

Human rights obligations and policy supporting children and families

Governments face a considerable challenge in balancing the needs of children, on the one hand, with those of parents and the wider community on the other. This study, by Clem Henricson of the National Family and Parenting Institute and Andrew Bainham of the Faculty of Law at the University of Cambridge, aims to stimulate debate about the tensions in family and child policy by reviewing government policy in the context of international human rights commitments, such as the European Convention on Human Rights. It explores ways of reconciling differing interests to the maximum benefit of all family members.

- Human rights commitments require the government to formulate policies that take account of the rights and needs of children and parents, but these needs are often competing.
- Progress in balancing individual and collective needs of different family members across policy areas varies.
- Children's welfare has dominated both the social exclusion agenda and issues of residence and contact. In both cases, this may have been to the detriment of the rights of parents and other adults.
- In education, the balance is in favour of parents' rights; children do not have rights to representation, consultation or choice.
- Tough youth justice measures promote the welfare of society above the rights and welfare of children and their parents. As such, they risk breaching the spirit, if not the letter, of the UN Convention on the Rights of the Child and the European Convention on Human Rights.
- The greatest balance has been achieved in managing commitments to universal family support alongside investment in child protection.
- The researchers conclude that:
 - the field would benefit from an overarching child and family policy that takes account of the separate and collective needs and rights of family members;
 - such a policy would need underpinning by a consideration of human rights to ensure that the entitlements of individuals are protected and balanced across the generations.



Introduction

How should governments balance the needs of children with those of parents? This study examines the tensions inherent in child and family policy, the implications of human rights legislation for policy development and the extent to which government has managed these responsibilities through the development of appropriate policies and structures for service delivery. It is intended to stimulate debate about managing the tensions between policies in support of children and those directed at parents and the family.

International obligations and child and family support policies

The European Convention on Human Rights (ECHR) sets out children's and parents' entitlements, including the rights to respect for private life and family life, enshrined in Article 8. The Human Rights Act (1998) (HRA) effectively incorporates the requirements of the ECHR into English law.

The ECHR has significant implications for central and local government. National legislation, such as The Children Act 1989 and the Adoption and Children Act 2002, makes children's welfare the paramount consideration in, for example, cases of contact or adoption. However, the ECHR requires parents' rights to be taken into account.

At the local level, statutory authorities must invest in child protection mechanisms, in line with Article 3's provision for the protection of children from torture, inhuman and degrading treatment. However, authorities must also invest sufficient resources in family support in order to maintain the integrity of the family unit and uphold the right to family life (Article 8).

The United Nations Convention on the Rights of the Child (CRC) sets out the independent rights of children. However, it also states that the best interests of the child are usually served by supporting the child's family.

The UK has been criticised by the UN Committee on the Rights of the Child for its failure to comply, on various fronts, with the requirements of the CRC. Criticisms include the fact that child poverty has not been eradicated and a lack of representation for children.

The European Union (EU) has a significant impact on family life but has not, until recently, had a coherent family

policy or children's rights policy. This is set to change, however, as the proposed EU Constitution contains a Charter of Fundamental Rights which includes provision for family rights and those of the child. The Charter could have a significant impact on member states should the Constitution come into force.

How have international obligations been incorporated into policy and practice?

Poverty and social exclusion

International commitments require the government to tackle child poverty (CRC) and social exclusion across the generations (e.g. EU and Council of Europe). The government has demonstrated a strong commitment to, and some success in, reducing child poverty. Other impoverished groups, however, such as those on Job Seeker's Allowance or Incapacity Benefit, have not seen increases in benefit levels.

While there are convincing arguments for the government's focus on child poverty rather than cross-generational social exclusion, there are still no clear principles which determine levels of investment at different life stages. A debate of such principles would be necessary to ensure that resources are allocated in line with international stipulations on equitable distribution (such as EU, ECHR and CRC commitments).

Family support and child protection

Recognising, in part, that supporting children at risk involves supporting families, the government has invested in both universal family support and child protection. It has developed integrated structures at national level, for example, by bringing together responsibility for children and families under the Department for Education and Skills. At local level, too, integration is apparent in proposals for Children's Trusts and measures for tracking and information exchange.

Despite these positive developments, local authorities would benefit from greater guidance around prioritising investment across family support and child protection. Guidance could emerge out of a review of the relationship between the demands and resources available for social care.

While rights issues are reflected in some of these developments, such as the appointment of a Children's Commissioner, the policy agenda, as reflected in

discussion documents and debates, is largely driven by children's welfare rather than children's rights.

Residence and contact

International obligations provide a clear framework for consideration in cases of parental separation. Children have the right to be heard and to have a say over their destiny. Parents have a right to enjoy the society of their children. Children and parents have a right to family life. Under English law, however, the priorities are different. Children's welfare rather than children's rights is the paramount consideration. Parents' rights are not central to considerations of contact: for example, they are not embedded as a core principle of the recent Green Paper - *Parental separation: Children's needs and parents' responsibilities*.

In order to meet its international obligations, the government needs to support parents in reaching decisions that maximise contact with both parties, subject to the welfare and interests of the child and the practicalities of the individual case.

Education

There is potential for considerable conflict in the field of education between the interests of children, parents and society. While parents have both a significant role in their child's education and the right, under the CRC and the HRA, to guide their child's spiritual, cultural and philosophical convictions, the State has an interest in ensuring that the adults of tomorrow are properly educated. For some commentators, proper education includes providing children with an 'open future' so that they are equipped to make their own choices across cultural, spiritual and economic spheres. Moreover, the CRC provides for children to exercise freedom of thought and religion, and to have a say over their life course, including over the direction of their education.

The government is seeking to balance tensions between parental autonomy and children's access to an 'open future'. It has increased parental involvement in education, for example, by providing more information and increasing parental representation. On the other hand, there is greater direct contact between State and child, through, for example, the Connexions service, the expansion of topics covered in PSHE (personal, social and health education), and the provision of sexual health advice.

Overall, however, children's rights receive little recognition in the education arena. Parents' rights continue to be the dominant influence. Children, and in particular, young people, have little say over the choice of school, attendance, withdrawal from sex and religious education, and issues of discipline.

Criminal responsibility

Recent youth justice measures, such as Anti-Social Behaviour Orders and Parenting Orders, seek to promote the welfare of society; this risks being at the expense of children's and parent's rights.

In the context of the CRC, the age of criminal responsibility for children is too low (set at 10 in England and Wales).

On the other hand, the introduction and extension of Parenting Orders, which reinforce parents' responsibilities for controlling their children's behaviour up to the age of 16, do not take account of the degree of independence of this age group. By threatening to criminalise parents for their children's behaviour these measures breach the spirit if not the letter of the ECHR.

Conclusion

Policy development and implementation

The government has put in place structures to support the delivery of child and family policy. At national level, responsibility for family support and child protection has been brought under the remit of the Department for Education and Skills. At local level, child and family services will be integrated under the proposed Children's Trusts.

Against this backdrop, the researchers conclude that it would be timely to conduct an overarching review of family policy as the foundation for producing a formally recognised national family and child protection policy. Such a policy should contribute to policies and services that support:

- children as having separate and distinct interests from those of adults;
- children in the context of their families;
- human rights across the generations.

Family policy could be strengthened further by taking account of other issues that impinge on family life, such as health, environment and transport. This may be achieved through increasing the profile of the government's existing inter-ministerial group, Misc 9. At the local level, Children's Trusts might be strengthened by changing their name to Children and Family Trusts, thus making their remit explicit and encouraging holistic thinking among those within them.

A human rights agenda

Application of the human rights agenda is not consistent. For example, although the ECHR has been integrated into domestic law through the HRA, its entitlements are not promoted in social policy. Moreover, despite signing up to the CRC, the government has not incorporated its articles into UK legislation.

This has resulted in contradictions and conflicts in policy. In some cases, children's welfare eclipses parents' rights; in others, such as education, parents' considerations dominate. There is also no consistent overview of how the interests of family members are managed across the generations, particularly in terms of allocating finite resources.

The researchers suggest that integrating a rights approach into government thinking and practice would help address such deficits. Rights provide a framework and point of reference for handling competing interests. They make individual and collective entitlements transparent and engender an expectation that interests will be balanced.

About the project

The study involved a review of documents from the last twenty years across family law, education, criminal justice, child protection and financial support. Sources were identified using a range of databases, websites and bibliographic resources and included family law reports; international directives and conventions; and UK government legislation, strategy documents and ministerial speeches.

For further information

The full report, **The child and family policy divide: Tensions, convergence and rights** by Clem Henricson and Andrew Bainham, is published by the Joseph Rowntree Foundation (ISBN 1 85935 330 4, price £9.95).

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