

PE1098/F

31 January 2008

Public Petitions Committee
Scottish Parliament
Edinburgh
EH99 1SP

Dear Public Petitions Committee,

CONSIDERATION OF PE1098

I welcome the opportunity to comment on this petition by Lynn Merrifield, on behalf of Kingseat Community Council which raises an issue that is very important for children and young people's safety in Scotland. When considering this petition I would urge the Committee to take account of the issues raised in terms of their impact on children's rights as laid out in the United Nations Convention on the Rights of the Child (UNCRC). I have set out below the importance of Local Authorities taking into account the rights of children as laid out in the UNCRC when addressing the safety needs of children traveling on school buses and when applying 'Best Value' criteria in their decisions.

United Nations Convention on the Rights of the Child

The UNCRC sets out the fundamental human rights that all children around the world, without discrimination, are entitled to. It sets out minimum benchmarks in rights for children rather than "best practice"; countries are thus encouraged to exceed the standards laid out in the Convention, but should not fall short of its basic requirements.

When the UK ratified the UNCRC, it made promises to the children and young people in this country that it would make life better for them by respecting and promoting the standards set out in the Convention. The promises relevant to this petition include:

- Article 3.1 - the best interests of the child should be at least a primary consideration in decisions made by legislative bodies or administrative authorities;
- Article 3.3 – institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety and health;
- Article 4 – the State shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the Convention; and
- Article 6 - the State should ensure, to the maximum extent possible, the survival and development of the child.

European Convention on Human Rights (ECHR)

In addition to considering the significance of the UNCRC I draw the Committee's attention to the fact that children are entitled to benefit from the protection of the European Convention on Human Rights. Article 2 of the Convention requires that a person's right to life be protected by law. It lays down a positive duty on States to protect life. The European Court of Human Rights has set out the substantive principles applicable in such cases – i.e. the principles relating to the prevention of death as a result of dangerous activities – in the following terms:

The positive obligation to take all appropriate steps to safeguard life for the purposes of Article 2 [...] entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life [...].¹

I urge that both the UNCRC and the ECHR be taken into account when applying 'Best Value' criteria in Local Government decision making. This would ensure that children and young people's rights have a significant bearing in decisions that impact on their lives.

In terms of the issue here, three point seatbelts on school buses has a clear impact on the survival and development of children. With this in mind and I would recommend that further investigation be taken by the Committee to find out what the implications are of not requiring all school buses to be fitted with seatbelts.

This could be done in the form of a children's rights impact assessment. Children's Rights Impact Assessments (CRIAs) provide a way of looking at decisions, policies or legislation and identifying and measuring their effect on children and young people and their rights. They allow the effect to be predicted, monitored and, if necessary, avoided or mitigated. In taking forward our model, one of our goals has been to embed children's rights in decision and policy making. As such we have been encouraging decision and policy makers to carry out their own children's rights impact assessments. It occurred to me that in the light of this petition, this might be an extremely useful exercise to do.

I would of course be happy to comment on your deliberations. I would also be happy to receive any feedback on how you find such an exercise.

Yours sincerely,



Kathleen Marshall
Scotland's Commissioner for Children and Young People

¹ Oneryildiz v. Turkey, Grand Chamber Judgement of 30 November 2004 in "The right to life: a guide to the implementation of Article 2 of the European Convention on Human Rights" by Douwe Korff. Council of Europe, 2006.