

**Establishing a New Office of the Children's
Commissioner for England (OCCE)**

Summary of Consultation Responses

+ Government Response

Introduction

In 2010, the Secretary of State for Education invited John Dunford to undertake an independent review of the Children's Commissioner. On 6 December 2010, he published his report, which concluded that the role of the Children's Commissioner was necessary and important, and made 46 recommendations, including ones which require changes to legislation. The Government accepted all the recommendations, in principle, and committed to consulting on legislative proposals.

The consultation ran between 7 July and 29 September 2011, and a total of 90 responses were received.

43 responses were on behalf of organisations and 14 responses were from individual adults. One of the organisational responses was a coordinated response on behalf of 27 organisations, 7 of which also submitted individual responses: the data presented in this report has been adjusted to take account of this. The adjusted response numbers are: 63 organisations, and 77 respondents in total.

33 responses were from or on behalf of children and young people. Of these responses, 9 were from groups of children and/or young people who had been supported to submit a response by external organisations. The analysis takes account of the number of young people whose views fed into the group responses; however, information was incomplete in some instances. The total number of children and young people participating is, therefore, estimated at 153.

Responses to the consultation are separated into two parts in this document: a summary of the responses to the consultation document; and a summary of the responses to the children and young people's version of the consultation document. This separation is because the questions in the two versions were not the same nor possible to map precisely from one document to the other, although they covered the same topics.

The breakdown of respondents was:

Children and/or Young People's Organisation *	35%
Children and/or young people	30%
Other **	22%
Local Authority	5%
Children's Workforce	4%
Parent	4%

* Including the coordinated response with 27 signatory organisations.

** Those which fell into the 'other' category included various special interest organisations (e.g. for the disabled or young offenders) and several child law professionals.

Alongside the Department for Education (DfE) consultation, other activity has taken place. This has included a consultation with children and young people by the Office of the Children's Rights Director and sector stakeholder

discussions. The outcomes from this activity have been taken into account when formulating proposals for next steps; but this activity is not covered by the factual information in the main body of this report, which contains data on responses to the DfE consultation document only.

This document contains:

- 1) An overview of all responses;
- 2) A summary of the responses to individual questions in the consultation document;
- 3) A summary of the responses to individual questions in the children and young people's consultation document;
- 4) The Government response to the consultation;
- 5) A list of organisations that responded to the consultation.

Throughout the report, percentages are expressed as a measure of those answering each question, not as a measure of all respondents.

1. Overview

There was broad support for the legislative proposals outlined in the consultation document on *Establishing a new Office of the Children's Commissioner for England (OCCE)*. The headline yes/no response statistics do not always align with the comments that accompany them. In the main, negative responses did not represent a rejection of any given proposal, but reflected disagreement with a specific detail or a desire to go further.

Key themes were:

- Throughout responses, there was an overarching concern to ensure that children and young people are properly consulted and involved in the work of OCCE. This was particularly strong in the responses from children and young people themselves, who expressed a desire to be 'listened to' and participate, suggesting various ways of engaging them (with new media featuring prominently).
- Most respondents felt that Parliament should have a leading role in relation to the OCCE, although the limitations on imposing requirements on Parliament in legislation were acknowledged. Many respondents sought greater clarity, but there were different views about what this role should be. This reflected a general acknowledgement that OCCE needed to be accountable as a publicly funded office, but concern about how this could be achieved without compromising its independence from Government.
- There were mixed responses about inclusion of the remit of the Children's Rights Director (CRD) within the new OCCE. On balance, respondents agreed that the CRD remit for looked after children should continue to be provided for in legislation. However, respondents who felt that OCCE should have a duty to support this group of children regularly added that the Children's Commissioner should nonetheless support all children; and respondents who disagreed and felt OCCE should be for all children (or other categories of vulnerable children) acknowledged that children within the CRD remit often needed extra help.
- There was a variety of views on the proposed advisory board. Generally, respondents felt the proposals were too prescriptive and the arrangements for setting up the advisory board should be for the Children's Commissioner to determine. In particular, there was concern about a possible conflict of authority between the advisory board and the Children's Commissioner. It was also felt that the proposed membership of the advisory board was not adequately representative of the 'plurality' of children or the children's rights sector, and that it should not replace broad and effective consultation.
- There was general agreement with the powers and duties proposed, and comments focused on extending them. In particular, many respondents felt the Children's Commissioner should have a power to require the

Government or relevant statutory body to respond in writing to recommendations and reports by OCCE.

2. Summary of responses to: *Establishing a new Office of the Children's Commissioner for England (OCCE): Consultation on Legislative Proposals*

Q1 Do you agree with the proposals to ensure that the functions of the Children's Rights Director continue to be provided for in legislation'?

There were 72 responses to this question.

64 (89%) Yes 3 (4%) No 5 (7%) Don't know

Although the majority of respondents agreed with this proposal and felt that children covered by the Children's Rights Director (CRD) were particularly vulnerable, nearly all responses included caveats. Respondents favoured a balanced approach where the Children's Commissioner's remit would include all children and young people but, in carrying out his or her functions, the Children's Commissioner should focus on the most vulnerable, including those who currently fall under the CRD remit.

31 (43%) respondents felt that the Commissioner should also have particular regard to children 'in detention' (e.g. young offenders or asylum seekers). Other respondents suggested various other categories of children that were vulnerable and should be included (e.g. runaways or children in the health system) with the word 'broaden' used in several responses.

11 (15%) respondents felt that legislation should not prescribe a strong focus on the CRD remit to the detriment of the duty to all other children. However, many of these respondents also felt that a duty to have 'particular regard' would not necessarily have a negative impact, if managed correctly.

9 (13%) respondents were concerned that the merger of the two organisations would result in a "dilution" of a valued CRD function.

The response to this question should be considered alongside responses on a limited casework role (see question 4b); and responses from children and young people, who were more concerned that the Children's Commissioner should represent all children (see part 3, questions 1-3).

Selected respondent comments:

"It is felt to be essential that the rights of all children and young people are promoted and protected but especially those detailed in Annex 1 [children within the CRD remit] who are particularly vulnerable."

"We think it is proper that within such a broad remit the operational focus is on reaching the most vulnerable, including those children who are currently covered by the CRD's remit ... However, the legislation should avoid a rigid definition and should not limit the Commissioner's priorities in advance."

“Children who are currently under the remit of the CRD are a particularly vulnerable group and need the continuing protection provided for by the proposed legislation.”

“We are concerned that there is real risk that the performance of these functions for the children currently defined within the CRD remit may become ‘submarined’ in the wider work of a larger organisation”

“The function of the Children's Commissioner should be to promote and protect the rights of all children.”

Q2 Should the Children's Commissioner's title be amended to ‘The Children's and Young People's Commissioner’, so that it more clearly covers the full age range?

There were 67 responses to this question.

24 (36%) Yes 35 (52%) No 8 (12%) Don't know

38 (57%) respondents referred to the UNCRC, under which children are defined as those under-18 years of age. These respondents felt that the proposed legislative change to the Children's Commissioner's role, to make it a role based on the UNCRC, made it clear that the Children's Commissioner's remit covered all children up to age 18. Although they acknowledged that teenagers generally do not like to be referred to as children, these respondents felt the title should not include ‘young people’ as it should reflect the UNCRC definition and, therefore, the OCCE role.

10 (15%) respondents felt that the title should contain ‘young people’ as teenagers do not like being called children, and were therefore concerned about the extent to which teenagers would engage with the work of the Children's Commissioner.

10 (15%) respondents felt that it would be most appropriate to consult children and young people about the title (for responses from children and young people to this question: see part 3, question 4).

A number of responses proposed alternative titles, with children's rights organisations often suggesting ‘Children's Rights Commissioner’. A few respondents were concerned about the impact of changing the name on budgets and brand recognition, and making the title too long and unwieldy.

Selected respondent comments:

“Whilst we recognise that older children may find the term ‘child’ patronising, we feel that including the term ‘young person’ may cause confusion on the role and remit of the Commissioner – to promote and protect children's rights as set out in the CRC. This is especially likely given that there is no agreed definition of the term ‘young person’. We believe that the Commissioner's office could still effectively communicate with children and young people of all

ages, through a range of communication channels without needing to have the words 'young people' in its title."

"On balance, we believe that for the sake of simplicity and on the basis that the term 'children' is recognised in domestic and international law as meaning people under the age of 18, that it is unnecessary to include the words 'young people' in the title."

"This would be a beneficial amendment which, as the question suggests, would serve to emphasise that the role of the OCCE covers older children as well as younger children."

"We believe that part of the reason that young people's engagement and awareness of the Commissioner's office has been "disappointing" is a perception that it is not relevant for them."

Q3 Do you agree with the proposal to create the new OCCE as a corporation sole, supported by an advisory board?

There were 68 responses to this question.

24 (35%) Yes 31 (46%) No 13 (19%) Don't know

As outlined in the Overview at the start of this report, this was a question where the headline yes/no response statistics do not properly align with the comments that accompany them. Many negative responses did not represent a rejection of the overall proposal but reflected disagreement with details.

There was general agreement that corporation sole is the most appropriate model for OCCE, with several respondents noting that it was the standard model for similar organisations. A couple of respondents disagreed, as they felt the rationale for corporation sole had not been properly explained.

There was a variety of views on the value of having an advisory board. The negative answers generally reflect a concern that the proposals were too prescriptive.

35 (51%) respondents were concerned about a potential conflict of authority between the Children's Commissioner and the advisory board, particularly with a Chair or board members appointed by the Secretary of State. Some respondents suggested the Children's Commissioner should chair the advisory board.

26 (38%) respondents felt there should not be a statutory advisory board, but a duty to consult children and organisations in the children's rights sector instead. These responses did not discount the possible value of an advisory board, but felt that it should be up to the Children's Commissioner to decide whether s/he wants one and it should not be a requirement in legislation.

12 (18%) respondents felt the proposals for the advisory board needed further definition and clarification. A few respondents felt the role must be advisory only, without a governance role.

Selected respondent comments:

“We agree that corporation sole status is the correct legal model for the new OCCE and in keeping with the legal set up of similar positions.”

“The corporation sole model appears to be a more child friendly model, since the role is occupied by an individual who is visible and identifiable to children and who is seen as a 'champion' for children's rights.”

“Creating an advisory board to support the commissioner is a good idea but not in the form that is being currently proposed. There is a danger that the Children's Commissioner's independence and exercise of power would be diminished by the existence of the advisory board as envisaged.”

“It is imperative that the Commissioner's independence is maintained and the terms of reference for the advisory board need to make this explicit. The advisory board's power to scrutinise should not supersede the Commissioner's role and powers.”

“The existence of a statutory advisory board may distract from the importance of sustaining ongoing positive relationships with a wide range of individuals and organisations concerned with the promotion and protection of children's rights.”

Q4a Do you agree that the powers proposed for the new Children's Commissioner are the right ones?

There were 71 responses to this question.

30 (42%) Yes 36 (51%) No 5 (7%) Don't know

Negative responses argued for more powers rather than disagreed with the powers proposed. In particular, respondents felt the Children's Commissioner should have (variations on) a power to require, upon request, the Government or relevant statutory bodies to respond in writing to recommendations made by OCCE.

37 (52%) respondents felt there should be a duty on the Government to formally respond to any recommendations made by the Children's Commissioner following use of the new impact assessment power. Several respondents argued that impact assessments should be a power not a duty, to ensure they did not create resource issues for OCCE.

37 (52%) respondents felt there should be a power to monitor advocacy and complaints procedures in legislation. In some responses this was linked to the CRD remit and the need to specifically monitor the complaints procedures of those without parental support.

12 (17%) respondents felt that the power to research topics of relevance to children should be included in legislation.

Selected respondent comments:

“We strongly support the new power to undertake children’s rights impact assessments. However, for this to be effective, an equivalent duty must be placed on public authorities to respond to the Commissioner’s analysis and recommendations.”

“We believe that it is essential for the new Commissioner to have specific powers regarding the provision of child-friendly complaints procedures and independent advocacy for vulnerable children living away from home.”

“We think it would be good to specify separately in the new legislation that the Children’s Commissioner has the power to undertake research ... These activities are to some extent already encompassed by the powers set out in the consultation document but it would be better if they are explicitly formulated.”

“In addition, although we are aware the power exists, we would urge the law is clarified to ensure that organisations comply with requests for right of access.”

Q4b Do you agree that the Children’s Commissioner should be able to undertake a limited form of casework for children who fall under the CRD’s remit?

There were 72 responses to this question.

31 (43%) Yes 35 (49%) No 6 (8%) Don’t know

There were three broad response categories to this question: some respondents felt that casework should be for all children and universal; some felt casework should be extended to other specified groups of vulnerable children; and some felt that OCCE should be limited to a strategic focus only, due to resource constraints and the possibility that OCCE may focus too much time on individual cases. Several respondents were concerned that OCCE should not duplicate the work of child protection or other agencies. Generally, respondents wanted greater clarity about the casework process.

34 (47%) respondents felt that casework should be extended to other children. A number of these responses felt that it should be up to the Children’s Commissioner’s judgement to decide which cases to take on, in order to manage the workload and resources of an extended caseload.

32 (44%) respondents felt that there needed to be a duty on statutory bodies to respond in writing to the Children’s Commissioner’s recommendations arising out of casework. This was linked to question 4a on the powers of the Commissioner and responses suggesting (variations on) a duty on public bodies to respond to the recommendations of the Children’s Commissioner.

7 (7%) respondents felt the process needed defining and formalising to ensure clear parameters to casework.

The response to this question should be considered alongside responses on the functions of the CRD (see question 1); and responses from children and young people, who were more concerned that the Children's Commissioner should represent all children (see part 3, questions 1-3).

Selected respondent comments:

"It is important that the Commissioner is not consumed with individual cases as this may be at the expense of achieving maximum impact for children and young people ... The OCCE must be in a position to hold others to account as opposed to doing their work for them, thus ensuring that resources are managed effectively."

"We consider that it is necessary to retain the casework function of the CRD to avoid regression from current levels of protection for those children who fall within the CRD's remit."

"To make sure that the casework function of the role provides the greatest impact for children, we urge a power to require authorities to give a response to the Commissioner's recommendations arising from casework."

"The legislation should be left open to enable the CCE to determine what s/he considers an important issue for an individual child (not just children)."

"Casework linked to issues which have wider ramifications seems both appropriate and necessary."

Q5 Do you agree that the duties and requirements set out above are the right ones for the new Children's Commissioner?

There were 68 responses to this question.

33 (49%) Yes 28 (41%) No 7 (10%) Don't know

There was broad agreement with the proposed duties outlined in the consultation document on an annual report, raising awareness and reporting on the views of children, with comments focused on clarifying process and additional detail. The relatively high negative statistic reflects opinions regarding a statutory duty to create an advisory board along the lines of the model proposed (see questions 3 & 9).

Respondents generally felt establishing a new OCCE with a remit for promoting and protecting children's rights in line with the UNCRC was a positive step.

35 (51%) respondents would welcome a duty to consult, involve and report to children and young people.

13 (19%) respondents felt there should be a bigger role for Parliament, which should be taking the lead on matters of scrutiny and monitoring of OCCE to ensure the office is fulfilling its duties. Some felt the role of Parliament should be detailed in the legislation, but others acknowledged the difficulty and limitations of imposing legal requirements on Parliament.

There were various suggestions regarding the annual reporting process: for example, that the annual report should include a section on proposed activity for the coming year or a section on what OCCE has done for children falling under the current CRD remit.

Selected respondent comments:

“A direct reporting line between the OCCE and Parliament is considered by the UN to be a positive practice since it enhances the independence of the OCCE and ensures that its recommendations, advice and reports receive a hearing in the UK’s representative and elected body.”

“The new duty to submit an annual report to Parliament is welcome, if this means replacing the current duty to report to a governmental department. This would give a clear signal that the OCCE and Commissioner are independent of Government.”

“Accordingly, there should be a duty on the Commissioner to take steps to ensure that a wide range of children are appropriately involved and consulted, and are able to participate meaningfully in the Commissioner’s work.”

Q6 Do you agree with our proposals for the appointment of the Children's Commissioner?

There were 67 responses to this question.

26 (39%) Yes 35 (52%) No 6 (9%) Don't know

There was a variety of views on appointment and the relatively high negative response reflects differing concerns of detail, particularly on the role of Parliament, children and young people in the appointment process.

32 (48%) respondents felt that Parliament should take the lead role on appointment of the Children’s Commissioner, which was often related to a concern about retention of the Secretary of State’s power of appointment and removal. A few respondents felt that appointment by Parliament would still be a political appointment.

31 (46%) respondents felt it was essential that children and young people were involved in the appointment process.

6 (9%) respondents felt it was essential that the appointment process was ‘transparent’, with a fair and open competition for the post. This concern with transparency of process is mirrored in comments about appointments to the

proposed advisory board and with regard to business and budget planning.

Selected respondent comments:

“We would like the appointment of the Children’s Commissioner to be made by Parliament with as much input from children and young people and children’s rights organisations as possible. We believe that this would greatly increase the chances of the successful candidate retaining the confidence of Parliament, the children’s rights sector and children and young people for the length of their term.”

“We agree that the Nolan Principles should be the guiding principles for appointment and that Parliament has a primary role in the appointment but there should also be “open” soundings taken by the appointments committee from across the range of stakeholders, including children and children’s representatives.”

“We strongly support the commitment to involve children in the appointment of the Commissioner. Any arrangements which seek to do this must ensure that such involvement is genuine and that children are included at every stage of the appointment procedure.”

“Ultimately, regardless of method of appointment, it should be borne in mind that the key qualification for the OCCE should be expertise in children’s rights – not simply ‘political palatability’.”

Q7 Do you agree that the Children's Commissioner should be appointed for a single, fixed term, without the possibility of reappointment?

There were 67 responses to this question.

43 (64%) Yes 18 (27%) No 6 (9%) Don't know

28 (42%) respondents felt that it was essential to ensure the Children’s Commissioner’s independence and avoid a conflict of interest or political influence due to the re-appointment process; and, therefore, preferred a fixed term, in line with consultation proposals and John Dunford’s recommendations.

7 (10%) respondents felt it should be possible to re-appoint the Children’s Commissioner if they were good and/or successful. A couple of respondents noted that it was standard practice for similar posts internationally to involve potential re-appointment.

4 (6%) respondents felt that the re-appointment process, should it be the preferred option, would need to be a rigorous re-selection process, not a simple ‘rubber-stamping’ of the incumbent post-holder’s continuation in post.

Selected respondent comments:

“We believe this is a vital safeguard to protect against an individual using the last part of his or her term to seek favour with Government or Parliament.”

“A report published in 2005 by the Office of the United Nations High Commissioner for Human Rights: Assessing the effectiveness of National Human Rights Institutions’ may be of interest. The report notes: ‘Members of national human rights institutions should have clearly defined terms of office (even if they are indefinite, as for judges, or renewable’). Terms should not be too short. Longer non-renewable terms are a better guarantee of independence than renewable shorter terms’.”

“We think that if the post has a reasonable duration for an individual to make their mark that a single fixed term is appropriate and that reappointment should not be an option in order to keep the role dynamic.”

“If the incumbent Commissioner has been successful, dynamic and had a positive impact, he or she should be able to put themselves forward for a second term. However, measures must be taken to ensure that this does not become, in effect, an automatic reappointment.”

“A renewable five year term allows for an outstanding Children’s Commissioner who is having a significant impact on improving children’s lives to continue to deliver an effective programme and see through real change.”

Q8 Should the duration of the Children's Commissioner's appointment be i) seven years, ii) six years or iii) five years. Please explain the reasons for your preference?

There were 60 responses to this question.

37 (62%) 7 years 2 (3%) 6 years 15 (25%) 5 years 6 (10%) Other

30 (50%) respondents felt that seven years was the right amount of time to enable the Children’s Commissioner to have an impact, i.e. to make plans and implement them.

25 (42%) respondents thought seven years was a good length of time as it spanned across elections, and made the post less likely to be influenced by the Government of the day.

9 (15%) respondents specifically linked their choice of five years to the possibility of re-appointment, i.e. ‘five years, if re-appointed’.

6 (10%) respondents felt seven years was too long if the Commissioner was ineffective or complacent.

Selected respondent comments:

“We believe seven years has the advantage of straddling two general elections and further insulating the Office from political favour or influence. This also provides sufficient time for the work of the Commissioner to make

(and demonstrate) a more substantial and tangible positive difference to children and young people's lives.”

“The risk of a seven year term is that a Children’s Commissioner who performs poorly but does not fall within the threshold for removal will both fail to have the necessary impact as well as running the risk of bringing both the role and office of the Children’s Commissioner into disrepute.”

“There is a need to balance providing the Commissioner with sufficient time to establish his or her self and to accomplish medium to long term work with the potential benefits of a “new blood” appointment.”

“The 5 year period with the option of re-appointment should remain in place: this will enable a necessary change of personnel if one is required but also will enable a Commissioner to remain in post, in particular if they are achieving high standards.”

Q9a Do you agree that the proposals set out are the right ones for making the new Children's Commissioner more accountable?

There were 69 responses to this question.

27 (39%) Yes 34 (49%) No 8 (12%) Don't know

There was general agreement that the Commissioner should be accountable as a publicly funded office, but less agreement on how or whom they should be accountable to. In many responses there is an implicit or expressed difficulty in marrying accountability with independence. The relatively high negative statistic reflects opinions regarding a statutory duty to create an advisory board along the lines of the model proposed (see question 3).

28 (41%) respondents felt that the Commissioner could only be accountable for activity for which the allocated budget was sufficient to deliver.

26 (38%) respondents felt it was essential that the Commissioner was accountable to children and young people, with several respondents querying how this would be achieved.

24 (35%) respondents did not approve of the advisory board.

7 (10%) respondents felt there should be a bigger role for Parliament in scrutiny and holding the Commissioner to account.

Selected respondent comments:

“Accountability is important, particularly when the role concerns vulnerable children and young people.”

“The establishment of an advisory board, to provide support and challenge to the Commissioner, together with the revised reporting arrangements, appear

to represent a proportionate response to the need to make the Commissioner fully accountable and at the same time more independent from Government.”

“The Children's Commissioner should report directly to parliament and, through predominantly elected Parliamentarians, to the public ... The Children's Commissioner would formally report to and be held to account by one or more Select Committees.”

“In addition, we would like to see further consideration given to the Commissioner's direct accountability to children.”

“It is not clear what the word ‘accountable’ is intended to refer to – accountable to whom? The accountability to Parliament is a much clearer concept than the wider accountability to a set of constituencies which is implied by the proposals for the composition of the Board.”

Q9b Do the proposals represent a fair and balanced approach to determining the membership and role of the advisory board?

There were 64 responses to this question.

19 (30%) Yes 33 (52%) No 12 (19%) Don't know

As with other questions in the consultation, there was a relatively high negative statistic on this question which reflected opinions regarding a statutory duty to create an advisory board along the lines of the model proposed. Overall, there was a general feeling that the proposed model of determining membership was too prescriptive and constraining on the Children's Commissioner.

21 (49%) respondents felt that the advisory board was not the best way to engage and involve children and young people. Further detail on the rationale for these responses and alternative suggestions for engaging children and young people were contained in responses to question 9d.

10 (23%) felt the advisory board should have ‘experts’ on it. Generally, these respondents felt that an understanding of children's rights was essential for all board members. Other suggestions for areas of specialist knowledge included: children in care, disabilities, local authority children's services, different age groups of children, SEN.

7 (16%) respondents felt there should be no political appointments, as this could potentially compromise the independence of the Children's Commissioner through a possible conflict of authority.

7 (16%) respondents felt that 2 NGOs and 2 children and/or young people was not sufficient to represent the diversity of the sector or of children.

Selected respondent comments:

“Establishing an advisory board for the new OCCE is welcome and the starting point for this new body must be that it is independent of government influence and not seen as an alternative source of leadership for the OCCE.”

“The board's role should be decided by the Children’s Commissioner and the board, with the Secretary of State (if he must) agreeing any such proposals.”

“The fundamental premise of all appointments to the board must be that they represent above all others, the interests of children, not the interests of the appointee, a particular party line or organisation.”

“We express concern over how the NGOs and children themselves can nominate two members each in a way that is both fair and transparent.”

“Rather than limiting consultations to a small advisory board, it would be far better to require the Children’s Commissioner to consult with children and children’s rights organisations on the development of a strategic plan.”

Q9c What should the process be for nominating the two NGO representatives?

There were 27 responses to this question.

9 (33%) respondents were concerned that Non-Governmental Organisations’ (NGO) representatives must not pursue their own agenda but must adopt a corporate approach in the best interests of children and young people in general.

6 (22%) respondents felt that children and young people should be involved in nominating NGO representatives.

6 (22%) respondents were concerned that any nomination or application process was transparent and inclusive.

Selected respondent comments:

“The process needs to be transparent and fair. This is important as there are so many relevant NGOs.”

“The process for nominating the two NGO representatives of the advisory board should include safeguards to ensure that the board is diverse and represents the needs and interests of all young people. It would be useful to conduct an audit of the skills, experiences and knowledge needed within the board.”

“We believe that members of the advisory group may be drawn from NGOs but they should not represent the NGOs.”

“In order for the advisory board to be truly advisory to the Commissioner, its members should be appointed by the Commissioner.”

“Use existing associations and umbrella organisations as a route to seek nominations, or to act as representatives of other children’s NGOs.”

Q9d What should the process be for nominating the two children and young people representatives?

There were 30 responses to this question.

8 (27%) respondents felt children and young people should be selected by their peers through a vote or election process.

6 (20%) respondents felt the advisory board was not the best way to involve children and young people. 5 (17%) respondents felt that two representatives is not sufficiently representative of children and young people generally. Respondents suggested ongoing consultation and engagement of children and young people would provide better representation of their views, and/or sub-groups of children and young people should feed into the adult board.

Peer election of candidates and concerns about whether children would be able to make their voice heard on an adult board were also themes in responses from children and young people (see part 3, question 5).

6 (20%) respondents suggested that existing sector engagement should be tapped into to identify representatives. 4 (13%) suggested existing children and young people groups, such as the Youth Parliament or Children in Care Councils, should be used to nominate representatives.

Selected respondent comments:

“As an organisation charged with promoting and protecting children’s rights, the OCCE must reflect active and meaningful participation of children and young people in its own structure, principles and practice.”

“Again, the process should be widely drawn and transparent. We would suggest that schools could be involved as well as young people’s organisations and NGOs.”

“The nominees could be asked to provide a manifesto and other children and young people could vote on the basis of it.”

“We believe that the involvement of children can be better achieved through other means and are concerned that such an approach could become a tokenistic exercise.”

Q10 Can you give us any practical examples of children's rights issues that have arisen in the context of non-devolved matters, where the involvement of the Children's Commissioner for Northern Ireland, Scotland or Wales might have been helpful?

There were 40 responses to this question.

In general, respondents provided theoretical rather than practical examples of devolved administration issues, with several respondents saying that these were potential rather than actual issues as relevant organisations were cooperating in practice.

27 (68%) respondents cited recent examples of the work of the Children's Commissioner on asylum seekers.

2 (5%) felt there should be a duty on OCCE to cooperate with Commissioners in devolved administrations. Other respondents felt that the Commissioners are already working well together, collaboratively across borders.

Selected respondent comments:

"There is a Memorandum of Understanding (MoU) in place between the UK Children's Commissioners that has established practical arrangements for dealing with day-to-day cross-jurisdictional issues that sometimes arise. This means that in practice there are no Reserved Issues when it comes to the work of the UK's Children's Commissioners."

"It is therefore not practical in my view to expect one Commissioner to conduct an investigation into a children's rights matter in another country of the UK."

"What is remarkable is the inconsistencies of the present arrangements in which some children have rights in some situations and others do not."

"In practice, the Commissioners in the devolved administrations currently have to work beyond their legislative powers when a key child rights concern affecting children in their jurisdiction relates to a non-devolved issue. This is not an ideal situation."

"We agree that the devolved administrations' own Commissioners should have responsibilities for every child within their own territory ... Where necessary there should be a joint responsibility for overlapping areas of domestic legislation on child rights, welfare and protection."

Q11 What other practical steps could the Government take to demonstrate its commitment to the UNCRC?

There were 56 responses to this question.

38 (68%) respondents felt there should be a duty on public bodies to have regard to the UNCRC.

26 (46%) respondents suggested a statutory code of practice for the public sector, produced by the Children's Commissioner.

24 (43%) respondents felt that it was important to raise awareness of the

UNCRC. This was a key theme in responses from children and young people (see part 3, question 10).

11 (20%) respondents felt the UNCRC should be incorporated into UK law.

Selected respondent comments:

“A public sector children's rights duty would be a positive step towards ensuring promotion and protection of children's rights.”

“We believe that the Government should start by analysing the progress it has made in implementing the 118 recommendations made by the UN Committee on the Rights of the Child in 2008.”

“Develop and implement an action plan that addresses the current deficits in terms of our lack of compliance with the UNCRC that is enforceable.”

“A key way to do this is through the school curriculum.”

“Ensure that training for professionals entering in to the children's workforce includes information on UNCRC.”

“Finally, it must be ensured that whether children's rights are incorporated or provided for indirectly in UK legislation and case-law, children must have a legally enshrined access to justice to determine their rights and to obtain remedies for infringement of those rights.”

3. Summary of responses to the children and young people's consultation on Establishing a new Office of the Children's Commissioner for England (OCCE)

Q1 Do you agree that the law should say that the Children's Commissioner for England should pay special attention to the rights of children and young people who cannot live with a parent or go to school away from home?

There were 100 responses to this question.

55 (55%) Yes 43 (43%) No 2 (2%) Don't know

There were two types of response to this question. Those who responded positively felt children falling under the CRD remit were more vulnerable, yet often said 'but it should be for all children'; and those who responded negatively felt the Children's Commissioner should be for all children and young people, yet often acknowledged that children falling under the CRD remit can be particularly vulnerable and may need more help.

57 (57%) respondents felt that children without parental support were particularly vulnerable and therefore needed extra help.

41 (41%) respondents felt that the Children's Commissioner should look after all children as anyone could be vulnerable.

11 (11%) respondents felt there should be two Children's Commissioners: one for all children, one for looked after children.

Selected respondent comments:

"Give them help but help us as well."

"Yes, if the roles have to be combined, we feel it is important that these people receive the extra attention that they need. However we also think this shouldn't mean that all other young people are forgotten or receive less attention than they deserve."

"All children are equal whatever situation they're in. They should pay attention, however not special attention to those who cannot live with parents or go to a school away from home."

"The Children's Commissioner should be looking after my rights too."

"Young people who do not have a parent need more attention."

Q2 Should the new Children's Commissioner only be allowed to look into the cases of individual children and young people who cannot live with a parent, or go to school away from home?

There were 124 responses to this question.

24 (19%) Yes 94 (76%) No 6 (5%) Don't know

67 (54%) respondents felt that "we are all equal" and casework should be for all children according to individual need.

15 (12%) respondents were concerned about the Children's Commissioner's capacity, and that they should only perform casework if they had the time and/or resources to do it properly. Some of these responses queried if there were other people who did the job already.

14 (11%) respondents considered the criteria for casework and queried what was meant by "an issue that affects lots of you". A number of respondents suggested that the Children's Commissioner should decide on what was an appropriate case to take on or not.

The positive responses to this question were mainly from looked after children who were aware of the work of the Office of the Children's Rights Director.

Selected respondent comments:

"Of course there are too many young people for every case to be looked into and we agree that perhaps there should be a particular focus on children and young people who cannot live with a parent or go to school away from home. However the Children's Commissioner should protect and promote the rights of all children and young people and therefore not be limited by only being allowed to look into cases of certain groups."

"Everyone matters! All children may need help or have family who cannot help even if they are not in care."

"Why just children who are looked after? They have lots of people keeping an eye on them. Other children need help."

"How will they have time to do all of this?"

Q3 Are there any other groups of children that you think should get more help? If so, who are they?

There were 133 responses to this question.

The main suggestions of other children who may need more help were:

- 23 (17%) respondents suggested disabled children and young people.
- 11 (8%) respondents suggested children with learning difficulties.
- 10 (8%) respondents suggested children living in poverty.
- 8 (6%) respondents felt it should be for any child that needs help
- 7 (5%) respondents suggested runaway / homeless children.
- 7 (5%) respondents suggested traveller children.
- 7 (5%) respondents suggested children and young people not in education, employment or training (NEETs).

- 6 (5%) respondents suggested young carers.
- 6 (5%) respondents suggested young parents.
- 6 (5%) respondents suggested children with mental health issues.

Q4 Does it matter that the Children’s Commissioner’s title only refers to ‘children’ rather than ‘children and young people’?

There were 128 responses to this question.

102 (79.5%) Yes 11 (8.5%) No 15 (12%) Don’t know

67 (52%) respondents said that teenagers are young people, not children.

17 (13%) respondents felt the title needed to be ‘snappy’ and were concerned that it could be too long if ‘young people’ was added.

14 (11%) respondents said that young people over 18 years were not children. This was in reference to the current legislative position where both the Children’s Commissioner and the Children’s Rights Director have a responsibility for some young people over the age of 18. These responses came from older young people.

The positive response to this question should be compared with the more equivocal response from organisations and adults (see part 2, question 2).

Selected respondent comments:

“We feel people at an older age wouldn’t like to be referred to as children. However, some of us say, because of the support they are given, the title wouldn’t bother them.”

“The term “children” is condescending to young people.”

“Children and young people – so that young people get listened to as well.”

“Name is too long though. Something snappier?”

Q5 Do you think it is a good idea for children and young people themselves to be members of the board? If so, how should they be chosen? If not, who should represent children and young people’s views?

There were 79 responses to this question.

75 (95%) Yes 3 (4%) No 1 (1%) Don’t know

Although children generally felt they should be represented on the board, various responses expressed concern about the practicalities of this.

19 (24%) respondents felt that their representatives on the board needed to reflect the diversity of children and young people, including representatives from different areas of the country and someone with experience of being

looked after.

17 (22%) respondents felt that their representatives would need the right skills to be on the board. A few suggest that training or mentoring should be provided, others that representatives should already be engaged in similar activity.

15 (19%) respondents expressed scepticism about whether the advisory board is the best place to involve children and young people and that representation could be tokenistic. Mainly, these respondents felt that the advisory board should not replace wide consultation with children and young people. Several respondents thought it would be better to have sub-groups of children and young people that fed into the board.

Suggestions for selecting representatives were generally underpinned by an active role for children and young people in the process:

20 (25%) respondents suggested there should be an election. These suggestions ranged from a simple vote on nominated candidates to full election campaigns and debates.

18 (23%) respondents suggested there should be invitations for expressions of interest and applications.

11 (14%) respondents suggested a nomination process through established facilitators for children and young people; for example, through youth groups or schools.

Selected respondent comments:

“We think it is highly important that young people are able to represent themselves otherwise it could appear that adults are saying what they feel is best for young people, without taking into account what young people actually want.”

“Good idea but children might be intimidated. May not have a lot of confidence. Try and get young people who are already involved in things, like Youth Council.”

“The adults on the board should make sure the meetings are young person friendly and relevant, as they should be able to work with children and young people after all!”

“Young people on the board is a good idea because it is coming from first hand experience and adults cannot substitute for young people.”

“Shadow board to feed through a ‘chair’, as adult meetings are really boring.”

“If there are lots of applicants there could be an online voting system.”

Q6 What are the main things that the board should do to make sure that the Children’s Commissioner is doing his/her job effectively?

There were 82 responses to this question.

45 (55%) respondents felt that the advisory board should involve children and young people in assessing the effectiveness of the Children’s Commissioner. There were various suggestions of how this could be done, including online feedback and board visits to children and young people across the country.

37 (45%) respondents felt that the advisory board should agree plans and targets with the Commissioner.

38 (46%) respondents felt that the advisory board should monitor the Commissioner through regular checks and meetings on performance.

Selected respondent comments:

“Make sure the board understands their job: be aware of the Commissioner's targets and when they are being met.”

“Talk to young people. It would be better if young people were involved in the process.”

“We should all have personal involvement ‘cos it’s about us.”

Q7 How should children and young people be involved in choosing future Children’s Commissioners?

There were 82 responses to this question.

Children and young people suggested various ways of involving them, with an underpinning theme of ascertaining how the applicant and children interact and if children ‘like’ the candidate.

42 (51%) respondents felt that children and young people should be involved in interviewing the candidates for Children’s Commissioner. These responses include both interviewing with adults and a separate interview with children and young people. A number of respondents also felt that children and young people should be involved in writing interview questions.

21 (26%) respondents felt the candidates should make speeches and presentations to children and young people. This was linked to both the interview process above and the election process below.

19 (23%) respondents felt there should be a vote on candidates for Children’s Commissioner by children and young people. These respondents mainly felt there should be an election campaign, often involving an online aspect.

Selected respondent comments:

“Young people should be involved in interviewing and writing the job description.”

“Some of us have found that in school, students interviewing teachers has worked well, so this could also work for the Children's Commissioner.”

“Also, if there was a day, where candidates could make speeches to children and young people and then have an opportunity to answer questions, that would be really good.”

“Children and young people and the adult panel to come together to decide who gets the job.”

“We're a democracy, why can't we vote? At least in polls, so you can tell who we want.”

Q8 Should Children's Commissioners be appointed to the job just once in their life or is it ok for them to be offered the job again?

There were 86 responses to this question.

63 (73%) Re-appoint 12 (14%) Once 3 (3%) Don't know

42 (49%) respondents felt that the Commissioner should be re-appointed if they are doing a good job.

11 (13%) respondents felt that the Commissioner should make way after a single period.

11 (13%) respondents felt the Commissioner should be subject to a probationary period before being offered the job permanently.

Selected respondent comments:

“We think it would be ok for someone who was doing a good job to be offered the job again. However it shouldn't be automatic. It is better to appoint the person who will do the job the best at that time, regardless of whether or not they have done it before.”

“They should be allowed to be offered the job again because they have personal experience and good contacts.”

“If they are good at their job, why would you want to get rid of them?”

“Depends on the person.”

“No, give others a chance.”

Q9 If you think they should only get the job once, how long should Children's Commissioners be appointed for: i) seven years, ii) six

years or iii) five years? Please tell us a little bit more about the reasons for your choice.

There were 70 responses to this question.

3 (4%) 7 years 4 (6%) 6 years 45 (64%) 5 years 10 (14%) Less

10 (14%) respondents felt that seven years was too long.

8 (11%) respondents felt that the term of appointment should be less than three years. A couple of these respondents considered a year to be a long time.

Selected respondent comments:

“5 years, because we feel this is a reasonable time period as they may need to improve, or may not be appropriate for the job. Although, we feel they can have the job more than once.”

“6 years – so they get time to sort themselves out.”

“Why limit time in office if they are really good at their job?”

“2 years on to get used to it, like driving. A probationary period. Then if they don't like it or they aren't good they can go.”

“Five years, because the youth of today will be very different to say 7 years time, so we should make sure the Commissioner is changed to suit society.”

Q10 What other things could the Government do to support children's rights under the UNCRC?

There were 51 responses to this question.

28 (55%) respondents felt that the Government should raise awareness of the UNCRC, as children's rights were not well known about or understood by both children and adults.

18 (35%) respondents felt that children and young people should be more involved, listened to and enabled to participate.

17 (33%) respondents felt that the UNCRC and children's rights should be delivered in schools.

7 (14%) respondents felt that the Government should provide funding to support children's rights. Some of these respondents were referring to subsidised facilities or travel.

Selected respondent comments:

“Give young people awareness and information on their current rights and responsibilities.”

“Website, leaflet, newspapers – lots of communications.”

“As the vast majority of young people go to school, we think it would be worth making at least one lesson a year, which pupils have to attend, about children’s rights under the UNCRC.”

“Display the articles in every school.”

“More money into youth groups.”

“Make it the law.”

“Talk to us, listen to us, and act upon what we say. Don’t just send us surveys you aren’t going to read.”

4. Government response

On 16 December 2011, alongside publication of this report, the Minister of State for Children and Families released a statement outlining the Government's response to the consultation. A copy of this statement is below.

GOVERNMENT RESPONSE TO CONSULTATION ON ESTABLISHING A NEW OFFICE OF THE CHILDREN'S COMMISSIONER FOR ENGLAND (OCCE)

The UNCRC context

Twenty years ago today, the Government ratified the UN Convention on the Rights of the Child (UNCRC). This is an international treaty that provides a comprehensive set of rights for children and young people under the age of 18. The UK was instrumental in drafting the Convention and it has now been ratified by 193 countries across the world. Importantly, the Convention sets out minimum standards for children that all countries should aspire to and offers special protection for children who are at particular risk of harm, disadvantage or neglect.

Today, the UNCRC is just as important as it ever was. Indeed, it can be argued that the growing interdependence between countries is leading to global economic, social and environmental uncertainty which is potentially putting children at even greater risk and is making the UNCRC more important than ever. In this context, the UK must set itself high standards. Since taking office, this Government has introduced many changes that will have a positive effect on the lives of children and that will strengthen our record on the UNCRC. But our aim is to do even better. We are therefore determined to have a strong Children's Commissioner who can help to identify emerging concerns and issues that need a national solution and can challenge the Government on aspects of our policy or practice which may not be working well for children.

Independent review and consultation

In December 2010, I announced that the Government had accepted, in principle, the recommendations made by John Dunford, following his independent review of the Office of the Children's Commissioner (OCC). In that announcement, I also said that we would consult on the legislative changes that John Dunford said were needed, in order for the Children's Commissioner to have greater impact in future.

The consultation was launched on 7 July and closed on 29 September 2011. Around 230 responses were received to the online consultation, of which about 150 were from children and young people. In addition, we received written feedback on a number of consultation events that children's rights organisations ran for children and young people. These additional

submissions have been taken into account and are reflected in this statement. I am extremely grateful to everyone who responded, especially to all the children and young people who took the time to feed in their views. A full analysis of the online responses has been published today on the DfE website, alongside this statement.

In general, there was strong support for the broad approach to our proposals, although there were concerns about some of the detail. We have taken all the consultation responses into account in deciding how to proceed. More information on specific points is given below.

The role of the Children's Commissioner

There was universal agreement that the Children's Commissioner's role should, in future, be more explicitly focused on the promotion and protection of children's rights – and that the framework for the Children's Commissioner's role should be the United Nations Convention on the Rights of the Child (UNCRC). We therefore intend to legislate on that basis.

The remit of the Children's Commissioner

There was strong support for John Dunford's view that the Children's Commissioner should support all children and young people, but should focus on the most vulnerable. In practice, this will mean the OCCE focusing its inquiries on groups of children and young people who are at greatest risk of their rights being breached. We have concluded that the Children's Commissioner should be able to determine which groups are most at risk in light of their circumstances at any given time, rather than try to define those vulnerable groups in legislation. This flexibility will help to ensure that the OCCE avoids duplicating the work of other agencies and will allow the Children's Commissioner to determine his or her priorities independently from Government or Parliament.

Incorporating the work of the Children's Rights Director (CRD) within the new OCCE

Respondents recognised that children in care or who live away from home for significant periods of time are particularly vulnerable to their rights being breached and wanted assurance that they would receive the same level of support currently provided by the Children's Rights Director. On that basis, we are proposing to legislate in a way that will allow the Children's Commissioner to undertake all the activities currently provided by the CRD, when the OCCE is established. This will include making special provision for the Children's Commissioner to provide advice and assistance to individual children who currently fall under the CRD's remit. In practice this will be a form of light-touch casework. We have considered whether to extend this facility to all, or other specific groups of children – as was suggested by a number of respondents to the consultation – but are concerned that this would lead to the new OCCE being swamped with requests to intervene on behalf of

individual children, and would detract from its strategic role. As now, the Children's Commissioner will be able to undertake an investigation or launch an inquiry based on the case of an individual child, where the case raises issues of wider significance for children's rights.

Making the Children's Commissioner more independent

John Dunford's report identified a perceived lack of independence from Government and identified a number of ways in which new legislation could help to address this concern. We agree that it is vital that the Children's Commissioner can choose which issues to investigate and make the recommendations for change that he or she sees fit, without interference by Government. We are, therefore planning to:

- remove the provision in the existing legislation that requires the Children's Commissioner to consult the Secretary of State before launching an inquiry;
- remove the provision in the existing legislation that allows the Secretary of State to direct the Children's Commissioner to carry out an inquiry;
- stipulate that the Children's Commissioner should be appointed for a single term only;
- give the Children's Commissioner a new power to carry out child impact assessments on new Government policies and legislation;
- extend the existing power for the Children's Commissioner to request a written response from the relevant government department or agency within a specified timeframe to recommendations made in light of an impact assessment;
- require the Secretary of State to involve children and young people and Parliament in the process of appointing a new Children's Commissioner, and to have regard to their views; and
- remove provisions that allow the Secretary of State to amend or decide not to publish reports produced by the Children's Commissioner in certain circumstances.

There was support for our proposal to appoint the Children's Commissioner for a single term, but a lack of consensus on the length of the appointment. John Dunford had recommended a seven year term, but some thought this was too long. A range of views were submitted, and in the light of those we have decided that a single, six-year term is the preferable option.

Status of the OCCE

Most respondents agreed that the OCCE should be a 'corporation sole'. This means that the post of the Children's Commissioner and the OCCE are indivisible, with accountability for all of the OCCE's activity resting with the Children's Commissioner. We believe that the sense of isolation and lack of transparency that were identified in John Dunford's report can be mitigated through other changes that we are introducing, such as the proposal to require the Children's Commissioner to appoint an advisory board.

Making the Children's Commissioner more accountable

John Dunford's report said that the Office of the Children's Commissioner should be more accountable to Parliament and that its business planning processes should be more transparent. These views were supported by respondents to the consultation. We are therefore proposing that the Children's Commissioner should be required to:

- consult on its strategic priorities for the following year;
- following consultation, publish a business plan setting out its agreed key activities and priorities;
- submit an annual report to Parliament for scrutiny by the appropriate Select Committee; and
- appoint an advisory board.

Although respondents generally accepted the idea of an advisory board in principle, there were mixed views and concerns about the proposals for its composition, how members would be appointed, and that appointing a high profile chair who was not the Children's Commissioner would create uncertainty about who was in charge.

We believe that an advisory board could play an important role in helping the Children's Commissioner to have more impact, but recognise the concerns that the consultation has raised. We intend, therefore, to be clear that accountability rests with the Children's Commissioner and to be much less prescriptive in the legislation – including a requirement on the Children's Commissioner to appoint an advisory board, but leaving it to the Children's Commissioner to determine its membership.

There was support for a stronger link between Parliament and the OCCE, both to help Parliament focus on areas of concern that the Children's Commissioner has highlighted and to monitor and assess the OCCE's impact. The Department for Education will liaise with the relevant Select Committees to ensure that this happens. We also envisage Parliament having a role in the appointment of the Children's Commissioner, in line with guidance issued by the Office of the Commissioner for Public Appointments (OCPA).

Children's Commissioner's Title

We have considered the views expressed through the consultation carefully. Two main alternative titles were suggested: young people argued strongly that the current title did not resonate with teenagers and thought 'young people' should be added; and children's rights stakeholders suggested that the post should be called the 'Children's Rights Commissioner'. Although we recognise the reasons behind these suggestions, we accept that 'Children's Commissioner' is the internationally recognised name for posts of this type and propose to retain it in the new legislation. We would, however, look to the Commissioner to ensure that their role spoke to young people as well as to younger children.

Handling of 'reserved' matters in the Devolved Administrations

Few respondents had concrete examples of where the current arrangements were proving problematic. However, we believe that it is important that children living in Scotland, Wales and Northern Ireland are able to raise a concern with their local Children's Commissioner, regardless of whether it relates to a devolved or a non-devolved matter, especially as they are unlikely to appreciate the difference in practice and because some cases involve both. This also calls for the four Commissioners to work collectively and coordinate their efforts when investigating UK-wide policy matters. Discussion with the Territorial Departments in Westminster and the Governments of the devolved administrations are continuing with the aim of securing a way forward that is in line with these objectives.

What more could the Government do to support children's rights

The most frequent suggestion was that there should be a duty on Government to have regard to the UNCRC when developing new policy and legislation. The Government's objective is to continue to make progress against the UNCRC through a mix of legislative and policy initiatives that will bring about real benefits for children. We have already made a firm commitment to give due consideration to the UNCRC when making new policy and legislation. However, we will watch closely the impact of the new duties being introduced by the Welsh Assembly and proposed by the Scottish Government.

There were a number of other helpful suggestions, in particular by children and young people, on: raising awareness of the UNCRC; and involving children and young people more in decision making. We will take account of the many helpful suggestions that people responding to the consultation made, as we move forward.

Conclusion

I would like to thank everyone who has contributed views and ideas to the consultation. They have helped us to refine our ideas on how the OCCE legislation should be developed. John Dunford's report has provided us with an opportunity to create a more effective Children's Commissioner, able to act independently to give a voice to children and young people and to recommend changes that will improve their lives. We hope to be able to legislate at the earliest opportunity to implement these important changes.

SARAH TEATHER MP
MINISTER FOR CHILDREN & FAMILIES

Organisations which responded to the consultation

Advisory Council For the Education of Romany and Other Travellers

Afasic England

Association of School and College Leaders

Barnardo's

British Association of Social Workers

Buckinghamshire County Council

Catholic Education Service for England and Wales

Centrepoint

Children England

Children Leeds Strategic Participation Group

Children's Commissioner for Wales

Children's Society, The

Coram Children's Legal Centre

Children's Commissioner Review NGO Coordinating Group *

Equality and Human Rights Commission

Fair Play for Children

Family Education Trust

Family Law Bar Association, The

Fostering Network, The

Howard League for Penal Reform, The

INQUEST

London Early Years Foundation

Mencap

Ministry of Defence

Nagalro

National Association of Schoolmasters/ Union of Women Teachers

National Children's Bureau

National Union of Teachers

Newlife Foundation for Disabled Children

North Tyneside Council

OCCE Asylum and Trafficking Advisory Board

Office of the Children's Rights Director

Office of the Children's Commissioner
Ofsted
Prison Reform Trust
Royal College of Paediatrics and Child Health
Save the Children
Scope
Scotland's Commissioner for Children and Young People
Stonewall
Unicef UK
Voice
Women's Aid Federation of England
Young Minds

** The organisations involved in the NGO Coordinating Group were: British Youth Council, Children England, Children's Rights Alliance for England (CRAE), Children's Rights Officers and Advocates (CROA), The Children's Society, National Association for Youth Justice, National Children's Bureau, National Children's Centre, NSPCC, Save the Children, UNICEF UK, Ariel Foundation International, Ariana-Leilani Children's Foundation International, Brook, Centre for Studies on Inclusive Education, Freedom from Torture, Howard League for Penal Reform, Include Me Too, London Play, The National Council for Voluntary Youth Services (NCVYS), National Youth Agency, Penal Reform International, Practical Participation, Traveller Law Reform Project (TLRP), Youth Access, Action for Sick Children, Fair Play for Children*

GOVERNMENT RESPONSE TO CONSULTATION ON ESTABLISHING A NEW OFFICE OF THE CHILDREN'S COMMISSIONER FOR ENGLAND (OCCE)

The UNCRC context

Twenty years ago today, the Government ratified the UN Convention on the Rights of the Child (UNCRC). This is an international treaty that provides a comprehensive set of rights for children and young people under the age of 18. The UK was instrumental in drafting the Convention and it has now been ratified by 193 countries across the world. Importantly, the Convention sets out minimum standards for children that all countries should aspire to and offers special protection for children who are at particular risk of harm, disadvantage or neglect.

Today, the UNCRC is just as important as it ever was. Indeed, it can be argued that the growing interdependence between countries is leading to global economic, social and environmental uncertainty which is potentially putting children at even greater risk and is making the UNCRC more important than ever. In this context, the UK must set itself high standards. Since taking office, this Government has introduced many changes that will have a positive effect on the lives of children and that will strengthen our record on the UNCRC. But our aim is to do even better. We are therefore determined to have a strong Children's Commissioner who can help to identify emerging concerns and issues that need a national solution and can challenge the Government on aspects of our policy or practice which may not be working well for children.

Independent review and consultation

In December 2010, I announced that the Government had accepted, in principle, the recommendations made by John Dunford, following his independent review of the Office of the Children's Commissioner (OCC). In that announcement, I also said that we would consult on the legislative changes that John Dunford said were needed, in order for the Children's Commissioner to have greater impact in future.

The consultation was launched on 7 July and closed on 29 September 2011. Around 230 responses were received to the online consultation, of which about 150 were from children and young people. In addition, we received written feedback on a number of consultation events that children's rights organisations ran for children and young people. These additional submissions have been taken into account and are reflected in this statement. I am extremely grateful to everyone who responded, especially to all the children and young people who took the time to feed in their views. A full analysis of the online responses has been published today on the DfE website, alongside this statement.

In general, there was strong support for the broad approach to our proposals, although there were concerns about some of the detail. We have taken all the

consultation responses into account in deciding how to proceed. More information on specific points is given below.

The role of the Children's Commissioner

There was universal agreement that the Children's Commissioner's role should, in future, be more explicitly focused on the promotion and protection of children's rights – and that the framework for the Children's Commissioner's role should be the United Nations Convention on the Rights of the Child (UNCRC). We therefore intend to legislate on that basis.

The remit of the Children's Commissioner

There was strong support for John Dunford's view that the Children's Commissioner should support all children and young people, but should focus on the most vulnerable. In practice, this will mean the OCCE focusing its inquiries on groups of children and young people who are at greatest risk of their rights being breached. We have concluded that the Children's Commissioner should be able to determine which groups are most at risk in light of their circumstances at any given time, rather than try to define those vulnerable groups in legislation. This flexibility will help to ensure that the OCCE avoids duplicating the work of other agencies and will allow the Children's Commissioner to determine his or her priorities independently from Government or Parliament.

Incorporating the work of the Children's Rights Director (CRD) within the new OCCE

Respondents recognised that children in care or who live away from home for significant periods of time are particularly vulnerable to their rights being breached and wanted assurance that they would receive the same level of support currently provided by the Children's Rights Director. On that basis, we are proposing to legislate in a way that will allow the Children's Commissioner to undertake all the activities currently provided by the CRD, when the OCCE is established. This will include making special provision for the Children's Commissioner to provide advice and assistance to individual children who currently fall under the CRD's remit. In practice this will be a form of light-touch casework. We have considered whether to extend this facility to all, or other specific groups of children – as was suggested by a number of respondents to the consultation – but are concerned that this would lead to the new OCCE being swamped with requests to intervene on behalf of individual children, and would detract from its strategic role. As now, the Children's Commissioner will be able to undertake an investigation or launch an inquiry based on the case of an individual child, where the case raises issues of wider significance for children's rights.

Making the Children's Commissioner more independent

John Dunford's report identified a perceived lack of independence from Government and identified a number of ways in which new legislation could help to address this concern. We agree that it is vital that the Children's Commissioner can choose which issues to investigate and make the recommendations for change that he or she sees fit, without interference by Government. We are, therefore planning to:

- remove the provision in the existing legislation that requires the Children's Commissioner to consult the Secretary of State before launching an inquiry;
- remove the provision in the existing legislation that allows the Secretary of State to direct the Children's Commissioner to carry out an inquiry;
- stipulate that the Children's Commissioner should be appointed for a single term only;
- give the Children's Commissioner a new power to carry out child impact assessments on new Government policies and legislation;
- extend the existing power for the Children's Commissioner to request a written response from the relevant government department or agency within a specified timeframe to recommendations made in light of an impact assessment;
- require the Secretary of State to involve children and young people and Parliament in the process of appointing a new Children's Commissioner, and to have regard to their views; and
- remove provisions that allow the Secretary of State to amend or decide not to publish reports produced by the Children's Commissioner in certain circumstances.

There was support for our proposal to appoint the Children's Commissioner for a single term, but a lack of consensus on the length of the appointment. John Dunford had recommended a seven year term, but some thought this was too long. A range of views were submitted, and in the light of those we have decided that a single, six-year term is the preferable option.

Status of the OCCE

Most respondents agreed that the OCCE should be a 'corporation sole'. This means that the post of the Children's Commissioner and the OCCE are indivisible, with accountability for all of the OCCE's activity resting with the Children's Commissioner. We believe that the sense of isolation and lack of transparency that were identified in John Dunford's report can be mitigated through other changes that we are introducing, such as the proposal to require the Children's Commissioner to appoint an advisory board.

Making the Children's Commissioner more accountable

John Dunford's report said that the Office of the Children's Commissioner should be more accountable to Parliament and that its business planning processes should be more transparent. These views were supported by respondents to the consultation. We are therefore proposing that the Children's Commissioner should be required to:

- consult on its strategic priorities for the following year;
- following consultation, publish a business plan setting out its agreed key activities and priorities;
- submit an annual report to Parliament for scrutiny by the appropriate Select Committee; and
- appoint an advisory board.

Although respondents generally accepted the idea of an advisory board in principle, there were mixed views and concerns about the proposals for its composition, how members would be appointed, and that appointing a high profile chair who was not the Children's Commissioner would create uncertainty about who was in charge.

We believe that an advisory board could play an important role in helping the Children's Commissioner to have more impact, but recognise the concerns that the consultation has raised. We intend, therefore, to be clear that accountability rests with the Children's Commissioner and to be much less prescriptive in the legislation – including a requirement on the Children's Commissioner to appoint an advisory board, but leaving it to the Children's Commissioner to determine its membership.

There was support for a stronger link between Parliament and the OCCE, both to help Parliament focus on areas of concern that the Children's Commissioner has highlighted and to monitor and assess the OCCE's impact. The Department for Education will liaise with the relevant Select Committees to ensure that this happens. We also envisage Parliament having a role in the appointment of the Children's Commissioner, in line with guidance issued by the Office of the Commissioner for Public Appointments (OCPA).

Children's Commissioner's Title

We have considered the views expressed through the consultation carefully. Two main alternative titles were suggested: young people argued strongly that the current title did not resonate with teenagers and thought 'young people' should be added; and children's rights stakeholders suggested that the post should be called the 'Children's Rights Commissioner'. Although we recognise the reasons behind these suggestions, we accept that 'Children's Commissioner' is the internationally recognised name for posts of this type and propose to retain it in the new legislation. We would, however, look to the Commissioner to ensure that their role spoke to young people as well as to younger children.

Handling of 'reserved' matters in the Devolved Administrations

Few respondents had concrete examples of where the current arrangements were proving problematic. However, we believe that it is important that children living in Scotland, Wales and Northern Ireland are able to raise a concern with their local Children's Commissioner, regardless of whether it relates to a devolved or a non-devolved matter, especially as they are unlikely

to appreciate the difference in practice and because some cases involve both. This also calls for the four Commissioners to work collectively and coordinate their efforts when investigating UK-wide policy matters. Discussion with the Territorial Departments in Westminster and the Governments of the devolved administrations are continuing with the aim of securing a way forward that is in line with these objectives.

What more could the Government do to support children's rights

The most frequent suggestion was that there should be a duty on Government to have regard to the UNCRC when developing new policy and legislation. The Government's objective is to continue to make progress against the UNCRC through a mix of legislative and policy initiatives that will bring about real benefits for children. We have already made a firm commitment to give due consideration to the UNCRC when making new policy and legislation. However, we will watch closely the impact of the new duties being introduced by the Welsh Assembly and proposed by the Scottish Government.

There were a number of other helpful suggestions, in particular by children and young people, on: raising awareness of the UNCRC; and involving children and young people more in decision making. We will take account of the many helpful suggestions that people responding to the consultation made, as we move forward.

Conclusion

I would like to thank everyone who has contributed views and ideas to the consultation. They have helped us to refine our ideas on how the OCCE legislation should be developed. John Dunford's report has provided us with an opportunity to create a more effective Children's Commissioner, able to act independently to give a voice to children and young people and to recommend changes that will improve their lives. We hope to be able to legislate at the earliest opportunity to implement these important changes.

SARAH TEATHER MP
MINISTER FOR CHILDREN & FAMILIES