

# Office of the Children's Commissioner consultation: A rights-based approach to education

**25 September 2014**



## About us

The British Humanist Association is the national charity working on behalf of non-religious people who seek to live ethical and fulfilling lives on the basis of reason and humanity. We promote Humanism, support and represent the non-religious, and promote a secular state and equal treatment in law and policy of everyone, regardless of religion or belief. Founded in 1896, we have around 30,000 members and supporters, and over 70 local and special interest affiliates.

The BHA has a long history of work in education, children's rights and equality, with expertise in the 'religion or belief' strand. We have been involved in policy development around the school curriculum for over 60 years. We also provide materials and advice to parents, governors, students, teachers and academics, for example through <http://www.humanismforschools.org.uk/> and our school volunteers programme. We have made detailed responses to all recent reviews of the school curriculum, and submit memoranda of evidence to parliamentary select committees on a range of education issues.

The BHA is an active member of many organisations working in education, including the Religious Education Council for England and Wales (REC), National Children's Bureau Sex Education Forum (SEF), the PSHE Association, the Children's Rights Alliance for England (CRAE) and Rights of the Child UK (ROCK).

Our primary interests in education relate to issues related to state-funded religious schools ('faith' schools), curriculum issues (in particular RE, PSHE/SRE, citizenship and science), and collective worship/school assemblies.

## Summary

We have suggested adding more detail in the following areas:

- To the list of articles of the UNCRC set out at the start of the document
- On the meaning of 'education'
- On the meaning of a 'broad curriculum', specifically identifying which subjects this might include (our interests lying in science, RE, PSHE/SRE and citizenship)
- On ensuring pupils' health and wellbeing
- On guaranteeing pupils' Gillick competence rights
- On preventing discrimination on the basis of any protected characteristics

Some of the current shortcomings we discuss can be rectified through changes to assessment and accountability systems, while others would simply require a change in legislation.

## 1. Do you agree with these proposals?

Yes – we welcome all of these proposals; although we think that there should be some additions (as per our response to question 3).

## **2. Are there any you do not feel are appropriate?**

No.

## **3. Are there any which should be added?**

We think that the following should be added:

First of all, we are concerned that some articles of the UN Convention that seem directly relevant to the education system are omitted from the list on pages 3-4. These include articles 13, 15, and 17. Others lose some important detail in their summaries. In our comments below we have referred to articles 2, 12, 13, 14, 17, 28, and 29.

### **What falls under 'education'?**

There should be a definition setting out the breadth of the education system – every child's education is covered, whether that is in state schools, private schools or being home schooled; whether in mainstream education or not; and whether in a school with a religious character or not.

### **'Broad curriculum'**

What is meant by a 'broad curriculum' should be expanded upon. This includes literacy, numeracy, science and technology, a broad grounding in the arts and humanities, and strong PSHE and citizenship education.

With respect to literacy, science and technology, article 28 says that 'States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods.' This is particularly important when it comes to dealing with schools teaching pseudoscientific ideas as scientifically valid and thus denying scientific knowledge.

With respect to citizenship education and religious education, article 13 says that children have 'the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers' and article 29 adds that children have the right to be prepared for 'responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups'. This seems to us to guarantee a broad religious education which includes education about other religious and non-religious worldviews. The need to include non-religious worldviews was a point specifically picked up on by the UN Special Rapporteur on Freedom of Religion or Belief during her last (2008) report on the UK.<sup>1</sup>

With respect to personal, social, health and economic (PSHE) education, there are references throughout the Convention to the need to ensure children's health and well-being. All the best evidence shows that in practice this means providing a full and comprehensive OSHE, including sex and relationships education (SRE), as the evidence shows that this is what leads to the best outcomes. The evidence shows that young people who have had good SRE are likely to have sex for the first time later than others, and when they do so it is more likely to be consensual and safe and

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<sup>1</sup> <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/105/17/PDF/G0810517.pdf?OpenElement> – paragraph 69

so less likely to lead to unwanted outcomes such as STIs, unwanted/teenage pregnancies and abortion.<sup>2</sup> The public health and wellbeing imperative is extremely strong. The last report by the UN Committee on the Rights of the Child into the UK recommended that ‘the State party intensify its efforts in order to provide adolescents with appropriate reproductive health services, including reproductive health education, in school.’<sup>3</sup> And in 2009 the Joint Committee on Human Rights (JCHR) regarded proposals for mandatory SRE as a ‘significant human rights enhancing measure’.<sup>4</sup>

## **Health and wellbeing**

Continuing on the theme of health and wellbeing, there should be an explicit reference in the document to ensuring children’s health and wellbeing. This is not just relevant with respect to PSHE and health services made available by and within each school, but also when it comes to children’s spiritual, moral, social and cultural development (SMSC), and so other subjects have relevance as do schools’ environments more generally. Article 17 of the UNCRC says, ‘States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.’

We would recommend adding this under ‘The education system should ensure that...’ or ‘Schools are at the heart of the education system and so...’

## **Gillick competence**

We welcome the statement that schools ‘should provide children and young people with the opportunity to have their voice heard, giving due weight and respect to their views in making decisions relating to their education’. But we do not think this is strong enough to reflect the legal reality. Case law around the European Convention on Human Rights (‘Gillick competence’) has established that once a child obtains sufficient understanding and intelligence to be mature enough to make up their own mind on the matter, a child’s right to make their own decisions overrides their parents’ rights over them. With respect to education-related settings, this includes a child’s right to determine their own religion or belief, a child’s right to decide whether or not to opt out of religious education, collective worship and sex education, and a child’s right to access sexual health services.

We do not believe that UK law, as currently drafted, enables children and young people to fully realise their Gillick competent rights. For example, with respect to opt-out rights, for RE and worship the rights transfer from parent to child when the child enters year twelve; for sex education, the right does not transfer during formal education at all. The age at which a child will reach sufficient maturity to make their own decisions will vary from child to child; however, it is certain that almost all have done so long before the age of 16. Therefore, the age of opt out needs to be lowered – if there is to be a firm age at all, which the BHA does not believe there should be. This argument has been repeatedly endorsed by the Joint Committee on Human Rights (JCHR), for example in reports in 2006,<sup>5</sup> 2008<sup>6</sup> and 2010.<sup>7</sup>

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<sup>2</sup> [http://www.ncb.org.uk/media/494585/sef\\_doessrework\\_2010.pdf](http://www.ncb.org.uk/media/494585/sef_doessrework_2010.pdf). See also <http://www.nice.org.uk/nicemedia/live/11673/49240/49240.pdf> and <http://unesdoc.unesco.org/images/0018/001832/183281e.pdf>. Surveys also consistently show that SRE is what parents want: <https://humanism.org.uk/2013/05/24/bha-welcomes-new-findings-in-support-of-compulsory-sex-and-relationships-education/>

<sup>3</sup> <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

<sup>4</sup> <http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/57/57.pdf>

<sup>5</sup> paragraphs 2.1-2.6: <http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/241/241.pdf>

We are now straying beyond the scope of this consultation, but for the reasons given above, we believe it is important to recognise children's rights and set out that once a child obtains sufficient understanding and intelligence to be mature enough to make up their own mind on the matter, children have the right to make their own decisions over matters related to their education, health and wellbeing.

Indeed, 12 of the UNCRC says 'States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.' Article 14 adds 'States Parties shall respect the right of the child to freedom of thought, conscience and religion. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.' This appears to reflect Gillick competence.

### **Discrimination**

Article 2 of the UNCRC says that 'States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.'

It seems to us that the fact that the admissions policies of 'faith schools' can discriminate on the basis of parental belief and religious practice severely limits the rights of young people to be autonomous and hold different beliefs to their parents. At any rate, explicit reference to the need to end discrimination on the basis of the various protected characteristics should be added to the document.

### **4. How should progress towards meeting these be measured?**

This obviously varies depending upon the particular proposal being considered. A particular concern of ours is segregation between schools, whether religious, ethnic, or socio-economic, and therefore good data needs to be available on the make-up of schools and their local areas. Unfortunately the Government stopped publishing local area data in 2010 and so this is becoming more difficult.

Beyond that, accountability and assessment are the two primary levers used in educational settings to ensure progress is being made. With respect to assessment, some of the subjects that we mentioned are currently assessed, but others (such as PSHE and, for most pupils, citizenship) are not. Making assessment commonplace will enable pupil progress in these areas to be measured effectively.

### **5. How could these proposals be implemented in different educational settings?**

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<sup>6</sup> paragraphs 1.40-1.45: <http://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/107/107.pdf>

<sup>7</sup> paragraphs 1.30-1.40: <http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/57/57.pdf>

With respect to PSHE and RE, the fact that the subjects are not on the national curriculum means that the quality varies far too widely, and is extremely patchy. Schools can and sometimes do teach abstinence-only SRE, for example, when the evidence shows that what leads to the best outcomes is full and comprehensive SRE. Having a nationally guaranteed statutory entitlement to a minimum curriculum in these areas would be a welcome start to ensuring consistent high quality.

With regard to health and wellbeing, young people should be guaranteed access to certain services, including sexual health services, assuming they are of sufficient maturity.

With respect to Gillick competence, a simple change in the legislation is required to ensure that children's rights are recognised. Labour intended to change the age at which sex education opt out rights transfer from adult to child to the age of 15 as part of the Children, Schools and Families Act 2010, but failed to get the plans passed before the 2010 general election. This was a good start but needed to go further, both in terms of having an age limit that is more flexible to the competence of the individual, and in terms of applying to other areas of school life.

## **6. How should the accountability system incentivise the achievement of these outcomes?**

Ofsted has an important role in complementing assessment structures. The recent renewed focus on the breadth and balance of the curriculum is welcome. But there is not enough focus more generally on ensuring children's rights and competence are respected, or that their health and wellbeing is guaranteed.

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