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Implementing Children's Rights in Scotland – Developing Systems of Child-Friendly Complaints, Remedy and Redress

#UNCRCScotland #Childredress



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<p>Welcome and Introductions Chair: Bruce Adamson, Children and Young People’s Commissioner Scotland</p>	9.30 – 9.45
<p>Incorporating the UNCRC in Scotland – what is needed for systems of child-friendly complaints, remedy and redress? Fiona Morrison, Máire McCormack, Kay Tisdall</p>	9.45 – 10.00
<p>Advocacy and legal representation for children Andrew Sirel</p>	10.00-10.20
<p>The 7 Core Principles of Child-friendly Complaints Ursula Kilkelly</p>	10.20 – 10.40
<p>Break</p>	10.40 – 11.00
<p>Right to an Effective Remedy Katie Boyle</p>	11.00 – 11.20
<p>Discussion</p>	11.20 -12.00
<p>Panel to take forward discussion Bruce Adamson, Rosemary Agnew, Katie Boyle</p>	12.00 – 12.30

Implementing Children's Rights in Scotland - Developing Systems of Child-Friendly Complaints, Remedy and Redress

Fiona Morrison
Centre for Child Wellbeing and Protection,
University of Stirling

Máire McCormack and Kay Tisdall
Childhood & Youth Studies Research Group (@CYSRG),
University of Edinburgh



Reasons for not accepting the amendment on redress, in the Children (Scotland) Bill

Ash Denham MSP, Minister for Community Safety

‘[redress is] not in the UNCRC itself; it is in general comment 5.’

‘.it is not clear from amendment 47 what a redress scheme would entail. What does the member think is appropriate redress if a child feels that their views have not been heard in a contact or residence case? Is it financial compensation? Is it a complaints mechanism with an apology? Does it involve reopening the decision? How does that sit alongside existing appeal processes, which amendment 47 would not affect, and the ability to vary the order?’

‘the extent to which a redress scheme might cut across existing remedies if a child is unhappy about the procedure or the outcome of the court order would need to be considered very carefully [..]’

‘A child can already apply to the court to vary the order, and there are organisations—such as Clan Childlaw and the Scottish Child Law Centre—that provide representation for children. A curator ad litem could be appointed to represent a younger child’s interests, and we propose to regulate them similarly to the way in which child welfare reporters are regulate.’

The Bill needs to strengthen the Children's Rights Scheme

- A system of children's rights indicators to effectively monitor the Bill's implementation;
- Stronger duties to promote public awareness and understanding of children's rights, including amongst children.
- Ensure individual children can claim their rights and seek remedy and redress when they think their rights have been violated

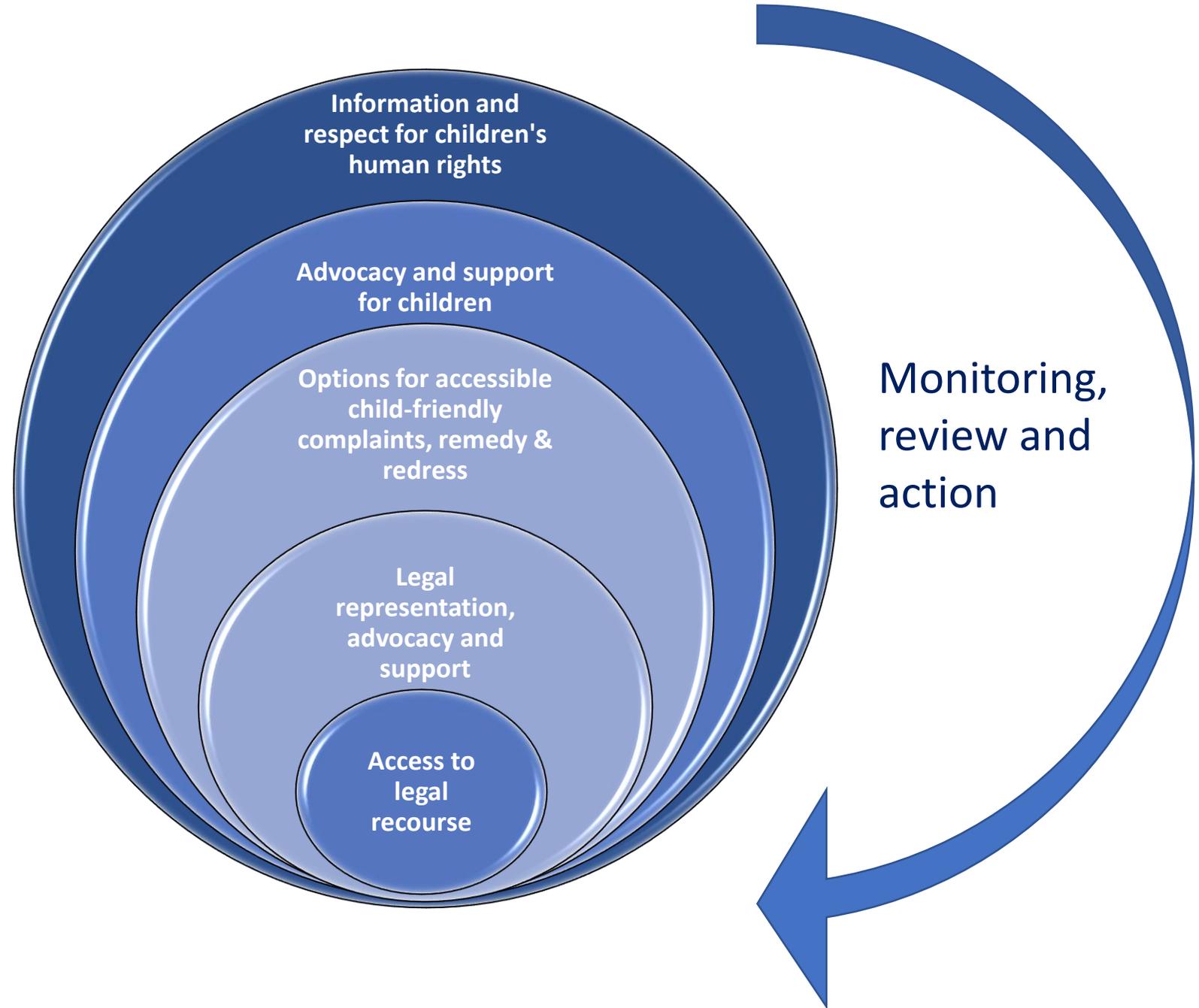
Key findings from Navigating the World of Rights (Who Cares? Scotland 2020)

- Children may not identify a rights abuse in their lives nor know how to challenge it.
- The public or professional do not always understand human rights, causing difficulties for children to have their rights upheld. Information and training is required.
- Children must learn about rights in school.
- A range of approaches are needed: from courts, to independent advocacy, to complaints mechanisms. There must be subsequent follow through, such as monitoring and ensuring changes are made.
- The important of support being available for all forms of rights challenges.

Child-Friendly Systems of Complaints, Remedy and Redress

- Deputy First Minister John Swinney MSP has committed to strengthening the Children's Rights Scheme, by requiring Ministers to publish *'updates on arrangements to promote a child-friendly complaints mechanism and ensure effective access to justice for children and young people'*.
- Significant and systematic efforts are needed to ensure that child-friendly systems of complaints, remedy and redress are embedded across public bodies.

Embedding systems of complaints, remedy and redress for children



Guidance on implementation

UN Committee on the Rights of the Child, General Comment No. 5 (2003)

- “For rights to have meaning, effective remedies must be available to redress violations. This requirement is implicit in the UNCRC ...”

Council of Europe’s Guidelines on Child-Friendly Justice

- Calls on Member States to facilitate children’s access to courts and complaints mechanisms and to recognise and facilitate the role of NGOs and other independent bodies or institutions such as children’s ombudsmen to support children’s effective access, both on a national and international level (Guideline 83)
- Any obstacles to access to court, such as the cost of the proceedings or lack of legal counsel, should be removed (Guideline 35).
- Children should have the right to their own legal counsel and representation, in their own name, in proceedings where there is, or could be, a conflict of interest between the child and the parents or other involved parties (Guideline 37).
- Children should have access to free legal aid, under the same or more lenient conditions as adults (Guideline 38).
- Lawyers representing children should be trained in and knowledgeable on children’s rights and related issues, receive ongoing and in-depth training and be capable of communicating with children at their level of understanding (Guideline 39).

Areas we hope to explore this morning

- How can we embed systems of child-friendly complaints, remedy and redress across all public authorities? And monitor their effectiveness? What might redress 'look like' for a child or young person?
- How do we ensure that children, adults and public authorities know about children's rights, and how to complain, seek remedy or redress if a child's rights are breached? What steps are needed to ensure children more at risk of having their rights breached have access systems of complaint, remedy and redress?
- How can we encourage adults and public institutions to view children's complaints positively and to take them seriously?
- What might we support public authorities to be positively accountable to children?
- How do we ensure such systems squarely address familiar tensions between children's rights to protection and participation?
- How can we extend such learning to organisations beyond public authorities – such as businesses and other organisations in the private sector?

UNCRC (Incorporation) (Scotland) Bill

Advocacy and legal representation for children

Andy Sirel, JustRight Scotland

4 February 2021



Current Hurdles

- **Knowing** there is a right – knowledge of the child, parent, professionals
- **Feeling able** to take advice – e.g. against a corporate parent?
- Knowing **where** to look – often reliance on Google!
- Number of **legal specialists** - with hard and soft skills



Current Hurdles

- **Legal aid** – eligibility is strict and takes into account parents' income
- Nature of **remedies** – complex legal structures; language; time-limits; adversarial procedures; ability to have voice heard
- Length of time “justice” takes – **is it worth it?**
- Abuse, trauma, mental health, disability, stigma, discrimination etc.



Practical improvements in Bill

- **Section 6** – “it is unlawful for a public authority to act in a way which is incompatible with the UNCRC requirements”
 - **Needs addressing:** Definition of ‘public authority’ is under close scrutiny because of recent case-law, including *Ali v Serco*
- **Section 7** – Bringing of proceedings in relation to section 6
 - Standing – no need for victim status, so “sufficient interest” is the legal test.
 - Time limits – proceedings must be brought within **1 year** or **3 months** if Judicial Review (s.7(7)+(8)). ***Time where YP was under 18 is disregarded.***
- **Section 10** – power for Children’s Commissioner to intervene

Practical improvements in Bill

- **Section 20** – Strike down declarators – court can strike down a provision of primary or subordinate legislation if incompatible. Applies from date of declarator (not retrospective) and only to legislation enacted **before** the Bill
- **Section 21** – Incompatibility declarators – applies to past or future legislation. Ministers then have 6 months to respond (**s.23**)

Still to be done

- A children's complaints apparatus – rather than tinker around the edges
- Training of lawyers
- Funding of legal aid sector
- Enhanced role of advocacy and its relationship with legal sector



Child-Centred, Trauma-Informed



Warmth & Kindness



Aware of Trauma



Joint Decision Making



Imaginative



Confidentiality



Handles Distress



JUSTRIGHT SCOTLAND

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- **7 Principles of Child-friendly Complaints**

- Professor Ursula Kilkelly
- School of Law
- University College Cork

- @based on work completed for the Ombudsman for Children, with Naomi Kennan
- Available at www.oco.ie



Introduction and Context (GC No 5, para 24)

Effective remedies considered integral to children's rights enforcement (GC No 5)

Children's 'special and dependent status' creates real difficulties for them in pursuing remedies for breaches of their rights

States need to give 'particular attention' to ensuring that there are 'effective, child-sensitive procedures' available to children and their representatives

Child-friendly information, advice, advocacy, access to independent complaints procedures and to the courts with necessary legal and other assistance

- **Guidelines on Child-friendly Justice 2010:**
 - Accessible – age appropriate - speedy – diligent
 - Meets the need of the child and is respectful of rights to due process, participate, dignity and respect for private and family life
- **Children’s experience of complaints:**
 - Slow
 - Inaccessible and ineffective
 - Trust and confidence

1. Open and Accessible – be open, be flexible, inclusive, hear feedback

2. Best interests of the Child – throughout the process, multi-disciplinary perspectives, problem solving approach to get the best outcome, balance each individual child's rights, demonstrate – take account of the child's individual characteristics and circumstances and their views (see GC No 14)

3. Child's Participation – proactively seek the child's views, take account of barriers, consult the child as to how, invite support

4. Transparency and communication – policy and procedure, be clear as to scope and any rules, provide guidance, updates and reasons



5. Timeliness – beware of impact of time, prioritise complaints from children, set out timeframe and stick to it



6. Fairness – impartial approach, review all information, consider each element individually, inclusive approach, appeals procedure



7. Monitoring and Review – quality assurance, keep accurate and complete records, review complaints and review process regularly

In conclusion

Effective and accessible complaints mechanisms and handling is integral to effective children's rights protection

The responsibility of every public body

Must be rights compliant in process and substance

Done right, can be a true marker of our commitment to children's rights

Potential questions for discussion this morning

- How can we embed systems of child-friendly complaints, remedy and redress across all public authorities? And monitor their effectiveness? What might redress 'look like' for a child or young person?
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Panel – taking the discussion forward

- Bruce Adamson, Children and Young People's Commissioner Scotland
- Rosemary Agnew, Scottish Public Services Ombudsman
- Katie Boyle, Associate Professor International Human Rights Law, University of Stirling

The other webinar speakers are available for questions and discussion.