

SUBMISSION FROM SOCIAL WORK SCOTLAND TO SCOTTISH PUBLIC SERVICES OMBUDSMAN CHILD FRIENDLY COMPLAINTS HANDLING PROCESS CONSULTATION

1st March 2024

Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services. Having previously provided evidence in relation to UNCRC incorporation into Scots Law ¹ and contributed to subsequent discussions on the practicalities relating to incorporation, we welcome this opportunity to respond to the SPSO proposals for child friendly complaints as an example of application of the UNCRC principles in practice.

The reflections within this response are drawn from consultation and discussion with our membership which covers senior leaders, including Chief Social Work Officers, and service and team manager involved in delivery of services to children and adults from across the country in both local authorities and third sector. This has taken place over the extended period of time within which moves to incorporate UNCRC into Scots law were underway, culminating in the bill becoming law in January 2024. Alongside this SWS have engaged with SPSO around their child friendly complaints process at various stages of development.

Our work in Social Work Scotland to support policy and legislative developments is underpinned by an active commitment to improving the rights of children and hearing their voice as a central aspect of this. As the leadership organisation for social work in Scotland, improving understanding of the needs and rights of children and how best those needs and rights are met is fundamental to the development of our profession as we seek to support children in their growth and development often in times of particular trauma and difficulty.

Social Work Scotland as an organisation is wholly supportive of the incorporation of UNCRC rights within Scots law. This human rights position aligns with the foundation of

¹ [Response to UNCRC - Social Work Scotland](#)

social work and the principles², standards, and codes³ to which our profession adheres. These principles are also at the core of the Promise⁴, and social work is therefore able to offer a particular perspective and context to how those rights are made real to children and young people and embedded in practice, structure and policy.

With this context, we offer our response to the SPSO consultation on the principles for child friendly complaints. As an organisation Social Work Scotland is supportive of the efforts of SPSO to develop and implement a child friendly complaints process, to which public bodies must adhere. We are also cognisant of the importance to children and young people and those who seek to support them, of such a process being manageable and able to be meet its aim. A resource intensive process at a time where workforce pressures are extensive, and the expectations are not able to be met will lead to greater dissatisfaction and a less child friendly process

Consultation Response:

Principle 1 – For Everyone Under 18

- For the purpose of complaints handling a child is defined as ‘anyone under the age of 18’
- All concerns affecting any child will be handled in a way that meets all of their rights under the UNCRC
- This includes concern raised directly by a child, as well as concerns raised by an adult, either on a child’s behalf, or about matters that affect a child.

Article 1 (definition of the child). Everyone under the age of 18 has all the rights in the convention.

Q1 *How well do you think we have explained this principle?*

The principle is:

Very clear Mostly clear **Partly clear** Not at all clear

Q2 *Is there anything you think would help explain the principle better?*

The definition of a child as under 18 is accepted and fully aligns to UNCRC.

The breadth of the principle and its all-encompassing nature however is a concern – *all* concerns affecting *any* child will be handled in a way that meets *all* of their rights.

² [Code of Ethics | BASW](#)

³ [SSSC Codes of Practice - Scottish Social Services Council](#)

⁴ <https://thepromise.scot/>

Whilst it is appropriate that the principles cover matters that directly impact on a child eg, housing for a family extending this to ‘all concerns, all rights and all matters’ is both unrealistic and unmanageable.

We would also note that a principle underpinning a process cannot seek to fulfil all a child’s rights and question if that is an appropriate expectation. Under UNCRC a child has many rights for example, the right to be protected for abduction. How will that principle be outworked in an investigation into a complaint about access to specific support in education?

Appreciating that the thinking behind this may be that any complaint investigation may result in knowledge of wider rights issues, we suggest a rephrasing of this principle to better cover the intent and what is realistic.

Principle 2- Focused on Children’s Best Interests

The best interest of any children affected will be at the heart of the complaints process. This means all decision made or actions taken will treat the best interests of any children affected as a top priority.

Article 3 (best interest of the child). The best interest of the child must be a top priority in all decisions and actions that affect them

Article 3 (best interests of the child) The best interests of the child must be a top priority in all decisions and actions that affect children.

Q3. How well do you think we have explained this principle?

Very Clear

Partly Clear

Not at all clear

Q 4. Is there anything you think would help explain this principle better?

This principle is clear and will be well understood by people

Principle 3 - Trusting and Inclusive

- Trust will be placed in children to make decisions they can manage, recognising their increasing ability to make their own choices.
- Concerns will be handled in a way that respects the rights of their parent/s, guardian/s or other responsible adult/s to guide and direct them.
- If a child does not wish their parent/s, guardian/s or other responsible adult/s to be made aware of their concerns, their involvement will be decided by carefully weighing the child’s views, their best interests, and the rights of everyone involved.

Article 5 (parental guidance and a child’s evolving capacities) Governments must

respect the rights and responsibilities of parents and carers to provide guidance and direction to their child as they grow up, so that they fully enjoy their rights. This must be done in a way that recognises the child’s increasing capacity to make their own choices.

Q 5. How well do you think we have explained this principle?

Very Clear Mostly Clear **Partly Clear** Not at all Clear
Question Title

Q6. Is there anything you think would help explain this principle better?

The UNCRC explains the rights and responsibilities of parents and guardian in relation to children well. The principle somewhat complicates the situation by interpreting this as firstly being the child’s right to make decision –and thereafter respecting the rights of the parent or guardian.

We suggest that the aspect of the principle outlining the right of the child to make their own decision is included in guidance rather than as part of the principle

Principle 4 – Centred on Children’s Voices

- Children will be given the chance to express their views, feelings and wishes in all matters that affect them.
- Children’s voices and views will always be listened to, taken seriously, and have real impact.
- Children will be asked how they want to communicate and things will be done their way whenever possible.
- Informed consent will be sought from the child affected where a concern has been raised by parent/s, guardian/s or other responsible adult/s on behalf of their child.

Article 12 (respect for the views of the child) Every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously. This right applies at all times, for example during immigration proceedings, housing decisions or the child’s day-to-day home life.

Q7. How well do you think we have explained this principle?

Very Clear Mostly Clear **Partly Clear** Not at all Clear

Q8. Is there anything you think would help explain this principle better?

The voice of the child is critical to UNCRC practice. And the principle of children being given the opportunity to express their view, feelings and wishes in matters affecting them is appropriate. They should also always be listened to and taken seriously and given choice in how they are communicated with.

Where the principle is less clear is in relation to children’s voces having ‘real impact’. That is both difficult to define and may not be realistic in all circumstances. We would suggest

finishing this part of the principle after ‘taken seriously’ We would also suggest removing the part relating to informed consent given the complexities around consent and parental rights.

Principle 5 – Kind and Supportive

- Children will be treated with kindness and understanding at all times, and they will never be treated differently for raising concerns.
- Every effort will be made to ensure children feel comfortable to freely and openly express their thoughts and opinions.
- Wherever possible, children will be supported to complain by people they know and trust.

Article 13 (freedom of expression) Every child must be free to express their thoughts and opinions and to access all kinds of information, as long as it is within the law.

Q9. How well do you think we have explained this principle?

Very Clear

Mostly Clear

Partly Clear

Not at all
clear

Q10. Is there anything you think would help explain this principle better?

The principle is clear but the second and third bullet points could be considered to be saying similar things and could be combined

‘Every effort will be made to ensure children are supported to freely and openly express their thoughts and opinions, including having someone they trust alongside them should they choose’

Principle 6 – Confidential

- Nothing a child shares will be passed on without their permission, unless doing so is required to raise a child protection concern.
- Before speaking with any child about a complaint, explanations will be given about when things may need to be passed on without their permission. This will include explaining what happens if they say something that suggests they are at risk. If a child’s concerns have to be shared, or their parent/s, guardian/s or other responsible adult/s involved, they will be told this, and why this needs to happen.
- If a child’s concerns are shared this will be done as far as possible without identifying them.
- Where an investigation might mean other people could identify the child, this will be discussed with them for their views on whether they wish to continue.

Article 16 (right to privacy) Every child has the right to privacy. The law should protect the child’s private, family and home life, including protecting children from unlawful attacks that harm their reputation.

Q 11. How well do you think we have explained this principle?

Very Clear

Mostly clear

Partly clear

Not at all clear

Q12. Is there anything you think would help explain this principle better?

This principle comes across as more of guidance than a principle and is thus fairly complicated. It also fails to cover parental rights.

It could be better expressed as ' Children have a right to privacy and this should be respected where a child is considered to have capacity and makes a complaint and does not wish their parents to be advised. Clear communication should be given where concerns must be passed on including what this mean for the child, with refence to the GIRFEC information sharing protocol

Principle 7 – Educational about Rights

- Information will be provided to children and any parent/s, guardian/s or other responsible adult/s about their rights under the UNCRC and they will be helped to understand what this means for them.

Article 18 (parental responsibilities and state assistance) Both parents share responsibility for bringing up their child and should always consider what is best for the child. Governments must support parents by creating support services for children and giving parents the help they need to raise their children.

Article 42 (knowledge of rights) Governments must actively work to make sure children and adults know about the Convention.

Q13. How well do you think we have explained this principle?

Very Clear

Mosty Clear

Partly clear

Not at all clear

Q14. Is there anything you think would help explain this principle better?

While supportive of the principle, what this looks like in terms of complaints is unclear

For further information, please contact
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