

Written evidence submitted by Professor Maggie Atkinson

I am Professor Maggie Atkinson, a Director with iMPower Consultancy Ltd. I served the then-statutory five-year term as Children's Commissioner for England from 01 March 2010 to 28 February 2015. I was the second incumbent in the role, succeeding the first Commissioner Professor Sir Al Aynsley-Greene (2005-2010) and preceding the third Commissioner, Anne Longfield OBE. I submit this statement as an overview of the role, and to offer reflections on the questions asked in the inquiry's terms of reference. I hope the committee finds this submission useful.

The inquiry's terms of reference and a commentary on each element

Responsibilities, powers, and independence of the CC for England, including in comparison with equivalent positions both in the other three UK nations, and around the world

1. These matters have always been topics for discussion. The 2004 Children Act instituted the role, after a sustained campaign, over many years, by children's organisations arguing for its creation. After the CC for England's role and office had run for five years, a government-commissioned review examined it during my first year in post, 2010. The report recommended strengthening the role, increasing its independence, and securing it by describing it in law as a children's rights body. Amendments creating a law that seeks to achieve those ends are contained in the 2014 Children and Families Act and its Schedules. A good deal of sector-wide expectation rests on the fulfilment of the redefined remit.
2. When first instituted, the role joined those in other UK jurisdictions, Europe, and beyond. Some of these roles are full ombudsmen. The English one is not. All four UK CC roles differ from each other. There have always been complicating factors where matters in the other UK nations are Reserved under devolution settlements. Neither the 2004 nor 2014 Acts resolved these issues. This largely appears to be because, whilst the English Office is a DfE NDPB and the Northern Irish, Scottish and Welsh CCs work with their own assemblies or governments, devolution and reservation of powers are the business of the Whitehall departments overseeing Westminster's relationships with the three other nations or provinces. It is clear that further devolution would require relevant Acts to be reopened. There has been no appetite for this, I understand because reopening them on CC issues would mean they were also open on others, meaning that devolution debates would inevitably re-commence.
3. That the powers of the English CC differ from those in many nations is not a surprise. Neither is the fact that the English Commissioner is not an ombudsman. There are nearly 12 million under-18s in England. Making the CC an ombudsman for all issues the UN considers should be covered by children's rights bodies – early years, parental issues, education, mental and

physical health, social care, family civil and criminal law, asylum and immigration, poverty, disability, equality, and far more besides - would require the establishment of at least a regional infrastructure to serve all England's many locations. The office would need a budget far greater than the approximately 18 to 20 pence per head of the population currently assigned. The post-holder would need to be equipped, in law, with an ombudsman's power to direct and insist rather than, as now, using strong and credible evidence which is backed and enriched by the voice of the child to persuade policy and decision makers. This latter way of working has characterised the office, and each CC, since inception in 2005.

4. In no period of government since the role's institution has it been favoured with either ministers' or officials' willingness to increase its resource base, or to rewrite the law, either to engineer - or perhaps more pertinently to resource - an ombudsman role. The nature of the work, were the CC to be an ombudsman, would in any event be changed by the amount of casework that would inevitably arise. It would be more than likely to engulf and sideline the CC's wider, more strategically influential role, as it has been proven to do elsewhere. The strategic work of the English CC, which is meant to influence, comment on and challenge both policy and practice, has always been deemed more important than having an office that could step into the quasi-judicial role played by an ombudsman. I consider this remains the correct conclusion. The issue has now been explored several times in the decade since the post went live under the first CC, not least being covered in some detail in the review in 2010.
5. When the role was created its primary statutory function was to represent the views and interests of children and young people, with particular regard for the marginalised, vulnerable or otherwise unlikely to be heard. This was always considered, by the wider children's sector and not least by we first 2 English Commissioners, to be both a lost opportunity and a deliberate diminution of the purpose and potential effectiveness of a vital rights based role during the final formation of the 2004 Children Act.
6. In the other 3 UK nations, and in others with either a Commissioner or ombudsman, the primary function has always been to promote and protect the rights of the child, measured against both national laws which are meant to do the same, and international instruments. Chief among the latter is the UN Convention on the Rights of the Child (UNCRC) which was ratified by the UN in 1989, and signed and ratified by the UK State Party in 1990-91. The UN considers the rights based status and purpose of a CC role, in any nation anywhere, is right and proper, indeed that such a role definition is required. The UN Committee has urged England to rectify what it has seen as a problem since the creation of the role. We may assume the UN Committee will now be rather more content, given the changes in the 2014 Act.
7. The 2010 review recommended, the sector agreed, and the 2014 Children and Families Act amended the 2004 Act to ensure, that the CC's primary statutory function is now the promotion and protection of the rights of the child. It follows that everything the CC does should explicitly be driven by that primary statutory function, which is described in some detail in the Act and its Schedules. The role retains the 2004 Act's particular focus on

children who are vulnerable, marginalised and likeliest to be unheard, whose rights are either actively denied or ignored. The final 10 months of my term, of course, were served under the 2014 Act, my team and I having been responsible for working on the establishment of, and beginning to perform, the strengthened role.

8. The 2014 Act made the CC the single children's rights body in England, combining the CC's work with that done by the then-Children's Rights Director at Ofsted on the rights of the looked after population and those living and/or learning away from home. This work is described in detail in the Act and Schedules. It is, however, and having been CC whilst the law was amended I hereby confirm from direct personal experience that it must be, one vital function among many in the remit, not the only focus of the CC's work. Looked after children are a very particular population, parented by and requiring far more attention than some receive from the state. They are by no means the only vulnerable children in society, and the CC should not speak for or champion only them.
9. It should be remembered that the CC has hard won, wide ranging powers that have not changed since the 2004 Act. These are powers and duties which the changes in primary function have either confirmed, or strengthened. They should be exercised, as far as possible and as resources allow, so that the role sustains its position in the thinking and practice of the children's sector, and across wider public policy and practice.
 - a. The CC is a Corporation Sole, not an employee of, or open to being run by anybody, despite being a SoS appointee. The CC must guard her/his independence, which nobody else's actions or directions may seek or be seen to fetter. The CC cannot be directed, by ministers or any others, to speak or write about any issue, or when they do speak or write, to do so in a particular way.
 - b. The CC, and those to whom she/he delegates the authority, has the right of entry wherever a child is cared for apart from private homes, and once there is expected to gain the views of children and young people without accompanying adults influencing the conversation. She/he must then report what is found both to the authorities concerned, and so long as it can be done without compromising children's safety, in the public domain.
 - c. The CC has, and both the children's sector and the CC's concerns have pressed her/him to use to the full, the power to instigate, call witnesses and insist on the supply of evidence to, formal statutory Inquiries. These must, in accordance with the CC's primary statutory function, be into matters of concern to and affecting the rights of children and young people, or of concern to the CC her/himself. They may, but are not necessarily, provoked by issues raised by particular children, or by particular cases that require further investigation.
 - d. The CC can, and given the power was hard won both the law and stakeholders expect that s/he will undertake, and report formally and publicly on, Child Rights Impact Assessments (CRIAs) on matters of

importance in policy which are likely to impact on children and young people's rights.

- e. The CC is accountable to Parliament, may not be deemed to be a civil servant though s/he is bound by the Civil Service Codes of Conduct, and is a Secretary of State appointment with only two potential grounds for dismissal: the misuse of public funds, and bringing or risking bringing the office into disrepute.

The impact of the role of the Children's Commissioner following changes made by the Children and Families Act 2014

10. The office has had considerable impact throughout its existence, not only since the 2014 Act. However, it is vital that all concerned, including every incumbent of the role over time, understand that the CC does not achieve anything alone; and in almost all cases, cannot insist on, direct or mandate what others do. The role gains and holds traction precisely because, as well as acting on her/his own volition, the CC influences, persuades and challenges others, in both their thinking and actions.
11. On children's behalf and informed by their views and voices, but equally crucially backed by evidence not simply stating the post-holder's opinions, the CC challenges, praises jobs so often well done by, and gives commentary and feedback to, those empowered to act for and to champion children and young people. The CC adds a weighty, hopefully authoritative statutory voice. It is compelling and hard to ignore by dint of the remit alone whoever undertakes it. It is added to voluntary bodies' and other campaigners' voices when they are raised on vital issues affecting children.
12. It has long been the bane of most nations' CCs' lives that there is a popular, media backed and sometimes political misapprehension that if a CC – even if (s)he is also an ombudsman – makes a call on government, the media, industry or others to do something, those called on must respond – and more to the point, must comply. This is now and always has been very far from true. The CC cannot insist and be obeyed – in my view, rightly so. "I call on government" is a phrase that should be used with utmost care, lest it become worn out.
13. It is in the nature of the CC's role, as it is in any national role, that the work passes from CC to CC as one term ends and another commences. The person in post changes and will develop her/his own plans and priorities. Meanwhile, the remit, and the work, continue. Only gradually does any new incumbent begin to do work that is solely theirs in both design and delivery. The first year or more's work by any new CC is largely inherited from, and was often started by, the one before. This is part of the pattern, and is neither a strength nor a weakness in the role's purpose or activity.
14. For example: When I stepped into role on 01/03/10, the plan for 2010-11 had been constructed by my predecessor, because 01/03 in any year is so close to the beginning of the next financial year on 01/04 that plans cannot

wait for a new incumbent to settle in, consult on and publish a plan that must commence delivery on that date. In my first two months in post in 2010, my office published on media transparency in the family courts, work which commenced under my predecessor. I was the face of the organisation as the child and adolescent mental health community acted on the OCC/Young Minds 2008-2010 publications "Pushed Into the Shadows" and "Out of the Shadows?" on adolescent mental health inpatient treatment, all the work on which commenced under the first CC. Similarly, less than two months after I arrived, the office went into Purdah for the 2010 General Election. My work as CC continued apace, but it was done out of the public eye until the Coalition government was formed.

15. Within days after that formation, a very early policy announcement since followed through in policy and practice, was that government was to cease to detain child asylum seekers in secured accommodation such as the then-Yarlswood family facility. My predecessor had worked tirelessly on the issue, as had the other three UKCCs. I picked up the matter, and throughout my term to 2015 and under the 3rd CC since, it has remained on the CC's agenda. It remains, perhaps even more so given the EU-wide crisis of migration we are witnessing.

16. Vital issues remained at the core of my work over my term, for which my office had been newly staffed by experts in their policy fields after a radical staffing overhaul, only just completed as I was appointed late in 2009. In all cases, the issues my team worked on were approached along three equally weighted lines of inquiry:

- What did the law, or international instruments such as the UNCRC, say about the matter under consideration?
- What did the available research and any associated academic commentary add?
- What did children have to say on the matter, to make adults think again?

No work was undertaken during my term of office unless it sought to answer all three questions.

These key issues in my term were:

17. Children and young people in conflict with the law, especially but not uniquely the incarcerated. My team regularly exercised my right of entry unannounced to institutions across the secure estate, bringing to light issues of over-zealous segregation, uses of restraint and associated pain infliction, mental ill-health and the under-diagnosis of brain injury and learning disabilities contributory to criminal behaviours. We challenged the system, as the UNCRC requires, to see offenders, even very serious ones, as children first. Our impact was acknowledged, but often won institution by institution, governor to governor, and very directly. It was also largely done "under the

radar” rather than in the public eye. We published on YJ issues twice, on mental health and brain injury. These reports are still used, not least in policy debates and academic research. We also worked in collaboration with the Howard League for Penal Reform, the Prison Reform Trust, the NAYJ and SCYJ, User Voice, the CLBA, CRAE and the Michael Sieff Foundation, and were in regular discussion with the YJB, the MoJ, the Home Office, police services and others. Simultaneously, YJ issues were central to the work of the other CCs in the UK, and across Europe. In 2008 they were – and will be again in 2016 – at the heart of the UN Committee on the Rights of the Child’s challenges to the UK on the UNCRC.

18. The lives of unaccompanied asylum seeker children, particularly but not solely as their period in care ended and they became the province of asylum legislation, not the laws concerned with their safeguarding. We had distinct wins in this area, for example standing four square with the other UKCCs, the medical and dental professions and members of the House of Lords against dental and other x-rays’ use in spurious attempts to “prove” a child’s age, work done under both Sir Al and me. We exercised our right of entry to Yarlswood, then to the Cedars pre-return facility for families. I regularly met with the Families Returns Review Panel chair and members. My team uncovered the scandal of the 1995 “Gentlemen’s Agreement” between France and the UK, used to send children arriving in the UK and not immediately claiming asylum back to France undocumented and potentially unsafe. My personal intervention made the UK government cancel it, and the French government follow suit. Again, we made the differences we made alongside the other UK CCs, the EU’s ombudsmen, the UK’s parliamentarians, asylum advocacy and charity organisations.
19. Child poverty, particularly combined with either the very early years of life, or the extra costs and indignities of disability. I was extensively quoted in parliamentary debates on these issues. My team’s evidence and reports informed the work of the Child Poverty Action Group (CPAG) and other campaigners, and OCC’s Child Rights Impact Assessments (CRIAs) on budgets, welfare reforms, legal aid withdrawal and other matters made influential contributions to debates. This issue was a growing concern under the first CC that accelerated and grew in urgency over my term, and been pursued by my successor given that, just as I did in 2010-11, she inherited a plan for 2015-16 constructed in consultation with and published by her, but written by the team working with me, meaning that work commissioned and started during the final year of my term has been completed in the first year of hers. As I remarked earlier, this is in the nature of a national role.
20. Education: the oft-discussed illegal or under the radar exclusion of particular vulnerable children from state schools, and the equally oft-alleged ill-use of the admissions system against some children. On exclusions, I used my powers to run my first statutory Inquiry over two years, with a handpicked expert team, backed by academic research and informed by children’s voices. The team visited LAs, schools and other settings, took formal recorded evidence from witnesses called and without the power to refuse to attend, and published a string of reports which influenced policy, DfE guidance and practice. The reports are still quoted in educational debates, including being quoted extensively in a 2-page feature on exclusions and admissions in the

TES magazine – education’s most widely read publication - on Friday 25 March 2016. As I stepped down, two further strands on education were coming to reporting stage, ready to be finalised under the new CC. These were on how children and families access complaints processes in or about schools; and on what a rights-based education system might look like.

21. Child Sexual Exploitation and Abuse: the first was the subject of my second formal Inquiry, exploring issues of children exploited in peer group gangs, or by adults who were not connected to their families. Every English police force, most LAs and a substantial percentage of health bodies supplied written evidence, given my powers required them to do so. The team took formal evidence and visited localities, reporting on shocking, deeply uncomfortable facts and giving the nation advice not only from the team, but from children, young people and families affected by this crime. The subsequent reports, including publication of evidence-based signs of exploitation and signals of a child being exploited or at risk, plus a toolkit for use by professionals, “See Me, Hear Me,” all remain influential on continuing debates. On my authority, the team did sterling work. With or without its sad coincidence with the horrors uncovered in society and still in the public domain, it was vital that we did what we did. Follow-up continues, not least further Inquiry activity on Child Sexual Abuse in Family Environments (CSAFE.) This arose directly from what children, families and our collated evidence told us. The team was in the midst of evidence gathering as I stood down, and the work has been reported under my successor whose team continues working on the issue. Influential as the work has remained, prominent as the OCC is in it, the CC cannot achieve the change required by acting as a single spokesperson. Police services and LAs, health and other statutory bodies, charities and pressure groups, all join the CC in this, as in so much more.
22. Children and young people’s health, particularly but not exclusively emotional health and wellbeing. I was a member of the then-SoS’s Children and Young People’s Health Outcomes Forum which held the system to account from 2011-2015, winding down ahead of the 2015 General Election. Out of that grew my role in advising the CMO on annual reports, particularly one concentrating on children and presenting challenges to a system whose default is to look to adults. When then-minister Norman Lamb set up the CAMHS taskforce that published “Future in Mind” I was a member, and am pleased to see the emphasis on CAMHS in both the work of my successor and her young advisers “Amplify” – who previously advised me – and public debate. This is a theme I have taken into my work in management consultancy. The health sector, voluntary and academic organisations come together around this issue. The CC is a vital statutory voice, but cannot gain traction or engineer change alone. I would not have wished to try to do so during my term, given children are all our business, whatever our work might be.
23. Children in and leaving the care system, and those affected by family law – both Public and Private: how well their voices are heard, how far LAs work in their best interests, and especially how those in or leaving care fare in a system bound by legal frameworks but which does not always see or hear the child. We challenged LAs and others on how they dealt with matters, and

how they should improve. We liaised with and advised Cafcass, the National Association of IROs and others. The office held a seat on the Family Justice Council before the Norgrove reforms meant such arrangements changed. We helped Professor Eileen Munro to access children and young people directly affected by the social care system she reviewed. Under the 2014 Act, we further strengthened our work on the care system, inheriting the Ofsted OCRD's team, archive, helpline and contact systems. I challenged practice in LAs falling short, and required and could not be denied their responses on the child's behalf. I ran the Care Matters survey on looked after children's experiences, feeding the APPG run for their benefit, the work of ministers at DfE, DCSs and others on what the system should look like and whether and it measured up. My successor has continued, publishing the survey months after arriving in post, having taken up the reins midway through its "open" period. Combining the OCC and OCRD was a sensible change. Again, however, the CC cannot engineer change on her/his own. Care Leavers' bodies, charities like the Who Cares? Trust, Barnardo's, NSPCC, 1Voice and others all play a role. The CC, however, remains the only one with an authoritative statutory voice in the conversation.

How the performance of the Children's Commissioner should be assessed

This issue, at least in part, is woven into the fabric of the role.

24. Regulation, how the office runs, and how the CC must comply with requirements: The CC is a public appointee, leading an Executive NDPB about whose work regulations are laid down. Free to speak as he/she sees fit and the evidence demands on the rights of the child – the latter being her/his primary function and therefore not a matter of choice – the CC is bound by many regulations about how he/she conducts him/herself as a spender of public funds paid via DfE.
25. Independence from the sponsor Department is crucial. It is not easy to achieve, the use of spaces in the Crown Estate and many other practical matters making it difficult to ensure a tangible and believable distance. The CC's role is funded via a sponsor Department, with a remit letter issued by the Permanent Secretary. It is not, however, meant to be OF a Department. It could be hosted in any relevant Department so long as doing so cements in place distance that will safeguard the CC's independence. The tendency of large government bodies to swallow small arms length ones, for example by setting out ways of working "for the ease of your operation and ours, CC" through providing shared services, means the CC must be patient but nonetheless insistent in restating her/his independence. The finesse of these debates took up a good deal of time during the terms of both the first two CCs. In late 2014, in readiness for implementation by the new CC, a Governance Review commissioned from the DfE's internal audit but reporting to me as outgoing CC, reiterated both the role's independence and the need to ensure it. The content of that report remains salient.

26. The CC is an Accounting Officer, bound by Cabinet Office and Treasury's rules, rigorously trained and signed off accordingly. He/she is bound, and must be seen robustly to abide, by both the Civil Service Codes and the 7 Principles binding those in public life. What the post holder must or may do is described in Acts and Schedules, against which the CC ought to be judged. The role is also subject to the Freedom of Information Act, and is regularly challenged on elements of what the CC and her/his office does.
27. OCC's IT systems are part of the "gsi" network, though the office is NOT accessed via the .gov.uk portal. Given its independence, it is clear it should not be, though that argument was also hard won in 2014. The CC and all her/his staff must pass annual security tests to continue to use the system. Documents held or stored are so in accordance with a rigorous policy, and in heavily secured settings, whether they are electronic or on paper.
28. Accounts, HR and other corporate functions should be, and have been, scrutinised by an independent and rigorous Audit and Risk Committee, with its own terms of reference placed on the CC's website, and an independent – during my term at DfE's insistence an externally appointed – chair, who must formally add her/his opinions to the annual report and statement of accounts which are laid before Parliament.
29. Under the 2014 Act, the CC must have an advisory board made up of members who are there to challenge both the CC and the work being done, as well as supporting her/him. The Governance Review in 2014 advised that appointments to the Board should be through a transparent public process. I instituted the first Board and it was invited. This was because, by agreement with the DfE, it was clear that public appointment processes would potentially fetter the new CC's discretion on Board appointments, a risky move given I was only CC under the new Act for 10 months but a Board would have had to be appointed to a longer term to make it worth people's time to put themselves forward.
30. The office is internally and externally audited, the former work meant to be done by an independent audit organisation, the latter by the NAO. Plans and annual reports must be consulted on and made public, the latter a TSO publication formally laid before Parliament.
31. The CC should operate under a formal Framework Agreement with the DfE, though during my term this went through many iterations and a final version remained to be agreed as I left. Whilst independent in thought, public statements and publications and work streams, the CC receives a funding letter from the Permanent Secretary, who is meant – directly or by delegating to a DG - to meet the CC and help her/him to set and deliver on personal objectives.
32. The CC is meant to report publicly on all issues investigated or worked on, so long as children cannot easily be traced or identified. In my term we judged each case of reporting on its merits, and safeguarded children by reporting only to organisations whose work we were scrutinising if a child could otherwise have been identified or their lives help open to public scrutiny. A good example of the latter circumstance was in the report we wrote for

commissioners and providers only, on the secure and forensic mental health estate, where numbers of settings are small and identifiable, and so are numbers of children held.

33. Impact measurement by Parliament: should be transparent, undertaken via the Select Committee system, and judged against the firm underpinning pillars of the role: it is described in law, regulated by government rules, and has a well-defined primary statutory duty, so holding it to account should follow.
34. The 2014 Act is more explicit than the previous law on the CC's independence. Though of course the business of Parliament is decided by its own bodies including your own, and not for influence by the CC or others, I am on record as saying I would have welcomed an annual open meeting with your or another committee, and indeed I pressed for that to happen. I am delighted that the committee seems set to speak regularly and in open session with the 3rd CC now in post. The suggestion towards the end of my term was that the discussion should be framed by set pieces. These are the law and the UNCRC, the current work and preoccupations of the CC, and the business plans and annual reports of the office, including how it spends the money given to it from the public purse.
35. The proven difference being made for children and young people by the CC – as I have said throughout, almost always in concert with others - and any proof available of contributions the CC makes to children's rights being promoted and protected as the law requires this role to ensure, should be the core of what any scrutiny body has to say about the CC's work.

I close this submission with a personal reflection

This was the most rewarding, fulfilling, challenging, scary and joyful role I ever filled in a 36 year career in public service. Given I was a DCS in the first generation of that role, served as President in 2008-09, and before that role throughout my earlier career I worked on children and young people's behalf in amazing organisations from 1979 onwards on worthwhile and interesting tasks with many terrific colleagues, that is quite a statement for me to make.

The existence of this post was hard won after many years of dedicated persuasion and campaigning for its creation by the children's sector. It matters enormously that England has a CC, and it is a delight and a privilege as well as a challenge to be chosen to undertake the work. It matters, equally, that no CC can do this work alone but must work in concert with others in the sector, because everybody is responsible for our children. Whoever comes and goes into and out of it, it is vital that the role always makes substantial, substantive, authoritative and considered contributions, backed by evidence and ringing with the voice of the child, to the nation's debates about, and both policy and practice on, children and childhood.

The CC's independence, which above all things means (s)he can and must speak unequivocal truth to power, lies at the heart of the role. The incumbent must

openly welcome policy which is well made and practice well executed, and provide trenchant analysis and where necessary critiques of policy whose effect is to deny children's entitlements. The weight the role carries, the CC's being balanced but critical when necessary, both add to the moral authority with which the CC promotes and protects their rights, as the law requires.

April 2016