

The Rights of a Child According to the UNCRC during the Separation of Parents

The UN Convention on the Rights of the Child (UNCRC) are the 54 international laws that state the civil, political, economical, social and cultural rights that every child has. This covers all races, religions and abilities. The convention means that all governments are legally required to meet the child's basic needs and ensure that they reach their potential.

The aim of this paper is to provide practitioners, and those working with children, information about the UNCRC articles that are most important for a child during parental separation. This paper will look at four articles as well as laws and acts that are particularly relevant.

Article 18 – The right to be brought up by both parents

The Education Act 1996 defines the word parents as including:

- All natural parents, not dependent of marriage
- Anyone who has parental responsibility even if they are not a natural parent
- Anyone who has care of the child that is not a natural parent or has parental responsibility (Welsh Government, 2007)

A child has a legal right to see their parent even if they do not have parental responsibility as long as it is deemed safe. Contact is the right of the child and is not dependent on parental responsibility.

The Education Act 1989 states that everyone who is defined as a 'parent' has the right to participate in decisions about the child's education and be kept informed. The school will not necessarily liaise with the parent that is not the full care giving parent on a day to day basis however, if they wish to ring regarding progress or any reports then legally the school must give that information over.

Major decisions about the child including where they live, must be agreed by both parents and put in to writing. If an agreement cannot be reached, then the a Specific Issue Order may be applied for and the decision will be made by the judge taking into consideration the child's best interest (Gov.com)

CYPCS (2019) advise that anyone who is employed by the government, including teachers, and may be involved in the child's upbringing have the responsibility to assist the parents when necessary.

Article 12 – The right to be listened to and interests to be respected.

Carmarthenshire Council (2019) state that it is every child's right to have their voice heard in any decision that directly affects them which is also what the UNCRC agree with.

The opinions of children should be considered greatly when making decisions and shouldn't dismiss the opinions based on age and abilities (Children & young people's commissioner Scotland).

Article 12 UNCRC paragraph 2 specifies that the child has a right to be heard in any judicial proceeding that affect them. This includes cases of decision making in terms of parental separation and who they wish to live with (Unicef, 2011).

The UNCRC include all children in their articles including those with disabilities and additional learning needs. Extra care should be taken to ensure that every child is allowed to express their views and opinions freely even if they are not able to verbally convey it. This means that those with disabilities should be given a way of communicating that works for them and to be given their fair chance of voicing their opinion.

UNICEF (2011) emphasis that whilst it is the right of the child to be heard, it is not required for them to have to voice their opinion if they do not wish to.

UNCRC focus on the fact that young people should feel able to express their opinion and not feel as though they will not be respected. All opinions should be listened to and not be dismissed.

In terms of parental separation, the child should feel as though they can voice their opinion on who they wish to live with and be reassured that their voice will be heard and respected.

Article 3 – The best interest of the child must be a priority

The UNCRC have identified Article 3 as one of the four pillar principles of the convention which is implemented and at the heart of all the rights that the child has (Committee on the Rights of the Children, 2013).

The Rights of Children and Young Persons (Wales) Measure 2011 state that all those involved in making decisions within the Welsh Government are required to consider the child's rights when making decisions including their right to have a voice previously looked at in Article 12.

The Children Act 1989 and 2004 both emphasis that the welfare of a child is paramount and that they are best looked after in their own families unless that is not in the best interest of the child such as cases of neglect and abuse. The Social Workers Regulations 2018 infers that each child has a plan designed to ensure that the least restrictive home setting is available, should the child be moved out of the family home. It should be in a close proximity to the family home and be designed to have considered the child's best interests and needs of the child. Working Together (2018) state that social workers and other practitioners should make decisions for the child with the best interest of the child in mind.

Regarding the child's education, it is imperative that the support available is flexible depending on the child's individual needs and what the best provision for the child is. Furthermore, each child is unique in ability and a uniform approach to education is not acceptable (Working Together, 2018). When looking at multi-agencies, it is crucial to consider what would work best for that child and not just look at what has been done in the past for similar situations.

Article 16 – The Child's right to privacy

The UNCRC states that no child is allowed to be subjected interrogation or questioning about their personal life and family situation; they have the right to privacy as much as adults do.

The Data Protection Act (1998) Section 29 outlines that personal information about anyone, including children, should not be disclosed without consent unless it's for the best interest of the child or in the prevention of crime.

Success in Schools (2015) state that schools should disclose to parents on enrolment that they have a duty of care to share information with outside agencies where there are potential safeguarding concerns. It is also to be noted that any referral made should have consent from the parents unless it could be detrimental to the child's wellbeing, in which case the child's information will be kept confidential. Practitioners are required to follow their companies or place of works safeguarding policy when concerning children and young people as Keeping Children Safe in Education (2019) emphasise that the child protection policies out line the procedures and responsibilities when keeping children safe. When the child is at an age to consent to data being shared, consent must be given according to the Data Protection Act (2018). When letters go home to parents that require personal information to be shared, such as permission slips with contact numbers and/or address, the school should provide a data sharing statement to inform the parents what the information will be used for and what will happen to it when it is no longer required. The child has a right for their parent's separation to not be spoken about to those who do not need to know

This briefing paper outlines 4 key articles that the UNCRC have provided that are relevant for a child when facing parents who have separated. The rights mentioned above are all in reference to separated parents however these rights are guaranteed to all children without exception of their circumstances (Jones et al., 2011). The rights of children and young people should be the foremost when practitioners are making any decisions about children in any setting. This briefing paper uses the UNCRC articles as it's basis, however practitioners should also be using the laws surrounding children to make recommendations within their practice.

References

- ASDinfoWales. (No Date) *Autism: A guide for early years settings*. Available at: https://www.asdinfo.wales.co.uk/resource/A-Guide-for-Early-Years-Settings_Eng.pdf (Accessed: 19th October 2019)
- ASDinfoWales. (No Date) *Teifi and Friends* [Video]. Available at: <https://vimeo.com/224777203> (Accessed: 19th October 2019)
- Beckley, P. (2012) *Learning in Early Childhood A whole child approach from birth to 8*. London: Sage Ltd.
- Black, MM, et al. (2007) 'Early childhood development coming of age: science through the life course', *US National Library of Medicine National Institutes of Health*, 389(10064), pp. 77-90. DOI: 0.1016/S0140-6736(16)31389-7.
- Bogdashina, O. (2005) *Communication issues in autism and Asperger syndrome: do we speak the same language?*. London: Jessica Kingsley.
- Bolger, K., Patterson, C. & Kupersmidt. (1998) 'Peer Relationship and Self-Esteem among Children Who Have Been Maltreated', *Child Development*, 169(4), pp. 1171-1197. Available at: <https://srcd.onlinelibrary.wiley.com/doi/epdf/10.1111/j.1467-8624.1998.tb06166.x> (Accessed 16th October 2019)
- Cherry, K. (2017) *5 Important Child Development Theories*. Available at: <https://www.explorepsychology.com/child-development-theories/> (Accessed: 9th October 2019).
- Children Act 1989*, c. 41. Available at: <http://www.legislation.gov.uk/ukpga/1989/41/contents> (Accessed: 19th October 2019)
- Children Act 2004*, c. 31. Available at: <http://www.legislation.gov.uk/ukpga/2004/31/contents> (Accessed: 19th October 2019)
- Dowling, M. (2010) *Young children's personal, social and emotional development*. 3rd ed. London: SAGE.
- Estyn. (2018) *Involving Parents – Communication between schools and parents of school-aged children*. Available at: <https://www.estyn.gov.wales/thematic-reports/involving-parents-communication-between-schools-and-parents-school-aged-children> (Accessed: 19th October 2019)
- Farrell, M. (2002) *Understanding special educational needs: a guide for student teachers*. London: RoutledgeFalmer
- Flanagan, C. (2008) *Applying psychology to early child development*. London: Hodder Arnold.
- Hallet, E. (2012) *The reflective early years practitioner*. London: SAGE.
- HM Government. (2018) *Working Together to Safeguard Children*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779401/Working_Together_to_Safeguard-Children.pdf (Accessed: 19th October 2019)
- HM Government. (2019) *Keeping Children Safe in Education*. Available at: <https://www.gov.uk/government/publications/keeping-children-safe-in-education--2> (Accessed: 20th October 2019)
- Jones et al. (2011) *Children's rights in practice*. London: Sage.
- Lansdown, G. (2011) *Every Child's Right to be Heard: A Resource Guide on the UN Committee on the Rights of the Child General Comment No.12*. Save the Children Fund: London
- Meggitt, C. (2006) *Child development An Illustrated Guide Birth to 16 years*. 2nd Ed. Oxford: Heinemann Educational Publishers.

Riddall-Leech, S. (2008) *How to observe children*. 2nd ed. Harlow: Heinemann.

Robinson, M. (2008) *Child development from birth to eight*. Berkshire: Open University Press

Smidt, S. (2002) *A guide to early years practice*. 2nd ed. London: Routledge.

Success In Schools Ltd (2015) *Information Sharing*. Available at:
<https://www.safeguardingschools.co.uk/wp-content/uploads/2015/02/Information-Sharing-Child-Protection.pdf> (Accessed: 18th October 2019)

The Children Act 2004, c. 31. Available at: <http://www.legislation.gov.uk/ukpga/2004/31/contents> (Accessed 16th October 2010)

The Social Workers Regulations 2018. Available at:
<https://www.legislation.gov.uk/ukdsi/2018/9780111170090> (Accessed: 19th October 2019)

UN General Assembly (1989) 'Convention on the Rights of the Child', *United Nations, Treaty Series*. 1577, pp. 3. Available at: <https://www.refworld.org/docid/3ae6b38f0.html> (accessed 15 October 2019)

Welsh Assembly Government (2017) *"Parents" and "Parental Responsibility": Guidance For Schools*. Available at: <https://gov.wales/sites/default/files/publications/2018-05/parent-and-parental-responsibility-guidance-for-schools-en.pdf> (Accessed: 19th October 2019)

Woodward, L., Fergusson, D. & Belsky, J. (2000) 'Timing of Parental Separation and Attachment to Parents in Adolescence: Results of a Prospective Study from Birth to Age 16', *Journal of Marriage and Family*, 62(1), pp.162–174. Available at: <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1741-3737.2000.00162.x> (Accessed 16th October 2019)