



# Children's Rights in Brief

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## #3 Respect for the views of the child



ombudsman  
do leanaí  
for children





## Introduction

The Ombudsman for Children's Office (OCO) is an independent statutory body, which was established in 2004 under the Ombudsman for Children Act 2002 (2002 Act). Under the 2002 Act, as amended, the OCO has two core statutory functions:

- to promote the rights and welfare of children up to 18 years of age; and
- to examine and investigate complaints made by or for children about the administrative actions of public bodies, schools and voluntary hospitals that have, or may have, adversely affected a child.

This briefing is the third in a series that the OCO is producing to raise awareness of children's rights under the United Nations Convention on the Rights of the Child (UNCRC).<sup>1</sup> We are creating this series in line with our duties:

- to encourage public bodies to develop policies, practices and procedures designed to promote the rights and welfare of children (section 7(1)(b) of the 2002 Act); and
- to collect and disseminate information on matters relating to children's rights and welfare (section 7(1)(c) of the 2002 Act).<sup>2</sup>

## Three Takeaways

1. Every child has the right to express their views freely in all matters affecting them and to have due weight given to their views, in accordance with their age and maturity.
2. Exercising the right to express their views is a choice for children. It is not an obligation for the child or children impacted by a decision to express their views if they do not wish to do so.
3. Children's right to express their views is not limited by their age. States parties should ensure that all children, regardless of their age, have the opportunity to express their views in several ways and should not be limited to verbal communication.

<sup>1</sup> Please refer to Children's Rights in Brief #1, the UN Convention on the Rights of the Child, for information on Ireland's overall children's rights obligations under the UNCRC.

<sup>2</sup> This briefing, and other briefings in this series, provide information on children's rights under the UNCRC. The briefings are not legal advice and should not be understood as legal advice.

## Children’s right to express their views in all matters affecting them

Article 12 of the UNCRC states that every child has the right to express their views freely in all matters affecting them, if they so wish, and to have those views given due weight, in accordance with their age and maturity. The UN Committee on the Rights of the Child (the Committee) has identified Article 12 as one of the [four general principles](#) of the UNCRC. As such, the Committee has advised that upholding children’s right to express their views is vital to ensuring children’s full and effective enjoyment of all their rights under the UNCRC. This means that children’s views need to be considered when interpreting and implementing children’s other rights.

Article 12 addresses the legal and social status of children: while children may lack the full autonomy of adults, they are rights holders in their own right. This means children have the right to participate in the decision-making processes that affect their lives and to influence decisions taken about them.

The Committee has advised that States must ensure implementation of this right for all children, including those who may experience challenges in expressing their views. States must therefore ensure that all children are supported to exercise the right to express their views, with particular efforts made to support children in vulnerable or disadvantaged situations. These children could include children with disabilities,<sup>3</sup> Traveller children, Roma children, children living in poverty, migrant children and children seeking asylum.

**“It makes me feel really good that somebody cares about what our opinions are.”**

Boy in Primary School<sup>4</sup>

<sup>3</sup> The UNCRC uses the term “disabled child”, while the UNCRPD uses the term “children with disabilities”. In this briefing paper, we use the term “children with disabilities”. However, we recognise that many people prefer the term “disabled children” or don’t identify with either term.

<sup>4</sup> Ombudsman for Children’s Office (2022), [Pieces of Us: A Children’s Report to the UN Committee on the Rights of the Child](#).

## Understanding children’s right to express their views under Article 12

The Committee has prepared a [General Comment](#), which provides guidance about how to interpret children’s right to express their views and how to apply this right in practice.

Article 12 provides that States “shall assure” the child’s right to express their views freely. This places a strict obligation on the State to take appropriate measures to fully implement this right for all children. There are two parts to this obligation:

- to ensure that the views of the child are sought; and
- to ensure that due weight is given to the child’s views in accordance with their age and maturity.

### Seeking children’s views

There is no minimum age at which a child acquires the right to express their views. The Committee has indicated that States should not place an age limit on when a child can express their views. Instead, the State should assure that right to “every child who is capable of forming” their own views.

States should presume that a child has the capacity to form and express their own views; it is not up to a child to prove their capacity. However, where appropriate, the State might be required to assess a child’s capacity to form and express an opinion.

### Facilitating children to express their views in a variety of ways

Article 12 is often interpreted as the right of the child to be heard. However, this right must not be limited to listening to children who are capable of easily expressing their views verbally. Research shows that children are able to form views from the youngest age, even when they may be unable to express them verbally. Consequently, full implementation of Article 12 requires recognition of, and respect for, non-verbal forms of communication including play, body language, facial expressions, and drawing and painting, through which very young children demonstrate understanding, choices and preferences.

States are required under Article 7 of the UN Convention on the Rights of Persons with Disabilities to ensure that children with disabilities are provided with the necessary assistance and equipment to enable them to freely express their views using any mode of communication and for those views to be given due weight. Examples include sign language, Braille, Easy Read, and alternative or augmentative modes of communication.

Efforts must also be made to recognise the right to expression of views for minority, indigenous and migrant children and other children who do not speak the majority language.

Article 12 states that a child should be able to express their views “freely”. This means:

- children should be able to provide their views without influence or pressure;
- children have a choice about whether or not they wish to express their views;
- children should be provided with appropriate conditions and an environment where they feel respected, supported and safe to express their views freely; and
- children must not be interviewed more often than necessary, especially when harmful events are being discussed.

In order for this right to be fully realised, children need to be informed about the conditions under which they will be asked to express their views. They should also be appropriately informed about the matters, opinions and possible decisions to be taken by those responsible for taking their views into account and by their parents or guardians.

States must ensure that the child is able to express their views “in all matters affecting” them. There is no limit placed on this, so children should be enabled to express their views in all cases where the matter under consideration affects them, be it in law, policy, service provision or decision-making at a national, local or individual level. This includes issues not explicitly mentioned in the UNCRC. Article 12 includes a specific obligation on States to ensure that children have the opportunity to express their views in any judicial or administrative proceedings<sup>5</sup> that affect them.

The Committee recommends that, wherever possible, the child must be given the opportunity to express their views directly. However, if the child does not wish to express their views directly, or is not of an age or level of maturity to express their views directly, the child should be provided with other ways of expressing their views indirectly through a representative. A representative could be a professional, such as a lawyer or a social worker. A child’s parent may also represent the child’s views. The Committee highlights that in some cases this may risk a conflict of interest between the child and their parent. It is important that the representative communicates the child’s views correctly to the decision-maker. This means that representatives should have sufficient knowledge and understanding of the decision-making process and have experience working with children. It also requires codes of conduct for representatives appointed to represent the child’s views.

## Consideration of children’s views

Article 12 specifies that simply ascertaining the child’s views is insufficient: the views of the child have to be seriously considered (i.e. given “due weight”). Age alone cannot determine the significance of a child’s views, as children’s levels of understanding are not necessarily linked to their age. For this reason, the weight given to the views of the child needs to be considered on a case-by-case basis.

According to the Committee, maturity is difficult to define. In the context of Article 12, maturity is about the capacity of a child to express their views on issues in a reasonable manner and without undue influence from others. Maturity refers to the ability to understand and assess the implications of a particular matter and must be considered when determining the individual capacity of a child. Consideration must also be given to the impact of the matter on the child: the greater the impact of the outcome on the child, the more relevant the assessment of the child’s maturity is.

The obligation to give due weight to children’s views includes an obligation to give information to these children on the way in which their views have been taken into account and the outcome of decisions made involving them.

## Implementing children’s right to express their views

Having ratified the UNCRC, Ireland must respect and pursue all necessary measures to implement children’s right to express their views and for their views to be given due weight in line with their age and maturity. As it currently stands, children’s right to express their views has been incorporated into several aspects of Irish law, policy and practice.

<sup>5</sup> Judicial proceedings may include proceedings relating to the separation of the child’s parents, custody, care and adoption of the child, and child justice. Administrative proceedings may include decisions about education, health or child protection and welfare.



## Examples of Irish law, policies and practice relating to children's right to express their views

- Article [42A.4.2°](#) of the Constitution of Ireland partially incorporates the right of the child to express their views into Irish law. It requires the State to introduce legislation to ensure that when a child is capable of forming their own views, the views of the child shall be ascertained and given due weight, having regard to their age and maturity, in the context of child protection and care, adoption, guardianship, custody and access proceedings.
- The [Domestic Violence Act 2018](#) says that a court may hear the views of the child when certain types of orders are sought on behalf of the child.
- The [Child Care \(Amendment\) Act 2022](#) provides a statutory basis for a national guardian ad litem (GAL) service for children in care proceedings. It aims to ensure that where a child is capable of forming their own views, the court must determine how to facilitate the child in expressing those views and give them due weight.
- [Young Ireland: the National Policy Framework for Children and Young People \(2023 – 2028\)](#) contains a number of actions that aim to improve children and young people's participation in decision-making and in the development of policy, legislation and research. It commits to engaging children and young people in the process of implementing the framework.
- The [National Framework for Children and Young People's Participation in Decision-making](#) aims to support government departments, agencies and organisations to improve their practice in giving children a say in decision-making. The framework is based on the Lundy model of participation.
- [Hub na nÓg](#) is a national centre that supports government departments, state agencies and non-governmental organisations to give children a voice in decision-making on issues that affect their lives.
- The [National Participation Office](#) was established within DCEDIY to manage and coordinate the activities of Comhairle na nÓg, Dáil na nÓg, the Comhairle na nÓg National Executive, the National Youth Assembly of Ireland and other related youth participation initiatives and structures.
- [Comhairle na nÓg](#) are child and youth councils which give children aged 12-17 the opportunity to be involved in the development of local services and policies.
- [Dáil na nÓg](#) is the national youth parliament of Ireland for children who are elected to attend through their local Comhairle na nÓg.
- The [National Youth Assembly of Ireland](#) is a consultative forum for young people between the ages of 12 – 24 years.
- The [Irish Second-Level Students Association](#), the national representative body for secondary school students, was appointed as a member of the [National Council for Curriculum and Assessment](#) for the first time in 2022.
- The OCO [Youth Advisory Panel](#) plays a vital role in the OCO's work by advising on emerging issues and concerns for young people.

**“Give young people a real voice. A lot has been done to make young people be heard but those things in my opinion aren’t making a massive impact or been shown any relevance. Also the kinds of young people that do take part in those initiatives are very academic young people who have interests in politics. But I think the real young people that we need to give a voice to are young people from poorer backgrounds or young people who spend majority of the time on the streets just hanging around.”**

Boy, age 16<sup>6</sup>

**“Actually listen to us, instead of speaking for or over us. Being disregarded as children with invalid opinions is very frustrating.”**

Girl, age 15<sup>7</sup>

6 Ombudsman for Children's Office (2022), [Pieces of Us: A Children's Report to the UN Committee on the Rights of the Child](#).

7 Ombudsman for Children's Office (2022), [Pieces of Us: A Children's Report to the UN Committee on the Rights of the Child](#).

## Core obligations

Under Article 12 of the UNCRC, the State has an obligation to review or amend legislation to introduce mechanisms that provide children with:

- access to appropriate information;
- adequate support to express their views;
- feedback on the weight given to their views; and
- procedures for complaints, remedies or redress.

The Committee also recommends that States should take measures that include:

- providing training on Article 12 for all professionals working with or for children;
- ensuring appropriate conditions to support and encourage children to express their views; and
- combatting negative attitudes about children and their right to express their views.

### Recommendations to Ireland by the UN Committee on the Rights of the Child in 2023

As part of its periodic examination of Ireland's progress with implementing the UNCRC, the Committee recommended in its [Concluding Observations](#) in February 2023 that the State:

- ensure children's right to express their views and to have them taken into account in all decisions affecting them, including in courts and in all forms of family law proceedings, and ensure that children are given adequate support to engage an expert to present their views at no cost to them or their family;
- strengthen measures to promote the meaningful and empowered participation of all children, including children in disadvantaged situations, within the family, the community, schools and in the realm of policymaking at the local, municipal and national levels;
- ensure that teachers, child care professionals and other professionals working with and for children systematically receive training on the right of the child to express their views on matters affecting them and on the implementation of recent legislative and policy reforms;
- act on its previous commitments to hold a referendum on lowering the voting age to 16 years and ensure that a decision to lower the voting age is supported by active citizenship and human rights education and measures to prevent undue influence.

## 5 Steps

The Committee has identified five steps for implementing children's right to express their views, which need to be taken by people who make decisions that impact on children. These are:

### 1. Preparation

Children must be informed by people responsible for taking their views into account about:

- what the right to express their views means;
- the impact that their views will have on the outcome;
- what they can expect from the process of taking their views into account; and
- the option of either communicating directly or through a representative, and the possible consequences of this choice.

### 2. Facilitating children to express their views

The environment in which children express their views should be child-friendly, enabling and encouraging so that it is clear that the adult who is responsible for taking their views into account is willing to listen and seriously consider what they have decided to communicate. The approach should have the format of a conversation rather than a onesided examination.

### 3. Giving due weight to children's views

Children's views must be given due weight. If children are capable of forming their own views, decision makers must consider the views of children as a significant factor in the settlement of the issue.

### 4. Providing feedback to children

The decision maker has to inform children of the outcome of the process and explain how their views were considered. This feedback is a guarantee that the views of the child are not only heard, but are taken seriously.

### 5. Complaints, remedies and redress

Legislation is needed to provide children with complaint procedures and remedies when their right to express their views is disregarded and violated. Decision makers should provide children with information on how to make a complaint and seek redress.

The Committee acknowledges that States will face challenges when fulfilling their obligations to facilitate children to express their views, but believes that it is an attainable goal if the strategies outlined in General Comment Number 12 are put into practice and a culture of respect for children and their views is built.

## Decisions by the UN Committee on the Rights of the Child about the right of the child to express their views

Ireland ratified the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OPIC) in 2014. The OPIC allows children or a representative to submit an individual communication to the Committee with a claim that the State has violated any of the child's rights under the UNCRC.<sup>8</sup>

The Committee's decisions on individual communications about children's right to express their views include:

- In the individual communication [K.S. and M.S. v. Switzerland](#), the Committee did not share Switzerland's view that K.S., a child involved in immigration and asylum proceedings, should not be given the opportunity to express his views because of his young age and because his interests were the same as his parents. The Committee decided that Switzerland's failure to give the child a separate and direct opportunity to express his views constituted a violation of Articles 3 (the best interests of the child) and 12 of the UNCRC.
- In the individual communication [B.J. and P.J. v. the Czech Republic](#), the Committee decided that the failure to give the children an opportunity to express their views and to give due weight to those views during domestic proceedings leading to their placement in institutional care amounted to a violation of Article 12 of the UNCRC.

**“Not being listened to  
because you're a child.”**

Child in Primary School<sup>9</sup>

## The right of the child to express their views in other international human rights standards

In addition to the UNCRC, other international human rights standards that apply to Ireland also require children's right to express their views to be complied with, in certain circumstances. For example:

- The [Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography](#) requires States to allow the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected.
- The [UN Convention on the Rights of Persons with Disabilities \(UNCPRD\)](#) requires States to ensure that children with disabilities have the right:
  - to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children; and
  - to be provided with disability and age-appropriate assistance to realise that right.

In contrast to the UNCRC, the capacity of the child does not need to be considered when hearing and considering the child's views under the UNCPRD.

- At EU level, the [Charter of Fundamental Rights of the European Union](#) says that children may express their views freely. It requires EU Member States to take children's views into consideration on matters which concern them, in accordance with their age and maturity, when implementing EU law.

<sup>8</sup> Complainants must have first exhausted all relevant remedies that are available in the State before submitting a complaint.

<sup>9</sup> Ombudsman for Children's Office (2022), [Pieces of Us: A Children's Report to the UN Committee on the Rights of the Child](#).

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