



ILPA Submission to the Independent Review of the Office of the Children's Commissioner

Introduction:

ILPA is a professional association with around 900 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA exists to promote and improve the giving of advice on immigration and asylum, through training, disseminating information and providing evidence-based research and opinion. ILPA is represented on numerous government and other stakeholder and advisory groups.

ILPA has produced best practice guidance and undertaken research in connection with children and immigration, including *When is a child not a child? Asylum, age disputes and the process of age assessment* (May 2007), *Child first, migrant second: Ensuring that every child matters* (February 2006) and *Working with children and young people subject to immigration control: Guidelines for best practice* (November 2004). ILPA currently operates a refugee children's project, funded by The Diana, Princess of Wales Memorial Fund, to provide training, guidance and other support to legal and other practitioners working with asylum-seeking children.

ILPA is a member of the Refugee Children's Consortium, and since 2005 has been represented on the Children's Commissioner's advisory board on asylum.

This response follows the pro-forma. We have not used the pro-forma largely because, having downloaded this document, we had met with difficulties in seeking to complete it on screen rather than by hand. We apologise for any inconvenience this may cause. However, it has been necessary for us to prepare our response as an electronic document so that it can readily be shared and discussed with members of our association before its being finally approved.

Our response is necessarily informed by what we know. Thus our answers to the questions posed, and responses to these, directly and solely concern our experience of the Children's Commissioner and her office in relation to immigration and asylum law and practice.

Type of organisation

ILPA is a national voluntary organisation. Further information about ILPA is provided in the introduction (above) and from our website at www.ilpa.org.uk

Region

ILPA is represented in all the regions identified. We are an association of members – mainly legal practitioners (also academics, NGOs and others) who are based throughout the UK.

ILPA's office is based in London. You are welcome to contact us about this response. Our telephone number is **020-7251 8383** or we can be contacted by email at info@ilpa.org.uk

1. How do you know about the Children's Commissioner?

Work.

ILPA has worked closely with the Children's Commissioner, particularly in relation to the UK's asylum system but also more broadly in relation to immigration, for several years. We have been represented on the Commissioner's advisory board on asylum since 2005 to advise and update the Commissioner on asylum practice, policy and law, and developments in these areas, and on the Commissioner's responses to these. That advisory board meets monthly at the Commissioner's office. However, our contact with the Commissioner's staff is more frequent.

Accordingly, it is impossible to dissociate our familiarity with the Commissioner from our work, albeit that other sources of information about the Commissioner and her work are familiar to us – including other organisations, TV, radio, print media and the Commissioner's website.

2. Are enough children and young people aware of the role of [the] Children's Commissioner? Please explain your answer and suggest what, if anything, could be done to increase their awareness.

No.

It does not appear to us that the Children's Commissioner or her office is particularly familiar to children subject to immigration control. It may be that the Commissioner could usefully work with the UK Border Agency to consider developing information provided by that Agency to children highlighting its role, statutory duty and procedures (including as to complaints) in relation to children, which might usefully also identify the Commissioner and her role.

Others such as social services and NGOs working with children can assist, including the Refugee Council Children's panel. However, awareness of the role of the Commissioner is likely to be greater or more limited depending on the Commissioner's powers to act to make a difference for children, including individual children. Please see further our answer to question 8 (below).

3. How great an impact do you think the Office of the Children's Commissioner has had on the lives of children and young people? Please explain your answer.

Significant impact.

Please see our answer to question 4 (below).

4. Please provide any specific examples of where you feel the Children's Commissioner (or the Children's Commissioner's Office) has been effective or ineffective, using the boxes below to show whether your example(s) relate(s) to all children, a group of children or an individual child.

Groups of children (as explained below).

In our experience, the Children's Commissioner and her office have had a significant impact in promoting the interests and improving the circumstances of children subject to immigration control, particularly children seeking asylum and children of asylum-seekers.

For example, in 2008 and 2009 the Commissioner conducted visits and follow-up visits to the Asylum Screening Unit at Croydon and the Immigration Removal Centre at Yarl's Wood. The reports, which followed, shone a light on the experiences and treatment of children at critical stages of the asylum and immigration processes. These have been valuable in and of themselves, but have had significant additional value by contributing to the evidence base available to others lobbying and campaigning to improve the experiences and treatment of children in such processes – including the work of the Refugee Children's Consortium and the work of many of its individual member organisations, including ILPA.

There have certainly been others, in particular the Refugee Children's Consortium, that have made significant contributions to the previous Government's decisions to withdraw the UK's immigration reservation to the 1989 UN Convention on the Rights of the Child and to equalise the statutory duties owed towards all children by introducing a duty to safeguard and promote the welfare of children upon the UK Border Agency by section 55 of the Borders, Citizenship and Immigration Act 2009 (which essentially mirrors the duty in section 11 of the Children Act 2004 upon various statutory bodies other than the UK Border Agency). However, the Commissioner has played an important part in securing these achievements, including by (but not limited to) the visits and reports referred to here.

5. Should the Office of the Children's Commissioner have a specific remit to promote children's rights (at present the Commissioner is expected to take account of the United Nations Convention on the Rights of the Child)? Please explain your response.

Yes.

We consider it would a natural and valuable progression that the Children's Commissioner should have a specific remit to promote children's rights. This would have the advantage of more clearly linking the role of the Commissioner to relevant international and domestic standards including the Convention. Indeed, we were disappointed at the previous Government's refusal to accept the position strongly advocated for by both Conservatives

and Liberal Democrats when the Children Bill was passing through Parliament in 2004 (see e.g. *Hansard* HC, 14 October 2004 : Columns 87-89, Children Bill Standing Committee B *per* Tim Loughton MP; and *Hansard* HL, 17 June 2004 : Column 901 Children Bill Division No. 1).

We are aware of suggestions concerning the relationship between the Commissioner and the Equality and Human Rights Commission (EHRC), and whether this relationship should be stronger, more formal or indeed whether the Commissioner should be brought within the EHRC structure. We consider that such suggestions are worthy of serious consideration. However, there would need to be further consideration given to the position of the other UK Children's Commissioners, as it would be unsatisfactory if one of the Commissioners (England) were, for instance, to be absorbed into a UK-wide equalities and human rights body while the others remained without. We do not, therefore, purport to offer a concluded recommendation on such suggestions concerning the relationship between the Commissioner and the EHRC, though we would support a greater equality of remit and powers as between the UK's Commissioners.

We do not consider, however, that this should replace the role of the Commissioner in promoting the views and interests of children. In this regard, it is vital that the role of the Commissioner and her office is directly accountable to children so as to ensure that their work is properly informed by children's experiences; and in this regard we refer to our observations in relation to awareness (see above response to question 2).

6. Is there anything you think the Children's Commissioner's office should be doing which they are not doing at present, or which you think they should stop doing?

We do not consider a Yes/No answer is appropriate.

Please note our responses to question 8, 9b and 10, below.

We consider that the work of the Children's Commissioner's office over the past few years has established good working practices and a solid body of evidence in relation to the experiences and treatment of children subject to immigration control, particularly children in the asylum system. We wish to see this continued to be built upon by the Commissioner and her office.

7. Should the Children's Commissioner focus mainly on the interests of all children or mainly on vulnerable children? Please explain your answer.

All children

We consider that it is essential that the Children's Commissioner be responsible in relation to the interests of all children. We note that questions as to who may be among the most vulnerable may change over time (indeed, may change quickly).

Moreover, experience in immigration law and practice has demonstrated the importance of relating the experiences and treatment of particular groups of children (such as children subject to immigration control, or whose family members may be subject to immigration control) to the experiences and treatment of other children when, for example, considering the application of relevant international and domestic legal standards.

8. Should the Children’s Commissioner have more powers to act directly on behalf of individual children and young people? Please explain your answer and include examples of when this might be appropriate.

Yes.

Firstly, we draw attention to the imbalance between the remit and powers of the UK’s Children’s Commissioners. For example, the Northern Ireland Commissioner for Children and Young People is empowered to deal with individual complaints from children or their parents/guardians concerning various Government services, though she must take account of existing complaints mechanisms. Moreover, she is empowered to start or take over legal proceedings on behalf of a child if a general principle is at stake¹. The Children’s Commissioner for Wales reports, in his 2009/10 Annual Report², 220 “full cases” dealt with by his office, defining this as “*when we stay involved and support the child or young person to work with other agencies to reach an appropriate outcome*”. Such practical ability to directly assist individual children is bound to support these Commissioners in their wider aims since the ability to provide practical assistance is or may be crucial in persuading individual children to present their concerns to them.

It is unsatisfactory that the Commissioner for England has distinctly less power to act directly on behalf of individual children than her counterparts. This further undermines her position since individual children, and those working with or supporting individual children, are less likely to be actively aware of her or her office or act on any degree of awareness if it does not appear to them that she or her office can provide any direct assistance.

Our experience on the Commissioner’s advisory board on asylum also suggests that, at times, the current limitation on the Commissioner’s powers has inhibited or impeded action in respect of individual cases and complaints, including where these may raise very serious concerns for the individual child or may be matters affecting other children.

Accordingly, we consider the Commissioner should have the power to pursue individual cases and complaints so as to ensure access to an effective remedy. Such a position would not require her or her office to be the sole or main representative of an individual child in so doing. It would, however, ensure that she had an active and effective role in promoting children’s rights including by direct referral to others (e.g. legal representatives, NGOs), to whom she could provide direct support and with whom she could see any such case or complaint through to a conclusion.

¹ See <http://www.niccy.org/about/Whatwedo>

² <http://www.childcom.org.uk/uploads/publications/221.pdf>

We note that if individual children are unable to secure their rights through adequately resourced, accessible and good quality legal representation and through other bodies working to secure the interests of children (be these formal inspectorates, NGOs or others) that are adequately resourced to do so, it may be that the Commissioner would need to take a greater involvement in individual cases or complaints. However, in promoting children's rights it is vital that the Commissioner is in a position to directly speak to the question of whether the legal and other support available to children is of appropriate standard, capacity and accessibility.

9a. Do you know the work of individual or organisations in England that carry out a similar role to the Children's Commissioner? If yes, please provide details.

No.

However, please see our response to question 10 (below).

We also note the similar role, though with dissimilar powers, of the other UK Children's Commissioners.

9b. Please say whether this is (or would be) helpful or unhelpful and explain why.

No.

Please see our response to question 10 (below). As indicated there, we consider that there is opportunity for some joint working. However, that is far from suggesting that it would be helpful to have another individual or organisation carrying out a similar role to the Children's Commissioner. The Commissioner and her office have a distinctive role in understanding and promoting the interests of children generally. That general understanding is of importance in considering the experiences and treatment of children in any particular area, such as children subject to immigration control or whose family members are subject to immigration control. However, to be fully effective, the expertise of the Commissioner and her office needs, in particular areas, to be informed and complemented by experience and expertise (and resources) of others. Recognition of this has been behind the establishment and maintenance of the Commissioner's advisory board on asylum, which has assisted the Commissioner and her office to identify specific areas where her intervention or voice may be required and how to do so most effectively. In our experience, as representatives on that board, the Commissioner and representatives on the advisory board have been greatly assisted by the presence in the Commissioner's office of someone with considerable experience of asylum law and practice.

Not only could joint working (as described below, see response to question 10) be of direct benefit to the Commissioner, we consider that it could constitute a element of the task of the Commissioner in promoting the interests of children by aiding non-child specialist bodies, whose work may be

designed to promote the interests of specific groups (of which children may form a part), to better understand and be able to promote the specific interests and rights of children within such groups.

10. Could the role of the Office of the Children's Commissioner be carried out more effectively if it were merged with another organisation? Please explain your answer.

No.

There is opportunity for the Children's Commissioner and her office to work with other organisations, but this does not require merger. Indeed, merger would or could be detrimental to both the Commissioner and other organisations. However, please note our observations on the Equality and Human Rights Commission in our response to question 5, above.

For example, in relation to children subject to immigration control, there is the opportunity (and we suggest, a need) for some close working between the Commissioner and the Chief Inspector of the UK Border Agency. The Chief Inspector and his office are tasked with inspecting, monitoring and reporting upon the work of the UK Border Agency. Where this touches on the lives of children, the expertise of the Commissioner and her office may be of particular value to the Chief Inspector and his office and *vice versa*.

11. If you wish to add any further comments about the role or powers of the Children's Commissioner, that you feel may be helpful to the review, please insert them in box below.

Having regard to our response to question 10 (above), we consider that other bodies, such as inspectorates, could usefully be required to consult with the Children's Commissioner in relation to areas of their work which touch upon the lives of children.

Sophie Barrett-Brown
ILPA, Chair

4 October 2010