House of Lords
House of Commons

Joint Committee on Human Rights

Children's Rights: Government Response to the Committee's Twenty–fifth Report of Session 2008–09

Tenth Report of Session 2009–10

Report, together written evidence and formal minutes

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders made under Section 10 of and laid under Schedule 2 to the Human Rights Act 1998; and in respect of draft remedial orders and remedial orders, whether the special attention of the House should be drawn to them on any of the grounds specified in Standing Order No. 73 (Lords)/151 (Commons) (Statutory Instruments (Joint Committee)).

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is three from each House.

Current membership

HOUSE OF LORDS	HOUSE OF COMMONS
Lord Bowness	Mr Andrew Dismore MP (Labour, *Hendon*) (Chairman)
Lord Dubs	Dr Evan Harris MP (Liberal Democrat, *Oxford West & Abingdon*)
Baroness Falkner of Margravine	Ms Fiona MacTaggart (Labour, *Slough*)
Lord Morris of Handsworth OJ	Mr Virendra Sharma MP (Labour, *Ealing, Southall*)
The Earl of Onslow	Mr Richard Shepherd MP (Conservative, *Aldridge-Brownhills*)
Baroness Prashar	Mr Edward Timpson MP (Conservative, *Crewe & Nantwich)*

Powers

The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers, and to make Reports to both Houses. The Lords Committee has power to agree with the Commons in the appointment of a Chairman.

Publications

The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/commons/selcom/hrhome.htm.

Current Staff

The current staff of the Committee are: Mark Egan (Commons Clerk), Chloe Mawson (Lords Clerk), Murray Hunt (Legal Adviser), Angela Patrick and Joanne Sawyer (Assistant Legal Advisers), James Clarke (Senior Committee Assistant), John Porter (Committee Assistant), Joanna Griffin (Lords Committee Assistant) and Keith Pryke (Office Support Assistant).

Contacts

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Report

With this Report we are publishing the Government's reply to our Twenty-fifth Report of 2008-09, *Children's Rights*, which we received under cover of a letter from Baroness Morgan, Parliamentary Under-Secretary of State for Children, Young People and Families, dated 11 February. We are also publishing our correspondence with the Home Secretary about the Government's position on the use of Mosquito devices to disperse groups of children.

Formal Minutes

Tuesday 23 February 2010

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Bowness	Dr Evan Harris MP
Baroness Falkner of Margravine	Fiona Mactaggart MP
Lord Morris of Handsworth	Mr Richard Shepherd MP
The Earl of Onslow	

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Draft Report (*Children's Rights: Government Response to the Committee's Twenty-fifth Report of Session 2008-09*), proposed by the Chairman, brought up and read the first and second time, and agreed to.

Resolved, That the Report be the Tenth Report of the Committee to each House.

Ordered, That the Chairman make the Report to the House of Commons and that Lord Morris of Handsworth make the Report to the House of Lords.

Written evidence was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 12 January.

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[Adjourned till Tuesday 2 March at 1.30pm.

List of Written Evidence

1 Letter and Government Response from Baroness Morgan, Parliamentary Under Secretary of State for Children, Young People and Families, dated 11 February 2010

2 Letter from the Chair of the Committee to Alan Campbell MP, Parliamentary Under Secretary of State, Home Office, dated 8 December 2009

3 Letter to the Chair from Alan Campbell MP, dated 31 December 2009

Written Evidence

Letter and Government Response to the Chair of the Committee from Baroness Morgan, Parliamentary Under Secretary of State for Children, Young People and Families, dated 11 February 2010

I attach the Government's response to the recommendations in the Joint Committee on Human Rights' (JCHR) report, Children's Rights, published on 20 November 2009.

Since my last evidence to the JCHR on 24 March 2009, I am pleased to say that the Government is making good progress in its response to the UN Committee on the Rights of Child's Concluding Observations.

I mentioned at the Oral Hearing with the JCHR that I plan to meet with my ministerial colleagues from the Devolved Administration to discuss how we work together to take forward the UN Committee's Concluding Observations and I am delighted that our meeting resulted in a firm commitment to do this and led to the publication of a UK-wide commitment document, *Working Together Achieving More*, which was published on 20 November 2009, the anniversary of UNCRC. It was launched at an event to mark the occasion at Lancaster House in London for children and young people. It sets out how the UK Government and the devolved administrations will collaboratively to address the Concluding Observations and includes areas of common interest where the four nations will address jointly.

The Government's *UNCRC: priorities for action* also published on 20 November 2009, outlines the progress made since 2008 alongside priorities for further action to address them. We plan to review the document annually and report on our progress. Similar plans have been published in the devolved administrations.

The DCSF is currently undertaking a mapping exercise on English legislations against the UNCRC articles in response to the JCHR recommendation where it asked for information on '*the extent to which the UNCRC rights are or are not already protected by UK law*'. We are scheduled to complete the exercise in early March and will send the JCHR a copy of the completed document then.

Finally, I want to assure the committee that the Government remain fully committed to the implementation of the UNCRC and will continue the work with our key stakeholders including the four Children Commissioners and children and young people to make children's rights a reality in the UK.

Annex: Government Response to the Committee's twenty-fifth Report of Session 2008-09

The Select Committee's recommendations are in bold text.

The Government's response is in plain text.

Where recommendations relate to very similar issues they have been grouped and answered together.

Implementation of the UNCRC

1. We recommend that the UK's next report to the UN Committee should again focus on addressing the UN Committee's most recent Concluding Observations, but with clearer links to future plans (and how their success can be assessed) as well as to the work of the devolved administrations and local government.

2. We recommend that the UK Government devise a comprehensive and detailed plan for implementation of the UN Committee's recommendations across the UK. This should be completed in conjunction with the devolved administrations and the Children's Commissioners, and be subject to widespread consultation. We recommend that the Government publishes annual reports in order to monitor progress on implementation more regularly than is required by the UN monitoring process. (Paragraph 19).

The UK Government is responsible for co-ordinating the implementation of the UNCRC across the UK and works closely with the devolved administration to implement the UNCRC.

The Children's Plan published in 2007 sets out the Government's ambitions to improve the lives of all children and young people and is underpinned by the UNCRC. Following the publication of the UN Committee's Concluding Observations in October 2008, the Government set out its priorities for addressing the UN Committee's Concluding Observations in the annex to the Children's Plan 'One Year On' (published in December 2008). The Children's plan 'Two Year On' published in December 2009, outlines the Government's progress on its objectives for children and young people and families and set out its next steps to work towards a better future for every child and young person.

'*Working together, achieving more*' published on 20 November 2009, set out how the UK Government and the devolved administrations will work together to address the UN Committee's Concluding Observations including areas of common interest where the four nations will address jointly.

The Government's '*UNCRC*: *Priorities for action*' sets out the progress made since 2008 alongside its priorities for further action to address them. The Government will work in partnership with NGOs, delivery partners and children and young people to drive progress and will report progress on all of the priority areas set out in this document by the end of 2010 and review these annually.

Similar plans have been published by the devolved administrations; Wales published *UNCRC: 'Getting it right';* Scotland published, *UNCRC*: *'Do the right thing'*; and Northern Ireland is developing additional actions for inclusion in its existing children young people's strategy action plan.

3. We recommend that further information be given by the Government about the extent to which the UNCRC rights are or are not already protected by UK law. (Paragraph 28).

The UK Government takes its commitment to comply with the obligation under the UNCRC very seriously. It meets its obligations under the UNCRC through a combination of legislation, policy initiatives and guidance. However, the Government continues to keep under review the mechanism for the protection of children's rights in the UK.

The Department for Children Schools and Families is currently undertaking a mapping exercise of English legislation against the UNCRC articles; this involves working with officials across Whitehall. We are scheduled to complete the document in early March and will send a copy to the JCHR when it is completed.

4. We reiterate our recommendation on the merits of including children's rights within any Bill of Rights for the UK. We are pleased to note that the Government is open to the possibility of their special protection, but are disappointed that this does not extend to creating directly enforceable rights or using the Bill of Rights to incorporate the UNCRC. We urge the Government to ensure that it consults widely on this question to ascertain how many of those working closely with children share the Government's view that it would make no practical difference to the lives of children. (Paragraph 30).

As recommended by the UN Committee on the Rights of the Child, the 2009 Green Paper, *Rights and responsibilities,* prioritised children's rights and said that a future Bill of Rights and Responsibilities could contain a right for children to achieve wellbeing, whatever their background or circumstances.

The Green Paper notes that any provision on a right to achieve wellbeing could be based on the broad aspirations such as those captured in the five *Every Child Matters* outcomes and other policy schemes in different parts of the United Kingdom, which are in turn underpinned by the general principles in the UN Convention on the Rights of the Child. These goals could form the basis of provisions in a future Bill of Rights and Responsibilities, articulating principles to guide public authorities and lawmakers when making policy and legislative decisions concerning children, and by the courts when interpreting legislation and reviewing executive and administrative action relating to child wellbeing. While there will be no legislation in the current Parliament, the Government believes that this particular subject should continue to occupy a central place in relation to the debate on any future Bill of Rights and Responsibilities.

We are currently consulting on the Green Paper. Through the office of the Children's Rights Director, children and young people were able to contribute their views on the consultation.

5. We do not understand why the Secretary of State is content to draw up his own Children's Plan with regard to the principles and Articles of the UNCRC, but is not prepared to require the authorities drawing up local Children's Plans to do the same. We ask the Secretary of State to reconsider and to ask the relevant local authorities to draw up their plans with due regard to the need to implement the UNCRC and the recommendations of the UN Committee (Paragraph 31).

The Government have included in draft statutory guidance as part of the Apprenticeship, Skills, Children and Learning Act 2009, an expectation that the preparation and development of the local area's Children and Young People's Plan by the Children's Trust Board will be consistent with the general principles of UNCRC. These plans will set out

how the Children's Trust Board partners will work together to improve children's wellbeing through the services they provide in a local area. The draft guidance is currently out for consultation and guidance will be published in spring 2010.

Attitudes towards children and discrimination

6. We were pleased to hear the Minister's commitment to do more to address negative, damaging and unfounded stereotyping of children and young people within society. Innovative and proactive solutions are required to address this problem, which has the potential to do real harm to the status and aspirations of children living in the UK, who have much to contribute to society. Such solutions should be timely, well targeted and funded. We recommend that the Government bring forward proposals to deal with this issue and look forward to receiving the evaluation of the Government's communications campaign in due course. (Paragraph 38).

The Government is working with key stakeholders including the four Children's Commissioners to identify how best to address negative portrayal of children by the media. A targeted communications strategy is being considered which aims to rebalance the public narrative about young people by actively promoting good news stories on a local level. This will help improve adults' perception and secure greater confidence by young people that their contribution and achievements are recognised.

Key groups from within the youth sector are currently working alongside media organisations to develop plans for a children and youth media centre. A feasibility study is being undertaken involving 11 MILLION, into the development of the centre, which would put journalists in touch with children and young people and vice versa, thereby ensuring that more children and young people's views are reported in the mainstream media. By creating a media centre which facilitates contact between journalists and young people, it is hoped that young people will feel more engaged with the media and have the opportunity to voice their opinions on the issues which effect them – leading to a more balanced and positive representation of young people.

The UN Committee and the JCHR's concerns about intolerance of children and young people and their negative portrayal in the media are being addressed through Aiming High for Young People. At the forefront of these measures is the development of a national youth week, Shine week. The week comprises national and local events to celebrate the talents and achievements of all young people. This year, Shine week culminated with young people from all over the country taking over the House of Lords to debate the issues most important to them, including their portrayal in the media. Shine Week 2010 will take place from 12 to 16 July.

Over £6 million is being invested between 2009 and 2011 in the development of The Youth of Today, a national body for youth leadership to offer a range of opportunities to young people, such as shadowing Ministers and Council leaders. It will also run a youth-led campaign to celebrate the achievements of young people, encouraging society to welcome them as leaders within their communities.

The Prime Minister announced in April 2009 a new programme to support opportunities for young people aged 14-16: pilots in five local authorities will look at expanding the

number of community service opportunities for this age group and increasing take-up. Our long-term ambition is that every young person should give at least 50 hours of service to their community in their teenage years. The Government has appointed Dawn Butler MP as Minister for Young Citizens and Youth Engagement. One of the priorities of this new ministerial portfolio will be to seek ways to help increase young people's participation in their local communities as well as in local and national politics.

We are happy to keep the Committee informed of progress from this range of activity to address negative portrayal of young people.

7. We recommend that the Equality Bill be amended to extend protection from age discrimination to people regardless of their age in relation to the provision of goods, facilities and services, except where discrimination on the grounds of age can be justified. (Paragraph 45)

The Government puts great value on the human rights and the worth of our children. Through the Equality Bill, which we anticipate will be enacted before the summer of 2010; we will bring together and strengthen existing legislation on discrimination. Children will be protected in the same way as adults against discrimination on grounds of their sex, race, disability, religion or belief, or sexual orientation.

Age discrimination provisions do not extend to the under 18s because it is almost always appropriate to treat children of different ages in a way which is appropriate to their particular stage of development, abilities, capabilities and level of responsibility.

Children of different ages have different needs, which should be reflected by the support and services they receive. Many services provided for young people are organised on the basis of age and some services are exclusively targeted at, or give priority to young people. We would wish to preserve such services that could be under threat if a prohibition on age discrimination extended to under 18s, since adults, or children of any age, could claim discrimination for not receiving the same level of service. For example, if a local council offered certain recreational facilities for children of specific ages, which were not accessible to adults or children of other ages. We have carefully considered this matter as part of the Equality Bill, including looking closely at any evidence presented on age discrimination in relation to young people.

The JCHR suggests that legislation which prohibited age discrimination would not put age-appropriate services at risk if it allowed a defence of justification for acts of age discrimination. However the legal test of objective justification is a high one, and would potentially require the actual age limits set in any case to be justified as well as the general principle of age-related provision. Children just above or just below any age limit might argue that they were suffering unfair discrimination by exclusion. It would be very hard for service providers to be sure what the outcome of any legal challenge might be, and experience of the Employment Equality (Age) Regulations 2006 indicates that there is a risk of service providers deciding not to provide age-related services rather than take any risk of legal challenge.

Children in the criminal justice system

8. Whilst we welcome the Government's commitment to reduce the number of first time entrants to the juvenile justice system, this conflicts with the continuing expansion of the range of offences which apply to children. For the Government's goal to be achieved, it must be coupled with action across Government, particularly the Home Office, to refrain from creating additional offences which lead to the greater likelihood of children being criminalised. In addition, offences on the statute book which may be committed by children should be reviewed with a view to repealing those that are not necessary, such as those that have never been used or have never been the subject of a prosecution. (Paragraph 51)

9. We would like to see a real reduction in the numbers of children being detained in the UK each year. There is a lack of clarity about the trends in the incidence of child detention, both on remand and sentenced. We are also concerned that some very vulnerable children are significantly more likely to be detained than others. We urge the Government to comply fully with its obligations under the Convention, in particular to ensure that custody is only used as a measure of last resort and to address the reasons for the over-representation of certain groups of children in detention. (Paragraph 77)

The Government's overriding ambition is to prevent children and young people getting into trouble with the law in the first place. A range of early intervention measures to prevent children who are at risk of coming into conflict with the law is set out in the Government's Youth Crime Action Plan (YCAP), published in July 2008. This is backed by £100m of new funding and sets out a triple track approach, encompassing better prevention to tackle problems before they become serious or entrenched; more non-negotiable support to address the underlying causes of poor behaviour; and tough enforcement where behaviour is unacceptable. Specific work under the plan includes removing young people who are at risk, from the streets at night and taking them to a place of safety with support services on hand and after-school patrols to tackle anti-social behaviour, disorder and more serious offending (including knife crime) at school at closing time and on problematic bus routes.

Current trends clearly indicate a sharp decrease in the number of young people aged 10-17 entering the criminal justice system, dropping from 94,481 in 2007/8 to 74,033 in 2008/09, a decrease of 21.6% Re-offending rates are also decreasing – frequency of juvenile re-offending fell by 23.6% between 2000 and 2007 (from 151.4 offences per 100 offenders committed within one year, to 115.7 offences). The number of under- 18s in the custody population is decreasing: in September 2009, the total number was 14 per cent lower than at the same point in 2008 and 19 per cent lower than the peak in 2002.

An accurate trend in the number of young people being remanded in custody is less easily identifiable. The Youth Justice Board provides two data sources: secure estate data which counts the average number of young people who are in custodial remand at any one time; and, YJB workload data which counts the number of remand episodes imposed by the courts.

The secure estate data for 2007/08 show a 41% increase since 2000/01 in the average number of young people on remand in custody. The Workload data show that the number of remand episodes handed down by the courts has fallen by 10% since 2002 demonstrating that there have been fewer repeat remand decisions over this period. The two data sets provide different remand measures and cannot easily be compared. The Government is committed to reducing the number of young people in custody, remanded and sentenced, and is looking at remand data as well as examining a number of options in relation to reducing the use of remand.

Young people in the youth justice system are often among the most troubled in the country; from chaotic backgrounds and with complex needs. The Government has taken a number of steps to ensure that young people are given the right support to address any needs they have upon entering the youth justice system including mental health issues, drugs problems or learning difficulties**.**

The Government is also committed to promoting the use of non-custodial sentences. In the Criminal Justice and Immigration Act 2008, the Government legislated for alternatives to custody for under-18s. The Youth Rehabilitation Order (YRO) was introduced on 30 November 2009 (for offences committed from that date) and provides two specific alternatives to custody. It will combine nine existing sentences into one enhanced, generic sentence and will be the standard community sentence used for the majority of young offenders.

Legislation came into effect alongside the YRO that requires courts to consider making a YRO (with an alternative to custody) before they can make a custodial sentence. If they decide to make a custodial sentence, they must explain why a YRO is not appropriate. In addition, the Sentencing Guidelines Council has published over-arching principles of sentencing for young people. We believe this will provide courts with a significant tool to help them achieve consistency in sentencing.

10. The Government should review and explain why such a disproportionate number of children who are looked-after, Gypsies and Travellers or have autism, are present within the criminal justice system, and why existing strategies appear to be failing. Such children, who are already likely to have experienced significant disadvantage and even discrimination in their early lives, require specific and targeted measures and support, outside of the criminal justice system. (Paragraph 57)

We do not have exact figures on the representation of looked after children, traveller children and children with autism in the criminal justice system.

To consider the specific needs of all children and young people in contact with the youth justice system, including those with mental health and learning difficulties, *Healthy Children, Safer Communities* – a strategy to promote the health and wellbeing needs of children and young people in contact with the youth justice system, was published on 8 December 2009. This strategy looks across the entire youth justice pathway to see where we can intervene earlier, faster and more effectively to meet the health and wellbeing needs of vulnerable young people. This will contribute to achieving better health outcomes and to reducing offending and reoffending.

We recognise the need to take into account the full range of factors that may influence why a young person becomes an offender.

Youth Offending Teams (YOT) are required to examine the young person's background, and report on their education, needs, understanding, and emotional understanding.

Courts are advised by reports made to them by YOT and the new sentencing guideline (published 20 November 2009) provides detailed guidance to courts on the factors that should be considered when sentencing an under-18. It is hoped that the availability of this guideline will help courts achieve greater consistency.

The Youth Restorative Disposal (YRD) is an innovative new summary being piloted in Avon and Somerset; Cumbria; Greater Manchester; Lancashire; Metropolitan; Norfolk; North Wales; and Nottinghamshire. The key aim of the YRD is to reduce the number of first-time entrants into the Criminal Justice System. It holds to account and challenges inappropriate behaviour and minor criminal offending using restorative justice principles. The YRD also enables earlier identification of young people by referring all offenders to the appropriate YOT, thus providing a new opportunity to reintegrate young people by identifying early risk factors and providing support, particularly for the vulnerable groups in society.

Placing YOT officers in police stations at the point of arrest (triage) is being piloted across 69 Youth Crime Action Plan areas. The aim of triage is to assess young people at the earliest stage in order to deliver swift and appropriate intervention to prevent escalation of offending through the criminal justice system. The early assessment also allows for joint decision making between the police and YOTs to divert young people who have committed low level offences out of the criminal justice system by offering, as a minimum, a restorative justice intervention.

11. We were pleased to hear the Minister's comments in oral evidence that as children's Minister she would try to safeguard and protect children, including those involved in prostitution. However, her subsequent written response, which reiterates the Government's line on why children involved in prostitution should continue to be criminalised, directly contradicts her oral evidence. This, as we have stated in previous Reports, flies in the face of international standards and the strong observations of the UN Committee; and also breaches the principle that victims of crime should not be criminalised. (Paragraph 60)

New guidance, Safeguarding children and young people from sexual exploitation, was published in June 2009. This guidance should inform procedures drawn up by Local Safeguarding Children Boards to ensure that local agencies work effectively to address this type of abuse.

he guidance provides information about different forms of sexual exploitation to help practitioners identify those at risk. It sets out the roles and responsibilities of different organisations involved in safeguarding and promoting the welfare of children; identify action that can be taken to prevent and reduce sexual exploitation; and provide advice on how to manage individual cases; and what needs to be done to identify and prosecute perpetrators.

We have made clear in Parliament during the recent Policing and Crime Bill that children found loitering or soliciting for the purposes of prostitution are victims and should be treated as such, and that criminal justice intervention should only be used in exceptional circumstances. But we also made clear that there are important reasons for maintaining the current law and allowing criminal justice intervention where it is the last resort and may be the most effective way of protecting a child from prostitution.

12. We are not persuaded by the Minister's response [on the age of criminal responsibility], which goes against the strong recommendations of the UN Committee and practice in comparable states. We fail to understand why criminal penalties are necessary to ensure that other services such as family intervention programmes are made available. Whilst we do not underestimate the effects on communities of the offending of some very young children, we do not believe that the UK's current response is consistent with its international obligations to children. Indeed, we consider that resort to the criminal law for very young children can be detrimental to those communities and counter-productive. We endorse the views of witnesses who advocate a welfare-based and child-rights oriented approach. This has the merit not only of being consistent with the UN Convention, but also of bringing about early and positive change in children's lives to prevent them from entering the criminal justice system in the first place. (Paragraph 66)

We know that many countries have a higher minimum age of criminal responsibility, but each country must make a judgement based on its own circumstances. We believe that children in England are old enough to differentiate between bad behaviour and serious wrong doing at age 10.

However, we are keen to ensure that children and young people are not prosecuted whenever an alternative can be found. Local multi-agency Youth Offending Teams include social services and health professionals who can refer the child on to other statutory services for further investigation and support if appropriate. For example, this can include child welfare departments or Child and Adolescent Mental Health Services. In addition there are civil alternatives for intervening in cases of anti-social behaviour such as Acceptable Behaviour Contracts and Anti-Social Behaviour Orders.

Criminal penalties are not a requirement for accessing Family Intervention Projects (FIPs). FIPs were originally set up to target families involved in persistent anti-social behaviour who are causing disproportionate problems in their communities and are at risk of losing their homes. The Youth Crime FIPs, which are funded in every local authority, target families experiencing multiple problems known to be linked to future risk of offending – these are often the same risk factors as those that cause a range of poor outcomes for children and young people including poor attainment and behavioural problems, mental ill health, domestic violence or having a parent in prison. There are pilot local authorities who are also receiving funding to test the family intervention model with families who are workless and who have significant barriers to work. Local authorities decide the referral routes for all the projects and this can involve a range of agencies, and the service should complement the existing local authority service structures. Due to the complex needs of the families and young people that are supported by family intervention projects, a criminal justice system enforcement action may be place, but is not a condition of accessing the service.

We are also expanding ways to divert young people away from the criminal justice system where this is appropriate. These include liaison and diversion schemes in police custody suites such as the "triage" scheme and also restorative justice interventions like the Youth Restorative Disposal. Initiatives such as these are possible because the criminal offence is recognised and acted upon but they do not result in a criminal record for the young person and are shown to have a high rate of satisfaction for the victim. By using Restorative Justice approaches, and these are embedded and being expanded in the youth justice system, we can give a voice to victims and educate the young person about the impact of their offending. This allows the victim, where they wish to be involved, and the young person to move on with their lives without further disturbance.

The success of initiatives such as this and other prevention schemes is supported by a decrease of 21% in the rate of young people receiving their first reprimand, warning or conviction from 2007-08 to 2008-09.

However, we can't avoid the fact that when a young person offends they have done something wrong and this may well have had a direct impact on a victim. It would be wrong to ignore that and it would lower community confidence in the justice system if we did so.

13. We are disappointed to hear of continuing breaches of Article 37 UNCRC, despite the Government's purported intention fully to comply with the Convention, and urge the Government to do all that is required, as a matter of urgency, to ensure that it and the devolved administrations are able fully to meet the UK's international obligations. (Paragraph 83)

Article 37(c) provides that children who are in custody should not mix with adult prisoners unless mixing is in the best interests of the child. (For example where there is an urgent need to evacuate children and young people from a secure estate for their safety either because of a fire or riot.).

When the UK ratified the UNCRC in 1991, there was no separate under-18 secure estate so a reservation was made against this article.

Since then, we have achieved major changes in the secure estate for children and young people. We established a discrete secure estate for boys under 18 in 2000 and for girls under 18 in 2006. Custodial establishments in England and Wales are now able to comply with the terms of Article 37(c). As a result, with the agreement of Scotland and Northern Ireland, we were able to withdraw the reservation in November 2008.

The Northern Ireland Office has made legislative and operational changes to ensure that Northern Ireland complies with Article 37(c).

In Northern Ireland, girls under 18 requiring custody are no longer held with female adults, but are accommodated at Woodlands Juvenile Justice Centre which is an under-18 establishment. A small number of 17 year old boys are held at Hydebank Wood Young Offenders Centre, but this is a split site establishment with two separate, dedicated landings for under-18s, a specific juvenile regime and tailored education provision. Due to the nature of this specialist provision within the Young Offenders Centre, the Northern Ireland Office is content that arrangements for 17 year old boys provide sufficient

separation from the young adult males accommodated on the same site to meet Article 37 obligations.

In order to better meet the UNCRC and in particular Article 37(c), the Scottish Prison Service (SPS) is developing its strategy for 16 and 17 year olds in custody that will ensure young people receive individualised age and stage appropriate care within a secure and fair environment.

In Scotland, the recent opening of Blair House at HM Young Offenders Institution Polmont improves compliance with the UNCRC. It provides complete separation of 16 and 17 year old young men in a centralised facility which offers a pragmatic approach to improving compliance. The SPS is further working to improve compliance in relation to 16 and 17 year old young women and to developing sustainable, long-term solutions in the best interests of the child.

14. We reiterate our strong concerns that pain compliance is still used as a tactic against young people in detention, and used disproportionately against vulnerable girls. We are particularly concerned that this remains the case, even though the independent review recognised that the use of pain compliance techniques would be irreconcilable with the UN Convention. We find this situation to be alarming and to go against the Government's espoused commitment to the best interests of the child. The Minister failed to persuade us that such techniques are necessary or consistent with the Convention. We reiterate our previous conclusions that techniques which rely on the use of pain are incompatible with the UNCRC. (Paragraph 94)

The Youth Justice Board's code of practice, *Managing the Behaviour of Children and Young People in the Secure Estate* states that restrictive physical interventions must only be used as a last resort, when there is no alternative available or other options have been exhausted. They must not be used as a punishment, or merely to secure compliance with staff instructions.

The Independent Review of Restraint was published in December 2008, alongside a Government response. Work is now underway to implement the 58 recommendations. £5 million of additional funding has been made available for the period 2009-11 to fund improvements in the secure estate for children and young people. This includes an accelerated programme of training for staff in the skills they need to understand and work with young people. The Youth Justice Board has agreed a package of funding to ensure that Secure Training Centres and privately owned young offender institutions have CCTV in common areas, which will also be used to monitor the use of restraint. In accordance with a key recommendation in the Independent Review of Restraint, we are establishing the Restraint Accreditation Board; a panel of medical experts who from 2010 will assess the safety of, and accredit, all restraint techniques to be used in secure training centres and young offender institutions.

The Government does not accept that there is any breach of the UN Convention. The rights of the child include rights of children in custody to be protected from assault by other detainees: giving effect to that right may sometimes require use of pain-compliant techniques. Restraint is not used solely to prevent a young person from harming others: it

is often necessary to restrain a young person to prevent self-harm. Girls in custody are significantly more likely to try to harm themselves than boys.

The use of a pain-compliant technique causes temporary discomfort to prevent a potentially much greater harm to the young person and/or to others. The law allows any reasonable use of force for that purpose.

15. Anti-social behaviour is an issue which rightly causes widespread concern within the UK. We do not underestimate the extent to which anti-social behaviour, by children or adults, can fundamentally blight the lives of individuals and communities. We commend the Government's commitment to tackling this issue. Indeed, human rights law may require it where the effect of the anti-social behaviour is to interfere with the rights of others to respect for their home or not to be discriminated against. We question, however, the degree to which anti-social behaviour orders (ASBOs) hasten children's entry into the criminal justice system, before other strategies have been tried. (Paragraph 105)

We are clear that custody should be a last resort for young people who breach their ASBOs. This is recorded in joint practitioner guidance[1]. A study by the Youth Justice Board in December 2004 concluded that the use of ASBOs was not bringing a whole new group of young people into custody. The study identified the majority of young people entering custody as a result of breaching an ASBO as '*prolific offenders*". In the study, 43 young people who received custody for breach of an ASBO had a total of 1779 offences between them. Further research by the YJB published in November 2006 confirms this finding.

The Government is committed to diverting young people from crime and anti-social behaviour. Last year we launched the Youth Crime Action Plan, a cross-government programme of action to tackle youth crime and anti-social behaviour and reduce re-offending. It set out a triple track approach of enforcement where behaviour is unacceptable, non-negotiable support and challenge to children and families where it is needed and better and earlier prevention. This builds on major progress we have made in the last decade in tackling youth offending. Backed by £100m of new investment it has led to significant action over the past year and a half, which has made a real difference to young people, families and communities. The number of young people entering the criminal justice system for the first time is falling. The number in England fell from 94,481 in 2007–08 to 74,033 in 2008–09 – a 21.6% decrease.

The Criminal Justice System has a role to play in protecting children from crime and anti-social behaviour. Enforcement actions, such as ASBOs, should not therefore be seen solely in terms of their impact on the small minority of young people who persistently engage in anti-social behaviour. They should also be seen as helping protect young victims.

However when Anti-social Behaviour Orders are used it is important that young people and their families receive the support they need to address the underlying causes of their behaviour. Therefore we have increased the availability of Individual Support Orders (ISO) alongside Anti-social Behaviour Orders on conviction and enabled local agencies to apply to the court to extend the period of time of an ISO. Challenge and Support Projects being delivered in 52 areas of the country take exactly this approach, that every time a young

[1] http://www.crimereduction.homeoffice.gov.uk/antisocialbehaviour/antisocialbehaviour55.pdf

person receives an enforcement measure for their behaviour, they also receive support to address the causes including through the use of an ISO where appropriate.

As part of the Crime and Security Bill, the Government is currently legislating for mandatory parenting orders on breach of an ASBO by 10 to 15 year olds and for a mandatory parenting needs assessment to be carried out when agencies are considering making an ASBO.

Asylum-seeking, refugee and trafficked children

16. We are surprised that the UK does not consider that any changes are required in the light of the removal of the reservation to Article 22. At the very least, we would expect that training and policy papers would need to be updated in order to ensure that decision makers have access to correct and authoritative information as to the current legal requirements. We recommend that the Government justify its argument that the withdrawal of the reservation to Article 22 of the UNCRC does not require any change to current practice or policy in this area. (Paragraph 113)

The UK Government entered a reservation to ensure that the UK was able to apply its own legislation governing the entry into, the stay in and the departure from the UK of persons subject to immigration control. Although already broadly compliant with the Convention, withdrawing the reservation was made possible largely because of the way we have transformed our child protection arrangements since the reservation was made in 1991.

UK domestic law already represented a well-developed framework based on the paramount importance of the welfare of the child and had high standards in relation to the standards of care and treatment available to children in the UK, including asylum-seeking children and other children present in the UK in breach of the Immigration Rules. But to further strengthen our domestic law arrangements, the Government introduced a new duty in the Borders, Immigration and Citizenship Act 2009 to safeguard and promote the welfare of children, which replaced a Code of Practice on keeping children safe from harm.

No substantive changes in legislation or procedure were deemed necessary simply as a result of the withdrawal of the reservation because in practice we judged that we were already compliant with the Convention. But statutory guidance has been updated to reflect the new safeguarding duty and reinforce the duty UK Border Agency (UKBA) has to protect children (Please see response to paragraph 19)

17. We welcome the Government's commitment to finding alternatives to detention of asylum-seeking families. However, the evidence we have heard leads us to believe that realistic alternatives have not yet been properly set up, tested or evaluated. We urge the Government to evaluate and learn the lessons of the Millbank Pilot and apply them to future projects, including the pilot in Glasgow. In particular, we agree with witnesses who suggest that alternatives to detention will only be effective if they are commenced sufficiently early and accompanied by good communication with families so as to encourage them to engage with the authorities. (Paragraph 122).

The UK Border Agency ran a pilot for 11 months from November 2007 at Millbank in Ashford, Kent, in conjunction with Migrant Helpline. This was aimed at refused asylum seekers with children who had no legal right to remain in the UK. (Migrant Helpline is a

registered charity with extensive experience of dealing with asylum seekers.) The pilot was an attempt to find alternative ways of removing children and families without the need to detain them.

The pilot was less successful than we had hoped, as the project did not successfully promote the anticipated increase in Assisted Voluntary Returns, with only one family choosing to take that option. The primary reasons for this were the very low number of families referred to the project and further legal representations by the families that were selected.

A family return project is currently being piloted in Glasgow (Alternative to Detention). It is being run by Glasgow City Council in partnership with UK Border Agency and the Scottish Government. The main objective is to reduce the number of asylum seeker families with children that are detained by helping those not granted refugee status or humanitarian protection by the courts to return voluntarily. The project which was established in July 2009 is at its infancy and we wait to see the outcome of the pilot.

UKBA has sought to learn the lessons from the Millbank pilot which is being taken forward in the Glasgow project. The project is led by Glasgow City Council and involves, the Scottish Government, International Organisation for Migration and Scottish Refugee Council. An evaluation contract has been awarded and will continue throughout the life of the project.

18. We are disappointed that, more than two years after our Report on the Treatment of Asylum Seekers, age-disputed children continue to be poorly treated and to experience the problems we previously identified. We reiterate our previous recommendations that x-rays and other medical assessment methods should not be relied upon to determine age, given the margin of error. The process for dealing with age disputes should be reviewed with a view to ensuring that no age-disputed asylum seeker is detained or removed unless and until an integrated age assessment has been undertaken. (Paragraph 124)

We do not agree with the Joint Committee on Human Rights' claim that age-disputed individuals are poorly treated. Those who cannot prove their age but who claim to be children (and where this claim may be credible) are given the benefit of the doubt and treated as children, unless and until a local authority conducts a full age assessment in compliance with the guidelines in the Merton case[2] which concludes that they are aged 18 or over.

Where individuals' appearance and/or demeanour very strongly suggest that they are significantly over the age of 18, they are considered to be adults, since to give the benefit of the doubt in these cases (i.e. to treat them as age-disputed) would entail grown adults and children being placed in the same accommodation, which would be a breach of other standards that exist around the care of children who are placed in accommodation.

On x-rays and other medical assessment methods of age determination, we have not yet commissioned these, though we do not share the Committee's view that there is such a margin of error in these methods that it rules out their utility.

Other than in exceptional circumstances, we do not detain individuals who claim to be children, unless their appearance and/or demeanour very strongly suggest that they are significantly over the age of 18. Exceptions would include where the individual had already been assessed as an adult in a Merton compliant process; where they held credible documentation showing them to be adult; or where we accepted that the individual was, or could be, a child, but were waiting for the local authority's children's services to collect them. In these latter circumstances, detention is for a brief period only, to ensure the child's safety. In the event that an individual claims to be an unaccompanied child after being detained, they will be age-assessed by the local authority. In the event that a Merton compliant age assessment concludes that they are below the age of 18, they are released into the care of that local authority immediately.

We would not remove an individual from the UK where previously there had been doubts about their age, unless we were satisfied as to whether they were a child or an adult.

19. We welcome the steps taken by the Government in adopting a new Code of Practice and statutory duty which have the potential to provide greater protection to the human rights of child asylum seekers. We urge the Government to ensure that all staff are appropriately trained on their new responsibilities, that robust mechanisms are put in place to monitor and ensure compliance with the duties and that accessible information is provided to those seeking asylum on how they can expect to be treated by the UK Border Agency in the light of these responsibilities. We will continue to monitor developments in this area. (Paragraph 132).

On 2 November 2009 section 55 of the Borders, Citizenship and Immigration Act 2009 came into force. This places a duty on the Secretary of State to make arrangements for ensuring that immigration, asylum and nationality functions are discharged having regard to the need to safeguard and promote the welfare of children who are in the UK.

The duty is intended to have the same effect as section 11 of the Children Act 2004 which places a similar duty on public bodies in England (section 55 applies to the activities of the UK Border Agency throughout the UK). It thus places the Border Agency on the same footing as those bodies and to improve inter-agency working.

The duty is supported by statutory guidance issued to the Agency jointly by Ministers from the Home Office and the Department for Children, Schools and Families, and an extensive staff training programme.

Children and armed conflict

20. We note the UN Committee's extensive set of recommendations to the UK on compliance with the Optional Protocol to the Convention on the Rights of the Child on Children in Armed Conflict. We recommend that the UK adopt a plan of action for implementing the Optional Protocol, including these recommendations, fully in the UK, together with a clear timetable for doing so. (Paragraph 143)

We are considering the recommendations to the UK on compliance with the Optional Protocol. We set out our position on the various elements of the UNCRC in written and oral evidence in 2007 and in 2008, and our position remains as stated then. We continue to ensure that we safeguard the welfare and interests of our young service personnel in line

with the key tenets of the UNCRC. We are not complacent; we remain vigilant on this important issue.

In terms of training, publication and promotion of the Optional Protocol, all members of the armed forces receive training on the Law of Armed Conflict (LOAC) shortly after joining and regularly throughout their careers. The UK armed forces do not routinely train all personnel on the Optional Protocol specifically, but personnel involved in handling prisoners of war, internees and detainees receive training which addresses the handling of juveniles and children. The Ministry of Defence are examining what more can be done to promote the Optional Protocol.

Letter from the Chair of the Committee to Alan Campbell MP, Parliamentary Under Secretary of State, Home Office, dated 8 December 2009

"Mosquito devices"

The Joint Committee on Human Rights is considering the human rights implications of the sale and use of special devices which are being marketed as a deterrent against anti-social behaviour by young people ("mosquito devices").

Children's rights have been a consistent focus of our work. Our first Report in our programme of scrutinising the UK's implementation of the main international human rights treaties was on the UNCRC in 2003[2] and on the Bill which became the Children Act 2004[3]We have also published Reports on the case for a Children's Rights Commissioner for England in 2003[4]. Since then, we have frequently reported on children's issues in the context of our routine scrutiny of Government Bills, including five Bills in the current session[5]. In our most recent Report on Children's Rights we raised many different types of discrimination against children, including the unfair treatment of children and young people in public spaces, particularly in shops, public transport and where "mosquito" devices are in use to disperse crowds[6]. The UN Committee on the Rights of the Child has recently highlighted the general intolerance and negative public attitudes towards children which can often be the underlying cause of further infringement of their rights, in particular the right to freedom of movement and peaceful assembly[7]. Related to this, it recommended that the Government should reconsider the use of mosquito devices[8].

The UK is a signatory of the UNCRC which imposes a positive duty on the state to guarantee the basic rights under this Convention, including the right to a standard of living

[2] Tenth Report of Session 2002–03, *The UN Convention on the Rights of the Child*, HL Paper 117, HC 81.

[3] Nineteenth Report of Session 2003–04, *Children Bill*, HL Paper 161, HC 537.

[4] Ninth Report of Session 2002-03, *The Case for a Children's Commissioner for England*, HL Paper 96, HC 666.

[5] See e.g., Ninth Report of Session 2008–09, *Legislative Scrutiny: Borders, Citizenship and Immigration Bill,* HL Paper 62, HC 375 at paras 1.8–1.16; Tenth Report of Session 2008–09, *Legislative Scrutiny: Policing and Crime Bill*, HL Paper 68, HC 395 at paras 1.62–1.66; Fourteenth Report of Session 2008–09, *Legislative Scrutiny: Apprenticeships, Skills, Children and Learning Bill*, HL Paper 78, HC 414 at paras 2.1–2.51; Fifteenth Report of Session 2007–08, *Legislative Scrutiny: Children and Young Persons Bill*, HL Paper 81, HC 440 at paras 1.1–1.50.

[6] Twenty-fifth Report of Session 2008–09, *Children's Rights*, HL Paper 157, HC 318, p 17.

[7] Committee on the Rights of the Child, Consideration of Reports Submitted by State Parties under Article 44 of the Convention, Concluding Observations, United Kingdom of Great Britain and Northern Ireland, 3 October 2008, CRC/C/GBR/CO/4., para 24.

[8] Ibid.

adequate for the child's physical, mental, spiritual, moral and social development; rights to healthcare, freedom of expression, and play, as well as the right to life to be protected from abuse. The JCHR is concerned that the deployment of mosquito devices, which only affect children and are indiscriminate in the children they affect, is in potential violation of internationally agreed human rights standards and requests clarification of the Government's position on their use.

We are aware the John Austin MP has previously been in correspondence with you on this issue and we have seen your response to him dated 20 October 2009. We also note your Written Answer to Mr Austin's Parliamentary Question of 15 October 2009, in which you stated that the Home Office does not have any plans to take further action on this matter.

We should be grateful if you could provide a memorandum setting out the Government's position on the sale, use, human rights and health implications of the deployment of mosquito devices. In particular:

- **Does the Government accept that mosquito devices have a disproportionate effect on children and young people?**
- **If so, what is the justification for any discriminatory impact?**
- **Do you consider that the use of mosquito devices is a proportionate response to anti-social behaviour? If so, please explain how, including you explanation of how the use of an indiscriminate device can be proportionate.**
- **What discussions, if any, has the Home Office had with other Government Departments and/or the police regarding the use of mosquito devices?**
- **Does the Home Office propose to review their use at any point?**
- **Can you provide us with a copy of the advice that you have given to practitioners as well as a copy of the Health and Safety Executive's assessment of the health risk posed by the use of mosquito devices?**

I am copying this letter to the Secretary of State for Health, given that we have asked about health implications.

Letter to the Chair from Alan Campbell MP, dated 31 December 2009

Thank you for your letter of 8th December about the human rights implications of the use of mosquito devices in tackling anti-social behaviour by young people.

Firstly, I would like to say that the Home Office does not promote the use of the 'mosquito' device. I would also like to be clear that we would be absolutely opposed to the use of any measures which interfered with children enjoying the company of their friends in public places or jeopardised their safety.

Our position on anti-social behaviour is that it should be tackled, not tolerated. We encourage local agencies to consider the full range of innovations and schemes and practices intended to reduce crime, the fear of crime and anti-social behaviour. It is for local agencies to decide on the most appropriate interventions based on their knowledge of

what works best locally. With that in mind, the Home Office has advised practitioners that the use of any device which claims to disperse groups of young people without a proven track record of success should be treated with caution and if used should form part of an overall strategy to tackle the drivers of that anti-social behaviour.

It is for Crime and Disorder Partnerships to decide whether these devices should be used to tackle ant-social behaviour problems. These partnerships also have a responsibility to communicate with people in local communities, including young people, to take account of their views and involve them when implementing these solution.

The Health and Safety Executive has considered the literature available on the mosquito device in order to determine whether there is any risk to health, either to hearing or other effects, which might be relevant under Section 3 of the Health and Safety at Work Act 1974. The Health and Safety Executive concluded that the literature available on very high frequency/ultrasound units of this type did not identify any significant and relevant health effects that may harm children/youths exposed to vhf/ultrasound in the long term.

The Health and Safety Executive also considered that in terms of noise exposure in the context of the Control of Noise as Work Regulations 2005, and therefore possible implications for persons working in proximity to these units, at the stated output level (for the mosquito unit) of an A-weighted sound pressure level of 76 Db, for the likely duration of the exposure, there was not likely to be any risk of an exposed person suffering hearing damage.

They concluded that based on the information and evidence available and whilst there is the possibility of some short-term subjective effects if the duration of exposure is prolonged, there would appear to be little likelihood of persons exposed to vhf/ultrasound from this device suffering long term ill health.

There are no regulations that govern the use of ultra-sonic devices and currently, we have no plans to ban the use of the 'mosquito' device. However, prolonged exposure to the noise emitted by a device may be a statutory nuisance. If an environment health officer took the view that it affected the occupants of a property, action could be taken against the owner of the noise emitter. Powers under Section 62 of the Control of Pollution Act 1974 which controls the use of loudspeakers for any purpose between the hours of 9pm and 8am could also be used.

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Sixth Report	UN Convention on the Rights of Persons with Disabilities: Government Response to the Committee's First Report of Session 2008-09	HL Paper 46/HC 315

Seventh Report	Demonstrating respect for rights? A human rights approach to policing protest	HL Paper 47/HC 320
Eighth Report	Legislative Scrutiny: Coroners and Justice Bill	HL Paper 57/HC 362
Ninth Report	Legislative Scrutiny: Borders, Citizenship and Immigration	HL Paper62/HC 375
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Eighteenth Report	Counter-Terrorism Policy and Human Rights (Fifteenth Report): Annual Renewal of 28 Days 2009	HL Paper 119/HC 726
Nineteenth Report	Legislative Scrutiny: Parliamentary Standards Bill	HL Paper 124/HC 844
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Twenty-fifth Report	Children's Rights	HL Paper 157/HC 338
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Seventh Report	A Life Like Any Other? Human Rights of Adults with Learning Disabilities: Volume II Oral and Written Evidence	HL Paper 40-II/HC 73-II
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Tenth Report	Counter-Terrorism Policy and Human Rights (Ninth report): Annual Renewal of Control Orders Legislation 2008	HL Paper 57/HC 356
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Twenty-Second Report	Government Response to the Committee's Fourteenth Report of Session 2007-08: Data Protection and Human Rights	HL Paper 125/HC 754

Twenty-Third Report	Legislative Scrutiny: Government Replies	HL Paper 126/HC 755
Twenty-Fourth Report	Counter-Terrorism Policy and Human Rights: Government Responses to the Committee's Twentieth and Twenty-first Reports of Session 2007-08 and other correspondence	HL Paper 127/HC 756
Twenty-fifth Report	Counter-Terrorism Policy and Human Rights (Twelfth Report): Annual Renewal of 28 Days 2008	HL Paper 132/HC 825
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Twenty-eighth Report	UN Convention against Torture: Discrepancies in Evidence given to the Committee About the Use of Prohibited Interrogation Techniques in Iraq	HL Paper 157/HC 527
Twenty-ninth Report	A Bill of Rights for the UK?: Volume I Report and Formal Minutes	HL Paper 165-I/HC 150-I
Twenty-ninth Report	A Bill of Rights for the UK?: Volume II Oral and Written Evidence	HL Paper 165-II/HC 150-II
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Thirty-first Report	Monitoring the Government's Response to Human Rights Judgments: Annual Report 2008	HL Paper 173/HC 1078
Thirty-second Report	Scrutiny of Mental Health Legislation: Government Response to the Committee's Sixteenth Report of Session 2007-08	HL Paper/ HC 1079