**The Price is Rights!: Cost Benefit Analysis and the Resourcing of Children’s Services[[1]](#footnote-1)\***

**Abstract**

This paper reflects on the impact of a decade of austerity measures on children in the UK, with a particular focus on the growing emphasis on cost benefit analysis (CBA) as a public rationing device. The argument points to the dangers of the now widespread use of this mechanism in the context of resourcing children’s services, not just by state bodies, but by civil society organisations and others charged with the protection of children’s rights. It considers why CBA is so appealing, and points to its potential in creating persuasive economic arguments in favour of investment in children; but it also points to the need for more principled, critical engagement with this device to prevent some of the mischiefs for which it has been used to date. The discussion proposes that a more robust rights-based approach, grounded firmly in the UN Convention on the Rights of the Child, would help to achieve a more fruitful correspondence between economic and children’s rights-related objectives.

**Key Words:** *Cost Benefit Analysis; Children’s Rights; Child Law and Policy; UN Convention on the Rights of the Child; Child Rights Budgeting; Austerity*

**Introduction**

There is nothing quite like a global economic crisis to test states’ commitment to children’s rights. In the decade since the financial crash it is fair to say that most states have failed spectacularly. Research has revealed that austerity measures introduced since 2008 continue to have a particularly detrimental impact on children across the world, but particularly in developed economies. Unicef’s cross-national evaluation of the impact of the recession on children tells us that around 76.5 million children live in poverty in the 41 most affluent countries (Unicef, 2015).[[2]](#footnote-2) A subsequent Unicef report reveals that in two thirds of those countries, children from the poorest households are now worse off than they were in 2008. Children’s well-being is particularly compromised by food insecurity,[[3]](#footnote-3) manifested in growing obesity rates among 11-15-year-olds and the number of adolescents reporting two or more mental health problems a week (Brazier, 2017). In the UK, infant mortality rates – one of the most reliable and stark indicators of the impact of socio-economic conditions on children – has been rising for the poorest children since 2010 (Taylor-Robinson and Barr, 2017). Compounding this situation are the widespread cuts in public services and welfare budgets, especially those relevant to children and young people (Aldridge and Macinnes*,* 2014; Ridge, 2013). Since 2012, spending on children and young people’s services in the UK alone has been cut by nearly £1bn taking inflation into account, leading to a withdrawal of preventative support for the poorest and a corresponding increase in child protection referrals (Action for Children, The Children’s Society and NCB, 2017).[[4]](#footnote-4)

Similar resource contractions are evident across the rest of the Europe, particularly in Greece, Spain, Ireland and Portugal where significant EU loan packages have been secured on condition that their governments will deliver huge cuts in social expenditure (Ruxton, 2012 at p.4). This trend continues as countries seek to build upon progress already made towards stabilising economies (Brazier, 2017).

Setting aside, for the moment, the fact that the austerity measures have been disproportionately regressive for children compared to any other group, it is accepted that difficult, often painful decisions have to be made about where and how scant public resources should be invested to achieve the best possible outcomes for the greatest number of people. The cost effectiveness of established sites of investment are inevitably scrutinised and justified in the face of myriad competing claims. Cost benefit analysis (CBA) is one of the most prominent tools used for these purposes and is increasingly influential in the design, resourcing and delivery of a vast range of services affecting children, in the public, private and third sectors alike. Tool kits and practice guidance abound in developed and developing regions alike as states seek to entrench CBA as the definitive public rationing device. Yet despite its ubiquity and influence, CBA has been subject to virtually no critical scrutiny, and certainly not from a children’s rights perspective.

The aim of this article, therefore, is to critically examine the use and impact of CBA on services relevant to children. It critiques[[5]](#footnote-5) the techniques and rationale underpinning CBA – or the ‘collection of procedures bearing that general name’ (Sen, 2000, p.933), particularly in a public policy context. In doing so, it highlights its utility in allocating public funding and achieving a level of public accountability (section 1). In the process, the analysis exposes some of the more invidious uses of CBA, not least its potential to obscure poorly evidenced, irrational decision-making that can seriously undermine children’s rights (section 2). In acknowledging that rights require resources which, in turn, have to respond to the competing demands of other (adult) rights-holders, the remainder of the article makes the case for a more explicit and authentic child rights-based approach to CBA (section 3). Using CBA as a case study, the discussion seeks to highlight the benefits and, indeed, challenges of forging a closer correspondence between efforts to advance children’s rights and economic modelling. In doing so, it explores the potential of children’s rights arguments to vindicate rather than compete with economic rationing and argues that this alliance, if conducted sensitively and rigorously, offers a sturdier, more plausible framework for mainstreaming children’s rights into resource allocation decisions.

1. **The pervasive and persuasive nature of CBA as a political tool**

Whilst CBA was initially developed in an industrial context (Ekelund, 1968), since the 1960s it has been routinely applied to public policy decision-making and operated as ‘…the key economic tool for analysing problems of social choice…as well as providing a useful vehicle for understanding the practical value of welfare economics.’ ([Mishan,](http://www.tandfebooks.com.liverpool.idm.oclc.org/action/doSearch?ContribStored=Mishan%2C+E)2007). At its most basic level, CBA compares and contrasts proposed benefits with projected costs of a particular area of public expenditure, legal or policy reform and assesses (usually in monetary terms) the quality of the return on that investment. CBA also provides some indication as to the amount of time it will take to recoup the initial expenditure, the types of programme or policy areas that are likely to yield the biggest returns, and the sub-populations that would offer the best (or poorest) returns (Dalziel, Halliday and Segal, 2015; Snell, 2011).

On a more profound level, CBA operates as an accountability mechanism compelling public decision-makers to produce empirically-grounded policy and to resist knee-jerk policy reactions to issues that are only of tangential, transient benefit to a relative minority (Abramoviz 2002, at 1720). It responds to the accepted wisdom that ‘costs’ are an unavoidable and critical consideration in regulatory decision-making but that investment of valuable public funding in particular services is the least vulnerable to critique when the costs are at least commensurate with the benefits projected to accrue as a result.

It is for all of these reasons that CBA is a highly seductive model, and not just for government agencies or private sector entities; it has also become a favoured advocacy model for not-for-profit children’s rights agencies in both the developed and developing regions. Key NGOs at international (Unicef, 2014; Peffer, Bique and Vaz, 2001; Unicef Tajikistan, 2009; Cherrier et al, 2013), European (European Council for Juvenile Justice, 2013; European Commission, 2014,) and domestic level (Steuer et al, 2009; Young Minds; Obesity Health Alliance, 2017; Cancer Research, 2016; The Children’s Society and the Carers Trust, 2016) now readily advance CBA-based arguments to attract public and private investment for specific child-related policy campaigns. The UK government strongly encourages public service providers to engage with CBA methods to ensure the best value for money when allocating public funding (HM Treasury, 2014), and there is mandatory guidance, modelled on CBA, to assist government departments in appraising and evaluating all policies, programmes and projects that concern public spending, taxation and regulatory changes to the use of public resources (HM Treasury, 2018). Indeed, a discrete discipline referred to as ‘childonomics’ has now emerged (Gheorghe et al, 2017).

Perhaps the most established context for the use of CBA is health economics.Any immunisation strategy is always prefaced by a comprehensive CBA, as is the development and delivery of treatment for childhood conditions such as epilepsy, diabetes, asthma, eczema. Similarly, CBA has underpinned myriad studies over the last two decades, initially largely in US (Trasande and Chatterjee, 2009; Strauss and Pollack, 2003; Lowry et al, 2003; Carroll et al, 2007; Finkelstein and Trogdon, 2008; Wang Dietz, 2002), but latterly throughout Europe and the rest of the world (Pil et al, 2014) to identify the immediate and longer-term economic consequences of childhood obesity and, in turn, to inform appropriate health policy interventions (Ananthapavan, et al., 2014).

These examples reinforce a model of CBA that is defined by four main characteristics. First, there is an overwhelming focus on early-intervention. Nipping society’s problems in the bud is a key objective underpinning CBA insofar as the problems faced by children, if unaddressed, foreshadow the problems of future generations of adults (Heckman, J. and Masterov, 2007 at 446). The ‘invest-now-or-pay-later’ (Polakow, 2011) presage underpinning this model is based on the accepted wisdom that in the same way that advantages accumulate with appropriate investment, so too do disadvantages when investment is withheld. The earlier the investment occurs, the less likely adverse conditions (such as poverty, substance abuse, disability, parental neglect) are to hijack an individual’s life opportunities and the less likely such circumstances are to entrench negative patterns of behavior and perpetuate intergenerational transmission (Barnet and Nores, 2010; Heckman, 2006; Burger, 2010; Engle, 2011).

Linked to the early intervention prerogative is an overwhelming and, many would argue, necessary focus of CBA on ‘high risk’ categories.We are informed that those from socio-economically disadvantaged communities or suffering from ill-health are more likely to be long-term unemployed and claiming benefits (Polakow, 2011; Heckman and Masterov, 2007; Foster and Jones, 2006). Those known to social services are more likely to be known to the criminal justice services and these trends are similarly reproduced through the generations (Hutchings et al., 2007; Scott et al, 2001). Thus, it follows that any attempt to remediate the disadvantages associated with their circumstances will yield the greatest returns in the future, by steering them onto a more positive social and economic trajectory (Heckman, 2006; Engle, 2011; Barnett and Nores, 2010).

For example, Forster et al. found in their work on mitigating the effects of violence against children that even ‘…expensive interventions can still be cost effective, provided that the interventions target a population (i.e. children) that is particularly costly to society when left untreated.’ (Forster and Jones, 2006, p.1289). In the same vein, children who are known to social welfare services, particularly those in the care of the state, are significantly more likely to become embroiled in juvenile offending and, consequently, subject to juvenile justice processes. Recent data reveals, for instance, that looked after children are five times more likely to be cautioned or convicted of a criminal offence than children in the general population (UK Children’s Commissioners, 2015, at p. 44; Goldson, 2015, p.179; Forty and Sturrock, 2017; Taylor, 2016). This is a worrying trend if one takes into account the fact that the number of children in care has now reached a record high: 72,670 cases as of March 2017, and an average of 90 children entering the care system every day (Dept for Education, 2017). Such statistics support what are already well-established and robustly evidenced conclusions that enhanced, targeted investment in early years welfare, specialist educational and child protection services – breeding grounds for would-be offenders – provide the best deterrent of youth crime (Audit Commission, 2004).[[6]](#footnote-6)

The third characteristic of CBA is the imperative to quantify ‘cost’ and ‘benefit’ in monetary terms. CBA identifies the probable outcomes of a particular course of action (or inaction) and then assigns an economic value to them. In public policy terms, often this is determined by reference to the estimated amount of unemployment benefits a person will claim, the time spent administering health care, time and cost of repeated absence from work, dealing with the social and welfare consequences of risky behavior (teenage pregnancy, treatment of sexually transmitted diseases, alcohol and other substance abuse), or the annual costs associated with dealing with a young offender (Foster and Jones, 2006).

Fourthly, CBA works on the basis that a particular investment choice diverts expenditure from treating problems *after* they occur to preventing them from occurring in the first place. CBA is inherently speculative, therefore, justifying expenditure in the present whilst accepting that the benefits may not accrue until many years into the future.

These observations present a number of conundrums: if CBA is now so entrenched as a children’s budgeting and campaign tool, and if the evidence arising from it is seemingly so persuasive, why is that the outcomes for our children are still so poor and deteriorating further? Why, in this era of enduring austerity, have children borne the brunt of public service cuts when, if the above findings are true, CBA should really come into its own? In an attempt to respond to these questions the next section takes a closer, more critical look at CBA to test some of the presumptions underpinning its application and reliability.

# The perilous consequences of CBA for children’s rights

There are a number of grounds on which the use of CBA in a children’s rights context can be challenged: first, that it is ideologically and normatively ambiguous – routinely applied without any reference whatsoever to the obligations to which states are bound under international, European and domestic children’s rights law; second that it is methodologically opaque - informed by and, indeed, generative of fragile, incomplete and often wholly inaccurate data and, by implication, ineffective law and policy; third, that more often than not it is useddefensively and exclusively by public authorities, to justify *non*-investment rather than to *support* investment in children’s services; and fourth, that it responds to and, indeed, reinforces the progressive marketization of childhood. Each of these contentions will be considered in turn.

* 1. **CBA is ideologically and normatively ambiguous**

The main driver of CBA, on the face of it, is getting the best value for public money or, to put it another way, containing costs. But it is not just about money; advancing a political narrative is an equally important objective insofar as it provides the evidential platform for supporting a favoured policy agenda. Take for instance the dramatic review of the family justice system in England and Wales in 2011, the final report of which is riddled with no less than 145 references to cost/benefit (Family Justice Review, 2011). The reforms arising from this review were purported to reduce the pressure on a notoriously overburdened, inefficient court system, divert cases away from court-based litigation towards more empowering (for the parties) and enduring alternative dispute mechanisms, streamline procedures and target expertise to achieve more consistency in decision-making, place the welfare and voice of the child at the forefront of decision-making, and expedite decision-making in public care proceedings in the interests of our most vulnerable children. The proposed benefits, for the individual, the family, the courts and society at large, provided a powerful and persuasive validation of these reforms and a seemingly proportionate response to the projected ‘costs’, made all the more so by the savings projections that provided their backdrop (MoJ and DfE, 2012).

Now, some seven years into the implementation of the review’s recommendations, the response appears rather less proportionate and persuasive than envisaged, realizing the fearful predictions of some early skeptics (Hunter, 2013; Maclean, 2016; Barlow, Hunter and Smithson, 2017; Mant and Wallbank, 2017). The shift towards mediation as an alternative mechanism for resolving private disputes has obstructed rather than facilitated moves to place children’s interests and voice at the forefront of decision-making insofar as such processes routinely fail to engage in any meaningful consideration of children’s best interests and wishes (Hunter, et al, 2015; Maclean and Eekelaar, 2016; Hunter et al, 2015b). In a public law context, the introduction of a 26-week hard deadline for completion of care proceedings, while potentially operating in children’s interests, has, in many cases served to shift delays to the pre-proceedings stage as local authorities postpone their initiation of care proceedings to buy time or, worse still, compromised the effectiveness and appropriateness of the orders ultimately granted (Holt and Kelly, 2016; Masson et al 2017).

These examples reinforce the morally and ideologically disconnected nature of CBA from the interests and rights of children. Where there is no clear frame of reference other than to produce the most quantifiably advantageous economic outcome for the State, it is not surprising that the measures informed by it amount to little more than passing costs onto the individual. Moreover, while the key objectives of CBA might be simple, the methods and evidence used to achieve those objectives are vulnerable to significant manipulation, particularly when it comes to defining investment in politically fickle public services provision. Let us not forget that it is a business model, used to rationalize expenditure, so it is perhaps not surprising that it is devoid of any coherent framework of values that resonate with social justice or children’s rights. As far back as the 1960s the US political scientist, Jack Wiseman, went as far as describing CBA as ‘sordidly mercenary’ and a ‘perversion of values’; merely a means to achieve a pre-determined political and economic end (Wiseman, 1965, at p.2). It remains the case today that the ‘priorities’, ‘outcomes’ or ‘benefits’ that are identified in that process are commonly skewed to meet those political and economic ends whilst outcomes that do not support the case are ignored or modulated.

Juvenile justice policy offers a particularly good illustration of this. The overtly retributivist model of the early 1990s was perpetuated by new Labour’s landmark ‘Tough on crime; tough on the causes of crime’ pledge[[7]](#footnote-7) which contributed to a staggering growth in custodial sentences (both in proportion and length) during new Labour’s subsequent administration.[[8]](#footnote-8) Thus, by 2010, the prison population in England and Wales had doubled over the course of 30 years creating one of the highest incarceration rates in the EU (Lyon, 2010; Silvestr 2011; Cipriani, 2009; The Howard League for Penal Reform, 2008). Child offenders have been amongst the worst affected by this penalisation policy despite clear evidence of its ineffectiveness in reducing crime. As Goldson notes:

*‘ ...penal custody is spectacularly counter-productive – even iatrogenic – when measured against its capacity to either meet the needs of children, prevent (or even reduce) youth crime, or offer the best value for public money. Indeed, volumes of empirical data testify to the harmful and damaging impositions of child imprisonment, to high rates of post-custodial recidivism and reconviction and to the enormous financial costs that penal custody imposes, rendering its application profoundly irrational on all counts’* (Goldson, 2015, at p.171)*.*

The soaring costs of this strategy beckoned a new approach once the global recession took hold.Faced with demands to reduce public spending by 20%, and given that it can cost as much as £212,000 per child per year to keep them in custody (Ministry of Justice, 2013), an obvious and easy target for the Ministry of Justice was to reduce the number of young people in prison.[[9]](#footnote-9) Such projections added significant momentum to children’s rights campaigns to promote alternatives to youth detention, not just in the UK, but internationally (European Council of Juvenile Justice. 2013) and heralded something of a retreat from ‘costly over-criminalisation’ towards ‘precautionary risk management’ (Squires, 2013). Thus, since the beginning of the recession, the number of first-time entrants into the youth justice system has fallen by 85%, and 81% fewer young people have been placed in custody or received a caution (Youth Justice Board and MoJ, 2018).

Whilst this increasingly reductionist agenda (Goldson, 2015 at p.178) might produce better outcomes for young people, it is unashamedly driven by the objective of lowering the national deficit rather than conceding to the empirical truth that detention is not just harmful to children but ineffective in reducing crime. Any correspondence between a CBA approach to juvenile justice and the children’s rights obligation to treat detention as a matter of last resort[[10]](#footnote-10) is a happy coincidence supporting the contention that compliance with human rights is the chance outcome of CBA-based decisions rather than a driving consideration (see further Hollingsworth, 2014a and 2014b).

This point is further highlighted by early childhood intervention strategies that seek to target themost marginalised children. The discussion has already alluded to the abundant evidence that such interventions offer the most effective means of forestalling damaging and entrenched patterns of behaviour and nurturing in young people the resources they need to respond to more economically and socially constructive opportunities. This CBA-endorsed tactic can take a rather more sinister turn in practice, however, and transmute into a policy response that is less about supporting vulnerable children, and more about repressive, even punitive benefits contraction (Patrick, 2017). Prime targets are those on the socio-economic margins, unemployed and in receipt of welfare benefits .[[11]](#footnote-11) The succession of welfare-to-work policies, including the withdrawal of benefits from lone parents once a child reaches the age of 5[[12]](#footnote-12) (and extended since April 2014 to those with children of 3 and 4),[[13]](#footnote-13) the introduction of the welfare benefits cap[[14]](#footnote-14) and the confinement of welfare claims to the first two children in a family to the exclusion of all other children born thereafter[[15]](#footnote-15) are all symptomatic of an increasingly hostile narrative of ‘welfare decadence’ (O’Brien, 2018). While such policies have been promoted (by the government at least) as rescuing children from a perpetual cycle of social exclusion, there has been very little governmental engagement with the impact of spending cuts on children directly, let alone with the extent to which such decisions comply with their obligations under international and domestic children’s rights law. For example, the prohibitive cost of childcare,[[16]](#footnote-16) the quality and affordability of decent housing within reasonable distance of schools, and the low skilled, low paid and contractually fragile nature of employment in which lone parents are typically engaged are barely considered (Gingerbread, 2018). Thus, while the government’s projection that “…a third of a million fewer children are being brought up in workless families” as a result of its ‘economic plan’ (Osborne, 2015), it is also true that work alone is not a route out of poverty (CPAG, 2017; Browne and Hood, 2016). Indeed, the initial welfare-to-work measures were estimated to have plunged over 40,000 more children into relative poverty and rendered twice as many children as adults, more vulnerable to eviction (Citizens Advice, 2015). More recent reports paint an even bleaker picture, estimating that the two-child limit rule, in particular, will push up to 50% of families with three or more children in the UK into poverty (O’Brien, 2018).

Unsurprisingly, children’s rights, including those enshrined in the UN Convention on the Rights of the Child (UNCRC), do not feature in any of these policy debates and decisions. Their best interests (Art 3); their right to life, survival and development (Art 6); their right to be cared for by their parents (Art. 7), their right to the highest attainable health (Art. 24), their right to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development (Art 27(1) CRC), to name but a few all impose legally binding obligations that should inform decision-making at the political as much as the legislative or judicial level. The UK Supreme Court has stated as much when considering the lawfulness of welfare cuts in recent years[[17]](#footnote-17) when Lord Kerr (dissenting) in *SG v SSWP*, asserted that: ‘...it cannot be in the best interests of the children affected by the cap to deprive them of the means of having adequate food, clothing warmth and housing...Depriving children of...these basic necessities of life is simply antithetical to the notion that first consideration has been given to their best interests’ (para 269). Lady Hale (also dissenting) highlighted the extent of the State’s obligations under the CRC:

*‘Although parents have “the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development” (Art 27(2)) States Parties have to “take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing. (Art 27(3)”’* (para 227).

The current absence of an explicit rights-based point of reference to guide such policy decisions means that there is no corrective mechanism to ensure that State-sanctioned interventions in private and family life are necessary and proportionate to identify and support the most ‘at risk’ children before it is too late. There is no clear mediating framework to ensure that such interventions uphold the best interests of the child, a legal requirement under the CRC (Art 3). At a more basic level, there is a failure to engage with the explicit and far-reaching legal obligations by which states are meant to be bound. To put it bluntly, such obligations might as well not exist.

The failure to utilise rights to frame cost/benefit and public resourcing arguments is not exclusive to government agencies though; virtually none of the CBA literature, the academic studies, the policy documents and even much of the campaign material generated by the children’s rights lobby that draws on CBA, make any reference to States’ concrete obligations under children’s rights law at all. This is apparent even in areas for which there is explicit international and domestic provision such as child protection, health, juvenile detention, immigration and asylum, education and family reunification. In fact, there has been no attempt so far to challenge current methodological and conceptual conventions underpinning CBA.

* 1. **CBA is methodologically opaque**

This brings us to the second objection to CBA as a tool for informing the resourcing of children’s rights: that its accuracy is often taken for granted and its projections often escape any detailed, critical scrutiny. In reality, CBA is an inherently inaccurate science. There is no transparency or consistency when it comes to determining what should be measured, that is, the factors that constitute ‘costs’ or ‘benefits’ for the purpose of this balancing exercise; no clarity as to the extent to which benefits have to demonstrably outweigh costs before investment will be justified; no clear sense of what proportion of children should benefit from the investment or, indeed, might be justifiably excluded from particular service provision before it will become acceptable to tailor policy choices accordingly.

The reality is that CBA can only ever reflect whatever intelligence is at its disposal, and insofar as that intelligence is often gathered in response to prescribed policy agendas it is vulnerable to some manipulation. Indeed, the available literature suggests it is not only the choice of *what* to measure that is politically loaded; benchmarks of *how* to measure costs and benefits are also vulnerable to significant calibration according to the budget available or the cuts anticipated. Consider, for example, the CBA evidence underpinning the legal aid cuts, introduced in 2013.[[18]](#footnote-18) It was clearly stated from the outset that the withdrawal of legal aid from all but a few areas would make a ‘substantial contribution’ to the Ministry of Justice’s target of reducing its budget by a quarter and yield savings of some £350 million in 2014–15. It asserted, however, that its parallel motivation was to move towards *‘a simpler justice system: one which is more responsive to public needs, which allows people to resolve their issues out of court without recourse to public funds, using simpler, more informal, remedies where they are appropriate, and which encourages more efficient resolution of contested cases where necessary.’*(Ministry of Justice, 2010, atp.5).

What has happened, in fact, is that the costs to the public purse have simply been passed onto the individual and the not-for-profit legal advice sector. The cuts have arguably resulted in *more* contested cases which take up *more* time and cause *more* aggression and distress in court, not less. Rather than prompting individuals to pursue less litigious alternatives to dispute resolution, the cuts have triggered an unprecedented and worrying trend in self-representation before the courts, effectively repurposing notions of fairness, justice and equality for economic ends and, in the process, significantly disempowering those without the skills or knowledge to represent themselves effectively (Mant, 2017; The Law Society, 2017; Cookson and Mold, 2014).[[19]](#footnote-19) The implications for children are particularly grave: an estimated 15,000 children per year are denied access to justice altogether as a direct consequence of legal aid cuts (Coram, 2018; The Law Society, 2017, at pp.6-9; Office of Children’s Commissioner, 2014; House of Commons Justice Committee, 2015).[[20]](#footnote-20)

Insofar as the selective bias underpinning that intelligence is rarely challenged, it is hardly surprising that the outputs of a CBA exercise are commonlybased on fragile, incomplete and even willfully misrepresented data.[[21]](#footnote-21) Such methodological biases are certainly not peculiar to CBA though; related econometric tools such as Impact Assessments have been heavily criticised on similar grounds. For instance, Mark O’Brien’s analysis of the former UK Coalition’s Comprehensive Spending Review which prefaced the introduction of far-reaching cuts in welfare and public spending revealed how significant distortions in the units of analysis and data collection methods adopted created an impression that cuts would be distributed and experienced ‘fairly’ across all socio-economic groups. Unsurprisingly, this was not borne out in reality, with lone parent, low income, minority ethnic families and those with disabled children, all shown to be disproportionately negatively affected by the austerity measures (O’Brien, 2013; and O’Brien, 2016. See also De Agostini et al, 2014).

# CBA is exclusionary

A third objection to CBA is that it is commonly used by governments as a mechanism for exclusion (to justify the withdrawal or abrogation of entitlement) rather than to *support* investment in provision for children. This is particularly the case in times of austerity. The predominantly economic impulse of CBA places service providers on the back foot, often placing an unrealistic burden on them to justify and evidence a potential return on every penny invested, whilst also proposing quick fix solutions to problems that require more comprehensive, sustained investment or perhaps even far-reaching structural and institutional reform. Inevitably, there are certain children’s services that will never fare particularly well in this context. Services for immigrant children, particularly the most vulnerable such as unaccompanied child asylum seekers, may, in many cases, cost the taxpayer more than any ensuing purely financial benefits.[[22]](#footnote-22) The same can be said of profoundly disabled children, many of whom will never have the opportunity or capacity to contribute in any direct way to the economy by way of payback. Services for these young people are undeniably resource intensive and so it is unsurprising that they rely heavily on the not-for-profit sector for sustained, comprehensive support. But it is also true that services for the most acutely vulnerable provide the context for some of the most invidious examples of commercial opportunism (The Children’s Society, Action for Children and NCB, 2017). Specifically, research by Humphris and Sigona (2017) demonstrates that in spite of explicit legal obligations to promote the best interests of unaccompanied children in the provision of all manner of social and economic support,[[23]](#footnote-23) sustained, austerity-driven cuts to local authority budgets have led to a fragmentation of frontline service provision. As a consequence, unaccompanied children are at the mercy of “..*formal and informal systems of outsourcing care and support…framed mostly in a dual narrative of ‘burden sharing’ and ‘efficiency/value for money*’”. The logic of this strategy on paper may be persuasive, but in reality, it has enabled the state (in the form of local authority actors) to distance itself from the delivery of (and accountability for) support to such children, rendering them less able to define and act upon their obligations to act in the best interests of children.

Children and young people’s mental health services constitute another area that is ill-accommodated by CBA. As an issue that demands an interagency approach to address the complex range of social, environmental, psychological and physical factors that conspire to affect the mental health of young people, providers in this area will always struggle to present a comprehensive case that satisfies the restrictive CBA model. Mental health problems in children and young people are notoriously difficult to define and the outcome of treatment is often unpredictable, particularly in the short term. The sheer diversity of treatment methods mirrors the vast range and combination of mental health disorders that children can exhibit, such that the cost and duration of any particular programme are often impossible to predict, let alone translate in monetary terms.

Of course, this feature of CBA has both positive and negative implications for governments whose term in office may be a distant memory before the consequences of their investment decisions become apparent. It may exonerate them from any real accountability if the investment turns out to be rather more costly than beneficial. Conversely, even if the evidence of long term benefits is very persuasive, the speculative nature of CBA may dissuade public investment if the costs are too great in the short term (such as mental health provision for young people) and necessitate diverting resources away from current issues for which the government can claim more immediate, electoral currency (such as universal benefits for the elderly) (Zechmeister et. al., 2008). As Knapp (1997, p.3) observes:

*‘...when fiscal pressures are at their most acute it is often the programmes whose pay-offs are most distant that are most vulnerable. The cynical politician may feel there are few votes to be won or lost by child mental health services, whilst the profit seeking [community] may see more drawbacks than benefits in continuing to offer such services at the expense of interventions with more immediate and visible effects.*’

It remains the case that public spending in adolescent and child mental health is woefully inadequate, even in the face of soaring demands on child and adolescent mental health services across the globe.[[24]](#footnote-24) More than half of local authorities in England reduced or froze budgets for child and adolescent mental health services (CAMHS) between 2010-11 and 2014-15, some by as much as 30% (Young Minds, 2014). This is in spite of multi-disciplinary evidence of the long term, far-reaching social and economic impact of mental health problems that go untreated (Patel et. al., 2007). Even taking into account more recent, additional investment, CAMHS still receives less than 1% of the overall NHS budget, and less than 8% of the total mental health budget (Young Minds, 2018).

* 1. **CBA responds to (and reinforces) the progressive marketization of childhood**

A fourth objection to the use of CBA in determining whether and how to resource services for children is its inevitable tendency to pitch services for children (and, by implication, their rights) as market entities, to be bought and sold, haggled over or dismissed as optional indulgences. This is symptomatic of a much more widespread fragmentation of public services, evidenced in the now routine outsourcing to private providers. In the process, children’s rights are subjected to a much more market-driven agenda, where profit margins and value for money are the dominant driving force rather than a desire to pursue the most effective course of action to promote children’s rights and well-being. As Steph Petrie (2015, p.275) notes, in her critical observation of the progressive shift away from the Welfare State to ‘welfare markets’:

*‘The “needs” of children have been codified in assessment templates in order to be quantified, costed and contracted within a given timescale. It is not surprising, therefore, that children in welfare markets become objectified, problematised and passed from provider to provider without continuity – in short they have become commodities with cost/revenue implications.’*

Such a strategy has necessitated a shift in the role of local government agencies from public service providers to commissioners and regulators, with competitive tendering and performance indicator targets the name of the game. This is particularly evident in the context of early-years day care provision, of which it is estimated that more than 90% is provided by the for-profit (61%) or third sector (30%) (Petrie, 2015). Child protection and youth justice are similarly affected, with private (for profit) service providers offering the majority of custodial, residential and foster care provision, often at considerable profit (Elvin, 2016).

Education is following suit with the move towards whole-sale academisation of schools (The Academies Act 2010) epitomising an increasing preference for business-inspired managerialism; by 2017, nearly two-thirds of secondary schools and over a fifth of primary schools in England and Wales had become academies, granting them considerable operational autonomy over funding, curriculum design, budgets, staffing issues and the shape of the academic year (Eyles et al, 2017). The mixed economy of school education alone has been accompanied by an increase in performance monitoring, an emphasis on naming and shaming, and growing concerns around the well-being of staff and pupils (Beckmann et al, 2009; Carr, 2015).

Engaging the services of smaller private or community interest entities is promoted as a shift away from exclusively top-down decision-making towards a more bottom-up, needs-based approach (Le Grand, 2009). But even if those arguments were empirically verified, there is little doubt that both the decision to contract out in the first place *and* the selection of an appropriate provider are determined largely on the basis of costs and savings rather than the rights and interests of children (Stevenson, 2014).[[25]](#footnote-25) The consequences of this neoliberalist strategy are increasingly disturbing, not least its effect of simultaneously divesting governments of full responsibility for the quality and accessibility of that provision whilst obscuring accountability and transparency on the part of private providers.

Such concerns are particularly acute in the context of children’s social work and mental health services which are now routinely outsourced to profit-making private providers and which have been the subject of a string of damning inquests into the preventable deaths of children in their care (Davis, 2016).[[26]](#footnote-26) Virgin Care runs 21 primary care services across England, including contracts for children’s public health nursing, child and adolescent mental health services and services for disabled children and their families. G4S and Serco share contracts for the forensic examinations of children who may have been sexually abused, and G4S has also expanded into the provision of residential children’s homes (Jones, 2015; Stanley et al, 2014). Indeed, the number of privately owned children’s homes has increased year on year over the last 4 years (now 1,610 or 73% of all active children’s homes in England on 31 March 2018) (Ofsted, 2018).

All of these contentions lead to the critical question of whether children’s rights can be adequately accommodated in the very process of determining how to resource children’s services, including through the use of CBA. In an attempt to respond to this question, the next section argues that rights and CBA need not be mutually exclusive. Indeed, it is asserted that public investment in children’s rights on a sustained basis is essential, not simply *in spite of* the economic climate but as a positive means of repairing and sustaining it. CBA can be a very useful tool for persuading decision-makers of this imperative, but only if the CBA model is used to support rights rather than to undermine them. In that sense, upholding children’s rights should be the non-negotiable starting point and ultimate aim of CBA, not the chance outcome.

**2. Towards a rights-based approach to CBA**

The discussion up to now has sought to dismantle some of our presumptions about the reliability and effectiveness of standard CBA approaches to the resourcing of children’s services. Making the case for a more explicit and faithful children’s rights-based approach to CBA beckons at least two sets of questions. The first is ethical and conceptual in nature and concerns whether the very endeavor of seeking to reconcile children’s rights with cost benefit priorities inevitably undermines or at least compromises the rights that we are seeking to uphold. The second question is more empirical and considers what needs to be put in place to achieve a children’s rights-based approach to CBA and what difference such an approach might make in practice.

**2.1. Is a rights-based approach to CBA a contradiction in terms?**

Arguing in favour of a children’s rights-based approach to CBA does not ignore the tensions that exist in rendering rights conditional upon their economic viability but, rather, acknowledges that such tensions are irrefutable; that the actual application of rights requires direct engagement with economics. Holmes and Sustein’s analysis of the relationship between the effective enjoyment of rights and the availability of public resources still holds true today:

*‘..rights [particularly economic and social rights] simply do not exist for individuals who live under a government incapable of taxing and delivering an effective remedy.…A legal right exists, in reality only when and if it has budgetary costs..*’ and *‘…liberty has little value if those who ostensibly possess it lack the recourses to make their rights effective’*.

But they also recognise the compromises that come with acknowledging the relationship between rights and resource-availability: *‘To ascertain that a right has costs is to confess that we have to give something up in order to acquire or secure it. To ignore costs is to leave painful trade-offs conveniently out of the picture.’* (2000, pp.19-20).

It is equally damaging to portray children’s rights as existing in an economic vacuum, unconditional and impervious to pragmatic resource considerations. Indeed, this is a regrettable, all too common tendency in children’s rights discourse and perhaps one of the main reasons why children’s rights have failed to advance as quickly or significantly as other emancipatory movements.[[27]](#footnote-27) For instance, the now burgeoning literature on child participation, whilst hugely important in making sense legally, theoretically, ideologically and practically, of why and how children should be directly and meaningfully engaged in decisions about their own lives, commonly neglects to acknowledge the cost of instituting vital procedural and structural mechanisms not to mention the capacity building required to facilitate children’s participation. Widespread criticism of the courts’ routine failure to involve children in discussions around where they should live and how much contact they should have with each parent following parental separation or divorce is a case in point. Instituting tailored consultation processes and adapting the physical environment of the court depending on the capacities and vulnerabilities of the child, providing training for lawyers and judges on how to elicit views from children and give due weight to them, joining children as parties to proceedings, and extending the length and nature of court proceedings to allow for meaningful, considered participation by children, all entail significant costs. Similarly, the right to education, for instance, requires policies on equality and accessibility, public transport, minimum standards in the curriculum, quality assurance and monitoring process, decent nutrition, health, well-being and safety measures to facilitate children’s educational development, as well as transparent, accessible redress when things go wrong. Indeed, nearly all social and economic rights depend on a high degree of sustained, affirmative action on the part of the public authorities.

But recognising that fulfilment of these rights has (sometimes substantial) cost implications should not diminish our commitment to their fulfilment. It is perhaps an uncomfortable truth that most rights operate along inherently cost benefit lines: they might be costly to resource in the first instance, but they yield longer term benefits because they imply investment in human and social capital, individual and collective well-being and, ultimately, increased taxable social wealth. Returning to the example of involving children in family justice proceedings, research tells us that this would lead to more enduring decisions, happier, more empowered children, more insightful and sensitive parents, better compliance with final decisions and, therefore, less likelihood of repeated, protracted proceedings (Daly, 2018; Stalford and Hollingsworth, 2018).

**2.2. Framing children’s rights in the light of resource availability**

The compatibility of children’s rights protection with economics is endorsed by the children’s rights legal framework itself. The way in which economic and social rights, in particular, are framed evidences an acute sensitivity to the fact that their realisation is highly contingent on the domestic economic context. The UN Convention on the Rights of the Child (CRC) itself is a rich resource of information about the tensions in and concessions made to detailed and often protracted negotiations around the resourcing and achievability of specific children’s rights obligations. A cursory reading of the Working Group discussions surroundingthe preparation of the CRC provisions indicates where the sticking points were most apparent in securing government investment (Nolan, 2013, at footnote 53). Take Article 4 CRC, for instance. This provision qualifies the expectation that all States Parties introduce appropriate legislative, administrative and other measures to give effect to the rights contained in the CRC by conceding that: ‘With regard to economic, social and cultural rights, States parties shall undertake such measures *to the maximum extent of their available resources*…’ (Art 4).

Substantive provisions of the CRC continue in the same vein: Article 6 imposes a duty on States to ensure ‘*to the maximum extent possible*’ the child’s right to survival and development; Article 24(1) recognizes the right of the child to the enjoyment of the *highest attainable* standard of health and requires States to promote and encourage international co-operation with a view to *achieving progressively* the full realization of this right (24(4)). Article 26 concerning the child’s right to social assistance is equally deferential to the domestic legal and economic context: ‘States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right *in accordance with their national law*. State obligations to fulfil the child’s right to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development are subject to ‘national conditions and *the means available*’ within each State.’ (Art 27(3)). States’ obligations with respect to the child’s right to education need only be ‘*realised progressively*’ (Art 28(1)).[[28]](#footnote-28) Even the axiomatic right to be heard need only be achieved ‘…in a manner consistent with the procedural rules of national law.’ The amenability of existing national rules or processes to the actual enjoyment of such rights is presumed rather than explicitly required.

Guidance issued by the Committee on the Rights of the Child as to how such provisions should be interpreted and applied reinforces this sensitivity to the domestic economic context.[[29]](#footnote-29) For instance, in its guidance on Article 4, the Committee calls for ‘a realistic acceptance’ that a lack of financial and other resources can hamper full implementation of economic, social and cultural rights. As such, we are reminded that expectations on States to meet their Convention obligations should be adjusted in the light of prevailing economic, technical, human and institutional resources.[[30]](#footnote-30) Similarly, the Committee’s more recent General Comment on public budgeting (UN Committee on the Rights of the Child, 2016) frames the obligations to implement measures for the fulfilment of children’s rights in accordance with ‘the maximum extent of their available resources’ (paras 28-31). It goes on to assert that budget planning requires ‘realistic assessments of the economic situation’ based on ‘reliable, timely, accessible and comprehensive disaggregated information and data…on the macroeconomic, budget and child rights situation, both current and projected’ (para 67). The Committee also emphasises the importance of States parties ‘making cost estimates of proposed legislation, policies and programmes that affect children, in order to ascertain the level of financial resources needed and to enable…the relevant decision-makers…to make informed decisions on the resources needed for their implementation.’ (para 73).

In that sense, rather than aspiring to (largely unattainable) gold plated services for children, the rights framework is acutely sensitive to and, indeed, accommodating of, the domestic resource and political constraints under which individual states are operating, particularly in times of austerity. It is conceded that certain areas of children’s rights are relative and open-ended; there is never a point at which they are completely secured because of economic fluctuations and the emergence of other priorities, including those pertaining to the rights of other groups or the public interests at large. Holmes and Sustein apply this reasoning to all rights, not simply those of an economic and social or welfare-related nature, when they say that *“All rights are protected only to a degree; this degree depends partly on budgetary decisions about how to allocate scarce public resources”* (2000, a p.121)*[[31]](#footnote-31)*

Framing our discussion of children’s rights within this pragmatic, resource-conscious paradigm advances a more informed discussion around distributive justice and democratic accountability.[[32]](#footnote-32) For these purposes, CBA offers a responsive and selective rationing device, to maximise the potential return on every pound of public money invested. But that does not mean that such constraints and prerogatives should absolve States of their responsibility for realising children’s rights. Implicit in their undertaking to progressively realise rights, particularly those of a social and economic nature, is a resolution not to take *regressive* steps that undermine or interfere with those rights. The Committee on the Rights of the Child goes even further, requiring States to positively ‘mobilize’ revenue to create and sustain resources needed to implement the rights of the child (GC 19, para 74-80). Put simply, States have to demonstrate that they are doing their very best with whatever means they have at their disposal; they may not be in a position to invest significantly in advancing certain rights to the same level at all times, but they will be held accountable for action that erodes children’s enjoyment of them.[[33]](#footnote-33) The persistence of this obligation in times of austerity is made explicit by the Committee on the Rights of the Child in asserting that “*The immediate and minimum core obligations imposed by children’s rights shall not be compromised by any retrogressive measures, even in times of economic crisis.”* (GC 19, para 31).

**2.3. What needs to be put in place to achieve a children’s rights-based approach to CBA?**

Bearing all of this evidence and guidance in mind, it is argued that essentially two things need to be put in place to render CBA more responsive to children’s rights. First, the entitlement and obligations contained in children’s rights law have to be the starting point rather than the chance outcome of the CBA process. This demands not only a clear acknowledgement of the nature and scope of our international children’s rights obligations, but some re-appraisal of what we mean by ‘costs’ and ‘benefits’ beyond a crude monetary interpretation. Second, more comprehensive evidence-gathering needs to be undertaken to support the assertion that children’s rights is a sound economic investment.

* + 1. **Adopting children’s rights as the starting point.**

Adopting children’s rights as a starting point in CBA is naturally achieved when states uphold their legal obligation to mainstream children’s rights into all stages of the legal and policy-making process and into decisions around resource-allocation.[[34]](#footnote-34) As it stands, current legal and policy guidance relating to CBA in a public services context remains staggeringly impervious to any consideration of children’s rights. For example, the UK Government has issued binding guidance in the form of its seminal ‘Green book’ (HM Treasury, 2018)[[35]](#footnote-35) to public sector bodies on how to spend public funds to ‘provide the greatest benefits to society, in the most efficient way.’ Performing an assessment of the costs and benefits of relevant options is central to this process. Despite its stated commitment to upholding equality and family cohesion (Chapter 4), however, the Green Book does not contain a single reference to children’s well-being or rights.[[36]](#footnote-36)

Efforts to incorporate a more explicit child-rights component into the public administration of funds could do worse than to draw on the emergent models of children’s rights budgeting (Nolan, 2013; Nolan and Dutschke, 2010; Wiles, 2006; Crowley, 2010; Sefton, 2009; UNICEF/EU, 2014; UN Committee on the Rights of the Child, 2016) and children’s rights impact assessment. Consider, for example, General Comment No. 5 which requires States ‘…to carry out a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation.” (para.45). To achieve this, States are accountable to the Committee on the Rights of the child as to what steps have been taken to ensure that the best interests of the child are a primary factor informing economic planning and budgetary decisions.[[37]](#footnote-37)

Consider also the obligation to place children’s rights and interests at the centre of financial planning extends to private business entities, including those to whom children’s services are outsourced. Specifically, General Comment No. 16 asserts that: “States are not exempted from their obligations under the Convention when they outsource or privatize services that impact on the fulfilment of children’s rights” (GC 16, para 33). The Committee goes on to state that:

*“States must take steps to ensure that public procurement contracts are awarded to bidders that are committed to respecting children’s rights…A State is therefore responsible for infringements of children’s rights caused or contributed to by business enterprises where it has failed to undertake necessary, appropriate and reasonable measures to prevent and remedy such infringements or otherwise collaborated with or tolerated the infringements”* (GC 16, paras 27-28)

It follows, therefore, that any processes involving the allocation of public resources should be driven by the primary imperative of upholding children’s best interests and their associated rights.

Accompanying this *general* obligation is the need to ensure that CBA responds to the *specific,* substantive children’s rights obligations that correspond with particular areas of service delivery. Fulfilment of these obligations should be at the forefront of any cost benefit analysis - both the starting point and ultimate goal - rather than driven by outcome indicators of an exclusively financial nature. Thus, decisions around the resourcing of mental health services might take Article 24 CRC as their starting point, which tells us that States should ‘progressively realise’ children’s right to the ‘highest attainable standard of health’. General Comment no. 15 provides detailed guidance on how this might be achieved, urging States “…to undertake an approach based on public health and psychosocial support to address mental ill-health among children and adolescents and to invest inprimary care approaches that facilitate the early detection and treatment of children’s psychosocial, emotional and mental problems.” [[38]](#footnote-38) Similarly, in addressing the situation of child migrants, General Comments 22[[39]](#footnote-39) and 23[[40]](#footnote-40) (2017) identify the investment of ‘adequate budgetary resources’ as a key pillar for fulfilling the rights of all children affected by international migration (GC 22, para 18), and draw an explicit correlation between children’s right to family life and adequately resourced social services (GC 23, para 38). In that sense, CBA should be deployed for identifying and obtaining the best possible outcomes from those resources. It should *not* be used (as is currently the case) as a mechanism for determining whether those resources should be available in the first place or, indeed, as a mechanism for justifying the retraction of that entitlement altogether. Conor O’Mahony illustrates this particularly effectively, emphasising how the framing of socio-economic (in his case, educational) entitlement as a legally-binding right rather than as a discretionary function of public authorities can have a transformative effect on their justiciability (O’Mahony, 2008).

* + 1. **Gathering strong evidence that children’s rights are a sound economic investment.**

At the heart of economic planning is a genuine belief not so much in the fact that the investment is ideologically, morally and ethically worthwhile, but that it is economically sound. No amount of children’s rights posturing or creative articulation of the children’s rights framework will achieve the level of investment required if the CBA evidence is painting a rather different (less lucrative) picture. Hard facts and figures speak to politicians, not abstracted children’s rights aspirations. Even rights that are less contested (notably those relating to child protection) are easily displaced or suspended where resource constraints beckon. The more fundamental paradigm shift that is required of decision-makers, whereby children’s rights are valued and prioritised, will come about more easily if accompanied by a more persuasive economic case that investment in rights pays significant dividends that far outweigh the financial benefits of ignoring them. The problem is, of course, that we have relatively limited hard evidence to support this assertion. Mainstream economists rarely, if ever, operate within a children’s rights paradigm any more than children’s rights activists operate within an economic one. They are notoriously uneasy bedfellows.[[41]](#footnote-41)

And yet there are some examples emerging of how this rights-based approach to CBA could work in practice**.[[42]](#footnote-42)**For instance, a 2014 report from Unicef UK and The Children’s Society(2014)assessed the costs and financial benefits of establishing a legal guardianship service to protect and support the estimated 3,000 unaccompanied and separated migrant children arriving in the UK every year. In conducting their CBA, they take as their starting point international children’s rights law which articulates the responsibility of states to provide guardians for all separated children.[[43]](#footnote-43) Such obligations are informed by an extensive body of intelligence attesting to the many benefits - socially, economically, educationally, psychologically - of providing separated children with independent and sustained support to assist them in navigating often traumatic and alien administrative, cultural, social and legal processes. The CBA undertaken by Unicef and The Children’s Society estimated that the annual cost of funding such a role was estimated to be £4,892 per child and that every £1 spent on such a system would lead to a benefit of £2.39. Of this, about half would come from reduced spending on legal challenges and appeals in the asylum process (approximately £27m) insofar as the guardian would ensure that the child was fully informed of the legal options available to him or her and would facilitate access to the most appropriate legal advice and representation. This intelligence has been used to support the establishment of a guardianship scheme in Scotland for unaccompanied asylum-seeking children which, to date, has been a resounding economic and social success and a model of good practice for other parts of the UK (Edinburgh Peace and Justice Centre, 2016).[[44]](#footnote-44)

There are numerous other areas in which a similar approach could be envisaged in determining appropriate, cost effective legal and policy responses affecting children. As already noted, had the UK government adhered more readily to the international children’s rights obligation that the detention of children should only be a measure of last resort (Art 37(b) CRC; Rule 13 of the UN Standard Minimum Rules for the Administration of Juvenile Justice 1985 (the Beijing Rules)) millions of pounds would not have been wasted on the misguided and counterproductive incarceration of child offenders that was so commonplace from the early 1990s onwards. Similarly, a rights-based approach to school exclusions – one that acknowledges that children with a disability have the right to special care and support (Art 23 CRC; Arts 7 and 8 UNCRPD), that every child has the right to an education, that discipline in schools must respect children's human dignity (Art 28 CRC) and that children's education should develop each child's personality, talents and abilities to the fullest (Art 29 CRC) – would have diverted policies away rather earlier than has been the case, from punitive expulsion towards more constructive investment in joined up services to address causative factors such as children’s mental health and family support.[[45]](#footnote-45) These findings are supported by independent evaluations of Unicef’s Rights Respective Schools Initiative,[[46]](#footnote-46) a UK-wide programme that embeds children’s rights within all aspects of school life, from policy planning, to resource allocation, discipline and curriculum delivery. Schools report that embracing a rights-based ethos stimulates an enhanced sense of collaboration between staff and students and results in improvements in all aspects of the schools performance, with tangible cost benefits associated with reduced absenteeism and exclusion (Sebba and Robinson, 2010; Dunhill, 2018). On a more global scale, Unicef’s Child Friendly Cities and Communities Initiative is already yielding strong evidence that localised investment in building a sound public services infrastructure based on children’s rights principles reaps significant benefits, not just for children, but for communities in general (Malone, 2015).

In the same vein, there is persuasive anecdotal evidence that public services can be more efficient, relevant and cost-effective if they respond directly to the expressed needs and expectations of the children who use those services. The UK children’s rights charity, Investing in Children, for example, has spent years testing the financial and societal effects of public services’ compliance with their Article 12 CRC obligations through direct and routine engagement with children and young people. They report on the success of an initiative by a neighbourhood police team who agreed to engage in more constructive dialogue with a group of young people whose behaviour had been identified as anti-social. This resulted in the officers developing a much more sympathetic view of the young people’s position (they lived in an impoverished community with almost no youth or leisure facilities) and a less confrontational policing style. As a consequence, the rate of ‘youth related’ incidents requiring a police response dropped by over 80% in a twelve-month period, representing a considerable saving of police resources. They also report on a project that created space for children and young people with diabetes to be consulted more directly in decisions about their medical treatment. This resulted in a dramatic increase in the use of insulin pumps (as opposed to hypodermic syringes) and placed the young people on a much healthier treatment trajectory. The projected savings to the NHS were regarded as ‘vast’; the consultant paediatrician involved in the project commented that by empowering children to manage their condition, they avoid many more costly complications further down the line (Mulhearn and Brown, 2017a; Brown and Mulhearn, 2017b).

**Conclusion**

Children’s enjoyment of their rights will always be curtailed if resources are withheld from the services, institutions, processes and personnel that deliver on those rights. This paper has discussed the persuasive, pervasive use of CBA by those charged with determining whether to invest those resources. CBA sits at the hazy intersection between rights protection and public financial accountability, and yet there has been no attempt to date to scrutinise the extent to which children’s rights obligations and guidance inform CBA processes. The evidence presented in this paper concludes that CBA is routinely carried out through wilful or selective blindness to children’s rights. In some cases, it has been deployed to positively undermine them in the name of cutting costs. Those charged with the protection of children’s rights – including civil society organisations and private entities tendering for public services contracts - have colluded in the CBA delusion by negotiating on such terms. But CBA does not have to represent such a stark choice between economic rationing on the one hand and dynamic rights protection on the other. As Amartya Sen notes, *“sensible cost benefit analysis demands something beyond the mainstream method, in particular, the invoking of explicit social choice judgments that take us beyond market-centered valuation*” (2000, at p.952). Related mechanisms such as Social Return on Investment (Nicholls et al, 2012; Fischer and Stanak, 2017), Child Rights Impact Assessments (Unicef, 2017; Collins and Guevara, 2014) and a growing appreciation of the ‘opportunity costs’ associated with poor resourcing (Sculpher et al, 2017), all seek to move us beyond this purely market-centred valuation, but they are not nearly as widespread and entrenched as CBA.

Rights can and should be accommodated more explicitly within CBA, not least by taking the intelligence underpinning children’s rights obligations, which States have freely negotiated and by which they are legally bound, as an essential reference point in this process. Of course, this requires a level of conviction on the part of those undertaking and responding to CBA that children’s rights can be realistically achieved within a given economic paradigm; that the children’s rights framework, far from undermining the economic impetus of CBA, is positively instrumental to a fertile economy. Gathering evidence to that effect takes time and will demand more creative and open-minded collaboration between economists and children’s rights experts. In the meantime, those who deploy CBA arguments to advance children’s interests could do more to ensure that economic arguments, for all of their political palatability, are more intimately aligned with the children’s rights obligations by which duty-bearers must be held to account.

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1. \* I am indebted to Kathryn Hollingsworth, Debra Morris, Aoife Daly, Joshua Curtis, Amandine Garde, Liam Cairns, Mike Jones and Seamus Byrne for their feedback on earlier drafts of this article. Any remaining errors or omissions are my own. [↑](#footnote-ref-1)
2. For a more qualitative review, see Ruxton, 2012. [↑](#footnote-ref-2)
3. The United Nations World Food Programme defines food security as having reliable and consistent access at all times to sufficient, safe, nutritious food to maintain a healthy and active life. [↑](#footnote-ref-3)
4. Children’s charities have reported that more than 500 child protection inquiries were initiated daily in 2017, compared to around 200 a day the decade previously. [↑](#footnote-ref-4)
5. This critique responds to the general, core principles rather than the technical approaches to CBA of which others are more qualified to comment. See in particular, Sen, 2000; and Adler and Posner, 2000. [↑](#footnote-ref-5)
6. This report estimated that if services had intervened early for just one in ten of the young people sentenced to prison each year, public services could save over £100 million annually. See also Bateman, 2011. [↑](#footnote-ref-6)
7. Speech by former Labour leader, Tony Blair at the annual Labour Party Conference, 30 September 1993 and legally endorsed in the Crime and Disorder Act 1998 and the Criminal Justice Act 2003 [↑](#footnote-ref-7)
8. For a very comprehensive historical overview of penal politics since the 1980s, see Goldson, ‘The circular motions’, 2015. [↑](#footnote-ref-8)
9. Youth custody consumed 75% of the youth justice budget at the start of the recession (2008 - http://blogs.lse.ac.uk/politicsandpolicy/the-austerity-of-youth-justice/ [↑](#footnote-ref-9)
10. Art 37(b) CRC; Council of Europe Guidelines on Child Friendly Justice, Section IV(A) paragraph 19. [↑](#footnote-ref-10)
11. Referred to by Jo Phoenix as ‘Repressive welfarism’ (2009, at p.113) [↑](#footnote-ref-11)
12. The Social Security (Lone Parents and Miscellaneous Amendments) Regulations 2012, No. 874 [↑](#footnote-ref-12)
13. The Income Support (Work-Related Activity) and Miscellaneous Amendments Regulations, 2014 No. 1097A claimant with a child over 3 may be required to undertake work-related activity, and part of the benefit may be withdrawn for non-compliance. According to Department for Work and Pensions Statistics, in the year up to and including December 2014, 43,100 sanctions (essentially up to a 20% reduction in the amount of income support a parent receives) were imposed on lone parents in receipt of Income Support. See further DWP, *Income Support Lone Parents Regime: Official Statistics Quarterly official statistics bulletin*, 27th May 2015. [↑](#footnote-ref-13)
14. Welfare Reform Act 2012 and Benefit Cap (Housing Benefit) Regulations 2012 [↑](#footnote-ref-14)
15. Welfare Reform and Work Act 2016, ss.13-14. Such rules have survived recent challenges, in *R (SG) v Secretary of State for Work and Pensions* [2015] UKSC 16; and in *SC & Ors v SSWP* [2018] EWHC 864 (Admin), [↑](#footnote-ref-15)
16. The pledge to provide free childcare of up to 30 hours a week for all working parents of 3 and 4 year olds did not come into effect until September 2017, whilst the welfare cuts were implemented almost immediately. [↑](#footnote-ref-16)
17. *R (SG and Others) v SSWP (previously JS and Others) v. SSWP,* [2015] UKSC 16. For a detailed analysis of the children’s rights implications of this decision, see Hollingsworth, 2015. [↑](#footnote-ref-17)
18. Legal Aid Sentencing and Punishment Act 2012 (LASPO) [↑](#footnote-ref-18)
19. Legal Aid Agency Legal Aid Statistics in England and Wales – January to March 2016, (Ministry of Justice, 30 June 2016) [↑](#footnote-ref-19)
20. It has been estimated that approximately 68,000 children per year are affected *indirectly* by the cuts in legal aid in private family cases alone (The Family Court Unions Parliamentary Group, 2014, at p.3) [↑](#footnote-ref-20)
21. While there are some commendable attempts to assess particular policy interventions, in CBA terms these openly concede that there are significant challenges in translating the findings of a defined research area into broader, concrete policy recommendations. Good examples are offered by Dalziel et al, 2015; Burger, 2010; and Zechmeister et al, 2008). [↑](#footnote-ref-21)
22. Although this presumption is challenged later in the discussion – see below at 2.3.2. [↑](#footnote-ref-22)
23. Not just by virtue of Article 3 of the UN Convention on the Rights of the Child, but under s.11 of The Children Act 2004, Part III of the Children Act 1989, and through a range of domestic policy instruments specifically targeting unaccompanied children in particular. See further Stalford, 2018. [↑](#footnote-ref-23)
24. According to cross-national comparative research, one in five children and adolescents across the EU suffer from developmental, emotional or behavioural problems, and one in eight has a mental disorder (Braddick, et al, 2009; Cyhlarova, et al., 2010. [↑](#footnote-ref-24)
25. See also CBA guidance introduced by the Government to support the public procurement process, ex. HM Treasury, Public Service Information Network and New Economy, ‘Supporting public service transformation: cost benefit analysis guidance for local partnerships’ (April 2014) [↑](#footnote-ref-25)
26. See also <https://www.theguardian.com/society/2016/jun/04/child-deaths-priory-hospitals-cancel-nhs-contract>. [↑](#footnote-ref-26)
27. For a critical review of the abject failure of human rights to address economic inequalities altogether, see Moyn, 2018. [↑](#footnote-ref-27)
28. It is worth noting that Nolan (above note 12, pp.260-2) draws attention to the CRC’s ‘confused approach’ to the concepts of ‘progressive realisation’ and ‘maximum available resources’, observing that ‘the fact that the rate of progressive realisation is necessarily affected by the extent of resources available to the state does not reduce that concept to simply a restatement of the “maximum available resources” point’. [↑](#footnote-ref-28)
29. For a detailed analysis of the influence of the International Convention on Economic, Social and Cultural Rights and associated monitoring process on the development of the Committee’s guidance on the CRC, see Nolan, 2013. [↑](#footnote-ref-29)
30. General Comment No.5 of the Committee on the Rights of the Child. [↑](#footnote-ref-30)
31. Above note 82, at p.121. [↑](#footnote-ref-31)
32. While it is beyond the scope of this article to consider in any depth how the courts balance children’s rights with resource issues, see in particular *Nzolameso v Westminster City Council* [2015] UKSC 22; R (AM) v LB of Tower Hamlets and Havering [2015] EWHC 1004 (Admin); *Burnip v Birmingham City Council; Trengrove v Walsall Metropolitan Council; Gorry v Wiltshire Council* [2012] EWCA Civ 629, [2012] LGR 954; *R (MA) v Secretary of State for Work and Pensions (Equality and Human Rights Commission Intervening)* [2014] EWCA Civ 13, [2014] PTSR 584; and *R (on the application of HC) (Appellant) v Secretary of State for Work and Pensions and others (Respondents)* [2017] UKSC 73 . For a more cautious perspective on the effectiveness of pursuing the protection of children’s economic and social rights through the courts, see Nolan, 2012, chapter 6. [↑](#footnote-ref-32)
33. International monitoring mechanisms, such as the UN Committee on Economic, Social and Cultural Rights (CESCR), can hold states to account in this regard. In 2015, the CESCR launched an investigation into the UK government’s welfare cuts alleged to disproportionately affect children and other marginalised groups. See further list of issues in relation to the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, E/C.12/GBR/Q/6, 3 November 2015. [↑](#footnote-ref-33)
34. Article 4 CRC requires States to undertake all appropriate legislative, administrative and other measures for the implementation of the rights in the Convention and devote the maximum amount of available resources to the realization of economic, social and cultural rights of the child. At a regional level, see also the Rights of Children and Young Persons (Wales) Measure 2011; and the Scotland, the Children and Young People (Scotland) Act 2014. [↑](#footnote-ref-34)
35. See also the Treasury Guidance on public procurement, and the guidance ‘Managing Public Money’ (July 2013, with annexes revised in August 2015) both of which draw on the Green Book. [↑](#footnote-ref-35)
36. Separate guidance has been issued to enable officials to determine the impact of public spending decisions on families, which includes some reference to children, although not within an explicit rights context (Department for Work and Pensions, 2014). More recently, the Minister for Children and Families reiterated the Government’s full commitment to the promotion and safeguarding of children’s rights, in accordance with the CRC, across all areas of activity. Zahawi N. Written ministerial statement for universal children’s day: HCWS1093, Department for Education. 2018, available at: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-11-20/HCWS1093/> [↑](#footnote-ref-36)
37. See for example para 51 of General Comment No 5, Similarly, GC No. 14 on the best interests principle and GCs no 17 (para 54) and No 16 (para 29) all require States to introduce the necessary legislative, administrative, judicial, budgetary, promotion and *other measures* aimed at the full enjoyment of those rights. [↑](#footnote-ref-37)
38. General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, CRC/C/GC/15 17 April 2013, para 38. [↑](#footnote-ref-38)
39. Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, CMW/C/GC/3-CRC/C/GC/22; [↑](#footnote-ref-39)
40. Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23. [↑](#footnote-ref-40)
41. A notable exception is S. De Vylder, 2004. [↑](#footnote-ref-41)
42. Some progress has been made in conceptualising and evidencing the complementarity between broader human rights and economics. See in particular, Salomon and Arnott, 2014; Nolan, O'Connell and Harvey, 2013; Nolan, 2014; Balakrishnan and Elson, 2008 and 2011; Seymour and Pincus, 2008; Harvey, 2002). As far as children are concerned, it is worth seeing how the Childonomics model will develop over time. Although it is not explicitly framed within a children’s rights context, they propose a methodology that involves contextualised, participatory evidence-gathering alongside the use of established, official datasets to test the impact of various types of investment in children’s services on children’s outcomes (or ‘benefits’) at individual, family, community and society level (Gheorghe et al, 2017). [↑](#footnote-ref-42)
43. Article 22 CRC; UNICEF (2006), Guidelines on protecting the rights of trafficked children; UN Committee on the Rights of the Child (2005), General Comment 6; EU Trafficking Directive (2011); Council of Europe Convention on Action against Trafficking in Human Beings. [↑](#footnote-ref-43)
44. NI passed legislation to introduce a similar guardianship scheme at the end of 2016. See also the findings of a CBA conducted by the Open Political Economy Network in relation to the first comprehensive, international study of how refugees can contribute to advanced economies. Its findings estimate that investing one euro in welcoming refugees can yield nearly two euros in economic benefits within five years. Again, the research adopts the rights framework as its starting point, specifically the United Nations Convention and Protocol Relating to the Status of Refugees which legally commits states parties to offering refuge to people forcibly displaced from their country (Legrain, 2016). [↑](#footnote-ref-44)
45. See the revealing findings of the CBA conducted by Scott, et al., 2001; and Bagley and Pritchard, 1998. [↑](#footnote-ref-45)
46. http://www.unicef.org.uk/rights-respecting-schools/ [↑](#footnote-ref-46)