

Article 12: **United Nations
Convention on the Rights
of the Child**

Awareness-
raising
through
action-based
research



CENTRE FOR RURAL CHILDHOOD
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EQUALITY AND HUMAN RIGHTS COMMISSION

ARTICLE 12
United Nations Convention on the Rights of the Child

AWARENESS-RAISING THROUGH ACTION-BASED
RESEARCH

Centre for Rural Childhood

March 2011



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, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Justice only exists where people's voices are heard. We recognise this for adults. It's time to recognise it is equally true for children.

Gerison Lansdown, International Children's Rights Consultant

INTRODUCTION

This action-based research project, commissioned by the Equality and Human Rights Commission, ran from 1st October 2010 to 31st March 2011.

The project was designed to raise awareness of article 12 of the United Nations Convention on the Rights of the Child (UNCRC) – namely the right of children to be heard and have their views taken seriously in all matters affecting them – in accordance with General Comment 12 of the UNCRC Committee on the Rights of the Child (1st July 2009), which identified that “there is a need for better understanding of what article 12 entails and how best to fully implement it for every child”. General Comment 12 is required to be disseminated by governments through “holding workshops and seminars and incorporating it into the training of all professionals working for and with children”.

The project was carried out by 2 members of staff from the Centre for Rural Childhood, Perth College University of the Highlands and Islands, under the directorship of Professor Rebecca Wallace, and sought to achieve the following aims derived directly from General Comment 12:

- Strengthen understanding of the meaning of article 12 and its implications for all stakeholders, including governments, non-governmental organisations (NGOs) and society at large;
- Highlight the positive approaches in implementing article 12 that are already taking place;
- Identify the barriers that exist to realising article 12 in practice, including those that are specific to certain groups of children;
- Identify the training needs of professionals who work for and with children in respect of the “gaps, good practices and priority issues that need to be addressed in order to further the enjoyment of article 12”.

RESEARCH QUESTIONS

These aims generated several critical research questions that were addressed throughout the study:

- What is the current level of understanding of article 12 among childcare professionals across sectors of health, law, social care and education in Scotland and how confident is the workforce that the child's right to be heard is being met?
- What practices and policies are currently supporting the implementation of article 12 in Scotland? How might these be shared across sectors and organisations?
- What training resources will best support professionals in their task of ensuring that article 12 is effectively realised by all children in Scotland?

METHODOLOGY

In achieving these aims and exploring these questions the project team adopted an 'action-based research' approach that is particularly suited to both awareness-raising and to Human Rights Education. Action-based research invites professionals to reflect on their own practice and understanding from the standpoint that the question 'How can I improve my practice?' is fundamental to all professionals at every career stage.

The use of the term 'professional' throughout the research recognises the specialist nature of working with children and is inclusive of all strata of the workforce whether trainee, frontline case-worker/service provider, manager or policy maker. Equally the term is used whether an individual role is based in a voluntary agency or other non-governmental organisation (NGO); in the private or commercial sector; or in the more traditionally recognised professions or sectors relating to children's welfare, health or education.

Professionals were invited to contribute and reflect on their experience through online survey, meetings and discursive seminars, and the project was promoted through various professional conferences, organisations and newsletters in Scotland. Over 500 participants responded to the online survey in health, education, social work, legal and voluntary sectors across all 32 of Scotland's local authorities. Stakeholder meetings and seminars were carried out with approximately 100 representatives of key organisations relating broadly to child welfare throughout Scotland (See Appendix A for participating organisations).

EXECUTIVE SUMMARY

Through analysis of the data made available by participants and stakeholders, the following findings emerged:

- Professionals at all levels across Scotland (policy makers, managers, case workers) agreed that the child's right to be heard is of direct importance to their professional role.
- Approximately 25% of the participants reported that they had little or no awareness of the UNCRC.
- Approximately 30% of the participants reported that they had little or no awareness of article 12 specifically.
- Where awareness of UNCRC/article 12 was reasonable or good that awareness came, in approximately 90% of cases, directly from the workplace.
- There is a strong correlation between awareness and training needs – approximately 75% of the participants had received no training in the UNCRC as a whole; and approximately 80% of participants had received no training specific to article 12.
- While the majority of participants (approximately 70%) felt that there are adequate or even excellent procedures/methods within the workplace to ensure that the voice of the child is heard and taken seriously, 40% of participants could identify instances where there was concern that the voice of the child was **not** heard.
- Most participants identified multiple barriers to implementation of article 12 with institutional barriers suggested as significant by approximately 70% of participants. These barriers were perceived to increase with particularly vulnerable groups of children.
- Training needs vary greatly with approximately 14% of participants indicating that they do **not** require special training relative to UNCRC or article 12 specifically. Web-based training was identified as the most popular option for those requiring training.

KEY THEMES

The following key themes emerged throughout our research:

Lack of ‘joined-up thinking’: participants consistently referred to various situations which demonstrated a lack of communication, co-operation or consultation between agencies or individuals or a duplication of efforts and resources. It is hoped that ‘Getting It Right For Every Child’ (GIRFEC) will provide a stronger mechanism for inter-agency communication and collaboration across Scotland as there is a strong desire to share best practice across sectors and authorities. However, the shared philosophy and value base underlying GIRFEC did prompt varying degrees of scepticism across all sectors. Particular attention was drawn to the need to respect confidentiality whilst sharing information within and amongst agencies. Certain participants agreed that guidelines were necessary to assist professionals in sharing information that is relevant and proportionate while safeguarding the child’s right to confidentiality.

Conflation of terms ‘rights’ and ‘responsibilities’: while it is clear that individual rights may need to be balanced with other competing rights, and so it is frequently suggested that ‘with rights come responsibilities’, it should be stressed that rights are not dependent or contingent on responsibilities. Rights are inherent from birth – they are not ‘earned’. UNCRC does not confer rights but rather articulates rights that already exist from the birth of a person. It is the particularly vulnerable state of childhood that necessitates a specific articulation of the rights of the child through the UNCRC – ultimately this articulation is a restatement of the human rights principles enshrined in the Universal Declaration of Human Rights and recognises that a child is an autonomous human being – a fully fledged social subject, rather than an objectified ‘human becoming’.

Only cultural change will effect the successful realisation of the UNCRC for every child:

Human rights education – training *ab initio* and thereafter through CPD – is essential if the required cultural shift is to gain momentum. Whilst rights are not contingent on the exercise of responsibilities, this is not to say that rights and the non-contingent performance of responsibilities by children cannot be encouraged through such education and training. The need for learning hubs in rural Scotland has been clearly gleaned from feedback received during the series of seminars undertaken as part of this research. One significant benefit to be realised from welcoming a culture that encourages and embraces, through rights-based education and training, the non-contingent performance of responsibilities, is the development of a sense of community. Such a cultural shift will

undoubtedly ensure a greater appreciation of the rights-based agenda which in turn will encourage children to respect the rights of others through respect for their own rights.

The UNCRC recognises children's evolving capacity to exercise rights as they grow older. The seminar series highlighted that this underlying principle is not fully appreciated and in fact the lack of such awareness is alarmingly low amongst certain professionals. A refined and robust understanding of the rights of the child therefore stands to be gained if the UNCRC's provisions are considered holistically. A more balanced and nuanced appreciation of the role of families and parents would for example be a very welcome development. After all:

- The preamble of the UNCRC emphasises that growing up within a caring family environment is central to the healthy development of children;
- The UNCRC recognises parental rights and responsibilities to provide direction and guidance to their children, acknowledging that such rights and responsibilities exist in order to protect and promote children's rights (in accordance with their evolving capacities);
- It promotes a culture of respect for children in families by listening to them and taking them seriously (in accordance with their evolving capacities);
- It does not diminish or undermine the role of parents, but it does imply a more open democratic approach to child rearing; and
- It specifically states that it is the government's responsibility to support parents in their child-rearing practices.

RECOMMENDATIONS ARISING FROM RESEARCH

On consideration of the research as a whole, the following recommendations are made. It should be noted that these recommendations do not necessarily reflect the views of individual research participants or of the Equality and Human Rights Commission:

- A rights-based framework and discourse should be adopted by all agencies dealing with children in satisfaction of General Comment 12. While it is acknowledged that several bodies felt that they were already giving effect to the ‘spirit’ of article 12 - particularly regarding ‘child at the centre’ and other participatory practices – a consistent rights-based discourse would assist with ‘joined-up thinking’ and is a fundamental step towards the fulfilment of Scotland’s obligations under the UNCRC and towards the cultural change required to effect this, with or without incorporation in to Scots or UK Law.
- As a corollary of such an articulated rights-based approach it is recommended that a common framework is put in place, to act as a minimum standard of guidance for anyone who will interact with children in their work role. This is particularly relevant to professions where work with children may only be a dedicated interest or small part of the overall job. A lot is left to individual professionalism and experience or intuition in those circumstances and there is no formal procedure for recognising basic competency in ascertaining the view of the child. An apposite example of this is where a junior solicitor with no experience or training with children can be asked to provide the court report in a dispute over residence or access.
- It should be noted that giving effect to article 12 does not mean that the child’s view will necessarily be the prevailing one, only that there will be the **opportunity** for the child to express their opinion and for it to be taken seriously by being given “due weight” while bearing in mind the best interests of the child. Fundamental to the concept that a child’s view is “given due weight” it is recommended that every process of consultation or participation has an inbuilt feedback process which outlines in what way the child’s view affected the outcome of the consultation or participation process. This is considered to be especially important in processes where the final decision does **not** accord with the view expressed by the child or where a particular disclosure is made on the part of the child. Given the scope of the right to be heard as relevant “in all matters affecting the child” this feedback process is

equally important in consultation or advisory situations (such as Pupil Councils) as it is in the most serious decisions affecting a child's life.

- As a matter of priority awareness-raising of article 12 and the UNCRC should be incorporated in to all initial training programmes for those who work with children in sectors of health, education, legal and social work. This should be supported by continuing professional development resources for both initial and secondary (or specialist) training including those in the voluntary sector. However given a family and intergenerational focus to many of the problems – and solutions – in issues relating to child health, education and welfare, and the desire that children's rights form part of a greater societal framework or ethos of human rights, it is suggested that awareness of UNCRC should form a core component of all initial training programmes in these sectors whether or not further specialism in children is expected.
- Amongst disadvantaged groups including disabled children and those otherwise coping with special educational needs, the demand for joined up thinking is particularly acute. If, in addition, a child belongs to a minority ethnic group, uses English as a second language or is suffering with mental ill-health, the need for a common framework of assessment that minimises the risk of professionals within and across sectors duplicating their efforts (thereby forcing the reiteration of life stories), is even more urgent. Greater attention to the imperatives of article 12 amongst professionals, if only in the form of guidelines and protocols borne out of initial awareness, is recommended. It is hoped all professional training in this regard will ultimately be rooted in GIRFEC as the best possible model for disseminating guidelines, ensuring compliance and the necessary cultural shifts.
- There exists a clear need for streamlining child-advocacy services applicable at every stage of the decision-making processes within judicial and administrative fora. These services ought to be tailored in such a way that they are clearly and readily understood by the child so as to achieve optimal outcomes by minimising the stress felt by the child during these processes. Accessibility is also vitally important to ensuring the child's right to be heard is respected. For example, a child may consider a favourite teacher the ideal advocate or choose a grandparent over a parent. In its General Comment 12, the Committee on the Rights of the Child emphasised that the child's right to express his/her own views and have them taken seriously in all matters

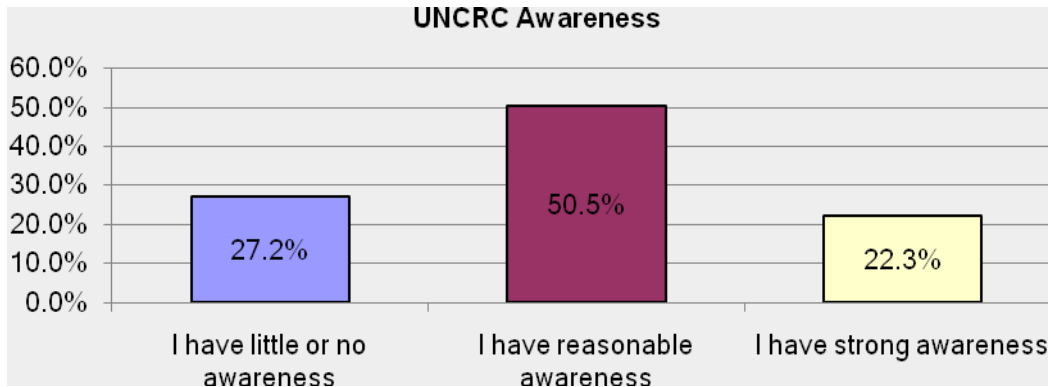
affecting him/her, applies but is not limited to the family, school, wider community and public services. The provision of accessible information is necessary to ensure such rights are exercisable safely and effectively. The availability of information relating to advocacy is therefore inextricably tied to the article 12 right of participation.

The project's aim has been that of strengthening understanding of article 12 and its implementation by directly engaging in the first instance with professionals who work with children, bearing in mind the longer-term training and developmental needs of professionals. The dissemination of the awareness-raising to as wide an audience as possible throughout Scotland has been central to satisfying this need. Although a number of the project's milestones consist of materials such as this report and an online learning resource (www.voiceofthechild.net) the process of awareness-raising has been on-going from the outset. The expectation is that the project is sustainable through continuing professional development and online learning resources. Significantly, an understanding of article 12 is crucial for the appropriate interpretation of all other articles contained within the UNCRC and substantive provisions of other international human rights conventions such as the UN Convention on the Rights of Persons with Disabilities. In developing its learning resources in the future, the Centre for Rural Childhood will explore the possibilities for advancing the rights of all children in this holistic manner.

It is acknowledged that, in a period of recession and cutbacks, including redundancies and service cuts in key areas of child health, education and welfare, the resource implications of these recommendations may seem impractical. It is believed that change can be started within existing frameworks, budgets and resources and that many of the examples of good practice explored had minimal resource implications. The ethos of action-based research has afforded the opportunity to make insightful observations about practitioners and professionals – whatever their status within an organisation – and the key changes that can be realistically expected from frontline service providers. On this basis it is concluded that it is not necessary to wait for legislative or policy change to begin the process of implementing these recommendations. Doing so, the authors are confident, will assist in effecting the realisation of article 12 by directly addressing many of the longstanding practices and attitudes impeding its practical implementation.

MAIN SURVEY FINDINGS

Q. How would you describe your current awareness of the UNCRC? This awareness may relate to your personal or professional knowledge.



As can be seen above, over 25% of participants reported little or no awareness of the UNCRC as a whole. Further analysis revealed that 50% of participants with little or no awareness were frontline service providers or case workers, approximately 25% were managers or policy developers and approximately 25% identified themselves as in trainee, administrative or auxiliary roles.

For those who identified themselves as having strong awareness, approximately 50% were from managerial or policy related roles, approximately 25% were frontline service providers or case workers and the remainder (approximately 25%) were predominantly from academia.

Broad sectoral analysis revealed the following (all values approximate):

In Health 50% had little or no awareness, 40% had reasonable awareness and 10% had strong awareness.

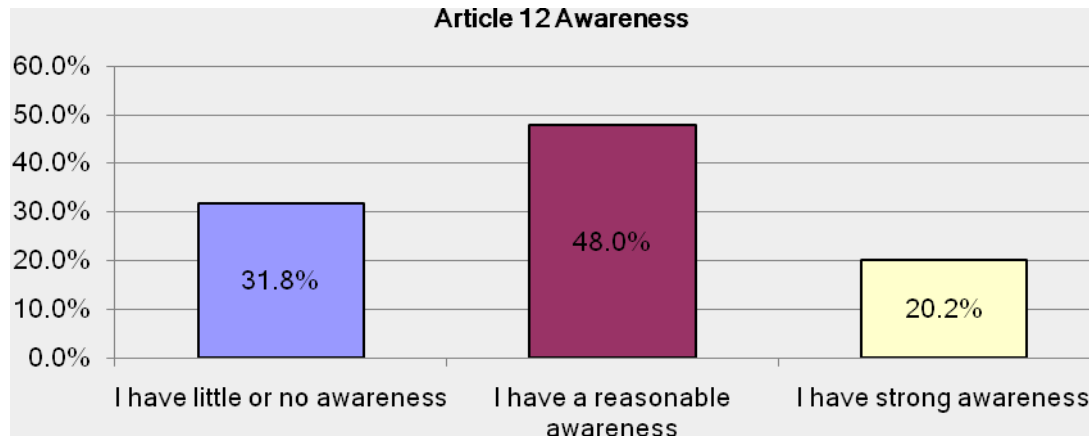
In Education 22% had little or no awareness, 52% had reasonable awareness and 26% had strong awareness.

In Social Work 6% had little or no awareness, 69% had reasonable awareness and 25% had strong awareness.

In Legal sector 10% had little or no awareness, 70% had reasonable awareness and 20% had strong awareness.

In Voluntary sector 15% had little or no awareness, 48% had reasonable awareness and 37% had strong awareness.

Q. How would you describe your current awareness of article 12 and its implications for child welfare? This awareness may relate to your personal or professional knowledge.



As the chart above shows, awareness of article 12 specifically was still less than that for the UNCRC as a whole: approximately 32% of participants reported little or no awareness, 48% reported reasonable awareness, and approximately 20% reported strong awareness. Further analysis revealed that of those participants who reported little or no awareness of article 12, 47% were frontline service providers or caseworkers, approximately 30% had managerial or policy-based roles, and approximately 23% identified themselves as in trainee, administrative or auxiliary roles.

For those who identified themselves as having strong awareness of article 12, 25 % were frontline service providers or caseworkers, 50% were in managerial or policy-based roles and the remaining 25% were predominantly from academia.

Broad sectoral analysis revealed the following (all values approximate):

In Health 57% had little or no awareness, 36% had reasonable awareness and 7% had strong awareness.

In Education 29% had little or no awareness, 49% had reasonable awareness and 22% had strong awareness.

In Social Work 9% had little or no awareness, 66% had reasonable awareness and 25% had strong awareness.

In Legal sector 15% had little or no awareness, 62% had reasonable awareness and 23% had strong awareness.

In Voluntary sector 18% had little or no awareness, 46% had reasonable awareness and 36% had strong awareness.

AWARENESS AND UNDERSTANDING

Awareness of the UNCRC was attributed mainly to the work place or work role (by approximately 90% of participants). 84% of participants believed that the child's right to be heard was of direct relevance to their professional role. Participants were invited to outline a specific example where the child's right to be heard might be important in their job. The following represent a small sample of examples given:

As children are our future it is imperative that we (adults) listen to the voices of children because quite often they are ignored or seen as irrelevant. My role as a community psychiatric nurse and a panel member allows me to use what skills I have developed to listen to kids.

Children and young people who care for parents who are experiencing mental ill-health often do not have the opportunity to participate in society, or in decision making. It is of utmost importance that young people have their voices heard in order to look after their own health and wellbeing.

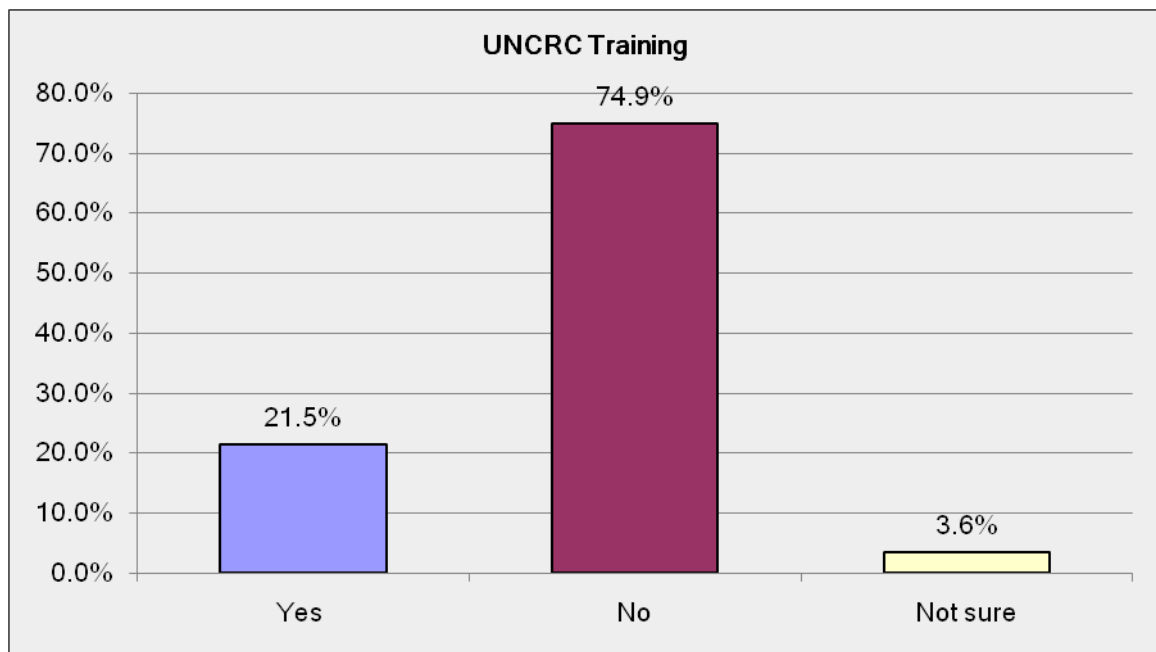
Child Protection needs to be child-centred and child-focussed. The child needs to be heard and to be visible in Case Conferences, Core Groups, Children's Hearings etc.

We have to listen to the children's verbal and non-verbal communication so that we can work out how best to offer a service which supports their learning and development. An example could be when children first attend nursery - they have a right to cry to indicate their insecurity or unhappiness at being left and we try to work with them to enable them to express their fears.

When the child and parent have a difference of opinion about the need for treatment. Some parents can want their child 'sorted' when the child is actually quite happy with their lot.

Children and young people in 'end of life care' situations. Their 'wishes' can be very different to that of their parents. Any treatment, intervention episode of care that is being given to a child and young person.

Q. Have you received any specific training on the UNCRC?



As shown above, approximately 75% of participants indicated that they had not received any specific training on the UNCRC with an additional 4% (approximately) unsure if they had received training or not. Of those who had received training (21.5%) 32% were frontline service providers or caseworkers, 51% had managerial or policy-related roles, and 17% were predominantly in academic or research-related roles.

Broad sectoral analysis revealed the following (all values approximate):

In Health 15% had received training, 80% had not received training and 5% were unsure whether or not they had received training.

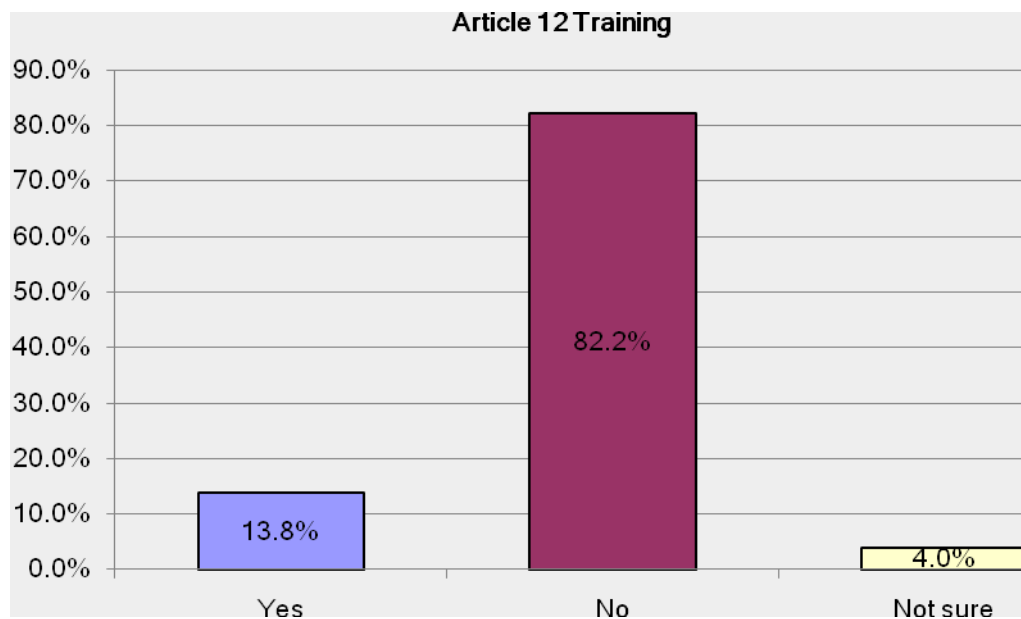
In Education 19% had received training, 78% had not received training and 2% were unsure whether or not they had received training.

In Social Work 42% had received training, 55% had not received training and 3% were unsure whether or not they had received training.

In Legal sector 17% had received training, 81% had not received training and 2% were unsure whether or not they had received training.

In Voluntary sector 29% had received training, 69% had not received training and 2% were unsure whether or not they had received training.

Q. Have you received any specific training on article 12 of UNCRC?



As shown above, approximately 82% of participants indicated that they had not received any specific training on article 12 of the UNCRC with an additional 4% unsure if they had received article 12 training or not. Of those who had received training (approximately 14%) 29% were frontline service providers or caseworkers, 47% had managerial roles, and 24% were predominantly in academic or research-related roles including trainee-posts.

Broad sectoral analysis revealed the following (all values approximate):

In Health 7% had received article 12 training, 88% had not received training and 5% were unsure whether or not they had received training.

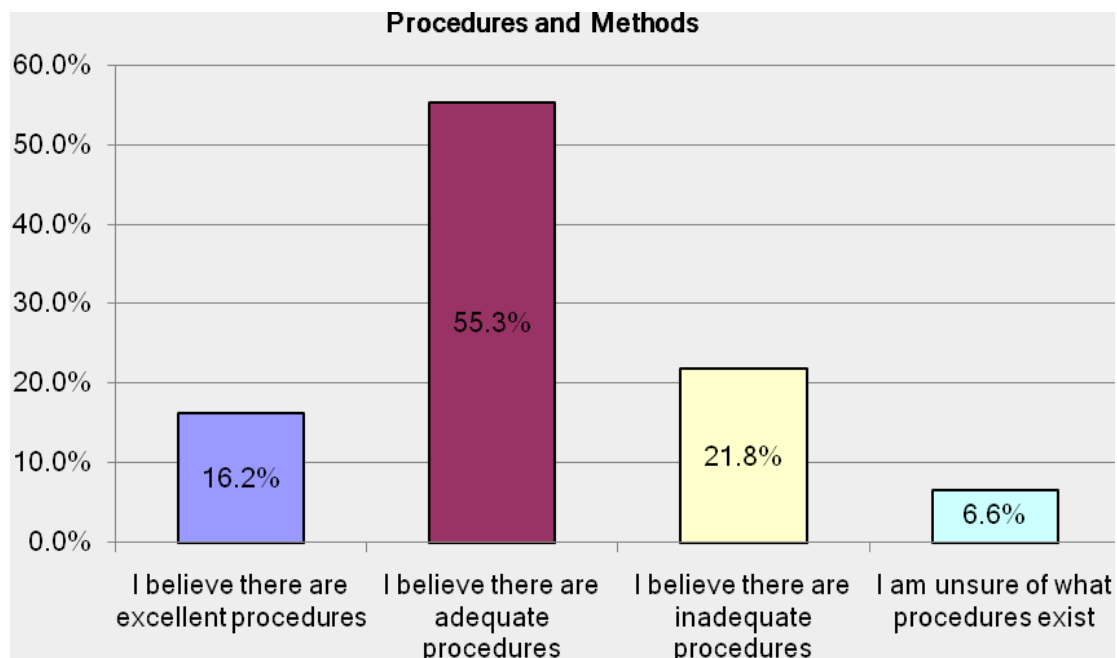
In Education 10% had received article 12 training, 85% had not received training and 5% were unsure whether or not they had received training.

In Social Work 29% had received article 12 training, 71% had not received training and 0% were unsure whether or not they had received training.

In Legal sector 19% had received article 12 training, 81% had not received training and 0% were unsure whether or not they had received training.

In Voluntary sector 19% had received article 12 training, 78% had not received training and 3% were unsure whether or not they had received training.

Q. Do you believe that, within your specific situation, there are procedures and methods to allow children to express their views in matters that affect them?



As can be seen above, approximately 16% of participants responded that, in their specific situation, there were excellent procedures in place to allow children to express their views in matters that affect them. Approximately 55% responded that there were adequate procedures; approximately 22% responded that the procedures were inadequate and 7% (approximately) were unsure of what procedures were in place. Of those who believed procedures to be excellent, approximately 27% were frontline service providers or caseworkers, approximately 61% had managerial roles and the remaining 12% had policy-related roles.

Broad sectoral analysis revealed the following (all values approximate):

In Health 9% believed procedures to be excellent, 52% believed procedures to be adequate, 24% believed procedures to be unsatisfactory and 15% were unsure of procedures.

In Education 26% believed procedures to be excellent, 48% believed procedures to be adequate, 18% believed procedures to be unsatisfactory and 8% were unsure of procedures.

In Social Work 0% believed procedures to be excellent, 79% believed procedures to be adequate, 16% believed procedures to be unsatisfactory and 5% were unsure of procedures.

In Legal sector 7% believed procedures to be excellent, 72% believed procedures to be adequate, 21% believed procedures to be unsatisfactory and 0% were unsure of procedures.

In Voluntary sector 29% believed procedures to be excellent, 41% believed procedures to be adequate, 30% believed procedures to be unsatisfactory and 0% were unsure of procedures.

APPENDIX A: PARTICIPATING ORGANISATIONS

Action for Sick Children Scotland
Alyth Youth Partnership
A J Gordon Solicitors & Co
Arngask Primary School
Article 12 in Scotland
Association for Real Change
Barnardo's Family Support Services
Barnardo's Scotland
British Red Cross
Centre for Interpretation Studies, Perth College, UHI
Centre for Learning in Child Protection, NSPCC
Centre for Research on Families and Relationships
Centre for Rural Childhood, Perth College, UHI
Children's Hospice Association
Children in Scotland
Children 1st
Clackmannanshire Council Youth Services
Community Alcohol and Drugs Services Shetland
Criminal Justice Social Work Development Centre, University of Edinburgh
Crossreach Children's Services
Dryburgh Education Centre, Dundee
Equality and Human Rights Commission
Ewart Consultancy
Families Need Fathers
Families Outside
Fife Council Education Services
Fife Rights Forum
Forres Academy
Fyfe Ireland Solicitors
Gael Og ISMS
Getting it Right for Every Child
Highland Children's Forum
Highland Council, Inverness
Highlands and Islands Equality Forum
Independent Advocacy Perth & Kinross
International Federation of Social Workers

Inverness College, University of the Highlands and Islands
Learning and Teaching Scotland
Lothian Community Health Projects Forum
Lothian University Hospitals
Mindroom
Mindstretchers
NHS Forth Valley
NHS Highland
NHS Shetland
NSPCC
Perth College, University of the Highlands and Islands
Perth College Development Trust
Scotland's Commissioner for Children and Young People
Scottish Association of Social Work
Scottish Childminding Association
Scottish Children's Reporters Administration
Scottish Child Law Centre
Scottish Government
Scottish Refugee Council
Shetland Children's Panel
Shetland Child Protection Centre
Shetland College, University of the Highlands and Islands
Shetland Youth Information Service
Stirling Council
Stirling Royal Infirmary
Strathmore Centre for Youth Development
St. Joseph's Primary School, Inverness
TC Young Solicitors
The Auchterderran Centre
Together Scotland
University of Edinburgh
University of Glasgow
University of Stirling
Voluntary Sector Health Network
Youth Highland