

Parenting Across Scotland Conference (Dundee, 26th April)

Maire McCormack

Children and Young People's Commissioner Scotland office

Thank you very much indeed for inviting me to your Conference.

The focus is on 'supporting families' in the context of austerity and welfare reform. It could not be more timely. I have just read the '*Forecasting Child Poverty in Scotland Report* undertaken for Scottish Government¹ and published at the start of this month. This produced forecasts for the four poverty measures in the Child Poverty (Scotland) Act, for fifteen years starting in 2016/17. The headline results make uncomfortable reading: By 2020-2021 After Housing Costs child poverty will be at 34.5% That is a rise of 9% in only five years. They note that '*a rise of this magnitude in such a short space of time would be without precedent since 1994/5, the year for which data from the Family Resources Survey are available.*' Absolute child poverty also rises sharply in the early years of the forecast

We are without doubt facing difficult times and it is clear that many families are struggling to make ends meet, to access adequate housing, good health care and food to eat. This is having a profound impact on children and young people and their rights & the predications are that this is going to get much worse. I have seen first hand how some families are suffering - my discussions with children, young people and their parents and carers have brought this home to me. I have also seem

¹ Howard Reed, Landman Economics and Graham Stark

n some remarkable projects – the support Aberlour provides in Girvan to parents with learning disabilities being one.

I know that the other speakers will be exploring these points in more detail and I feel privileged to sit alongside you as you all have done so much to raise awareness of children living in poverty. I look forward to hearing from Brid about UK wide research project and the links between deprivation and child poverty. **Anne**, - the Deep End Doctors do amazing work in often challenging circumstances. We have much to learn from the universal nature of your work. **Morag** – your powerful evidence and work during the passage of the Child Poverty (Scotland) Act helped to ensure significant amendments at Stage 2, not least around interim targets and income maximisation. I am particularly interested in your work showing the importance of poverty on parental - and particularly maternal - outcomes and their association with their children's outcomes. I know you feel strongly that we cannot mitigate, alleviate or eradicate child poverty by focusing only on children and that this must be part of the measurement framework for child poverty. The GUS data also highlights that maternal mental health is strongly associated with income poverty and especially with material deprivation. I look forward to hearing about your current research. **Alison** – you have been relentless in highlighting the devastating impact that unaffordable housing is having on families and individuals living in Scotland, pushing more into poverty and damaging their wellbeing and life chances – especially of children and young people. Youi are truly children's rights defenders – all of you.

I hope that my contribution can help you to think about how you as professionals can use the CRC to advocate for improvements to law, policy and practice.

So what I'll do - I'll put the Convention on the Rights of the Child in context. I'll talk a bit about my job and office. I'll then look at the CRC in a little detail and on those articles which relate to families and how through them we can further the rights of children and young people's rights. I have met some extraordinary children and young people and families in my short time as Commissioner (I have been in post for almost a year now) - so many varied experiences, so many different parents and carers, but all with a common desire - to secure the very best for their children and for them to grow up in 'an atmosphere of happiness, love and understanding. We use this phrase a lot – for good reason. It comes straight from the text of the United Nations Convention on the Rights of the Child (the CRC).

The UN Convention on the Rights of the Child

Let's start with the UN Convention on the Rights of the Child - I'll call it the CRC. You are no doubt aware, there is a range of international instruments setting out the human rights of children, but the CRC is the first legally binding international instrument to incorporate their full range of civil, cultural, economic, political, and social rights, as well as aspects of humanitarian law. The preamble starts with the premise that all children should grow up in an atmosphere of happiness, love & understanding and goes on to proclaim that

"The best interests of children should be a primary consideration in all matters that affect them" and that includes decisions taken by legislative bodies.

The CRC builds on the Charter of the United Nations (1945) which recognised that the inherent dignity and the equal and inalienable rights

of all members of the human family are the foundation of freedom, justice, peace and social progress. It breathes life into the Universal Declaration of Human Rights of 1948, which proclaimed that childhood is entitled to special care and assistance. It is also the most rapidly and widely ratified international human rights treaty in history. It changed the way children are viewed and treated in international legal terms. It proclaims children's status as human beings with a distinct set of rights, not just as passive objects of care and charity. The rights contained in the 54 articles of the Convention are universal, interdependent and interrelated. They cover all aspects of a child's life and explain how those in power must work together to make sure all children and young people can enjoy all their rights.

The rights are often grouped into four categories: Survival, Development, Protection and Participation, along with a set of Guiding Principles and other provisions – articles 43 to 54 – explaining how governments and international organisations will work to implement the CRC. We can best understand these rights as a set of promises, made by our Government, on our behalf, that we should do certain things to make life better for children and young people. Those promises are made internationally, but it was recognised that there was a need for domestic actors to ensure those promises were given life and meaning at a national level – Children's Commissioners - this is where I come in.

The role of the Commissioner

At its heart, the Commissioner's job is to ensure those promises are kept: by reminding people of what they are; by exploring what they mean; by monitoring how they are translated into practice; and by holding people to account when implementation falls short. My role in

summary is to promote and safeguard the rights of children and young people and to remind those in power of the promises made. (I am reminded at this point that when I went round the country asking young people to help me draft my revised strategic plan, I was told in no uncertain terms that I must be brave and fierce. I intend to be just that.)

Rights are interconnected

We know that the CRC rights are all interconnected. This means that if we want to understand what is in the child's best interests, we must look to the other Convention rights. As we will hear from the other speakers, there are interconnections in real life between rights to health and poverty, education and recreation, safety and development.

We sometimes see children's rights presented as if they are in opposition to the rights of parents, and particularly to the right to family life as set out in the European Convention on Human Rights, but when parents and family members call our office to seek advice, for example in relation to education, additional support needs, a failure to provide CAMHs support or the withdrawal of free music tuition for their children, they often do so because they regard themselves as defenders of their children's human rights – and they are right to do so. They may not use those terms, but this is exactly what they are doing.

The CRC recognises the important and essential role the family can play in protecting children's rights. It understands that all types of families can create an environment in which respect for children's rights thrives – '*an atmosphere of happiness, love and understanding*' where children's best interests are promoted. Rather than being in conflict with parents or carers' rights, the CRC is both supportive and complementary to them. It

is pro family. Unfortunately many people fail to grasp this and suggest that the Convention is anti-family. You only have to look at the articles to see that it is not - **23 of its 42 substantive articles refer to the family.** Three articles have particular significance 5, 18 and 27. (ref to the little red book on the tables – an advocacy tool)

Articles in the CRC of particular relevance to families

I'd like to look at these three articles to illustrate my point. In the CRC preamble it states that

*' the family, as the fundamental group in society and the natural environment for the growth and wellbeing of all its members and particularly children, **should be afforded the necessary protection and assistance** so that it can fully assume its responsibilities within the community*

Article 5 is clear that the Government should be supporting parents and respect their rights and responsibilities to guide and advise their child, so that as they grow, they are able to apply their rights properly and effectively. It states....

*State Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community.... Or other persons legally responsible for the child, to provide in a manner consistent with **the evolving capacities of the child**, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention*

Let's consider for a moment, the reference to the **evolving capacities of the child** a key concept of the CRC. This means that children will

require different degrees of protection, provision, prevention and participation during different life stages. The idea of ‘*evolving capacities*’ acknowledges that childhood “is not a single, fixed state and that children need to gradually assume more and more responsibility for decisions about their lives. If they are given opportunities to develop in a supportive environment, they in turn will be ready for ‘for responsible life in a free society’

Article 5 qualifies the words ‘guidance’ and ‘direction’ with ‘appropriate’ to note that adults do not have unlimited discretion when they give direction to a child. As children grow older and more mature, they must take on more responsibility for their own lives. It is **how** they exercise their rights that is subject to guidance, rather than the rights themselves. As article 12 states, the child’s right to participate is essential to the promotion of a child’s evolving capacities. Parental authority is best exercised through appropriate guidance if parents truly have their child’s best interests in mind. The State has a duty to nurture this and support parents to do this.

Article 18 gives parents the primary responsibility for the upbringing and development of their child and to consider their best interests at all times. It also makes clear that governments must recognise parental responsibilities

States Parties shall render appropriate assistance to parents and legal guardians in performance of their child rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children

Article 27 has particular significance as it affirms the important role of the family, noting that parents have the primary responsibilities within their abilities and financial capacities to ensure that the child has the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

1. States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

In order for families to thrive they must have their basic needs met. Parenting or family support are not enough. Financial support, adequate housing & health care is essential. The CRC is clear that the family is the most appropriate place for children, that parents hold rights on behalf of their children and that the state has the duty to support parents in delivering those rights.

In practice this means that families must have their needs met in order to bring up their children – the role of adequate financing, social security benefits, housing and healthcare using the CRC as a framework to ensure that all families have the best start in life. For example, across

Greater Glasgow and Clyde, the Healthier, Wealthier Children initiative has turned things around for some low income families. It works because key frontline staff in mainstream statutory services - a nurse or midwife can help pregnant women by referring them to high quality, local money advice services who can check their eligibility for support and help them to apply for benefits. It has made a huge difference to low income families – their weekly food shop, energy bills and other costs. The right referral networks are and especially at transition points when additional costs are incurred, such as the birth of a child, the start of secondary school. A further example of the state stepping in to support parents is the amendment to the Child Poverty (Scotland) Bill on income maximisation. We framed our response in terms of the CRC and support for the family.

Let me turn now to one key article – article 26 of the CRC. This says that children and young people should get financial support from the State when their parents or guardians are unable to provide them with a good enough standard of living by themselves.

1. States Parties shall recognise for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realisation of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

The UK Government's changes to the social security system has caused major hardship for families across the UK and will impact upon child poverty (including in Scotland) for a considerable time. We are all familiar with the freeze in the nominal level of most social security benefits and tax credits received by working families for four years which started in 2016 – 17 and limiting tax credits and universal credit to a family's first two children.

The right to social security is key to securing other children's rights e.g.

- article 27, the **right to an adequate standard of living**
- article 24, the **right to health**
- articles 28 & 29 the **right to education**

It is a fundamental right and the gatekeeper to securing a series of other rights, including the right to an adequate standard of living. Indeed, where there is poverty and income crisis (often due to failures in the social security system such as delays in payments or the imposition of sanctions), families are increasingly having to access food banks. Further rights such as the right to health and the right to be free from inhuman and degrading treatment are thus engaged.

(The Scottish Government's increase in Carers' Allowance and the introduction of the Best Start Grant on their own, will not have a massive impact on the poverty rates, but they are important.)

General Comments

I want to now turn to some of the 'General Comments' issued by the Committee on the Rights of the Child. These provide an authoritative interpretation of the CRC rights. They help to increase understanding of

the articles and help Governments to fulfil their obligations. Many are relevant to today's discussion, but I want to touch on just one - General Comment No 7 – Implementing child rights in early childhood.

This highlights the importance of respecting parental roles. It reaffirms that reaffirms that parents or legal guardians have the primary responsibility for promoting children's development and well-being, with the child's best interests as their basic concern, but points to situations most likely to impact negatively on young children such as neglect and deprivation of adequate parenting; parenting under acute material or psychological stress or impaired mental health; parenting in isolation; inconsistent parenting and situations where children experience disrupted relationships or where they are provided with low-quality institutional care. The Committee (through the General Comment) calls on Governments to take all necessary steps to ensure that parents are able to take primary responsibility for their children and to support parents in fulfilling their responsibilities. (this last sentence is key)

The Committee recognises that a range of family patterns may be consistent with promoting children's well-being and can make a distinctive contribution to the fulfilment of children's rights. It calls on States to render appropriate assistance to parents, legal guardians and extended families in the performance of their child-rearing responsibilities including assisting parents in providing living conditions necessary for the child's development and ensuring that children receive necessary protection and care. It notes that realising children's rights is dependent on the well-being and resources available to those with responsibility for their care.

It calls for an integrated approach to include interventions that impact indirectly on parents' ability to promote the best interests of children (e.g. taxation and benefits, adequate housing, working hours) and those with more immediate consequences (e.g. perinatal health services for mother and baby, parent education) Governments need to be mindful of these comments when developing policy to ensure a rights based approach is taken. The point is also made that many parents are economically active, often in poorly paid occupations which they combine with their parental responsibilities. States **must** take measures to ensure that children of working parents have the right to benefit from childcare services, maternity protection and facilities for which they are eligible.

So how Governments are held to account by the United Nations?

Every five years, Governments are held to account by the UN Committee on the Rights of the Child. In 2008 it noted that

...families lack appropriate assistance in the performance of their child-rearing responsibilities, and notably those families in a crisis situation due to poverty.

and made calls to raise awareness of the Convention, supporting positive parenting, along with particular calls around children deprived of parental care and those living in poverty. In 2016, parenting again was a priority. The Committee emphasised that the government should:

...intensify its efforts to render appropriate assistance to parents and legal guardians, including informal kinship carers, in the performance of their childrearing responsibilities.²

² CRC/C/GBR/CO/5: Para 53(a).

http://www.togetherscotland.org.uk/pdfs/Concluding_Observations_2016_FINAL.pdf [Date accessed: 23.4.18]

The four UK Children’s Commissioners also get a chance to have a say and we raised concerns about the impact of austerity and changes to the welfare system and the subsequent failure to protect vulnerable groups of children and young people from child poverty preventing the realisation of other Convention rights, particularly

- article 26, the right to benefit from social security,
- and article 27, the right of every child to a standard of living

We noted that the Government had not carried out a Child Rights Impact Assessment, that the best interests of the child were not central to the development of these policies and that children’s views were not sought. We pointed out that reductions to household income for poorer children as a result of tax, transfer and social security benefit changes had led to food and fuel poverty, and the sharply increased use of crisis food banks provision by families. In short, the CRC had been given scant regard. The Committee agreed. In their Concluding Observations (ie recommendations) ,it raised serious concerns at the effects that fiscal policies and allocation of resources had had in contributing to inequality in children’s enjoyment of their rights disproportionately affecting children in disadvantaged situations and called for.....

“ a comprehensive assessment of the cumulative impact of the full range of social security and tax credit reforms introduced between 2010 – 2016 on children, including children with disabilities and children belonging to ethnic minority groups....where necessary revise these in order to respect the right of the child to have his or her best interests taken as a primary consideration”

My office also raised concerns with the Committee on Economic, Social and Cultural Rights (another international treaty) which monitors implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR). In their Concluding Observations, that Committee drew attention to the “*disproportionate impact that austerity measures introduced in 2010 are having on the enjoyment of economic, social and cultural rights by disadvantaged and marginalised individuals and groups*”.

It also raised concern that the UK had not undertaken an assessment of the cumulative impact of such measures on the realisation of economic, social and cultural by disadvantaged and marginalised individuals and groups and called for this to happen as a matter of urgency, highlighting children in particular. As you can see, there is a pattern.

In the short time I have left I'll focus on three distinctive areas which I have engaged with and which speak directly to the Conference theme.

1. *Judicial Review – No Recourse to Public Funds rights: how failing to support the parent can impact on a child's rights* (

I have recently been involved in the case of a mother and child. The mother was married to an EEA national and resided in the UK under a spousal visa. Following separation from her spouse, her immigration status meant she was subject to 'No Recourse to Public Funds.' This prohibited her from accessing public funds including child benefit, housing benefit, universal credit and disability benefits AND the Scottish Welfare Fund. (The NHS & education do not count as public funds, nor does support under s22 or s25 of the Children (Scotland) Act 1995)

As a result of the NRPF condition, mother and child were made destitute, facing street homelessness. They were also denied homelessness assistance due to the mother's NRPF status. They then requested assistance under s22 of the Children (Scotland) Act 1995 – which places the LA under a duty to provide assistance to a child in their area who is in need and whilst they were provided with temporary accommodation on a week by week basis it was highly unsuitable.

My view is that the LA is required to assess the needs of the child under s22 of the 1995 Act and that in meeting those needs, it must have regard to the nature of those needs, which include the child's need to be accommodated with his mother; his wellbeing; his right not to be subjected to inhuman or degrading treatment in terms of article 3 of the ECHR, as would be the case were he and his mother left to sleep on the streets; his right to respect for his private and family life in terms of article 8 of the European Convention on Human Rights and crucially his rights as a child under the CRC. I am keen to highlight local authority practice and interpretation of the NRPF condition and its impact on children. Children of refugees, asylum seekers and those with insecure immigration status are amongst the most vulnerable in society, particularly where financial support is withheld from their parents by the State. For me, this is a good example of how failing to provide support to parents can impact on the child. It is important that Local Authorities properly and fully assess the child's rights and wellbeing when considering the extent of their legal duties to provide support.

2. Food poverty – supporting families can in turn further children's rights

You may recall a powerful documentary called 'children on the breadline' shown on February 13th earlier this year. It competed with another item on the BBC news - how Prince William was going to juggle getting to the FA Cup final, whilst being at his brother's wedding. That juxtaposition made these families lives stand out more and it angered me. What struck me about the programme was the solutions the young people were putting forward in order to alleviate their family situation. It was very much a case of article 12 CRC in action - listening to the young people's views about decision affecting them. I am also reminded of the initiative in Midlothian around the Pupil Equity Fund. The University of Edinburgh recently produced Top 10 tips from the children, teachers and parents/ carers of Midlothian as to how the PEF fund could be used to reduce or remove stigma, exclusion or disadvantage for children from low income households.

My office, Nourish Scotland and Home-Start UK also conducted research with some children and asked them what they thought about food insecurity, not just around a shortage of food, but wider experiences including social, financial, geographical and nutritional considerations. They helped us to identify solutions to food insecurity, such as making food more affordable and supporting charitable solutions whilst also recognising the key role played by the state. They were perceptive to how financial restraints could be a barrier to children being able to eat the food they need, and about how that might make their parents feel. They were well aware that money could make a difference to the amount and type of food children ate. What struck me was how they internalised responsibility for managing food resources to reduce pressure on their parents or carers. Throughout the sessions, these young people showed a complex understanding of food needs, barriers

to accessing food and solutions to food insecurity. Experiencing food insecurity as a child is a fundamental violation of their rights: it impacts negatively on physical health, mental health and developmental outcomes.

3. Parents of children with learning disabilities – parents/carers acting as human rights defenders

I was recently at a Conference organised by the Scottish Transition Forum. These parents have been fearless in their support of their children's rights across a range of areas such as short breaks, wheelchair provision CAMHS provision, advocacy support. Parents acting as human rights defenders of their children.

I'll conclude with a reminder of the duties in the Children and Young People (Scotland) Act 2014.

Part 1 of this Act places a duty on Ministers to consider steps they could take to give further effect to the CRC in Scotland and to undertake a CRWIA to consider how children's rights can be furthered through the development of legislation and policy (and mitigate any negative impacts). CRWIAs provide an opportunity to ensure that parents receive the support they need to fulfil and promote their children's human rights.

Under Part 1, S 2, local authorities and other bodies also have a duty to report every three years on the steps taken to further the UNCRC. This is an ideal opportunity to explore how children's right can be embedded in service delivery e.g. education, health, transport. Working with parents

is essential to this, to ensure that local services provide that meaningful support.

You support the families, you further children's rights. Parents hold rights on behalf of their children and the state has the duty to support parents in delivering those rights