

Written evidence submitted by Sir John Dunford

The responsibilities, powers and independence of the Children's Commissioner for England, including in comparison with equivalent positions in other UK nations and around the world

Responsibilities

1. The starting point for my review¹ in 2010 was the statutory remit of the Children's Commissioner, as set out in the Children Act 2004. In that legislation, the role of the Commissioner in England was to represent the views and interests of children in England, a considerably weaker role than that of Commissioners in other countries, both in the UK and elsewhere.
2. Evaluating the performance of the Office of the Children's Commissioner up to 2010, I judged that its effectiveness had been impaired by the weakness of the remit in the legislation, leading to a lack of clarity both within the organisation and outside.
3. Other Commissioners in the UK and Ireland, all of whom I met, were much clearer about their role, which was based on the rights of children under the UN Convention of the Rights of the Child (UNCRC), and were regarded as being considerably more effective, especially in Scotland and Wales.
4. The other argument for my recommendation that the legislative remit of the Children's Commissioner in England should be amended to read 'to promote and protect the rights of children as set out in the UNCRC' was that the UK is a signatory to the UNCRC and it was impossible for the UK to fulfil its obligations under that international treaty unless England followed the example of the other UK nations and had a right-based Children's Commissioner.
5. In my discussions with school teachers' and head teachers' representatives, concern was expressed about the creation of an 'I know my rights' culture among young people. However, my visits to two of the several thousand schools that are in the UNICEF rights respecting schools award scheme demonstrated to me that these schools are aiming to produce good citizens who, while recognising their own rights, equally have a greater recognition of the rights of others and the need to act in a way that respects these rights.
6. Having four Commissioners in the countries of the UK, which is the signatory to the UNCRC is a complicating factor when it comes to the rights of children under UK legislation, as opposed to devolved matters. Thus a child in Wales who is an immigrant or an asylum seeker is subject to UK legislation, which comes under the remit of the Commissioner in England. Although I was concerned about this at the time of writing my report, I am satisfied that, in

¹ Review of the Office of the Children's Commissioner (England), John Dunford, DfE, December 2010

practice, the Memorandum of Understanding between the four Commissioners and the regular meetings of BINOCC (British and Irish Network of Children's Commissioners) provide an adequate safeguard for children in this situation.

Powers

7. A critical question for the Children's Commissioner is the extent to which she carries out the role of an Ombudsman, doing casework on behalf of children.
8. This question was complicated by the need to remove the duplication of role by recommending that the Children's Rights Director (CRD) in Ofsted should be brought into the Office of the Children's Commissioner and that the CRD should be responsible to the Commissioner and not to Her Majesty's Chief Inspector, a line of accountability that had its origins in the merger of the inspection of children's services with the schools' inspectorate. The CRD did casework; the Children's Commissioner did not.
9. Looking at the caseload in Wales and Ireland and scaling up for England, it was clear to me that an Ombudsman role would create an unmanageable burden for the Commissioner, which would put at risk other rights-based work.
10. I therefore recommended that the Commissioner should have the power to investigate cases affecting individual children only where these have strategic significance. Many an important issue of general significance will have been revealed through the investigation of an issue affecting one individual at first and the Commissioner has the power to do this.

Independence

11. I am firmly of the view that a Commissioner can only be effective if s/he is independent, and is seen to be independent.
12. Part of the poor public perception of the Children's Commissioner up to 2010 arose from the lack of statutorily based independence. The Commissioner was perceived not to be independent of the government. The secretary of state for education had to be consulted before the Commissioner could conduct an inquiry; the Commissioner's annual report was presented to the secretary of state; and the Commissioner could stand for a second term of office with the approval of the secretary of state.
13. I therefore recommended the removal of the need to consult about inquiries; the removal of the secretary of state's power to direct the Commissioner to undertake an inquiry; that the annual report should be presented to Parliament; a single term of office of six years; and a role for Parliament in the appointment of a new Commissioner.

14. I further recommended that the Commissioner should have the power to comment on legislation affecting children arising from all government departments before it reached the statute book.
15. The legislation in 2014 has established a degree of independence that is analogous to that of Her Majesty's Chief Inspectors of Schools, Prisons and Constabulary, all of whom are widely recognised as being independent of government and who report on the basis of evidence as much on the effect of government policies as on the work of the professionals in their respective sectors. With the 2014 legislation, the Commissioner can also do this, without looking over her shoulder at the reaction of the secretary of state, as her predecessors had to do.

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

16. One of the reasons for the lack of impact of the Office of the Children's Commissioner in its first six years was its lack of focus. This has been clearly addressed by the present Commissioner in her published priorities.²
17. My perception of the impact of the work of the Office of the Children's Commissioner is that it has had a much clearer focus since the 2014 legislation came into place.

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

18. As an independent Commissioner accountable to Parliament, it is appropriate that the performance of the Children's Commissioner should be assessed by Parliament through the Education Select Committee.
19. In setting her business plan on an annual basis, including key performance indicators, the Commissioner is laying the foundation on which her work can be assessed at subsequent Select Committee hearings when presenting her Annual Report.
20. It is vitally important for children in England, however, that the business plan should include long-term, as well as short-term, goals and that the Select Committee should recognise the importance of these and an appropriate timescale on which they can be met.

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² Ambitious for Children, July 2015