. For the adults making decisions about her life, rights and future that same year equates to a small fraction, so it can be easy to forget the necessary urgency of the decisions being made.

We need to move faster on children's human rights. Surely the least we can do is ensure that by the time Ruby starts high school, her rights are fully protected in law?

Bruce Adamson is Children and Young People's Commissioner Scotland

> Keep up to date with the work of the Commissioners' Office at cypcs.org.uk

> Read more about the progress of our 25 calls campaign at childreninscotland.org.uk/25-calls/

> Find out more about the work of the Scottish Human Rights Defenders at rightsdefenders.scot

"Give us a seat at the table"



"We need people to listen, support and empower us. Don't just put us at the kid's table and then ignore us. Give us a seat at the table where decisions are being made about our futures and lives. If bureaucratic structures mean that's not possible, then it's time for a new table. One where everyone has a voice, no matter their age."

Members of the Young Human Rights Defenders Action Group (pictured)



Members' Spotlight

"We want Scotland to become the world's first child-friendly country"

Unicef is the world's leading organisation working for children in danger. *Frances Bestley* tells us about their work in Scotland and outlines the changes needed to ensure children are brought up knowing their rights

This year is especially exciting for us, celebrating 30 years since the UN Convention on the Rights of the Child, which is essential to our work, was adopted by the UN General Assembly.

Unicef is mandated by the Assembly to uphold the Convention and to promote the rights and wellbeing of every child, everywhere, in everything we do.

In Scotland, we have much to be positive about. At Unicef, our Rights Respecting Schools Award has led a step-change in the way children experience their rights in school. As a result, Scotland now boasts the highest proportion globally of children and young people accessing a whole school rights-based education.

1,400 schools across Scotland are currently working towards accreditation. This number represents more than half of all schools in Scotland, and reaches over 350,000 children and young people every day.

What we hear from our Rights Respecting Schools is that when the views of children and young people are given due weight and consideration the relationships between students and the adults around them improve.

Strong nurturing relationships are vital in helping students make progress in their education. We see educational outcomes improve as children feel a greater sense of ownership and value of their learning, but we also see students' compassion, self-acceptance and confidence grow. We see them become active and engaged citizens on a local level and on a global one too.

Unicef UK has a vision for Scotland to become the world's first child-friendly country – one in which all children and young people are brought up knowing their rights.

National milestones such as the Children and Young People (Scotland) Act 2014 and Getting it right for every child (GIRFEC), Scotland's national approach to improving the wellbeing of children and young people, are crucial to achieving this.



"Strong nurturing relationships are vital in helping students make progress in their education"



Photographs: Unicef/Surton-Hibbert Taken at a Rights Respecting School, Glasgow

For Unicef our challenge is to roll out the Rights Respecting Schools Award across 75% of Scottish schools in every local authority area by 2021, reaching 515,000 children. We'll also be using our OutRight campaign, which encourages children and young people to speak out on children's rights, acting as a vehicle to achieving our vision.

This year the campaign looks back over what has been achieved for children since 1989 and explores the history of children's rights, before asking children to look ahead and imagine the world for children in another 30 years' time.

We also encourage young people to get involved in our broader Unicef campaign on vaccinations and ensuring the right to health for children both in the UK and around the world. You don't have to be a Unicef Rights Respecting School to take part. All those working with young people can get involved too.

Our 'call for action' for the child rights sector in Scotland is for all of us to work together and make sure the Scottish Government delivers on the repeated commitment by the First Minister to incorporate the principles of the UN Convention on the Rights of the Child (UNCRC) into Scots law and "to do it in the most effective way possible".

The time has come to incorporate the CRC into domestic law. Unicef UK has recommended that the Scottish Government adopts a direct and full incorporation of the UNCRC into Scots law as we consider this to be the most

effective model of incorporation to realise the commitments of the Scottish Government and enable the provisions of the UNCRC and the rights enshrined in it to become a reality for children in Scotland.

Direct incorporation means that the UNCRC itself forms part of national law, is binding on public agencies and can be applied by the courts. The UN Committee on the Rights of the Child considers this a preferred model to give legal effect to the Convention.

We hope that Children in Scotland members will join us in this call for action and work with us to build a rights-respecting future for all.

Frances Bestley is Programme Director at Unicef UK

> Interview by Lisa Clark

Benefits of Children in Scotland membership

"Membership of Children in Scotland keeps us up to date with the Scottish education and child services landscape.

It provides us with an opportunity to share our work with a wider range of organisations who are putting children at the centre of all they do."

Frances Bestley – Unicef UK

"Join us to build a rights-respecting future for all"

> Find out more about Rights Respecting Schools at unicef.uk/rrsa

> Sign up to the OutRight campaign: unicef.org.uk/outright-cis

> Find out more about membership childreninscotland.org.uk/join or email membership@childreninscotland.org.uk