

FAMILY EDUCATION TRUST

SUBMISSION TO THE JOINT COMMITTEE ON HUMAN RIGHTS

INQUIRY INTO THE UK'S SECOND REPORT UNDER THE UN CONVENTION ON THE RIGHTS OF THE CHILD AND THE CASE FOR A CHILDREN'S COMMISSIONER FOR ENGLAND

For the past thirty years, Family Education Trust has been conducting research into the causes and consequences of family breakdown. By means of its publications, videos and conferences, and through its media profile, the Trust seeks to stimulate informed public debate on matters affecting the family, based on reputable research findings.

As an independent research organisation, Family Education Trust does not receive government funding and is financed entirely by members' subscriptions and donations. It has no religious or political affiliations.

In making this submission to the Joint Committee on Human Rights, we are responding both to the concluding observations of the United Nations Committee on the Rights of the Child in response to the UK's second report and to the current inquiry into whether there is a need for a children's commissioner in England.

We are not persuaded that there is a need for a commissioner for children in England. The assertion is frequently made that children need 'a champion - a strong independent voice to promote and protect their rights and to represent their interests'. In view of the appointment of a children's commissioner in Wales, the publication of the Commissioner for Children and Young People Bill in Scotland, and moves towards creating a similar office in Northern Ireland, it is claimed that 'England's 11.3 million children are at risk of being left behind and let down.'¹

Having followed the debates within both the Northern Ireland Assembly and the Scottish Parliament, and studied the oral and written evidence presented to the Joint Committee on Human Rights in England, we are of the opinion that the 'need' is assumed rather than demonstrated. In all the submissions and discussions we have read, there is a striking lack of evidence for the claim that all children need to have special mechanisms to represent their interests.

Certainly some lobbyists have sought to present a case in favour of establishing special mechanisms for children, but whether they have established a 'need' is open to debate. Peter Newell, who serves as co-ordinator of EPOCH (End Physical Punishment of Children) and of the Children are Unbeatable alliance, and as chairman of the Children's Rights Alliance for England, has been particularly active in

¹ *The Case for a Children's Rights Commissioner for England*, Children's Rights Alliance for England, March 2003.

campaigning for a children's commissioner. In 1991 he co-authored a pamphlet on the issue which was published by the Calouste Gulbenkian Foundation (a revised edition subsequently appeared in 2000). Since then he has been involved in several 'commissions' which have recommended the establishment of a children's commissioner, including the Gulbenkian Foundation's Inquiry into Effective Government Structures for Children. It is also worthy of note that each of three Private Member's Bills to establish a Children's Rights Commissioner in England, has been presented to Parliament by Hilton Dawson MP, who in the 2001 debate acknowledged that the bill had been written by Peter Newell.²

Mr Newell has constructed an argument and has succeeded in persuading a number of prominent figures in the childcare industry to support his campaign, who have, in turn, managed to attract the support of dozens of smaller groups. However, the case itself is by no means proven.

In recent years, several international bodies have backed the call for a children's commissioner. For example, the UN Committee on the Rights of the Child has commended the establishment of such an office in various countries, and the Council of Europe in its European Strategy for Children has proposed the appointment of a commissioner or ombudsman for children.

In order to keep things in perspective, it should be borne in mind that the UN Committee on the Rights of the Child consists of just ten individuals drawn from states around the world and has recently been criticised for adopting radical interpretations of the UN Convention on the Rights of the Child in its pursuit of an agenda contrary to traditional moral and social norms regarding the family, marriage, motherhood and religion.³ Similar comments could be made about the Parliamentary Assembly in the Council of Europe, and it is significant that while this body issued a recommendation in favour of a children's commissioner as long ago as 1996, the Committee of Ministers in the Council of Europe has not taken it up. Then, with regard to the interest of children's organisations in this issue, given that almost without exception they are in receipt of public funds, the possibility should at least be considered that they may have a vested interest in pursuing the children's rights agenda in view of the vast additional resources that would be required to fulfil its objectives.

Parents tend not to feature very prominently in the thinking and public pronouncements of those demanding a children's commissioner, and yet it is parents who spend more time with their children than anyone else, who care for them, know their needs and show a daily practical interest in their lives. When it is noted that, by and large, parents are not in the vanguard of the campaign for a children's commissioner, it becomes evident that support for the establishment of such an office is by no means so widespread as it may at first appear.

We believe there are a number of reasons why the establishment of a children's commissioner would not serve the best interests of children:

² HC Deb (2000-01) 363, col 606

³ Fagan, Patrick F, *How UN Conventions on Women's and Children's Rights Undermine Family, Religion and Sovereignty*. Washington: The Heritage Foundation, February 2001

1. It would undermine parents

Parents are almost always the best people to look after their children and most children in England live in a family with one or both parents and other family members. The family is the main place where children's needs are met.

However, the implication of those calling for a children's commissioner appears to be that children need some form of external enforcement mechanism to safeguard their rights. It is assumed that because children cannot vote, have limited social and economic power, are vulnerable, less likely to have access to independent advice and advocacy, and are subject to certain unique restrictions, that their voice often goes unheard. However, in the vast majority of cases, children have parents who are well able to represent their interests, and we find it disturbing that the assumption is being made that a Commissioner would fulfil this advocacy role more adequately than parents.

The argument that children need independent statutory representation appears to rest on the false assumption that parents and children have widely different interests. Some organisations which claim to have the welfare of children at heart are increasingly pursuing policies which lead to the removal of children from the protective influence and authority of their parents. This raises serious questions about the extent to which they are acting in the best interests of those they claim to represent.

Meanwhile, at grassroots, parents are continuing to protect, guide, care and provide for their children. They are the unsung heroes, hidden from the public eye, but available to their children 24 hours a day, seven days a week during their most vulnerable and formative years. The overwhelming majority of parents do far more to promote and protect the rights and interests of their children than any statutory office will ever do. Most children do not need a 'champion' at all because they already have one; indeed, many children have two champions, more commonly known as a father and a mother. They live with them, they are known personally to them, they are related to them, and they are loved and cared for by them. Parents are far better placed and equipped to represent the interests of their children than any impersonal bureaucratic machine.

One strand in the case for a children's commissioner is that children have participation rights and that a commissioner will empower them to take part in the democratic process. In his oral evidence before the Joint Committee on Human Rights, Michael Leadbetter, president of the Association of Directors of Social Services, referred to 'a legacy of "children must be seen and not heard"' and expressed the view that the appointment of a 'powerful' children's rights commissioner, 'with access to children' and 'able to change guidance or legislation' was a priority if the whole culture were to be changed to one where children were both seen and heard.⁴ As far as we are aware, however, no one is denying that children are capable of making rational decisions and should be encouraged to develop their decision-making skills, but we would submit that it is better that they

⁴ Joint Committee on Human Rights, Twenty-second Report of Session 2001-02, The Case for a Human Rights Commission: Interim Report, EV23, 24.

should do so under the loving guidance and protection of their parents rather than by order of an impersonal state-funded office.

When considering the remit of the commissioner, parents are again frequently bypassed. For example, the consultation paper issued by the Northern Ireland Executive in 2001 contained the following paragraph:

We recognise that as potential users and recipients of the services of the Office of a Children's Commissioner, children and young people are in effect the experts in respect of what functions, role and powers a Commissioner should have. They are the experts at being young and, most importantly, they can offer solutions that adults would not necessarily think of.⁵

Similar sentiments overlooking the accumulated wisdom of parents, gained over many years, have been expressed in evidence submitted to the Joint Human Rights Committee during its current inquiry. It is apparently forgotten that parents have been young themselves and are in fact more 'expert at being young' than their children, not only because they have had longer experience of youth than their children, but they also have the benefit of hindsight and can look back and see situations in a more objective light than they did at the time.

The claim is sometimes heard that children need a commissioner because they are a minority group who do not have a vote, a union or a complaints system to make their voices heard in the way that adults do. However, this is to overlook the fact that children have parents who are well qualified to represent the interests of their children. To suggest that they need a commissioner to speak up for them is an insult to parents. The family unit is a far better context in which the majority of children will be able to address any complaints and grievances than any union or impersonal mechanism.

2. It would threaten the autonomy of the family unit

The suggestion is frequently made that in the event of any conflict between the rights of children and the rights of adults, the commissioner would be obliged to give priority to the rights of the child. This was, clearly stated, for example, in the Northern Ireland consultation document:

Where there is a conflict between the rights of children and the rights of adults, the Commissioner could be required to give priority to the rights of the child.⁶

On the reasonable assumption that parents are included in the term 'adults', this has far-reaching implications for the autonomy of the family unit.

Family relationships are very personal and individual matters, and each family is shaped and influenced by certain social, cultural, religious and philosophical factors which are not common to every other family. Values and standards will therefore differ from family to family and this will be reflected in the way children are brought

⁵ Office of the First Minister and Deputy First Minister, *Protecting our Children's Rights: A Consultation Paper on A Commissioner for Children for Northern Ireland*, Belfast 2001, para 7.1.4.

⁶ *ibid.*, para 3.4.3

up. We are therefore very wary of any approach which could lead to an official body intervening in the family and siding with the child against his or her parents in the name of 'children's rights'.

As Charles Colson has put it:

[We should be] very cautious of recommendations decreasing the role of parents and increasing the role of the state in family life... Children's rights theory claims to promote the welfare of children. But in reality it throws children into the arms of state professionals - who may be filled with big ideas but empty of the bonds of family love.⁷

In *The Fight for the Family*, Lynette Burrows writes:

State intervention into family life is feared and loathed by most children more than anything. They are more troubled by the state interfering than they are reassured by the protection offered. Children do not want rights, they want love and protection and...the majority of them do not want social workers or anyone else coming into their families and telling their parents they are not behaving properly.⁸

We are concerned at the lack of attention devoted to the family unit in discussions about a children's commissioner. The emphasis on children as citizens of the state is so great that there is a danger of forgetting that children are first and foremost members of a family. It is not the role of the state, but rather the responsibility of parents to enable children to enjoy a happy, safe and secure childhood.

3. It would threaten the unique character of childhood

While no one denies that 'children are people too', we are concerned that there are many in the children's rights movement who seem to regard children as essentially the same as adults. While children are people, they are not adult people; they are not fully grown and fully-developed and mature. They are dependent on their parents, not only for the provision of their physical needs, but also for their moral training and development. They therefore need the protection that their parents are able to give.

There is a great danger in children's rights philosophy that adults who have no family bonds and no long-term personal commitment to a child may gain access to children without the knowledge and consent of their parents. In this context there is considerable risk of exploitation. We would consider the availability of contraceptive advice and supplies to children and young people under the age of consent and the pressure to override the wishes of parents on the kind of sex education their children receive at school as examples of this. It is precisely because children are vulnerable to manipulation, ill-treatment or abuse by those more powerful than themselves that they need the protection of their parents.

In this connection, we were concerned to read the oral evidence of the President of the Royal College of Pediatrics and Child Health, Professor David Hall, in response to a question about the provision of contraception to a 12-year-old girl involved in a sexual relationship with a 22-year-old man. The questioner explained:

⁷ Charles Colson, *A Dance with Deception*, Word, 1993, p179

⁸ Lynette Burrows, *The Fight for the Family*, Oxford: Family Education Trust, 1999, p54

The parents are livid and want the full force of the law brought to bear on that situation. The child herself appears to be consenting and maintaining the position that she is capable of making her own decisions and the law of course says that that relationship, if it is taking place, is statutory rape which has a sentence of life imprisonment as a maximum. If the child in that situation wants contraceptive advice and contraception, how do you we deal with that terribly difficult situation?

Professor Hall responded:

The advice that GPs receive...would be that as far as the young person herself is concerned you would have to make a judgment as her doctor about the right course of action. If your judgment was that she was making a mature and considered decision in coming to consult you and was asking for contraceptive advice, I think most doctors would provide that advice and treat that in confidence. If their judgment was that this girl was being manipulated and used then the terms used include 'some secrets are too big to keep'. That might be the sort of language you would use to someone you treat as a child. In the case you describe I suspect most people would feel that as far as their behaviour as a doctor was concerned, they would probably give her the advice that she was requesting because they would consider her very competent by the very act of having come to seek advice on contraception and they would consider that was how she was behaving. They would probably then ring their Medical Defence Union and say, 'Help, have I done the right thing?' I think that is probably what most of them would do.⁹

In the name of 'the rights of the child', Professor Hall felt that the medical profession would generally be prepared, in such circumstances, to set aside the protective provisions of the legal age of consent to sexual intercourse and the protective instincts of the child's parents. If Professor Hall is correct in his assessment of current GP practice, it is to be feared we have moved a long way from the judgment of the law lords in *Gillick v West Norfolk and Wisbech Area Health Authority*, when Lord Fraser ruled:

Nobody doubts, certainly I do not doubt, that in the overwhelming majority of cases the best judges of a child's welfare are his or her parents. Nor do I doubt that any important medical treatment of a child under 16 would normally only be carried out with the parents' approval. That is why it would and should be most unusual for a doctor to advise a child without the knowledge and consent of parents on contraceptive matters.¹⁰

We are concerned that the appointment of a children's commissioner would exacerbate the tendency to promote the 'sexual rights' of the child to the detriment of parental authority. This is certainly the direction in which children's rights campaigners would like to see things move, and the United Nations Committee on the Rights of the Child has indicated its support for such a move. In its concluding observations on the United Kingdom, published in October 2002, the Committee expressed concern that:

homosexual and transsexual young people do not have access to the appropriate information, support and necessary protection to enable them to live their sexual orientation.

The Committee recommended measures:

⁹ Joint Committee on Human Rights, Twenty-second Report of Session 2001-02, The Case for a Human Rights Commission: Interim Report, EV60.

¹⁰ *Gillick v West Norfolk and Wisbech Area Health Authority and another* [1985] 3 All ER 402.

to reduce the rate of teenage pregnancies through, *inter alia*, making health education part of the school curricula, ensuring the inclusion of sex education to all children and the availability of free protection measures; and improving access to confidential and adolescent-sensitive advice and information and other appropriate support (as recommended by the independent Advisory Group on Teenage Pregnancy).

It further called on the government to repeal Section 28 of the Local Government Act 1986.¹¹

Quite apart from the fact that the Committee on the Rights of the Child has strayed considerably from the plain meaning of the Convention in making these recommendations, it shows scant regard for the moral and religious views of parents on issues affecting their children's sex education and sexual expression. The Committee has also accepted without question the received wisdom on reducing the teenage pregnancy rate in the United Kingdom. We are sending with this submission two of our most recent reports which call into question the government's teenage pregnancy strategy.¹²

Listening to children and giving full attention to their feelings and concerns is by no means incompatible with parents taking full responsibility for the way their children are brought up. Neither is the recognition that parents must sometimes make decisions on behalf of their children incompatible with a recognition that children are often capable of making rational decisions and should be encouraged to develop their decision-making skills. Children develop at different rates and no two children face exactly the same decisions. It is therefore not possible to dictate at what age a child should be able to decide *x* or *y*. It is part of the responsibility of parents to allow their children to make decisions under their own guidance and protection. This is therefore a matter for parental discretion and not one where the state or any commissioner should dictate at what age a child should be able to make certain decisions for himself or herself.

4. There are grounds to fear that the office would be used as a vehicle to advance a carefully-defined 'children's rights' agenda

One of the primary objectives in view in the proposal for a children's commissioner is the promotion of 'a culture of children's rights' in which children will be more aware of their rights.

However, we are not convinced that the creation of a 'rights culture' will serve the best interests of children and families. 'Rights-talk' invariably fosters a feeling of 'them' and 'us' and, rather than building bridges, has the effect of driving people further apart. With particular reference to 'children's rights', there is a danger that the 'generation gap' will grow even larger than it is currently perceived to be. Certainly

¹¹ UN Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland, 4 October 2002, (CRC/C/15/Add.188.)

¹² *Why the Government's Teenage Pregnancy Strategy is destined to fail*, London: Family Education Trust, 2002. van Loon, J., *Deconstructing the Dutch Utopia: Sex education and teenage pregnancy in the Netherlands*, London: Family Education Trust, 2003.

within the home, any talk of 'rights' will always lead to a spirit of conflict between parents and children which will damage relationships within the family. This is the case whether we are thinking of 'parent's rights' or 'children's rights'. We believe the focus should rather be on the family as a whole, and the responsibilities of parents towards their children and children towards their parents.

Lynette Burrows argues that the 'rights' which are frequently claimed for children are little more than the 'desires' of some adults to exercise more power over people's private lives:

The assertion of children's rights in their current form is both bogus and inconsistent. They do not, for example, propose to raise children to the level of adults where they would be named, prosecuted and punished for violent and disorderly behaviour. Neither are they proposing that children be allowed to choose if they drink, smoke or attend school... In other words, we are not talking about genuine children's rights at all. We are talking about the right of some adults - and certainly not ordinary parents - to decide what children shall and shall not be allowed to do. Children themselves are just the means by which they achieve their aims. Their effect, if not intentions, is to reduce us all to the level of dependent children, waiting to be told by Nanny State what rights we have left with which to control our own lives and make decisions for the welfare of our families.¹³

It is a matter of some concern that an agenda of this sort has been pursued in other countries which have appointed a children's commissioner or ombudsman. While direct intervention in individual family homes generally falls outside the remit of the office, in many cases the children's commissioner does have the power to initiate legislation on children's issues which have a direct bearing on family life. For example, in Norway the children's ombudsman contributed to legislation prohibiting all forms of physical punishment of children. In view of the fact that the ombudsman used his influence to undermine parents and remove from them the choice of how they reasonably discipline their children, we derive little comfort from the assurance given in the Northern Ireland consultation paper that: 'The Ombudsman cannot consider individual conflicts between a child and his or her guardian, nor can he or she deal with the exercise of parental responsibility.'¹⁴ In this connection we are also concerned that in his very first annual report, the children's commissioner for Wales has declared his own strong support for 'the campaign to remove the defence of reasonable chastisement from UK law' and committed his office to continue campaigning to that end.¹⁵

There is no doubt that many of the individuals and groups who support the appointment of a Children's Commissioner see it as a vehicle to pursue a radical agenda which would see a transference of authority and responsibility for children's upbringing away from parents to the state.

¹³ *ibid.*, p74

¹⁴ Office of the First Minister and Deputy First Minister, *Protecting our Children's Rights: A Consultation Paper on A Commissioner for Children for Northern Ireland*, Belfast 2001, paras 6.3.3; 6.3.9.

¹⁵ Children's Commissioner for Wales, Report & Accounts 2001-2002, p20.

5. The remit and powers of a children's commissioner are likely to grow increasingly intrusive

We note that in Wales, for example, the first Children's Commissioner took up his position in March 2001, with responsibility towards children in the care system. However, immediately after his appointment was announced, the UK government introduced the Children's Commissioner for Wales Bill, extending the remit and introducing new functions, giving the commissioner powers to 'consider and make representations to the Assembly about any matter affecting the rights or welfare of children in Wales', whether in the care system or not.¹⁶

In his oral evidence before the Joint Committee on Human Rights, Peter Newell of the Children's Rights Alliance of England stated that while he welcomed the appointment of the children's commissioner in Wales, he wanted to see the commissioner's powers further extended so that he would be able to investigate and report freely on anything that affects children's rights, including proceedings before the courts, and be empowered to have legal powers to pursue those rights where necessary.¹⁷

Even more ominous were Mr Newell's remarks in response to the question of whether a children's commission could concern itself with what happens to children in the privacy of their families. He commented:

Clearly the commissioner has to include within their scope the realisation and recognition of children's rights within the family. Human rights do not stop at the door of the family home any more than they stop at the school gates. Whether the commissioner should have a right of access to the family home, that seems to me something that within this country we are not ready for and if we advocate it at this point it would probably delay us having a children's commissioner for many more years. I think it is absolutely clear that the commissioner should have a right of immediate access to anywhere where children are being looked after by the state or by private bodies, so I would certainly include foster care, including private foster care, in that. At the moment my view is that it would be unhelpful to advocate a direct right of access for the commissioner to the family home.¹⁸

While Mr Newell regards it as impolitic to press for a commissioner with access to the family home 'at this point', that is certainly the goal on which he has set his sights. As the children's rights agenda unfolds, little by little, the authority and responsibilities of parents will be whittled away and transferred to an unelected and unaccountable statutory office with the power to impose a whole philosophy and pattern of child-rearing on every home in the land.

Conclusion

We live in an age where children and childhood are very easily sentimentalised. It is relatively easy to gain support for any cause which claims to 'do more for children'. Promises of more funding for children's health and education will always be vote-winners, for example. Likewise, if the government announces that it is going to set up

¹⁶ *ibid.*, p3

¹⁷ Joint Committee on Human Rights, Twenty-second Report of Session 2001-02, The Case for a Human Rights Commission: Interim Report, EV33.

¹⁸ *ibid.*, EV 35.

an office to reduce child abuse, eliminate bullying, and give children a better start in life, few will rise up to oppose it.

However, as we have attempted to show in this submission, we fear that the creation of a children's commissioner is undesirable because it:

- undermines the role and responsibilities of parents
- fails to respect the autonomy of the family unit
- fails to recognise the unique character of childhood,
- would undoubtedly be used as a vehicle to advance a radical 'children's rights' agenda, and
- the remit and powers of a children's commissioner are likely to grow increasingly intrusive.

We would urge that in any consideration of issues affecting children, that:

- (a) due respect should be paid to the views of parents as those who have the primary responsibility for the care and nurture of their children, taking care to avoid the imposition of any particular parenting philosophy and style;
- (b) children should be viewed first and foremost as members of a family, rather than independent citizens of the state. We are concerned by the growing tendency among public policy-makers to divorce children from their parents in their thinking.

Children are people with individual needs which are most effectively met in a personal way within the family. They should therefore not be viewed as subjects of the state in isolation from the family. They need parents to guide, direct and protect them. It is when society begins to lose sight of the importance of parents and the family unit that children are at risk of being treated as objects.

We therefore conclude that children do not need a commissioner. What they need more than anything else is a mother, father and a loving home. If the government is concerned about promoting the best interests of children, the most positive thing it can do is to promote stable family life, based on marriage, and encourage children to value and respect their parents.

18 March 2003

Family Education Trust
The Mezzanine, Elizabeth House
39 York Road
London
SE1 7NQ

Tel: 020 7401 5480