

Care Matters: Transforming the Lives of Children and Young People in Care

A Response by the Children's Commissioner

January 2007

The Children's Commissioner

The general function of the Children's Commissioner as set out in Section 2 of the Children Act 2004, is to promote awareness of the views and interests of children, particularly relating to:

- Physical and mental health and emotional well-being
- Protection from harm and neglect
- Education, training and recreation
- The contribution made by them to society
- Social and economic well-being

In considering what constitutes children's interests, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC). The rights guaranteed by the Convention are indivisible, but those that have particularly informed the Commissioner's reading of the Green Paper are:

- Article 2:** All convention rights apply to all children ***without discrimination.***
- Article 3:** Children and young people's ***best interests*** are taken into account in decisions which affect them.
- Article 12:** Children and young people must be consulted in decisions which affect them, and ***have their views taken into account.***
- Article 16:** Children and their families have a right to ***privacy.***
- Article 19:** Children must be kept ***safe from violence and neglect.***
- Article 22:** Children who come into a country as ***refugees*** have the same rights as children born in that country.*
- Article 23:** Children who have any kind of ***disability*** should have special care and support so that they can lead full and independent lives.
- Article 24:** Children and young people are to have ***access to the best available health care*** and benefit from health promotion activities.
- Article 25:** ***Children in the care of the state*** must have their circumstances reviewed regularly.
- Article 28:** Children have the ***right to an education.***
- Article 29:** Children have the right to an ***education which develops their potential.***
- Article 39:** State parties should promote ***the physical and psychological recovery*** and social reintegration of a child victim of neglect, exploitation, abuse and any inhuman or degrading treatment or punishment. This will take place in an environment which fosters the health, self-respect and dignity of the child.

** UK General Reservation -*

The UK has entered a general reservation in regard to the entry, stay in and departure from the UK, of those children subject to immigration control, and the acquisition and possession of citizenship. The Government has stated that the reservation does not prevent the UK from having regard to the Convention in its care and treatment of children, which must be compliant with other human rights instruments.¹

Introductory Remarks

The Children's Commissioner recognises the significant efforts made in recent years to support children in care to achieve their full potential, particularly through the Quality Protects programme. Those working with children and young people in care include some of the most skilled and dedicated professionals in the children's workforce. Many individual children have achieved remarkable outcomes. We therefore believe that discussion of the Green Paper should be respectful of a workforce that feels somewhat maligned and reform-weary, and respectful, above all, of children who too often have felt stigmatised by a negative public debate. Yet debate must be searching and robust. Outcomes for children who have to rely on the State for part or all of their upbringing have been consistently poor and are not improving rapidly enough. The Children's Commissioner agrees entirely with the Secretary of State's verdict that this is 'neither acceptable nor inevitable'.²

Care Matters is rightly ambitious. *Every Child Matters* has challenged services to assess children's needs at the earliest possible stage, analyse them holistically and meet them in an integrated way. The Green Paper seeks to integrate children in care and children on the edge of care fully into this approach. Implementation will be complex and require close partnership work to ensure that children with diverse and often complex needs remain at the heart of design and delivery. There is no attempt in this Green Paper to minimise this complexity by conjuring the false prospect of a single big idea that will transform outcomes. Instead, it sets out a package of proposals aimed at improving children's experiences and outcomes in many aspects of their lives. The Children's Commissioner welcomes the comprehensiveness and specificity of this approach. It is important that implementation sustains this breadth, and that policy does not become distorted by narrow targets.

The Children's Commissioner welcomes many of the Green Paper's ideas. We have chosen to comment in detail on those proposals or omissions where we have particular concerns, and which are particularly relevant to our

¹ For an analysis of the reservation, the Government's position and arguments against its retention, see Joint Human Rights Committee. 2005. *17th Report*, S. 46 – 49.

<http://www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/99/9902.htm>

² DfES. 2006. *Care Matters: Transforming the Lives of Children and Young People in Care*, Department for Education and Skills, p.3.

consultation with children and young people and our ongoing work streams. Our key areas of concern are:

- ***The risk of reduced protection for children as a result of measures to reduce the size and age of the care population;***
- ***The proposed merging of advocacy and independent visitor roles, to the detriment of both;***
- ***The failure to introduce a statutory right to advocacy for all children in care;***
- ***The failure to review and overhaul support for children in care or on the edge of care who are involved in anti-social or offending behaviour;***
- ***The proposed extension of access to electronic social care records, without consent, to education and other professionals outside social care;***
- ***The potential divergence of care standards for asylum seeking children and indigenous children, as a result of a forthcoming Home Office led review.***

Important proposals that are generally welcomed by the Children's Commissioner, but which require clarification, include:

- ***Bringing disabled children in 52 week specialist provision into the care system;***
- ***Piloting a veto for young people in care over decisions about legally leaving care before 18, and allowing them to live with foster families up to the age of 21.***

The Children's Commissioner is grateful to Save the Children for sharing results of its consultation with three groups of Unaccompanied Asylum Seeking Children, and to Newcastle City Council for opening-up its consultation with its children in care population to Children's Commissioner policy officers.³

³ 15 young children, aged 8-23, attended a consultation event on 6th January 2007. Children's Commissioner staff gauged views through postcard style questionnaires and informal conversations.

Chapter 1 The Need for Reform

General Observations

The Children's Commissioner agrees with the Green Paper's key statement of principle, that 'we must demand for [children in care] the same as we would for our own children'. It is right to demand consistency, stability, access to high quality education, a rewarding life outside of school and a supported transition to adult life for all children. This must apply to children and young people who enter into care for any reason at any age. There are very few direct references to Unaccompanied Asylum Seeking Children (UASC) in the Green Paper. ***The Children's Commissioner has sought and received important assurances from the Secretary of State that the Green Paper's proposals will be applied without discrimination, and are intended to benefit all children in the care of the state.⁴ Given this intention, it is regrettable that consultation on major reform of services to UASC – the 'UASC Reform Programme' – has not been launched simultaneously. The Children's Commissioner views this as a failure to join-up policy in a clear and publicly accessible manner. We are concerned that, as a result, there are significant gaps in the Green Paper.***

Q 1. Are the elements we suggest for our 'pledge' the right ones?

❖ *All local authorities will be encouraged to develop a 'pledge' for children and young people in their care, describing the key elements of the service they are entitled to receive. The Green Paper proposes potential core elements.*

It is unclear whether the 'Pledge' and its 'core elements' will constitute good practice or required practice, or how these will be inspected against. The Children's Commissioner welcomes local flexibility, with the opportunity that this gives children in care to be involved in setting their own priorities, but would be concerned if this led to radically inconsistent service levels nationwide.

⁴ 'I am happy to assure you that [UASC] will benefit from the Green Paper as a whole, not only from the proposals targeted specifically at them. As you know, there are some particular issues for this group, the majority of whom return home to their country of origin at some point. They and their carers often need help and support in understanding the asylum process, in order to prepare for a positive return home where appropriate. Beyond these particular needs though, this is a group of children like any other, and should receive the same excellent support from the Local Authority (LA) as corporate parents that we would expect for any child in care.'" Letter to the OCC from the Secretary of State for Education and Skills, 7th November 2006.

Chapter 2 Children on the Edge of Care

Q 3. What more can be done to reassert the responsibility of parents and help them with those responsibilities?

There is no mention in the Green Paper of the key role of short breaks in offering support to disabled children and their families, yet these services could play a key role in ensuring that children are prevented from coming in to the care system. *We are concerned that there appears to be local misunderstanding and confusion about the status of children who use short term breaks and the obligations and duties of social services;⁵ so this position needs to be clarified.*

Short breaks not only offer support to parents but can provide disabled children with a break from their family which allows them to access and enjoy new experiences. Short breaks need to be more planned constructively around the child's needs. The Parliamentary Hearings on services for disabled children⁶ found that these were a service priority for families with disabled children but that the 'lack of short breaks was the biggest single cause of unhappiness with service provision' (p.45). The Hearings also identified that families with the highest level of need often have lowest levels of access to short breaks due to lack of staff skills, for example, in meeting additional health needs. They also found that the level of respite and short breaks provision for families is falling.

The Children's Commissioner supports the recommendation of the Parliamentary Hearings that,

Families with disabled children should have a statutory minimum entitlement to short breaks services, set to reflect the level of their child's needs and that of the family.

Local authorities should target funding at providing a flexible menu of short-term breaks, as a proven preventative measure to further costs later. A multi-agency approach should be taken to funding and commissioning short breaks, recognising the potential cost savings to a range of agencies.(p.46)

Q. 6 What more could be done to support family and friends carers?

The number of children and young people in the in the care system who are accommodated with family and friends has been rising during the last decade, and is now greater than the number in residential care or the number placed

⁵ Morris, J. 2005. 'Still Missing? Volume 2: Disabled Children and the Children Act'. The Who Cares Trust. Relevant standards are set out in: Department of Health & DfES. 2004. *National Service Framework for Children Standard 8: Young People and Maternity Services: Disabled Children and Young People and Those with Complex Health Needs*. 5.6 - 5.7.

⁶ Council for Disabled Children. October 2006. *Parliamentary Hearings on Services for Disabled Children: Full Report*. Council for Disabled Children.

for adoption. Research into their outcomes is not extensive, but it consistently shows that they benefit from greater placement stability and stronger family and cultural identity than their peers. The Children's Commissioner therefore welcomes recognition of the importance of family and friends to children on the edge of care and children in care. Children and young people consulted by the Commissioner as part of Newcastle City Council's Green Paper consultation were very clear that families should be given the chance to look after their children in different ways:

'Sometimes you can work the problems out.'

In this context, the Children's Commissioner welcomes the proposed extension of Family Group Conferencing, and recognises the possible benefits to BME children and young people in particular. However, the Green Paper is unspecific about the support needs of friends and family carers. The majority are grandparents, who often have to cope with family tensions while dealing with greater financial, housing and health problems than stranger foster carers.⁷ ***We would urge the Government to engage with relevant stakeholders to devise practical solutions and resource these realistically.*** For example, there is currently no *prima facie* right to assessment of need under S.17 of the Children Act 1989 for children in the care of family or friends, and special guardianship proceedings can be prohibitively expensive.

The Green Paper's proposal to require local authorities to lodge an outline plan of permanence for the child with the court at the outset, highlights a real problem. Research indicates that social workers initiate only 4% of family and friends placements.⁸ However, we are concerned that the proposal may not always be practical, and could work counter to the child's best interests. The family may be scattered or the parent may have refused to provide the names and the whereabouts of family members. It is often the case that no decision can be made about long term placement until assessments have been completed and thus it is unrealistic and unhelpful to impose requirements upon an initial care plan. We would therefore urge a measure of flexibility in the final proposal.

Q. 7 Is it right for us to work towards an increase in the number of children supported in families and, as a result, a smaller younger care population with more complex needs?

General Observations

The Green Paper is framed in terms of types of support – intensive family support or support through the care system - rather than thresholds for support. The Children's Commissioner agrees that the issue needs to be handled in these terms, guided at all time by the best interests of the individual child. However, we have some concerns that efforts to reduce the

⁷ Office of the Children's Commissioner. September 2006. Kinship Care: Submission to the Children in CareTeam. www.childrenscommissioner.org

⁸ Farmer E. and Moyhers, S. 2005. 'Children Placed with Family and Friends: Placement Patterns and Outcomes'. Report to the DfES, School for Policy Studies, University of Bristol.

care population may, in practice and particularly if inadequately resourced, lead to higher thresholds and reduced levels of protection. We already know that some of our most vulnerable children – for example, those with disabilities - are not receiving appropriate services and are not sufficiently well safeguarded. In other words, instead of seeing the current population of children in care as unnecessarily high, it may be more realistic at this point in time to see it as artificially low.

It is reasonable to expand Functional Family Therapy while evaluating its effectiveness, and to encourage local pilots of specialised family drug and alcohol courts. Longitudinal evidence will be crucial. It is right to look critically at whether children and young people who experience repeated care episodes are having their long term needs supported by a sustained package of interventions. However, ***we would urge extreme caution before setting reduction of the care population as a policy objective per se. More work is needed to ensure that basic safeguarding procedures and the best interests test are consistently practised regardless of age.*** For example, we are not confident that all local authorities assess children referred to them for a service within the seven day time limit set down in guidance, or indeed assess them at all.

Children with Disabilities

The severity and complexity of disability amongst children has increased since the 1980s, along with a rise in the number of children diagnosed with autistic spectrum disorders. Services are being faced with unprecedented numbers of children with complex needs, and as a result many children are not getting the support they need.⁹ In particular, services struggle to meet the needs of families from black and minority ethnic communities, some of whom have high support needs: for example, the prevalence of learning disability in South Asians aged 5-32 is three times higher than other communities.¹⁰

A 2003 Audit Commission report on services for disabled children¹¹ found uneven provision, inadequate planning and co-ordination, and confusing eligibility criteria. Lack of funding was a principal factor in determining the quality of services families received. Parliamentary hearings in 2006 confirmed this picture, with 81% of parents and 62% of professionals rating social care services as poor, and with parents reporting tightening eligibility criteria.¹²

Although evidence suggests that disabled children are more than three times more likely to be abused than other children,¹³ the second joint Chief Inspectors' Report found that in some areas, disabled children are under-represented on the child protection register. The same report voiced serious

⁹ Beresford, B. 1995. 'Expert Opinions: A National Survey of Parents Caring for a Severely Disabled Child'. Policy Press and Community Care.

¹⁰ Council for Disabled Children. October 2006. *op cit*.

¹¹ Audit Commission. 2003. *Services for Disabled Children: A review of Services for Disabled Children and their Families*.

¹² Council for Disabled Children. October 2006. *op cit*.

¹³ NSPCC. 2003. 'It Doesn't Happen to Disabled Children: Child Protection and Disabled Children'.

general concerns over 'inappropriately high thresholds' in many local authorities. These have been raised in response to resource pressures, have resulted in reduced access to protection for vulnerable children, and have damaged local partnership working arrangements.¹⁴

Safeguarding Services for Young People aged 14-18

The Children's Commissioner is working with the Children's Legal Centre to assess how local authorities discharge their duty of support to 14-18 year olds under the Children Act 1989.¹⁵ Preliminary case evidence suggests that some local authorities are extremely reluctant to bring such young people into the care system (under S.20 of the Children Act), and instead may refer directly to adult housing and homelessness services or offer inappropriate levels of support under S. 17. Evidence has also recently come to light that some local authorities are inappropriately de-accommodating young people without taking proper account of their best interests.¹⁶ Such practices fail to safeguard individual young people, and preclude vulnerable individuals from entitlement to leaving care services at 18.

The Children's Commissioner appreciates that the needs of this age group present particular challenges, and that the care system should operate in a way which supports parenting, but remains concerned that current practice does not consistently meet the needs of vulnerable children. Some innovative, and promising practice is emerging, such as development of short-term 'crash pads' for adolescents in conflict with their families (residential provision offering immediate access for a short, time-limited period), but the Green Paper offers no guidance or vision. ***In this context, we find the Green Paper's ambition to see a 'younger care population' troubling. We would urge the Government to identify best practice with this age group, issue further guidance and monitor compliance.***

Q.4a Do you agree that there is a need for a more systematic approach to sharing effective practice in children's services? If so, how can we ensure maximum impact on supporting evidence-informed commissioning and practice?

See also:

Sometimes children in care are left waiting for help because services do not know what they need. Do you think that teachers and doctors should have information on children in care e.g. what school you go to, what is in your care plan? from CYP consultation feedback form.

¹⁴ Commission for Social Care Inspection. July 2005. *Safeguarding Children: The Second Joint Chief Inspectors' Report on Arrangements to Safeguard Children*. For discussion of thresholds see particularly 4.22-23 and 4.28.

¹⁵ Research is beginning in January 2007, with a report due to be issued in the summer.

¹⁶ Office of the Children's Commissioner. January 2006. 'Evidence from the Office of the Children's Commissioner on the De-accommodation Policy and Practice of the London Borough of Hillingdon'. Evidence to the Joint Committee on Human Rights.

- ❖ *Explore the implications of and models for extending access to the ICS [Integrated Children's System], on a "read-only" basis, to those such as schools and health services who might be able to use the information to joint up their approaches in supporting children. In considering this approach we will evaluate practice in areas which have already extended access to the ICS in this way.*

The Children's Commissioner does not support extending access to ICS electronic records to those outside social care without the full and informed consent of children and young people or, where appropriate, their carers.

The ICS is a 'conceptual framework'¹⁷ to support practitioners and managers in the key tasks of assessment, planning, intervention and review in order to discharge their duties to children in need and in care. It is supported by an electronic case record system capable of generating reports. Individual local authorities have each been responsible for procuring their own systems in line with DfES specifications. The programme has experienced delays. Systems were intended to be operational nationally from January 2007, but it is now likely that most will go live from mid 2007, with a small minority delayed until 2008. Once fully established, ICS will subsume and supersede local authorities' Child Protection Registers.

The Children's Commissioner has consulted young people on their views of information sharing.¹⁸ These were predominantly young people (14+) who had been involved with social care services, including care leavers, and would therefore be covered by the ICS in future. Their views were mirrored by children in care in Newcastle.

Young people believed that it was right to share information about personal circumstances regardless of consent where doing so would directly prevent serious harm. They attached the concept of serious harm firmly to physical harm, and emphasised that information sharing was only legitimate with those empowered to intervene, and not with those who simply had an interest in the outcome. Younger group members were more sympathetic to sharing of information at lower thresholds of risk. It was felt that information sharing can entrench negative impressions of young people, define them by past difficulties and lead to over-reaction by professionals.

Groups talked about building relationships with important professionals as a process that can lead to wider information sharing with consent once trust is

¹⁷ <http://www.everychildmatters.gov.uk/socialcare/integratedchildrenssystem/about/>

¹⁸ Hilton, Z. and Mills, C. 2006. *'I Think it's About Trust': The Views of Young People on Information Sharing*, Office of the Children's Commissioner. https://www.childrenscommissioner.org/documents/Report_VulnerableChildren_InfoSharing_NSPPCIndexRep_0%201.pdf . The findings are consistent with other recent consultation with children and young people, for example: Children's Rights Alliance for England. 2005. *Children and Young People Talk About Information Sharing*. http://www.crae.org.uk/cms/index.php?option=com_docman&task=doc_download&gid=66&Itemid=1&mode=view .

established, and about how premature information sharing can inhibit their willingness to deal openly with services. The young people strongly believed that their right to control their private information should be respected in line with their growing maturity.

'With any normal kid that doesn't have social workers and that, they have more control over their life and what's being said and the information that[s] being passed to people, whereas people that are in foster care, they don't get the choice because, because anybody really can access the information, and as you get older you want your life to be private.'

UASC consulted by Save the Children about the Green Paper have also expressed their concern that too many people know about their personal stories.

Young people consulted by the Children's Commissioner expressed particularly strong concerns about what they perceived as the low-level of confidentiality in schools. This, combined with their belief that a teaching role did not require case-level detail, led them to the firm conclusion that schools should not have access to social-care information.

'I don't think there is confidentiality in schools.'

'Teachers will sit there and talk about our business, because it's happened to me.'

'Your teachers should be there just to teach you really ... and that's it, but they know all your information. It's really strange.'

'It's none of their business.' (Newcastle)

Although the Information Sharing strand of the *Every Child Matters* programme aims to harmonise information sharing processes across children's services,¹⁹ it remains the fact that practices and cultures vary widely. Ofsted has raised concerns about schools' implementation of confidentiality policies, deeming them to be poor in two out of ten secondary schools.²⁰ Unfortunately, the comment of one young person reported in the Green Paper itself is therefore unsurprising:

'My maths teacher told my whole class that I'm in care.'

There are legitimate concerns that in the past some children have suffered significant harm and missed-out on support because professionals have been assessing and intervening in isolation. The IS Index and the CAF process will do much to mitigate risks of this happening in the future. The Children's Commissioner appreciates that ICS at its most fundamental and most valuable is a conceptual framework to enable all those working with children

¹⁹ DfES. 2005. *Information Sharing: Practitioner's Guide*.

²⁰ Ofsted. January 2005. 'Personal, Social and Health Education in Secondary Schools'. cf. Ofsted. July 2005. 'Drug Education in Schools'.

to share common assessment and planning principles. We strongly support the continuing reinforcement of these principles. However, no strong case has been made to support the proposition that extending ICS case management electronic records to education and health will enhance protection.

The Green Paper consultation question blurs the issue of ICS case record extension with organisational learning and commissioning. This confirms us in our belief that the proposal is service-led rather than child-centred. The proposals to enhance the role of the designated teacher and ensure that every child in care is offered a named health professional are potentially far more promising in terms of enhancing inter-agency work in partnership with the child or young person and their carer. At a minimum, we would expect the extension of ICS case record access to be subject to informed consent by the young person or carer.

'It's OK if they ask first.' (Newcastle)

Chapter 3 The Role of the Corporate Parent

Q. 8 Do the proposals add up to a sufficient strengthening of the corporate parenting role?

❖ *Revise guidance to all local authorities on care plans*

We strongly support consolidation and strengthening of the 'care plan', and believe that Government should take the opportunity to embed good practice around specific types of need. For example, the care plan for UASC must make reference to their immigration situation and, where this is not settled, to devising different plans for different immigration outcomes, (so-called 'triple planning'²¹). Social workers dealing with planning for UASC must have a sufficient understanding of the asylum system to ensure that they do not raise false expectations amongst UASC while also recognizing that they are not entirely 'passive' in the shape of that outcome. A trusted social worker may be the person to whom a UASC first discloses information about their past that may have a bearing on the immigration decision.

Q. 9 Would a 'social care practice' help give social workers more freedom to support children?

²¹ For a discussion of 'triple planning' see Crawley, H. 2006. 'Child First, Migrant Second: Ensuring that Every Child Matters'. Immigration Law Practitioners' Association, p.31. Multi-track planning is supported by the Association of Directors of Social Services (ADSS. October 2005. 'Key Transition for UASC: Guidance for Social Workers, Personal Advisors and their Managers'. 3.13) and has been recommended by the Joint Chief Inspectors (Commission for Social Care Inspection. July 2002. *op cit.*, 3.22).

The Children's Commissioner recognises the Green Paper concern that lack of independence means that social workers may not always be in a position to deliver what they would like to for children. ***We therefore support careful piloting and evaluation of a 'social care practice' model.*** If the model demonstrates benefits to children, we would support the idea of 'specialist' social care practices and would like to see a care practice for UASC developed in one of the UASC Reform Programme 'receiving' authorities. Historically, ensuring that social work roles remain uncompromised by immigration imperatives has proved challenging, so evaluation of any UASC care practice should assess how far independence has assisted social workers to focus on and support the best interests of the child.

Q. 10 Should the Independent Visitor role be revitalised and renamed as 'Independent Advocate' to introduce advocacy as a key element of the role?

The Children's Commissioner agrees that advocacy is a key issue for children in care, but does not believe that the proposal to effectively merge the roles of advocate and Independent Visitor would be helpful; on the contrary, it would seriously dilute both roles. ***The Children's Commissioner would like to see an expansion of the Independent Visitor service, as well as increased investment in advocacy services. We also believe that all children in care should have access to an advocate. While services expand to meet this new entitlement, priority should be given to disabled children, not only those in care, but also those living away from home in residential placements, currently without the protection of Looked After status.***

The Role of the Independent Visitor

Independent Visitors (IVs) were introduced by the Children Act 1989 to visit, advise and befriend children and young people in care who have no regular contact with their families. The role is undertaken by volunteers who aim to build trusting relationships with children over a period of time. Regrettably, evidence suggests that fewer children than was envisaged are benefiting from their support. In 1998, only about a third of local authorities were making IVs available, and only 32 IVs were matched with disabled children.²² This is disappointing, as the Children's Commissioner believes that the role is extremely important. It offers consistent emotional support from a caring and independent adult. Although informal advice will be part of that relationship, it cannot and should not be a relationship of advocate and client.

The Role of Advocacy

The role of an advocate is to represent the child's wishes. Advocates in existing advocacy services are trained in a range of skills, and professional courses in advocacy at NVQ level and higher are offered. Currently, statutory access to an advocate for children in care is only available for those considering a complaint. Evidence suggests, however, that working with an advocate has benefits beyond dispute resolution. Advocacy:

²² Knight, A. 1988. 'Valued or Forgotten? Disabled Children and Independent Visitors'. NCB & Joseph Rowntree Foundation.

can foster looked after children's participation in decision-making and assist them in gaining access to needed services. Advocacy may therefore not enable children to have a voice in matters of concern to them, but also encourage service providers to be more accountable to young people in their decision-making. The right to advocacy may therefore protect children's welfare and their rights.²³

The Role of Advocacy for Children with Disabilities

Advocacy offers crucial protection where children face particularly complex circumstances, are in contact with many different services, or have communication difficulties. The Prime Minister's Strategy Unit report²⁴ acknowledges the crucial role of independent advocacy services in enabling disabled people to exercise choice and control over their lives and to facilitate independent living. The *National Service Framework Standard 8: Disabled Children and Young People and those with Complex Health Needs* states that systems should be in place to provide bilingual advocates in the main locations where health, social care and education services are provided.²⁵ However, only 5% of advocacy services target disabled children and young people and few advocates have experience of working with disabled children and young people, particularly those with communication difficulties.²⁶ Considering the high level of needs of disabled children, including their greater risk of abuse, this limited progress is particularly worrying.

Like all children, disabled children have a right to have their views, wishes and feelings taken into account when decisions are being made about their lives. Many research studies shown that in practice authorities are failing to meet their duties in this regard, particularly in relation to children who do not use speech and who have complex needs – a concern raised by the *Second Joint Inspector's Report on Arrangements for Safeguarding Children*.²⁷ It is common for professionals to record that a child's level of impairment prohibited their wishes being ascertained and to arrive for a review never having met the child before.²⁸ There is a great deal of room for improvement in ensuring disabled children have a greater say in the decisions that affect them (Q.26).

²³ Oliver C., Knight, A. & Candappa, M. October 2006. *Advocacy for Looked After Children and Children in Need: Achievements and Challenges*. Thomas Coram Research Unit, p.13.

²⁴ Prime Minister's Strategy Unit. *Improving the Life Chances of Disabled People: Final Report*. Joint report with DH, DWP, ODPM and DfES.

²⁵ Department of Health & DfES. 2004. *National Service Framework for Children, Young People and Maternity Services: Standard 8, Disabled Children and Young People and Those with Complex Health Needs*. 7.1- 7.2.

²⁶ Oliver, C. 2004. *Advocacy for Children and Young People: A Review*. Institute of Education, University of London.

²⁷ Commission for Social Care Inspection. July 2005. *Safeguarding Children: The Second Joint Chief Inspectors' Report on Arrangements to Safeguard Children*. 2.6.

²⁸ Stuart, M. & Baines, C. 2004. *Progress on Safeguards for Children Living Away from Home: A Review of Action Since the People Like Us Report*.

Some pioneering work has already demonstrated how to enhance the participation of disabled children in decision-making through advocacy.²⁹ A variety of methods can be used, including the use of visual images, signs, interpreters, a variety of support aids and equipment, as well as enlisting the support of a known and trusted person. In circumstances where children have high support needs, important information about their wishes is provided through sounds, facial expressions, body language and silences.³⁰

The Role of Advocacy for UASC

UASC encounter or need the services of a greater range of professionals, services and officials than most of their citizen peers. Their relationships with these will have a direct bearing on their future outcomes – in particular their relationship with their immigration lawyer, professionals sought through the immigration lawyer to support their case and (from April 2007) their New Asylum Model ‘case-owner’ from the Home Office. The Children’s Commissioner has already raised concerns that children in these circumstances are not sufficiently well-supported to understand and influence decisions, and has proposed that a guardian or advisor should be appointed for all UASC on arrival, up to obtaining the age of majority, or until they have permanently left the UK.³¹ We would hope that any revisions to advocacy services and entitlement would take full account of these issues and proposals.

Health Advocacy

It is unclear how the proposal for each child to have a named health professional who will ‘be an advocate within the health system as part of the core team around the child’ (6.24) relates to the other advocacy proposals. We hope that duplication would be kept to an absolute minimum.

Chapter 4 Ensuring Children are in the Right Placements

Q. 11a Should a ‘tiered’ approach to fostering placements be developed?

The Children’s Commissioner welcomes this approach, as potentially providing a better match between carer skills and children’s needs. The relationship between the child or young person and their carer is critically important, including in achieving the improved health and education objectives set within the Green Paper. For example, half of the children and young

²⁹ Greene, M. 1998. ‘Over To Us: A Report of an Advocacy Project Working with Young Disabled People Living in Residential Institutions. GMCDP [Greater Manchester Coalition of Disabled People] Publications.

³⁰ Foundation for People with Learning Disabilities. 2000. ‘Every Day Lives, Everyday Choices’. Mental Health Foundation.

³¹ Office of the Children’s Commissioner. September 2006. ‘Memorandum from the Office of the Children’s Commissioner to the Joint Committee on Human Rights on the Treatment of Asylum Seekers’. www.childrenscommissioner.org

people consulted by the Children's Commissioner in Newcastle said they would talk to their carer if they had concerns about sex and relationships, whereas only a quarter would talk either with their teacher or doctor. Similarly almost a half would talk with their carer if feeling sick or unhappy, whereas only slightly more than a quarter would approach a doctor.

We welcome the ongoing commitment to use and evaluate Multi-Dimensional Treatment Foster Care, which can offer significant benefits for children and young people with complex and severe emotional or psychological difficulties and who are involved in offending behaviour. The Children's Commissioner would wish to see a more detailed description of what 'additional needs' on the part of UASC will require specialist training for carers. In reality, UASC are a diverse group with very different experiences and levels of need, and this must be respected fully in all placement arrangements.

Q. 12 How can we increase placement choice without increasing financial burdens on the system?

- ❖ *Offer a choice of suitable placements for each child, leaving final decisions about individual placements in the hands of social workers in discussion with children themselves*

We welcome these important proposals about placement choice, which, if properly implemented and resourced, could significantly improve children's outcomes and properly realise children and young people's right to have their views taken into account, as set out in the Children Act 1989 and the UNCRC, Article 12.

Historically, placement planning for UASC has evolved quite differently from that for other children in care; yet this appears to be due more to the 'special circumstances'³² of UASC funding – which is directly from the Home Office, and claimed retrospectively – than to these children's special circumstances and individual needs. It is a service-led arrangement that needs to be overturned. The Children's Commissioner would prefer to see UASC-accommodating local authorities supported directly through their central allocation. If dispersal to 'receiving authorities' begins to take place, as planned under the UASC Reform Programme, this would be more immediately practicable. It not clear whether such Programme placements will be commissioned directly by the local authorities who assume responsibility for these children's care, or whether the Home Office will commission directly. The Children's Commissioner believes that commissioning must remain with child care professionals in local authorities, and that centrally dictated arrangements would risk weakening the corporate parenting responsibilities that the Green Paper seeks to reinforce. We re-iterate our disappointment that the UASC Reform Programme consultation has not been brought out in parallel with the Green Paper, and will look with interest to see how it delivers on the Green Paper's commitment to give all children and young people a say in their choice of placement.

³² DfES. 2006. *Care Matters*, *op cit.* 4.41.

Q. 13 Should local authorities be required to consider whether disabled children in 52 week specialist provision should have 'Looked After' status?

There are an estimated 13,300 disabled children in England in long term residential placements, in education, social care and health settings, with 9,500 of these in residential schools.³³ Placements can be many miles away from the child's family and friends. The Green Paper recognises that a substantial number of these children 'do not have the statutory rights and protection afforded by being in the care of the local authority.' Disabled children in long term placements are more likely to be in residential placements than foster placements and are less likely to be the subject of care orders than non disabled children.³⁴ Research has highlighted that there is a lack of clarity about social services departments' duties and the legal status of children at residential school.³⁵ There is also little evidence of disabled children's 'wishes and feelings' about their placements being 'ascertained'.³⁶

A major study on Disabled Children in Residential Placements³⁷ concludes, The great variation in local practice and on-going concerns about difficulties in maintaining relationships with family and friends, greater vulnerability to abuse and neglect, difficult transitions and poor long-term outcomes for some, raises the question of whether all disabled children spending long periods in residential provisions should, as a matter of principle, be looked after. (p.41)

The Children's Commissioner strongly believes that these children (in long term residential placements) should be accorded looked after status and provided with the safeguards set out in the Children Act 1989 and associated guidance, in particular, more rigorous care planning, provision and review. We support the Council for Disabled Children's recommendation that Looked After status be presented to parents as a partnership between them and the state to ensure that their child, placed a long way from home, will be fully protected and supported.

³³ Pinney, A. 2005, *Disabled Children in Residential Placements*, DfES.

³⁴ Morris, J. 1998. *Still Missing? Volume 1: The Experiences of Disabled Children and Young People Living Away From their Families*. The Who Cares? Trust.

³⁵ Abbot, D. et al. 2000. *Disabled Children and Residential Schools: A Survey of Local Authority Policy and Practice*. Norah Fry Research Centre.

³⁶ Morris, J. 1998. *Still Missing? Volume 2 . op cit. .*

³⁷ Pinney, A. 2005. *op cit.*

Chapter 5 A First Class Education

- ❖ *The Education and Inspections Act 2006 has given local authorities the power to direct schools to admit children in care.*

The Children's Commissioner welcomes this measure, which should benefit many children in care. For example, UASC have previously been disadvantaged by their arrival mid-phase, at times when schools have often been reluctant to enrol new pupils.

- ❖ *Create a presumption that children in care should not move schools in years 10-11, unless it is clearly in their best interests.*

Abrupt moves out of foster care and into semi-independent units at 16 have too often disrupted young people's education. The Children's Commissioner therefore welcomes this new presumption, which needs to be underpinned by the initiatives to strengthen placement choice and continuity as set out in chapter 7. We would wish to see the presumption of support for uninterrupted education – including through meeting reasonable transport costs – to be extended to Year 13.

- ❖ *Target children in care and their carers in recruitment programmes for literacy, language and numeracy skills courses; and develop a specific Family Literacy, Language and Learning package for children in care and their carers.*

The Children's Commissioner welcomes these proposals. It is important to broaden the social and ethnic mix of carers, while at the same time ensuring that all carers have the skills and experience to engage confidently with education issues. However, we remain concerned that social workers – as lead professionals and budget holders - do not have a consistently good understanding of the education system. Despite the fact that around 27% of children in care have statements of Special Educational Needs, social workers are not always sufficiently knowledgeable in the concept and practice of SEN in England. Placement and school moves can compound this difficulty, resulting in long delays in the statementing process which adversely affects the child. The Children's Commissioner would like to see improved training for social workers on how the system works, and would expect that a commitment to joint training programmes within Children's Trusts will help achieve this. Improved training should be backed by clearer expectations within the revised Personal Education Plan (PEP) process, setting a clear timeframe within which SEN assessments must be completed.

- ❖ *Create a new entitlement for all children in care/care leavers to have access to support through a personal advisor until the age of 25.*

This welcome development would ensure that most young people could take advantage of advice and support up to the age of 25, and take full advantage

of the new entitlement to free first time Level 2 and Level 3 learning. However, whether UASC would be able to access this entitlement would depend on how it was enacted. Currently, Schedule 3 of the Nationality, Immigration and Asylum Act 2002 prevents former UASC who are either 'failed asylum seekers' or who are 'unlawfully in the UK' from accessing 'leaving care' support under the Children Act 1989. Under Home Office proposals to reduce from 18 to 17 ½ the upper age limit to which Discretionary Leave is granted to UASC whose asylum claims are unsuccessful (see Q.17 below), it is likely that the majority of UASC will be 'unlawfully in the UK' by age 18, which concerns us. If UASC are to benefit from the new entitlement for 'all' children, then enabling legislation relating to this entitlement would have to fall outside of the ambit of Schedule 3.

Q. 15 How would a 'Virtual Headteacher' best raise standards for children in care?

The Children's Commissioner believes that the Virtual Headteacher could play a useful role in spreading good practice and enhancing accountability. Disproportionate school exclusions of children in care remain a concern, and there may be scope for the Virtual Headteacher to promote effective alternatives.

The role may be particularly important in areas which become designated 'receiving areas' under the UASC Reform Programme. Clear referral and reception arrangements will need to be made, guaranteeing swift access to the education placement that best meets the young person's individual needs. The Virtual Headteacher's monitoring and reporting should disaggregate UASC from other children in care to ensure that meaningful figures are available in terms of both access and performance.

Q.17 Are the measures proposed in relation to the Further Education sector sufficient to achieve a step change in outcomes for young people in and leaving care?

The Children's Commissioner welcomes the breadth of the proposals, but has concerns that not all children in care will be in a position to benefit. A substantial proportion of UASC do not arrive until age 16 and are unlikely to be placed in school at all. Current arrangements can be very limiting – for example only offering ESOL provision. It is therefore especially important for UASC that provision of FE is put on a sound footing. Yet progress will depend substantially on the 'UASC Reform Programme' and new arrangements for dealing with children under the New Asylum Model from April 2007.

Immigration status is already a key barrier to UASC educational attainment. While most are refused asylum (around 95%), the majority are granted a period of Discretionary Leave until adulthood. These children remain lawfully in the UK if they seek an extension of their leave and, if the extension is refused, can appeal and remain until it is finally determined. In practice this means that many former UASC will often be in the UK legitimately into their late teens or early twenties. Many choose to use this time to gain

qualifications. Yet HE and FE admissions policies sometimes consider whether the students' immigration status precludes them from completing courses. Even where a place has been offered, lack of access to student loans and imposition of overseas fees rates often mean that places cannot be accepted.

A recent announcement by the Home Office has indicated that they intend to reduce the age to which Discretionary Leave is granted to 17 ½ – with the stated intention of 'resolving' any extension application and appeal before the child's 18th birthday. This would render the young person 'unlawfully in the UK' as soon as they become 'appeal rights exhausted' – with the Home Office target now being age 18. This policy will have extremely serious implications for UASC planning beyond their GCSEs. When confronted with A level choices at age 16, their immigration status at age 18 will have to be taken into account. Many will not be able to complete an A level course by their 18th birthday – when they will be required to leave the UK - and will therefore find their academic progress blocked.

The Children's Commissioner would like to see flexibility in the arrangements for extending Discretionary Leave to explicitly allow those UASC who start courses while still children, the opportunity to complete them before removal proceedings are contemplated. Introduction of 'case owners' under the New Asylum Model could be helpful in this respect. Each child will have a Home Office 'case owner' who oversees their case from start to finish, remaining in contact with the child and their social worker. Decisions about the departure from the UK of those young people whose claims fail could therefore be tailored to individual educational needs.

Chapter 6 Life Outside School

Q. 18 Have we set out the right features in the comprehensive model of health care for children in care?

The level of health needs among children in care is extremely high. 63% of children in care at 31st March 2005 had been brought into care because of abuse or neglect. A comprehensive study in 2003 found that 44% of children in care aged 5-17 had a mental health disorder, compared to 10% in the general population.³⁸ Children and young people coming into care have often experienced severe disruption in their home lives, with only sporadic attention to their health and wellbeing needs. All too often this erratic home life has been exacerbated by a care system unable to offer placement stability, despite the recognition within the Healthy Care Standard that all children in care should 'experience a genuinely caring, consistent, stable and secure relationship with at least one committed, trained, experienced and supported

³⁸ Meltzer, H. et al. 2003. *The Mental Health of Young People Looked After by Local Authorities in England*. National Office of Statistics.

carer'.³⁹ The Children's Commissioner is therefore pleased that attention to health and wellbeing is within the context of a set of proposals which confirm the importance of placement stability (see Q.22). Given the importance of stable and nurturing relationships, we are reassured to see that the Healthy Care Standard forms part of the integrated health service model proposed in the Green Paper.

The Green Paper clearly conceptualises health and wellbeing as multi-faceted, demanding holistic assessment and effective partnership working. The Children's Commissioner endorses this approach, which puts children and young people's relationships, activities and choices at the heart of services. We broadly welcome the range of health-supporting proposals, including:

- ❖ *Providing extra support to those who enter youth custody.*
- ❖ *A personal advisor for each pregnant young woman in care.*

We would hope that improved advice and support to pregnant young women in care can be linked to the piloting of the Nurse-Family Partnership model as outlined in the *Social Exclusion Action Plan*.⁴⁰

We also welcome, in principle, the proposal for

- ❖ *Each child in care to have a named health professional to help ensure their individual needs are being met.*

This proposed new role is in addition to existing designated doctor and designated nurse roles. These have strategic and clinical governance responsibilities, but in many parts of the country are deeply involved in clinical and case-support roles. Introduction of the named health professional will therefore require careful piloting in order to build on, rather than disrupt, existing good practice. For example, interagency health support for UASC and children with disabilities has developed effectively in a number of areas.

We welcome the proposed updating of *Promoting the Health of Looked After Children*, not only as an opportunity to clarify the roles and responsibilities of all those involved in ensuring that children in care receive the health services they need, but as an opportunity to reiterate and reinforce the sound principles of holism and child-centred care that it articulates.

The Children's Commissioner supports, in principle, the proposal to

- ❖ *Introduce screening for substance misuse as a regular part of assessments*

However, it is not clear that children and young people's views have been sought and taken into account on this issue. It is important in both principle

³⁹ NCB, *The National Healthy Care Standard*.

http://www.ncb.org.uk/Page.asp?originx_7194cp_58543156822553f74l_20067313739a

⁴⁰ H.M.Government. 2006. *Reaching Out: an Action Plan on Social Exclusion*. Section 3, Chapter 4.

and practice that children and young people are partners in developing new tools and procedures, and that the comprehensive nature of the health assessment is not compromised by disproportionate attention to this one area of risk.

Q. 19 What more could we do to help young people in care to participate in leisure and cultural activities?

❖ *Social Workers and carers should ensure that young people in care and those leaving care access the new volunteering opportunities that will be created as a result*

The Children's Commissioner recognises the value to many children and young people of voluntary work. For example, UASC, like other children in care, could benefit greatly in terms of personal development, as well as in terms of community integration. Their opportunities, however, are limited by Home Office policy for those whose asylum claims are under consideration or have failed outright.⁴¹ Clear guidance should be available to young people locally, and policy should be reviewed periodically for its impact.

Q. 25 Is the approach to supporting children in care who enter youth custody the right one?

General Observations

The Children's Commissioner welcomes the importance that the Green Paper attaches to improving the quality and availability of support to children and young people in the care system who engage in, or are at risk, of "anti-social" and/or criminal behaviour. We also welcome the Government's commitment in the Green Paper to reduce the currently high numbers of Looked After or formerly Looked After children and young people who enter the criminal justice system, as well as its proposals to help improve the outcomes on release of Looked After children who are already in custody. We note that Multi-Dimensional Treatment Foster Care, which is supported by the Green Paper, has proved particularly beneficial for children and young people with complex needs who are involved in or at risk of offending.⁴²

Despite these positive developments, ***the Children's Commissioner feels that the Green Paper has missed an opportunity to re-examine more thoroughly the care and support given to Looked After children who offend or are at risk of offending.*** We believe that issues at the forefront of current debate on the youth justice system generally, such as the use of custody and the proportionality of anti-

⁴¹ National Asylum Support Service. 2005. 'Policy Bulletin 72: Employment and Voluntary Activity'.

⁴² Aos, S., Phipps P, Barnoski, R. and Lieb., R. 1999. 'The Comparative Costs and Benefits of Programs to Reduce Crime', Washington State Institute for Public Policy. Reid, J. B. 1991. 'Comparisons of Two Community Alternatives to Incarceration for Chronic Juvenile Offenders' *Journal of Consulting and Clinical Psychology*, 66:624-633.

social behaviour interventions, are of particular relevance to efforts to improve the outcomes of children and young people in the Looked After system.⁴³

Alternatives to the Use of Custody

❖ *Build approaches to managing behaviour, based on evaluated practice such as restorative justice, into the framework of training and qualifications for foster and residential carers.*

Whatever the behaviour of children and young people, the Children's Commissioner believes that the response must address the welfare and care needs of the offending child or young person. To this end, we are encouraged by the reference in the Green Paper to exploring restorative justice approaches. Lessons can be learned from the success of using a restorative approach in the school setting, with schools reporting significant reductions in exclusions and improvement in classroom behaviour as a result of adopting the approach.⁴⁴ A large body of literature and international comparative research points to the value of restorative measures, including positive interim findings from the statutory youth conference scheme that has been used in Northern Ireland.⁴⁵ The Children's Commissioner would also support further consideration of the potential scope of diversionary programmes and community sentences as alternative youth justice approaches. We believe that a review of evidence will help cultivate a more welfare-based, less punitive, response to offending behaviour by Looked After children and young people.

The high use of prison custody for children who offend in England is a matter of serious concern for the Children's Commissioner, as it is for many child welfare and youth justice experts and organisations, as well as for international human rights bodies, including the UN Committee on the Rights of the Child.⁴⁶ Children in these settings are, by definition, vulnerable. Particular concerns have been raised over those with mental health problems,⁴⁷ learning disabilities or histories of sexual and/or domestic abuse.⁴⁸ As the Green Paper acknowledges, children and young people in care can fall within all of these categories and are over-represented in many.

The Children's Commissioner's main concerns relating to the custody of children in England include: the adequacy of the juvenile estate to care for the

⁴³ For an overview of current debates see Allen, R. October 2006. 'From Punishment to Problem Solving: A New Approach to Children in Trouble'. *Centre for Crime and Justice Studies*.

⁴⁴ See example of Deptford Green Secondary School which follows the "Transforming Conflict" model. For information on the latter see, www.transformingconflict.org

⁴⁵ Campbell, C. *et al.* October 2005. 'Evaluation of the Northern Ireland Youth Conference Service'. Report No. 12. Statistics and Research Agency, Northern Ireland Office.

⁴⁶ United Nations Committee on the Rights of the Child. October 2002. Concluding Observations of the United Nations Committee on the Rights of the Child: The Second Report of the United Kingdom of Great Britain and Northern Ireland. Geneva.

⁴⁷ See, for example, Harington, R. and Bailey, S. *et al.* 2005. 'Mental Health Needs and Effectiveness of Provision for Youth Offenders in Custody and in the Community'. Youth Justice Board for England and Wales.

⁴⁸ See, for example, DH/HO 2006. 'Tackling the Health and Mental Health Effects of Domestic and Sexual Violence and Abuse.' Department of Health and Home Office.

needs of vulnerable young people; the low age of criminal responsibility; sentencing policy; and pre-sentence assessment and placement procedures. Evidence on the rate of re-offending amongst young people,⁴⁹ the alarming incidence of self-harm in prisons and the numbers of children who have died in custody⁵⁰ give some indications of how the system is tragically failing to meet the needs of vulnerable children and young people who offend.

The case of 16 year old Joseph Scholes, who died in Stoke Heath Young Offenders Institution in 2002, exemplifies many of these issues. Shortly after voluntarily entering the care of the Local Authority, Joseph was involved in a series of mobile phone robberies along with a group of other young people from the children's home where he was being Looked After. Although the court agreed that Joseph was on the periphery of the incidents, he was nonetheless sentenced to a two year detention and training order. Despite a history of depression, self-harm and alleged sexual abuse, Joseph was ordered to serve his sentence at Stoke Heath Young Offenders Institution; the local authority secure children's homes having no place at the time. Joseph died by hanging only a few days into his sentence. A judicial review of the coroner's decision not to proceed with an inquest is currently being appealed to the House of Lords.⁵¹

The proposal in the current Offender Management Bill 2006,⁵² to allow children and young people to serve their detention and training orders in open children's homes, is an indication that the Government is aware of the serious shortcomings within the current estate. If passed, the Children's Commissioner will be interested in monitoring and evaluating this measure to assess its impact both in terms of outcomes for the offending children and for those who are accommodated in the children's home purely on care grounds. We will also be interested in monitoring the impact on local authority secure children's homes, the numbers of which have diminished in recent years to the alarm of many, including the Local Authority Secure Accommodation Network, who see them as a more suitable environment for children.⁵³

Anti-social Behaviour Interventions

- ❖ *Develop a protocol on how children's homes should work with the local police and YOT to manage anti-social behaviour or offending behaviour, including how and when the provider will seek to involve the police.*

We welcome this practical proposal, as having the potential to correct a significant disadvantage currently experienced by many children in care, who

⁴⁹ Allen 2006, pg. 26. Figures show that 4 out of 5 young people are back before the courts within two years of their previous offence.

⁵⁰ Goldson, B. and Coles, D. 2005. *In the Care of the State? Child Deaths in Penal Custody*, Inquest, July 2005. See also the website of the Howard League (www.howardleague.org) for information on self harm among young people in custody.

⁵¹ See Inquest's website for further information on the judicial review proceedings: www.inquest.org.uk.

⁵² Clause 25.

⁵³ DfES. 2006. *National Statistics: Children in Secure Children's Homes, Year Ending 31 March 2006*.

face a much lower threshold for police involvement when in residential care than their peers.

The Home Office does not publish statistics on the numbers of looked after children who have been issued with Anti Social Behaviour Orders (ASBOs) or other forms of intervention; nor has it published any review or evaluation of impacts on looked after children. This mirrors a similar lack of evaluation of the use of ASBOs and other measures against children generally.

From the available data, including reports and studies on the subject, we do however have evidence of the following:

- Looked after children are receiving ASBOs and breaching the orders;⁵⁴
- One local authority successfully applied for an ASBO against a child for whom it had corporate parental responsibility;
- ASBOs are being issued in significant numbers (with a fluctuating figure of around 50%) to children and young people, despite having been designed for such use in only “exceptional circumstance”;⁵⁵
- Breach rate of all anti-social behaviour interventions (including ASBOs) among children and young people is high, with a recent study finding the highest rate of breach for Acceptable Behaviour Contracts and the lowest for Warning Letters;⁵⁶
- ASBOs are being issued with conditions that are wholly disproportionate to the act causing the ASBO to be imposed and which are often impossible for children and young people to keep;⁵⁷
- There is a presumption that the details of a child who has received an ASBO (including name, age and address) will be publicised, with age, disability or Looked After status not operating as an automatic bar to reporting;⁵⁸
- There is evidence that the focus on anti-social behaviour is bringing children into contact at an earlier stage with the criminal justice system.⁵⁹

The Children’s Commissioner is concerned that the use of ASBOs and other interventions against looked after children and the framework within which they operate, give rise to a potential conflict of interest between the local authority in its role as corporate parent for the child and in its prominent new role in the stand against anti-social behaviour. This was highlighted in the extreme by the case of Sheffield City Council which applied for an ASBO against a child in its care.

⁵⁴ Ashford, B. and Morgan, R. Autumn 2004. ‘Criminalising Looked After Children’. *Criminal Justice Matters*, no. 57.

⁵⁵ Home Office statistics for period April 1999 – December 2005. See www.crimereduction.org.

⁵⁶ National Audit Office. December 2006. *Tackling Anti-Social Behaviour*.

⁵⁷ Youth Justice Board Report. 2006. *Anti-social Behaviour Orders*. See also the Report on the UK of the European Human Rights Commissioner, May 2005, Council of Europe.

⁵⁸ Home Office, 2005. *Working Together, Guidance on Publicising Anti-social Behaviour Orders*. This policy was the subject of criticism by the European Human Rights Commissioner in his report on the UK, May 2005.

⁵⁹ Youth Justice Board Report, 2006, *op cit*.

The Children's Commissioner believes that more research must be carried out on the impacts of ASBOs on looked-after children, as well as on all children generally. We welcome the recent recommendation in the report of the National Audit Office that the Home Office should carry out a formal review of the impact of anti-social behaviour interventions across the population.⁶⁰ We also await new legislation to implement the recommendation of the Home Affairs Committee from 2005, that ASBOs against children and young people should be subject to automatic review at one year.⁶¹

Greater Support for All Looked After Children and Young People in Custody and on Release

❖ *Require local authorities to carry out an assessment of the needs of those young people in their care on a voluntary basis who enter youth custody, with an expectation that they will continue to be supported as a child in care. In most cases this will entail a social worker, a care plan, and continued support as a child in care on leaving custody.*

We commend the Government for addressing the current unequal treatment received by children and young people who are voluntarily in care. However the 'expectation' of continued support is vague, and we would seek a legal presumption that children and young people in care under S.20 will continue to be supported as children in care by the local authorities.

We note also that the Green Paper makes no reference to the role that may be played by the social workers, commissioned by the Youth Justice Board, to work in young offender institution. This arrangement, which has been in place since 2005 as a result of the judgment by Mr Justice Munby on the application of the Children Act 1989 to children in custody,⁶² is strongly supported in the Lambert Report⁶³ and in a joint report on young people's experiences in custody by HMIP and the Youth Justice Board.⁶⁴ We note however, from the Government's response to the Lambert Report that these posts are currently subject to evaluation and there is no commitment to future funding.⁶⁵ We would look to see sustainable funding secured through the forthcoming Comprehensive Spending Review.

⁶⁰ NAO 2006, *op cit*.

⁶¹ HM Government. 'Report of the Home Affairs Select Committee Inquiry on Anti-Social Behaviour, April 2006', HMSO.

⁶² The Queen (on the application of The Howard League for Penal Reform) and the Secretary of State for the Home Department and Department of Health [2002] EWHC 2497 (Admin).

⁶³ Lambert, D. 2006. 'Review of the Effectiveness of Operational Procedures for the Identification, Placement and Safeguarding of Vulnerable Young People in Custody', Home Office. The Lambert Operational Review was commissioned by the Home Office in response to the death of Joseph Scholes. It was finalised in October 2005 and published in October 2006.

⁶⁴ Worsley, R. 2006. 'Young People in Custody, 2004-2006: An Analysis of Children's Experiences of Prison', HM Inspectorate of Prisons and Youth Justice Board.

⁶⁵ Government Response to Lambert Report, October 2006.

Chapter 7 The Transition to Adult Life

General Observations

Planned and supported transitions are crucial to the well-being of all children in care, and have historically been an area where needs have not been fully met. Problems have been experienced disproportionately by children in care with disabilities. It is estimated there are almost 156,000 adolescents aged 16-19 with a disability in UK, over 4,000 with a severe disability and the numbers are increasing.⁶⁶ So the Children's Commissioner is pleased that the Green Paper recognises the problems and difficulties associated with disabled children's transition to adulthood.

Disabled young people and their families find the transition to adulthood both stressful and difficult. For many, there has been a lack of co-ordination between the relevant agencies and little involvement from the young person. Some young people are not transferred from children to adult services with adequate care plans, which can result in their exclusion from adult services. In addition, some disabled young people experience a decline in the services they receive. This can lead to a regression in their achievement and/or a deterioration in their condition.⁶⁷

Despite this recognition, Chapter 7 -*The Transition to Adult Life*, makes no reference to disabled children and there are no recommendations for change. This is a major omission.

The *Improving Life Chances of Disabled People* report from the Prime Minister's Strategy Unit⁶⁸ identified three key elements for the effective support for disabled young people at transition to adulthood:

- Planning for transition focused on individual needs
- Continuous service provision
- Access to a more transparent and more appropriate menu of opportunities and choices

We support this analysis, which accords with the requirements of the National Service Framework, Standard 7.⁶⁹ Indeed, disabled young people support such an approach and they would like to see the transition to adult services to begin early and to be gradual. They regard the existence of continuity of contact by people they can get to know and see regularly as essential, along with peer support and mentoring to help them cope with the uncertainties of adolescence. Information transfer is a key concern of young people, their

⁶⁶ DH. 2000. *Quality Protects: Disabled Children Numbers and Categories and Families*.

⁶⁷ DfES. 2006. *Care Matters*. *op cit*. 1.47.

⁶⁸ Prime Minister's Strategy Unit. 2005. *op cit*.

⁶⁹ DH and DfES. 2004. *National Service Framework for Children*, *op cit*.

parents and the professionals involved. In addition, young people recommend that strategies should be informal, flexible and individualised.⁷⁰

Education agencies, with health and social care have a statutory duty to develop effective transition plans for disabled young people from the age of 14, as set out in the SEN Code of Practice. The Children's Commissioner would like to see this adhered to consistently in practice.

The Children's Commissioner supports the solution to the issue of transitions proposed by the Parliamentary Hearings report. These include:

- Effective co-ordination of multi-agency services.
- Development of a specified role with responsibility for the transition process in every local area, e.g., Transition Worker posts or co-located multi-agency transition team.
- Local multi-agency protocols and agreements that set out how they will support young people and their families through the transition process.

Q. 22 Should young people be allowed to remain with their foster families up to the age of 21, including when the young person is at university?

- ❖ *Pilot a veto for young people in care over any decisions about legally leaving care are before they turn 18; and pilot allowing young people to continue to live with foster families up to the age of 21.*

The Children's Commissioner welcomes these proposals as addressing a substantial disadvantage faced by all children in care. Historically, premature placement moves have been driven by cost rather than an analysis of individual need. For example, different levels of Home Office grants to support UASC pre- and post-16 years of age have had the effect of curtailing many young people's choices and interrupting continuity of placement. A credible pledge therefore needs to relate to adequate resources, or may have the effect of reducing choice and flexibility overall. The Children's Commissioner believes that young people need to be positively encouraged to stay in care. Moving to semi-independent or independent accommodation can look very attractive to 16 and 17 year olds who may not fully appreciate what such a move would mean. We consider there should be a strong presumption that children will not leave the care system under the age of 18, and will be expected to remain in foster care up to that age.

We would like to see further consideration of how these proposals to enhance continuity and choice for young people in foster care will, in practice, benefit young people in residential settings. The Commissioner notes that the support needs of children and young people in residential care generally receive little specific attention in the Green Paper. This is regrettable, as their

⁷⁰ G McEnery. 2004. 'The Needs of Physically Disabled Young People During the Transition to Adult Services, *Child: Care, Health and Development*. 30: 317-323; Social Care Institute for Excellence. April 2005. 'Transitions of Young People with Physical Disabilities or Chronic Illness for Children's to Adult Services'. SCIE Research Briefing 4.

needs are often more complex than those of their peers in foster care, and their transitions often prove particularly problematic

We also note that the Green Paper makes no reference to extending the current PSA on placement stability beyond 2008,⁷¹ but the Children's Commissioner would hope that the target or an equivalent will be maintained.

Chapter 8 Making the System Work

Q. 26 What more should we do to give children in care a greater say in decisions which affect them?

- ❖ *Expect every local authority, as part of the pledge set out in chapter 1, to set up a 'Children in Care Council', made up of a rotating group of children in care, through which children's views would be collected and passed directly to the DCS.*

The Children's Commissioner welcomes the proposed Councils. Research by the Children's Commissioner confirms that where local authorities have invested seriously in children and young people's participation, it has supported appropriate service delivery and commissioning, and has reduced levels of complaints.⁷² It is clearly important that the Councils build on, rather than cut across, existing good practice.

⁷¹ The PSA target is to: narrow the gap in educational achievement between looked-after children and their peers, and improve their educational support and the stability of their lives, so that by 2008, 80% of children under 16 who have been looked after for 2.5 years or more will have been in the same placement for at least 2 years.' More information is available at: www.everychildmatters.gov.uk/socialcare/lookedafterchildren/placementstability/

⁷² Office of the Children's Commissioner. 2006. 'Children and Young People's Plans: A Review of the First Year'.