



Children's Rights: How to Implement a Rights-Based Approach in Residential Child Care

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Introduction

Children's rights are often spoken about and discussed in residential units, but how do we use children's rights as a tool to do our work? This paper suggests some answers. It starts with basic information about the United Nations Convention on the Rights of the Child (UNCRC) and answers some common questions on children's rights. It introduces two models for implementing a rights-based approach, and provides illustrations of their use. Residential workers might wonder why we need another method of working with children and young people. Taking a rights-based approach is not meant to be just another method, but is an overarching framework, which complements existing ways of working in child care. Discussions and reflections on the models presented in this paper will hopefully provide a better way to make decisions about children and young people in residential care.

Where did the UNCRC come from?

The UNCRC was developed by the United Nations, following a decade of work devoted to discussing why a separate statement about children's rights was needed. The final document was adopted by the UN General Assembly in November 1989 and ratified by the UK in 1991. Ratification means that legislation such as The Children (Scotland) Act 1995, the Regulation of Care (Scotland) Act 2001 and the Care Standards should incorporate the UNCRC. By doing this, the Government makes sure that children's rights are upheld by those who provide services for children and young people and that adults working with them, such as residential workers and other professionals, are accountable.

Relating Rights to Practice: what's the relationship between adults and children?

Everyone has human rights, including adults and children. Children's rights are simply specific human rights for all children and young people from birth to 18 years of age. They are needed because they reflect the special status of childhood - a period of rapid change and development during which this group experiences different vulnerabilities (e.g. physical weakness or lack of knowledge) and therefore has different entitlements from adults.

Our explanation of what childhood is and recognition of this special status has been developed over a long period time. Aries (1962), and other theorists who have come after him, tells us that the idea of childhood is **socially constructed**. This means that people in western society tend to see children and young people either as potential victims who need looking after, or as potential threats who need to be controlled. One of the consequences of our current thinking is that children and young people are seen as passive and helpless and adults must 'do something' to help. This has been translated into the understanding that children and young people in need of care should be 'taken away', 'be properly educated' or 'get the right kind of treatment.' This thinking focuses on children and young people's weaknesses and not their strengths. The UNCRC emphasises strengths and asks adults to see children and young people as active and not passive objects. Through the UNCRC, children are **rights-holders**. This point is important because unless the residential worker sees the child as a rights-holder and not a helpless object, any degree of participation will be, at best, tokenistic and at worst, meaningless. Residential workers are in one of the most important positions to promote children's rights, and therefore are also among the key groups of **duty bearers**.

The tasks of the residential worker are complex, requiring many skills. Taking a **rights-based** approach to work is an important way to apply those skills in a proactive way. A **rights-based** approach is one where the worker has examined children's rights and tries to put them at the centre of their practice; however, applying a rights-based approach has been met with some suspicion. Some would argue that the

promotion of children's rights has added to tensions in residential care, and undermined practitioner morale.

The Scottish Commissioner for Children and Young People, Kathleen Marshall, comments on a fear that our culture is becoming too 'rights-based.' She explains that there is a fear among practitioners that an over-emphasis on the rights of children and young people will create expectations that are both unhealthy and unrealisable in a democracy. Adults also sometimes comment that 'children and young people know too much about their rights already.' The truth is, however, as Marshall acknowledges, that children and young people know very little about their rights. What they believe they know is often only a fragment or even a caricature of the actual content of the UNCRC. Some studies about children have shown this to be the case. For example, in an interview with the Scottish Child Law Centre carried out by Save the Children, concern was expressed about how little children and young people in residential care attending children's panels know about their rights. Informing children and young people is a key responsibility for residential workers; however, given the fact that residential workers meet many problems on a daily basis, including verbal and physical abuse, they may have real concerns about their own rights. Some residential workers may feel that their rights are over-ridden by children's rights, or that they have more important matters to deal with than the promotion of children's rights. It is the intention of this paper to

demonstrate that it is possible to implement a rights-based approach which makes both staff and children feel valued.

How Do Rights and Responsibilities Relate To Each Other?

Kathleen Marshall emphasises that in any society, rights and responsibilities must go together. Sometimes, however, this is wrongly interpreted. For example, some people may say that unless a person takes responsibility, they cannot have rights. Marshall would say that a person can only be regarded as having a right if someone else has a responsibility to respect it; however, rights do not have to be **earned** by the exercise of responsibility. For example, most of us would acknowledge that babies have rights as have people with severe learning difficulties. Yet both these groups cannot exercise this right without help from others and are very vulnerable to harm or exploitation. It is the same with children and young people in care. Marshall suggests that the more appropriate link should be responsibility and power, not responsibility and rights. Anyone exercising power of any description must do so responsibly. Our responsibility consists of knowing and being aware that in situations where we could have the power and moral capacity to jeopardise the rights of others, we have the responsibility to treat others with respect within a context of human rights.

Two Models for Implementing a Rights-Based Approach to Practice

(A) Model One: The Triangle of Rights

The 54 articles in the UNCRC are clustered around four core principles which help with interpreting the UNCRC as a whole and offer a holistic way of making decisions regarding children and young people. Save the Children, which developed the models described in this paper, says that one way to picture these principles is as a triangle, in which three of the core principles form the corners of the triangle. When the triangle is out of balance, it poses a risk of jeopardising the right to life, survival and development, which is the fourth core principle, and lies at the heart of our work with children and young people.

The three core principles forming the three corners of the triangle are:

► Non-discrimination

All rights in the UNCRC apply to all children and young people. Children and young people have a right to be protected from discrimination. This is Article 2 of the UNCRC.

► Best interests of the child

In all actions concerning children and young people the best interests of the child should be a primary consideration. This is Article 3 of the UNCRC.

► Participation of the child

Children and young people should be free to express opinions in all matters affecting them, and those views should be given due weight 'in accordance with the age and maturity of the child'. This is Article 12 of the UNCRC.

The Fourth core principle in the heart of the triangle is:

► The right to life, survival and development

Children and young people have a right to life and the right to the development of their personality, talents and abilities to the 'maximum extent possible'. This is Article 6 of the UNCRC.

Using the Triangle of Rights in Practice

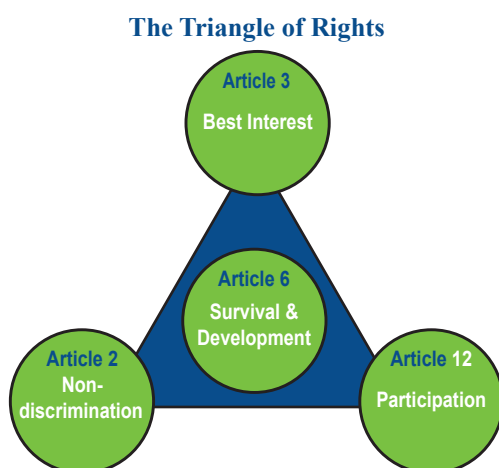
When a decision is made, the following questions relating to the core principles at each corner of the triangle should be addressed:

1. **Participation** Were the views of the child sought? What are they and how can we take them into account? Does the child know how we have considered their views? Have we explored how the child can engage fully in decision-making, taking account of their age? Have we offered sufficient support to help them engage? Have we allowed time for preparation and created an environment in which the child is comfortable to speak out? Is the language used appropriate to their developmental level?

2. **Non-discrimination** Have all options been explored? Are we advocating for this child as a rights holder and is he/she an equal partner in the discussion? Are all relevant persons included in the discussion? Are we making every effort to overcome difficulties, and/or prejudices, including our own, regarding the child or young person being an equal partner?

3. **Best Interests** Are decisions based on the child or young person's background, future and best interests? Are we being guided by other considerations such as resource issues or organisational constraints? Are we making assumptions about the child based on issues such as our own experience, values and judgements? Are we regularly reviewing the decisions made, and have we taken the opinion of the child or young person into account?

4. **Life, survival and development** Is the initial decision still safeguarding the survival and development of the child to the maximum extent possible? Is it subject to regular review?



The UNCRC Core Principles

A Case Study Using the Triangle of Rights

Neil is an 11-year-old boy with learning difficulties, living in a residential unit. His mother was not coping after Neil's father died. Neil lives in a group with older boys and is often the victim of bullying. Social Work decides he should move to a foster home and has found a placement for him. His mother agrees with the move; however, the foster placement is far away from Neil's home. His mother is concerned about not seeing him often enough and that he will lose touch with his school and friends. Social Work says that the move is the best option available as placements are scarce.

We can use the triangle of rights to see if this decision meets Neil's rights to survival and development 'to the maximum extent possible', as outlined in the UNCRC:

Participation (Article 12)

- Were Neil's views taken into account? Was he part of the dialogue during the decision-making process? Was he informed as to how his views were considered? Was he given sufficient information, choice and opportunity to make an informed decision?
- Has he been listened to and given time to explore this option (e.g. visit the foster family/explore the distance/given opportunities to continue regular contact with family/school options explored, given opportunity to talk to his family) as opposed to other options?

Non-discrimination (Article 2)

- Have methods of communication been used to ensure that Neil's learning difficulties do not constrain his participation in decision-making?
- Has the family been involved and allowed to express their views?

- Could work be done on anti-bullying strategies with the group and staff in the unit?

Best Interests (Article 3)

- What could residential staff do to safeguard Neil's interests? For example, is it really in his best interests to be placed so far away from his mother?
- How long has he been in the residential setting? Has he had the opportunity to settle and are we breaking this off too soon?

Survival & Development (Article 6)

- Does this decision support his current emotional and developmental needs?

The questions which the Triangle of Rights prompts us to ask make us look at the bigger picture in Neil's situation. In this case, the decisions appear to be a reaction to a situation in the unit. Analysis of the situation using the Triangle indicates that the proposed foster placement is perhaps not the best option. This decision was made on the basis of protecting Neil from an immediate problem in his current placement and is therefore not about what is best for his long-term development. It reflects a short-term intervention that could lead to further placement breakdowns. In addition, this intervention does not deal with some of the underlying causes (e.g. bullying behaviour).

Alternatively, working with the group on bullying and finding a more appropriate placement would be a rights-based approach to practice which is further explained below. It would minimise the interruptions to Neil's development and maintain his family links. This decision would address his best interests, his development and participation, and not only the interests of the placing authority.

(B) Model Two: The Needs versus Rights Framework

Unlike a rights-based approach, a needs-based approach does not identify anyone who has a clear responsibility to meet needs. In other words, needs – unlike rights – do not create any valid claims on anyone to fulfil them, therefore the fulfilment of needs, instead of being a duty, becomes a charitable action dependent on the goodwill of powerful adults who cannot be held to account if they do not fulfil their duty as this duty is not recognised.

By contrast, a rights-based approach focuses on the responsibility and duty of adults under the UNCRC to uphold the minimum requirements of care outlined in the Convention and the relevant legislation in Scotland. This approach also places a greater emphasis on the strengths of children and young people and their capacity to play an active part in the realisation of their rights. It encourages workers to look at underlying psychological, economic, political or institutional causes of the child's situation. It asks workers to make decisions which explore the bigger picture and challenge the causes of problems.

The Needs versus Rights framework

A NEEDS-BASED APPROACH	A RIGHTS-BASED APPROACH
Motivation: charity, voluntary, emotive response. Need met as concession or policy for the good of the state	Motivation: meeting of obligation, fulfilling responsibilities. A child has a recognised claim against the state.
Short-term intervention/reactive	Longer-term intervention/proactive
Beneficiaries dependent on the goodwill of the more powerful	Beneficiaries as active participants in the realisation of their rights
One-way relationship perpetuating dependence	Two-way relationship promoting empowerment between worker and child
Immediate outcome stressed over process	Longer term process is important
Accountability undefined, charitable action of practitioner/worker, individualised responses	Accountability of duty-bearer clearly defined. Practitioners are representatives of the state with a duty of care under the UN Convention and local law
Focus on resolution of present problem	Concern for underlying causes and wider analysis of the situation
Concern for identified few	Universality of benefits
Needs ranked in a hierarchy. Needs are met. Assumption: the need has been eliminated.	All rights in the Convention are equal and indivisible. All rights must be fully realised. The four principles are a guide to addressing issues holistically and equally.

Practice Examples using the Needs versus Rights Framework

Two additional illustrations using the Needs versus Rights framework follow, using examples from the report entitled *Lets Face It!* which was produced by Who Cares? Scotland.

Bullying:

One of the issues raised by the children and young people in this report was bullying. When dealing with bullying behaviour, the focus is often on assisting victims of bullying with their immediate needs. This falls under the needs-led approach. Working with the underlying causes for bullying behaviour, possibly by starting life skills training or creative drama sessions with children and young people, could help to address the issue in the longer term, and illustrates a rights-based approach.

Restraint

Misuse of restraint and sanctioning also concerned children and young people in the report. The UNCRC acknowledges the need for discipline but insists it must be administered in a way that is consistent with the child's dignity. It also acknowledges the need for some children and young people to be restrained, but insists that this must conform to the law and be a last resort.

Before applying sanctions, staff should ask if these are really in the best interests of those being sanctioned. Helping children and young people to understand the consequences of behaviour and create an environment of reflection and learning is a longer-term solution and can give them valuable skills for the future. Inappropriate or unfair sanctioning might help the unit in the short term, but can lead to mistrust and the breakdown of relationships between

workers and children and young people. Involvement in the process of sanctioning provides the young person with an opportunity to demonstrate their motivation to stay in the unit and work with staff. It also gives staff the opportunity to demonstrate their commitment to that young person, and clearly reflects a rights-based approach.

Using the LAC materials: A Rights-Based Approach in Practice

Residential workers should be familiar with the "Looking After Children materials (1999)." They were designed by the Scottish Executive and are usually called the LAC materials. This material consists of a set of forms describing the holistic care plan for the child or young person. The forms are intended to promote information sharing, communication and decision-making among the key people involved with the child. One set of forms records essential information, plans and reviews required for daily care and understanding of children and young people's identity. Other forms are concerned with assessment and action needed to promote the welfare of the child. The LAC materials reflect many of the dimensions addressed by the Triangle of Rights and the Needs Rights Framework. They can be a tool for reflection and can assist staff to ensure that the best interests of children and young people are constantly pursued and reviewed, in line with the UNCRC.

Conclusion

Hopefully, this paper will have outlined a practical and relatively easy way to implement a rights-based approach to work in residential child care. Residential workers are faced with making decisions about children everyday. By using a rights-based approach, decision making becomes more empowering, respectful and lawful for staff and children alike.

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