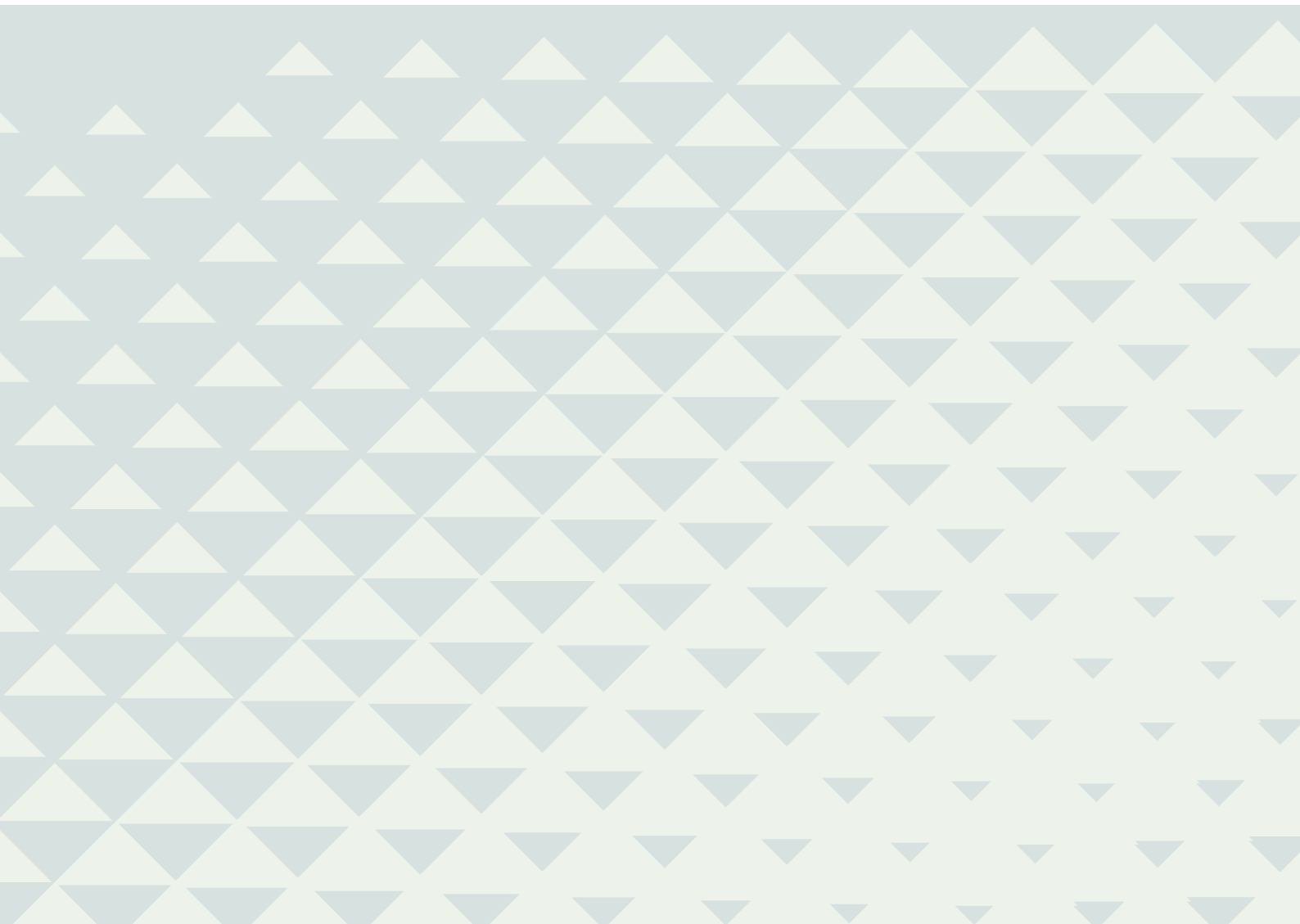




**NALDIC's vision for an
Inspection framework -
through a Children's
Rights lens**
A NALDIC Pamphlet



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Section 1

Using a Children's Rights lens to review the Ofsted Inspection Framework (OFSTED)

Fiona Ranson (Deputy Editor, EAL journal, Associate Lecturer at Northumbria University and Christina Richardson, Editor-in-Chief, EAL Journal and NALDIC Vice Chair

Preface to the discussion

The Office for Standards in Education, Children's Services and Skills (OFSTED) is familiar to all those working in education institutions in England as the body that inspects schools and childcare settings, with the stated aim of '... improving lives by raising standards in education.'¹

OFSTED sets out its approach, principles, and criteria for making judgements in the OFSTED framework² which is accompanied by an OFSTED Inspection handbook for each of its 4 remits: Early Years, Maintained Schools and Academies, Non-association Independent schools and Further Education and Skills. It is the Maintained Schools and Academies Inspection handbook that is referenced in this pamphlet.³ OFSTED makes judgments in 4 areas: quality of education; behaviour and attitudes; personal development; leadership and management. The common criteria across the four remits are explained in the inspection framework whilst details of how these are applied in each context is contained in the relevant handbook.

According to its website, OFSTED espouses the following values:

'We put children and learners first, and we are independent, evidence-led, accountable and transparent'.⁴

Whether this statement holds true for all children, including multilingual EAL children, has been and continues to be a key concern for NALDIC. NALDIC has previously commented on the impact of the removal of the OFSTED Lead Inspector role for EAL,

ESOL and Gypsy, Roma and Travellers in issue 14 of the EAL Journal, highlighting the need to provide accountability for the development of EAL learners and to reverse the ongoing invisibilisation of EAL learners, stating:

'Schools need an explicit strategy for multilingualism and intercultural learning in the community. Without such a strategy it will be impossible to monitor and adequately support the development of our EAL pupils. If Ofsted fails to identify EAL pupils as a discrete group it will never be possible to ensure that EAL pupils are developing appropriately, linguistically and academically. In other words, if we're not looking for it, we will never see it' (EAL Journal, Spring 2021, Issue 14:6).

Given these concerns, NALDIC would like to begin a conversation about what inspections of schools would look like if the needs of EAL children were a key focus in school inspections. We have noticed that once again, the current OFSTED inspection handbook (2022) does not mention EAL learners or the needs of minority groups. With this in mind, we asked our contributors to consider what the OFSTED framework (for maintained schools and academies) would include, if it were to include the needs of EAL learners- using a lens taken from the Convention of the Rights of the Child (CRC). Whilst not endorsing OFSTED inspection as a method for school improvement, given that this is a key tool in the government's approach to accountability, we, nevertheless, wanted to use this as a starting point.

Why a Children's Rights lens?

The UK government is a signatory to the United Nations Convention on the Rights of the Child (UNCRC), since ratification in 1991. Yet according to the UN "There is no consistent practice across the UK in when and how governments take children's rights into account when developing law and policy, nor in making decisions that impact either directly or indirectly on children."⁵ The UNCRC asks governments to undertake a Child's Rights Impact Assessment (CRIA) as part of their decision making when developing new policy and legislation. Wales has made good use of this approach; Scotland is also embedding this within their decision making as is Northern Ireland, which has a useful online toolkit to support this.⁶ However, England is "lagging behind: in the last decade, such assessments have been carried out only sparingly, depending on the priorities of the ministers in office."⁷ (Digital futures, 2021)

Footnotes

¹<https://www.gov.uk/government/organisations/ofsted/about>

²<https://www.gov.uk/government/publications/education-inspection-framework/education-inspection-framework>

³<https://www.gov.uk/government/publications/school-inspection-handbook-eif/school-inspection-handbook>

⁴<https://www.gov.uk/government/organisations/ofsted/about>

⁵https://www.unicef.org.uk/wp-content/uploads/2017/09/Unicef-UK-Briefing_Child-Rights-Impact-Assessment_England_September-2017.pdf

⁶<https://www.niccy.org/what-we-do/training/cria/>

⁷<https://digitalfuturescommission.org.uk/wp-content/uploads/2021/03/CRIA-Report.pdf> Lisa Payne, a child right consultant on 21st December 2020

Section 2

Children's Rights and the role of OFSTED: What would a rights-respecting inspection framework look like?

Jenny Driscoll (Reader in Children's Rights, King's College London)

The United Nations Committee on the Rights of the Child ('the Committee') published its Concluding Observations on the combined 6th and 7th reports of the United Kingdom of Great Britain and Northern Ireland on the 2nd of June 2023 (UN Committee on the Rights of the Child (CRC), 2023). It makes for worrying reading. The Committee 'reminds the State party of the indivisibility and interdependence of all the rights enshrined in the convention' (III-5) and calls for urgent measures to be taken in a number of areas, including non-discrimination; children deprived of a family environment; mental health; and asylum-seeking, refugee and migrant children.

The Committee recommends mandatory child-rights impact procedures for legislation and policies relevant to children in England, Northern Ireland and Wales (III-A8(e) (the position in relation to Scotland is discussed below) and that the UK develops and adopts 'comprehensive policies and action plans on the implementation of the Convention, with the participation of children' (III-A9(a)). Such action plans should include a special focus on children in disadvantaged situations, in which group the Committee includes asylum-seeking, refugee and migrant children and children belonging to minority groups. The UK should also ensure that children's rights under the Convention are taught within the mandatory school curriculum and in the training of teachers and educational professionals[1] (III-I47(i)).

The Committee expresses continuing deep concern as to persistent discrimination against children in disadvantaged situations (III-C19) in a wide range of areas, including youth justice and freedom of expression and religion. It also notes 'with concern that children's views are not systematically taken

into account in decisions affecting them and in national and local decision-making' (III-C23) and recommends strengthening of measures to promote the meaningful participation of children, including in school settings and policy making at local and national levels. It calls for increased action to address educational inequalities in relation to children in disadvantaged situations, including children belonging to ethnic minority groups (III-I47(a)); to tackle discrimination and bullying in schools (III-I47(f)); and to 'decolonise' the curriculum and develop educational materials that promote inclusion and respect for diversity. Comprehensive EAL provision is essential to reduce educational inequalities and disadvantage, while curricula, systems and processes to ensure that EAL children's voices are heard and their cultures and values respected, help to address discrimination and promote inclusion.

Beyond these provisions of direct relevance to EAL children in schools, the Concluding Observations reflect two disquieting trends. First is the increasingly intolerant political climate for immigrant and ethnic minority families, reflected in legislation such as the Illegal Migrant Bill, and the experiences of minority groups in the youth justice system. Second is the lack of government commitment to children's rights. The Civil Society Alternative Report for England, compiled by the Children's Rights Alliance for England (CRAE) to inform the Committee's work and endorsed by 97 charities, NGOs and civil society groups (CRAE, 2022), concluded that many areas of children's rights had regressed since 2016 and that 'children's rights and voices are regularly overlooked in UK Government decision-making' (p. 12), demonstrating a clear need for statutory child rights impact assessments.

The almost total absence of attention to the needs of EAL children within OFSTED inspections can be seen therefore as part of a pattern of erosion of children's fundamental rights, particularly in relation to non-discrimination and participation. This has been coupled with a recent trend which Ball describes as 'a form of regressive modernisation', in which neoliberal influences such as personalisation, globalisation and justification by results are coupled with a curriculum centred on traditional subjects and core knowledge, resulting in a focus on performativity (Ball, 2021:210).

Such an approach has not only been linked to poor child mental health and wellbeing (Pascoe et al., 2020), but arguably amounts to a breach of article 29 of the UNCRC. Article 29 sets out the purpose of education, which, in addition to 'development of the child's personality, talents and mental and physical abilities to their fullest potential', includes 'development of respect for human rights and fundamental freedoms'; 'development of respect for ... the child's ... own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own'; and 'preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin'. Article 30 prohibits denial of the right of children belonging to ethnic, religious or linguistic minority groups to enjoy their culture, practise their religion and use the language 'in community with other members of his or her group'.

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So to what extent does OFSTED espouse and evidence a child-rights based approach in its current practice and what might that look like?

OFSTED is required by law (Education Act 2005, section 7) to have regard to the views of pupils when undertaking an inspection. Under the current framework (OFSTED, 2022), it does so through a questionnaire to pupils and formal and informal in-person meetings with pupils in the absence of other adults (paras 104 – 105, 236-239) as well as talking to and observing a ‘wide range of pupils’ ‘in a range of situations outside of normal lessons to evaluate other aspects of personal development, behaviour and attitudes’ (para 237). There is some reference to the importance of a respectful culture in which discrimination and bullying are not tolerated, and of aspects of the curriculum which align with the aims of article 29. These include support for broader development of children’s talents, interests and character; learning about staying mentally and physically healthy; respect for diversity and promotion of inclusion; pupils’ spiritual, moral, social, cultural, mental and physical development; and the development of ‘responsible, respectful and active citizens’ (para 293). The accompanying ‘Overview of research’ document (OFSTED, 2019) acknowledges that school ethos is important in encouraging democratic citizenship and tolerance. However, at no point is there any mention of children’s rights in, and not just to, education.

Yet evidence suggests that the current context of performance management, surveillance and accountability systems imposed on schools and exemplified in the OFSTED inspection regime constrains teachers’ ability to model democratic practice, encourage dialogue with pupils and be responsive to pupil voice (Gewirtz, 2002; Fielding, 2004; Cremin et al., 2011).

There is a plethora of evidence that educating children about their rights and implementing a rights-based approach to education with student participation at the heart can help reduce disaffection and bullying (Oliver and Candappa, 2003), improve pupil behaviour (OFSTED, 2006) and promote respect for diversity. Recent research on the UNICEF Rights Respecting Schools initiative by the Equality and Human Rights Commission (Culhane and McGeough, 2020), found that teachers implementing the programme reported improved attendance and attainment, better pupil well-being and behaviour, reduced levels of prejudice and discriminatory attitudes and improvements in teacher recruitment and retention. However, for the approach to be successful, enhanced pupil participation, a curriculum that supports human rights education and a culture promoting fair and equal treatment for all pupils are prerequisites. EHRC found implementation to be more challenging for schools in England than those in Scotland and Wales, which they attributed to a lack of government support.

The Westminster government’s commitment to children’s rights is lacklustre in comparison to that of Scotland and Wales. Although Scotland’s intention to incorporate the UNCRC through the UNCRC (Incorporation) (Scotland) Bill was thwarted by the Supreme Court in 2021 as being outwith the jurisdiction of the devolved parliament. Scotland has embedded duties on Scottish Ministers and public authorities to promote and advance children’s rights in legislation (Children and Young People (Scotland) Act 2014). Child Rights and Wellbeing Impact Assessments (CRWIA) (Scottish Government, Director-General Education and Justice, 2021) are promoted throughout the Scottish government and encouraged for use by public authorities and third sector organisations under non-statutory guidance.⁸

The Scottish Government has also published an Action Plan to incorporate the UNCRC as far as possible (Scottish Government, 2021). In Wales, Children’s Rights Impact Assessments are used to support ministerial compliance with the duty to have due regard to the Convention on the Rights of the Child under section 1 of the Rights of Children and Young Persons (Wales) Measure 2011 (Welsh Government, nd).

The English government’s disinterest in children’s rights is exemplified in OFSTED’s approach. Under ‘Our values’ on the OFSTED website (GOV.UK, Ofsted, nd), Ofsted claims ‘We put children and learners first, and we are independent, evidence-led, accountable and transparent’. But in the absence of full participation by children in all matters affecting them and acknowledgement of the evidence-base in relation to a child rights-based curriculum and approach to school life, ‘putting children first’ is liable to equate to a paternalistic assumption of what is best for children in the eyes of adults (Liebel et al., 2012). And without understanding of the experiences, perspectives and needs of minority groups, such an approach tends to perpetuate constructions of such children as deficient and inferior, as Cushing convincingly argues later in this collection. The task in this pamphlet is to imagine a school inspection framework which places the needs of EAL children at the centre is therefore of enormous importance in shedding light on a much wider concern about respect for, and celebration of, diverse groups and the lack of priority accorded to children’s rights in England. A Child Rights Impact Assessment applied to inspection policy and practice might serve not only to improve inspection practice in relation to marginalised groups but to illuminate the underlying deficiencies in education policy.

Footnotes

⁸(REFERENCE by the Attorney General and the Advocate General for Scotland 2021)

Section 3

The OFSTED framework through a children's rights lens: perspectives from school-based practitioners and university colleagues

We enlisted the help of five other contributors from the field of education to consider the OFSTED Framework, alongside the UNCRC, paying particular attention to the needs of multilingual learners

Key Questions

We asked contributors to answer the following overarching question:

- Considering the OFSTED Inspection framework (maintained schools and academies) alongside the Children's Rights framework, please identify:
- In what way does the OFSTED framework promote the needs and rights of EAL learners in its evaluation of quality of education; of personal development; of behaviour and attitudes and of quality of leadership and management?

Simeon Bates *Secondary School teacher of Music and EAL*

There is no reference to 'EAL learners' within the evaluation of the 'Quality of education' section of the OFSTED framework. OFSTED makes judgments about the extent to which schools provide an 'ambitious', 'broad' and 'rich' curriculum with an identifiable 'intent', 'implementation' and 'impact'. However, the long-term intent, implementation and short-term impact of provision for EAL learners are neither explicit or implicit and so the framework falls short of meeting the individual needs - referenced in the Convention on the Rights of the Child- Articles 2 (non-discrimination), 3 (best interests of the child), 6 (develop their full potential) & 12 (Freedom of expression). One of the biggest challenges is that EAL learners are often, either not heard and/or are expected to be passive participants in school activities, as opposed to actively engaged with it. Homogenisation leaves them with a severely narrowed experience of the curriculum, stemming their non-core subject skills/interests and thus stifling each student's ability to reach their potential (Articles 28 - right to an education & 29 - develop every child's personality, talents and ability).

OFSTED's evaluation of 'Personal Development' covers arguably the most important educational aims of school (Articles 2 -non- discrimination, 6- the right to develop full potential & 12- express views, feelings and wishes). The notable absence of 'EAL' or 'ESL/Multilingual' from such a framework is alarming. The intent for a curriculum offer for 'all' learners that aims to explore broad topics is clear; however, the implementation and impact of this in practice falls short. Why is it presented as for 'all' learners when, in fact, the word 'all' does not appear to include some pupil groups, including EAL pupils? The focus should be on the individual rather than the numbers.

A multilingual EAL learner would want to know that their culture is valued and that they have the opportunity to experience success.

The continuing distinct absence of 'EAL learners' within OFSTED's evaluation of 'Behaviour and Attitudes' is concerning. One of the challenges here is what is to be expected so quickly of newly arrived pupils from diverse cultural backgrounds and who, up until the point of attending English school, have grown up, possibly, with a different values' system. In practice this demands far more clarity than is currently provided given the complexity of inter-cultural values/ expectations in relation to the schools. With no reference to multilingual EAL pupils/ learners throughout I believe, OFSTED should consider a multiplicity of views including that of parents/carers, as well as the student's home culture. This would ensure that a more positive and holistic approach is taken (Articles 2, 3, 6, 12 & 28).

Turning to OFSTED's evaluation of 'Leadership and Management', reference is made to key guidance such as The Equality Act (2010) and Keeping Children Safe in Education (2022). However, there is no reference to 'EAL Learners' and their languages within this section of the OFSTED framework (Articles 28 & 29). Its focus is primarily on 'pupil outcomes', 'management responsibilities and 'safeguarding' but no reference to inclusivity, diversity or linguistic differences. Greater emphasis should be placed on a leadership culture that is evidence-informed, responsive to individual needs and proactive in nature - this should bring cultural and linguistic diversity into focus alongside Special Educational Needs and Disabilities (SEND). Furthermore, there should be greater focus on listening to, understanding and acting on student voice (Articles 3 & 12).

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Ian Cushing

**Senior Lecturer in Applied Linguistics,
Manchester Metropolitan University.**

In recent years I have closely monitored OFSTED's use of the phrase 'social justice' and how this is used to justify its increasingly prescriptive inspection frameworks, research reviews, and literacy policies. These justifications are typically made in reference to what OFSTED call 'disadvantaged' children – i.e. those who are typically working-class, disabled, racialised, and/or designated as English language learners. To take just one example, here is an extract from a 2020 document written by Sean Harford, who at the time was the National Director of OFSTED:

Many children enter early years settings 'language impoverished'. It is a matter of social justice to give these pupils the best possible language and communication development to lay the foundations for a successful education [...]. Pupils are disadvantaged by not being able to write and speak standard English. Rather than being seen as a means of perpetuating class hierarchies, it is now widely regarded as an instrument of social justice. It should be modelled in early years and taught explicitly as pupils move through the curriculum (Harford 2020: 2).

As OFSTED has done more broadly in recent years, Harford here reproduces deficit-based thinking and discourses of verbal deprivation which frame the language practices of marginalised children as inadequate and in need of corrective remediation if they are to achieve upward social mobility. Deficit-based thinking blames the victim for school failure rather than interrogating how schools are organised and structured to prevent marginalised children from succeeding (Valencia 2010).

It is a pervasive ideology which increasingly characterises OFSTED's approach to educational policy making and its coercive influence in schools (Nightingale 2020). This ideology is typically deployed under a guise of humanitarian benevolence which claims it has the welfare of marginalised children at its heart. Through these missionary-esque logics, social justice is achieved not through addressing the root causes of educational injustices such as white supremacy, ableism, and structural racism but in demanding that marginalised children modify their own language and cultural practices. Critical educational linguists and community activists have been rejecting these logics for decades, on the grounds that they simply perpetuate social injustice and maintain racial, class, and linguistic inequalities (e.g. Coard 1971). As the black linguist and activist April Baker-Bell (2020) so clearly articulates, there is no social justice without linguistic justice – because of how linguistic prejudices and privileges in school reflect prejudices and privileges in society more broadly. The way that marginalised children's language is devalued in schools simply reflects the ways that their lives are devalued in wider society. To assume that social justice can be achieved through language-based interventions alone leaves the broader structures of inequalities intact and ensures that existing power hierarchies remain, rather than are challenged.

In collaboration with Professor Julia Snell, our work has shown that this victim blaming, deficit thinking, and other forms of language discrimination lie at the very core of Ofsted's institutional norms – and have been since its inception as a schools inspectorate in 1839 (Cushing & Snell 2022; Snell & Cushing 2022).

As part of this research, we analysed a corpus of over 3,000 school inspection reports published between 2000-2020 and found that Ofsted readily hand out praise to schools where teachers and children are deemed to be producing standard, academic, spoken English, and that this is an indicator of high-quality teaching, a willingness to learn, and intellectual capabilities. Conversely, where teachers and children were deemed to be speaking in varieties deemed to be non-standard, 'non-native' and non-academic, the inspectorate heard this as symptomatic of poor pedagogies, unruly classrooms, and cognitive inferiority. An informally circulated copy of confidential training materials for OFSTED inspectors confirmed that these ideologies about language are deployed under a guise of equality, where inspectors are actively told that 'standard English is a matter of social justice' (OFSTED, 2020: 13) and told to downgrade schools who question these assumptions.

In our research, Julia and I found that these kinds of deficit judgements about language were particularly marked for schools in areas of high economic deprivation with communities of racialised bilinguals. These same kinds of deficit ideologies also surface in OFSTED's inspection routines of initial teacher education, where racialised and working-class pre-service teachers are assessed against benchmarks established and maintained by normative linguistic whiteness (Cushing 2023). It is crucial to note here how those ideologies are produced by an overwhelmingly white workforce: Ofsted's latest staff statistics show that 92% of its inspectors are white.

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In a related project (Cushing 2022), my work also showed how OFSTED subscribes to ideologies concerning the so-called word gap, where low-income, racialised and bilingual children are framed as suffering from debilitating absences in their vocabularies. The notion of the word gap emerged from small-scale, academic knowledge production in the 1990s (Hart & Risley 1995) and has been increasingly normalised in England's schools via policy makers such as the Education Endowment Foundation and popular books for teachers (e.g. Quigley, 2018). At the core of the word gap lies colonial distinctions between humanness and non-humanness, reproduced in educational psychology research built on anti-Black methodologies and normative assumptions about the minds and language of children (see Johnson et al 2017). Since the mid-2010s, OFSTED have increasingly subscribed to word gap ideologies in its own inspection frameworks, staff training, and so-called 'research reviews'. As one example, in a video on 'social justice' presented by OFSTED's deputy director of schools, Matthew Purves, he claims:

This is about equity and it's about social justice. You've heard in some of the other videos what we found about vocabulary. And that the most disadvantaged children are often those who have access to the fewest number of words heard in conversation and don't have access to the most complex words in conversation. Well, that puts them at a disadvantage when they come to school. (OFSTED, 2018)

As others in this pamphlet have shown, when critiqued through a lens of children's rights, OFSTED's stance on language is deeply troubling and contributes to the perpetual framing of marginalised children as deficient, lacking, and in need of corrective-based remediation through compensatory educational methods.

This stance assumes that marginalised children are linguistically inferior compared to their white, middle-class and able-bodied counterparts. Yet for OFSTED, this stance is good practice, benevolent, and rooted in the so-called 'evidence base' of education policy making.

Language rights are human rights. Yet for OFSTED, human rights are preserved by asking marginalised communities to internalise that their language is deficient, modify their language, and in some cases, abandon it all together. These reductive claims to justice lie at the heart of OFSTED's institutional design. For example, its 2019 inspection framework is accompanied by an 'equality, diversity, and inclusion' statement which describes the work of the inspectorate as having 'due regard to the need to eliminate discrimination' (OFSTED 2019: 3). Its annual reports have claimed that 'equality, diversity and inclusion are at the heart of our work' (OFSTED, 2021: 57). My collaborative research (Cushing 2022; Cushing & Snell 2022; Snell & Cushing 2022) has exposed how these claims to justice are simply lip-service. Instead, I have argued that language-based discrimination is in fact institutionally embedded into the very heart of the inspectorate's ideologies and policies. A genuine approach to children's rights and social justice focuses its energy on changing the systems that have created injustices in the first place, rather than demanding that marginalised children change themselves.

Anna Czebiolko
Head of EAL at Harrogate Ladies' College

According to the existing OFSTED Inspection Handbook (para. 260), inspectors are obligated to "gather and evaluate evidence about how well leaders identify children's early starting points." Upon the suggestion in article 29, "Education must develop every child's personality, talents and abilities to the full." In order to justifiably assess multilingual pupils' progress, the necessity to get the measure of their linguistic and educational skills cannot be eliminated. Equality loses its function in school settings if the needs and rights of the most vulnerable EAL pupils stay unseen. Those who have gaps in their education or are unschooled are at the risk of remaining the most disadvantaged.

Although the current evaluation of 'personal development' suggests ensuring an inclusive environment, it is fundamental to measure its effectiveness "Every child has the right to express their views, feelings and wishes in all matters" (Article 12) may become a privilege only for those who speak English. An understanding of the needs of learners from diverse backgrounds is mandatory to ensure OFSTED inspections ask the right questions, otherwise the meaning of the phrase full potential in Article 6 cannot continue to be regarded as universal. In an environment where children are not allowed to their home language and integrational initiatives are unsuccessful, those voices are unheard.

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A non-discriminatory learning environment is unquestionably a right (Article 2), but this may be affected by not only open discrimination but also by unconscious bias. Not including the views of pupils with English as an additional language because of their linguistic barriers, means schools and OFSTED have a partial picture. Translated questionnaires may enable communication with literate learners, and potentially audio recordings in different languages could widen participation. A non-discriminatory school can be identified by its curriculum and policies. “The best interests of the child must be a top priority in all decisions and actions that affect children” (Article 3). OFSTED may analyse “whether leaders seek to engage parents and their community (...) in a way that supports pupils’ education.” (para. 313). If so, the awareness of those learners from a refugee background, their length of residence and relevant personal circumstances appears to be important. For example, there needs to be a different way of judging whole-school adult-oriented initiatives, to include those initiatives which support asylum seekers. A child-centred school would ensure that parental engagement is not overlooked.

Kathryn Kashyap ***School Improvement Adviser for*** ***Multilingualism and Racial Justice***

The framework discriminates against multilingual EAL learners by not making any reference to the specific educational approaches needed in order to ensure the best possible outcomes for these pupils. Although there is much which implicitly supports the rights and needs of multilingual EAL learners, omissions and assumptions inherent in the statements position them as invisible, inferior or unknowing. This can have significant negative consequences for the social, emotional, educational and spiritual wellbeing of EAL learners and their sense of belonging.

This is exemplified in the quality of education statements. For example, the OFSTED School Inspection Handbook (2022)⁹ does not reference the knowledge of the world that multilingual EAL learners bring to the curriculum. The term “cultural capital” infers that there is a superior capital that has to be taught, rather than recognising the cultural capital that all communities possess. Also the specific needs of migrant pupils who arrive midterm, particularly refugees, are omitted when considering gaps in knowledge. Furthermore there is no reference to EAL learners’ reading, thereby potentially ignoring reading in home languages or the length of time it takes to acquire English. This will discriminate against multilingual EAL learners. Without this scrutiny, best interests and outcomes will not be appropriately assessed.

The evaluation of personal development does not take account of linguistic and cultural diversity and does not challenge notions of “otherness” so it is likely that EAL learners’ right to be heard, their sense of well being and belonging, will be marginalised. The section on behaviour and attitudes, if judged through the experiences of multilingual EAL learners, could potentially help them to develop and flourish. However, there is no mention of racism at any point in the framework, including in the safeguarding section, only discrimination. Thus a foundational aspect of safety may be omitted. The link between dealing with discrimination and Public Sector Equality Duty (PSED)¹⁰ is not made clear, missing a key opportunity for the right to be heard.

With regard to the statements on leadership and management, high expectations for all pupils should support multilingual EAL learners’ rights and needs, as long as this is implemented through a non-discriminatory framework. The focus on the curriculum needs to be supported by a clear reference to EAL pedagogy in order to ensure it is delivered in the best interest of the child. The positive statement on engaging parents and communities has the potential to address all four aspects of the rights of the child. However the reference to pupils who are “harder to reach” could easily lead to dismissive views which underpin the silencing of EAL in the whole document, rather than scrutinising how schools engage effectively with all EAL learners and their families.

Footnotes

⁹<https://www.gov.uk/government/publications/school-inspection-handbook-eif/school-inspection-handbook>

¹⁰https://dera.ioe.ac.uk/id/eprint/16086/1/public_sector_equality_duty_guidance_for_schools_in_england_final.pdf

Section 3

Ratha Perumal

Senior lecturer in the Department of Early Childhood and Education, University of East London, teaching in Education and multilingualism

Nearly one in five pupils in England is learning English as an additional language (DfE 2022).¹¹ However, the educational needs of those EAL pupils - who are referred to within this pamphlet with the asset-focused descriptors 'multilingual' and/or 'bilingual' - have historically been overlooked in education policy provision. EAL is a very broad category that can include beginner learners and highly proficient multilingual English users. Granular differences in the attainment of pupil groupings within the larger aggregation of learners, whose linguistic profiles are captured within a widely-framed definition of EAL,¹² are thus not always acknowledged or fully understood (Choudry, 2018).¹³ Those variations are then masked beneath homogenising attainment data that is often presented in averages (DfE, 2019).¹⁴ It is perhaps unsurprising then that EAL specialist expertise is rarely prioritised - from a policy perspective - in school-based provision (Hutchinson, 2018). In light of this longstanding structural indifference to all things EAL, to what extent might a (re)thinking of the OFSTED inspection framework (DfE, 2022)¹⁵ offer opportunities to redress this imbalance?

A reading of the text of that inspection handbook reveals omissions and/or the glossing over of terms and concepts common in EAL pedagogy (and elsewhere): words like 'language', 'minority ethnic', 'race' and 'ethnicity' rarely occur in the document. Conversely, in the inspection handbook section entitled 'Spiritual, Moral, Social and Cultural development' under 'Provision for social development', there are statements that reference the social skills learners must develop in order to work and interact with:

'...other pupils...from different cultural, religious, ethnic and socio-economic groups.' (Paragraph, 302. OFSTED School Inspection handbook, 2022)

Such assertions tacitly position racially minoritised, culturally diverse, multilingual pupils as socially problematic and outside the mainstream educational context. Such assumptions are patently inaccurate, given the significant - and growing - constituency of our current pupil demographic which is made up of multilingual EAL pupils (DfE 2022). Thus, a shift in perspective that takes full account of the linguistic and cultural diversity that is the lived reality of the majority of classroom settings today (Lucas & Villegas, 2015) could provide the basis for this much-needed change.

A (re)orientation in the focus of inspections will require a corresponding schools-based pedagogic and wellbeing framework, as a planning tool for senior leaders and teachers to engage with the needs of multilingual pupils. A framework to achieve this could draw from the Child's Rights Impact Assessment (CRIA),¹⁶ under the United Nations Convention on the Rights of the Child (UNCRC).¹⁷ A CRIA framework ensures the interests of the child remain central to any proposed action and/or policy enactment. Such a framework would enable a critical assessment of the education and related provision for multilingual EAL learners, thus providing a foundation on which to develop an inclusive inspection focus, and a school-based teaching framework that draws on core principles of effective EAL pedagogy. Such arrangements would achieve recognition of the needs and rights of multilingual pupils in education policy provision and implementation. Daily decisions that can affect the educational outcomes and wellbeing of EAL pupils are often made with hardly any consideration to this group of learners. A CRIA-structured analysis is a potentially powerful tool to include all children's needs in educational decision-making.

Footnotes

¹¹<https://explore-education-statistics.service.gov.uk/find-statistics/school-pupils-and-their-characteristics>

¹²[https://www.bell-foundation.org.uk/eal-programme/guidance/education-policy-learners-who-use-eal-in-england/#:-:text=The%20Department%20for%20Education%20\(DfE,to%20be%20other%20than%20English.](https://www.bell-foundation.org.uk/eal-programme/guidance/education-policy-learners-who-use-eal-in-england/#:-:text=The%20Department%20for%20Education%20(DfE,to%20be%20other%20than%20English.)

¹³<https://ealjournal.org/2018/02/01/the-attainment-of-eal-pupils-in-england-what-the-headlines-dont-tell-us/>

¹⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908929/Attainment_of_EAL_pupils.pdf

¹⁵<https://www.gov.uk/government/publications/education-inspection-framework/education-inspection-framework>

¹⁶<https://www.unicef.org.uk/child-friendly-cities/home/cria/>

¹⁷<https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>

Section 4

NALDIC's Children's Rights Assessment Impact of the OFSTED Handbook

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As discussed in the preface of this pamphlet, The UNCRC asks governments to undertake a Child's Rights Impact Assessment (CRIA) as part of their decision making when developing new policy and legislation. In fact The United Nations' fifth periodic report of the United Kingdom of Great Britain and Northern Ireland¹⁸ published on 12th July 2016, recommended that they:

“(a) Introduce a statutory obligation at the national and devolved levels to systematically conduct a child rights impact assessment when developing laws and policies affecting children, including in international development cooperation;

(b) Publish the results of such assessments and demonstrate how they have been taken into consideration in the proposed laws and policies.”

To date key governmental organisations have failed to respond to this request in England. This includes OFSTED, who have not undertaken a CRIA prior to publication of its Handbook for Inspectors.

This means that children's rights are not given the attention they need within accountability discourse. NALDIC are concerned that this has a direct impact on EAL and multilingual learners in our schools. As a result we have considered what a CRIA would look like, if it were used to audit the current OFSTED handbook. We have made a start on creating a Children's Rights Impact Assessment (CRIA), which examines the OFSTED Handbook for Inspectors, using a CRIA format, adapted from a Skillset template. Ideally, organisations are asked by UNCRC to undertake this prior to adopting policies and guidance. However, this CRIA has been completed retrospectively by NALDIC and as such describes the current situation. To inform our suggested CRIA for the OFSTED School Inspection Handbook (2022), we have turned to the discussions shared in this pamphlet- the collected views of practitioners from the field of education and children's rights. NALDIC have undertaken this task, in order to highlight the way in which multilingual EAL learners/pupils are overlooked by OFSTED. Other cohorts of children have also been overlooked, but their concomitant needs are beyond the scope of this pamphlet. The CRIA involves a 3 stage process -Screening, Assessing Impact and Summary and Monitoring. The first two stages are covered below.

The CRIA screening tool contains the following questions in bold:

Stage 1 – Screening

1. What is the policy/legislation? Summarise in 2-3 paragraphs. 2. Will aspects of the policy/legislation affect children up to the age of 18 either directly or indirectly? 3. Are there particular groups of children and young people who are more likely to be affected than others?

NALDIC's responses in relation to OFSTED.

1. OFSTED Inspections:

Inspections of maintained schools and academies in England come under sections 5 and 8 of the Education Act 2005, respectively. OFSTED provide grade descriptors, which offer a view of what inspectors use to make their judgements and on which they report.

The OFSTED handbook is a guide for inspectors on how to carry out inspections of maintained schools and academies under section 5 and section 8 of the Education Act 2005.

This is published online for schools and other interested parties so that they are aware of OFSTED's inspection processes and procedures under the education inspection framework (EIF).

2. Will aspects of the OFSTED framework affect children up to the age of 18 either directly or indirectly? (Yes/No)
Yes

3. Are there particular groups of children and young people who are more likely to be affected than others? (Yes/No)
Yes

- Multilingual learners.
- Children learning English as an Additional Language
- Children from asylum seeking families/refugee families.
- Young people who are separated from their families and are seeking asylum.
- Children, who have come as migrants or experienced forced migration and are in care.
- Children in families which are seeking asylum, who are living in poverty.
- Roma children.

Footnotes

¹⁸http://clientarea.skillset.co.uk/DFE/Childrens%20Rights_v0.3%20-%20Storyline%20Output/story_content/external_files/CRIA%20template.pdf

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Stage 2 – Assessing impact

For each relevant article, briefly summarise what impact your policy will have on implementing each relevant article and evidence whether your policy will have a positive, negative or neutral impact on implementing each article. Please provide any supporting evidence.

How policy/legislation might impact on children and young people

NALDIC's responses in relation to OFSTED.

The children in question here are EAL/ multilingual learners, who represent almost one fifth of the school population. OFSTED's approach to their Framework for Inspection will impact upon them. OFSTED is a key element of the Government's accountability framework for schools. Multilingual learner's inclusion/exclusion within the framework is significant.

Which UNCRC Articles are relevant to your policy/ legislation?

NALDIC's responses in relation to OFSTED.

Learning and knowing about rights

Article 4 (implementation of the Convention) states that Governments must do all they can to make sure every child can enjoy their rights by creating systems and passing laws that promote and protect children's rights. This is relevant in OFSTED's approach to inspection and the creation of its framework for inspection. At the moment it is unclear how OFSTED incorporate Children's Rights into their inspections. At this point in time the OFSTED Framework has a negative impact in this area.

Article 42 (knowledge of rights) states that Governments must actively work to make sure children and adults know about the Convention. A key aspect of the United Nations Convention on the Rights of the Child (UNCRC) is the requirement for all children to know about their rights. This is not mentioned in the OFSTED framework. OFSTED do not refer to the UNCRC anywhere within their framework for inspection. This means that schools are unlikely to know about the importance of this requirement. At this point in time the OFSTED Framework has a negative impact in this area.

Education:

Article 28 (right to education) states that every child has the right to an education. Primary education must be free and different forms of secondary education must be available to every child. Discipline in schools must respect children's dignity and their rights. Without a proactive and deliberate approach to inclusion of multilingual learners within the framework, and without mention of EAL pedagogy, it is difficult to confirm that all children receive the same access to education. An over-emphasis on 'league tables' has had a knock-on effect on school admissions, where schools are reluctant to admit newly arrived EAL learners because they fear this may impact upon their position in league tables (UNICEF, 2018, p. 2).¹⁹ However, there is no mechanism within the current framework to access school admissions data more broadly. The over representation of BAME learners being excluded in our schools is concerning²⁰ (Stewart-Hall, Langham and Miller, 2023). Again, there needs to be a way of triangulating this data more broadly. At this point in time the OFSTED Framework has a negative impact in this area.

Article 29 (goals of education) states that education must develop every child's personality, talents and abilities to the full. It must encourage the child's respect for human rights, as well as respect for their parents, their own and other cultures, and the environment. At the moment, without an acknowledgement that multilingual learners need an enhanced induction, which incorporates language mapping, it is difficult to see the mechanism by which schools are inspected to ensure that they consider multilingual learners funds of knowledge and build on these funds of knowledge. At this point in time the OFSTED Framework has a negative impact in this area.

Article 30 (children from minority or indigenous groups) Every child has the right to learn and use the language, customs and religion of their family, irrespective of whether these are shared by the majority of the people in the country where they live. The current OFSTED document reviewed for this pamphlet 'others' minority groups. This needs to change. Without an acknowledgement of multilingual learners' languages, culture and experiences as assets, and an overemphasis on one form of English language being privileged, EAL learners are framed as 'deficit', or have their needs ignored via OFSTED's silence surrounding them. It could be expected that practice in secondary schools would be detailed regarding accreditation of first language where possible. This is an essential key step and would support de-hierarchisation of languages, which currently privileges European languages (Cushing, Georgiou, & Karatsareas, 2021). Linguistic differences receive no attention. OFSTED need to espouse that language rights are human rights. At this point in time the OFSTED Framework has a negative impact in this area.

Footnotes

¹⁹<https://www.unicef.org.uk/wp-content/uploads/2018/09/UNICEF-UK-POLICY-POSITION-England.pdf>

²⁰<https://www.unicef.org.uk/wp-content/uploads/2018/09/UNICEF-UK-POLICY-POSITION-England.pdf>

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Article 8 (protection and preservation of identity) states that every child has the right to an identity. The silencing and invisibilising of EAL learners mean that the Framework for inspection only recognises the majority English speaking child. Given what is known about the centrality of mother tongue to our thinking skills, and the way in which our language(s) carries with it our experiences, memories, family, it is clear that home language(s), are central to a learner's identity (Baker-Bell, 2020). At this point in time the OFSTED Framework has a negative impact in this area.

The UNCRC's four general principles:

Article 2 Non-discrimination.

Racism is not mentioned in the OFSTED framework. This invisibilising of racism is concerning in an environment which has seen, particularly post Brexit, an increase in racist incidents (Soyei, & Hollinshead, 2022). The invisibilising of multilingual learners is also a discriminatory act. At this point in time the OFSTED Framework has a negative impact in this area.

The best interests of the child (article 3)

The multilingual child receives no mention within the current OFSTED framework for inspection. This is hugely concerning, since the implicit message that OFSTED give schools is that they too can ignore the needs of EAL learners. By not attending to racist behaviour explicitly, multilingual learners/minorities' safeguarding is overlooked. At this point in time the OFSTED Framework has a negative impact in this area.

The right to life, survival and development (article 6)

As above- multilingual learners' exclusion from the framework means that OFSTED fail to pay heed to their strengths and needs, which in turn sends a message to schools. They are framed as deficit via their exclusion from the framework- the standard subscribed to is White British monolingual (Cushing, Georgiou, & Karatsareas, 2021). Article 6 is explicit that "Governments must do all they can to ensure that children survive and develop to their full potential." At this point in time the OFSTED Framework has a negative impact in this area.

The right of children to express their views and have them be given due weight in decisions that affect them (article 12)

OFSTED make no mention of how they secure the views of all learners and their families, or of the expectation that schools secure the views of all of their learners and their families. They rightly discuss the need for an interpreter where a child is hearing impaired and may require British Sign Language to access any discussion with an inspector. However, they do not address the notion of interpretation where there is no shared language with multilingual learners. Securing views of newly arrived multilingual learners and their families is a safeguarding issue as well as a participatory right. It could be expected that OFSTED would anticipate a robust, well thought through policy on use of interpreters and approaches to participation which are not always only language dependent in schools. There is no evidence that children or young people have contributed to approaches to inspection or that EAL learners' views have been directly sought. At this point in time the OFSTED Framework has a negative impact.

The remaining questions are left open for OFSTED to comment:

- Does your policy/legislation address any of the recommendations put forward by the UN Committee on the Rights of the Child in its Concluding Observations on the UK?
- What evidence is there to support your assessment of the impact on children's rights?
- Have you made any modifications to OFSTED's policy/handbook to address any negative impacts?
- Are there any alternative options to the proposal being considered? What would their projected impacts on children's rights be?
- Has there been any stakeholder consultation on the OFSTED approach to inspection? Please provide evidence. Stakeholders include children, parents/carers, children's workforce, representative bodies, NGOs.
- What steps have been taken to directly or indirectly gather the views of children and young people and how have you taken their views into account?

Section 5

NALDIC's Vision for an inspection framework: Key Principles

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Based on our review of the OFSTED Inspection framework and the CRIA, we have identified the following principles that we would like to see at the heart of a school inspection system that promotes the educational and social development and welfare of all children whilst recognising the Rights of the Child.

1 Building professionalism, trusting teachers, and enhancing provision for all learners and avoiding damaging punitive public accountability.

2 Understanding the needs of EAL learners, via extensive participatory research with EAL leads and learners who have English as an Additional language. This would be non-punitive and would establish a plan for enhancing 'language' across the curriculum.

3 Recognising the considerable gaps in provision pertaining to multilingual learners in schools and considering the way in which EAL pedagogy could be enhanced and strengthened throughout the education workforce- from trainee teachers to classroom teachers.

4 Understanding the dangers of homogenising entire groups of learners and encouraging the development of a more enhanced understanding of individual learners' strengths and needs.

5 Recognising the inequalities which are embedded in education provision and seek to lead in supporting schools to develop their ethos, pastoral systems and curriculum to address these inequalities.

6 Challenging language hierarchisation and recognising it for what it is- 'othering'. Discourses which explore languages, dialects and linguistic differences should be encouraged.

7 Understanding the importance of addressing racism, and recognise how the current exclusion of this from their framework is itself discriminatory institutional racism.

8 Understanding how safeguarding children requires positive communication with all learners. This then may require use of interpreters for parental meetings and for engagement with multilingual learners and their families.

9 Understanding the impact of intersectionality for multilingual children and families, such as poverty, insecure immigration status, gender and special educational needs. This will involve identifying the ways in which governments have created conditions which underpin vulnerabilities. An independent inspectorate, who acts on the rights of the child will refuse to be silent on these issues.

10 Ensuring 'independence' in an inspecting organisation so that it can share concerns they have with governments who 'other' children and their families, and be a voice who advocates for children's rights.

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