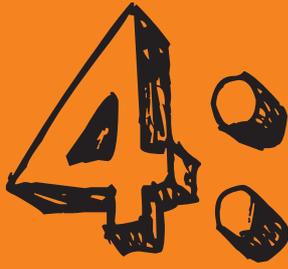


Education
Family Life and Alternative
Family and Welfare
Civil Rights
Care
Health and Culture
Justice
Leisure, Play and
Juvenile
Protection



FAMILY LIFE AND ALTERNATIVE CARE



4.1 Introduction

The article 19 right to protection from violence within the family environment has previously been explored in chapter 3 in the wider context of protection, with particular consideration given to the issues of physical punishment, domestic violence and abuse and the efforts made by the State to address these ongoing breaches of children’s rights. This chapter proceeds with an exploration of the wider context of family life, considering in particular the relationship between parental responsibility and the evolving capacity of the child and the onus on States to proactively support parents in the upbringing of their children.

The second part of this chapter presents an exploration of the experiences of children and young people who, for one reason or another, are being brought up within an alternative care environment. The chapter concludes with a series of priority action areas that, if addressed, would substantially progress the rights of children and young people to a safe and appropriate upbringing.



4.2 A Rights-based Approach to Family Life

While the preamble to the Convention upholds the family as ‘the fundamental group of society and the natural environment for the growth and wellbeing of all its members and particularly children’, it does not offer any definitive definition as to what constitutes a family. Subsequent commentary by the Committee does however offer further clarification on the intended application of the term within the Convention.

The report of the Committee’s 1994 Day of General Discussion on the role of the family, for example, clarifies that *“the Convention refers to the extended family and the community and applies in situations of nuclear family, separated parents, single-parent family, common-law family and adoptive family”*, concluding that *“such situations deserve to be studied in the framework of the rights of the child within the family”* (CRC 1994b:para 2.1).

The Committee reiterates this broad interpretation of the concept of family in General Comment Number 7, issued in 2005, recognising *“an overall trend towards greater diversity in family size, parental roles and arrangements for bringing up children”* and acknowledging *“that each of these relationships can make a distinctive contribution to the fulfilment of children’s rights under the Convention and that a range of family patterns may be consistent with promoting children’s wellbeing”* (CRC 2005b:para 19). The use

4

FAMILY LIFE AND ALTERNATIVE CARE

of the term 'family' in this report should be interpreted in this inclusive manner.

There are many different articles of the UNCRC that address the issue of family life and the rights that children should be afforded in relation to this. As previously explored in chapter 3, article 19 outlines a series of protections that all children and young people should be afforded whilst in the care of their parents or other responsible adults – these include protection from physical, sexual or mental violence, neglect or negligent treatment or any form of injury or abuse.



Articles 3(2), 5, 18 and 27 of the Convention together address the relationship between children, their families and the State, in relation to the care, protection and development of the child and the complexities of where responsibility for this lies:

“These four articles of the Convention, taken together, make clear that parents have primary responsibility for securing the best interests of the child as their ‘basic concern’, but that this responsibility is circumscribed by the child’s rights under the Convention and may be shared with others such as members of the wider family.

The State must take appropriate steps to assist parents in fulfilling their responsibilities, and if parents cannot manage this, the State must step in to secure the child’s rights and needs” (UNICEF 2007:231).

Other articles of the Convention also of primary relevance to the issue of family life include article 7 (the right to be cared for by one’s parents), article 9 (governing separation from one’s parents), article 10 (inter-jurisdictional parental contact) and article 26 (the right to financial support). Articles 8 (identity) and 14 (right to freedom of thought, conscience and religion), though less central to the debate, also relate to the area of family life:

“The civil rights of the child begin with the family. The family has an important role to play as to the right of the child to be registered with a name, to a nationality, to know as far as possible his or her parentage, and to preserve his or her identity. Socialization and acquisition of values are developed within the family...The family is an essential agent for creating awareness and preservation of human rights, and respect for human values” (CRC 1994b:para 2.2).

Articles 20, 21 and 25 (explored in section 4.9) address the needs and rights of children who cannot, for whatever reason, grow and develop within the family environment.

Like any other articles within the Convention, these articles should be interpreted in light of both the four general principles of the Convention and the other articles contained therein. Moving beyond the UNCRC, they

should also be read in conjunction with, and interpreted in light of, a series of other rules and guidelines also issued by the UN, including:

- General Comment Number 4 on ‘Adolescent Health and Development’
- General Comment Number 7 on ‘Implementing Child Rights in Early Childhood’
- General Discussion on ‘Role of the the Day’
- Family in the Promotion of the Rights of the Child’.

The ECHR also considers the issue of family life, stipulating in article 8 that ‘everyone has the right to respect for his private and family life’. Unlike the UNCRC, the ECHR has now been fully incorporated into domestic law via the Human Rights Act 1998 which, though not child specific, affords children full enjoyment of the rights contained therein.

4.3 Overview of Family Life in Northern Ireland

The concept of ‘family’, and the accepted use of the term within NI, has changed considerably in recent years; adapting and expanding to incorporate a variety of familial forms beyond that of the traditional nuclear family. As DHSSPS notes in its 2007 draft ‘Families Matter’ strategy:

“There have been major changes to family structures in Northern Ireland over the last few decades. Today when we talk about families, we do not just mean the traditional mother and father living in the same household as their children. The definition of family has evolved and covers, single parent households, children

living with step-parents, same-sex families, or children living with a relative” (DHSSPS 2007g:14).

DHSSPS offers the following definition of family for the purposes of the draft strategy:

“A family consists of any child or young person under the age of 18 (21 for young people leaving care and disabled young people) and their primary caretakers. A primary caretaker can be a parent, an expectant mother or other biological relative or any person involved in bringing up the child or young person who has responsibility for that young person or child” (DHSSPS 2007g:15).

Children’s experiences of family life in NI vary widely, in terms of who they live with, their relationships with these and other individuals, the safety and wellbeing they experience within their family environment and the levels and types of care provided. While for some children the family is a place of safety and nurture, for others it is an environment of violence, fear, neglect or abuse. While for some, it is a place of freedom and exploration, for others it is a cause of worry or the source of duties and responsibilities beyond their years.

Though the State has a fundamental role to play in promoting and supporting the effective upbringing of children within the family environment, most children and young people growing up in NI will experience little direct State intervention in this regard. As illustrated previously in chapter 3, however, there is a significant minority of children whose family life is subject to direct State intervention, legislated

4

FAMILY LIFE AND ALTERNATIVE CARE

for under the Children (Northern Ireland) Order 1995. Recent years have witnessed increased recognition of the importance of family support prior to such intervention thresholds being reached, with the concepts of prevention and early intervention gaining increasing prominence within both the policy and practice arenas. The draft family support strategy 'Families Matter', produced by DHSSPS in January 2007, clarifies this position stating that direct intervention should only occur in extreme circumstances when the welfare of the child is at risk; for example, from domestic violence, physical, sexual or emotional abuse.

The draft strategy for family support in NI cites as its primary aim the creation of confident, responsible and empowered parents who (through access to seamless services, support and information) are able to support their children to reach their full potential and become active citizens within society. The strategy proposes achievement of this aim through the continued delivery of universal support services, supplemented by a primary focus on preventive and early intervention services to support parents at particular times of need and at particular stages in the development of their child. Particular developments proposed within the draft strategy include:

- increased investment in positive parenting and parent education
- increased provision of family mediation services
- implementation of a regional information database on services for families
- development of a regional parent helpline
- introduction of a common assessment framework throughout NI
- development of new information sharing protocols
- establishment of new children's centres providing a service hub within the community (DHSSPS 2007g).

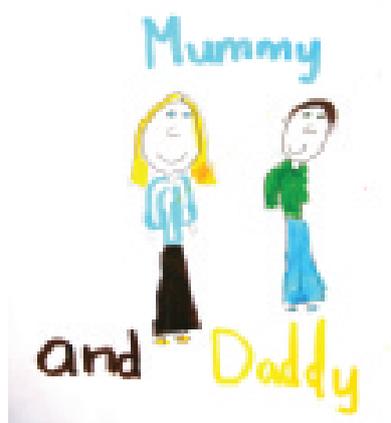
These, and other, proposals contained within the draft 'Families Matter' strategy have been generally welcomed, in terms of the focus on parental support, prevention and intervention and the adoption of a whole child approach to service delivery. However, issues raised as requiring further consideration in response to the initial proposals included the need for stronger inter-governmental working, help for families of children with additional needs and 'hard to reach' families to access universal services and the role of social services in the provision of effective preventative family support structures (DHSSPS 2007h).

Though consultation on the draft strategy ended in March 2007, at the time of writing no final strategy has yet been published. In its continued absence, there remains no overarching strategy or framework for the provision of family support services within NI. If the historically fragmented and piecemeal nature of family support within NI is to be addressed, it is imperative that a comprehensive strategy be produced without further undue delay and that this strategy be accompanied by specific time-bound targets, clear lines of accountability, evaluation and review and an adequate ring-fenced resource package. From a rights perspective, it is also imperative that this strategy be guided by, and reflective of, both the four general principles

and other relevant articles of the UNCRC and that in progressing it the State give appropriate consideration to the Committee’s most recent call to *“intensify its efforts to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities”* (CRC 2008:para 45).

4.4 The Role and Responsibilities of Parents in the Upbringing of Children

The Preamble to the Convention on the Rights of the Child clearly identifies the family as the preferred environment for the upbringing of children, recognising the family ‘as the fundamental group of society and the natural environment for the growth and wellbeing of all its members and particularly children’. It further notes that all children ‘for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding’ though, recognising that this is not always the case, adds a number of further protections and caveats throughout the Convention, including those of State support for family life and the possibility of statutory intervention should a child’s experience of family life prove detrimental to their wellbeing or development.



Article 27 of the Convention places a clear responsibility on parents, or others responsible for the child, to ‘secure within their abilities and financial capabilities, the conditions of living necessary for the child’s development’. This includes, amongst other things, material needs, care, support, education and protection. It is important to note that though this responsibility lies primarily with parents, the State has a clear accompanying duty to support parents in the outworking of this obligation, through the provision of both material assistance and appropriate programmes of support. This is explored further in section 4.5 below.

Article 5 of the Convention considers the relationship between the role of parents to direct and guide their children and the capacity of children to exercise the self-expressive and developmental rights afforded them within the Convention. Commenting on the effective realisation of article 5, the Implementation Handbook for the Convention observes that *“the Convention challenges concepts that parents have absolute rights over their children... The rights and duties that parents have derive from their responsibility to act in the best interests of the child...the nature of parental direction and guidance is not unlimited; it must be ‘appropriate’, be consistent with the ‘evolving capacities of the child’ and with the remainder of the Convention”* (UNICEF 2007:76-79).

Committee commentary on this, and other relevant articles of the UNCRC, firmly links the issues of parental rights and responsibilities, clarifying that both should be interpreted and applied in light of the four general principles

4

FAMILY LIFE AND ALTERNATIVE CARE

of the Convention, in particular that of the best interests of the child:

“The Convention requires that current legal principles of parental rights be translated into principles of parental responsibilities – the legal responsibility of parents to act in the best interests of their children... ‘The best interests of the child’ are not written on tablets of stone. They will vary from child to child. Parents may have quite different views on what are a particular child’s best interests; professionals, too, may not agree with each other about what is best. The child’s rights under the Convention are therefore helpful in making the concept less subjective. Any breach of these rights (including failure to respect children’s evolving capacities) is likely to be contrary to the child’s best interest” (UNICEF 2007:232/233).



With some notable exceptions, explored elsewhere in this report, the majority of children and young people who participated in this review spoke positively about their relationships with their parents and the care provided them within the family environment:

“My parents support me in everything I do because they love me.”

“My mum’s a legend...[how?]...she talks to us about anything and we know we can talk to her. She doesn’t judge, or make a difference between people. She gives advice but won’t pressure you into it – just tells you the truth. She’s worried about us, but loves us to bits. She still has rules, but is more understanding.”

“My parents want the best for me and they do know what it is so I listen to them but they let me do my own thing as well.”

“You have someone there for you, for whatever you need and you can go to them.”

Though not always in agreement with the decisions their parents made, or the rules they set within the home environment, most children and young people recognised that their parents were acting out of genuine motives, doing what they believed was in the best interests of their children. As highlighted above, however, the issue with the concept of ‘best interests’ is its variable interpretation and the difficulty that can arise when a parent’s interpretation differs from that of the child – the findings of this review indicate that this appears to particularly be the case in relation to the exercise of children’s article 12 right within the family environment and the application of the concept of evolving capacities in this regard.

The concept of ‘evolving capacities’, contained within articles 5 and 14 of the Convention, is *“one of the Convention’s key concepts – an*

acknowledgement that children's development towards independent adulthood must be respected and promoted throughout childhood. It is linked to the requirement of Article 12 that the views of children should be given 'due weight in accordance with the age and maturity of the child'" (UNICEF 2007:77).

General Comments 4 and 7 offer detailed discussion of how, operating from a rights-based framework, the concept of evolving capacities should impact upon the role of parents throughout the lifespan of a child's development. Though the maturation and learning of children will clearly vary according to their stage of development, the central tenet that applies irrespective of age or developmental capacity is that children are active social agents, rather than passive recipients of care.

Information from the Northern Ireland Household Panel Survey in 2006 suggests that parenting behaviour in NI is influenced by both the gender and age of child, with boys being more severely parented than girls and there being fewer positive interactions between parents of teenagers and their children than parents of younger children (Lloyd and Devine 2006). The views of children and young people shared as part of this review would certainly support the latter of these findings, with teenagers being generally more negative about parent-child relationships than their counterparts of primary school age.

As highlighted above, the degree to which parents recognised the evolving capacity of the child within the family home was an issue of

particular contention for many young people who participated in this review. While some felt their parents respected the validity of their views, opinions and experiences, many others felt that their views held little sway within the family home:

"My parents are supportive and listen though sometimes they think they know better."

"I do make my own decisions but my parents do not let me make certain decisions if they do not agree with [them]. They do listen but it is very hard to make them change their minds."

"It depends on what decision it is. If I wanted to go out my parents might just say no and not even discuss where or what I might want to do."

"I think that grown ups think that they are always right no matter what."

"Parents don't listen and so their children grow up to be parents and they don't listen to their children. It's a vicious circle."

Parents' views on children's right to have their say on decisions that impact them within the family environment were similarly varied, with some parents actively encouraging their children to participate in decision making within the home and others feeling that decision making should remain in the hands of parents who knew what was best for their children:

"Until they leave school and can be financially independent parents have to take control – they may consult but ultimately parents will encourage the direction their child takes – good or bad."

4

FAMILY LIFE AND ALTERNATIVE CARE

"[Children have] too much say at home!!!!"

"Within the limits of our family, we have always tried to involve the children in decision making affecting them."

"Not old enough yet for major decisions but encourage them to think for themselves and listen to their opinion."

"Parents make decisions for their children hoping they are the best choices to enable their child to have a good life. When my child is old enough and is deemed capable I will give him the information he needs to make informed choices."

"My children have a say where appropriate in decisions which affect their life within the home, for example, my eldest daughter had a big input into her choice of grammar school. I feel however, that decisions at any higher level are made without the input of children."

"13 year old – has a say, but often unrealistic requests."

Opinions on the degree of freedom afforded children within the family home also varied amongst participants in this review. While some children and young people felt their parents gave them increasing freedom and responsibility as they got older, many others did not and this was a source of great frustration. Similarly, while some parents felt their children should have increasing freedom and responsibility as they got older, others did not, variably citing the need to protect their children and the potentially

negative consequences of lack of parental direction as the rationale behind this:

"[Parents] just don't let you do anything because they are overprotective."

Other areas of tension between children and their parents highlighted in this review include the differential treatment of siblings, or the pressure to be like them, and the negative effects of parents' working commitments:

"All my brothers and sisters are older than me, so they get treated differently to me...it seems that I'm treated differently because they're older and I'm still under the control of my parents."

"I'm the oldest, my brother gets to do everything cos he is younger."

"Parents expect you to be exactly like your older bro's or sisters."

"At home my dad works late, when he comes home he's crabby – no time to listen to us."

"Daddy's always away working in Dublin building a hotel."

While identifying areas for improvement in terms of the promotion and protection of children's rights within the home environment, most notably in respect of the exercise of children's article 12 right and the recognition of their evolving capacities, the role of parents in children's lives was, for the majority of participants in this review, a predominantly positive one.



Furthermore, while recognising that the promotion of children's rights within the family environment is frequently portrayed to be in conflict with, and a threat to, the rights and responsibilities of parents, the reality is that these two concepts are not in any way mutually incompatible. As highlighted above, the Convention clearly recognises, and indeed promotes, the important role to be played by parents in the upbringing of children, noting the family environment to be the preferred domain for the development of the child. What the Convention does, however, require is that the rights and responsibilities of parents recognised within it be exercised in line with the best interests of the child (as defined within the Convention) and in light of their evolving capacity as active social agents.

4.5 The Role of the State in Family Life

As noted previously, the Convention clearly places primary responsibility for the development of a child, and the provision of living conditions necessary for this development, with the parents or legal guardians of that child. However, as article 27 explicitly outlines, the exercise of this

responsibility is subject to the proviso of 'within [the] abilities and financial capacities' of the individual(s) concerned. Where parents, or those responsible for the child, lack the requisite skills or resources to adequately discharge these responsibilities and duties, the State must assist them in doing so through the provision of both financial assistance and relevant support programmes and institutional facilities.

Article 27 places a specific requirement on States to:

- assist parents, and others responsible for the child, to provide each child with a standard of living adequate for their physical, mental, spiritual, moral and social development
- provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing, when needed
- take all appropriate measures to secure the recovery of maintenance from parents or other persons with financial responsibility for the child.

Article 26 affords every child the right to benefit from social security, placing an onus on States to promote full realisation of this right, while article 18 further requires States to:

- render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities
- ensure the development of institutions, facilities and services for the care of children
- take all appropriate measures to ensure that children of working parents have the right to benefit from childcare services and facilities for which they are eligible.

4

FAMILY LIFE AND ALTERNATIVE CARE

The Implementation Handbook for the Convention clarifies that the obligations in relation to State assistance, contained within articles 18, 26 and 27, include both universal provision and targeted assistance for those particularly in need:

“State assistance is obviously appropriate when parents are unable to undertake their child-rearing responsibilities, regardless of whether or not this is their fault. The State should assist families identified as at risk of breaking down with practical measures, such as financial benefits, housing, day care, home helps, equipment and so forth, as well as psychological and professional support” (UNICEF 2007:237).

“But beyond targeting support to families ‘in need’, the article enjoins States to recognize their responsibility to assist all parents. Universal services and non-means tested financial benefits are a recognition by the State of its responsibility towards and interest in, children; such services and benefits are an investment in the country’s future. In addition, universal provision is often the most effective form of prevention, in that families at risk will automatically receive it, whereas targeted provision may not be taken up by those who most need it because of ignorance, a perceived stigma or complications in making a claim” (UNICEF 2007:238).

As explored throughout the remainder of this section, there are a number of different ways in which the State currently seeks to fulfil these obligations. These include the provision of benefits (both targeted and universal), the provision of funding to a range of family support

services and, most recently, the development of a range of parenting support materials. While these are all welcome initiatives, notable gaps in provision remain, not least of which are:

- the fact that not all parents are accessing, or indeed aware of, the benefits to which they are entitled
- continued inadequate levels of appropriate and affordable childcare provision
- the burden falling on young carers due to inadequate provision of support for families where parents are unable to meet their parenting obligations
- the failure of the government to extend the main programme of funding for parenting support programmes (the CYPFP) under the Programme for Government and Budget 2008–2011.

Underpinning these all is the failure to progress the draft family support strategy (previously explored in section 4.3) into a definite strategy document. As highlighted previously, if the historically fragmented and piecemeal nature of family support within NI is to be addressed, it is imperative that a comprehensive strategy be produced, resourced and implemented without further delay.

4.5.1 Financial Assistance

There is currently a range of financial benefits provided by the State to help support parents in the upbringing of their children. These include statutory maternity and paternity benefits, child benefit, carer’s allowance, free school meals, working tax credits and child tax credits. While

some of these benefits are explicitly targeted at those 'most in need', with receipt of the benefit dependent upon means testing, others are not income related and are therefore classed as universal. Even some of these benefits are not, however, universally available, as per the recommendation of the Committee, with receipt of them dependent upon satisfactory fulfilment of other requirements. Statutory maternity pay, for example, is only awarded to women who have worked for the same employer throughout their pregnancy and paid sufficient national insurance contributions.

Parents and carers who participated in this review raised concern as to the level of benefits they could claim, both when working and when out of work:

"When I am working we can afford what she needs but, when I have to claim benefits it can be difficult to buy fresh fruit and veg because of the cost. I end up resorting to chicken nuggets."

"Children with working parents – [do] not get same financial support as children whose parents are unemployed."

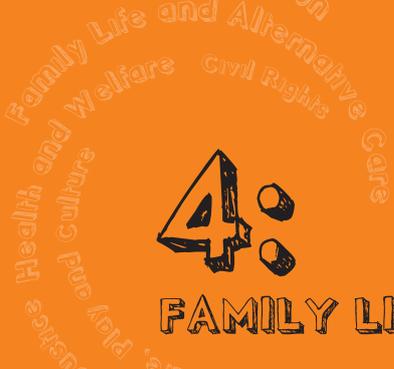
Concern has been expressed that the level of financial assistance available to families in NI does not adequately take account of the particular circumstances of family life here. A 2007 report on expenditure into children's services in NI, for example, concluded that families in NI are adversely affected by being subjected to the same tax and benefit rules as the rest of the UK. Contributory factors to this, noted in the report, include larger family size,

greater proportions of lone parents not working, lower average private incomes and lower growth on child-contingent spending since 2002 than the rest of the UK (Economic Research Institute of Northern Ireland (ERINI) 2007). Save the Children have further highlighted that even if a family in NI is claiming all of the benefits to which it is entitled, it may still be living below the poverty line set by the government (Save the Children 2007). The inadequate assistance provided to families and, in particular, those families "in a crisis situation due to poverty" was noted as a specific issue of concern by the Committee in its consideration of the UK's 2008 periodic report (CRC 2008: para 44).

4.5.2 Family Support Programmes

While there have been several welcome developments in recent years in terms of the recognition afforded to family support by statutory agencies, many of the parents and carers who participated in this review expressed continued discontent with the level of support and assistance currently provided by the State for the upbringing of children. Two fifths of those who completed questionnaires said they did not feel they had adequate support for bringing up their child/children and even those who said they did have adequate support attributed this to the contribution of family and friends, rather than that of the State.

Parents and carers of disabled children and young people highlighted particular dissatisfaction with the level of support and assistance provided by the State, in terms of



4

FAMILY LIFE AND ALTERNATIVE CARE

both access to, and delivery of, services and the lack of information given to them with regard to their entitlements from the State. This is in spite of the fact that article 23 of the Convention places additional requirements on States in relation to the provision of support to disabled children and their families, beyond those generically required for families.

General Comment Number 9, issued by the Committee in 2006, expands upon the additional support expected for parents and carers of disabled children, noting that this should include education for parents and siblings, psychological support, respite care and assistance within the home and material support which includes the provision of aids and equipment (CRC 2006b).

The findings of this review, and other recent studies conducted within NI (KPMG 2007; McConkey et al 2007; Jones et al 2006; Mencap 2006), would suggest that the reality experienced by many families is far from that envisaged by the CRC, with many parents reporting ongoing difficulties when trying to access the services and supports to which they and their children are entitled:

“My child is not receiving the help he needs nor the support. The disability team have let me down so many times. This has affected my health. Taken a year off work to try and sort out help. Services are not dependable/consistent.”

“I am supposed to get 6 hours a week respite from social workers, but they don't have anyone. This is an ongoing problem, services are very poor.”

“My son is severely disabled and I have found that in my area that there is a lack of respite care available. This puts considerable pressure on me as I am a working single mother.”

“The limited services for children and young people with ADHD and ASD has an effect on my son's potential...constraints on resources mean that services often have to be secured privately.”

“My child suffers a learning disability and I feel that if he had more help and support rather than a brick wall stating no money available he would have a better chance to have a basic but good quality of life.”

The Bamford Review also considered the issues affecting parents and other family members in households with a disabled child, highlighting the importance of adequate support for these individuals:

“Children with a learning disability can display a range of special needs which require family members to fulfil a diverse range of roles and functions. Few carers could innately possess such a range of skills and, as such, need support and opportunity to acquire such skills” (Bamford 2005:36).

Noting the current inadequacy of such support, the report recommends the development of specific family support plans for families of disabled children that incorporate provision of both practical and emotional support. The needs of disabled children and their families are further considered in relation to health and welfare in chapter 5.

4.5.3 Childcare Provision

Article 18 of the Convention places an obligation on the government to develop institutions, facilities and services for the care of children and to take all appropriate measures to ensure that children of working parents have the right to benefit from childcare services and facilities for which they are eligible. General Comment Number 7 expands upon the responsibilities of the State in relation to the provision of childcare services and facilities for all ages of children, noting that:

“States Parties have a key role in providing a legislative framework for the provision of quality, adequately resourced services, and for ensuring that standards are tailored to the circumstances of particular groups and individuals and to the developmental priorities of particular age groups” (CRC 2005b:para 31).

The Implementation Handbook for the Convention further emphasises the importance of ensuring access to childcare services and facilities, as outlined in article 18(3), noting that *“the importance of meeting the needs of children of working parents cannot be overestimated”* (UNICEF 2007:239).

A DHSSPS commissioned review of the NI Childcare Strategy, published in 2005, highlighted a number of deficiencies in the current strategic approach to childcare provision within NI, recommending that a new strategy be drafted *“to meet changing needs in an ever evolving context”* (Capita 2005:10).

Criticisms have also been levelled at the system by agencies working in the field of childcare, most notably those relating to costs of childcare, lack of statutory investment in the field and the inadequate scale of provision.

A 2008 poll, conducted by the Northern Ireland Child Minding Association (NICMA), found that many parents reported difficulties accessing childcare: 30% who had recently looked for childcare in NI said they had found their search ‘fairly’ or ‘very’ difficult (NICMA 2008). Working parents who participated in this review also raised difficulties regarding the arrangement of childcare for their children, again in relation to high costs and inadequate options, but also in relation to lack of flexibility from both employers and childcare providers:

“Childcare provision is really poor and difficult to access. Employers do not give enough help with flexible time and working arrangements for parents. As a working mother I am made to feel guilty by both education and health professionals who have said, to my face, that I should not work and should stay at home. This is something I cannot afford to do.”

“More affordable childcare would be helpful as we don’t have family close by, but we are resourceful enough to help ourselves.”

“Access to affordable and good quality childcare is a big issue for me as a working mother. Many day care centres no longer offer part-time hours which is prohibitive for parents who want to spend more time with their children.”

4

FAMILY LIFE AND ALTERNATIVE CARE

“If you are a single parent looking for help with crèche facilities you need a social worker to ensure that a space for your child will be made available and that it is funded by social services.”

As the NI NGO report to the Committee on the Rights of the Child observes, *“in the absence of affordable and flexible childcare, there continues to be a heavy reliance on informal sources of childcare such as family or friends. However, such solutions are unlikely to be workable in the long term given the geographical dispersion of families, the increase in the numbers of women in the labour market and the policy objective of raising the number of over-50s in work”*. The report continues: *“there is a prevailing view among the childcare sector that the Government is not discharging its responsibilities in respect of the provision of childcare, which is becoming increasingly privatised when what is needed is a mixed economy of provision – all of which should be focused on meeting the best interest of the child and ensuring provision is non-discriminatory”* (SC/CLC 2008:25).

Level of Provision

The Children (NI) Order 1995 places a duty on Trusts to review the level, pattern and range of daycare and related services for young children every three years. DHSSPS also collates information annually in relation to the number of facilities and places in day nurseries, childminders, playgroups, out of school clubs, holiday schemes and family centres. Latest available statistics reveal that on 31 March 2007 there were:

- 274 day nurseries providing a total of 10,671 registered places
- 3,441 registered childminders providing 16,908 places, 56% of which were designated for children under 5 years of age
- 547 playgroups providing 13,015 places – 97% of these places were community/local or private provision
- 266 out of school clubs providing 6,320 places – 35% of these places were provided by voluntary agencies.⁴⁰

Considering these figures against the corresponding ones for the last 5 years, it becomes apparent that while the number of day nursery and out of school club places have increased by 49% and 40% respectively, the number of registered childminding places and playgroup places have decreased by 17% and 13% respectively.⁴¹ This represents a slight cumulative decrease from a total of 47,170 places in 2002 to 46,914 in 2007, an alarming indictment on the success of the government’s childcare strategy introduced in 1999, one of the main aims of which was to improve access to childcare.

In light of these figures, it is unsurprising that Geraghty and Sinclair (2007) identify an ongoing shortage of childcare places within NI, noting that NI has one of the lowest levels of early years provision within the UK, with an unmet need for 5,500 places.

40. www.dhsspsni.gov.uk/statistics_and_research-cib_child_daycare [accessed October 2008].

41. Calculated from figures available at www.dhsspsni.gov.uk/statistics_and_research-cib_child_daycare [accessed November 2008].

A number of key developments were introduced in 2006 that may offer potential for improvement in relation to the provision of childcare within NI. These include revisions to governance and funding arrangements (responsibility for early years has transferred from DHSSPS to DE, who now fund the four Childcare Partnerships and Sure Start) and the introduction of a new Home Childcarer Scheme, that “allow[s] parents to have approved childcare in their own home and claim tax credits against the cost” (OFMDFM 2007b:39), but it is as yet too early to judge the impact of these new initiatives on the availability of appropriate childcare places for families across NI.

Cost of Provision

The proportion of childcare costs subsidised by the government here is significantly lower than that in other European countries, with the UK Government contributing only 25% of childcare costs, compared to an average of 70% across European countries. Parents here are therefore left to source and contribute 75% of their childcare costs compared to their European counterparts who only have to personally contribute 30% (Capita 2005). Professionals who participated in this review cited other European countries as models of good practice that the NI Government should seek to emulate:

“It goes back to what the Nordic countries have done in terms of both providing flexibility and agreeing what is good for parents and children, especially in the first year of life and then agreeing a taxation system and flexibility of work that allows parents to fulfil their parenting role, as well as their working role.”

The high costs of childcare are particularly felt by families living in poverty. Even with the additional subsidies available under Family Tax Credits, many families living on low incomes, particularly lone parents, find it difficult to source the shortfall required to access suitable provision. Both parents/carers and professionals who participated in this review highlighted the financial stress experienced by such families who cannot afford childcare under the current State system:

“Affordability can also cause financial stress for parents, which is not good for children. The government needs to do more to subsidise childcare and make it more affordable and of higher quality.”

Additional Barriers to Access

A recent study on the daycare needs of disabled young people, commissioned by NICMA, highlights the additional difficulties that parents of disabled children face when attempting to access childcare in NI, noting the situation to be ‘particularly stark’ for these families. The authors note that between 3 and 4% of children using daycare are disabled, with over 1 in 5 disabled children going to a childminder. The study reports regional differences in the degree to which disabled children’s needs are being met, highlighting a number of additional barriers that these children and their families face including those of lack of information about available services and entitlements, unwillingness on the part of some carers to care for a disabled child, cost and location of available services, transport difficulties and physical access to some buildings (Geraghty and Sinclair 2007).

4

FAMILY LIFE AND ALTERNATIVE CARE

Concerns have also been raised in relation to the particular childcare difficulties faced by families living in rural locations. In 2007 the Department of Agriculture and Rural Development (DARD) established a Rural Childcare Stakeholders' Group as a short-term advisory committee to consider the key issues affecting families in rural areas. The Minister for Agriculture and Rural Development was presented with the Group's report in 2008, which highlighted the distinct challenges facing parents living in rural areas in accessing childcare. While the report does not suggest that a specific strategy be developed for rural childcare it does make a number of targeted recommendations to improve current provision. One such recommendation is the development of a rural childcare funding programme to focus on rural access, early years integration, quality and strategy, affordability and sustainability issues. The report highlights the need for an accurate database of all registered childminders and the potential benefits to be gained from the provision of childcare and after school provision around primary schools. As the report concludes, "flexibility is needed for rural service delivery and an ability to adapt to local circumstances" (Rural Childcare Stakeholder Group 2008:47).

The NI NGO Submission to the CRC identifies a further gap in childcare provision for migrant families:

"NGOs working with migrant families have observed that existing childcare provision fails to meet their needs for a variety of reasons, including lack of flexibility to accommodate

patterns of shift work, language skills deficits, cost of childcare for those working in the low wage economy combined with (non EU) ineligibility for the childcare element of the Working Tax Credit" (SC/CLC 2008:5).

While the general situation in relation to the provision of childcare within NI falls short of that envisaged by the Convention, the particular difficulties faced by these, and other marginalised groups, raises additional questions in relation to the degree to which the government's childcare policies are in compliance with the article 2 'non-discrimination' principle of the Convention. The development of affordable childcare, for all children who require it, must become a priority for the Northern Ireland Executive if they are to fulfil their UNCRC obligations to children and their parents.

4.6 Young Carers

"Young carers are people aged from as young as 5 to 23, who have accepted the responsibility of a caring role, perhaps for an ill/disabled, drink or drug misuse parent or guardian."⁴²

The number of young carers in NI, per head of the population, is estimated to be higher than that for the rest of the UK. Most recent estimates suggest that there are more than 8,500 children and young people in NI acting in a caring role, though in the absence of any comprehensive data source, this cannot be statistically verified (Crossroads NI).

42. www.crossroadscare.co.uk/young_carers [accessed August 2008].

Young people can end up in caring roles for a variety of reasons, but whatever the reason the adoption of such a role prematurely places upon them responsibilities and tasks traditionally associated with adulthood. The average age of children taking on these roles and responsibilities is only 12, yet some are providing in excess of 50 hours care per week in the absence of adequate support and provision (Devine and Lloyd 2008; Crossroads NI). As Crossroads (NI) observe:

“Often they are coping with responsibilities most of us may only undertake when we are adults and they are doing so alone and, in many cases, in fear of being separated from their families. These children can be lonely, isolated, lose friendships, miss out on education and social activities.”⁴³

Crossroads identify a number of potential effects on young people of regularly undertaking caring responsibilities. These include lateness and/or absence at school and difficulties completing homework and coursework. Young carers may also be prone to tiredness, anxiety, depression, isolation and low self-esteem, or to have low levels of personal care or physical ill-health (including back pain from lifting and the effects of bad nutrition). They are also frequently vulnerable to bullying.

Though there is much anecdotal evidence about the reality of young carers’ lives in NI, there is little research evidence available to substantiate this. Data gathered in the 2007 YLT survey

offers some insights into the extent, nature and effect of caring among young people in NI. The survey, which elicited the views of 627 sixteen year olds on a wide range of issues, found that 20% of participants reported having caring responsibilities either at home or elsewhere. Almost 1 in 10 (9%) said they had extra family responsibilities because they look after someone who is sick, disabled or elderly and living with them; for two fifths of these young people, the person they were caring for was a parent.

Others were caring for siblings or grandparents. The types of care provided by participants in the YLT survey included ‘general care’, housework, childcare and providing company or support. It is interesting to note that the YLT survey observed *“clear differences in the caring responsibilities of young people depending on their family financial circumstances. Respondents who were not well off were significantly more likely to have caring responsibilities at home than respondents from families who were better off”* (Devine and Lloyd 2008:2).

A UK-wide study of over 6,000 young carers offers further insights into the lives of young carers (Dearden and Becker 2004). This study similarly found that the majority of people being cared for by children and young people were mothers (52%) or siblings with learning disabilities (31%). Half of the young carers were providing care because of physical ill health, 29% because of mental ill health, 17% for learning difficulties and 3% for sensory impairments.

43. www.medicalnewstoday.com/articles/74835.php [accessed August 2008].

4

FAMILY LIFE AND ALTERNATIVE CARE

Half of all respondents in Dearden and Becker's study were providing 10 or less hours care per week; one third were providing 11 to 20 hours care, while the remaining fifth were providing over 20 hours care a week. Just over one third (36%) of the 6,000 young carers in the study had been providing care for 2 or less years; 44% had been caring for 3 to 5 years, 18% for 6 to 10 years and 3% for over 10 years. Girls were noted to be more likely to be involved in caring tasks than boys, especially as they get older.

Two thirds of the young carers in the study reported providing domestic help, while 82% said they provided emotional support and supervision. Just under half (48%) provided general and nursing type care and almost 1 in 5 (18%) provided intimate personal care. One in 10 (11%) undertook childcare duties and 1 in 10 also reported caring for more than 1 person. Despite their involvement in such demanding tasks, one fifth (21%) reported receiving no other support apart from contact with the young carers project, through which they were recruited to the study.

Over half (56%) of the young carers in Dearden and Becker's study were living in lone parent families. Only 4% of the adults with care needs were in employment, and where there was a second adult in the home, only slightly more than half of them were in employment. The lack of economic activity within these homes has obvious financial implications. The authors of the report note:

"These findings reflect those of smaller scale studies (see for example Dearden and Becker, 2000; Aldridge and Becker, 2003) where it has

been suggested that a lack of adult employment – and therefore income – in families can result in the whole family being vulnerable to poverty and social exclusion. Furthermore, Morris (2003) argues that disability benefits do not take into account the additional costs of parenting for disabled adults, further exacerbating family poverty. Our data also indicate that even in two parent families the second parent may be in employment and therefore less 'available' to provide care. Furthermore, we know that in some families an adult spouse or partner 'opts out' of the caring role, which falls by default to children within that family" (Dearden and Becker 2004:6).

Considering the effects of caring on schooling, 27% of carers of secondary school age and 13% of primary school age in Dearden and Becker's study were found to be experiencing problems in terms of attendance and/or educational difficulties. The prevalence of educational difficulties was found to rise to 4 in 10 for those caring for people with drug or alcohol issues. The study concludes:

"There is still some way to go...A fifth of families remain without any support services at all apart from their children's involvement with a project. Children continue to provide a high number of care hours each week, and they perform caring tasks – particularly intimate personal care – that many families (and children) find unacceptable. Children caring for relatives with drug or alcohol problems are especially vulnerable to educational difficulties. We have seen that, despite an improvement in the general picture since 1997, many young carers continue to

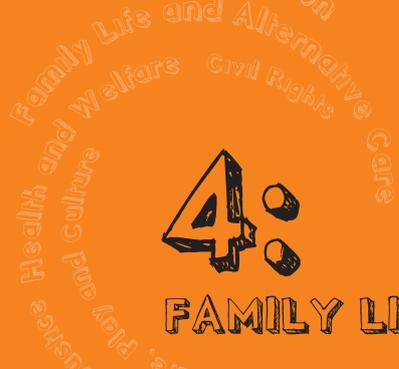
experience educational difficulties and too few of them have had a formal assessment of their needs...Many children care for several years and some will be committed to caring for many years. It is apparent that services need to better meet the needs of disabled adults, particularly those adults with parenting responsibilities, and that more assessments of disabled parents and of young carers need to take place in order to meet needs and to prevent young caring from becoming established within the family. Professionals in health, education, social services and the voluntary sectors must continue to work towards supporting young carers and their families, and aim to reduce the incidence of inappropriate care that continues to take place" (Dearden and Becker 2004:14).

The issue of informal caring within NI, including that by young carers, has been considered by the government in recent years. A strategy entitled 'Caring for Carers' was published in January 2006. Building on a previous consultation, the strategy identifies six key themes around which the future delivery of services for carers should be based; 'young carers' is one of these six key themes.

A necessary first step in meeting the needs of young carers is the identification of who is providing care. According to the 2006 strategy, the 'Carers Assessment and Information Guidance', issued by DHSSPS in April 2005, stresses the responsibility of Boards and Trusts to ensure they identify children whose parents or other relatives have specific needs because of illness or disability. The identification of young carers is not without difficulty, however, as the strategy observes:

"Young carers are often reluctant to come forward because they are afraid of what may happen to them and their families should it become known that they are caring for someone. They also may not want other young people to know about their situation. This is especially true in the case of adolescents who feel that the need to be the same as everyone else and not stand out is important. Whatever the reason, this secrecy can lead some young carers to feel isolated from other young people within their school or community. This hampers them from getting information about services and support, and many young carers do not realise that there are people who can help them. They have told us that they need information that is easily accessible. As with all carers, they mentioned information on the health and care needs of the person being cared for, how to do practical things for the cared for person such as help him or her go to the toilet and where to get help if they want it. They suggested a website as the most practical method of making such information available" (DHSSPS 2006b:28).

In setting the context for the provision of services and support to young people identified as undertaking caring responsibilities, the Caring for Carers strategy highlights the rewards that caring can bring, noting that *"it is important to record that many young carers want to care – they see their role as being part of the dynamics in their family and would not want to stop caring. They do, however, need recognition, understanding and support"* (DHSSPS 2006b:27).



4

FAMILY LIFE AND ALTERNATIVE CARE

While this may be the case for some, it is not necessarily the case for all. As one young participant in this review shared:

“I was made to have a lot of responsibilities from a young age – because my mum was drinking I had to look after myself and my two younger sisters. This was difficult.”

It is imperative that a child’s desire, or sense of duty, to provide care is not used to negate the onus on the State to provide adequate support and provision for families with additional caring needs. It is concerning to note that in recognising that *“a sufficient level of service should be provided to the ill or disabled person so as to prevent young people from having to take on inappropriate levels of responsibility for providing care”* the strategy states this should be *“a general principle”* rather than a mandatory requirement. The question arises, in what circumstances would it be acceptable not to provide a family with a sufficient level of service to prevent a young person taking on inappropriate levels of responsibility for providing care? This failure to adequately regulate the provision of support for young carers appears again later in the document, when an aspirational statement that young carers *“must be given the opportunity to enjoy the same life chances as all other children”* is followed by the non-committal statement that *“Trusts may provide services to ensure that their education and development do not suffer”* (DHSSPS 2006b:27).

The Carers and Direct Payments (Northern Ireland) Act 2002, which came into effect in March 2003, has gone some way in meeting the needs of older young carers, in placing an obligation on Trusts to take steps to ensure that carers are aware of their right to an assessment (of their ability to provide care) and in enabling Trusts to make direct payments to 16 and 17 year olds for services that meet their own assessed needs. However, much more is needed, both for these older young carers and for the many under 16s who are regularly providing care.

The demands of caring can negatively impact upon all aspects of children’s lives, including their physical and mental health, their education, their access to play and leisure and their developmental opportunities. The government’s failure to provide adequate support for families where the adult(s) is unable to provide the required level of care and support, and the consequent continued existence of such detrimental impacts upon young carers, is a clear breach of these children and young people’s UNCRC rights. As a professional participant in this review concluded:

“Child carers – where is this child’s right to have a childhood?”

4.7 Family Breakdown

It is difficult to accurately determine the number of children impacted by family breakdown in Northern Ireland in any given year. Though NISRA statistics reveal that 2,913 divorces were granted in NI in 2007, a 14% increase on the corresponding figure for 2006 and the greatest

number since records began (NISRA 2008b), these figures do not take account of couples with children who have separated without undergoing a divorce or the number of couples who had co-habited and then separated (Glover 2008). According to official statistics, just under 5,000 children/stepchildren were affected by divorce in 2007; 2,900 of these were aged under 18 at the time of divorce. Though the remainder were aged 18 or over at the time of divorce, the strong likelihood is that they will have been impacted by pre-divorce conflicts and tensions in the years prior to this (NISRA 2008b).

The children and young people who participated in this review who had first hand experience of family breakdown spoke openly about the impact this had upon them, highlighting in particular the negative emotional effects of divided loyalties and associated feelings of guilt and the difficulties of trying to maintain relationships with two 'warring' parties:

"My parents are separated – you don't want to hurt them – they don't know the effect on their children."

"Parents arguing and saying stuff in front of me about each other and making me pass stuff along when it's none of my business, then I get blamed."

"A child feels responsible when there is a separation/divorce. If I don't want to go to my daddy, he blames me, it is my fault."

The report of a 2006 NI-wide conference, entitled 'Getting it Right for Children when

Parents are Separating', also highlights the emotional impact of family breakdown on children and young people and the shortcomings of the current system in relation to the support provided to them in this regard. Though noting that much anecdotal evidence exists on the impact of family breakdown on children and young people, the report observes a paucity of local research on the subject, highlighting this as an area for redress (Fawcett 2006).

While any experience of family breakdown is likely to be in some way difficult for those involved, 'conflictual separations' (where the care of the child is in dispute) are observed to be particularly difficult on children and young people:

"From frontline practitioners in family support and clinical services there was a shared common concern about the short and longer term consequences for children failing to cope with conflictual separations – emotional distress, behavioural difficulties, disrupted schooling and problems with contact arrangements. Researchers highlighted the complexity of children and young people's lived experience of moving between two households while policy makers and service managers emphasized the costs and consequences of system and service failures – delayed interventions, protracted and bitter parental disputes, spiralling legal costs, and a general lack of co-ordination between different sectors and levels of service delivery. The intention was not to be 'overly dramatic' or to pathologise families dealing with difficult circumstances. Rather it was to underline the scale of the issue and to begin to explore what

4

FAMILY LIFE AND ALTERNATIVE CARE

action was required... Summing up at the end of conference Hugh Connor, Director of Social Services acknowledged the need for a different approach, one which embraced new and joined up ways of working and which moved away from a 'one size fits all' mentality" (Fawcett 2006:21).

When separating or divorcing parents are unable to work out for themselves where a child is to live and who will care for them, the Children (NI) Order 1995 provides Family Proceedings Courts with the power to make 'Article 8 Orders' that "regulate to varying degrees the exercise of parental responsibility when couples separate and...encourage both parents to maintain involvement in the child's life" (Glover 2008:294). When an Article 8 application is made, the Resident Magistrate will either refer the case for a hearing, allow a trial period of interim arrangements or request a Welfare Report (Article 4 report) from a social worker that provides the court with more information on issues of relevance to the case, including the child's wishes and feelings (Glover 2008).

While the Family Proceedings Courts play a beneficial role in "delivering a solution that serves the best interests of the child" in some contact and residence cases, the adversarial nature of the process can also work against the best interests of the child:

"The nature of a court hearing in which a child can be asked effectively to "choose" between two loved parents and then await a decision about his or her future can significantly impact

on emotional well-being, and can lead to breakdown in relations between parent and child. Fawcett (2006, p. 11) states that 20–30% of children lose contact with paternal relations completely, and that instead of helping the child sustain family ties, "ineffectual" court procedures along with a lack of social support "do little to ease the silent anguish of the child of separation". Statistics published by Relate, Northern Ireland (2005) suggest an even higher loss of paternal relations. They report that one-half of non-resident fathers lose all contact with their children within five years" (Glover 2008:295).

The loss of parental relationship noted above is in conflict with the effective realisation of article 9(3) of the Convention which states that 'State parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests'. Commenting on the outworking of this, the UNCRC Implementation Handbook observes that:

"Too often children lose the chance to maintain contact with the non-residential parent because of the needs of the residential parent or because of the parents' acrimonious relationship...Courts may correctly refuse to enforce access if this is likely to have adverse consequences for the child. But while legislation often decrees that the child's best interests shall be paramount in such decisions, the law does not always make clear that these best interests are generally interpreted as meaning regular contact with both parents.

States could often put more resources into providing practical assistance to children whose parents are in conflict, for example by providing neutral places or the supervision of access” (UNICEF 2007:130).

The ‘Getting it Right for Children when Parents are Separating’ conference report highlights the importance of investing in more prevention, early intervention and mediation services as a means of addressing the potentially negative implications of adversarial court proceedings on children’s relationships with their parents but notes that currently, *“alternatives to dispute resolution in the courts in Northern Ireland are scandalously short on the ground when compared to other parts of the UK”* (Fawcett 2006:4).

Glover (2008) further explores the potential contribution to be made by mediative processes in conflictual separations, noting the increasing prominence afforded to family mediation and in-court conciliation within England and Wales since 2004, where the provision of legal aid to settle disputes in family proceedings is now dependent upon parties considering family mediation. Similar measures are currently being developed in NI, with the introduction of a new Funding Code (under the Access to Justice (Northern Ireland) Order 2003) that allows cases that concern the upbringing and welfare of children to become a top priority for legal aid funding and establishes family mediation as a separate level of service, thereby *“potentially paving the way for increased funding provision for the development of services”* (Glover 2008:296). The recent commitment of DHSSPS, in the draft ‘Families Matter’ strategy, to *“reduce*

the negative impact of parental separation on children by developing and expanding family mediation service in Northern Ireland” (DHSSPS 2007g:24) is a further welcome development in this regard but as Glover (2008) observes, the challenge is in ensuring that equal energies are spent on realising the effective implementation of these commitments.

4.8 Thresholds for Intervention

As highlighted previously, though the role of the State in family life is primarily one of secondary support and assistance, there are occasions where the State must adopt a more interventionist role in order to maintain the best interests of a child who is at risk of violence, harm or abuse. The outworking of this obligation has been considered in chapter 3 and will not therefore be restated here, except to note that recent years have witnessed significant concern around the interpretation of appropriate thresholds for intervention, with criticism focusing on failure to intervene on the one hand and premature intervention on the other. Professionals who participated in this review also expressed concern in relation to the application of thresholds for State intervention in family life but, on the whole, these tended to focus more on the potentially negative implications of raising these thresholds:

“Recent targets to reduce the population of children in care are very concerning. The threshold for intervention to remove a child into care is already very high, significant harm has often occurred which repeated interventions are implemented in order to satisfy judicial requirements.”

4

FAMILY LIFE AND ALTERNATIVE CARE

While the increasing significance afforded to prevention and early intervention work in recent years is to be welcomed, it is imperative that this be accompanied by clear and appropriate thresholds for intervention. It is also imperative that responsibility for decisions around intervention be placed with appropriately trained and experienced professionals who are able to recognise situations where more direct intervention, in the form of child protection proceedings, is necessary to protect the rights and best interests of that child. The remainder of this chapter explores the experiences of such children post entry into alternative care.



4.9 A Rights-based Approach to Alternative Care

While the UNCRC recognises the family as the natural environment in which a child should grow and develop, it also recognises that this ideal is not always possible and/or in the best interests of the child. Acknowledging this, the Convention provides specific protections and rights for children who, for whatever reason, are

unable to grow and develop within their family environment. These rights and protections are contained within articles 20, 21 and 25 which, like all other articles, should be interpreted in light of the four general principles of the Convention.

Article 20 outlines the particular rights due to children who are temporarily or permanently deprived of their family environment, whether as a result of circumstances such as abandonment or the death of a carer or because they have had to be removed in order to protect their best interests. Article 20 stipulates that all such children are 'entitled to special protection and assistance' from the State, who must also ensure appropriate alternative care arrangements for each child. Article 21 addresses the specific rights of children who are adopted, while article 25 places a stipulation on States to ensure all children placed by the authorities for the purposes of care, protection or treatment of their health, have the right to a periodic review of their placement or care.

Both the UN General Assembly and the Committee on the Rights of the Child have afforded significant consideration to the issue of children living without parental care. The General Assembly adopted a plan of action in 2002 committing State parties to "take special measures to support such children and the institutions, facilities and services that care for them, and to build and strengthen children's own abilities to protect themselves".⁴⁴ The Committee on the Rights of the Child followed

44. www.crin.org/resources/treaties/discussion2005.asp [accessed June 2008].

this with a Day of General Discussion on the issue of children living without parental care in 2005, culminating in a set of recommendations issued to State parties in March 2006 covering, amongst other things, expectations with regard to preventative measures, the provision of alternative care and the need for evaluation and review (CRC 2005c).

The issues facing children living without parental care were also raised by the Committee in its 2008 Concluding Observations on the UK, in which it called upon the State to take account of the recommendations emanating from the 2005 Day of General Discussion, in particular those relating to placement instability, family contact, inadequate preparation for aftercare and the placing of children with disabilities in long-term institutional care (CRC 2008:para 44/45).⁴⁵

4.10 Overview of Looked After Children in Northern Ireland

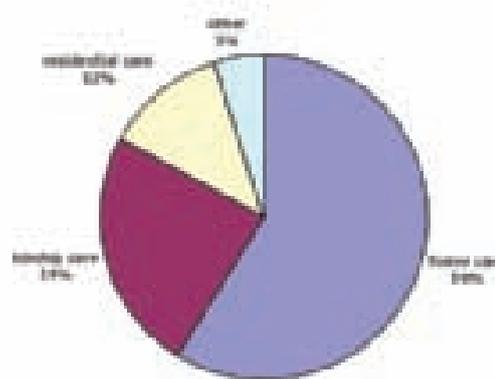
“A child becomes looked after if they are provided with accommodation for a continuous period of twenty-four hours or more by a HSS Trust in the exercise of its social services function” (Mooney et al 2008:15).

According to NISRA/DHSSPS statistics, there were 2,356 looked after children in NI at 31 March 2007. This equates to 54.5 per 10,000 population aged under 18; a similar rate to that of England (54.6) and notably lower than that of Scotland (131.0) or Wales (72.4) (Mooney et al 2008). This figure also represents a 3.2%

decrease in the number of children ‘looked after’ from the corresponding figure for 2006 (Mooney et al 2008).

Children become looked after for a wide variety of reasons; some to provide family support through voluntary agreements with their parents, others are looked after under court orders. Some return home after a short period of time in care; others remain looked after in the longer term. Children taken into care can be placed in residential or foster care, kinship care or in other accommodation such as special schools, hospitals, bedsits or independent living provision. Figure 4.1 below demonstrates the proportions of looked after children in each placement type in March 2007.

Figure 4.1: Looked After Children, by Placement Type (March 2007)



Source: Mooney et al (2008)

The majority of looked after children fall into the 5 to 11 year (32.5%) or 12 to 15 year (32.5%) categories. A further 15.4% are aged 4 or under, while the remaining 19.7% are aged 16 or over. Just over half (53%) of these

45. The latter of these issues is explored in chapter 5.

4

FAMILY LIFE AND ALTERNATIVE CARE

children are male, with the remaining 47% female (Mooney et al 2008). Research indicates that children from cross-community families are disproportionately represented in care statistics, with family breakdown being cited as the primary reason for this and the additional stressors of living in a cross-community family and lack of accessible community support systems recognised as relevant contributory factors (Kelly and Sinclair 2005).

The length of time spent in care varies significantly, but March 2007 figures reveal that 80% of looked after children had been in care 1 year or more. Over half (54.8%) had been in care 3 or more years (Mooney et al 2008).

Looked after children are not a homogeneous group – they come from different backgrounds, have different experiences while in care and exhibit different strengths, resilience and coping mechanisms. That said, they face many common difficulties and disadvantages and do so, frequently, in the absence of adequate support and provision. Patterns of disadvantage and discrimination consequently emerge within this population, including:

- lack of placement stability
- lower rates of involvement in education, training and employment than their peers
- poorer educational attainment and higher unemployment than their peers
- higher rates of teenage pregnancy and young parenthood than their peers
- over-representation in the youth justice system
- higher incidence of mental ill health
- higher incidence of drug and alcohol (mis)use
- failure to address special educational needs

- high rates of homelessness post care (McAuley and Bunting 2006; Mullan et al 2007a; McCrystal et al 2008; SC/CLC 2008).

These patterns of disadvantage and discrimination are well recorded and their existence commonly accepted. DHSSPS explicitly references them in the introduction to its 2007 draft strategy for children in care and those on the edge of care, 'Care Matters in NI – A Bridge to a Better Future':

"Children in care are one of the most vulnerable and disadvantaged groups in society. In later life they are more likely to be socially excluded than children from almost any other background...They have considerably poorer educational attainment and much higher rates of unemployment on leaving care than their peers. They are also more likely to have a statement of Special Educational Needs and to experience school suspensions and/or expulsions than school aged children who are not looked after. Girls are more likely than their peers to become pregnant in their teenage years and boys are more likely to receive a caution or a conviction than their peers" (DHSSPS 2007i:3/4).

It is in recognition of, and response to, such continued disadvantage and discrimination that the government introduced the draft Care Matters strategy in 2007, recognising that:

"Outcomes for children in care at present remain very poor. We must do better and while we have seen a number of improvements and investments targeted at children in care in Northern Ireland in recent years it is evident that we have a long way to go" (DHSSPS 2007i:1).

Care Matters outlines a strategy for the review and reform of services for children and young people in, or on the edge of, care. The six key areas addressed within the strategy are:

- strengthening support to families and children who risk being taken into care while ensuring that children are properly protected
- ensuring children who come into care are in the right placement and have stable placements
- ensuring the new Trusts have the necessary arrangements in place to act as corporate parents for children in care
- improving education opportunities for children in care
- providing children in care with opportunities to take part in activities outside school and care
- strengthening support to young people leaving care as they make the transition to adulthood.⁴⁶

Though a number of different concerns have been raised in relation to the specifics of the draft strategy, its introduction has been broadly welcomed by interested parties. Of particular note is the written commitment to “ensuring a rights perspective” (DHSSPS 2007i:11) in the development of the strategy, though McMahon and Keenan (2008:58/59) have questioned the stated primacy of the best interests principle:

“Adherence to Child Rights standards within the document is in some doubt. While much of the document makes explicit reference to the best interests of the child (UNCRC Article 3) as a primary concern in the implementation

and development of the strategy, this is later undermined. The document goes on to state that ‘the welfare of the child must always be paramount and this overrides all other considerations’ and further that ‘this principle must be at the heart of any strategies, policies, procedures and services to safeguard children and must be at the heart of this strategy’... If Care Matters is to result in the development of care services which are in line with the provisions of the UNCRC, it must be underpinned by an unambiguous commitment to the principle of the best interests of the child.”

Though public consultation on the draft strategy ended in September 2007, the final strategy has not yet been issued at the time of writing.

The production of the final strategy offers an opportunity to address the concerns raised regarding some of the draft proposals and to strengthen the rights-basis of both the strategy and any consequent action plan. It is imperative that this revised strategy be developed and implemented without undue delay and that it be accompanied by both a targeted, time-bound action plan and an adequate ring-fenced resource package.

4.11 Kinship Care

Children taken into care can be placed in a number of different settings, including that of kinship care, where a child is placed with relatives other than their parent(s) or another member of their wider social network. The CRC, in its General Day of Discussion on Children without Parental Care, expressed a preference

46. www.northernireland.gov.uk/news/news-dhssps/news-dhssps-may-2007/news-dhssps-150507-new-approaches-needed.htm [accessed June 2008].

4

FAMILY LIFE AND ALTERNATIVE CARE

for this type of care recommending that 'family-type alternative care environments' should be pursued where possible (CRC 2005c). The draft Care Matters Strategy also recognises a preference for kinship care and the benefits this can offer, though acknowledges that this is often not given the primacy it should:

"Children and young people have indicated that where they can no longer live with their parents that their preferred option is to be cared for by other family members or close friends. The evidence suggests that this is not considered as a first option often enough and yet it also indicates that such placements with family and friends give children greater stability than other care placements. We also know that potential family or friends carers are deterred from coming forward by the process of seeking approval as a foster carer and their perception of the bureaucracy associated with becoming a carer" (DHSSPS 2007i:26).

The systemic difficulties associated with kinship care placements were also raised by some professionals who participated in this review:

"In many instances, children being cared for by relatives fall through the system for support."

"Relative carers have not been given parity with registered foster care in terms of financial and professional support – the children are obviously the victims."

Though an experience of kinship care is not without difficulties or challenges, particularly in terms of negotiating family relationships,

evidence suggests that kinship care offers greater stability and continuity in family relationships, together with a greater sense of personal identity and permanency for children and young people (Lernihan and Kelly 2006). As Iwaniec (2006:262) observes:

"On the whole, kinship care can be a good option for a child if the placement is well supported and supervised. As most children in public care tend to return to their families after statutory care ends, it may be wise to try harder to place more children with kinship carers, with suitable allowances, regulations, and help in place."

In spite of the recognised benefits of kinship care, only one in four looked after children is currently in a kinship placement. If the benefits of kinship care are to be made more widely available to looked after children within NI, it is imperative that the systemic difficulties highlighted above are addressed and that the commitment contained within the draft Care Matters strategy, to *"offer more support to these 'kinship' foster care arrangements and where possible make these more flexible and sustainable"* (DHSSPS 2007i:26) is effectively realised.

Care Matters observes that increased use of kinship care can be facilitated without recourse to legislative change. The proposed duty on Trusts, contained within the draft strategy, to *"demonstrate that they have explored the options of a family support package or a kinship fostering arrangement before placing children into a mainstream residential home or non-kinship fostering arrangement"* (DHSSPS

2007i:27) offers an effective mechanism for ensuring that the possibility of kinship care is always considered as the first option for a child unable to remain within the parental home. The accompanying proposal to ensure that family and friends, who are approved as foster carers, should receive the same allowances, support and training as non-kinship foster carers would also be a progressive step in terms of the principles of non-discrimination and best interests of the child if implemented.

4.12 Non-kinship Foster Care

Non-kinship foster care has been the dominant type of placement for looked after children within NI since the 1970s. When a child cannot remain within the parental home or reside with other relatives, foster care is generally the preferred option as it *“provides the opportunity for a looked after child to live in a family environment rather than living in a residential setting”*.⁴⁷ As Iwaniec (2006:5) observes:

“Most children in need of care and protection living away from home in the United Kingdom are placed in foster homes. The shift from residential to foster care in the past two decades or so has been both ideological and financial. There is a strong belief that foster care is a better option for children living away from home as it provides a family model of everyday life and greater opportunity to build warm relationships with the foster family which can last for a long time after leaving care. Foster care is also much cheaper, and that was another reason for the development of the foster care placements policy.”

47. www.dhsspsni.gov.uk/fostering_q_and_a [accessed June 2008].

Most foster care occurs on a voluntary basis through social services, with foster carers receiving an allowance for the cost of care. Some fostering is, however, arranged on a private basis through a fostering agency which, having received an initial referral from a HSC Trust, facilitates the provision of care to that child.

Children may be placed in foster care on respite or on a short, medium or long-term basis (Mullan et al 2007a). As of March 2007, there were a total of 1,389 looked after children placed in foster care in NI. This accounts for three fifths of all looked after children within NI (Mooney et al 2008).

Though children and young people in foster care generally fare better than their counterparts in residential care, it is important to recognise that an experience of foster care is not devoid of difficulties and challenges. As Mullan et al (2007a:42) observe:

“With regards to foster care a number of young people mentioned the difficulty of feeling ‘at home’ because the reality was that they were not living at ‘home’ with their parents...a significant number, while noting varying positive aspects of foster care, discussed how they sometimes did not feel they fully belonged, being intermittently reminded that they were ‘different’ and not really part of the family.”

Furthermore, not all foster placements are successful or sustainable. This can be for a number of different reasons including incompatibility between the carer and the child,

4

FAMILY LIFE AND ALTERNATIVE CARE

adaptation difficulties, challenging behaviour, unrealistic expectations on either side, insufficient support and impact of a placement on other foster family members. Iwaniec (2006:260) offers the following insights on this issue:

“Placement break-ups have been observed over the years to be the most serious problems experienced in the fostering service: they disrupt stability and attempts to build permanency for the most needy children. It is easy to blame foster parents or fostered children for the unsatisfactory outcomes for both parties, and it is essential to investigate what is needed to make the task of fostering better informed and better supported, placing children with suitably chosen foster carers, and seeking the children’s expression of choice as to where they want to live...Children’s participation in the decision-making seems to go a long way in making placements work satisfactorily, avoiding frequent break-ups, and building pathways to permanency.”

The existence of difficulties within foster care and the potential for placement breakdown should not be taken to indicate that the current preference for foster care should be challenged or changed, but rather to highlight that although a foster child’s experiences and outcomes may be more akin to that of children residing within their family home, some key differences remain, the impact of which should not be underestimated.

The prioritisation of foster care placements over those of residential care is, like kinship care, in line with the recommendations of the

Committee on the Rights of the Child that ‘family-type alternative care environments’ should be pursued where possible (CRC 2005c). There is, however, a current disparity between the number of children requiring foster care and the number of foster carers available to provide this which means that not all children requiring foster care are able to access appropriate provision.

A recent audit by Fostering Network NI revealed that there were 192 children and young people waiting for a foster family in March 2007, most of whom were in the 11 to 15 year age group.⁴⁸ The NI NGO Alternative Report to the Committee on the Rights of the Child also recently observed:

“While there has been a rise in the proportion of looked after children placed in foster care, this has not been matched by a rise in foster carers, leading to concerns regarding placement choice as children are inappropriately placed in residential care despite assessment of need. Social workers have highlighted insufficient placement availability, particularly: long-term placements, emergency placements and placements for adolescents” (SC/CLC 2008:26).

DHSSPS expands upon this difficulty, outlining why more foster carers are required:

“On any one day, around 2,500 children and young people are living with foster carers in Northern Ireland. Many more move in and out of foster homes during the year. In order to provide these children with the highest standard

48. www.northernireland.gov.uk/news/news-dhssps/news-dhssps-may-2008/news-dhssps-120508-mcgimpsey-highlights-need.htm [accessed June 2008].

of care, each one should be able to live with a foster carer carefully chosen to meet their specific needs. To achieve this, we need a large pool of highly skilled and well-trained foster carers from a wide range of backgrounds. This will enable HSS Trusts to improve placement choice, facilitate the better matching of children with carer and improve the outcomes for the children.”⁴⁹

The NGO 2008 report to the Committee on the Rights of the Child identifies lack of remuneration for carers as a potential key contributory factor to the current shortage of foster carers (SC/CLC 2008). A recent study by Swain (2007a) also highlights the difficult financial situation of many foster carers in NI, noting that only 35% of the 37 NI carers who participated in their survey receive a fee from fostering, compared to a 60% UK average; half of these individuals do not have access to income from employment. The study further notes that 73% of NI carers who took part in their survey receive less than the national minimum wage (based on a 40-hour week) and that only 24% claim benefits. Reflecting on these findings, and those from the rest of the UK, the author recommends that foster carers be paid fees that equate with comparable employment in the children’s workforce and that continuity of payment is ensured throughout the year. The author concludes:

“To recruit and retain sufficient foster carers with the right skills and experience it is essential that foster carers receive a fee payment that equates with comparable employment in the children’s workforce. This will require significant

49. www.dhsspsni.gov.uk/fostering_q_and_a [accessed June 2008].

additional investment, but it is an investment that will transform the life chances for children in care and ensure greater numbers are able to live economically active and fulfilled lives. This expenditure will also result in cost savings in the future. The biggest savings would be in the long-term costs to society of meeting the needs of adults who need extra support as a consequence of the lack of stability experienced whilst in care” (Swain 2007b:6).

A number of recent developments within the field, including the introduction of a national minimum allowance for foster carers in October 2006, the establishment of the government funded Fostering Achievement Scheme in September 2006, the launch of the Regional Fostering and Training Co-ordination Service and the Regional Fostering Helpline in early 2008 and further investment in fee paid foster care, will hopefully address some of these difficulties but it is, as yet, too early to tell the extent of their impact or that of the impending final Care Matters strategy.⁵⁰

In the meantime, the ongoing shortage of foster care placements means that many children are not able to access a placement that is specifically tailored to their needs, in terms of geographic location, co-placement with siblings or support required. Some children are consequently having to move away from families, schools, friends and extended support networks or reside with families who feel ill equipped to offer all the necessary support. Yet others are having to remain in residential care in

50. www.northernireland.gov.uk/news/news-dhssps/news-dhssps-may-2008/news-dhssps-120508-mcgimpsey-highlights-need.htm [accessed June 2008].

4

FAMILY LIFE AND ALTERNATIVE CARE

the absence of appropriate placement options. This is a matter that must be urgently redressed if children and young people in State care in NI are to access the type and standards of alternative support and care envisioned by the Committee on the Rights of the Child.

4.13 Residential Care

As previously highlighted, General Comment Number 7, issued by the Committee on the Rights of the Child, prioritises 'family-type alternative care environments' over those of residential care. The UNCRC Implementation Handbook further comments that "*article 20 implies, but does not spell out, that placement in 'suitable institutions for the care of children' is the last resort, second best to placement in an alternative family*" (UNICEF 2007:282).

The provision of residential care within NI is legislated for under the Children (NI) Order, a series of accompanying Regulations introduced in 1996 and The Children's Homes Regulations (Northern Ireland) introduced in 2005.

There are a total of 59 different residential care homes across NI offering a total of 403 placements for looked after children. The majority of these (45) are statutory homes, offering a total of 323 places. The remainder are independently run, offering a further 80 places (Mooney et al 2008). There are notable regional variations in the comparative provision of residential care within NI, with coverage ranging from 11.1 places per 10,000 children

in the Eastern Board to 6.8 places per 10,000 in the Southern Board.⁵¹

DHSSPS statistics reveal that there was a total of 283 children and young people in residential care in March 2007. This constitutes 12% of all looked after placements in NI at this time, a figure which, though the same as that of Scotland, compares unfavourably to comparative rates of 11% in England and 5% in Wales (Mooney et al 2008).

In its contribution to the UK report to the UNCRC, the NI Government outlines a number of key principles that 'continue to underpin developments in residential childcare policy'. These include the following:

- residential care is an integral part of the child welfare system
- a range of residential provision is required to provide appropriate services for children
- where possible, children should be placed locally, unless the need for specialist services dictates otherwise
- residential care is a valuable service in its own right, which is a placement of choice for some children
- placement choice is intrinsically linked to quality of care and the safeguarding of children's wellbeing
- homes should be small and domestic in nature, not provided on campus sites, or on sites providing for other users

51. Comparative figures for the Western and Northern Boards are 9.5 and 6.9 per 10,000 respectively. All 'per 10,000 children' figures relate to the under18 population in the Boards.

- social work is the core discipline within the residential sector; where other disciplines are recruited this is a part of the home's overall statement of purposes and function, and as a complement to the social work establishment
- there should be equality of access to residential childcare places for all children (OFMDFM 2007b:43).

While many of these principles are commendable in theory, the degree to which they have been effectively translated into reality remains questionable. Though there has been investment in smaller Intensive Support Units, many homes in continued operation are not 'small and domestic in nature'. There continues to be an *"inadequate supply of sufficiently varied placements"* with Trusts reporting that *"they are not always in a position to meet the assessed needs of each child or young person requiring a residential placement"* (SSI 2006:67).

The inequitable division of available placements across the four Boards does not easily facilitate 'equality of access' or the provision of local placements and, as highlighted elsewhere in this chapter, placement choice is frequently reported to be determined more by resource implications than quality of care or safeguarding concerns. Commenting on the potential implications of this, Iwaniec (2006:265) notes that *"lack of placements may result in inappropriate groupings of children in the same unit that can put highly vulnerable children at risk: this can be further complicated by the high turnover of staff and lack of skilled practitioners"*.

A recent SSI Inspection observed that *"many concerns emerged in relation to the operation of residential services regionally, which included a failure to discharge statutory functions and meet legislative requirements"* (SSI 2006:68). Specific issues highlighted by the Inspectors include:

- minimal use of pre-admission placement planning
- inappropriate resident mix – as a result of failure to operate to Statements of Purpose and Function (see also Campbell and McLaughlin 2005)
- inconsistent use of discipline and child protection measures
- inappropriate involvement of PSNI and potential criminalisation of young people's behaviour
- lack of placement choice
- staffing shortages and excessive use of casual staff
- inadequate assessment of individual need and risk
- inadequate management of risk and child protection concerns, including inappropriate sexual activity among young people, misuse of alcohol and drugs and frequent running away (SSI 2006).

Children and young people who have participated in recent studies have also articulated the difficulties and challenges posed by an experience of residential care. Those who participated in the SSI Inspection expressed dissatisfaction with the rules of residential homes, restrictions on their freedom and methods of behavioural control. Several also expressed concerns about the age and gender mix of

4

FAMILY LIFE AND ALTERNATIVE CARE

residential care homes, drawing particular attention to the issue of bullying. Those young people who participated in Voice of Young People in Care (VOYPIC)'s recent research on the mental health of looked after children also identified a series of challenges, difficulties and frustrations associated with residential care (Mullan et al 2007a, 2007b). As Mullan et al (2007b:429/430) observe:

“For those who had experience of living in residential care, the main areas of potential vulnerability were in their relationships with others, including staff as well as their peers. Young people mentioned finding it difficult or awkward getting to know new people in placements, and some felt it was ‘the luck of the draw’ regarding who they lived with. Some worried or did not like the influence others had on them, or the effect of other young people on their home whereby they learned new behaviours such as destructive behaviour, substance use, absconding or indeed criminal behaviour. Conflict with other young people was also mentioned, including in some cases, bullying. Poor relations and conflict with residential staff particularly around the use of restraints and sanctions or staff difficulties in being unable to control situations due to low staff numbers were also mentioned. Other issues included boredom and a lack of stimulation in residential care. Private space was seen as being particularly hard to achieve in the residential setting, especially when young people felt that they needed some ‘mental space’. A few young people also noticed on reflection that they had been institutionalised by this group-living.”

Particular concerns raised in relation to an experience of residential care by participants in this review, included treatment by staff, the use of discipline and restraint and access to, and the effectiveness of, complaints procedures. To expand, some children and young people who participated in this review noted an inconsistency in the behaviour of certain staff and their use of discipline with residents:

“Manager abuses their power big style, picks and chooses what happens, all different sanctions, even if you do the same stuff.”

“I think [name of home] was the worst children’s home I’ve ever been in. They really didn’t listen to you and they tried to get you to go to school, and all that there, but they went the wrong way about it. They were rewarding people when they weren’t doing what they were supposed to be doing.”

Some also expressed concern in relation to the use of restraint within residential homes, stating that current practices were unfair and painful:

“They don’t let you move your arm if it hurts when you’re being restrained.”

“All staff should be trained in how to restrain properly without getting hurt.”

The existence of complaints such as these highlight the necessity of accessible and effective complaints procedures for looked after children. Yet some young people who participated in this review had little faith in the effectiveness of existing complaints system and/or felt their

access to such procedures was strictly controlled by staff:

“During the night if you ask for a complaints form, they say wait to morning and most of the time they don’t give you one – say they don’t have them.”

“Staff look at them [complaints] first, they’re not allowed to but they do.”

“No support if you want to complain.”

“When you want to ring the police when something happens, they won’t let you use the phone – you have to use a public phone.”

The limited access of children in alternative care to effective complaints mechanisms was an issue specifically raised by the Committee in its 2008 Concluding Observations in which it called upon the government to ensure that all looked after children are provided with appropriate and accessible complaints mechanisms and receive regular visitations (CRC 2008).

Research indicates that a residential care placement may be a preferable option for some older children but, as Iwaniec (2006:7) observes, *“residential care (if it is to help teenagers) has to change considerably in terms of the helping philosophy, selection of residence and staff, and the building of a positive image as a place of care and help – and not a dumping ground for difficult cases”* (Iwaniec 2006:7).

The children and young people who tend to end up in residential care are some of the most vulnerable in the looked after population, many of whom present with complex needs and challenging behaviour. It is therefore crucial that their needs are met with appropriate placements and care and that the principles of choice, appropriateness, quality of care and safeguarding espoused by the government in its recent report to the UNCRC be translated into reality through effective resourcing and resolution of the systemic shortcomings highlighted above.

4.14 Secure Accommodation

There is currently one secure care facility within NI, Lakewood Secure Children’s Unit. This is a new purpose built unit (opened in 2006) that includes training and leisure facilities and can accommodate up to 16 young people aged 13 to 17 years at any one time (OFMDFM 2007b).

The legislative basis for the use of secure accommodation is provided for in the Children (NI) Order 1995, The Children (Secure Accommodation) Regulations 1996 and the Representations Procedure (Children) Regulations (NI) 1996. Additional guidance is provided in Volume 4 of the Children Order Guidance.

Article 44 of the Children Order states that a child shall not be placed or kept in secure accommodation unless (a) it appears that he has a history of absconding and is likely to abscond from any other description of accommodation and if he absconds, is likely to suffer significant harm (determined in accordance of Art 50(3)



4

FAMILY LIFE AND ALTERNATIVE CARE

of the Children Order) or (b) if he is kept in any other description of accommodation he is likely to injure himself or other persons. It is unlawful to restrict the liberty of a child in the absence of these criteria being met. Similarly, a child must not continue to have their liberty restricted if the criteria cease to apply, even if a court order permitting this remains in force.

Considering the potential use of secure care, the Children Order Guidance Volume 4 clearly states that *“restricting the liberty of children is a serious step which must be taken only when there is no appropriate alternative. It must be a ‘last resort’, in the sense that all else must first have been comprehensively considered and rejected – never because no other placement was available at the relevant time, because of inadequacies in staffing, because the child is simply being a nuisance or runs away from his accommodation and is not likely to suffer significant harm in doing so, and never as a form of punishment”*. It also highlights the duty upon Trusts to *“take reasonable steps designed to avoid the need for children within their area to be placed in secure accommodation”* (DHSSPS 1996:para 15.5/15.6).

The Guidance further stipulates that all decisions to place a child in secure care should be taken at senior level and that no child under the age of 13 years should be placed in secure accommodation without the prior approval of DHSSPS.

A child may only be held in secure care for a maximum of 72 hours (consecutively or within a period of 28 days) without court approval. A court may authorise a secure care placement

for up to three months in the first instance and subsequently, upon further application, for up to six months at a time. However, the placing Trust is required to review the child’s case within one month of initial placement and thereafter at intervals not exceeding three months to ensure that the criteria for admission, and thus the necessity for placement, still apply (DHSSPS 1996).

DHSSPS statistics report a total of 53 admissions to secure care in 2006/07. Just under two thirds (64%) of these admissions were female; 36% were male. Just under three quarters (74%) of these 53 admissions were young people aged 14 or 15 years; a further 13% were aged 16 plus and the remaining 13% were aged 12 or 13 years of age. A total of 41 discharges were recorded during the same period. Almost one third of those discharged had been in secure care for 12 weeks or longer. At the other extreme, only 17% had been there less than 2 weeks (Mooney et al 2008).

It is interesting to note that the statistics released by DHSSPS in relation to children in secure care do not differentiate between 12 and 13 year olds, despite the fact that the legislation and guidance relating to the use of secure accommodation clearly does. It is therefore not possible, on the basis of available statistics, to determine how many under 13 year olds are being placed in secure care, with the sanction of DHSSPS.

Commenting on the use of secure care within NI, Kilpatrick (2006:73) concludes that *“secure accommodation raises significant issues in relation to the CRC. To deny young persons their right to liberty is one of the most serious*

penalties that can be imposed, yet there is little knowledge as to how effective this is in meeting their needs. The demand for secure accommodation always exceeds supply, yet there has been no long-term follow-up research undertaken to compare the outcomes for those young people admitted to secure care and those who were refused it". It is hoped that the audit of need and use of secure care for young people in NI recently completed by the National Children's Bureau (NCB) (forthcoming) will shed further light on these and other issues of concern in relation to the use of secure care.

4.15 Placement Choice, Stability and Continuity of Care

When considered in the context of alternative care, articles 3 and 12 of the UNCRC place a duty on States to ensure that any placement or care is individually tailored, informed by the views of the child, mindful of their needs and wishes and in line with the best interests principle.

The general consensus amongst the participants in this review, who offered comment on this issue, was that this was currently not the reality for many looked after children within NI. Inadequate placement options, inappropriate consultation mechanisms and conflicting demands on resources and service provision mean that only a minority of looked after children are accessing individually tailored, comprehensive care packages that pay cognisance to their needs and wishes and prioritise their best interests above all else. According to the findings of both this review, and other recent studies within the field, decisions about placements or the provision of care are more often resource

driven or cognisant of the needs of others and, consequently, rarely primarily influenced by the rights or needs of the child:

"With respect to children in care, service provision is often resource led and not needs based. This can result in major deficiencies and an inconsistent level of service provision with waiting lists for services in excess of what is often deemed appropriate and not in keeping with a 'rights' based perspective" (professional). "Many decisions regarding a child's long term future seem to place a greater emphasis on the parent's needs than those of the child. This is in complete conflict with the rights of the child, the needs of the child should be paramount in the care system, and all decisions should be made in their best interests not those of the parents" (professional).

"Children [are] being placed in placements that don't meet their needs. Say for example that a child's appropriate placement would be a foster placement but they've spent 18 months in a children's home because there isn't a foster placement for them" (professional).

As Iwaniec (2006:6) concludes:

"Choice of placement is a vital factor in meeting the assessed needs of children. Sadly, children are often placed on the basis of vacancy and not suitability, and seldom is a child's wish heard as to where he/she prefers to be placed. If we seriously want to take on board children's wishes and rights, and treat them with respect, as stated in the Children's Act and the Rights of Children as postulated by the United Nations Convention



4

FAMILY LIFE AND ALTERNATIVE CARE

on the Rights of the Child, we need a variety of settings to accommodate children living away from home. Children old enough and capable of making decisions should be allowed a choice as to where they want to live. Looked after children should have access to appropriate placements; where they are placed should not be a resource led decision, it should be based on what is in the child's best interests and what meets their individual needs and circumstances... Informed choices and careful assessment can help to prevent a child's sense of rejection and a carer's feeling of failure."

DHSSPS also recognises the need for investment in placement choice, in the proposed Care Matters strategy:

"It is important that for every child who requires to be looked [after] there is a choice of placements which meet their needs. Fieldwork staff who need to accommodate children should have at their disposal a range of choices from which to secure a placement that is appropriate to the assessed needs of the child they are working with. This is particularly the case if children are to be consulted meaningfully about where they will be placed...A range of new initiatives are needed. In particular, the issue of children being placed into residential children's homes or foster care placements, which are not appropriate to meet their needs, must be addressed and Trust boundaries should not be a barrier in identifying the best possible placement for each child or young person coming into care" (DHSSPS 2007i:32).

A further critical issue in looked after children's lives, closely related to that of placement choice, is that of placement stability and continuity of care. Articles 20 and 21 of the Convention place a clear duty on States to pay due regard to the desirability of continuity in a child's upbringing when considering solutions for their care. The importance of stability in looked after children's lives is also clearly outlined by the Committee in General Comment Number 7 which encourages States to *"invest in and support forms of alternative care that can ensure security, continuity of care and affection and the opportunity...to form long-term attachments based on mutual trust and respect"* (CRC 2005b:para 36b).

This is not, however, the reality for many children and young people in care within NI. Of all children looked after for more than a year in 2002/03, over 20% had changed placement at least once (DHSSPS 2007i). The *"too frequent move between places for children in alternative care"* was raised as an issue of particular concern by the Committee in their 2008 Concluding Observations (CRC 2008:para 44).

The issues of placement stability and continuity of care are raised time and time again when looked after children and young people are given the opportunity to comment on their experience of care, as something that is both important to them and frequently missing in their lives (Mullan and Fitzsimons 2006; NICCY 2006a; SSI 2006). Those who participated in this review were no different:

*"I was moved 52 times since I was five"
(young person).*

"You'd stay with a family for so long and you'd only be getting used to them, and then you'd be told it was time to go, you know, pack your bags" (young person).

"[I] felt when I was moving that it was my fault and that there was something wrong with me" (young person).

These experiences, which mirror those recorded in other recent studies, sit in direct contrast to the intention of the UNCRC that *"the State should take all measures to avoid multiple placements of children in its care. When children have suffered the trauma of losing their family they may present behavioural problems that could result in them being passed from one foster home to another, or in their spiralling downwards, through increasingly restrictive institutions, which could then lead to further behavioural problems. Care must be taken to avoid such disruption in children's lives"* (UNICEF 2007:289).

The importance of placement stability and continuity of care, or indeed the repercussions of the absence of these, is well documented in recent NI studies. Mullan et al's (2007a) study of the mental health needs of looked after children, for example, explores the repercussions of 'pinball living' and, conversely, the positive contribution that longer-term stable placements can make to a young persons mental wellbeing:

"Placement change can be confusing and unsettling...A substantial proportion talked about the uncertainty they experienced as a consequence of their highly unsettled lives including; getting to know new people, discontinuity of friendships, moving school, missing previous placements, the hassle of moving, leaving the area they were from and the abruptness with which they could move" (Mullan et al 2007a:69).

"Stability has a protective influence in the lives of Looked After Children/Care Leavers... Continuity of care is also important not only to detect and act upon mental health problems, but also because it provides a 'better' service to Looked After Children themselves" (Mullan and Fitzsimons 2006:34).

NICCY's 2006 review of looked after children's participation in the care planning process further identified the importance of continuity of care in terms of supporting and facilitating looked after children's self expression and involvement in decisions about their lives. The review observes:

"The effective realisation of individually tailored, participative care planning processes is dependent, amongst other things, upon shared knowledge, communication and understanding. These can only be attained and maintained within the context of positive reciprocal relationships between looked after children and young people and those tasked with their care" (NICCY 2006a:24).

4

FAMILY LIFE AND ALTERNATIVE CARE

Continuity of care is also crucial with regard to looked after children's experiences of social workers, key workers and other professional relationships, yet recent studies by NICCY, VOYPIC and SSI would all indicate that many looked after children are unable to access such continuity of care:

"Frequent turnover of social workers (often with very little advance notice) was a problem identified by the majority of young people, several of whom spoke of the difficulties this caused in terms of bonding, sharing and trusting: "I've had ten social workers and I've only been in care two years...you get to know them then they go"; "you spend your time building relationships with them then losing them...means you have to go over the same things again and again"" (SSI 2006:102).

"Children can have many different social workers and this can prove very difficult and disruptive for the child as they may have built up a relationship with a social worker and then have to start from scratch again with another. This is especially true with older children. Many issues may just have started to be addressed and the social worker moves on. The child then often will withdraw and will not open up to the new social worker" (foster carer cited in NICCY 2006a:24).

"When their social worker changes they are gutted. They have lost relationship and have to rebuild. The same issue applies in relation to residential unit changes" (residential staff cited in NICCY 2006a:25).

Residential staff participating in Campbell and McLaughlin's study of the staffing of residential care within NI also highlighted the importance of consistency in looked after children's lives, as does McAuley in her follow-up study of children who have left care:

"Findings repeatedly indicated that worker consistency and continuity were deemed critical for young people who were coming from very unstable familial or care backgrounds...staff consistency was vital in trying to address the problems through establishing and maintaining a therapeutic and caring relationship with the young person...the main focal point of successful working in the residential sector rested on the forging and maintaining of symbiotic trusting relationships between the workers and young people" (Campbell and McLaughlin 2005:75).

"These young people experienced a significant number of changes of social workers. The issue of a high turnover of staff in Family and Child Care needs to be considered from the point of view of impact on Looked After Children and their expressed and understandable difficulty in establishing trust in adults" (McAuley n.d.:15).

The continued experience of multiple placements and frequent changes in social work personnel, and the failure to effectively engage children in these decisions, sit in direct contrast with the permanency and stability advocated within the Convention. They also sit in direct conflict with the general principles of articles 3 and 12 of the Convention.

4.16 Participation in Care Planning Processes

“Social workers don’t listen as they say they do things for your best interests, but it’s what they think, that they do. They don’t ask first” (young person).

As highlighted in chapter 2 of this report, article 12(1) of the UNCRC stipulates that States must ensure children who are capable of forming their own views are given the right to express these views freely in all matters affecting them and have these given ‘due weight’ in accordance with their age and maturity. Article 12(2) specifically relates this right to judicial and administrative proceedings affecting the child which, according to the UNCRC Implementation Handbook, should be seen to include both legal care and adoption proceedings and decision making in relation to the provision of services such as care, health, education and protection to children in alternative care.

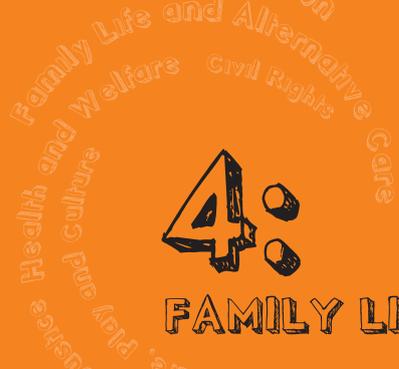
The CRC specifically considered the issue of respect for the views of the child in their 2005 Day of General Discussion on Children without Parental Care. Emphasising the importance of looked after children’s article 12 right, the Committee states:

“The Committee is concerned at the fact that children are not often heard in the separation and placement processes. It is also concerned that decision-making processes do not attach enough weight to children as partners even though these decisions have a far-reaching

impact on the child’s life and future...In the light of article 12 of the Convention, the Committee recommends that all stakeholders continue and strengthen their efforts to take into consideration the views of the child and facilitate their participation in all matters affecting them within the evaluation, separation and placement process, in the out-of-home care and during the transition period...It also recommends that States parties undertake a regular review of the extent to which children’s views are taken into consideration and of their impact on policy-making and court decisions and on programme implementation” (CRC 2005c:para 663/664).

The principal statute governing the care, upbringing and protection of children in NI, the Children (NI) Order, also explicitly recognises a role for the voice of the child. Article 26 of the Order places a duty on authorities to ascertain the wishes and feelings of the child (as far as is reasonably practicable) and give these due consideration, with regard to the age and understanding of the child, when making decisions about their care. This recognition of the need to both ascertain and consider children’s wishes and feelings is also observable in other legislative and policy frameworks of relevance to looked after children, including those of the Children (Leaving Care) Act (NI) 2002 and the recent draft Care Matters strategy.

While the reference to looked after children’s article 12 right in legislative and policy frameworks is to be welcomed, findings of studies undertaken in NI in recent years reveal ongoing dissatisfaction with the ways in which, and degree to which, looked after children are



4

FAMILY LIFE AND ALTERNATIVE CARE

actually involved in decisions about both their care and other aspects of their lives (McAuley and Bunting 2006; NICCY 2006a; SSI 2006; Mullan et al 2007a).

NICCY's 2006 review of children and young people's participation in the care planning process found there to be a general acceptance of the principle of children's involvement and participation in care planning across all respondent groups (children, foster carers, residential staff, LAC Chairs and birth parents), but noted that the ways in which participants envisaged this occurring varied considerably:

"Children and young people not only wanted to be consulted and informed about decisions regarding their care; they also wanted to have an active and meaningful role within the decision-making process when old/mature enough to do so...Trust staff and foster carers, whilst generally supportive of the concept of involving children and young people in the care planning process via discussion and feedback, expressed a notable degree of reluctance as regards the sharing of decision-making power with young people" (NICCY 2006a:15).

This finding is in line with that of Winters, who Iwaniec reports "examines what exactly is meant by children's participation, and notes that a common misconception is that children's participation is synonymous with children controlling adults and telling adults what to do. Rather, she argues, the term means taking part in, sharing, influencing, and affecting decisions reached through a process of mutual discussion, negotiation, compromise, and agreement in

a partnership relationship. There are different degrees of participation, ranging from being informed, expressing a view, influencing the decision-maker, and being the main decider. The aim should be to elevate the voice of the child to the same level and visibility in proceedings as the voices of the other professionals who make comments on these children's lives" (Iwaniec 2006:264/265).

NICCY's review of children's participation in care planning concludes, on the basis of both a review of existing literature and primary research with key stakeholders, that though there is evidence of good intent, and even pockets of good practice where this has been translated into action, the LAC system, as a whole, is still a long way off from being genuinely child-centred or participative in either culture or practice:

"Whilst there has certainly been notable progress in recent years, children and young people do not yet feel they are active participants in their care planning. Most young people, particularly those of post-primary age, want to have a more active and meaningful role in decisions about their lives. They want to be active partners in, not passive recipients of, their care planning...It is clear that there is still much to be done if children and young people are to feel genuinely involved in, and correctly believe that they can influence, the decisions that are made about them" (NICCY 2006a:37,7).

The inconsistent application of looked after children's article 12 right with regard to care planning is also recognised within the draft Care Matters strategy, which acknowledges

that “not all children are active participants in their care plan, or even aware of what their plan entails...Young people want to have a more active and meaningful role in their care planning...the sometimes rigid and inflexible nature of the current system precludes the effective participation of children and young people” (DHSSPS 2007i:41). The NI NGO 2008 Alternative Report to the CRC similarly concludes:

“Care planning arrangements are generally bureaucratic, adult-led and problem-focused rather than a child-centred process, which emphasises each child’s strengths and potential and provides advocacy support for looked after children. NGOs working with children in alternative care express concern that the emphasis in training tends to be on skills, expertise and regulatory policies and procedures rather than values and attitudes towards children, promotion of and compliance with children’s rights, service user involvement and participation” (SC/CLC 2008:26).

Participants in NICCY’s 2006 review of care planning processes identified further reasons why the rhetoric of an individually tailored participative approach to care planning was generally not being translated into reality. These include:

- lack of relationship due to changes in social work personnel and placement insecurity
- a lack of appropriate communication tools for eliciting the views of children and young people and providing feedback to them

- the formality and adult-focused nature of the current review process
- inappropriate timing, duration and location of reviews
- the frequently personal and often negative focus of reviews
- the absence of an independent advocate for children and young people
- inability to accommodate children with additional or complex needs
- the absence of a genuine article 12 culture
- professional constraints – caseload, bureaucracy, lack of resources etc
- failure to share good practice.

Recommended actions for improving the participation of children and young people in the care planning process, proposed within the report, include making reviews less formal and more child focused, involving children in the planning of reviews, mandatory presence of an impartial advocate for the child and exploration of identified good practice initiatives (NICCY 2006a).

The findings of NICCY’s 2006 review closely correspond with those of other recent NI studies addressing the issue of looked after children’s participation in decisions about their lives. A number of different VOYPIC studies, summarised in McAuley and Bunting (2006), have also highlighted children and young people’s desire to be more aware of, and more involved in, decisions about their lives and the urgent need for current care planning structures to be revised. VOYPIC’s more recent study into the mental health needs of looked after children also observes:



4

FAMILY LIFE AND ALTERNATIVE CARE

“The one procedure where almost all of the young people were unanimous in their criticism was LAC reviews. These were something which young people did not feel they could participate in and their lasting impression was the volume and relevance of people talking about them in a predominantly negative way...Many young people talked of the tension and discomfort they felt during this process. Rather than them understanding it as a review of the care process as it related to them, they experienced it as a review of them as a person in which they had little or no part. While they could be there, the situation and the power imbalance meant that the young person essentially did not have a voice” (Mullan et al 2007a:38/39).

Children who participated in a 2006 SSI Inspection of child protection services also raised concerns in relation to their involvement in care planning, in particular their experiences of LAC reviews. Criticisms of reviews included being pitched at an inappropriate level – *“I come out and think what happened there – I don’t understand three-quarters of it”*– being too negative, too much personal information being shared, too many (unnecessary) people present, meetings being *“boring”* and lasting too long and a feeling of being *“studied”* and *“talked about”* rather than engaged with. In spite of these criticisms and negative experiences, virtually all young people who participated in the Inspection recognised the need for some kind of forum where issues in their life could be discussed and resolved. However, as the Inspection Report notes, *“the young people’s preference was not, however, that these should continue in the current format, but that reviews*

should be reconfigured in a way that enabled young people to participate more freely and engage more freely”. The report consequently urges all Trusts to ensure *“that their practice is focused on the right of the child to meaningfully engage in decisions about their life, in an age appropriate manner”* and to undertake a comprehensive review of existing structures to ensure they are fit for task (SSI 2006:101–105).

The failure of Trusts to effectively and meaningfully engage looked after children and young people in decision making processes relating to their lives is a clear breach of these children’s article 12 right. It is imperative that this be urgently redressed, and that emerging practice of engaging children and young people in both their own planning and review processes and the development of more appropriate mechanisms for how care planning could be delivered to all looked after children, be consolidated and expanded upon in line with the Committee’s 2008 recommendation that children’s views be taken into account in all measures relating to their care (CRC 2008). As Iwaniec (2006:265) observes:

“Within the CRC (Children’s Rights Convention) there is a need to ensure that there are effective, child-sensitive procedures available for all children and their representatives, including child-friendly information, advice, and advocacy, as well as support for self-advocacy.”

The commissioning of a review of LAC processes, as proposed in the draft Care Matters strategy, would provide a good first step in terms of achieving the more effective engagement of

looked after children in decisions about their lives, provisional to the inclusion of children and young people's voices in any such review. Further recognisance and development of the emerging practice of independent advocacy for looked after children is also widely recognised as an effective mechanism for facilitating the realisation of these children and young people's article 12 right, however, in order for this to make a significant impact, it must become a mandatory requirement, with clear standards for delivery, monitoring and review.

4.17 Educational Experiences and Outcomes

As highlighted previously, looked after children are not a homogeneous group. Their educational experiences and outcomes range from those who are engaged in and doing well at school through to those who have completely disengaged from learning and/or left school without qualifications. Unfortunately, however, the former tend to be in the minority. As a group, looked after children and care leavers are collectively more likely to be disengaged from education, to under perform and consequently to leave education early and/or without basic qualifications:

"The underachievement of care leavers has been well documented, and studies carried out in Northern Ireland indicate that young people in care here are less likely (on average) than other school children, to succeed educationally. For example more than half (53.2%) of young people who left care in 2001/02 had no formal qualifications, more than 10 times the proportion

of all school leavers who had no formal qualifications (5.2%)" (DHSSPS 2005:15).

The most recent outcome indicators for looked after children, published by DHSSPS in 2006, relate to the year ending September 2003. These statistics portray an alarming picture in relation to the educational experiences and outcomes of looked after children within NI:

- 1 in 11 (9%) looked after children of school age were suspended from school, compared with 1.7% of the general school population in NI. 1.7% were expelled, compared to 0.02% of the general school population
- 1 in 10 (10%) children looked after (for at least 12 months) missed 29 or more days of school during the academic year
- almost 1 in 10 (9%) changed schools, excluding changes from primary to secondary school
- only 1 in 4 (26%) looked after children remained in full time education at the end of Year 12
- looked after children performed significantly less well academically at every Key Stage than the general school population
- over half (53%) of looked after children due to sit GCSE/GNVQs did not sit any exams
- only 42% of looked after children attained at least 1 GCSE/GNVQ at grade A*–G compared to 96% of the general school population. Only 8% obtained 5 or more, compared to 59% of the general school population (Mooney et al 2006).

As of September 2003, almost one quarter (22%) of looked after children of school age had



4

FAMILY LIFE AND ALTERNATIVE CARE

a statement of Special Educational Needs (SEN). This compares to a figure of 4% for the general school population. Three fifths (60%) of these children had a statement of SEN because of a learning disability, 22% because of behavioural problems and the remainder due to 'other' reasons, such as an Autism Spectrum Disorder (ASD), physical disability or emotional problems (Mooney et al 2006).

The continued disproportionately negative educational experiences and outcomes of looked after children reveal a stark failure, on the part of government, to effectively facilitate the realisation of their basic right to education. Article 28 of the UNCRC places a duty on State parties to ensure that all children are able to enjoy their right to education; the statistics presented suggest this is not yet a reality for many looked after children in NI.

It is encouraging to note that there have been a number of initiatives introduced in recent years to attempt to address the disengagement and disempowerment of looked after children in education, including the appointment of dedicated Education Welfare Officers and the development of joint protocols between HSS Boards and ELBs, but these have tended to be Board specific and therefore limited in their range. Commenting on these, and other initiatives, the draft Care Matters strategy states, *"it is now time to consolidate all of these various initiatives into a single approach across the region and to build on the learning to establish an effective support service within education for looked after children"* (DHSSPS 2007i:63).

Care Matters proposes four key strands that should underpin any new approach to achieving improved educational outcomes for looked after children:

- empowerment of education services to support looked after children – through the development of Education LAC Teams in each HSS Trust that will manage personal education plans for all looked after children and act as a bridge between the home and school environment
- supporting foster carers/key workers to engage with schools as other parents do – through provision of training and support services to carers/key workers, the expansion of the Fostering Achievement Scheme (which allows foster carers to access educational equipment and resources such as computers or tutoring) and the provision of out of school educational support for children in residential care
- sharing of information about a child's care status to be informed by the best interests principle and respect for privacy – in order to balance the need to ensure appropriate educational provision and children's reluctance to be identified as looked after or treated differently. Protocols for sharing information between schools and social services should be developed
- equal access to the full range of educational opportunities available – both in terms of school to be attended and additional educational needs to be met. Particular consideration should be given to transition points and to the provision of Alternative Education Provision (AEP) placements beyond compulsory school leaving age.

It is interesting to note that despite the rights-based rhetoric contained within the proposed strategy, one of the four key principles of the UNCRC – children’s participation – fails to appear as a foundational principle for achieving improved educational outcomes. This is an unacceptable omission that must be redressed in the final strategy and any accompanying action plan.

Recognising that looked after children are less likely to go on to further education and training post 16 than their non-care-experienced peers, Care Matters also considers the issue of post compulsory education and training. It cites the previous commitment, on the part of government, to double the number of care leavers in education, training or employment at age 18 within 15 years and sets forth a number of specific actions which are required to deliver this.

Whilst the recommendations and commitments contained within the draft strategy, with regard to the improvement of educational outcomes for looked after children, are both necessary and welcome, it is imperative that these be adequately developed and resourced through production of a final strategy, accompanying action plan and dedicated budget. Until this occurs, and experiences and outcomes for looked after children begin to significantly improve, the State remains in breach of its article 28 obligation to ensure all children and young people are able to enjoy their right to education.

4.18 Emotional Wellbeing and Mental Health of Looked After Children

The issue of looked after children’s emotional wellbeing and mental health has been the focus of several NI based studies in recent years (Teggart and Menary 2005; Bamford Review 2006a; Mullan and Fitzsimons 2006; Mullan et al 2007a; Whyte and Campbell 2008). The findings of these studies clearly indicate that looked after children and young people, as a group, experience disproportionately high rates of emotional difficulties and mental ill health:

“It is by now well established that young people in care have markedly higher rates of mental health problems than the general population. Children looked after by Social Services in children’s homes, foster homes and other residential placements often face complex and enduring interpersonal and mental health problems affecting every aspect of their lives and making it difficult for them to accept help and support and for staff and carers to maintain therapeutic relationships” (Bamford Review 2006a:8).

Teggart and Menary, in an assessment of 64 looked after children in 1 HSS Trust, noted that over 60% of these young people may have a diagnosable psychiatric disorder. They further observed that the children and young people in their sample were assessed (by their carers, teachers and themselves) to have higher levels of emotional symptoms, conduct problems and inattention-hyperactivity and that young people with learning disabilities in state care



4

FAMILY LIFE AND ALTERNATIVE CARE

“were significantly more likely to be reported as being emotionally and behaviourally distressed compared with the non-disabled comparison group” (Taggart et al 2007:412). Commenting on their findings, the authors conclude “while further clarity will be helpful, it is beyond doubt that children in substitute care have significant need for mental health supports in view of the levels of difficulty identified” (Teggart and Menary 2005:47).

Considering potential reasons for this; looked after children face a number of different challenges and experiences that can negatively impact upon their emotional wellbeing and mental health. These can relate to their experiences prior to entering care or the actual experience of being taken into care and the feelings and complexities associated with that, including feelings of confusion or abandonment, loss of family, geographical uprooting and lack of involvement in, or understanding of, the process. Children and young people’s consequent experiences of living in care can also negatively impact upon their emotional wellbeing and mental health, in terms of the stigma faced, the experience of living in an artificial environment, being moved between multiple placements and social/keyworkers and family contact issues (Mullan et al 2007a).

Mullan et al (2007a) note that, in spite of this, LAC review and care planning processes tend to focus more on the practical issues relating to the care of a child, rather than addressing the emotional difficulties and challenges created by an experience of care or coming into care. They further note that staff working with looked

after children are rarely adequately trained to identify and respond to mental ill health and that *“the focus is often on trying to fit young people into an ‘unnatural system’, rather than the system trying to mould itself around the needs of the young person” (Mullan et al 2007b:419).*

According to Whyte and Campbell’s (2008:196) study of the mental health of looked after children in two HSS Trusts, looked after children *“are not routinely screened for mental health or mental ill-health and generally only come to the attention of specialist mental health services when they display significantly extreme behaviour or symptomology and their placement is at risk of breakdown”.*

Teggart and Menary (2005:47) also highlight continued inadequacies in how the system responds to the mental health needs of looked after children:

“The delivery of services to this population is complex and can meet with impediments such as the impacts of high staff turnover rates in residential care or multiple foster placements and unclear planning... Within Northern Ireland in recent years, Trusts have begun to dedicate posts and, in some cases, teams to the provision of mental health services for young people in care. Developments are patchy, however, and as with so many CAMH service issues in Northern Ireland there is a lack of regionally coherent planning and investment.”

Considering a more appropriate response to looked after children’s mental health needs, Mullan et al (2007b:431) note the *“need to*

move away from responding to behaviour to understanding that young people's responses are not unnatural or surprising" given their circumstances and experiences. The authors consequently recommend that services should be based on need and delivered via joined up working that engages with carers and staff in the young person's existing network. They further recommend that service provision recognise the importance of resilience in looked after children's lives and invest in resilience building and the development of 'positive' coping mechanisms from an early age.

Mullan et al's observations mirror those of the Bamford Review which recommends that close collaboration between social services and the network surrounding the child, comprehensive assessment of need and appropriate evidence based interventions be the cornerstones of any model designed to meet the mental health needs of looked after children.

It is imperative that the provision of support and services in relation to looked after children's mental health be based on an accurate and appropriate assessment of need. Based on their initial piloting of the model, both Teggart and Menary (2005) and Whyte and Campbell (2008) propose routine use of the Strengths and Difficulties Questionnaire (SDQ) at the point of entry to care, as a potential means of achieving this.

Irrespective of the particular assessment or screening model used, once a need has been identified it is vital that an adequate and appropriate range of supports and interventions are readily available for use in the context of an

individually tailored care plan. As Teggart and Menary (2005:47) observe, "a population that experiences such complex social circumstances and psychological realities requires the availability of a sophisticated array of supports and treatments".

VOYPIC's 2006/07 study of the mental health of looked after children in NI proposes a number of measures that need to be addressed in order to ensure an appropriate response to looked after children's emotional wellbeing and mental health needs. These include:

- investment in supportive social relationships and the presence of a 'significant adult' in each young person's life
- development of resilience and coping skills
- increased placement stability
- facilitation of desired contact with family
- helping young people understand their life story and care experience
- development of advocacy for looked after children
- greater continuity of social workers and other professional support
- meaningful participation of children in the care planning process
- better training for medical and social care professionals working with looked after children
- adoption of a common assessment framework
- appropriate use of informal and formal supports and services
- development of a database of services available for young people with poor mental health (Mullan and Fitzsimons 2006; Mullan et al 2007a).

4

FAMILY LIFE AND ALTERNATIVE CARE

These, and other issues, must be urgently addressed in order to ensure that all looked after children are able to enjoy the emotional wellbeing and positive mental health envisaged within the provisions of the UNCRC. The disproportionate numbers of looked after children exhibiting emotional difficulties and/or mental ill health clearly illustrates that the government is not currently providing adequate 'special protection and assistance' to this group, as is their obligation under article 20 of the Convention.

4.19 Leaving and Aftercare

Around 200 young people leave care in NI each year. Most recent statistics reveal that 220 young people (107 males and 113 females) ceased to be looked after during the year ending 31 March 2006. Over a third of these young people had spent more than 5 years in care; 1 in 7 (14%) had been looked after for 10 years or more (Mooney et al 2007a).

Young people leaving care are forced to experience the transition to independent living, and the many challenges and responsibilities associated with this, several years before the average age at which non-looked after young people choose to leave the familial home (22 years). The difficulties faced by care leavers upon their premature transition to independence and their frequently negative experiences of life post care have been well documented, as DHSSPS themselves recognise in a series of different documents:

"Too many of our young people are leaving care before they are ready to do so. At 16 and 17 most young people are facing new though normal transitions and challenges and are thinking about future education and training opportunities rather than having to contemplate leaving 'home' and possibly moving to independent living. Young people themselves point out their fears and anxieties about this and that often they feel that they are made to leave care too soon with inadequate preparation" (DHSSPS 2007i:89/90).

"Not only do young people leave care prematurely, the main elements of transition to adulthood tend to be compressed. Learning to manage a home, gaining a career foothold and starting a family tend to overlap in the immediate period after leaving care. Many young people will also have received inconsistent preparation for adulthood. It should not therefore be surprising to find that while some young people have positive experiences of the care system and go on to do well, others experience considerable difficulty, including a high risk of homelessness" (DHSSPS 2005:15).

As highlighted above, care leavers are frequently left to negotiate this premature and compressed transition to adulthood in the absence of adequate support structures, both financial and inter-personal. Their experience of negotiating independence, and their ability to do so successfully, is also frequently negatively impacted by their experiences of life pre-care or life in care:

“Young people in care, by virtue of their pre care experiences and subsequent separation from immediate/birth parents can endure significant trauma, experiencing a real sense of loss and isolation” (DHSSPS 2007i:89).

“Most, if not all, care leavers will have experienced significant trauma and disturbance in their lives both before, and on entering care. This distress can be sustained while in the care system, through the disruption and instability caused by frequent placement moves, changes of school, absenteeism and exclusions from school” (Mooney et al 2007a:7).

In light of these issues, it is unsurprising that care leavers frequently experience further disadvantage in the months and years following their departure from care. As Mooney et al further observe:

“Young care leavers therefore seem to be faced with a constellation of adversity. They have experienced a great deal of disruption and turmoil during their young lives. On average, they have lower levels of educational attainment than their peers, are more likely to bear the responsibility of parenthood, and experience higher levels of disability and health problems. They are expected to leave care and often to learn to manage a home independently while still in their teens. In effect, they are rushed into adulthood at a very young age. It is perhaps not surprising therefore, that although some are successful in later life, care leavers tend to be over-represented among the adult prison population and among rough sleepers and the homeless” (Mooney et al 2007b:9).

“Care leavers are among the most disadvantaged groups in our society. Research has consistently shown that young people who have been looked after have poor educational attainment and often become unemployed upon leaving care; girls are more likely than their peers to become pregnant in their teenage years, and boys to be represented among the prison population. Young care leavers are also more likely than others to become homeless and are at high risk of poverty and social exclusion” (Mooney et al 2007a:7).

Most recent published statistics, from 2005/06, reveal that under half of the 180 care leavers surveyed were in education/training (30%) or employment (17%). One in 10 (9%) were unemployed, with the remaining 43% economically inactive due to sickness or caring responsibilities. This is likely impacted by the fact that more than half (55%) had left school without gaining any qualifications, compared to 3% of the general school leaving population. The financial implications of low educational attainment and economic inactivity are likely to be particularly strongly felt, given the general absence of other sources of support for these young people (Mooney et al 2007b).

Given the multiple difficulties, disadvantages and challenges faced both on leaving care and in negotiating independent living, it is imperative that young people receive intensive preparation and support prior to, during and after the leaving care process, if they are to have any possibility of effectively negotiating their way through this structure of constraint. Unfortunately, the care leavers who have participated in both



4

FAMILY LIFE AND ALTERNATIVE CARE

this review, and other recent NI studies, have generally not found this to be the case:

“This deep-rooted desire to leave care as early as possible meant, however, that some young people were not fully prepared for the drastic change in circumstances. Only a small number of young people said they had a good awareness of the potentially difficult realities of life after care and felt prepared for these because of the skills they had been learning” (Mullan et al 2007b:430).

Young people who participated in this review reflected on how starkly their experience of life after care compared to their life in care, in terms of the financial support and other opportunities available to them. With hindsight, several of these young people felt that their experience in care had actually done them a disservice in preparing them for independent living as the following extracts of a conversation between two care leavers clearly illustrates:

“Do you know what I think? I think the young people are spoilt, I really do. Everything is sat out in front of them. Whenever they come out of it, it’s a big, it’s a wake up call. You are living on £45 from the brew. You’re not getting taxis, you’re not getting your dinner set in front of you” – “but you enjoyed it when you were there, didn’t you?” – “yeah, but it was a gonk when you don’t get all that stuff anymore, it really is. And it’s hard to face reality, and its hard to come from having it all.”

“Get too much; lack of boundaries – doesn’t prepare you for life after care.”

“[Young people should be able to] build up time living on own so that it’s not a shock when you have to do it – like someone being there at night to supervise them so they are safe – in case something goes wrong.”

Stein (2008), writing on the issue of resilience and young people leaving care, identifies a clear relationship between the resilience of young people post care and the care and support they received while in care, during the transition period and after leaving care. The importance of adequate preparation for, and support on, leaving care in order to mediate the negative impacts of these difficulties and disadvantages is also recognised by government, as is the responsibility of Trusts to provide this:

“Young people approaching the time when they will leave care, do so from a wide variety of backgrounds and circumstances, at various ages and with differing levels of support available to them from family and friends. The quality of preparation for leaving care, and of the aftercare subsequently provided, will profoundly affect the successful transition of the young person to independent living and potentially affect the quality of the rest of a young person’s life” (DHSSPS 2005:16).

“For young people in care the care system must provide not only a positive living environment but also a bridge into adult life. It must be recognised that every young person needs

continuing help to make a smooth transition to adulthood. Most young people, as part of growing up and maturing towards adulthood, do so with the continued love, support and care of their parents. Most young adults outside of care enjoy a range of support including financial support from their families. At a basic level they will have somewhere safe where they can continue to live until they are ready to live independently and once having left home they have somewhere to come home to and caring supportive adults to turn to in times of need. Such support often remains in place far beyond the difficult stages of achieving independent adult status. We should demand no less for our young people whilst they are in our care and beyond as they progress into adulthood” (DHSSPS 2007i:89).

The key pieces of legislation currently governing the area of leaving and aftercare are that of the Children Order, the Children (Leaving Care) Act (Northern Ireland) 2002 and the accompanying Children Order Guidance and Regulations, in particular Volume 8 which specifically addresses leaving and aftercare in the context of the provisions of the Children (Leaving Care) Act.

The Children (Leaving Care) Act, effective as of 1 September 2005, introduced a new legal framework for the provision of leaving and aftercare services to young people leaving care. The Explanatory Notes to the Act explain:

“The main purpose of the Act is to improve the life chances of young people who are looked after by HSS Trusts as they make the transition to independent living. To do this, it amends the Children Order to place new and enhanced

duties on HSS Trusts to assess and meet the care and support needs of young people until they are at least 21 years old. Its main aims are: to ensure that young people should not leave care until they are ready to do so; to improve the assessment, preparation and planning for leaving care; to provide better personal support for young people after leaving care; and to improve the financial arrangements for care leavers” (DHSSPS 2002:para 7).

The new Act, and its accompanying regulations and guidance, provide that all young people who are aged 16 or 17 and have been looked after for at least 13 weeks since the age of 14, from 1 September 2005 onwards, will qualify for leaving care services.⁵² Specific provisions, introduced under the 2002 Act, include:

- a new duty on HSS Trusts to assess and meet the needs of eligible 16 and 17 year olds who remain in care, or those who have left care
- a new duty on HSS Trusts to keep in touch with young people who have left care in order to make sure that they receive the support to which they are entitled. The duty will run until the young person reaches 21, or later if he or she is still receiving help from a Trust with education or training

52. The Act and Regulations provide that all young people who are aged 16 or 17 and who have been looked after for at least 13 weeks since the age of 14 will qualify for leaving care services under the new legislative arrangements. Young people who continue to be looked after are known as ‘eligible children’. Those who leave care after the age of 16, who were previously eligible are known as ‘relevant children’. Those who leave care after the age of 18, who were previously either eligible or relevant are known as ‘former relevant children’. Young people who left care before 1 September 2005 continue to be dealt with under the provisions of the Children (NI) Order.



4

FAMILY LIFE AND ALTERNATIVE CARE

- a requirement on HSS Trusts to provide a personal adviser and a pathway plan for all eligible young people. The pathway plan will map out a route to independence for these young people and will be reviewed regularly to take account of a young person's changing circumstances and ambitions. The personal adviser will provide a single point of contact for a young person. The adviser will be responsible for overseeing the pathway plan and ensuring that the young person receives the support to which he or she is entitled in a co-ordinated and easily accessible way
- simplified arrangements for the financial support of 16 and 17 year olds leaving care. The Act places HSS Trusts under a new statutory duty to support care leavers and at the same time removes entitlement to means-tested benefits from 'eligible' and 'relevant children'. Under the new arrangements, HSS Trusts will become their primary source of income
- the provision of continuing support post 18. Young people who have qualified for the new arrangements when they were 16 or 17 can continue to have a personal adviser and pathway plan. HSS Trusts must keep in touch with them until they are 21, or later if they are still being helped with education or training. They must also provide general assistance for these young people, in kind, or exceptionally in cash, until they are 21 and assist them with the expenses associated with employment, education and training (DHSSPS 2002).

Though the new Act amends elements of the Children Order, the Order and its underlying principles continue to provide the overall legal framework for leaving and aftercare services.

As such, the five key principles of that Order – protection, participation, paramountcy, partnership and prevention – should continue to underpin and inform all service provision for children leaving care (DHSSPS 2005).

The increased legislative protection and provisions contained within the 2002 Act (effective as of 1 September 2005) are to be welcomed from a child rights perspective, but it is, as yet, too early to assess the impact of these developments upon the life experiences of young people leaving care.

The needs of young care leavers transitioning to adulthood has also been considered in the 2007 draft Care Matters strategy. The draft strategy highlights a series of recent commitments by government to improving the life chances of care leavers, including the Programme for Government and Public Service Agreement commitments to improved educational experience and attainment for children in care within NI. The draft strategy also introduces four key principles that should underpin the provision of any future services and support for young people leaving care. These are:

- promoting continuity and stability where possible
- preserving bonds and links with significant adults/carers/peers
- supporting young people's transition to adulthood in keeping with their developmental needs and readiness to assume the responsibilities of adult life
- promoting the concept of interdependence in recognition that many young people will continue to need formal/informal support into adulthood and beyond.

Proposed mechanisms for ensuring the above include:

- commencing preparation for adulthood at age 13
- ensuring all looked after children have access to mentoring/peer education schemes
- increased support in relation to accessing and remaining in appropriate education, training and employment
- the revision of guidance and legislation to ensure that eligible and relevant 16 and 17 year olds cannot be discharged from care against their wishes
- investment in more appropriate post care living arrangements (including supported and specialist accommodation provision)
- the development of comprehensive and holistic wrap-around services and support for young people leaving care
- continued support to young people with complex needs up to the age of 25
- enhanced monitoring and auditing arrangements (DHSSPS 2007i).

The proposals contained within the draft Care Matters strategy aimed at improving the life experiences and outcomes of young people leaving care have been generally welcomed by commentators in the field. However, in the absence of the production of a final strategy, accompanied by a target-driven, time-bound action plan and dedicated resource package, they remain nothing more than a conceptual ideal. It is imperative that the commitment to provide special care and assistance to improve the life experiences and outcomes of this historically disadvantaged group, espoused within the draft strategy, be translated into reality

without delay if these young people are to be able to enjoy the rights afforded to them within the UNCRC.

4.20 Adoption

“The importance for children of belonging to and being brought up by their birth family is a principle underpinned by both domestic and international legislation. Adoption is such a dramatic departure from this principle that it can only be achieved through a formal legal procedure, which results in the severance of the legal relationship between the parents and the child, and the establishment of a new one between the child and his adoptive parents. Adoption is the legal transferring of a child from one family to another. This change of family is, in the legal sense, binding in perpetuity, it is for ‘all time’. It is intended to be permanent. The legislation intends that ‘it is as if the child had been born into the family’. An adoptive family is not an alternative family; it is the family. The child is registered as an adopted child on the granting of an adoption order and a new birth certificate is issued” (DHSSPS 2006a:17).

At least 500 looked after children were adopted in NI between 1999 and 2005 (DHSSPS 2006a). More recent statistics for the year ending 31 March 2006 reveal a further 56 children adopted from care in that year; a figure that is 30% lower than the comparative figure for 2004. Viewed another way, the percentage of looked after children adopted from care fell from 3.2% in 2004 to 2.2% in 2006: this compares unfavourably to a comparative figure of 6% in England in the same year.



4

FAMILY LIFE AND ALTERNATIVE CARE

The average age of children adopted in 2006 was 5 years and 4 months. Only 1 in 10 (11%) were aged 12 or over. From last entry into care, the average duration to adoption for these 56 children was 4 years and 1 month. This is significantly longer than the comparative figures of 3 years 4 months and 3 years 10 months for 2003 and 2004 respectively. The average duration from the Trust LAC 'best interest proposal' (when adoption is proposed as in the best interests of the child) through to actual adoption was 2 years and 8 months in 2006 compared to 2 years and 3 months in 2004 (Mooney and Fitzpatrick 2008). The increasing timescales associated with adoption processes within NI raise questions as to the effectiveness and efficiency of current processes and highlight the importance of the Committee's recent call for the State party to *"strengthen its efforts to facilitate that children, always in their best interest, are adopted as speedily as possible, taking in due account, inter alia, their cultural background"* (CRC 2008:para 47).

The primary piece of legislation currently governing adoption in NI is the Adoption (NI) Order 1987. This Order was introduced over 20 years ago, but its origins lie in a piece of English legislation from 1976, making it in effect over 30 years old. Though relevant guidance has been introduced more recently, including a DHSSPS 1999 Circular that *"established the clear expectation that adoption would be formally considered as an option in care planning for looked after children"* (DHSSPS 2007i:50), these have lacked the power of legislative change.

Recognising the disjuncture between the governing legislation and the reality of adoption in the twenty first century, DHSSPS produced a draft strategy for improving adoption within NI; Adopting the Future was issued for consultation between June and September 2006. Introducing the need for reform, the document highlighted a myriad of factors, which combined, result in many looked after children being unable to access 'the chance for permanence'. Legislative and procedural issues identified include:

- the fact that the Adoption Order is 'out of date' and potentially out of step with various pieces of recent domestic equality legislation and European Conventions
- tension between aspects of the Children (NI) Order and the Adoption (NI) Order
- disparity between adoption legislation in NI and other UK regions
- failure to match potential adopters and children across Trusts
- unnecessary procedural delays
- inadequate profile given to adoption within children's services and inconsistent use of permanence planning across Trusts
- wide variation across statutory agencies in the use and practice of adoption – *"there are concerns over the consistency, quality and clarity of the process, with some eligibility criteria not reflecting the norms of modern society"*
- lack of uniformity in the assessment of adoption support needs (including financial support)
- the fact that step-parent adoptions require the natural parent to adopt their own child
- the limited statistics available on adoption

- redeployment of adoption resources to other front line children's services (DHSSPS 2006a).

Other key issues impacting upon the potential usage of adoption within NI, also raised within the draft strategy, include a shortage of prospective adopters and the complex needs of many looked after children. These issues were also raised by foster carers and professionals who participated in this review:

"Lack of foster parents or carers – more and more kids being put into homes because of lack of foster parents" (professional).

"The number of children in need of permanent substitute families through adoption or long term fostering exceeds demand, resulting in children waiting for long periods. The support of children adopted from care is wholly inadequate even though most of the children placed have great needs. The development of a comprehensive post adoption support service is needed as a matter of priority if these vulnerable children are to be given better life chances" (professional).

The draft strategy cites, as its vision for the future of adoption in NI, a framework of services where the needs of the child are placed firmly at the centre of the process, where agencies avail more of the option of adoption for looked after children and where both children and families can expect the highest standards of professional advice, effective permanence planning and support (DHSSPS 2006a). Proposed developments for the realisation of this vision include:

- new adoption legislation which places the child at the centre of the process and is aligned with the relevant provision of the Children (NI) Order in order to ensure the welfare of the child is the paramount consideration in all decisions relating to adoption
- the introduction of statutory timescales and legislative recognition that delay in decision making is likely to prejudice the child's welfare
- increased independence in the reviewing process
- access to advocacy for children
- consideration of regional placements, when local placements are not possible
- extension of eligibility criteria for potential adopters and introduction of a new criteria of 'special guardianship' that does not require the legal separation involved in adoption
- legislative requirement for all appropriate criminal record checks to be conducted on prospective adoptive applicants
- priority processing of foster carer applications for adoption of a child in their care
- enhancement of adoption support services.

DHSSPS, in its summary and analysis of consultation responses, concludes that the strategy was generally well received, with most of the proposals receiving widespread support. The key exception, identified as the issue that *"provoked the largest response and opposition"* amongst respondents (DHSSPS 2007:4), was that of extending joint adoption to civil partners and unmarried couples (whether of same sex or different sex, living as partners in an enduring family relationship). In responding



4

FAMILY LIFE AND ALTERNATIVE CARE

to these concerns, the Department clarifies that people in unmarried couples (same sex or otherwise) can already adopt in NI but that, under current legislation, only one partner can currently become the legal parent, with the other obtaining parental responsibility through a less permanent legal order. It clarifies:

“The change proposed, therefore, is not to enable people in unmarried relationships to adopt where they previously could not. Children can and have been placed with single adopters in unmarried relationships, where agencies have considered that to be in the child’s best interests, under the existing legislation. We do not believe that where children would otherwise be placed in these circumstances, the law should deny them two legal parents. The Department therefore intends to proceed to amend the legislation as proposed. The key features of the policy will be that: (a) the welfare of children will be the determining consideration for any agency; (b) assessment will be the major factor in determining the suitability of any applicant; and (c) there will continue to be no right for any person to adopt” (DHSSPS 2007j:46).

A number of respondents to the draft strategy also raised the necessity of ensuring the introduction of appropriate structures that facilitate the effective realisation of children’s rights. Prior to issuing Adopting the Future, DHSSPS commissioned research on how the existing 1987 Order complies with the UNCRC and the ECHR. According to DHSSPS, *“the objective of the research was to recommend how Northern Ireland legislation might be revised in order to bring it closer in line with these*

two instruments”. The research recommended that any new legislation should (a) place a binding commitment on relevant authorities ‘to act in a Convention complaint manner’ and (b) incorporate the Convention’s general principles in express form – *“in particular, it must be made clear that the legislation and the adoption process operating under it must be informed by the principles of non-discrimination, best interests and respect for the child’s views”* (DHSSPS 2006a:79/80).

DHSSPS has stated that it is *“committed to further increasing awareness of rights and effective implementation, specifically of children’s rights, in both looked after children’s and adoption services”* and that *“this will be reflected in practical steps to facilitate children to effectively participate and make their voices heard in key decisions about their lives”* (DHSSPS 2007j:11). However, in presenting the conclusions of this audit of the Adoption (NI) Order, DHSSPS states that it *“has neither accepted nor rejected”* the recommendations for strengthening the rights basis of adoption legislation (DHSSPS 2007i:79).

If children’s rights are to be adequately protected in the field of adoptive care, it is imperative that the Department accepts the recommendations of the audit and explicitly incorporates the general principles and provisions of the UNCRC within any revised legislation or guidance. Full compliance with the general principles of the Convention would require a move away from a welfare-based approach (where welfare is the paramount consideration in decision making) to a system where the best interests of the child

is always the paramount consideration. As the UNCRC Implementation Handbook explains: *“In adoption the best interests of the child must be “the paramount” consideration rather than simply “a primary” consideration as in article 3. The provision establishes that no other interests, whether economic, political, state security or those of adopters, should take precedence over, or be considered equal to, the child’s...The paramountcy principle should be clearly stated in law. Any regulation that fetters the principle could lead to a breach of the Convention”* (UNICEF 2007:295).

Though the government’s recognition of the shortcomings of the current system and the production of a draft strategy for improving this are to be welcomed, it is of grave concern that no final strategy has yet been produced. While the political sensitivities of some proposals are acknowledged, this is not adequate justification for a failure to produce definitive outcomes two years post consultation. This failure to commit to, implement and resource a final strategy is an alarming indictment on government that sits in clear contradiction with their statement that *“given the complex nature of adoption and the huge impact it has on the lives of children and families, the development of adoption policy and legislation is one of the most critical responsibilities to be exercised by Government”* (DHSSPS 2006a:7).

4.20.1 Intercountry Adoption

Moving beyond domestic adoption, article 21 of the UNCRC also offers explicit comment on the issue of intercountry adoption (ICA), stipulating that intercountry adoption should only be

considered if a child cannot be suitably placed in his or her own country. Article 21 further stipulates that any child adopted under ICA must enjoy safeguards and standards equivalent to those existing in the case of a national adoption. This is not currently the case within NI.

According to the draft 2006 adoption strategy, DHSSPS receives approximately 20 ICA applications a year. Commenting on the additional complexities associated with such applications, the document states:

“The reality is...that children adopted from abroad may be particularly vulnerable to additional difficulties arising from early life experience in institutional care. Limited documentation or lack of birth family information is also problematic. Children from these backgrounds may experience developmental delay, lack of secure attachments, poor primary health and social care, or inadequate family or personal medical history. There are also further challenges in bringing a child of a different cultural and perhaps ethnic background into a country that is not so ethnically diverse as the rest of the UK” (DHSSPS 2006a:59).

The current legislative basis for the regulation of intercountry adoption in NI is found in the Adoption (Intercountry Aspects) Act (NI) 2001, which sets boundaries in terms of the legalities of intercountry adoption and places responsibilities and duties on the Department, Boards and Trusts in terms of the management of this. According to DHSSPS (2006a), responses to intercountry adoption are also influenced by the provisions of the Hague Convention on the Protection of Children and

4

FAMILY LIFE AND ALTERNATIVE CARE

Co-operation in Respect of Intercountry Adoption which the UK ratified in June 2003.

The 2006 strategy document 'Adopting the Future' states there are a number of specific protections currently in place in relation to the adoption of children from other countries. It also recognises, however, that *"there is scope to further improve the intercountry adoption process to protect the children involved"* (DHSSPS 2006a:60). Particular proposals contained within the draft strategy include:

- centralising responsibility for the management and delivery of all ICA services with the proposed regional adoption centre that will also have responsibility for domestic adoption
- strengthened restrictions on bringing children into the UK
- introduction of a legislative requirement for consideration of a 'match' by an expert adoption panel.

It is imperative that these, and other protective measures, are introduced as a matter of urgency in order to ensure the protection and best interests of children involved in intercountry adoptions and to minimise risk of exploitation within this field. Their introduction is also necessary if children adopted under ICA are to be able to enjoy equivalent safeguards and standards as their peers adopted under domestic protocols, as stipulated under article 21 of the Convention.

4.21 Conclusion

Where parents, or those responsible for a child's upbringing, lack the requisite skills or resources to adequately support and care for the child or children, the Convention places a clear duty on the State to assist them in doing so through the provision of both financial assistance and relevant support programmes and institutional facilities. The evidence gathered during this review, both primary and secondary, would suggest that there are significant gaps in how the State is currently fulfilling this obligation.

While many children and young people in NI are able to enjoy a positive and appropriate upbringing within a safe and loving family environment, there continue to be notable groups within NI for whom this is far from reality, due to an inability or unwillingness on the part of parents to provide this and the failure of the State to resource and support them in doing so.

As illustrated in the latter part of this chapter, children who are living without parental care are particularly vulnerable to abuses of their rights, and while developments in recent years are to be welcomed, more progress is required if the cumulative disadvantage experienced by these children is to be addressed. While not an exhaustive list, section 4.22 highlights a number of priority action areas which, if effectively addressed, could offer significant progress in the field of family life and care.

4.22 Priority Action Areas

- The urgent publication and implementation of a comprehensive and fully resourced family support strategy that promotes positive parenting and the rights of the child within the family environment and supports parents (financially and otherwise) in fulfilling this role. This must be accompanied by a detailed action plan with clear lines of accountability and responsibility and clear measurable time-bound targets.
- Greater identification of the needs of young carers, coupled with a mandatory requirement that young carers are provided with adequate and appropriate support services.
- Enhanced provision of, and investment in, family mediation services for families involved in conflictual separation or divorce, with particular recognition given to addressing the emotional impact of family breakdown on children and young people.
- The urgent publication and implementation of a comprehensive and fully resourced 'Care Matters' strategy, that is accompanied by a detailed action plan with clear lines of accountability and responsibility and clear and measurable time-bound targets. The same is also required of the proposed new strategic direction for adoption, as set forth in the draft 'Adopting the Future' Strategy.
- Investment in the development of a range of placement options for looked after children to ensure that adequate placements are available to suit the needs of all children/ young people in care. All placement decisions should take account of the views of the child and be informed by the article 3 best interests principle, with familial placements being given preferential consideration and adequate resourcing and recognition.
- Restructuring of looked after children reviews to make them more flexible, child friendly and support the participation and involvement of children in decision making as recommended by the NICCY review of the care planning process.
- Targeted inter-departmental investment in tackling the current patterns of disadvantage experienced by looked after children, including those associated with their health and education.
- Placing the provision of independent advocacy on a statutory footing, making it a mandatory aspect of provision for all children at all stages of the care process.
- Greater investment in appropriate accommodation options across Northern Ireland for children leaving care, so they are able to access suitable accommodation in the broad geographical area of their choice.