

Children's Rights in the Courts

Using the convention of the rights of the
child in legal proceedings affecting children



The Children's Rights Alliance for England (CRAE) protects the human rights of children by lobbying government and others who hold power, by bringing or supporting test cases and by using regional and international human rights mechanisms. We provide free legal information and advice, raise awareness of children's human rights, and undertake research about children's access to their rights. We mobilise others,

including children and young people, to take action to promote and protect children's human rights.

This publication was researched and written by Rupinder Binning; and edited by Carolyne Willow.

CRAE is very grateful to the Equality and Human Rights Commission (EHRC) for funding this publication. The EHRC is not responsible for any of the content of this publication.

ISBN 978-1-898961-35-2

March 2012

Contents



- 1. Introduction** Page 4
- 2. Children's rights come of age** Page 6
- 3. Children's rights and the law** Page 7
- 4. Case examples** Page 9
- 5. Conclusion** Page 22
- 6. Annex: Convention on the Rights of the Child** Page 23

1. Introduction



16 December 2011 was the twentieth anniversary of the UK's ratification of the United Nations Convention on the Rights of the Child (UNCRC).

The UNCRC confirms clearly the status of children as holders of rights alongside all other human beings; it recognises children's particular vulnerability and their need for special protection and assistance; and it affirms the enormous potential for human growth and development during childhood. It is an all-encompassing treaty with 54 articles, and more than 40 substantive rights.

The UNCRC is being used increasingly in proceedings affecting children but as yet not consistently. This publication highlights how the UNCRC can be used in proceedings and the principal benefits to children. Its aim is to help increase the use of the UNCRC in UK legal proceedings where children are affected – because they are central to the proceedings or they will be significantly affected by the outcome, such as when parents are being sentenced or subject to immigration rules for example.

There can be no doubt that the ban on corporal punishment in schools pursues the legitimate aim of protecting the rights and freedoms of children. It has long been held that these are not limited to their rights under the European Convention. The appellants were anxious to stress that the corporal punishment in which they believe would not breach the child's rights under either article 3 or article 8 [of the European Convention on Human Rights]. But it can still be legitimate for the state to prohibit it for the sake of the child. A child has the same right as anyone else not to be assaulted ... Even if it could be shown that a particular act of corporal punishment was in the interests of the individual child, it is clear that a universal or blanket ban may be justified to protect a vulnerable class ... Above all, the state is entitled to give children the protection they are given by an international instrument to which the United Kingdom is a party, the United Nations Convention on the Rights of the Child...

Baroness Hale of Richmond, 2005¹

Despite the fact that the UNCRC is not part of domestic law and therefore not binding on English courts, the benefits to children of asserting the UNCRC rights in all proceedings affecting them are immense. The UNCRC guarantees rights that encompass all aspects of a child's life and development. Many of the rights exist in other instruments applying to "everyone", including the European Convention on Human Rights (ECHR). However, the UNCRC asserts their equal application to children and adds many additional rights recognising their special status and needs. Using the UNCRC in legal proceedings affecting children adds the strength of applicable international law. It recognises the child as a separate human being whose interests must be (also) considered and who has his or her own perspective, views and feelings.

Since it began examining states parties to the UNCRC in 1993, the UN Committee on the Rights of the Child, the treaty monitoring body for the Convention, has provided authoritative interpretation and guidance to states on fulfilling their obligations under the treaty and ensuring compliance. It has done this in a series of (now 13) General Comments² and in its “concluding observations” issued after examination of each state. This “jurisprudence” can be used to clarify and enhance legal argument to support fulfilment of the rights of the child.

There is no question that the UNCRC has been a major catalyst in changing the social and political status of children; and for achieving significant advances in law, policy and practice across the world. Within the UK, the practice of respecting children as holders of rights is a direct challenge to the Victorian concept that “children should be seen and not heard”. A child with rights becomes a visible person whose own thoughts, perspective and interests must be taken into account. But CRAE is concerned that legal practitioners are not sufficiently and consistently using the treaty, therefore denying children its full protection and maintaining the courts as predominantly a locus for adult concerns and disputes.

Whilst legal practitioners cannot seek to protect children’s rights through a standalone claim under the UNCRC, its treaty provisions may be relevant and could assist in a number of ways in domestic cases, through for example:

- Emphasising the particular needs and rights of the child, as distinct from adults
- Making visible and important the impact of a decision on children and their rights
- Resolving ambiguity in the meaning of statute, regulation or common law
- Being a legitimate guide in the development of common law
- Showing how other jurisdictions and international courts and tribunals have used international law.

The near universal ratification of the UNCRC and its standards signifies the global authority of the treaty. It is for that reason that the gaps in domestic children’s rights protection should be being narrowed and closed through focused advocacy by legal practitioners.

Lessons can be learned from the ECHR and case law prior to its incorporation into domestic law. The ECHR came into force in 1953 but it wasn’t until 1966 that the UK accepted the complaints mechanism established under that treaty. The ECHR was used by lawyers in

domestic cases and reference made to it by courts in their judgments long before incorporation in 2000, when the Human Rights Act 1998 (HRA) came into force.³

Research undertaken by CRAE shows the UNCRC is being increasingly referred to in domestic cases and being very successfully used, including in the highest courts. This is not intended to be a complete guide to the use of the UNCRC. The publication sets out some key cases in England in which the UNCRC has featured, explaining how it was used and the impact on the outcome of the case. We also highlight some cases where it is disappointing the UNCRC did not feature prominently.

CRAE plans to establish a national database of significant domestic cases that have relied upon the UNCRC. Meanwhile, the Council of Europe and Children’s Rights International Network are tracking key cases in Strasbourg and internationally.⁴ We would also recommend two publications providing comprehensive guides to the evolving law and children’s rights:

- Professor Jane Fortin’s *Children’s Rights and the Developing Law* (2009, Cambridge University Press)
- Alistair Macdonald QC’s *The Rights of the Child. Law and Practice* (2011, Family Law)

2.

Children's rights come of age



The 1980s – the decade that ended with the adoption of the UNCRC in November 1989 – saw in England a landmark judgment and also the enactment of major reforming legislation for children's rights.

The landmark judgment was that of the House of Lords, arising out of the case of *Gillick v West Norfolk and Wisbech Area Health Authority*.⁵ In the *Gillick* case, a mother was seeking an order that her daughters – then aged under 16 years – could not be given contraceptive advice and treatment without her knowledge and consent. The final judgment of the highest court stressed the child's growing autonomy. The majority held that a minor could consent to treatment without parental knowledge or consent in some circumstances. The judgment set out what is commonly referred to as the *Gillick* competence test.

The test proposes that children are entitled in law to make decisions which affect them if they are able to understand the implications of the decision and to weigh up the risks and benefits. The test applies to those under 16 years of age.⁶

I would hold that as a matter of law the parental right to determine whether or not their minor child below the age of sixteen will have medical treatment terminates if and when the child achieves sufficient understanding and intelligence to understand fully what is proposed.

Lord Scarman, October 1985⁷

Gillick was a landmark judgment for children's rights as, even though the case concerned medical consent and decision making, the implications are much broader. The judgment emphasises that the authority of a parent is not absolute and that such authority is dependent on the child's maturity and capability in decision-making. Its impact extends beyond the child having a voice in matters affecting him or her, to having autonomy and control: a concept mirrored in Article 5 of the UNCRC, which links the legitimacy of parental direction and guidance with the child's evolving capacities. In 2006, the *Gillick* ruling survived challenge in a case brought by a mother of five, Sue Axon, who unsuccessfully argued that Government guidance relating to confidentiality for under 16s in sexual health matters was unlawful.⁸ Silber J explained that the UK's ratification of the UNCRC 'was significant as showing a desire to give children greater rights' and referred to the *Mabon*⁹ and *Williamson*¹⁰ cases which also made positive use of the Convention in upholding children's rights – see below.

A second major event in the 1980s was the Children Act 1989 which altered the spectrum of private and public proceedings and matters relating to children, their families and their home environment. The 1989 Act embodies a number of key principles in relation to children, most importantly that: the welfare of the child must be the court's paramount consideration in any matter concerning a child's upbringing; and decisions about children's welfare must take into account the child's ascertainable wishes and feelings.¹¹ This legislation also for the first time gave children the right themselves to apply for the court's permission to institute contact, residence and prohibited steps proceedings.¹²

The [Children] Bill in my view represents the most comprehensive and far reaching reform of child law which has come before Parliament in living memory.

Lord Mackay of Clashfern, then Lord Chancellor, December 1988¹³

In the same year that the Children Act was enacted by Parliament, the UNCRC was adopted by the UN General Assembly – after a 10-year drafting process involving civil servants, children's rights campaigners and academics from the UK.

3.

Children's rights and the law



United Nations Convention on the Rights of the Child

The UN adopted the Convention on the Rights of the Child on 20 November 1989. The Polish Government proposed the idea for an international children's rights treaty and work began on the treaty in 1979, which was designated by the UN as the International Year of the Child. Whilst declarations relating to children and their rights had preceded the UNCRC, this was the first comprehensive children's rights treaty.

The UNCRC has 54 articles, with Article 1 defining a child as every human being below the age of 18 years. Articles 2 – 42 give substantive rights to children; the remaining articles establish the Committee on the Rights of the Child, the reporting procedure and other technical matters.

The UNCRC deals with the full range of economic, social and cultural and civil and political rights for children; it has been described as the Children's Magna Carta.¹⁴ Even within the confines of children's civil and political rights, the UNCRC goes much further than the ECHR for children, because its provisions have been tailor-made for them. For example:

- Article 6 of the UNCRC protects the child's right to life and maximum development¹⁵
- Article 3 of the UNCRC requires that the child's best interests be a primary consideration in all actions concerning the child¹⁶
- Article 18(1) requires that the best interests of their children will be parents' 'basic concern'
- Article 2(2) protects the child from discrimination or punishment connected to the status or actions of their parents or other family members

- Article 7 of the UNCRC grants the child the right to, as far as possible, know and be cared for by both parents
- Article 12 of the UNCRC grants all children the right to express their views freely in all matters affecting them; and for those views to be given due weight in accordance with the child's age and maturity
- Article 9(2) of the UNCRC requires that the child's views be known in any proceedings relating to separation from one or both parents
- Article 19 of the UNCRC protects children from all forms of mental and physical violence
- Article 28(2) requires that school discipline be administered in a manner consistent with the child's human dignity
- Article 25 of the UNCRC entitles every child placed away from his or her parents for the purposes of care, protection or treatment to periodic review of his or her treatment
- Article 40(1) of the UNCRC requires that children in conflict with the law be treated in a manner consistent with the promotion of the child's sense of dignity and worth
- Article 40(2)(b)(vii) of the UNCRC requires that the child's privacy be upheld at all stages of criminal proceedings.¹⁷

The UNCRC was ratified by the UK on 16th December 1991. Only two states – the United States and Somalia – have yet to ratify, and both have signed the Convention, signifying an intention to ratify. The Vienna Convention on the Law of Treaties confirms that a treaty is legally binding on states and must be performed in good faith.

The UK is required under international law to fully implement the UNCRC, to ensure that all children in the jurisdiction enjoy all of the rights safeguarded by it. However, as the UNCRC has not been incorporated into domestic law, it is not directly enforceable: children and young people cannot directly petition courts using the UNCRC. Nevertheless, it should be consistently referred to by courts, public bodies and decision-makers when considering matters relating to children.

Courts should seek to interpret domestic legislation consistently with the UNCRC. Even when international treaties have not been incorporated into domestic law, there is no doubt that '*domestic legislation has to be construed as far as possible to comply with international obligations*'.¹⁸ As Lord Carswell noted in the case of *Re E*, concerning sectarian unrest in

Northern Ireland which had developed into abuse towards and attacks on children travelling to and from a local school with their parents:

*The UNCRC was ratified by the United Kingdom in 1991, but this was not incorporated into domestic law. The requirement [Article 3.1 Best interests] is nonetheless a consideration which should be properly taken into account by the State and its emanations in determining upon their actions.*¹⁹

Vienna Convention on the Law of Treaties

“Pacta sunt servanda”

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Article 26, Vienna Convention on the Law of Treaties

Parliamentary sovereignty prevents the direct application of treaties in English courts without the incorporation of the treaty into domestic law. It is Parliament that ‘has, under the English constitution, the right to make or unmake any law whatsoever’.²⁰

Although treaties are not justiciable on their own without incorporation, the courts are still required to consider treaty obligations. This is made clear in the Vienna Convention on the Law of Treaties (Vienna Convention) to which the UK is a party, having ratified it in June 1971.

It is a basic principle of international law that a state cannot invoke its domestic law as a reason for not fulfilling its international obligations (Article 27, Vienna Convention).

Human Rights Act 1998

The HRA incorporated into domestic law the majority of the rights and freedoms in the ECHR, allowing UK citizens to seek protection of their human rights through domestic courts while leaving intact their right to go to the European Court of Human Rights if domestic remedies fail.

The ECHR – and so the HRA – applies to “everyone”, to children just as much as to adults. The HRA provides a vital means of challenging rights violations in domestic courts, including in cases involving children. However, because the ECHR was not drafted with children in mind, it is essential that the UNCRC be consistently used to interpret and make decisions about children’s rights. Indeed, judges have increasingly included the UNCRC in their decision-making on HRA cases involving children. It has been

held by both the Supreme Court and the Strasbourg Court that, when interpreting ECHR rights in relation to children, it is the UNCRC that sets the standards.

The UNCRC is not only binding in international law; it is reflected in the interpretation and application by the European Court of Human Rights of the rights guaranteed by the European Convention.

Baroness Hale of Richmond, 2005²¹

The European Court of Human Rights has repeatedly referred to the UNCRC in its decision-making and judgments, and used it to interpret and assess children’s rights in a wide number of cases. Section 2 HRA places a duty on UK courts to take into account jurisprudence from the European Court of Human Rights.

Ministerial Code

The Ministerial Code sets out the rules and standards for UK Government Ministers.²² The Code was essentially developed to instil public trust in government and to respond to a perception that accountability had been eroded. For the purposes of this publication, the most pertinent part of the code is paragraph 1.2 which reminds Ministers of their overarching duty to comply with the law including international law and treaty obligations. This emphasises that international law is directly applicable in Ministerial decision-making and puts beyond doubt any question that Ministers must comply with treaty obligations.

The Code reaffirms that any violations of international treaties such as the UNCRC are breaches of international law.

4. Case examples



The human rights of children and the standards to which all governments must aspire in realising these rights for all children are set out in the Convention on the Rights of the Child.

Sahin v Germany, Grand Chamber judgment of the European Court of Human Rights, 2003²³

We have categorised the cases for discussion under the cluster headings used by the UN Committee on the Rights of the Child. In addition to definition of the child, there are seven clusters:

- General measures of implementation
- General principles
- Civil rights and freedoms
- Family and alternative care
- Basic health and welfare
- Education, leisure and cultural activities
- Special measures of protection.

Cluster 1:

General measures of implementation

The UNCRC is not only binding in international law; it is reflected in the interpretation and application by the European Court of Human Rights of the rights guaranteed by the European Convention.

Baroness Hale of Richmond, 2005²¹

All of the provisions in the UNCRC must be fully implemented. Articles 4, 42 and 44(6) have been grouped by the UN Committee on the Rights of the Child as general measures of implementation, meaning they are critical to the state's overarching efforts to comply with, and uphold, the treaty. These parts of the Convention set out: a duty to undertake all appropriate legislative, administrative and other measures to implement the UNCRC; requirements relating to publicising and raising awareness of the UNCRC; the composition and role of the UN Committee on the Rights of the Child; and states' reporting obligations. As noted above, the UN Committee comments, in its concluding observations, on the reports submitted by states parties. It also publishes General Comments, which are its authoritative interpretation of the content of the human rights provisions within the UNCRC.

Both the concluding observations and General Comments provide a significant contribution to the implementation of the UNCRC and act as invaluable guidance to states parties in fulfilling their obligations. They can provide significant assistance to the courts when dealing with cases involving children. There have been notable domestic cases which have emphasised that commentary by the UN Committee should be taken into account when interpreting the UNCRC.

In *R (Williamson) v Secretary of State for Education*,²⁵ Baroness Hale referred to the relevant commentary by the UN Committee on the Rights of the Child. In that case headteachers, teachers and parents at four independent Christian schools challenged the legislative prohibition on corporal punishment in schools as being incompatible with their rights under the ECHR, specifically their right to manifest their religion guaranteed under Article 9 ECHR and their right to have their children educated according to their philosophical convictions under Article 2 of the First Protocol. Their application failed in the High Court, the Court of Appeal and in the House of Lords.

Baroness Hale referred to the UN Committee's concerns and recommendations relating to the UK's failure to protect children from all corporal punishment in the family and in private schools, expressed following its first review of the UK in 1995. Following the second review, in 2002, the UN Committee welcomed the abolition of corporal punishment in all schools, a point again noted by Baroness Hale. She also cited the concerns of the UN Committee on Economic, Social and Cultural Rights and the need to heed such recommendations from treaty monitoring bodies.²⁶ She referred to the extensive professional support for the prohibition of corporal punishment in schools, stretching as far back as the Plowden Report of 1967. Baroness Hale concluded:

With such an array of international and professional support, it is quite impossible to say that Parliament was not entitled to limit the practice of corporal punishment in all schools in order to protect the rights and freedoms of all children ÷ prohibiting only such punishment as would violate [children's] rights under article 3 (or possibly article 8) would bring difficult problems of definition, demarcation and enforcement. It would not meet the authoritative international view of what the UNCRC requires.²⁷

R(C) and the Secretary of State for Justice is another notable case showing the authority of the UN Committee.²⁸ This was a judicial review reaching the Court of Appeal concerning the widening of powers to use physical restraint on children detained in secure training centres (STCs). Amendment rules had widened the permissible use of physical restraint to include good order and discipline.

Buxton LJ referred to Baroness Hale's speeches in the *Durham Constabulary*²⁹ and *Williamson* cases. In the former, it was reaffirmed that Article 3 ECHR must be interpreted in light of international conventions, in particular the UNCRC, and in the latter, Baroness Hale reaffirmed the authority of the UN Committee. Buxton LJ also referred to the report of the parliamentary Joint Committee on Human Rights (JCHR) on the use of restraint in STCs.³⁰ The JCHR had referred to the UN Committee's General Comment no. 8³¹, relating to protection from cruel and degrading treatment and punishment, and to the UN Committee's specific recommendation to the UK that the deliberate infliction of pain should not be permitted as a form of restraint.³² The Secretary of State responded by claiming he was bound only by the UNCRC and not the views of the UN Committee. The JCHR was dismayed by the Government's lack of regard for the UN Committee's authority. Buxton LJ shared this criticism:

... the Secretary of State appeared to suggest to the JCHR that he was bound only by the Convention, and not by the view of the UN Committee. The JCHR, at §30, stated that it was very disappointed by the Secretary of State's apparent lack of respect for the views of the UN Committee. So am I. And in view of the observations of Baroness Hale of Richmond that must raise serious doubts as to the degree of understanding with which the Secretary of State approaches his obligations under article 3.³³

Cluster 2: General principles

The UN Committee has identified four articles of the UNCRC as providing overarching rights:

- Article 2 – non discrimination in the application of Convention rights to all children
- Article 3 – the best interests of the child must be a primary consideration in all actions concerning the child
- Article 6 – the child's right to life, survival and maximum development
- Article 12 – children's right to express their views in all matters and proceedings affecting them and to have those views given due weight in accordance with their age and maturity.

The courts are increasingly referring to these four general principles, particularly Articles 3 and 12. The UN Committee's General Comments examine the application of the general principles in a wide range of contexts and circumstances though particular authoritative guidance is provided in General Comments nos. 5 and 12.³⁴

Best interests shall be a primary consideration

The importance of best interests permeates the UNCRC as a guiding principle to be applied alongside all other rights. The inter-related nature of the rights in the Convention requires that, when considering the best interests of an individual child, their views should be heard and given due weight.³⁵

The case of *ZH (Tanzania)* highlights how the obligation to give a primary consideration to the best interests of the child can be successfully used in legal argument.³⁶ The central issue in this case was the best interests of children where a decision was taken to deport a parent. The case involved the deportation from the UK to Tanzania of a mother of two children. The children were both born in the UK and were not subject to immigration proceedings. Their mother's deportation would inevitably



mean the children would also be forced to leave the UK with her. The court also considered what would happen if the children had to remain in the UK with their father.

The Asylum and Immigration Tribunal and the Court of Appeal both held that the children could reasonably be expected to follow their mother to Tanzania. The children's father had been diagnosed with HIV; he was living on a disability allowance; residing with his parents and new partner; and was reported to be drinking a great deal. Despite these facts, the Tribunal felt that there would not necessarily be any practical difficulties if the children were to live with their father, or indeed for the father to visit the children in Tanzania. The Court of Appeal said that the Tribunal's finding that the children could live with their father was susceptible to criticism as having no rational basis, but nevertheless upheld the Tribunal's decision that the children could reasonably be expected to follow their mother to Tanzania. The Court of Appeal also declined to hold that there was no evidence to support the Tribunal's finding that the father would be able to visit the children in Tanzania despite his health and limited means.

The decision before the Supreme Court on appeal from the Court of Appeal was whether deportation of the mother would infringe the right to respect for the family life of each parent and of the two children under Article 8 ECHR and, if so, whether this could be adequately justified by the immigration authorities.

Counsel for the appellant mother did not argue that the citizenship of the affected children should settle the issue but argued that insufficient weight had been given to the welfare of children affected by the decision to

remove their parent. Counsel stated that the decision was incompatible with their right to respect for private and family life considered in light of UNCRC obligations.

This was a landmark case in terms of the best interests of the child and indeed the UNCRC. The judgment contains a lengthy consideration of international human rights provisions and specifically the UNCRC, stating that, for the court's purposes, the most relevant national and international obligation is contained in Article 3(1) UNCRC. As Baroness Hale explained:

This is a binding obligation in international law, and the spirit, if not the precise language, has also been translated into our national law. Section 11 of the Children Act 2004 places a duty ... to carry out their functions having regard to the need to safeguard and promote the welfare of children. The immigration authorities were at first excused from this duty, because the United Kingdom had entered a general reservation to the UNCRC concerning immigration matters. But that reservation was lifted in 2008 and, as a result, section 55 of the Borders, Citizenship and Immigration Act 2009 now provides that, in relation among other things to immigration, asylum or nationality, the Secretary of State must make arrangements for ensuring that those functions are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom.³⁷

Baroness Hale further stated that the jurisprudence of the European Court of Human Rights makes it clear that the Court will expect national authorities to apply Article 3(1) of the UNCRC and treat the best interests of the child as a primary consideration.

The Supreme Court considered a number of factors, including the children's education in the UK, their social links and positive relationship with their father. It also considered the children's citizenship and in that context referred to the UNCRC (Articles 7 and 8). The court concluded that, in making a proportionality assessment under Article 8 HRA, the best interests of the child must be a primary consideration, meaning it must be considered first, albeit it may be that the strength of other considerations outweighs the best interests of the child.

The case of *MXL and others* is also significant in the discussion of Article 3 UNCRC. This case concerned the unlawful immigration detention of a mother and her two young daughters. Blake J observed:

Once Article 8 is engaged, the exercise of judgment in a case falling within its ambit must comply with the principles identified by Strasbourg. In a case where the interests of children are affected this means that other



principles of international law binding on contracting states should be complied with. In the case of children those principles are reflected in Article 3(1) of the UNCRC 1989 to which the UK is now a party without any derogation to immigration decision making by this route, the principle that the interests of the child are a primary consideration should be applied by public officials.³⁸

The importance of the child's best interests was articulated well by Counsel in *R (Kenny) v Leeds Magistrates Court*, concerning an individual subject to an interim anti-social behaviour order whilst still a child. Owen J referred to a decision of Munby J, pointing to the requirements of Article 3 of the UNCRC³⁹, and contended:

Where a defendant is under 18 the court must have regard to the principle that the best interests are a primary consideration when addressing the question of whether it is just to make an order.⁴⁰

In *R (A) v Leeds Magistrates Court*, the High Court held that the district judge was correct in treating the child's best interests as a primary consideration, rather than the primary consideration in ASBO proceedings relating to a 16 year-old. The judge cautioned that:

The phrase "the best interests of the child as a prime consideration" is not a magic talisman which, if not pronounced in a case concerning a child, will necessarily invalidate the order made.⁴¹

The UNCRC's best interests provisions are, of course, strengthened considerably in criminal proceedings when the child is the defendant when joined with Article 40(3)(b), the requirement to avoid judicial

proceedings and to ensure children are dealt with in a manner appropriate to their age and well-being.

In the case of *R v Bishop* the appellant, Mr Bishop, had been sentenced to a period of imprisonment following a conviction for burglary.⁴² Mr Bishop appealed the sentence on the ground that the judge should have had more regard to the consequences of his imprisonment on his five children. The appellant took care of the children during the week, while his ex-partner took care of them at weekends only. The mother's work commitments meant she was unable to look after them during the week. The court considered Article 8 ECHR and the consequences of sole carers being sentenced to imprisonment. Counsel for the father referred to the best interests provisions of the UNCRC, although this was not included in the judgment. It was held that while the sentence of imprisonment was appropriate, the court had to be aware of the 'highly unsatisfactory and difficult situation faced by the children',⁴³ and the appeal was allowed and the sentence of imprisonment suspended for two years.

The best interests principle was also considered in the case of *R(on the application of MP) v Secretary of State for Justice* and *R(on the application of P) v The Governor of HMP Downview and the Secretary of State for Justice*.⁴⁴ The case concerned two judicial reviews brought by female prisoners challenging the refusal of their childcare resettlement leave (CRL) requests.

CRL allows for temporary leave for prisoners who are the sole carers of children under 16 years. The purpose of CRL is to encourage the maintenance of the child/parent ties and to help prepare prisoners to resume their parental responsibilities on release.

In the case of *MP* the children were aged 4, 9 and 13, and were said to be suffering significant emotional disturbance due to the separation from their mother. In the case of *P* the child was aged 15 and suffering from depression as a result of separation from her mother. Both *MP* and *P* had applied for CRL and their applications were refused because they were not in the remaining two years of their early release date. The central issue was whether the defendants had acted lawfully in restricting CRL to prisoners who are within two years of their earliest release date. All of the children were interested parties in the application.

Lang J ruled that the Secretary of State had misinterpreted the policy on CRL by restricting it to those prisoners who are nearing the end of their sentence. CRL could be available at any stage provided other eligibility criteria are met. The claimants' submission that the two purposes of CRL are separate,

and can arise at different stages of the prisoners' term of imprisonment, was accepted by Lang J.

Lang J ruled that the defendants had been applying an inflexible policy in relation to CRL which did not involve consideration of the merits of the individual case and did not permit any exceptions. Lang J also held that the defendants failed to have regard to Article 8 ECHR and Article 3(1) UNCRC and acted in a way which was incompatible with Article 8 ECHR.

In considering the child's best interests under Article 3(1) UNCRC, Lang J examined detailed submissions by Counsel for the children, and wider policy, such as the damaging effect on children of having a parent in prison. The cases of *ZH Tanzania* and *R (P and Q) v The Secretary of State for the Home Department* were also considered. In rejecting the defendants' submission that the principles in *ZH Tanzania* were of limited effect in the context of adult prisoners' leave, as there was no primary legislation enshrining the primacy of the best interests of the child, Lang J stated:

*I do not consider that the absence of primary legislation enshrining Article 3(1) UNCRC, in the context of temporary leave, means that the Secretary of State intends it to be disregarded when exercising his powers under the Prison Act and Prison Rules.*⁴⁵

Lang J concluded 'that Article 8 was engaged when the CRL policy was reviewed and individual decisions made in relation to MP and P, and that Article 3(1) UNCRC has to be considered as part of the application of Article 8. On the evidence before me, little or no consideration was given to Article 8 or Article 3(1) UNCRC when the policy was reviewed or when individual decisions were made'.⁴⁶

The right to be heard and taken seriously

Article 12 of the Convention on the Rights of the Child (the Convention) is a unique provision in a human rights treaty; it addresses the legal and social status of children, who, on the one hand lack the full autonomy of adults but, on the other, are subjects of rights.

UN Committee on the Rights of the Child, 2009⁴⁷

Article 12 of the UNCRC grants every child capable of forming a view the right to express those views freely in all matters affecting him or her, including in judicial and administrative proceedings. Crucially, those views must

be given due weight in accordance with the age and maturity of the child. This provision is more commonly known as the right to participate, and is applicable to all children. The starting point is the presumption that a child has the capacity to form views. It is not necessary that the child has comprehensive knowledge of all aspects of the matter being considered. The UN Committee's General Comment no. 12 provides an authoritative interpretation of what giving due weight entails.⁴⁸

Re D is a notable case concerning children's right to express their views in all matters affecting them.⁴⁹ The case concerned the removal of a four year-old child from Romania by his mother, and a subsequent application by the father for the child to be returned to Romania under the Hague Convention on the Civil Aspects of International Child Abduction Act 1980. As a result of delay in the English proceedings pending a determination from a Romanian Court as to the lawfulness of removal, the proceedings were still ongoing in 2006 when the child was eight years old. The child made an application to the Court of Appeal to be made a party to the proceedings, but this was rejected. A subsequent Children and Family Court Advisory Support Service (CAFCASS) report revealed that the child was adamantly opposed to a return to Romania. After the mother was granted permission to appeal to the House of Lords, the child petitioned for leave to intervene and was permitted to do so. As well as the substantive issue of returning the child to Romania under the terms of the Hague Convention, the matter of how the child's views should be put before the court was considered. Baroness Hale observed:

*There is now a growing understanding of the importance of listening to the children involved in children's cases. It is the child, more than anyone else, who will have to live with what the court decides. Those who do listen to children understand that they often have a point of view which is quite distinct from that of the person looking after them. They are quite capable of being moral actors in their own right.*⁵⁰

The Brussels II Revised Regulation recognises the importance of listening to children involved in family law cases between member states, by effectively making a presumption that the child's views will be heard unless it is inappropriate given the child's age and maturity. Baroness Hale explained:

*Although strictly [the Brussels II regulation] only applies to cases within the European Union ... the principle is in my view of universal application and consistent with our international obligations under Article 12 of the United Nations Convention on the Rights of the Child.*⁵¹

Article 12 of the UNCRC was also considered in *Re M*, another child abduction case.⁵² Here Baroness Hale asserted:

*These days, and especially in the light of article 12 of the United Nations Convention on the Rights of the Child, courts increasingly consider it appropriate to take account of a child's views. Taking account does not mean that those views are always determinative or even presumptively so ... but that is far from saying that the child's objections should only prevail in the most exceptional circumstances.*⁵³

Mabon v Mabon and others is a very significant case relating to the child's right to be heard.⁵⁴ Three of six siblings, aged 17, 15 and 13 years, applied for leave to be separately represented in family proceedings dealing with their parents' separation. The application was rejected at the County Court as the judge believed there was no advantage in separate representation. The applications were allowed on appeal to the Court of Appeal: it was held to be 'simply unthinkable to exclude young men from knowledge of and participation in legal proceedings that affected them so fundamentally'.⁵⁵

The Court of Appeal referred to the UK's obligations under Article 12 UNCRC and Article 8 ECHR and stated that the applicable domestic law was framed widely enough to meet international obligations under the UNCRC provided that 'judges correctly focus on the sufficiency of the child's understanding and, in measuring that sufficiency, reflect the extent to which, in the 21st Century, there is a keener appreciation of the autonomy of the child and the child's consequential right to participate in decision making processes that fundamentally affect his family life'.⁵⁶

Thorpe LJ strongly supported the children's right to be heard as expressed in the UNCRC, albeit emphasising their age (there is no minimum age in the treaty for the child's right to express views freely):

*Unless we in this jurisdiction are to fall out of step with similar societies as they safeguard Article 12 rights, we must, in the case of articulate teenagers, accept that the right to freedom of expression and participation outweighs the paternalistic judgment of welfare.*⁵⁷

The judge in the CRL cases referred to above also considered the importance of ascertaining the child's views. Lang J stated that 'in my judgment, those making individual decisions in respect of CRL are required to give effect to this [Article 12] principle, when considering Article 8 [of the ECHR]'.⁵⁸

In *R(on the application of K) v Parole Board*, Article 12 UNCRC was considered in relation to the procedure involved in releasing K (a child) from detention on licence.

The central issues in the case in determining whether the procedure was unfair, were the lack of adult assistance for K in the application process; and the failure to disclose the possibility of an oral hearing. McCombe J observed that 'the law may frequently require more exacting standards of fairness on the part of the authorities dealing with children than would be necessary or appropriate in the case of an adult'.⁵⁹ He stated that the UNCRC and Beijing Rules could also inform common law obligations of fairness towards children.⁶⁰ In considering Article 12 UNCRC, McCombe J said the opportunity to be heard should be made effective by providing adult assistance and that 'minimum standards of fairness would afford a possibility for the [parole] dossier to be gone through scrupulously by an adult with the child, for strengths and weaknesses to be identified, assistance in formulating and reviewing written representations, including representations for an oral hearing ... the final product should be looked at by an adult and advice given before the document is delivered to the [parole] board'.⁶¹

Cluster 3: Civil rights and freedoms

All children must be given the chance to find their identity and realize their worth in a safe and supportive environment.

World Summit for Children, 1990⁶²

The civil rights and freedoms cluster incorporates the right: to registration after birth, nationality and the child's right to know his or her parents (Article 7); the right to identity (Article 8); freedom of expression (Article 13); freedom of thought, conscience and religion (Article 14); freedom of association and peaceful assembly (Article 15); the right to privacy (Article 16); access to information (Article 17); protection from all forms of violence, injury or abuse or neglect (Article 19); and protection from torture or other cruel, inhuman or degrading treatment or punishment (Article 37(a)).

Whilst children are protected alongside adults under treaties such as the International Covenant on Civil and Political Rights and the ECHR, they were never specifically considered in the development of these rights and freedoms. It is without doubt that such rights are vital for the healthy development of children.

Birth rights

Article 7 has been referred to in a number of domestic cases involving paternity and the child's right to know his or her father.



In *Re H*, concerning a two year-old child, the putative father applied for a direction for a blood test to determine paternity, which the mother opposed. Ward LJ asserted, 'every child has the right to know the truth unless his welfare clearly justifies the cover up' and referred to the child's Article 7 UNCRC right to, as far as possible, know and be cared for by both parents.⁶³

The freedom articles

The "freedom articles" incorporate the rights to freedom of expression, conscience, thought and religion, association and assembly and are core civil rights and freedoms which empower and enable children to develop and participate fully in society.

In *R (W) v Commissioner of Police for the Metropolis and Richmond Upon Thames Borough Council*, a child challenged by way of judicial review Section 30(6) of the Antisocial Behaviour Act 2003.⁶⁴ W lived in an area which was designated a dispersal zone pursuant to s30(6), and challenged the authorisation granting police the power to forcibly remove children under the age of 16 from the area during curfew hours. This power is granted on the basis that there are reasonable grounds for believing that the presence or behaviour of a group of two or more persons in any public place has resulted in, or is likely to result in, members of the public being intimidated, harassed, alarmed or distressed.

The Divisional Court held that the Section 30 power was permissive, giving police the power to take home a child who was willing to be removed. On appeal, the Court of Appeal held that the police did have the power to remove a child by reasonable force, though

the power must not be used arbitrarily.⁶⁵ Although this limitation on police powers was very welcome, regrettably, the Court of Appeal did not examine the Act from the perspective of the UNCRC.

Privacy, family life and home

The case of *Hunter and others v Canary Wharf Limited* was not solely concerned with children's rights but provides important judicial commentary.⁶⁶ Several hundred claimants argued that the defendant had, in constructing the Canary Wharf Tower, caused nuisance to them by causing interference with their television reception. The substantive issues concerned private nuisance and the right of occupiers to sue. Lord Cooke concluded that the child claimants should be entitled to such relief, noting:

*Internationally the distinct interests of children are increasingly recognised. The United Nations Convention on the Rights of the Child, ratified by the United Kingdom in 1991 and the most widely ratified human rights treaty in history, acknowledges children as fully-fledged beneficiaries of human rights. Article 16 declares inter alia that no child shall be subjected to unlawful interference with his or her home and that the child has the right to the protection of law against such interference. International standards such as this may be taken into account in shaping the common law.*⁶⁷

Lord Cooke noted similarities in protection between Article 16 UNCRC and Article 12 Universal Declaration of Human Rights and Article 8 ECHR.⁶⁸

An Article 8 HRA claim was brought in *Murray v Express Newspapers plc and another*.⁶⁹ The defendants had taken and subsequently published a photograph of the 19 month-old son of author J. K. Rowling. It was argued on the child's behalf by his parents as litigant friends that he had a right to privacy under Article 8 ECHR. The Court of Appeal considered Article 16 UNCRC, and its emphasis on the need to protect the child from unlawful interference with privacy, family or home. In ruling that a child's right to respect for his private life under Article 8 ECHR may, in some cases, outweigh a publisher's right to freedom of expression under Article 10 ECHR it was said that:

*... In our opinion it is at least arguable that [child's name] had a reasonable expectation of privacy. The fact that he is a child is in our view of greater significance than the judge thought. The courts have recognised the importance of the rights of children in many different contexts and so too has the international community ... and the United Nations Convention on the Rights of the Child, to which the United Kingdom is a party.*⁷⁰

The case of *R (P and Q) v The Secretary of State for the Home Department* involved the issue of the right to family life and considered the UNCRC articles and principles.⁷¹ Two serving female prisoners appealed against the decision of the Divisional Court to dismiss their challenges to the lawfulness of aspects of the Prison Service's policy relating to Mother and Baby Units. The Court of Appeal held that the Prison Service was entitled to have a policy of that kind, though it was not entitled to operate it in such a rigid manner by insisting that all children must leave the unit by 18 months old. The first reason for this was that the policy's own aim of promoting the welfare of the child would not be met if the effect on the child's welfare was 'catastrophic'.⁷² The second reason was that, in considering Article 8 ECHR, there might be exceptions where the right of the mother and the child outweigh other considerations. The court considered the report of the working group tasked to examine the Prison Service's mother and baby policy and noted that it considered Article 8 ECHR and the child's best interests; and that the underlying principle of giving primacy to the welfare and best interests of the child drawn from the UNCRC should be followed 'where possible'.⁷³ Woolf CJ responded to Counsel's submissions on the UNCRC by stating:

The UNCRC is not part of our domestic law. Nonetheless [Counsel] submits the obligations under the UNCRC are relevant because a) they can inform our decision; and b) they are taken into account by the [ECtHR] when applying Article 8 and therefore in accordance with section 2(1) of the HRA have a place in the interpretation of Convention rights in the courts in this jurisdiction. He also relies on the fact that (as appears from the evidence before us) in devising the Policy the Prison Service has itself taken into account the UNCRC. We accept these submissions.

Protection from torture or other cruel, inhuman or degrading treatment or punishment

The judicial review brought by the mother of 14 year-old Adam Rickwood,⁷⁴ who hanged himself hours after being unlawfully restrained and subject to the brutal nose "distraction" in Hassockfield STC, relied on the UNCRC in determining the perimeters of use of force in custodial settings. Blake J explained:

... it should have been clear to all properly self-directing public authorities that the limits on the use of force on children in custody was driven by the core principles set out in the UN Convention on the Rights of the Child, to which effect was designed to be given

in UK law by the Children Act 1989, and which informs any detailed elaboration of human rights relating to children set out in the Human Rights Act 1998. Deliberate infliction of pain and force on children as young as 14 could only be justified by very compelling reasons such as those contemplated by the STC Rules, rather than generally to support staff orders. The authors of the Smallridge and Williamson report to the Ministers were very much mistaken if they believed that the requirements of the UN CRC were irrelevant to the limits of restraint that could be used in the UK.⁷⁵

The case of *R (on the application of Children's Rights Alliance for England) v Secretary of State for Justice and others* concerned the widespread unlawful use of restraint in secure training centres (STCs) between 1998 and 2010.⁷⁶ The history leading up to these legal proceedings began with the restraint-related deaths of two children in STCs in 2004. Foskett J summed up: 'The children and young people sent to [secure training centres] were sent there because they had acted unlawfully and to learn to obey the law, yet many of them were subject to unlawful actions during their detention. I need, I think, say no more'.⁷⁷

CRAE's legal action pursued a court order requiring the Government to identify potential past victims and to either provide, or to facilitate the provision of, information relating to unlawful restraint and their right to seek investigation and/or compensation. Counsel referred extensively to the UNCRC to support the submission that the defendant is under a positive obligation to provide that information. In support of this argument, Counsel referred to Articles 3, 19, 37 and 39 UNCRC, and also to extracts from the UN Committee on the Rights of the Child's General Comments nos. 5, 8 and 10.⁷⁸

Foskett J summarised Counsel's submissions on the UNCRC as follows:

Whilst there are subtleties of argument about when and how these factors should have been considered by the Defendant when responding to the Claimant's invitation to take action, the bottom line of the submission is that these considerations add up to an overwhelming need for the kind of action sought in the claim. He submits that the UNCRC and the comments made in relation to it add to the case under Article 6, and indeed the case under the common law, the action of the kind sought is necessary to ensure effective access to justice.⁷⁹

While Foskett J ruled out a legal obligation on the part of the defendant to identify potential victims and notify them of their rights, he urged some form of Government action:

Merely because the action of disseminating the relevant information is not required by the law does not mean that there is no obligation to consider whether some action is necessary if only as a matter of good and fair administration. The fact that those potentially affected were vulnerable children and young persons would, in my judgment, at least dictate the need for the Defendant to consider whether something ought to be done.⁸⁰

Cluster 4: Family environment and alternative

This cluster of entitlements incorporates the right to parental guidance and direction in accordance with the child's evolving capacities (Article 5); the right not to be separated from parents unless in the child's best interests (Article 9); the right to enter and leave a state party for reunification purposes (Article 10); states' duties relating to combating illicit transfer and the non return of children (Article 11); the recognition of parents' responsibilities for the child's upbringing and development as well as their right to support (Article 18); the right to special protection and assistance for children deprived of their family environment (Article 20); the rights of the child in adoption (Article 21); the requirement for periodic review of children placed for purposes of care, protection and treatment (Article 25); and the recovery of maintenance from parents with financial responsibility (Article 27(4)).



Illicit transfer and non return of children

The case of *Northumberland County Council v Z, Y, X and the Government of the Republic of Kenya* highlighted the provisions of Article 11 UNCRC requiring states parties to take measures to combat the illicit transfer of children, and also Article 35.⁸¹ The case involved a British couple bringing a Kenyan child into the UK under a false passport and concealing her from the local authority. The child was eventually made subject to care proceedings and returned to Kenya where she was adopted. The local authority subsequently sought to disclose the judgment to the police and immigration authorities in order to safeguard other children. The Kenyan Government also sought disclosure of case papers. The court recognised that the UNCRC contains important principles for public policy, to which the court must have regard, and, accordingly, carefully considered its requirements.

Periodic review

In the case of *Re R*, concerning inter-country adoption, the court referred to Article 21 UNCRC in relation to the specific rights of the child in adoption proceedings.⁸² A child was brought into the UK from Romania by a non-parent, who, at the time of entry stated that the child was visiting for a holiday. An application to adopt the child was subsequently made to the local authority by the non-parent who informed the local authority that the birth parents were in agreement. It later transpired that the birth parents were not in agreement; indeed, they sought the return of their child to Romania. In setting out guidelines for future inter-country adoption applications, *Bracewell J* referred to the UNCRC and Article 21(c) and the principle that children subject to inter country adoption shall have safeguards and standards equivalent to those for national adoption, which is reflected in the UK's domestic legislation.

Cluster 5: Basic health and welfare

This cluster focuses on the health and welfare of children and incorporates their right to benefit from child care services and facilities (Article 18(3)); the additional rights of disabled children (Article 23); the right to enjoy the highest attainable standard of health (Article 24); the right to benefit from social security (Article 26); and the right to an adequate standard of living (Article 27).

The case of *Smith v Secretary of State for Work and Pensions and another* concerned child maintenance and the assessment of the father's contribution.⁸³ A mother of three children appealed the amount of maintenance

payments the father was required to make. The father was only required by the Child Support Agency to pay maintenance on a small portion of his earnings as he claimed large deductions on his income tax.

The case concerned an interpretation of the phrase “total taxable profits” in the Child Support (Maintenance Assessments and Special Cases) Regulations 1992. The phrase is used for determining the earnings of a self-employed, non-resident parent.

The case is an excellent example of the UNCRC being positively used where there are two possible interpretations of domestic law.

Baroness Hale of Richmond referred to the positive obligation of the state under Article 8 ECHR to take steps to permit integration into the family, and observed a ‘*child can scarcely benefit from family life if a child does not have enough to live on*’.⁸⁴ She noted the European Court of Human Rights considers other international human rights instruments when interpreting its own Convention and referred to provisions in Article 27 UNCRC. Baroness Hale discussed the calculation problem and how it essentially led to an amount which ‘*no one could consider to secure the proper development of a child of a man of his station in life*’.⁸⁵ Importantly, Baroness Hale clarified:

*... if an international treaty has not been incorporated into domestic law, our domestic legislation has to be construed so far as possible so as to comply with the international obligations which we have undertaken. When two interpretations of these regulations are possible the interpretation chosen should be that which better complies with the commitment to the welfare of children which this country has made by ratifying the UNCRC.*⁸⁶

In the case of *Re J*, the Court of Appeal confirmed Wall J’s refusal to grant a Muslim father a specific issue order requiring his five year-old son to be circumcised. Wall J had considered the father’s rights under Article 9 ECHR to bring up his child in accordance with his religion. He also referred to the mother’s own rights to oppose such an application; the child’s welfare; and the need in Article 24(3) UNCRC for states to abolish traditional practices prejudicial to children’s health.⁸⁷ Thorpe LJ stated that Wall J had correctly held that the father’s rights had to be balanced against the mother’s own rights and the child’s welfare.⁸⁸

Cluster 6: Education, leisure and cultural activities

This cluster incorporates the child’s right to education (Article 28); the aims of education (Article 29); and the right to play, leisure and cultural activities (Article 31).

As noted above (Cluster 1) the principal aspect of the case of *R (on the application of Williamson and others) v Secretary of State for Education and Employment and others*⁸⁹ concerned the extension of the ban on corporal punishment to independent schools. The parents argued that the ban interfered with their right to freedom of religion and their freedom to manifest their religion. They claimed that their Christian beliefs included a belief that ‘*part of the duty of education in the Christian context is that teachers should be able to stand in the place of parents and administer physical punishment to children who are guilty of indiscipline*’.⁹⁰

It was held that the parents’ rights under Article 9 ECHR had been infringed by the statutory ban on corporal punishment in schools but that this infringement was proportionate and justified:

*... the statutory ban pursues a legitimate aim: children are vulnerable, and the aim of the legislation is to protect them and promote their wellbeing. Corporal punishment involves deliberately inflicting physical violence. The legislation is intended to protect children against the distress, pain and other harmful effects this infliction of physical violence may cause. That corporal punishment may have these harmful effects is self-evident.*⁹¹

The judgment contained detailed consideration of the principles of human rights law and provisions under the HRA. Baroness Hale of Richmond considered the UNCRC, including Article 28(2)’s requirement that states parties take measures to ensure that school discipline is in line with the child’s dignity and in conformity with the Convention. Crucially, Baroness Hale also questioned why no organisation (naming CRAE in particular) had come forward to intervene on behalf of children:

*This is, and has always been, a case about children, their rights and the rights of their parents and teachers. Yet there has been no-one here or in the courts below to speak on behalf of the children. No litigation friend has been appointed to consider the rights of the pupils involved separately from those of the adults. No non-governmental organisation, such as the Children’s Rights Alliance, has intervened to argue a case on behalf of children as a whole. The battle has been fought on ground selected by the adults. This has clouded and over-complicated what should have been a simple issue.*⁹²



Cluster 7: Special measures of protection

The special protection measures' cluster of articles incorporates the rights of children in situations of emergencies (Articles 22, 38 and 39); in conflict with the law (Articles 37, 39 and 40); in situations of exploitation, including reintegration and recovery (Articles 32 to 36 and 39); and the rights of children belonging to minority or indigenous communities (Article 30).

Liberty and security, and freedom from torture, inhuman and degrading treatment.

Article 37 is a far-reaching provision dealing with deprivation of liberty and associated safeguards such as: protection from unlawful and arbitrary detention; detention as a last resort; treating children with humanity, respect and in accordance with their age and needs; separation from adults in detention; contact with family; and legal assistance. Article 37 recognises the close link between children's right to liberty and security, and protection from torture and cruel, inhuman and degrading treatment or punishment.

Article 37 can be promoted in cases involving children in conflict with the law, and is supported by extensive guidance in the UN Committee's General Comment no. 10.⁹³ However, that Article does not solely apply to children in conflict with the law but also to deprivation of liberty in welfare, mental health and asylum and immigration cases. Article 37 is supported by Articles 39 and 40 dealing with the positive rehabilitation of child victims including child victims of cruel, inhuman or degrading treatment or punishment.

In *R (DT) v The Secretary of State for the Home Department*, Article 37(c) was relied upon by the claimant in arguing that her detention in an adult prison at 16 years old was unlawful.⁹⁴ The claim was unsuccessful: it was argued by the Home Secretary that at that time the UK had in place a reservation to Article 37(c) in respect of placing children with adults due to lack of suitable detention facilities or where deemed mutually beneficial. Despite the unfavourable outcome, this case is a positive example of the use of the UNCRC in legal argument to support claims under the HRA and challenges to domestic legislation.

The case of *ID and others v Home Office* involved an appeal by a Czech family in relation to their detention in an immigration removal centre.⁹⁵ The two children were aged 14 and 10. As part of their claim the family relied upon Chapter 38 of the then Operations Enforcement Manual, which states that the detention of a family with children must be a last resort and/or necessary, and they reinforced this by citing Article 37(b) UNCRC. Brooke LJ explained:

*If a court judges that in making his decision to detain, an immigration officer failed to take into account matters of material significance (viz he had overlooked relevant features of internal policy or paid no regard to the fact that the prospective detainee is a child protected by art 37(b) [UNCRC] then he will have strayed outside his wide ranging powers. As a result he will have no power to authorise the detention in questions.*⁹⁶

*If on the other hand there is not illegality under English law, then we have to determine whether the detention of this family with their two young children was disproportionate in the light of not only of Home Office internal policy but also of art 37(b) [UNCRC].*⁹⁷

The case of *S, C and D v Secretary of State for the Home Department* involved the detention of a mother with her two children in an immigration removal centre.⁹⁸ *D* was a baby under one years old and *C* was four years old. The court recognised that Article 5 ECHR, the right not to be subjected to arbitrary detention, must be read alongside the UNCRC, citing in particular Articles 3 and 37(b) relating to best interests and protection from detention. The High Court held that the Home Office policy on the detention of families and children was compatible with the general thrust of the UNCRC, but on the particular facts of this case the detention of the mother and her two children was unlawful.

Child-centred juvenile justice system

The case of *R v. Durham Constabulary and another ex parte R* in the House of Lords involved a challenge to the lawfulness of a warning given to a 15 year-old boy under the Crime and Disorder Act 1998. It was argued

that the procedure was incompatible with Article 6 ECHR due to the absence of any legislative requirement that a child should give informed consent to a warning.⁹⁹ The warning had resulted in the 15 year-old being named on the Sex Offenders Register – an outcome which had not been explained to him at the time of the warning. Counsel for the child referred to the provisions in Article 40 UNCRC. The House of Lords held that the warning process did not breach Article 6 ECHR and it was also considered that, in this case, the actions of the police did not contravene Article 40 or the spirit of the UNCRC. However, Baroness Hale gave a fuller account of the UNCRC and Articles 3, 37 and 40 and expressed:

... grave doubts about whether the statutory scheme is consistent with the child's rights under the international instruments dealing with children's rights. The rigidity of the scheme undermines the emphasis given to diverting children from the criminal justice system, propels them into it and on a higher rung of the ladder earlier than they would previously have arrived there, and thus seriously risks offending against the principle that intervention must be proportionate both to the circumstances of the offender and of the offence.¹⁰⁰

The case of *R (B) v Brent Youth Court* concerned a change of circumstances in the child's bail application.¹⁰¹ Counsel referred to the UNCRC, Articles 3 and 37(b) in particular, to support arguments on the welfare of the child, and the unlawful deprivation of liberty. Unfortunately, the judgment did not consider the UNCRC arguments but the case shows how the treaty can be used in legal argument.

In *R v Secretary of State for the Home Department ex parte Venables*; *R v Secretary of State for the Home Department ex parte Thompson*, the courts were involved in considering matters of release on licence, mandatory sentences and the setting of tariff periods.¹⁰² The background to this case is well known: two 10 year-old boys abducted and killed a two year-old child. Following sentencing, the trial judge in his report to the Secretary of State stated that a minimum tariff of eight years imprisonment was necessary to satisfy the twin aims of retribution and deterrence and given the boys' ages. The Lord Chief Justice agreed that a shorter period was appropriate given their age and recommended a tariff of 10 years. The Home Secretary subsequently set a tariff of 15 years, with a review after 12 years.

It was held by the House of Lords that in 'setting the tariff of 15 years the Secretary of State was applying an unlawful policy. The unlawfulness lies in adopting a policy which totally excludes from consideration during the tariff period factors necessary to determine whether

release from detention would be in the interests of the welfare of the applicants'. The sentence of detention when imposed on a child was not the same as a sentence of life imprisonment imposed on an adult and the Home Secretary was wrong to treat it on the same basis and to be influenced by public opinion.

Lord Browne-Wilkinson in his speech commented usefully on the difference between adult and child offenders and stressed the UK's international obligations under the UNCRC:

The Convention has not been incorporated into English law. But it is legitimate in considering the nature of [indefinite detention for children] that Parliament has not maintained on the statute book a power capable of being exercised in a manner inconsistent with the treaty obligations of this country. Article 3(i) requires that in the exercise of administrative, as well as court, powers the best interests of the child are a "primary consideration." Article 40(i) shows that the child offender is to be treated in a manner which takes into account "the desirability of promoting the child's reintegration and the child's assuming a constructive role in society." The Secretary of State contends that he is entitled to fix a tariff which will endure throughout the childhood of the offender and that neither in fixing that tariff nor in considering any revision of it will he have any regard to the welfare of the child. Such a policy would infringe the treaty obligations of this country.¹⁰³

In the case of *R v G and another*, Article 40(1) UNCRC was referred to.¹⁰⁴ The case involved the convictions of two young boys, aged 11 and 12, who had set fire to newspapers behind some shops, resulting in £1million worth of damage. The children's defence was that they, essentially, had expected the newspapers to extinguish by themselves and had not appreciated or realised the risk of the fire spreading like it did. The central issue at trial was the meaning of recklessness. The trial judge had to direct the jury in accordance with *R v Caldwell*,¹⁰⁵ a case which extended the subjective test of recklessness by adding an objective test: this being that there was an obvious risk which was so obvious that any reasonable person would have seen it (where the ordinary reasonable person is an adult). The jury had difficulty reaching a verdict and asked the judge why they should consider the risk as perceived by a reasonable person or layman. The case reached the House of Lords to determine whether a defendant can be properly convicted under Section 1 CDA 1971¹⁰⁶ on the basis of recklessness when, by reason of his age and/or personal characteristics, the risk would not have been obvious to him, even if he had thought about it.

The UNCRC was considered by Lord Steyn who stated that:

*Ignoring the special position of children in the criminal justice system is not acceptable in a modern civil society. Article 40.1 provides ... [a] provision [which] imposes both procedural and substantive obligations on state parties to protect the special position of children in the criminal justice system ... Similarly, it is contrary to Article 40.1 to ignore in a crime punishable by life imprisonment, or detention during Her Majesty's pleasure, the age of a child in judging whether the mental element has been satisfied. It is true that the Convention became binding on the United Kingdom after Caldwell was decided. But the House cannot ignore the norm created by the Convention. This factor on its own justified a reappraisal of Caldwell.*¹⁰⁷

The boys' convictions were overturned. Lord Steyn also stated that, if it is wrong to ignore the special characteristics of children in the context of "recklessness", the same standard of justice may be afforded to adults who lack mental capacity or suffer from a relevant personality disorder.

The UNCRC has been cited in other criminal proceedings concerning children. For example, Lord Bingham, in considering the reasonable time requirement under Article 6 ECHR as applied to children, stated: 'the reasonable time requirement in the Convention must, when dealing with children, be read in the light of the UN Convention on the Rights of the Child and the Beijing Rules, both of which apply to UK and both of which highlight the need for criminal proceedings, if brought at all, to be prosecuted with all due expedition'.¹⁰⁸

Munby J, in considering the application of the Children Act 1989 to young offender institutions, examined the state's obligations under Articles 3 and 8 ECHR and the additional positive obligations under Articles 3 and 37 UNCRC. The judge also examined the obligations under the (then) European Charter (now Lisbon treaty). Whilst human rights arguments were not central to the case, it is worth recalling the status given to international obligations by Munby J: 'Neither the UN Convention nor the European Charter is at present legally binding in our domestic law and they are therefore not sources of law in the strict sense. But both can, in my judgment, properly be consulted insofar as they proclaim, reaffirm or elucidate the content of those human rights that are generally recognised throughout the European family of nations...'.¹⁰⁹

In the case of *R on the application of E and Ors v the DPP* a judicial review was sought of the decision of the

Crown Prosecution Service to prosecute a 14 year-old girl on allegations of sexual abuse.¹¹⁰ E was aged 12 when it was alleged that she had committed offences of sexual abuse against her two younger sisters (she was 14 years at the time of the prosecution). A judicial review application was made on the decision to prosecute as there were concerns that, whilst a criminal prosecution was pursued, none of the children concerned could be given adequate help and therapeutic support and also E had claimed that she had been groomed and coerced into making the video by someone she had met on the internet. The UNCRC was considered by the court, in particular Articles 39 and 40 relating to the special status of a child who is both defendant and victim.¹¹¹ The application was dismissed insofar as it challenged the legality of the DPP's policy and guidance, but was successful in terms of quashing the decision to prosecute.

Protection from sexual exploitation and abuse

Article 34 places an obligation on all states parties to protect children from all forms of sexual exploitation and abuse. The case of *R v Christian and Others*¹¹² involved prosecutions under English law in a UK overseas territory, the Pitcairn Islands. The case involved seven men who had been accused of various sexual offences, some of which had been carried out against children. The defendants made an application that the trials be stayed due to abuse of process, arguing that the tenuous legal and political connections between the islands and the UK meant that the prosecutions under English law should not have been allowed. The application, which was heard in the Pitcairn Supreme Court, was not granted. The court affirmed the application of English law, and stated that there was an understanding of the Islanders that rape and other sexual offences were unlawful and would be tried under the long established court structure and that such offences were violations of accepted international human rights standards. The judgment specifically refers to Article 34 UNCRC as one such standard, that is the state's obligation to protect children from all forms of sexual exploitation and abuse.¹¹³ It was stated that 'this article must be fundamentally designed to protect the inherent dignity and person of the child'.¹¹⁴

The decision was appealed in the Pitcairn Court of Appeals and lastly in the Privy Council in England: both affirmed the jurisdiction of English law and upheld the convictions.

5. Conclusion



The case examples in this publication show how the law can be used to promote much greater respect for children's rights in the UNCRC. This publication has highlighted case law where practitioners and courts have incorporated the UNCRC within the litigation and adjudication process, thereby seeking to enforce the rights children have under international law.

Courts have increasingly referred to the UNCRC across a wide spectrum of proceedings affecting children. However, as yet, the approach both by courts and practitioners is not consistent. Key areas in which the UNCRC has been referred to include: juvenile justice, family proceedings, abduction cases and asylum and immigration. There are a number of areas where the use of the UNCRC appears to be less frequently used such as housing, local authority duties in the context of leaving care and children in need, employment and health.

It is not disputed that the strength of the UNCRC would be greater if it were incorporated into domestic law, thus creating enforceable rights under the Convention for children and young people. Calls for incorporation of the UNCRC have come from a large number of non-governmental organisations working with and for children, human rights bodies and the four Children's Commissioners. The UN Committee of the Rights of the Child has repeatedly recommended that the UNCRC be incorporated into domestic law, most recently in its 2008 concluding observations.

Wales and Scotland have both made significant moves towards enshrining (though not incorporating) the UNCRC into domestic law. In March 2011, Wales

introduced the Rights of Children and Young Persons (Wales) Measure 2011 which will place a duty on Ministers to have due regard to the UNCRC. In September 2011, Scotland announced a Rights of Children and Young Person Bill proposing similar (albeit weaker) provisions to Wales. Both these developments could significantly raise the profile of the UNCRC in legal proceedings affecting children in those countries.

But legal practitioners in England do not have to wait for domestic law to give full effect to the UNCRC. Children in our country have now been protected (on paper, at least) by the UNCRC for 20 years and it is up to all children's rights advocates, including legal practitioners, to use it to its maximum effect. With such a host of judicial comments – including comments from the highest courts – as to the applicability of the UNCRC and the authoritative comments and observations of the UN Committee of the Rights of the Child, this treaty can be used far more often and consistently in legal proceedings affecting children. CRAE will continue to strive to make this happen.

6.

Annex: Convention on the Rights of the Child

Article 1

This Convention applies to everyone aged 17 or under.

Article 2

All the rights in this Convention apply to all children and young people without any discrimination.

Article 3

Adults should always try to do what is best for children and young people. Governments must do everything to make sure children and young people are safe and well looked after.

Article 4

Governments must do all they can to make sure children and young people's human rights are upheld.

Article 5

Parents can give children and young people advice and help about children's rights. The more a young person knows and understands, the less advice and help a parent needs to give.

Article 6

Every child and young person has the right to life. Governments must do all they can to make sure every child and young person has the best possible life.

Article 7

Children and young people have the right to a name and a nationality. Children and young people have the right to be cared for by both parents.

Article 8

Governments should do everything possible to protect the right of every child and young person to a name and nationality and to family life.

Article 9

If a court is thinking about who a child or young person should live with, everyone affected by the decision should get the chance to be heard – including the child. Every child and young person has the right to keep in regular contact with both parents, so long as this is the best thing for the child or young person.

Article 10

If a child or a parent wants to live in another country, the decision about this should be made quickly and positively. A child or young person whose parents live in another country has the right to keep in touch with them.

Article 11

Governments must work together to stop children and young people being taken illegally to another country.

Article 12

- Every child and young person has the right to express his or her views freely – about everything that affects him or her
- The child's or young person's views must be given 'due weight' depending on his or her age and maturity
- The child or young person has the right to be heard in all decision-making processes, including in court hearings

- The child or young person can speak for him or herself, or someone else can speak for him or her.

Article 13

Every child and young person has the right to freedom of expression, including the right to all kinds of information and ideas (unless there are legal restrictions).

Article 14

Every child and young person has the right to freedom of thought, conscience and religion (unless there are legal restrictions). Governments must respect the right of parents and guardians to give advice to the child and young person about this right. The more a child or young person knows and understands, the less advice parents need to give.

Article 15

Every child and young person has the right to meet people and to gather in public (unless there are legal restrictions).

Article 16

The law must protect every child and young person's right to privacy.

Article 17

Governments must make sure children and young people have access to lots of different information. Governments must encourage the media to give information to children and young people and protect them from harmful information and materials.

Article 18

Governments must do all they can to help parents look after children well. Parents are the most important people in children and young people's lives. Parents must always do what is best for children and young people.

Article 19

Governments must do everything to protect children and young people from all forms of violence, abuse, neglect and mistreatment. Help must be available for children and young people who are hurt by violence, abuse, neglect and mistreatment.

Article 20

Children who are separated from their parents have the right to special protection and help.

Article 21

The child's best interests must be the top priority in adoption. Governments can support adoption between countries. Children and young people who are adopted by people in another country must have the same protection as children adopted by people in their own country.

Article 22

Governments must give protection and humanitarian help to children and young people who are refugees, or who are trying to be accepted as refugees.

Article 23

Every disabled child and young person has the right to a full life and to active participation in the community.*

Article 24

Every child and young person has the right to the best possible health and health services.

Article 25

Children and young people who have been placed away from home by the authorities have the right to have their care reviewed regularly.

Article 26

Governments must support every child and young person's right to benefit from social security, including social insurance. Child benefit is for every child, comes from taxes, and is part of social security. Family benefits, including allowances for children, come from weekly social insurance contributions made by employers and employees.

Article 27

Children and young people have the right to a standard of living that is adequate for them to develop fully (this includes physical, mental, spiritual, moral and social development). Parents have the main responsibility for making sure children and young people get this right. Governments must support parents. The amount of help the Government gives depends on how rich the country is.

Article 28

- Every child has the right to free primary education
- Governments must encourage secondary education, making it available and accessible to every child and young person
- Access to higher education must be based on the ability to benefit from it
- Governments must make sure children and young people get information about education
- Governments must encourage regular school attendance
- Governments must make sure that school discipline protects the dignity of children and young people, and is in line with their rights in this Convention – so no hitting or humiliation.

Article 29

Governments agree that the aim of education is to help the fullest possible growth of the child or young person's personality, talents and mental and physical abilities.

Education must help children and young people:

- Respect human rights
- Respect their parents
- Respect their and others' culture, language and values
- Have self-respect
- Respect the environment.

Article 30

Children and young people from minority communities must not be stopped from enjoying their own culture, religion and language.

Article 31

Every child and young person has the right to rest, play and leisure. Governments must promote children and young people's involvement in the arts.

Article 32

- Every young person has the right to be protected from harmful work and economic exploitation
- Governments must do everything to protect this right
- Governments must set a minimum age at which young people can work, and they must introduce rules to protect young people in work.

Article 33

Governments must do everything to protect children and young people from illegal drugs.

Article 34

Governments must do everything to protect children and young people from sexual exploitation (including prostitution) and sexual abuse.**

Article 35

Governments must do everything to protect children and young people from being taken away, sold or trafficked.**

Article 36

Governments must protect children and young people from all other exploitation.

Article 37

- Governments must do everything to protect children and young people from torture or other cruel, inhuman or degrading treatment or punishment. This is an absolute right, with no excuses for any breach of it
- Children and young people must not be given a death sentence or life imprisonment without the possibility of release
- Children and young people who are locked up should be able to challenge this quickly in court
- Children and young people must only be arrested or locked up as a last resort and for the shortest possible time
- Every child or young person who is locked up must be treated with respect
- Every child or young person who is locked up must be separated from adults, unless it is better for him or her to be with adults
- Every child or young person who is locked up has the right to keep in contact with his or her family, through letters and visits.

Article 38

- Governments agree to abide by international human rights law in relation to wars
- Governments must do everything to stop children under 15 from being involved directly in a war
- Governments must do everything to protect and care for children who are affected by war.***

Article 39

Governments must give good support to children and young people who have been hurt, abused or exploited. This support must promote children and young people's health, self-respect and dignity.

Article 40

- Every child or young person accused, or convicted, of committing a crime must be treated with respect and in a way that helps him or her to respect the human rights of others
- Every child or young person must be treated as innocent until found guilty
- Every child or young person should be told as soon as possible why they have been arrested and charged with a crime
- Every child or young person accused of a crime must be given immediate access to a lawyer
- No child or young person can be forced to give evidence in a court
- Every child and young person has the right to an interpreter if they do not understand the country's main language
- The child and young person's right to privacy must be fully respected at all times
- Governments must set up a separate criminal justice system for children and young people
- Governments should promote a minimum age of criminal responsibility
- Wherever possible, children and young people who infringe the law should not have to go to court
- Courts should always try to avoid sending children and young people to institutions
- There must be many ways to assist children and young people who infringe the law, including care, guidance and counselling.

Article 42

Governments must make sure everyone gets information about this Convention.

Articles 41 and 43 to 54 say how adults and governments must work together to promote and protect all the rights in this Convention.

*The emphasis on children's rights to inclusion is significantly stronger in the UN Convention on the Rights of Persons with Disabilities. The UK ratified this Convention in 2009.

**In May 2000, the UN introduced stronger protections for children and young people subject to sexual exploitation and trafficking (the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography). The UK ratified this part of the Convention on the Rights of the Child in 2009.

***In May 2000, the UN introduced stronger protections for under 18 year-olds (the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict). This requires that no child or young person should ever be forced to join the armed forces, and no child or young person should ever be involved directly in a war. The UK ratified this part of the Convention on the Rights of the Child in 2003.

References

- 1 *R (on the application of Williamson and others) v Secretary of State for Education and Employment and others* [2005] UKHL 15 [80]
- 2 <http://www2.ohchr.org/english/bodies/crc/comments.htm>
- 3 *Re KD (A Minor)(Ward: Termination of Access)* [1988] 1 All ER 577 (when dealing with a mother's claim for contact, the House of Lords took full account of the need for all domestic legislation and case law to comply with the terms of the ECHR); *R v Secretary of State ex parte Brind* [1991] 1 AC 696 (aid to construction of legislation in cases of ambiguity); *R v Derbyshire County Council v Times Newspapers Ltd* [1992] QB 770 – (to establish the scope of common law where it is developing, uncertain, incomplete - Article 10 ECHR informed the House of Lords decision that the local authority could not bring action for libel as it would offend against freedom of expression protections); *R v Khan* [1996] 3 WLR 162 (to inform the exercise of judicial discretion, the judge may have regard to the ECHR as a material consideration in exercising the discretion conferred by s78 PACE 1984 re excluding evidence).
- 4 See http://www.coe.int/t/dg3/children/caselaw/CaseLawChild_en.asp and http://www.crin.org/Law/CRC_in_Court/index.asp
- 5 *Gillick v West Norfolk and Wisbech Area Health Authority* [1985] 3 All ER 402 HL
- 6 Consent in the case of 16-18 year-olds is dealt with under Section 8 Family Law Reform Act 1969, which gives children over the age of 16 the power to give effective consent without the need to seek consent from parents.
- 7 *Gillick v West Norfolk and Wisbech Area Health Authority* [1985] 3 All ER 402 HL [89]
- 8 *R (Axon) v The Secretary of State for Health (The Family Planning Association: intervening)* [2006] EWHC 37 (Admin) [64] [78] [79]
- 9 *Mabon v Mabon and others* [2005] EWCA Civ 634
- 10 *R (on the application of Williamson and others) v Secretary of State for Education and Employment and others* [2005] UKHL 15
- 11 Section 1(1) Children Act 1989 places a duty on the courts to consider the welfare of the child as the paramount consideration. Under Section 1(3)(a) of the Act, the "welfare checklist" requires the court to have regard to the child's ascertainable wishes and feelings, considered in light of his or her age and understanding.
- 12 Section 10(8), Children Act 1989.
- 13 Lord Mackay LC 502 HL Official Report (5th Series) col 488
- 14 James P. Grant, Executive Director of UNICEF. Reported in The New York Times, 21 November 1989, 'U.N Assembly adopts doctrine outlining children's basic rights'
- 15 This article applies to all rights in the Convention, including economic, social and cultural
- 16 Ibid.
- 17 This analysis by CRAE of the contrasting civil and political rights in the UNCRC and the ECHR was first published in the submission to the Commission on a Bill of Rights from the Rights of the Child UK coalition, November 2011.
- 18 *Smith v Secretary of State for Work and Pensions* [2006] UKHL 37 [78]
- 19 *Re E (A child)* [2008] UKHL 66 [60]
- 20 A V Dicey, *The Law of the Constitution*, 10th Edition, Macmillan, 1959, pp39-40
- 21 *R (R) v Durham Constabulary* [2005] 1 WLR 1184 [26]
- 22 www.cabinetoffice.gov.uk/resource-library/ministerialcode
- 23 *Sahin v Germany* (30943/96) 2003 ECHR 340
- 24 *R (on the application of Williamson and others) v Secretary of State for Education and Employment and others* [2005] UKHL 15 [84]
- 25 Ibid.
- 26 Ibid [84]
- 27 Ibid [86]
- 28 *R(C) v Secretary of State for Justice* [2008] EWCA Civ 882
- 29 *R (R) v Durham Constabulary* [2005] 1 WLR 1184
- 30 Joint Committee on Human Rights, 'The Use of Restraint in Secure Training Centres', Eleventh Report of session 2007-2008
- 31 General Comment no. 8 'The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment' (Arts. 19; 28, para. 2; and 37, inter alia) 2006, Geneva
- 32 Committee on the rights of the child, 49th Session, 'Concluding Observations; United Kingdom and Northern Ireland' 2008
- 33 *R(C) v Secretary of State for Justice* [2008]EWCA Civ 882 [61]
- 34 The Committee on the Rights of the Child's General Comments can be accessed here: <http://www2.ohchr.org/english/bodies/crc/comments.htm>
- 35 General Comment No. 12 'The right of the child to be heard', 25 May – 12 June 2009, Geneva, paragraph 68
- 36 *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4
- 37 Ibid [23]
- 38 *MXL and Others v Secretary of State for the Home Department* [2010] EWHC 2397 [83]
- 39 *R(on the Application of Howard League) v Secretary of State for the Home Department* [2002] EWHC 2497
- 40 *R(Kenny)-v-Leeds Magistrates' Court* [2003] EWHC 2963 (Admin) [42]
- 41 *R (A) v Leeds Magistrates' Court* [2004] EWHC 554 (Admin) [51]
- 42 *R v Bishop* [2011] EWCA Crim 1446
- 43 Ibid at [13]
- 44 *R(on the application of MP) SSJ and R(on the application of P) v The Governor of HMP Downview and the SSJ* [2012] EWHC 214 (QB)
- 45 Ibid [170]

- 46 Ibid [175]
- 47 General Comment No.12 'The right of the child to be heard', 25 May – 12 June 2009, Geneva, paragraph 1
- 48 Ibid, paragraphs 28 – 31
- 49 *Re D (A child) (Abduction: Foreign custody rights)* [2006] UKHL 51
- 50 Ibid [57]
- 51 Ibid [58]
- 52 *Re M (Abduction: Zimbabwe)* [2007] UKHL 55
- 53 Ibid [46]
- 54 *Mabon v Mabon and others* [2005] EWCA Civ 634
- 55 Ibid [23]
- 56 Ibid [26]
- 57 Ibid [28]
- 58 Ibid [173]
- 59 *R (On the Application of K) v Parole Board* [2006] EWHC 2413 (Admin) [30]
- 60 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) at <http://www2.ohchr.org/english/law/pdf/beijingrules.pdf>
- 61 *R (on the Application of K) v Parole Board* [2006] EWHC 2413 (Admin) [30]
- 62 World Declaration on the survival, protection and development of children at the – World Summit for Children, 30 September 1990, paragraph 15
- 63 *Re H (a minor) (blood tests: parental rights)* 1996 3 FCR 201 [218]
- 64 *R (On the application of W) v Commissioner of Police for the Metropolis and Richmond upon Thames Borough* [2005] EWHC 1586 (Admin)
- 65 Ibid [35]
- 66 *Hunter and others v Canary Wharf Ltd*; [1997] 2 All ER 426
- 67 Ibid [10]
- 68 Ibid [11]
- 69 *Murray v Express Newspapers Plc and another* [2008] EWCA Civ 446
- 70 Ibid [45]
- 71 *R (P and Q) v The Secretary of State for the Home Department* [2001] EWCA Civ 1151
- 72 Ibid [101]
- 73 Ibid [20]
- 74 *R(on the Application of Carol Pounder) v HM Coroner for North and South Districts of Durham and Darlington and others* [2009] EWHC 76 Admin
- 75 Ibid [51]
- 76 *R (on the application of The Children's Rights Alliance for England) v Secretary of State for Justice and others* [2012] EWHC 8 (Admin)
- 77 Ibid [78]
- 78 The Committee on the Rights of the Child's General Comments can be accessed here: <http://www2.ohchr.org/english/bodies/crc/comments.htm>
- 79 Ibid [175]
- 80 Ibid [199]
- 81 *Northumberland County Council v Z, Y, X and the Government of the Republic of Kenya* [2009] EWHC 498 (Fam).
- 82 *Re R (Minor) Inter-country adoptions: Practice* [1999] 4 All ER 1015
- 83 *Smith v Secretary of State for Work and Pensions* [2006] UKHL 35
- 84 Ibid [77]
- 85 Ibid [88]
- 86 Ibid [78]
- 87 *Re J (Specific Issue Orders: Muslim Upbringing and Circumcision)* [1999] 2 FLR 678.
- 88 Ibid
- 89 *R (on the application of Williamson and others) v Secretary of State for Education and Employment and others* [2005] UKHL 15
- 90 Ibid [9]
- 91 Ibid [49]
- 92 Ibid [71]
- 93 General Comment No. 10 'Children's Rights in Juvenile Justice' 15 January – 2 February 2007, Geneva
- 94 *R (DT) v the Home Secretary for the Home Department* [2004] EWHC 13 (Admin)
- 95 *ID and others* [2007] EWCA Civ 38
- 96 Ibid [110]
- 97 Ibid [112]
- 98 *S, C and D v Secretary of state for the Home Department* [2007]
- 99 *R (R) v Durham Constabulary* [2005] 1 WLR 1184
- 100 Ibid [42]
- 101 *R (B) v Brent Youth Court* [2010] All ER (D)
- 102 *R v Secretary of State for the Home Department ex parte Venable; R v Secretary of State for the Home Department ex parte Thompson*; [1998] AC 407 (HL)
- 103 Ibid [123]
- 104 *R v G and another* [2003] UKHL 50
- 105 *R v Caldwell* [1982] AC 341
- 106 Section 1 Criminal Disorder Act 1971
- 107 *R v G and another* [2003] UKHL 50 [53]
- 108 *Dyer v Watson* [2004] 1 AC 379 [61]
- 109 *R(on the Application of Howard League) v Secretary of State for the Home Department* [2002] EWHC 2497 [51]
- 110 *E and Ors v the DPP* [2011] EWHC 1465
- 111 Ibid [16] [17] [22] [27] [45]
- 112 *R v Christian (No 2)* [2005] PN5C 1; (24 May 2005)
- 113 Ibid [169-172]
- 114 Ibid [171]



Children's Rights Alliance
for England

94 White Lion Street, London N1 9PF
T: 020 7278 8222 E: info@crae.org.uk W: www.crae.org.uk