

‘Voice’ is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child

Laura Lundy ^{*}

Queen’s University, Belfast, UK

(Submitted 25 August 2005; conditionally accepted 4 November 2005; accepted 10 February 2006)

This article provides a children’s rights critique of the concept of ‘pupil voice’. The analysis is founded on Article 12 of the United Nations Convention on the Rights of the Child, which gives children the right to have their views given due weight in all matters affecting them. Drawing on research conducted on behalf of the Northern Ireland Commissioner for Children and Young People, the article assesses some of the barriers to the meaningful and effective implementation of the right within education. It is argued that the phrases which are commonly used as abbreviations for Article 12, such as ‘pupil voice’, have the potential to diminish its impact as they provide an imperfect summary of the full extent of the obligation. The article proposes a new model, which has four key elements, for conceptualising Article 12—Space, Voice, Audience and Influence.

Introduction

The concept of ‘pupil voice’ has received increasing attention in the past decade, a development which is often attributed to the ratification of the United Nations Convention on the Rights of the Child (UNCRC) (e.g. Noyes, 2005, p. 533). The relevant provision of the UNCRC is Article 12, a right which is referred to often by policy makers and academics but which is rarely cited in its entirety. The full text of Article 12 reads as follows:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

*School of Education, Queen’s University, Belfast, BT7 1NN, UK. Email: l.lundy@qub.ac.uk

Freeman (1996, p. 37) has observed that Article 12 is significant 'not only for what it says, but because it recognises the child as a full human being with integrity and personality and the ability to participate freely in society'. It was partly as a result of this that Article 12 became one of the most controversial provisions of the UNCRC during the drafting process. Its perceived potential to undermine adult authority was a key reason why the United States did not ratify the Convention (Kilbourne, 1998). However, Article 12 was embraced unambiguously by the UK Government, which is therefore legally obliged to give effect to it in full. In spite of this, there is a recognised gap between the UK's international commitments and what happens in practice in relation to educational decision making. Compliance with the UNCRC is monitored by the United Nations Committee on the Rights of the Child ('The Committee'), a group of independent international experts on children's rights (Lansdown, 2000). The Committee publishes periodic reports on individual states which highlight breaches of the UNCRC and makes recommendations to secure further compliance. In its first periodic report on the UK in 1995, the Committee criticised the failure to solicit schoolchildren's views in relation to issues such as sex education and school exclusions (p. 3). In 2002, the Committee documented its concern that 'in education, schoolchildren are not systematically consulted in matters that affect them', and recommended that the UK Government should 'take further steps to promote, facilitate and monitor systematic, meaningful and effective participation of all groups of children in society, including in school, for example, through school councils' (p. 7).

The Committee's criticisms are supported by the findings of a research project conducted on behalf of the Northern Ireland Commissioner for Children and Young People (NICCY) (Kilkelly *et al.*, 2005). The research, a large-scale audit of children's rights in Northern Ireland, evaluated the law, policy and practices which impact on children's lives against the standards in the UNCRC and other international human rights covenants. The main aim of the research was to identify areas where children's rights were 'ignored or underplayed'. The research process was divided into six core themes: implementation; family life and alternative care; education; play and leisure; health, welfare and material deprivation; and criminal justice and policing. The author of this article was a member of the interdisciplinary team which was commissioned to carry out the research and this chapter incorporates reference to some of the key findings within the sub-theme of 'education'.

A range of data collection methods was employed. These included: an extensive review of existing research relating to children in Northern Ireland; documentary analysis of law and government policies; and focus groups and interviews with over 350 policy makers, professionals, practitioners and volunteers representing a range of child, youth and related organisations and agencies throughout Northern Ireland. Interviews were conducted with representatives from all of the main educational organisations in Northern Ireland. Each adult participant, irrespective of their particular sector or background, was asked a series of questions across all of the research themes, including education. In keeping with the Commissioner's statutory

remit, and for the research to be as current and inclusive as possible, children and young people from across Northern Ireland were also invited to participate in the research. In total, 1064 schoolchildren from 27 schools contributed to the research through drawing pictures, writing stories, designing posters or undertaking tasks which were appropriate to their level of understanding. This included children in mainstream schools, special schools and Irish medium schools. However, in recognition of the fact that not all children could be accessed through schools and, given that pupils might, for various reasons, be unwilling to disclose sensitive information about their lives in a classroom setting, over 100 children and young people were interviewed outside formal school environments.

One of the main findings of the NICCY research was that not having a say in the decisions made about them was the single most important issue to children in Northern Ireland (Kilkelly *et al.*, 2005, p. xxii). The conclusion that children's views were not sought or listened to or, worse, that they were afforded only minimalist, tokenistic opportunities to participate and engage with adults, was a theme which permeated all aspects of the research study. Examples of violations of Article 12(1) were peppered throughout children's experience of family, health, education, play and leisure, and youth justice and policing. There was no other issue that was so commonly and widely identified by children and young people and the adults who work with and for them. A total of 903 submissions related to children and young people's experiences at school. Over 50% of these were categorised under the theme of 'not having a say' in decisions (p. 186). Typical remarks from children and young people included the following:

Sometimes school can get on my nerves cause I don't think children get enough respect from teachers and caretakers and I think some children are scarred [*sic*] about speaking their mind in case they get shouted at. (Girl, aged 11 years) (p. 186).

Pupils don't really have a say in school. Teacher's opinions always come first. (Girl, aged 14) (p. 186).

The NICCY findings echo those of previous studies which have investigated children's experience of their rights. For example, Morrow (1999, p. 166) observed that the issues which most concerned children and young people 'appeared to be more concerned with the everyday, even mundane problems of being accorded little dignity or respect, and having little opportunity to simply have a say and contribute to discussions'.

Barriers to the implementation of Article 12

In practice, children's enjoyment of Article 12 is dependent on the cooperation of adults, who may not be committed to it or who may have a vested interest in not complying with it. Adult concerns tend to fall into one of three groups: scepticism about children's capacity (or a belief that they lack capacity) to have a meaningful input into decision making; a worry that giving children more control will undermine authority and destabilise the school environment; and finally, concern that

compliance will require too much effort which would be better spent on education itself. In recent years, there has been much valuable work which has addressed these concerns and identified the benefits of consulting with children; in particular the fact that it improves teaching and learning and fosters a more democratic school ethos (Flutter & Ruddock, 2004). There is also a growing body of publications identifying models of best practice for engaging with children (for example, McBeath *et al.*, 2003).

One of the ongoing obstacles to the successful implementation of Article 12 is that there is a limited awareness of the provision itself. This was apparent during the interviews with the professionals working with and for children conducted as part of the NICCY research. While many interviewees acknowledged the desirability of consulting with children as a matter of good practice, few were aware of the existence or scope of Article 12. This is in itself indicative of a breach of Article 42 of the UNCRC, which requires States Parties to: ‘make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike’. The Committee has observed that:

if the adults around children, their parents and other family members, teachers and carers do not understand the implications of the Convention, and above all its confirmation of the equal status of children as the subjects of rights, it is most unlikely that the rights set out in the Convention will be realised for many children. (2003, para. 66)

In view of this, the Committee has recommended that initial and in-service training for teachers and others working with children should be ‘systematic and ongoing’ and should ‘increase knowledge and understanding of the Convention and encourage active respect for all its provisions’ (2003, para. 53).

There is a need for a greater awareness of the fact that respecting children’s views is not just a model of good pedagogical practice (or policy making) but a legally binding obligation. As a minimum, those working in the education sector need to know that Article 12 exists, that it has legal force, and that it applies to all educational decision making. Moreover, one of the factors which continues to hinder the full realisation of this right is that the precise remit of the Article is not yet fully understood. In fact, I would argue that Article 12 is one of the most widely cited yet commonly misunderstood of all of the provisions of the UNCRC. It is often mentioned under the banner of ‘the voice of the child’, or ‘pupil voice’, as it is more commonly referred to in education. Other abbreviations include: ‘the right to be heard’, ‘the right to participate’ and/or ‘the right to be consulted’. While these provide a convenient shorthand which helps to avoid the use of Article 12’s long-winded and somewhat awkward construction, each has the potential to diminish its impact as they convey an imperfect summary of what it requires.

The commonly used abbreviations sideline consideration of key elements of Article 12; for example, that it applies to ‘all matters affecting the child’. McGoldrick (1991, p. 141) has pointed out that this phrase does not restrict application to those matters in which the child has a specific right since a suggested amendment to this effect was not accepted during the drafting process. The significance of an informed

understanding of this phrase cannot be underestimated since a conservative interpretation can effectively shut down the application of Article 12. The obvious starting point would be to ask children themselves whether the matter affects them. In spite of this, decisions that an issue does not affect a child without having first sought the child's view as to whether or not they consider that it will have an impact on them appear to be commonplace. If Article 12 is to be implemented fully in the UK's schools, action needs to be taken to ensure that children are involved at each of the stages at which decisions are made which will ultimately impact on the child in the classroom. These can be categorised into: (i) when decisions are being made which impact on individual pupils; (ii) when school and classroom policies are being developed; and (iii) when government policy/legislation on education is determined. The Committee has emphasised that Article 12 not only applies to all levels of decision making, but requires 'consistent and ongoing arrangements' to ensure that it is implemented effectively (2003, para. 12.).

A new model for understanding Article 12

In a thematic review of the area, Noyes observed that 'both the term *pupil* and *voice* need careful critique' (2005, p. 533). In a similar vein, Roche (1999, p. 489) has warned that the language of children's participation can be 'cosy' and has suggested that we need to be more critical of the circumstances in which children are asked to participate in decision making. This 'cosiness' is manifest in the phrases which are widely used to describe Article 12 of the UNCRC, most particularly the popular notion of 'the voice' of the child/pupil. The widespread use of such terms is in danger of creating a type of 'chicken soup' effect—where children's voice is held out as an unquestionable good to be endorsed by all, a common, if somewhat dangerous side effect of children's rights discourse (Sloth-Nielsen, 1996, p. 337). One of the inherent difficulties with this is that the initial goodwill can dissipate when the rhetoric needs to be put into practice, especially when the effect of this is to challenge the dominant thinking, generate controversy or cost money. The fact that adults can find compelling reasons for not giving children's views due weight strengthens the case for the discourse on pupil voice to be firmly located within the framework of children's rights. The practice of actively involving pupils in decision making should not be portrayed as an option which is in the gift of adults but a legal imperative which is the right of the child.

Thus, while there is widespread support for the practice of consulting with pupils, this may be based on an understanding of children's rights which does not always match up to Article 12. In the light of this, I propose a new model for conceptualising Article 12 which attempts to capture more fully the true extent of the UK's legal obligations to children in terms of educational decision making. Article 12 has two key elements: (i) the right to express a view, and (ii) the right to have the view given due weight. Neither is absolute: the text of Article 12 contains additional phrases which both qualify and expand the application of each of the twin elements of the provision. Moreover, Article 12 cannot be viewed in isolation, as is

often the case in academic discussion about children’s participation in decision making. A practical consequence of the indivisibility, interdependence and interconnectedness of all human rights is that the meaning of individual provisions of the UNCRC can only be understood when they are read and interpreted in conjunction with the other rights protected in the Convention.

Having analysed the various provisions of the UNCRC in the light of children and young people’s experience of involvement in decision making as it emerged in the NICCY research, I am suggesting that there is a need for a new means of communicating the legal and human rights imperative in Article 12 of the UNCRC. With this in mind, it is proposed that the successful implementation of Article 12 requires consideration of the implications of four separate factors: Space, Voice, Audience and Influence. These concepts and their relationship with the two main strands of Article 12 and other relevant UNCRC provisions are represented in Figure 1.

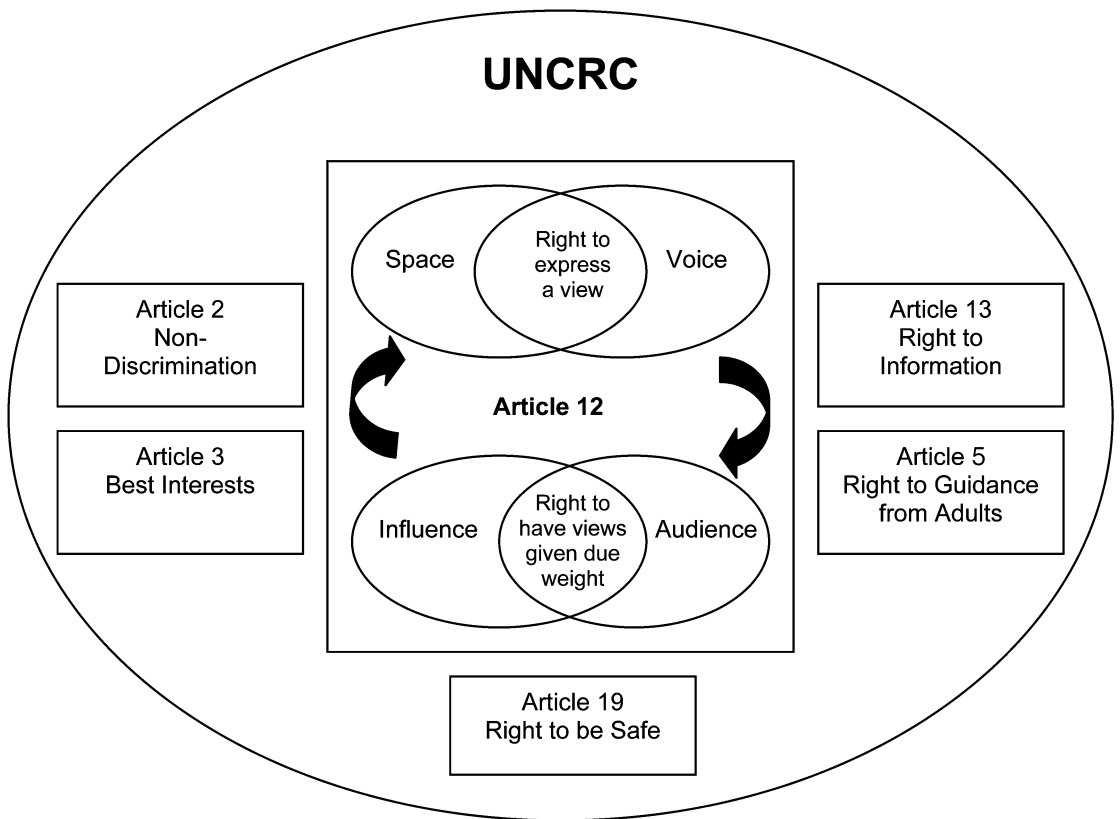


Figure 1. Conceptualising Article 12

This model provides a new way of conceptualising Article 12 of the UNCRC which is intended to focus decision makers on four elements of the provision:

- Space: Children must be given the opportunity to express a view
- Voice: Children must be facilitated to express their views
- Audience: The view must be listened to.
- Influence: The view must be acted upon, as appropriate.

The model reflects the fact that these elements are interrelated. In particular, there is a significant degree of overlap between: (a) space and voice, and (b) audience and influence. Secondly, it depicts the fact that Article 12 has an explicit chronology. The first stage is ensuring the child's right to express a view. Following on from this is the child's right to have the view given due weight. However, in recognition of the fact that the decision-making processes are rarely static, the model acknowledges that, once the child is informed of the extent of influence, the process may begin again. Finally, the model represents the fact that Article 12 can only be understood fully when it is considered in the light of other relevant UNCRC provisions; in particular: Article 2 (non-discrimination); Article 3 (best interests); Article 5 (right to guidance); Article 13 (right to seek, receive and impart information); and Article 19 (protection from abuse).

The model unpacks the legal implications of Article 12 by highlighting and analysing the meaning of each of the specific phrases contained within Article 12. In doing so, my analysis draws primarily on the text of the UNCRC and the General Comments and Concluding Observations of the UN Committee on the Rights of the Child, which, in the absence of a court-based right of individual petition, are the main jurisprudential source for the UNCRC. At the outset it is acknowledged that international human rights law is not meant to be interpreted literally, as is often the case with the domestic law of the UK, but rather teleologically (i.e. within the broad spirit and intention of those who drafted it). Nonetheless, the text of Article 12 is a deliberate product which represents the hard-won consensus of the global community. One of the knock-on effects of this careful deliberation is that the right is relatively convoluted. It does not 'trip off the tongue' and it is not easily recalled verbatim. However, while there is an obvious need for a shortened version of the text, there is a danger that the full import of the obligation may be lost in the current abbreviations, irrespective of how catchy and convenient these are in practice. The model proposed constitutes an attempt to provide a practical précis of Article 12 which condenses the wording of the provision without sacrificing its scope and meaning.

Space

A prerequisite for the meaningful engagement of children and young people in decision making is the creation of an opportunity for involvement—a space in which children are encouraged to express their views. Article 12 requires states to 'assure' to the child the right to express their views. The use of the word 'assure' rather than the more diluted phrases such as 'take appropriate measures to ensure' or 'use their best efforts to ensure' which appear elsewhere in the UNCRC indicates a positive

obligation to take proactive steps to encourage children to express their views; that is, to invite and encourage their input rather than simply acting as a recipient of views if children happen to provide them. An important first step is that children are asked which matters they consider impact on them, and how (or indeed whether) they would like to be involved in influencing the outcome of the decision. Children complain that the issues which they are allowed to influence are predetermined by adults and that, in school councils, for example, the issues which they get to discuss are predetermined by teachers. One young person in the NICCY research described her experience on the student council as follows:

As soon as you got in, it was just like you got handed the minutes from the last meeting and you had to talk about this and this and it was mainly about the canteen and stuff and you didn't really get the opportunity to bring anything up. (Kilkelly *et al.*, 2005, p. 187)

Equally, children should be asked whether or not they wish to participate in decision making. Article 12 is a right (not a duty) to express a view and there will be occasions when children and young people will not want to be involved. This too should be respected. Children's reasons for not wishing to express a view will be varied. One group of marginalised young people declined to be involved in the NICCY research, citing a form of 'consultation fatigue'. They had grown tired of responding to government consultations with children and young people which had brought little tangible benefit to their daily experience.

The space offered to children to participate must be a safe space. Article 19 of the CRC gives children the right to be protected from abuse. Children must therefore be able to express their views without fear of rebuke or reprisal. This is particularly important within school contexts where children may face the consequences of having spoken out on a daily basis. In the NICCY research, many of the children's responses indicated that, when they offered their views in school, they were perceived to be challenging the teacher's authority (Kilkelly *et al.*, 2005, p. 186). This concern was echoed in focus groups with key professionals. For example, one education welfare officer commented:

Sometimes children feel that they don't have the right to question teachers' behaviour. If they question something, they are said to be cheeky or emotionally difficult. They are not sure how to present themselves or how they should ask questions without being cheeky or whatever. (Kilkelly *et al.*, 2005, p. 186)

Children's perspectives should be viewed as an integral part of school discourse rather than an attempt to undermine authority. However, if children are to speak 'freely', it will also in certain instances require the development of mechanisms (such as e-consultation devices) which enable children to express their views anonymously.

The space must also be inclusive. It is important that the views of a diverse range of children are sought and that participation is not just afforded to the articulate and literate (Flutter & Rudduck, 2004, p. 137). Article 2 of the UNCRC requires states to ensure that Article 12 is secured: 'to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status'. The need to secure

the participation of disadvantaged and marginalised children and young people has been emphasised by the United Nations General Assembly (2002) on the basis that it is necessary to build their self-esteem and to prepare them to take responsibility for their own lives. Moreover, the Committee has stressed the particular need to guarantee the participation of children with disabilities on the basis that these children may suffer a 'double denial' of their right because of 'an even deeper inability to accept the child's competence' (1997, para. 334).

Voice

Article 12 gives children a right to express their views. However, this right is not confined to Article 12, nor indeed the UNCRC. It is afforded to all human beings (young and old) in a range of international human rights instruments including the Universal Declaration on Human Rights. The only stipulated restriction on the right within Article 12 is that it is afforded to a child 'who is capable of forming his or her own views'. While there may be an element of uncertainty about what constitutes the capacity to form a view, a major difficulty is that this phrase often disappears in discussion about Article 12, replaced by a more general assumption that the right is dependent upon the child's 'capacity'. There may be a misperception that the right to express a view is somehow dependent on 'the age and maturity of the child'. This phrase, which can obviously limit the application of the right, only applies to the second part of Article 12(1) (the obligation to give views due weight). Children's right to express their views is not dependent upon their capacity to express a mature view; it is dependent only on their ability to form a view, mature or not.

Article 12 stipulates that children should be assured the opportunity to express their views 'freely'. Children in the NICCY research complained that their teachers did not encourage them to express their opinions. One of the most commonly voiced concerns was that their teachers were always 'shouting at them', an environment which is clearly not conducive to eliciting views and encouraging a two-way dialogue (p. 183). One child caricatured this in a drawing, reproduced in Figure 2.

In some cases, children will need the help of others in order to form a view. Article 5 of the UNCRC gives children the right to receive guidance and direction from adults in the exercise of their Convention rights, including Article 12. During the United Nations Special Summit on Children's Rights in 2002, children and young people identified a range of prerequisites to meaningful and effective participation, including: sufficient time to understand the issues; access to child-friendly documentation and information; capacity building with child-led organisations; and training for adults to overcome their resistance to children's involvement (Bennett Woodhouse, 2003). They also made specific suggestions as to how best to involve younger children through the organisation of fun activities such as plays, puppet shows, videos and drawing projects. This accords with Article 13 of the UNCRC, which states that children's right to freedom of expression includes a right to impart information 'either orally, in writing or print, in the form of art, or through any other media of the child's choice'.



Figure 2. 'I am always right'

The need for representation in relation to judicial and administrative proceedings is acknowledged explicitly in Article 12(2). Freeman (2000, p. 288) has identified a number of limitations with this provision, including the fact that it does not require separate representation from the child's parent and that it is qualified by the phrase 'in a manner consistent with the procedural rules of natural law'. However, the fact that judicial and administrative proceedings are considered to be a particular example of an instance in which there may be a need for representation and advocacy does not preclude the need for it elsewhere. Moreover, it is recognised that in other instances, children may need practical assistance to communicate their views, for example, through assistive technology or through the use of interpreters.

Audience

Article 12 requires children's views to be given 'due weight'. While most of the other UNCRC provisions have their roots in preceding human rights covenants, this aspect of Article 12 does not have an obvious ancestry. While adult human beings have a right to express their views, they do not have a right to have them given weight, except perhaps indirectly in election processes. Implicit within the notion of due weight is the fact that children have a right to have their views listened to (not just heard) by those involved in the decision-making processes. One of the themes which emerged in the NICCY research was that many children did not have the sense that their views were listened to at school. Typical comments were as follows:

Some teachers get on to you without listening to what you are saying. (Young person in focus group) (Kilkelly *et al.*, 2005, p. 181)

The need for adults to receive training in the skills of active listening has been widely acknowledged. Moreover, there is growing recognition of the fact that children

express their views in a variety of ways, not all of which are verbal. The Committee on the Rights of the Child has observed that younger children, for example, 'make choices and communicate their feelings, ideas and wishes in numerous ways, long before they are able to communicate through the conventions of spoken or written language' (2005, para. 11). Effective 'listening' may also involve 'looking' (Lancaster & Broadbent, 2003). For example, recent research has shown that babies who were born prematurely are able to express their views about the issues of most concern to them and are therefore capable of exercising their rights under Article 12 (Alderson *et al.*, 2005). Training in 'listening' skills should take appropriate account of the range of non-verbal 'cues' which children deploy when they are expressing themselves. The Committee has emphasised that in the case of younger children (which it defines as those up to eight years of age), the achievement of participation rights 'requires adults to show patience and creativity by adapting their expectations to a young child's interests, level of understanding and preferred ways of communicating' (2005, para. 11(c)).

Even where there is no doubt about the child's view on an issue, there is no guarantee that their views will be communicated to or taken on board by those adults who are in a position to give them effect. This would suggest the need to ensure that children at least have a 'right of audience'—a guaranteed opportunity to communicate views to an identifiable individual or body with the responsibility to listen. The discussion which takes place at school councils is a good example. Previous research has indicated that the existence of a school council is not in itself a guarantee of rights (Wyse, 2001). Pupils complain that their views are not communicated to those who have ultimate influence over decision making and that nothing ever changes as a result (Alderson, 2000). While it is not possible to ensure specific outcomes from these processes, it is possible to prescribe the formal channels of communication for the child or young person's views. This could be a requirement that the minutes of school councils are tabled for discussion at the meetings of boards of governors or that student representatives are members of the governing body (see, for example, Hallgarten *et al.*, 2004). Likewise, formal rights of audience could also be integrated into exclusion and special education processes as well as the meetings of local education authorities and departmental working groups.

Influence

States Parties are required to ensure that children's views are given 'due weight in accordance with their age and capacity'. The Committee has warned that 'appearing to "listen" to children is relatively unchallenging; giving due weight to their views requires real change' (2003, para. 12). At some point, attention needs to focus on the extent of influence; what constitutes the 'due' in the 'due weight'. The fact that this is explicitly linked to the 'age and maturity' of the child and that this is usually dependent on adults' perceptions of children's capacity is what makes this aspect of Article 12 so complex. For example, there is a danger that the adults who act as gatekeepers to Article 12 rights may decide that children are not sufficiently mature

to express a view, a decision which may well fly in the face of research which indicates that children are more capable than adults give them credit for and that their capacity for decision making increases in direct proportion to the opportunities offered to them (Alderson & Goodwin, 1993; De Winter, 1997).

Applying the provision in the spirit and context in which it was drafted would require an interpretation that is generous and child-empowering rather than negative and opportunity-restricting. Support for this can be drawn from Article 5 of the UNCRC, which requires adults to provide children with guidance and direction in line with their evolving capacities. The Committee (2005, para. 14) has said:

Evolving capacities should be seen as a positive enabling principle. It should not be interpreted as an endorsement of authoritarian practices that restrict children's autonomy and self-expression and which have traditionally been justified by appealing to children's relative incompetence and their need for socialisation.

Article 3 of the UNCRC, which requires children's best interests to be 'a primary consideration' in all decisions affecting them, is also of significance. The Committee has recognised that young children, in particular, are reliant on others to assess and represent their rights and best interests in relation to the decisions that affect their welfare, 'while taking account of their views and evolving capacities' (2005, para. 10). There is obvious potential for tension and conflict in the operation of Article 3 and Article 12. However, while children's best interests must be a primary consideration, their right to have their views given due weight cannot be abandoned on the basis that the adults in their lives know what is best for them. Children's rights theorists have reflected for some time about the legitimate limits to children's autonomy, concluding that it should only be restricted where the child's preferred course of action denies the child a right to an 'open future' (Feinberg, 1980), interferes with their development interests (Eekelaar, 1986) or restricts their life choices in an irreparable way (Freeman, 1996).

One of the most common and cogent criticisms levelled at Article 12 is that it is easy for adults to comply with the various outward signs of consultation and ultimately ignore children's views. Tokenistic or decorative participation is not only in breach of Article 12 but can be counterproductive. For example, Alderson (2000) found that tokenistic school councils had as much or more negative impact than having no council at all. Various models have been developed which can be used to distinguish meaningful involvement from 'tokenism' or 'decoration', most notably Hart's ladder of participation (Hart, 1992). The challenge is to find ways of ensuring that adults not only listen to children but that they take children's views seriously. While this cannot be universally guaranteed, one incentive/safeguard is to ensure that children are told how their views were taken into account. Often children are asked for their views and then not told what became of them; that is, whether they had any influence or not. For example, one group of young people who took part in the NICCY research complained about the lack of feedback after they had participated in various consultations. One commented:

That happens over and over again that all this stuff is going to happen and you never hear about it again. (p. 43)

Children and young people should be told what decision was made, how their views were regarded and the reasons why action has proceeded in a certain way. While the implementation of Article 12 cannot be guaranteed, it can be monitored. It is possible to implement procedural safeguards which make the process more open and transparent and which create the conditions in which it makes it uncomfortable for adults to solicit children and young people's opinions and then ignore them. Securing change requires a culture shift in school life in which children's views are not just valued and respected but seen to be integral and embedded within decision making (Sinclair, 2004). In the long term this will only be brought about through awareness raising and training which should in turn result in revised policies and practices being implemented in schools. The hope is that the benefits which accrue will be sufficiently evident to convince those who are currently resistant to a children's rights approach.

Finally, it is worth highlighting the fact that Article 12 includes the possibility that the child's views will fully determine the issue in certain instances. Discussions about children's rights under Article 12 often proceed with the assumption that there will always be some level of adult input. Inherent within notions of 'consultation' and 'participation' is the implication that the decision will always lie, at least in part, with an adult or adults. The reality is that Article 12 must be interpreted in conjunction with Article 5 of the UNCRC (which states that adults' right to provide 'appropriate direction and guidance' in the exercise by the child of the rights in the Convention must be carried out in 'a manner consistent with the evolving capacities of the child'). The import of Article 5 is that the adults' right to provide guidance wanes as the child matures and may eventually cease. Moreover, there are several other UNCRC rights, such as the right to freedom of conscience (Article 14) and association (Article 15) which can be exercised independently by a mature child. In some decisions, at some point, the adults' views may be irrelevant and the child's view should prevail. In instances such as these, notions of 'consultation' and 'participation' are effectively redundant.

Conclusion

The significance of Article 12 for education cannot be understated. In its General Comment on the Aims of Education (2001), the Committee observed that:

Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with Article 12(1) and to participate in school life.

A strong case has been made for the increased involvement of children and young people in decision making in education from both a citizenship perspective (Devine, 1998; Roche, 1999) and an educational benefits perspective (Flutter & Ruddock, 2004). From a human rights perspective, the arguments are equally, if not more, compelling. Compliance with Article 12 will not only foster a positive school ethos and produce better citizens, it is a legal and moral imperative.

Article 12 can make a unique and powerful contribution to the creation of a children's rights culture in schools. It is in many respects a barometer for children's rights since, when it is implemented effectively, other rights fall into place naturally. The right to education acts as a multiplier of rights—increasing a person's capacity to enjoy all other rights when it is fully protected. Article 12 has similar transformative potential: it is difficult to imagine egregious breaches of children's rights in situations where they have been fully and effectively involved in determining the outcome of the decisions which affect them. For example, children and young people knew that the use of corporal punishment in schools infringed their fundamental rights to dignity and equality long before it became the accepted wisdom amongst the majority of adults. In truth, the strongest argument for guaranteeing the implementation of this right derives from its capacity to harness the wisdom, authenticity and currency of children's lived experience in order to effect change. Young people are quick to grasp the wider benefits of pupils being given greater influence over the things which affect them in schools. For example, one young person in the NICCY research offered the following advice on reducing disaffection with school:

We need to be able to leave our books in school, have longer lunches and breaks and better sporting equipment. By applying some of the above points to school, it would make school more enjoyable and maybe would encourage kids to stay in school and not go on the beak and they would get on better with the teachers. (Kilkelly *et al.*, 2005, p. 191)

While the case for increased compliance with Article 12 of the UNCRC is compelling, some children's rights activists take the approach that compliance should not have to be justified at all. The reality is that the UK (along with every other established nation in the world bar one) has acknowledged that it is a fundamental human right and has made a public commitment to ensuring compliance. In truth, it could be queried why the benefits of involving children in decision making should have to be 'sold' to schools and the public authorities involved in education any more than the benefits of freedom from torture and the right to life. What cannot be queried is the ongoing need to publicise and explain the nature of the right itself. Not only is this an obligation on States Parties under Article 42 of the UNCRC, but it is arguably all the more necessary when the provision in question is not only complex and multifaceted but runs counter to the instinct and interests of many of the adults who are key to securing the right.

Flutter and Rudduck have warned that we need to be wary about the 'bandwagon' appeal of concepts such as pupil voice, which can turn a new development into 'flavour of the month' (2004, p. 138). One way of sustaining the existing momentum might be to reframe the discourse to reflect the fact that pupil involvement in decision making is a permanent, non-negotiable human right. This would require a concerted strategy to increase awareness about (and secure the implementation of) Article 12 of the UNCRC within the UK education system. This cannot be achieved without ongoing guidance and expertise from a variety of disciplines. There is a need for psychologists to provide insights into children's capacity, sociologists to

document the social impacts of compliance and non-compliance, and education-ists to identify the educational benefits and most effective practices within schools. Moreover, given that much of the existing work is carried out under the broad auspices of 'children's rights', there is also a need for an informed legal perspective.

This article aims to contribute a critical legal and children's rights perspective to the growing literature about 'pupil voice' in education. The focus on the legal imperative is intended to complement existing work within the field. Having analysed the text of UNCRC, it is apparent that some of the most commonly used concepts have the potential to dilute the impact of Article 12. Phrases such as 'pupil voice', 'the voice of the child', 'the right to be heard' and the 'right to participate' address specific elements of the provision, and, taken individually, are incapable of conveying the full extent of the right. The model proposed in this article—Space, Voice, Audience and Influence—conceptualises the distinct facets of Article 12 in a legally sound yet user-friendly format. It is offered as a potential model for informing understanding, developing policy and auditing existing practice.

References

- Alderson, P. (2000) School students' views on school councils and daily life at school, *Children and Society*, 14, 121–134.
- Alderson, P. & Goodwin, M. (1993) Contradictions within concepts of children's competence, *International Journal of Children's Rights*, 1, 303–313.
- Alderson, P., Hawthorne, J. & Killen, M. (2005) The participation rights of premature babies, *International Journal of Children's Rights*, 1, 31–35.
- Bennett Woodhouse, B. (2003) Enhancing children's participation in policy formulation, *Arizona Law Review*, 45, 750–763.
- Committee on the Rights of the Child (1995) *Concluding observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland*. UN/CRC/C/15/Add.34 (Geneva, United Nations).
- Committee on the Rights of the Child (1997) *General discussion on the rights of children with disabilities*. UN/CRC/C/66, Annex V (Geneva, United Nations).
- Committee on the Rights of the Child (2001) *General Comment No. 1 (2001): The aims of education*. UN/CRC/GC/2001/1 (Geneva, United Nations).
- Committee on the Rights of the Child (2002) *Concluding observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland*. UN/CRC/C/15/Add.188 (Geneva, United Nations).
- Committee on the Rights of the Child (2003) *General Comment No. 5 (2003): Implementation*. UN/CRC/GC/2003/1 (Geneva, United Nations).
- Committee on the Rights of the Child (2005) *General Comment No. 7 (2005): Implementing child rights in early childhood*. UN/CRC/GC/7 (Geneva, United Nations).
- De Winter, M. (1997) *Children as fellow citizens: participation and commitment* (Oxford, Radcliffe Medical Press).
- Devine, D. (1998) Children's citizenship and the structuring of adult-child relations in the primary school, *Childhood*, 9(3), 303–320.
- Eekelaar, J. (1986) The emergence of children's rights, *Oxford Journal of Legal Studies*, 6, 161–182.
- Feinberg, J. (1980) The child's right to an open future, in: W. Aiken & H. LaFollette (Eds) *Whose child?* (Totowa, NJ, Littlefield Adams).
- Flutter, J. & Rudduck, J. (2004) *Consulting pupils: what's in it for schools?* (London, RoutledgeFalmer).

- Freeman, M. (1996) Children's education; a test case for best interests and autonomy, in: R. Davie & D. Galloway (Eds) *Listening to children in education* (London, David Fulton).
- Freeman, M. (2000) The future of children's rights, *Children and Society*, 14, 277–293.
- Hallgarten, J., Breslin, T. & Hannam, D. (2004) *I was a teenage governor* (London, IPPR and Citizenship Foundation).
- Hart, R. (1992) *Children's participation: from tokenism to citizenship* (Florence, International Child Development Centre/UNICEF).
- Kilbourne, S. (1998) The wayward Americans—why the USA has not ratified the United Nations Convention on the Rights of the Child, *Child and Family Law Quarterly*, 10, 243–256.
- Kilkelly, U., Kilpatrick, R. & Lundy, L. et al. (2005) *Children's rights in Northern Ireland* (Belfast, Northern Ireland Commissioner for Children and Young People).
- Lancaster, Y. P. & Broadbent, V. (2003) *Listening to young children* (Maidenhead, Open University Press).
- Lansdown, G. (2000) The reporting process under the Convention on the Rights of the Child, in: P. Alston & J. Crawford (Eds) *The future of the UN Human Rights Treaty monitoring* (Cambridge, Cambridge University Press).
- McBeath, J., Demetriou, H., Rudduck, J. & Myers, K. (2003) *Consulting pupils: a toolkit for teachers* (Cambridge, Pearson).
- McGoldrick, D. (1991) The United Nations Convention on the Rights of the Child, *International Journal of Law and the Family*, 5, 132–169.
- Morrow, V. (1999) 'We are people too': children and young people's perspectives on children's rights and decision-making in England, *International Journal of Children's Rights*, 7, 149–170.
- Noyes, A. (2005) Pupil voice: purpose, power and the possibilities for democratic schooling, *British Educational Research Journal*, 31(4), 532–540.
- Roche, J. (1999) Children: rights, participation and citizenship, *Childhood*, 6(4), 475–493.
- Sinclair, R. (2004) Participation in practice: making it meaningful, effective and sustainable, *Children and Society*, 18, 106–118.
- Sloth-Nielsen, J. (1996) The contribution of children's rights to the reconstruction of society: some implications of the constitutionalisation of children's rights in South Africa, *International Journal of Children's Rights*, 4, 323–344.
- United Nations General Assembly (2002) *A world fit for children*. UN/A/RES/S-27/2 (Geneva, United Nations).
- Wyse, D. (2001) Felt tip pens and school councils: children's participation rights in four English schools, *Children and Society*, 15(4), 209–218.