



House of Lords  
House of Commons  
Joint Committee on Human  
Rights

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# Children's Rights

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**Twenty-fifth Report of Session 2008–  
09**

*Report, together with formal minutes and oral  
and written evidence*

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## Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

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

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### Current Staff

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

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## Summary

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Surveys by UNICEF and others of the well-being of children and young people have found that the UK is ranked lower than almost all other industrialised countries. We have previously considered children's rights in the context of the UN Convention on the Rights of the Child (UNCRC) – which the UK ratified in 1991 – inquiries into human trafficking, the treatment of asylum seekers and the use of restraint in secure training centres, and our scrutiny of legislation. This Report follows up some of the issues we have raised previously in the light of the latest Concluding Observations of the UN Committee which monitors compliance with the UNCRC.

We recommend that there should be a UK plan for implementation of the recommendations of the UN Committee on the UNCRC, with annual reports on progress. We are not persuaded that incorporation of the treaty into UK law is unnecessary and reiterate a previous recommendation that any Bill of Rights for the UK should include children's rights. We also recommend that new, local children and young people's plans should be founded on the UNCRC.

The UNCRC found that there was a “general climate of intolerance and negative attitude towards children” in the UK, which we pressed the Minister for Children to address. Innovative and proactive solutions are required. The Minister said that the Government is working with local media to provide them with positive stories about children and young people and we look forward to scrutinising an evaluation of the Government's campaign in due course.

A large number of discrimination issues were raised by witnesses and should be addressed by the UNCRC implementation plan which we recommend should be drawn up. We also recommend that the Equality Bill be amended to extend protection from age discrimination to people regardless of their age in relation to the provision of goods, facilities and services, except where the discrimination can be justified.

We draw attention to the large number of children from vulnerable and marginalised groups in the criminal justice system and the growing number of offences for which children can be charged and convicted. An approach based more clearly on the rights and welfare of the child is needed in this area. The decriminalisation of child prostitution is particularly necessary and we draw attention to the Minister's inconsistent comments on the subject. Detention of children should be a last resort; more should be done to fulfil the government's recent commitment not to detain children with adults; the use of ‘pain compliance’ in secure settings is, in our view, incompatible with the UNCRC; we question the degree to which ASBOs hasten children's entry into the criminal justice system; and we welcome recent proposals to improve education for children in custody.

We welcome the withdrawal of the UK's reservation to Article 22 of the UNCRC, which related to immigration, but question why this has not led to changes in policy and practice. We draw attention to the detention of children subject to immigration control, disputes over the age of asylum seekers, and welfare, education and support issues. Human trafficking, children and armed conflict, child poverty and education issues are also discussed.



# 1 Introduction

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1. In 2007, UNICEF published a report assessing the well-being of children and young people in 21 industrialised countries.<sup>1</sup> It covered educational achievement, health and safety, poverty, behaviour and relationships. The UK came bottom. In April 2009, the Child Poverty Action Group (CPAG) published a similar assessment of child well-being in 29 European countries.<sup>2</sup> The UK ranked 24th, ahead only of Romania, Bulgaria, Latvia, Lithuania and Malta. These findings were widely reported and prompted media discussion about why the UK's children were apparently so unhappy.<sup>3</sup> It is certainly not difficult to hear or see negative depictions of children's lives in the media. Stories concerning children as the victims of crime – particularly sexual abuse, assaults and murder – are given extensive coverage. The reporting of crime committed by children is similarly copious, often leading to lengthy public debate about the condition of children today. Concerns about children being less well educated, less disciplined and less respectful than their elders are often expressed.

2. All of these issues relate to the human rights of children, which are principally enshrined in the UN Convention on the Rights of the Child (UNCRC).<sup>4</sup> The Convention rights include the right to “a standard of living adequate for the child's physical, mental, spiritual, moral and social development”; rights to education, health care, freedom of expression, and play, as well as the right to life and to be protected from abuse. The UNICEF and CPAG research suggests that children's rights are not being adequately respected and promoted in the UK. A consistently negative portrayal of children in the press may risk creating a culture in which this situation is tolerated.

3. Children's rights have been a consistent focus of our work, and that of the JCHR in the 2001 Parliament. The Committee's first Report in its programme of scrutinising the UK's implementation of the main international human rights treaties was on the UNCRC in 2003.<sup>5</sup> The Committee also published Reports on the case for a Children's Commissioner for England<sup>6</sup> in 2003 and on the Bill which became the Children Act 2004.<sup>7</sup> Since then, we have frequently reported on children's issues in the context of our routine scrutiny of Government Bills, including five Bills in the current session.<sup>8</sup> In addition, we have often reported on issues concerning the rights of children in our other work, such as our 2006 Report on the *Treatment of Asylum Seekers*, which included recommendations on

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<sup>1</sup> UNICEF, *Report Card 7, Child Poverty in Perspective: An Overview of Child Well-being in Rich Countries*, February 2007.

<sup>2</sup> Child Poverty Action Group, *Child Wellbeing and Child Poverty: where the UK stands in the European table*, Spring 2009.

<sup>3</sup> Eg *Miserable Children* broadcast on Radio 4 on 12 April 2007.

<sup>4</sup> The UK ratified the UNCRC in 1991. It has also ratified the Optional Protocol on the Involvement of Children in Armed Conflict.

<sup>5</sup> Tenth Report of Session 2002-03, *The UN Convention on the Rights of the Child*, HL Paper 117, HC 81.

<sup>6</sup> Ninth Report of, Session 2002-03, *The Case for a Children's Commissioner for England*, HL Paper 96, HC 666.

<sup>7</sup> Nineteenth Report of Session 2003-04, *Children Bill*, HL Paper 161, HC 537.

<sup>8</sup> See e.g. Ninth Report of Session 2008-09, *Legislative Scrutiny: Borders, Citizenship and Immigration Bill*, HL Paper 62, HC 375 at paras 1.8.1.16; Tenth Report of Session 2008-09, *Legislative Scrutiny: Policing and Crime Bill*, HL Paper 68, HC 395 at paras 1.62-1.66; Fourteenth Report of Session 2008-09, *Legislative Scrutiny: Apprenticeships, Skills, Children and Learning Bill*, HL 781, HC 414 at paras 2.1-2.51; Fifteenth Report of Session 2007-08, *Legislative Scrutiny: Children and Young Persons Bill*, HL Paper 81, HC 440 at paras 1.1-1.50.

unaccompanied child asylum seekers and asylum-seeking families;<sup>9</sup> our work on the implementation of human rights judgments, including those concerning the retention of children's DNA;<sup>10</sup> and our Report on the use of restraint in secure training centres.<sup>11</sup>

4. States which have ratified the UNCRC and the Optional Protocol are required to submit periodic reports on implementation of the Convention. The UK's most recent report was submitted on 16 July 2007.<sup>12</sup> Reports are considered by the UN Committee on the Rights of the Child (the "UN Committee"), which issues "Concluding Observations" on each country. The most recent Concluding Observations on the UK were issued on 20 October 2008.<sup>13</sup> The UK's next report must be submitted by January 2014.

5. The Concluding Observations made a number of positive comments about the UK, particularly in relation to the UK's withdrawal of reservations to Articles 22 and 37 of the UNCRC, the initiation of the process of ratification of the Optional Protocol on the sale of children, child prostitution and child pornography as well as the ratification of several other international instruments relating to children since the UK's last report, in 2002, and measures in the Children Act 2004 and the Childcare Act 2006.<sup>14</sup> Numerous areas for concern were also recorded, several of which are discussed in this Report. Many of these areas of concern overlap with the concerns expressed by the UN's Human Rights Council in its Universal Periodic Review of the UK, which included the high incarceration rate of children, children's privacy, the use of painful restraint techniques, the problem of violence against children and child poverty.<sup>15</sup>

6. When we reviewed our working practices at the beginning of this Parliament, we indicated that we would continue to scrutinise the implementation in the UK of the provisions of the main international human rights treaties to which the UK is a party, and that we regarded this as an important part of our work.<sup>16</sup> However, we also indicated that, while we would take the latest set of Concluding Observations and recommendations as our starting point, we would not necessarily aim to be comprehensive in covering every observation, but rather would be more selective and focus on those issues we regarded as the most important or topical and in relation to which we were in a position to add value to the work already being done in the relevant field. In this Report we therefore consider a number, but not all, of the UN Committee's Concluding Observations in greater detail.

7. We decided to issue a call for evidence on the Concluding Observations, focusing on the following matters:

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<sup>9</sup> Tenth Report of Session 2006-07, *The Treatment of Asylum Seekers*, HL Paper 81, HC 60.

<sup>10</sup> Tenth Report of Session 2008-09, *Legislative Scrutiny: Policing and Crime Bill*, HL Paper 68, HC 395.

<sup>11</sup> Eleventh Report of Session 2007-08, *The Use of Restraint in Secure Training Centres*, HL Paper 65, HC 378.

<sup>12</sup> *Third and Fourth Periodic Reports of States parties due in 2007: United Kingdom of Great Britain and Northern Ireland*, CRC/C/GBR/4, 25 February 2008 ("UK's Report to UNCRC").

<sup>13</sup> UN Committee on the Rights of the Child, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, 20 October 2008, CRC/C/GBR/CO/4 ("UNCRC's Concluding Observations on the UK"). Concluding Observations were also issued on the same day on the UK's Report on the implementation of the Optional Protocol on the involvement of children in armed conflict (CRC/C/GBR/OPAC/CO/1).

<sup>14</sup> *Ibid.*, paras 4, 5, 8 and 10.

<sup>15</sup> Human Rights Council, *Universal Periodic Review, Report of the Working Group on the Universal Periodic Review, United Kingdom of Great Britain and Northern Ireland*, A/HRC/8/25, 23 May 2008.

<sup>16</sup> Twenty-Third Report of Session 2005-06, *The Committee's Future Working Practices*, HL Paper 239, HC 1575 at paras 64-67 and 77.



- children in detention (including the use of restraint and deaths in custody);
- the practical impact of the withdrawal of the UK's reservations to the UNCRC on immigration and children in custody with adults;
- discrimination against children on the grounds of age or disability;
- asylum-seeking children;
- child trafficking victims (including ratification of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography);
- discrimination against children in education (including access by vulnerable groups, child participation, complaints, bullying, exclusions and segregation);
- how best to enshrine in law the Government's goal of eradicating child poverty by 2020, in view of the right of every child to an adequate standard of living under Article 27 of the UNCRC;
- criminalisation of children; and
- participation of children in the armed forces.<sup>17</sup>

8. We received nearly 60 written submissions from NGOs, children and young people, academics and others. We heard oral evidence from Sir Al Aynsley-Green, Children's Commissioner for England, Kathleen Marshall, Scotland's Commissioner for Children and Young People, Keith Towler, Children's Commissioner for Wales and Patricia Lewsley, Northern Ireland Commissioner for Children and Young People, on 10 March 2009. On 24 March 2009, we took oral evidence from Baroness Morgan of Drefelin, Parliamentary Under-Secretary of State and Anne Jackson, Director, Child Wellbeing Group, Department for Children, Schools and Families (DCSF). We are very grateful for all of the evidence we received.

9. We have focused on some of the matters on which we have previously reported, including implementation of the UNCRC, children in the criminal justice system, and asylum-seeking children. The written evidence we have received on matters not covered in detail in this Report will be of interest to all those concerned with children's issues, both inside Parliament and beyond, and we will seek to use it in our future work on legislation and thematic matters.

## **UK report to the UN Committee on the Rights of the Child**

10. In our previous Report on the UNCRC, we recommended that the UK's next periodic report to the UN Committee be structured to:

- show the general principles of Government policy and action in the UK related to each of the Articles of the Convention;
- report separately on the activities relating to children's rights issues of each central Government department together with relevant non-departmental public bodies

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<sup>17</sup> Press Notice No. 3, Session 2008-09, 17 December 2008.

(NDPBs) and inspectorates related to each department, and each of the devolved administrations, and to make some effort to capture related activities at local government level;

- provide a specific response to each of the recommendations in the UN Committee's previous Concluding Observations; and
- include a strategic plan of action in relation to children's rights for the coming five years, indicating measures of success against which implementation can be judged.<sup>18</sup>

11. The UK's report to the UN Committee met some of these recommendations.<sup>19</sup> It dealt thoroughly with the Committee's previous recommendations and also set out how the UK had implemented specific Articles of the UNCRC in law. The activities of the devolved administrations were covered, but not in separate sections, and there was little to delineate the activities of departments and other public bodies in relation to children. Some account of future plans was given in the narrative, but generally without an indication of how to measure whether policies had been successful. **We recommend that the UK's next report to the UN Committee should again focus on addressing the UN Committee's most recent Concluding Observations, but with clearer links to future plans (and how their success can be assessed) as well as to the work of the devolved administrations and local Government.**

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<sup>18</sup> See note 5 above, para. 13.

<sup>19</sup> See note 12 above.

## 2 Implementation of the UNCRC

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### An implementation plan?

12. In December 2007, the Government published its first Children's Plan, which aimed "to put the needs of families, children and young people at the centre of everything we do".<sup>20</sup> It set out the Government's plans for the next 10 years under each of the Department for Children, Schools and Families' strategic objectives. The introduction records that the Plan has been developed with regard to the principles and Articles of the UNCRC. Annex B states that "the content of each chapter relates to the clusters of Articles of the UNCRC and takes forward the recommendations of the UN Committee".<sup>21</sup> Beyond references to an understanding of human rights as part of a child's education, however, the body of the Children's Plan makes no further mention of the UNCRC, or of human rights.

13. In 2008, the Government published a one year Progress Report on implementation of the Children's Plan.<sup>22</sup> The Progress Report was published after the publication of the UNCRC's latest Concluding Observations. The Government described the Concluding Observations of the UNCRC as a "helpful framework for further action" and stated that the December 2008 update to the Children's Plan "sets out England's priorities for taking forward the UN Committee's recommendations".<sup>23</sup> This is provided in an Annex to the Progress Report which sets out some of the UNCRC's recommendations alongside the Government's priorities for action, in general terms.

14. We note that the Children's Plan relates only to England. The Scottish Government has published an implementation plan for consultation.<sup>24</sup> It has also established a stakeholders' group to monitor progress in dealing with the UNCRC's Concluding Observations. The Minister told us that "each devolved administration will address the UN Committee's Concluding Observations as appropriate to their national requirement".<sup>25</sup>

15. Publication of the Children's Plan and Progress Report has been widely welcomed.<sup>26</sup> However, they were not seen by some witnesses to be a sufficient response to the UNCRC's recommendations. Some witnesses criticised the Progress Report for only addressing a small number of the UNCRC's recommendations and stated that they were not clear why some recommendations had been prioritised over others.<sup>27</sup> A number of witnesses recommended that the UK Government should publish a detailed UK-wide action plan on

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<sup>20</sup> Department for Children, Schools and Families, *The Children's Plan: Building Brighter Futures*, Cm 7280, December 2007, p. 3.

<sup>21</sup> *Ibid.*, pp 15, 159.

<sup>22</sup> Department for Children, Schools and Families, *The Children's Plan One Year On: A Progress Report*, December 2008.

<sup>23</sup> *Ibid.*, p. 208.

<sup>24</sup> *Consultation on the Scottish Government's Response to the 2008 Concluding Observations from the UN Committee on the Rights of the Child*, 15 December 2008.

<sup>25</sup> Ev 26

<sup>26</sup> Ev 47, 72, 157

<sup>27</sup> Ev 157

implementation of the UNCRC, to include milestones and interim dates<sup>28</sup> and to be co-ordinated nationally, rather than by the four nations separately.<sup>29</sup>

16. We asked the Minister to explain how the UNCRC's recommendations were prioritised in order to arrive at the list in the Annex to the Progress Report. The Minister explained that they reflected those areas which the Government had identified within the recommendations where more could be done to further implement the Convention.<sup>30</sup> The Minister suggested that the UK was responsible for "co-ordinating our responses to the progress on the Convention" and that she would be meeting Ministers from the devolved administrations "to discuss a UK wide approach to addressing the Concluding Observations and the possibility of devising a UK wide action plan".<sup>31</sup>

**17. We welcome the publication of the Children's Plan and Progress Report, including the Annex pointing to the Government's priorities for implementing the UNCRC's recommendations in England. We note the Scottish Government's decision to consult on implementation of the UNCRC's recommendations in Scotland and suggest that this is an example of good practice which should be followed across the UK.**

18. Although we recognise that the devolved administrations have responsibility for certain areas of children's rights, we note that the UK Government is ultimately responsible for ensuring that it complies with its international human rights obligations under the UNCRC. The role of the UK Government is both to co-ordinate national efforts on implementing the Convention and to report to the UNCRC on progress.

19. We agree with witnesses that it is not advisable to leave implementation to each nation to deal with separately. We recommend that the UK Government devise a comprehensive and detailed plan for implementation of the UNCRC recommendations across the UK. This should be completed in conjunction with the devolved administrations and the Children's Commissioners, and be subject to widespread consultation. Crucially, the participation of children and young people should be actively sought and facilitated at all stages in the process, including during the implementation stage. In our view, such a Plan would be beneficial to the Government, devolved administrations, service providers and children and young people themselves. The finalised plan should be published and subjected to regular monitoring and evaluation. We recommend that the Government publishes annual reports in order to monitor progress on implementation more regularly than is required by the UN monitoring process.

## **Incorporation into law**

20. The UN Committee has recommended that the UNCRC should be incorporated into UK law,<sup>32</sup> a point echoed by numerous witnesses to our inquiry.

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<sup>28</sup> Ev 62, 158, 185, 189

<sup>29</sup> Ev 28, 186

<sup>30</sup> Ev 26

<sup>31</sup> Q 40

<sup>32</sup> UNCRC's Concluding Observations on UK, *op. cit.*, para. 11.

21. All four of the Children's Commissioners called for the UNCRC to be incorporated into UK law. The Northern Ireland Commissioner went as far as stating that "the biggest problem facing the realisation of children's rights in Northern Ireland is the absence of domestic legislation fully incorporating children's rights in legislation".<sup>33</sup> The Commissioner saw the Bill of Rights for Northern Ireland as an opportunity to incorporate the UNCRC into law. The Commissioner for Wales remarked on the particular difficulties caused by devolution, noting that "the danger ... is we might find devolved administrations moving at a different pace".<sup>34</sup> The Scottish Commissioner drew attention to the fact that the Scottish Government was considering scrutinising all legislation for compliance with human rights and possibly including a statement on children's rights in policy memoranda accompanying Bills.<sup>35</sup>

22. Children's England and the NSPCC suggested that the UK needed to build a culture of respect for children's rights.<sup>36</sup> According to Children's England, this could be achieved by embedding principles of children's rights in policy-making and practice and ensuring a clear and common understanding of what children's human rights mean.<sup>37</sup> Witnesses also advocated increasing awareness of the Convention amongst children, parents and professionals working with children,<sup>38</sup> through training, professional development and sustained Government funding.<sup>39</sup> The Equality and Human Rights Commission and the NSPCC called for the principle of the paramountcy of the child's best interests to be established in all areas of UK law and practice.<sup>40</sup>

23. Addressing the issue of incorporation during debate on the Children's and Young Person's Bill, however, the then Children's Minister, Beverley Hughes MP, said:

What matters most is giving children that good experience of childhood and having a Government who progressively want to go further to promote the well-being of children, rather than confirming by referring to the Convention in every single piece of legislation or going through the arduous process of incorporating it all together in one big piece of legislation, which would frankly be a fruitless task.<sup>41</sup>

24. We asked the Minister to explain why the Government considers that incorporating the Convention into UK law would be "a fruitless task". In response, Baroness Morgan stressed the Government's commitment to the UNCRC, but argued that the Government implemented the Convention through a number of separate pieces of legislation and did not consider it necessary to incorporate the Convention into law in order to honour its international obligations.<sup>42</sup> Pressing the Minister, we requested an analysis to show that

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<sup>33</sup> Ev 148

<sup>34</sup> Q 31

<sup>35</sup> Q 33

<sup>36</sup> Ev 47, 139

<sup>37</sup> Ev 47

<sup>38</sup> Ev 139

<sup>39</sup> Ev 47, 185

<sup>40</sup> Ev 92, 139

<sup>41</sup> PBC Deb, 24 June 2008, col 46.

<sup>42</sup> Q 109

there are effective domestic legal remedies for potential breaches of each Article of the Convention.<sup>43</sup> The Minister replied to this request in correspondence stating:

The question assumes that there is a direct legal remedy which could be relied upon in respect of any breach of the UNCRC. However, the UK meets its obligations under the UNCRC through a combination of legislation, policy initiatives and guidance.<sup>44</sup>

25. The Minister pointed to its commissioning of “an updated high-level mapping of the legislation and policy that supports the UNCRC in England” and promised to provide us with this overview once it is available. **We look forward to receiving it.** She also noted that where UNCRC obligations are met through legislation, the usual remedies applicable to that provision would apply, as well as the possibility of challenging a decision of a public authority for failure to comply with the Human Rights Act 1998, judicial review or the use of complaints mechanisms.<sup>45</sup>

26. In our previous Report on the UNCRC, we concluded:

We do not accept that the goal of incorporation of the Convention into UK law is unrealisable. We believe the Government should be careful not to dismiss all the provisions of the Convention on the Rights of the Child as purely “aspirational” and, despite the ways ... in which the CRC is currently able to exert influence, we firmly believe that children will be better protected by incorporation of at least some of the rights, principles and provisions of the Convention into UK law.<sup>46</sup>

27. We note that whilst the European Convention on Human Rights (ECHR), effectively incorporated by the Human Rights Act 1998, applies to children as it does to adults, it does not provide an equivalent degree of specificity to the UNCRC, but is instead expressed in generic terms. It also does not have the breadth of coverage of the UNCRC. It would not therefore be correct to assume that for every alleged breach of the UNCRC there is a relevant Article of the ECHR which an individual would be able to invoke in court proceedings in the UK. There may therefore be a significant gap between the domestic remedies provided by the Human Rights Act and the ECHR on the one hand and, on the other, the remedies which would potentially be available to individuals were they able to rely on the UNCRC directly in court proceedings in the UK.

**28. The Government has not persuaded us that children's rights are already adequately protected by UK law, nor that incorporation of the UNCRC is unnecessary. We agree with those witnesses who emphasised the benefits of incorporation, accompanied by directly enforceable rights. It is significant that all four Children's Commissioners in the UK, with their extensive experience of working with children, think it would make a real practical difference to children if the UNCRC were incorporated into UK law. However, we recommend that further information be given by the Government about the extent to which the UNCRC rights are or are not already protected by UK law.**

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<sup>43</sup> Q 116

<sup>44</sup> Ev 25

<sup>45</sup> Ev 25

<sup>46</sup> See note 5, above.

29. The UN Committee recommends that any Bill of Rights for Northern Ireland or the UK should incorporate the principles and provisions of the UNCRC and include a special section on children's rights.<sup>47</sup> In our Report on a UK Bill of Rights, we supported the inclusion of rights relating to children in a future Bill of Rights. Responding to our Report, the Government accepted that a Bill of Rights could make special provision for children.<sup>48</sup> In its Green Paper consulting on a Bill of Rights and Responsibilities, the Government stated that:

It is open to exploring whether and, if so, how a Bill could be used to improve children's wellbeing and their standing and respect for children in UK society and how such a Bill could encourage the sense of rights and responsibilities we want from everyone with regard to children in our society. In particular, it seeks views on how the rights of all children, young people and their families might be articulated, along with the responsibilities we all share to secure these.<sup>49</sup>

But that it:

... would not want to create new avenues of redress for individuals in the courts. Rather, it would be seeking to influence the actions of public bodies and to emphasise the importance of children and their wellbeing in UK society.<sup>50</sup>

It did not suggest that a Bill of Rights and Responsibilities would be used to incorporate the UNCRC.

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

**31. In the meantime we are disappointed that the Government has rejected even our modest proposal that the UNCRC be made the framework of local Children and Young People's Plans.<sup>51</sup>** The Government resisted our proposed amendment to the Apprenticeships, Skills, Children and Learning Bill, which would have required Children's Trust Boards to have regard to the need to implement the UNCRC when preparing their Children and Young Person's Plans. It told us that it considers it to be "unnecessary to have any specific provision falling on the Children's Trust Board to have regard to the UNCRC when preparing its plan", that the UK complies with its obligations under the UNCRC through a mixture of legislative, executive and judicial action, and that its

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<sup>47</sup> See note 32 above, para. 11.

<sup>48</sup> Third Report of Session 2008-09, *A Bill of Rights for the UK? Government's Response to the Committee's Twenty-Ninth Report of Session 2007-08*, HL Paper 15, HC 145, p. 18.

<sup>49</sup> Ministry of Justice, *Rights and Responsibilities: Developing our Constitutional Framework*, Cm 7577, March 2009, para. 3.66.

<sup>50</sup> *Ibid.*, para. 3.67.

<sup>51</sup> Fourteenth Report of Session 2008-09, *Legislative Scrutiny: Apprenticeships, Skills, Children and Learning Bill*, HL Paper 78, HC 414, paras 2.42-2.48.

legislation is consistent with the provisions of the Convention.<sup>52</sup> **We do not consider the Secretary of State's response to be an adequate answer to the case we made in our Report. We do not understand why the Secretary of State is content to draw up his own Children's Plan with regard to the principles and Articles of the UNCRC, but is not prepared to require the authorities drawing up local Children's Plans to do the same. We ask the Secretary of State to reconsider and to ask the relevant local authorities to draw up their plans with due regard to the need to implement the UNCRC and the recommendations of the UN Committee.**

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<sup>52</sup> *Ibid*, para. 2.46; HC Deb, 5 May 2009.



## 3 Attitudes towards children and discrimination

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32. Article 2 of the UNCRC requires that states respect, and ensure that all children can enjoy, the rights contained within the UNCRC “without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”. In addition, states must take all legislative and administrative measures to ensure “such protection and care as is necessary for his or her well-being”.<sup>53</sup>

33. In its 2008 report, the UN Committee commented with concern on the “general climate of intolerance and negative public attitudes towards children” in the UK and the discrimination which some particular groups of children (such as Roma and Irish Traveller children, migrant, asylum-seeking and refugee children, lesbian, bisexual, gay and transgender children and children belonging to minority groups) continue to experience. It recommended that the UK:

- address intolerance and inappropriate characterization of children;
- strengthen awareness-raising and other preventive activities against discrimination and, if necessary, take affirmative action to benefit vulnerable groups; and
- take measures to ensure that cases of discrimination are addressed effectively, including through disciplinary, administrative and penal sanctions.<sup>54</sup>

### Attitudes towards children

34. Many witnesses reiterated the UN Committee’s concerns about negative attitudes within the UK towards children, including their negative portrayal in media and political debate.<sup>55</sup> For example, Save the Children and the Children’s Law Centre Northern Ireland told us of:

Growing concern in Northern Ireland ... about the pernicious effects of stigmatisation, demonisation and criminalisation of children and young people through a combination of legislative and policy approaches as well as societal discourse and attitudes, often fuelled by hostile media coverage of issues relating to young people.<sup>56</sup>

35. Research conducted by the Young Researcher Network suggests that although the national media tends to report more negative stories about children, at a local or regional level, the stories about children tended to be more positive. The research concluded that negative reporting was likely to make children feel alienated and angry and negative about

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<sup>53</sup> Article 3(2) UNCRC.

<sup>54</sup> UN Concluding Observations on the UK, *op. cit.*, para. 25.

<sup>55</sup> Ev 48, 194, 198

<sup>56</sup> Ev 52

themselves, caused stereotyping and impacted on children's daily lives (e.g. interaction with the police, other adults and other young people). However, they also suggested that negative stories had "the potential to be used for education and greater understanding of the problems that some young people face".<sup>57</sup> Liberty suggested that "negative stereotyping of young people has informed the development of much of the law and policy relating to children in recent years".<sup>58</sup> Responses by young Gypsies and Travellers, co-ordinated by the UK Youth Parliament, concluded that the portrayal of Gypsies and Travellers had got worse in recent years.<sup>59</sup>

36. The Children's Commissioner for England referred to 2006 research showing that 71% of media stories about children were negative and a third were about crime. He said:

Young people feel the media represent them as anti-social, to be feared, selfish, criminal and uncaring.<sup>60</sup>

And:

What is happening now is unprecedented in terms of the persistent demonisation of children and young people.<sup>61</sup>

37. We asked the Minister for her views on the UNCRC's observations about the negative attitude in the UK towards children and what the Government was doing to address the problem. The Minister told us that the Government was developing:

... PR and communication campaigns which can change the perception of young people. We know that young people around the UK make a tremendously positive contribution to our society; we know that the vast majority of young people behave well at school, achieve, make great contributions as volunteers, and what we want to be able to do through things like National Youth Week, by working with NGOs and young people's organisations is to help to make that more widely understood. We feel very strongly that there is an awful lot more as a Government that we could do.<sup>62</sup>

38. When we pushed the Minister to explain what exactly she could do to try to change negative press coverage, she explained that the Government is working with local media to provide them with positive stories about children and young people. She also told us that the public relations and communications campaign would be evaluated.<sup>63</sup> **We were pleased to hear the Minister's commitment to do more to address negative, damaging and unfounded stereotyping of children and young people within society. Innovative and proactive solutions are required to address this problem, which has the potential to do real harm to the status and aspirations of children living in the UK, who have much to contribute to society. Such solutions should be timely, well-targeted and funded. We recommend that the Government bring forward proposals to deal with this issue**

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<sup>57</sup> Ev 200

<sup>58</sup> Ev 120

<sup>59</sup> Ev 198

<sup>60</sup> Ev 28

<sup>61</sup> Q 2

<sup>62</sup> Q 35

<sup>63</sup> Q 36

and look forward to receiving the evaluation of the Government's communications campaign in due course.

## Discrimination

39. Many examples of different types of discrimination were raised with us. These included:

- 16 and 17 year olds finding it difficult to access social services and mental health services, and falling in the gap between provision for children and adults;<sup>64</sup>
- children and young people not being taken seriously when reporting a crime or calling emergency services;<sup>65</sup>
- children and young people being treated unfairly in public spaces, particularly in shops, using public transport or where “mosquito” devices are in use to disperse crowds;<sup>66</sup>
- public places such as leisure centres, libraries and transport facilities being unfit for adults with babies and young children;<sup>67</sup>
- discriminatory attitudes of medical professionals towards disabled children;<sup>68</sup>
- fertility of disabled children restricted by use of non-essential medical intervention;<sup>69</sup>
- high incidence of bullying of children with a learning disability;<sup>70</sup> and
- difficulties for young Gypsy and Traveller children in accessing suitable accommodation, public transport, GP surgeries and safe places to play.<sup>71</sup>

Witnesses also expressed concern at the effects of discrimination on multiple grounds on children, for example in respect of a combination of their age and disability.<sup>72</sup>

**40. We are concerned at the range of problems which were described to us, many of which would have a serious and negative impact on the lives of children and young people. We are particularly troubled, as the UN Committee was, by the evidence of discrimination against especially vulnerable groups of children. The UNCRC implementation plan we have recommended should focus on proposing specific measures in relation to these groups.**

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<sup>64</sup> Ev 195

<sup>65</sup> Ev 195

<sup>66</sup> Ev 195

<sup>67</sup> Ev 195

<sup>68</sup> Ev 164

<sup>69</sup> Ev 165

<sup>70</sup> Ev 126

<sup>71</sup> Ev 96, 198

<sup>72</sup> Ev 90

### ***Age discrimination and the Equality Bill***

41. A number of witnesses provided specific evidence on the Equality Bill and advocated amendments to the Bill. Evidence included calls to:

- prohibit age discrimination against under-18s in the provision of goods, facilities and services;<sup>73</sup>
- extend the single integrated equality duty to cover children's services and education;<sup>74</sup> and
- make reasonable adjustments in public transport and in access to public buildings for young children.<sup>75</sup>

42. The Children's Commissioners all referred to age discrimination in a variety of contexts. The Commissioner for England said:

The forthcoming Equality Bill offers a legislative opportunity to enhance children's protection from discrimination and thereby promote their rights and outcomes. Including under-18s in the Bill's proposed age discrimination prohibition and age strand of the single public equality duty is crucial to achieving this goal. We are pleased the Government has signalled that it is willing to seriously consider this latter proposal.<sup>76</sup>

43. Young Equals provided examples of countries such as Australia which have protected children from age discrimination without excessive litigation.<sup>77</sup>

44. The Government is not in favour of extending age discrimination to the provision of goods, facilities and services to under-18s arguing that this could have the "unintended effect of diluting protection[s] that are in place" rather than enhancing them.<sup>78</sup> We asked the Minister to explain how extending protection against age discrimination to children would dilute existing protections. She reiterated the Government's concern that by extending protection it might not be able to provide age-appropriate services aimed specifically at children or at children of specific ages.<sup>79</sup>

**45. We doubt that prohibiting age discrimination against children would have the unintended consequences mentioned by the Minister. In particular, we consider that it would be possible to draft an appropriate provision which would prohibit all discrimination on the grounds of age in relation to goods, facilities and services, except where it can be justified. This would allow age-appropriate services to be provided where there was good reason for doing so, such as to respond to the needs of a young child. We recommend that the Equality Bill be amended to extend protection from age**

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<sup>73</sup> Ev 60, 66, 88, 92, 93, 125, 195

<sup>74</sup> Ev 60, 66, 194, 196

<sup>75</sup> Ev 60, 197

<sup>76</sup> Ev 17, 28

<sup>77</sup> Ev 196

<sup>78</sup> Ev 74

<sup>79</sup> Q 37

**discrimination to people regardless of their age in relation to the provision of goods, facilities and services, except where discrimination on the grounds of age can be justified.**

## 4 Children in the criminal justice system

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46. Article 37 of the UNCRC requires that:

No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

Every child deprived of his or her liberty shall have the right to prompt access to legal and appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

47. In its report on the UK, the UN Committee expressed particular concern at the criminal prosecution of child prostitutes and children without valid immigration documentation. It also noted the application to children of ASBOs which, whilst civil orders, might convert into criminal offences if breached and could lead children into contact with the criminal justice system. It recommended that the UK:

- raise the age of criminal responsibility;<sup>80</sup>
- always deal with children in conflict with the law within the juvenile justice system;
- review the application of the Counter-Terrorism Act to children;
- adopt appropriate measures to protect the rights and interests of child victims or witnesses of crime at all stages of the criminal justice process; and
- conduct an independent review of ASBOs, with a view to abolishing their application to children.<sup>81</sup>

48. Many of these concerns were also reflected in our evidence. We deal with some of these issues in our Report.

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<sup>80</sup> See General Comment No. 10.

<sup>81</sup> UNCRC's Concluding Observations on the UK, *op. cit.*, para. 80.

## Criminalisation of children

49. Echoing the concerns of the UN Committee, Children England told us that it remained concerned that too many children and young people were becoming caught up in the criminal justice system, which was often ill-suited to their needs.<sup>82</sup> The Standing Committee for Youth Justice suggested that there had been a fall in the proportion of children diverted from court and a tendency towards increased prosecution.<sup>83</sup> The Children's Commissioner for England stated that since 2002, the number of under-18 year olds involved with the criminal justice system had risen by 27%, even though the juvenile crime rate had remained stable.<sup>84</sup> The Children's Society pointed to "net-widening", in other words an increasing number of offences which may be committed by children.<sup>85</sup>

50. However, in contrast to the submissions of a number of witnesses, the Youth Justice Board told us that between 2005 and 2008 there was a 10% reduction in first time entrants into the youth justice system, as recorded by Youth Offending Teams.<sup>86</sup> The Department for Children, Schools and Families told us that in 2007–08, 10,000 fewer young people entered the criminal justice system in England for the first time compared to the previous year and restated its aim to reduce the number of first-time entrants to the criminal system aged 10–17 by one fifth from current levels by 2020.<sup>87</sup>

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

52. The Howard League for Penal Reform suggested that:

The Government response to children's behaviour is primarily punitive and fails to take account of the best interests of the child.<sup>88</sup>

53. Some witnesses advocated focusing on child welfare rather than preventing offending,<sup>89</sup> adopting a welfare and child-rights approach to youth justice<sup>90</sup> and an increased role for

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<sup>82</sup> Ev 48

<sup>83</sup> Ev 176

<sup>84</sup> Ev 28

<sup>85</sup> Ev 68

<sup>86</sup> Ev 203

<sup>87</sup> Ev 73

<sup>88</sup> Ev 99

<sup>89</sup> Ev 69

<sup>90</sup> Ev 139

children's services within the youth justice system so that all children receive services on the same basis as children outside the system.<sup>91</sup> The Children's Society called for:

... reform to the youth justice system to put children's welfare concerns at its centre. This should be based on the principle of treating children in trouble with the law as children first and foremost. The majority have experienced/are experiencing chaotic and damaging childhoods that require support by mainstream or specialist services. Addressing these needs rather than simply punishing a child's problematic behaviour is best for the child and for society as a whole.<sup>92</sup>

54. The Standing Committee for Youth Justice reiterated the contention that children caught up in the criminal justice system frequently had a number of problems which meant that a child-centred approach would be beneficial:

Children's offending is typically but one symptom of multiple problems across the spectrum of their lives ... There is substantial evidence that a welfare-led approach which seeks to identify and meet these unmet needs is a much more effective means of preventing re-offending than a punitive one.<sup>93</sup>

55. We draw attention to the evidence from the Welsh and Scottish Children's Commissioners that there are different approaches to dealing with juveniles in trouble with the law in different parts of the UK. The Welsh Commissioner mentioned the All Wales Youth Offending Strategy, which picks up the welfare model and the principle that "children within the youth justice system should be treated as children first and as offenders second".<sup>94</sup> The Scottish Commissioner told us that the Scottish model can be distinguished from the English system by its welfare-based approach and the use of children's hearings.<sup>95</sup> The Commissioner for England agreed that a lot can be learnt from the Scottish system.<sup>96</sup>

56. Witnesses also noted the over-representation of particular groups of children and young people within the criminal justice system. For example, looked-after children are over-represented in the criminal justice system and in custody in particular.<sup>97</sup> The Adolescent and Children's Trust pointed to a significant correlation between looked-after children and children who offend (noting that 40% of children in custody have been in care).<sup>98</sup> They suggested a possible explanation, stating that children in care:

... can be accelerated into and through the criminal justice system for behaviour that in other circumstances would be dealt with by the family... Care should be viewed as a buffer against criminalisation, not an accelerant.<sup>99</sup>

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<sup>91</sup> Ev 203

<sup>92</sup> Ev 68

<sup>93</sup> Ev 177

<sup>94</sup> Q 10

<sup>95</sup> Qq 7-10

<sup>96</sup> Q 9

<sup>97</sup> Ev 53

<sup>98</sup> Ev 179, although also pointing out that over 90% of children in care will never have a criminal conviction

<sup>99</sup> Ev 178



The Children's Legal Centre called for "immediate research into the reasons for the over representation of children from looked-after backgrounds in custody".<sup>100</sup>

57. Other witnesses noted the disproportionate number of young male Gypsies and Travellers<sup>101</sup> and children with autism<sup>102</sup> in the criminal justice system. **We are particularly concerned by the high number of children from especially vulnerable and marginalised groups within the criminal justice system. The Government should review and explain why such a disproportionate number of children who are looked-after, Gypsies and Travellers or have autism, are present within the criminal justice system, and why existing strategies appear to be failing. Such children, who are already likely to have experienced significant disadvantage and even discrimination in their early lives, require specific and targeted measures and support, outside of the criminal justice system.**

58. We asked the Minister about one specific example of children being criminalised, namely as children involved in prostitution, a matter on which we have previously reported.<sup>103</sup> We were alarmed that the Children's Minister appeared to be unaware that children involved in prostitution are treated as criminals rather than victims.<sup>104</sup> She said:

I cannot accept that it would ever be okay for a child to be a prostitute ... I certainly could not accept that it was the right thing to criminalise the victims of rape ... and I would always want to ensure as a children's Minister that we were working to safeguard and protect the child.<sup>105</sup>

59. We specifically drew the Minister's attention to the possibility of amending the Policing and Crime Bill to comply with the UNCRC recommendation that under-18 year olds involved in prostitution should not be criminalised.<sup>106</sup> Following the evidence session, the Minister provided us with a written response on this point, which repeated the Government's argument for maintaining the status quo, namely that prosecutions are only brought exceptionally, and that the criminal law should be retained to remove people from the streets who have refused the support of social services or voluntary organisations.

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

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<sup>100</sup> Ev 52

<sup>101</sup> Ev 198

<sup>102</sup> Ev 184

<sup>103</sup> Tenth Report of Session 2008-09, *Legislative Scrutiny: Policing and Crime Bill*, HL Paper 68, HC 395 at paras 1.62-1.66.

<sup>104</sup> Q 42

<sup>105</sup> Q 47

<sup>106</sup> As we recommended in our Tenth Report of Session 2008-09, *Legislative Scrutiny: Policing and Crime Bill*, HL Paper 68, HC 395 at paras 1.62-1.66.

### *Age of criminal responsibility*

61. In our previous Report on the UNCRC, we noted that the age of criminal responsibility in the UK was the lowest in the European Union (10 years in England and Wales and 8 years in Scotland),<sup>107</sup> that the UK had abolished the common law principle of *doli incapax* (the rebuttable presumption that children aged 10–13 years are incapable of criminal intent)<sup>108</sup> and that the UNCRC, in its earlier report on UK compliance with the Convention, had recommended that the UK raise the age of criminal responsibility “considerably”.<sup>109</sup> We recommended that the Government review the effects of the low age of criminal responsibility on children and on crime and noted that the criminalisation of young children had to be justified by very convincing evidence. We concluded:

Unless evidence of the effectiveness of the present age of criminal responsibility in reducing crime and disorder can be presented, and can be shown to be convincing, we conclude that to bring it more in line with our European neighbours would meet both the requirements of effective criminal justice and our duty under the UNCRC to uphold children’s human rights. We recommend that the age of criminal responsibility be increased to 12 years.<sup>110</sup>

62. The Scotland Commissioner told us that the Scottish Government proposes to increase the age of criminal responsibility to 12 years in Scotland, but pointed out that she would prefer it to be higher, as this was the minimum acceptable international standard. She also suggested that people might conclude that advocates of raising the minimum age thought that children should have no moral responsibility below that age. However, she argued that this was not the case; the aim was to decide, instead, on the most effective and principled approach to children’s behaviour “to turn them around and put them on the right line”.<sup>111</sup> The Welsh Commissioner agreed that raising the minimum age might be perceived by the public as being “a very soft act” and suggested that there needed to be a public discussion about how to respond to very young children who get into trouble. This, he suggested, required “political courage to take a stance on something in the face of perhaps a media response and a public response that might not be sympathetic to a move of that nature”.<sup>112</sup> Other witnesses to our inquiry also referred with concern to the comparatively low ages of criminal responsibility in the UK.<sup>113</sup>

63. Earlier this year, the Council of Europe Commissioner for Human Rights, in his Viewpoint on children, distinguished between responsibility and criminalisation of children, saying:

We need to separate the concepts of “responsibility” and “criminalization”. It is essential to establish responsibility for conduct which contravenes the law. Where responsibility is disputed, there has to be a formal process to determine responsibility

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<sup>107</sup> The Council of Europe Commissioner on Human Rights remarked on the UK’s low age of criminal responsibility in his viewpoint “*Children should not be treated as criminals*”, 2 February 2009.

<sup>108</sup> Crime and Disorder Act 1998, section 34.

<sup>109</sup> See note 5 above, para. 37.

<sup>110</sup> See note 5 above, para. 38.

<sup>111</sup> Q 11

<sup>112</sup> Q 12

<sup>113</sup> Ev 52, 68, 69, 84, 99, 174, 179, 191

in a manner which respects the age and the capacity of the child. However, this does not have to be a criminal process nor involve the criminalization of children.<sup>114</sup>

In his Report on the UK, focusing on juvenile justice, he recommended “that the Government considerably increase the age of criminal responsibility to bring it in line with the rest of Europe, where the average age of criminal responsibility is 14 or 15”.<sup>115</sup>

64. Witnesses also expressed concern at the removal of the presumption of *doli incapax*. The Equality and Human Rights Commission suggested that there should be an independent review of the effect of the abolition of the rebuttable presumption.<sup>116</sup> The Commission on Families and the Wellbeing of Children stated that “we have arrived at a position in which, once within the youth justice system, a child is viewed first and foremost as an offender rather than as a child in trouble”.<sup>117</sup>

65. The Minister confirmed in oral evidence to us that she had no plans to look at the age of criminal responsibility. She noted that it had been set at 10 years old in England and Wales since 1963 and that this level:

... gives us the opportunity to engage in early intervention and ensure that all the opportunities that have been recently set out through the youth crime action plan can come into play at an early age.<sup>118</sup>

When challenged as to how maintaining the current age is consistent with the basic interests of the child, she replied:

Our approach is to ensure that where a child starts to display early signs of offending behaviour there is the opportunity through the many early interventions to support that child, whether it is through either family intervention programmes or referral to other services to encourage them to learn different behaviour... where young people do engage in a serious offence that is something that we recognise we have to take very seriously and address.<sup>119</sup>

**66. We are not persuaded by the Minister’s response, which goes against the strong recommendations of the UN Committee and of practice in comparable states. We fail to understand why criminal penalties are necessary to ensure that other services such as family intervention programmes are made available. Whilst we do not underestimate the effects on communities of the offending of some very young children, we do not believe that the UK’s current response is consistent with its international obligations to children. Indeed, we consider that resort to the criminal law for very young children can be detrimental to those communities and counter-productive. We endorse the views of witnesses who advocate a welfare-based and child-rights oriented approach.**

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<sup>114</sup> Council of Europe Commissioner on Human Rights, Viewpoint “*Children should not be treated as criminals*”, 2 February 2009.

<sup>115</sup> Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visits to the United Kingdom (5-8 February and 31 March-2 April 2008), *Rights of the child with focus on juvenile justice*, CommDH(2008)27, Strasbourg, 17 October 2008.

<sup>116</sup> Ev 95

<sup>117</sup> Ev 70

<sup>118</sup> Q 48

<sup>119</sup> Q 49

**This has the merit not only of being consistent with the UN Convention, but also of bringing about early and positive change in children's lives to prevent them from entering the criminal justice system in the first place.**

### Children in custody

67. The UN Committee expressed concern at the high level of child deaths and self-harm in custody and recommended that all available resources be used to protect the right to life. It also recommended that automatic, independent and public reviews of unexpected deaths or serious injuries of children in care or custody be introduced. It continued to express concern at the use of physical restraint on children, urging the Government to ensure that restraint is used only as a last resort and exclusively to prevent harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished. It recommended that the UK:

- develop a broad range of alternative measures to detention for children in conflict with the law;
- establish the principle that detention should be used as a measure of last resort and for the shortest period of time as a statutory principle;
- unless in the child's best interests, ensure that every child in detention is held separately from adults; and
- provide for a statutory right to education for all children in detention.<sup>120</sup>

### Measure of last resort

68. Article 37(b) requires that children should only be detained as a last resort and for the shortest appropriate period of time.

69. In our last Report, we commented with concern on the numbers of children in detention and concluded:

We urge the Government to re-examine, with renewed urgency, sentencing policy and practice (and in particular the use of detention and training orders) and alternatives to custodial sentences, with the specific aim of reducing the number of young people entering custody and with a commitment to implementing Articles 37(b) and 40(4) of the Convention to the fullest extent possible.<sup>121</sup>

70. In our Report on the Criminal Justice and Immigration Act 2008, we recommended that the Bill be amended to require that a Youth Rehabilitation Order with intensive supervision and surveillance should always be tried before custody, unless the offence is so exceptionally serious that a custodial sentence is necessary to protect the public. Whilst the Government agreed that custody for young people should only be used as a last resort, it considered that adequate and appropriate safeguards already exist to ensure that courts

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<sup>120</sup> UNCRC's Concluding Observations on the UK, *op. cit.*, p. 20.

<sup>121</sup> See note 5 above, para. 41.

only use custody where it is a necessary and proportionate response to the offence or offending of the young person.<sup>122</sup>

71. The issue of the number of children in detention has remained a source of concern to children's rights organisations and others. Some witnesses suggested that there was a high number of children in custody generally in the UK, which compared unfavourably with the majority of European countries.<sup>123</sup> The National Children's Bureau stated that "since 1992 there has been a 90 per cent increase in children and young people in custody" and "a declining number placed in secure children's homes on welfare grounds".<sup>124</sup> However, there was some dispute between witnesses as to current trends in detaining children, including between children on remand and those serving custodial sentences. For example, a number of children's organizations told us that the number of children serving custodial sentences has increased.<sup>125</sup> Other witnesses pointed to the high level of children on remand,<sup>126</sup> with the Prison Reform Trust suggesting that "three quarters of under-18 year olds locked up on remand by magistrates' courts are either acquitted or given a community sentence".<sup>127</sup>

72. However, the Youth Justice Board suggested that:

While the use of custody for under 18s is significantly higher than 10-15 years ago, over the last ten years the numbers have been broadly stable and have not mirrored the sharper rises witnessed in the adult sector. As a proportion of all disposals custody has slightly declined in more recent years".<sup>128</sup>

73. The Minister suggested that the number of young people in custody has peaked and is coming down. She also pointed out that the option of a custodial sentence should be available as a last resort, in order to balance the needs of the community.<sup>129</sup> The Minister provided further detail in writing to us, stating:

Data provided by the Youth Justice Board indicates that during the last seven years there was a 10 per cent decrease [in the number of young people in custody on remand].<sup>130</sup>

However, she also noted that "the collated data does not indicate how many young people remanded in custody or to secure conditions were acquitted or received a non-custodial sentence".<sup>131</sup>

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<sup>122</sup> Fifth Report of Session 2008-09, *Legislative Scrutiny: Criminal Justice and Immigration Bill*, HL Paper 37, HC 269, paras 1.11-1.117.

<sup>123</sup> Ev 64, 152

<sup>124</sup> Ev 129

<sup>125</sup> Ev 51, 64, 123, 139

<sup>126</sup> Ev 50, 64, 152, 191

<sup>127</sup> Ev 152

<sup>128</sup> Ev 202

<sup>129</sup> Q 50

<sup>130</sup> Ev 24

<sup>131</sup> Ev 24

74. Unsurprisingly, given the over-representation of some groups of children in the criminal justice system compared to others, witnesses told us that certain of those trends were repeated in custody. For example, children in the care system are over-represented in custody,<sup>132</sup> as are children with mental health or learning difficulties.<sup>133</sup> Additionally, the Children's Commissioner for England noted that the use of custody for girls has risen sharply:

Overall custody has risen by 56 per cent but those for girls increased by 297 per cent.<sup>134</sup> We are locking away more girls than ever before yet 40 per cent of those girls suffered violence at home, 33 per cent had sexual abuse, 71 per cent have some form of psychiatric disorder, more than 89 per cent are engaging in self-harm, 49 per cent are drug dependent and around 50 per cent have literacy levels below the average 11-year old, and 71 per cent have been involved in social care prior to their admission.<sup>135</sup>

75. As the National Children's Bureau described it in their submission to us, detaining children:

... denies children their liberty and is expensive. It is therefore important that such a step is taken only when necessary, and that the types of locked provision available are fit for purpose in addressing the child's problematic behaviour and the unmet needs that may be causing it.<sup>136</sup>

76. Witnesses recommended diverting prison resources to community-based initiatives, phasing out prison accommodation for young people,<sup>137</sup> creating a statutory safeguard to make custody a measure of last resort<sup>138</sup> and desisting from legislating to allow for the increased imprisonment of young people.<sup>139</sup>

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

### **Reservation to Article 37**

78. In our last Report on the UNCRC, we commented on the UK's then reservation to Article 37(c) of the Convention, which reserved to the UK Government the right to accommodate children and adults together in detention. We noted at the time that the

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<sup>132</sup> Ev 130

<sup>133</sup> Ev 130

<sup>134</sup> Between 1992 and 2006. See NACRO and CfBT Education Trust, *Review of provision for girls in custody to reduce reoffending*, February 2009, p. 5.

<sup>135</sup> Q 14

<sup>136</sup> Ev 129

<sup>137</sup> Ev 50, 59

<sup>138</sup> Ev 51, 59, 120, 175, 202

<sup>139</sup> Ev 120

main problem was finding suitable accommodation for the increasing numbers of girls being given custodial sentences. On a number of occasions, the Government set and then failed to meet its own deadlines for removing all under-18 year old girls from the prison system. We recommended that:

... the Government reinforce its efforts to ensure there are sufficient suitable places under local authority care to allow the removal of all girls under 17 from prison custody into local authority secure accommodation by the end of 2003, and so enable the reservation relating to Article 37(c) of the Convention to be withdrawn.<sup>140</sup>

79. Since our Report, the Government has withdrawn its reservation to Article 37.<sup>141</sup> Both the UN Committee and witnesses to our inquiry welcomed the withdrawal of the reservation.<sup>142</sup> **We also commend the Government for having finally removed its reservation to Article 37, as we have advocated for many years.**

80. We note that despite the removal of the reservation, there remain ongoing problems and continuing breaches.<sup>143</sup> For example, witnesses told us that:

- 17 year old girls have been placed on an adult detoxification wing where there were no separate facilities for girls;<sup>144</sup>
- boys under-18 years of age continue to be held with adult males in prison service custody in Northern Ireland;<sup>145</sup> and
- female children are not held separately from female adults in Hydebank Wood in Northern Ireland.<sup>146</sup>

81. The Youth Justice Board told us that removal of the UK's reservation should not be interpreted as meaning that when a person becomes 18 they should automatically be transferred to an adult establishment.<sup>147</sup>

82. We asked the Minister about the apparent gap between the Government's aspiration behind removal of the reservation "to fulfil the Convention"<sup>148</sup> and practice since the reservation was removed, particularly in Scotland and Northern Ireland. The Minister explained in written evidence that Scotland was currently working on how it could separately accommodate all under-18s in custody, but that currently young people might be held together with adults. As for Northern Ireland, she wrote that:

The Northern Ireland Office has taken steps to ensure that Northern Ireland is fully compliant with Article 37(c). The Criminal Justice Order 2008 allowed for all young

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<sup>140</sup> See note 5 above, para. 62.

<sup>141</sup> Press Notice Department for Children, Schools and Families, *UK lifts reservations on the UN Convention on the Rights of the Child*, 22 September 2008.

<sup>142</sup> Ev 49, 59, 65

<sup>143</sup> Ev 59, 176

<sup>144</sup> Ev 99

<sup>145</sup> Ev 50; Q 13

<sup>146</sup> Q 13; Ev 169

<sup>147</sup> Ev 202

<sup>148</sup> Q 65

women under the age of 18 to be accommodated at Woodland Juvenile Justice Centre which is an under-18 establishment. A small number of 17 year old boys are held at Hydebank Young Offenders Centre which is a split site establishment with separate accommodation provided for under-18s and 18-21 year old men.<sup>149</sup>

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

### *Treated with humanity and respect*

84. The UNCRC requires that children in custody should be treated with humanity. The state is required to protect children from physical and psychological assault.<sup>150</sup>

85. The Youth Justice Board, which is responsible for making arrangements for the provision of secure accommodation for children and young people sentenced or remanded by the courts, aims "to ensure a secure, healthy, safe and supportive place for children and young people is provided however short or long their period in custody might be".<sup>151</sup>

### *Assaults, injuries, control and restraint and segregation*

86. In our earlier Report on the UNCRC, we concluded that:

The level of physical assault and the degree of physical restraint experienced by children in detention in our view still represent unacceptable contraventions of UNCRC Articles 3, 6, 19 and 37. These statistics do not provide reassurance that the Prison Service is implementing fully its responsibilities to respect the rights of children in custody.<sup>152</sup>

87. A recent report by the Howard League for Penal Reform, which drew together the findings of inspections of 15 jails holding children, concluded that there were "dire conditions" across the system, including unacceptable and forcible use of strip searching, denial of toilet breaks on journeys to and from court, fear of bullying and assault, physical restraint leading in some cases to fractures, staff not vetted by the Criminal Records Bureau, infrequent access to shower facilities, and children being held in solitary confinement.<sup>153</sup> Specific issues were raised with us by the Law Society of Scotland about the day to day treatment of children in secure accommodation including strip searching without reasonable suspicion, children being forced to conduct all telephone calls in the presence of staff, access to medical practitioners, access to a complaints system, access to fresh air and physical activity, and effective care for the mental health of children. Although the Society commends the Scottish Government for stating that no child is to be

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<sup>149</sup> Ev 24

<sup>150</sup> Article 40 UNCRC.

<sup>151</sup> Ev 201

<sup>152</sup> See note 5 above, para. 52.

<sup>153</sup> Ev 98



held in adult prison accommodation, it suggests that this should be extended to cover the transportation of children and young people.<sup>154</sup>

88. In our Report focusing on the use of restraint on children and young people, we concluded that it was contrary to the UK's human rights obligations for restraint to be used in order to maintain "good order and discipline". The statutory instrument which sought to enable restraint to be used for this purpose, which the Government claimed was necessary in order to clarify the law, has now been quashed by the courts.<sup>155</sup> Before this, restraint was used to maintain good order and discipline 16 times between April and September 2008.<sup>156</sup> Following the concerns expressed about the use of restraint, the Government established an independent review. Its report and the Government's response were published in December 2008.<sup>157</sup> The review made over 50 recommendations, most of which have been adopted, including discontinuing use of the "nose distraction" technique.<sup>158</sup> The review concluded, however, that "a degree of pain compliance may be necessary in exceptional circumstances" but recognised that this would be "irreconcilable" with the UNCRC and would be unpopular with the Children's Commissioners, our Committee and others.<sup>159</sup>

89. The UN Committee concluded that restraint should be used against children "only as a last resort and exclusively to prevent harm to the child or others" and called for "all methods of physical restraint for disciplinary purposes to be abolished".<sup>160</sup> The Council of Europe Commissioner for Human Rights, reporting on the UK urged "the immediate discontinuation of all methods of restraint that aim to inflict deliberate pain on children (including physical restraints, forcible strip-searching and solitary confinement)".<sup>161</sup>

90. A number of witnesses expressed concern at the continuing use of restraint in Secure Training Centres (STCs) and the continuing use of pain compliance techniques,<sup>162</sup> stating that they are likely to put children in danger and could result in serious injury or death.<sup>163</sup> Research by the Howard League for Penal Reform found that, from October 2006 to June 2008, restraint was used 6,001 times on children in prison, 4,380 times on children in STCs, and 3,695 times on children in local authority secure children's homes. Restraint is used disproportionately in STCs and 44% of all injuries caused by restraint occur in STCs. Girls comprise just 7% of children in custody but account for 20% of restraint incidents.<sup>164</sup> Witnesses also expressed disappointment at the Government's response to the

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<sup>154</sup> Ev 115

<sup>155</sup> *R (C) v Secretary of State for Justice* [2008] EWCA Civ 882.

<sup>156</sup> Papers deposited in House of Commons library; Q 71

<sup>157</sup> Written Ministerial Statement, 15 December 2008; Department for Children, Schools and Families and Ministry of Justice, *Government Response to the Review of the Use of Restraint in Juvenile Secure Settings*, Cm 7501; Q 71

<sup>158</sup> Q 71

<sup>159</sup> Smallridge, P. and Williamson, A., *Independent Review of Restraint in Juvenile Secure Settings*, 15 December 2008, pp 7-8.

<sup>160</sup> UNCRC's Concluding Observations on the UK, *op. cit.*, para. 39.

<sup>161</sup> Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visits to the United Kingdom (5-8 February and 31 March-2 April 2008), *Rights of the child with focus on juvenile justice*, CommDH(2008)27, Strasbourg, 17 October 2008.

<sup>162</sup> Ev 59, 98, 120, 129, 139, 175, 191

<sup>163</sup> Ev 98

<sup>164</sup> Ev 98; Q 14

independent review,<sup>165</sup> particularly at the fact that the independent review had not led to pain distraction techniques being removed completely.<sup>166</sup>

91. Witnesses made a number of recommendations including ending the use of pain restraint or distraction techniques, introducing clear and consistent minimum standards, guidance and training across the secure estate,<sup>167</sup> providing independent advocates at debriefs of young person following restraint<sup>168</sup> and six monthly reports to Parliament on restraint incidents broken down by purpose and ethnic origin of the children concerned.<sup>169</sup>

92. The Youth Justice Board welcomed the independent review and told us that it was committed to acting on the review's recommendations, including by updating its Code of Practice, supporting establishments to learn from incidents of restraint, developing a holistic approach to behaviour management, and investing in staff training in the use of behaviour management techniques.<sup>170</sup>

93. The National Children's Bureau argued that "it is difficult to ensure that any monitoring arrangements are sufficiently rigorous to identify situations where restraint or specific techniques have been used unnecessarily".<sup>171</sup> The Minister accepted that there may not be sufficiently comprehensive record keeping and that, in view of this, the number of restraint incidents could be higher than those recorded.<sup>172</sup> She also suggested that the high number of incidents recorded against girls could be explained by the need to protect girls from self-harm.<sup>173</sup> She responded to our questioning on whether she agreed with the independent review of the use of restraint in STCs that the use of pain compliance was "irreconcilable" with the UNCRC in writing stating:

The Government does not agree that the use of pain-compliant techniques in extreme circumstances is contrary to the UN Convention on the Rights of the Child ... The co-chairs of the independent Review of Restraint voiced an opinion to that effect, as an incidental comment ... The co-chairs had not, as far as we are aware, taken legal advice on this point. The Government's own view is that the co-chairs' recommendation is compatible with the provisions of the Convention.<sup>174</sup>

**94. We reiterate our strong concerns that pain compliance is still used as a tactic against young people in detention, and used disproportionately against vulnerable girls. We are particularly concerned that this remains the case, even though the independent review recognised that the use of pain compliance techniques would be irreconcilable with the UN Convention. We find this situation to be alarming and to go against the Government's espoused commitment to the best interests of the child. The Minister**

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<sup>165</sup> Ev 65

<sup>166</sup> Q 14

<sup>167</sup> Ev 140

<sup>168</sup> Ev 186-187

<sup>169</sup> Ev 93

<sup>170</sup> Ev 202

<sup>171</sup> Ev 131

<sup>172</sup> Qq 83 & 84

<sup>173</sup> Q 85

<sup>174</sup> Q 69; Ev 24

**failed to persuade us that such techniques are necessary or consistent with the Convention. We reiterate our previous conclusions that techniques which rely on the use of pain are incompatible with the UNCRC.**

### ***The right to education***

95. In its 2008 report on the UK, the UN Committee again recommended that the UK “provide for a statutory right to education for all children deprived of their liberty”.<sup>175</sup> In our last Report on children’s rights, we recommended that, as a matter of urgency, the Government bring forward legislative proposals to provide children in custody with a statutory right to education and access to special needs provision equal to that enjoyed by all other children.<sup>176</sup>

96. The Children’s Legal Centre told us that “children in custody do not have a statutory right to education. Many children in custody are not educated under the National Curriculum and do not receive education that is full-time. Also, support for children in custody with Special Educational Needs is severely lacking”.<sup>177</sup>

97. The Minister told us that the Apprenticeships, Skills, Children and Learning Bill, aims “to align education, as far as practicable, with the mainstream sector, including bringing young people in custody under the primary legislative regime”,<sup>178</sup> which would mean that local authorities will have responsibility for providing education to young people in detention<sup>179</sup> and that local authorities will receive additional funding in order to exercise this new duty.<sup>180</sup> The Youth Justice Board, referring to the Bill, expressed support for the transfer of responsibility for education provision in youth custody to local authorities, stating “we particularly support giving children in custody clear legal entitlements to education and training in custody”.<sup>181</sup>

98. Under the Apprenticeships Bill, local education authorities (LEAs) with young offender accommodation in their area (host authorities) will be required to ensure that enough suitable education and training is provided to meet the reasonable needs of the children and young people who are subject to youth detention in their area. Young offenders are currently excluded from the duties and powers given to LEAs under the Education Acts. The Bill will also change this position so that detained young offenders are subject to the Education Acts. The aim is that their education, so far as is practicable, matches that of children and young people in the mainstream education system. The Bill also imposes responsibilities on the LEA where a detained young person is ordinarily resident (home authorities) to monitor the education and training of a detained child or young person from their area and to take such steps as they consider appropriate to promote that

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<sup>175</sup> UNCRC’s Concluding Observations on the UK, *op. cit.*, para. 48.

<sup>176</sup> See note 5 above, para. 59.

<sup>177</sup> Ev 54

<sup>178</sup> Q 62; Ev 24

<sup>179</sup> Q 58

<sup>180</sup> Q 62; Ev 24

<sup>181</sup> Ev 201

person's fulfilment of his or her learning potential, both while they are in custody and on their release.<sup>182</sup>

99. In our scrutiny Report on the Bill, we welcomed the provisions in the Bill concerning education for detained young offenders as positively enhancing human rights.<sup>183</sup> However, we were concerned about the extent to which the Bill as introduced ensured equal access to special needs provision for children in detention.<sup>184</sup> We were reassured by the Government's subsequent amendments to the Bill concerning the special educational needs of detained children and young people. These amount to a significant strengthening of the legal framework to address the special educational needs of this group of children and young people amongst whom such needs are particularly prevalent.<sup>185</sup> **We are pleased to note the Government's positive proposals for improving the education of detained children and young people, including those with special educational needs, which are consistent with the UNCRC.**

### Anti-social behaviour orders

100. Many witnesses told us of their concern at the use of ASBOs on children and young people. Liberty described them as a "mix [of] criminal and civil law, [which] set people up to breach them, are increasingly counterproductive and used as a panacea for all ills"<sup>186</sup> and as a "fast track to criminality".<sup>187</sup> The Wales UNCRC Monitoring Group and the Standing Committee for Youth Justice suggested that children and young people are more likely to be harmed by ASBOs than to receive any benefits from their imposition.<sup>188</sup> Some witnesses suspected that the rise in the number of criminal convictions of children has resulted in part from the breach of anti-social behaviour measures.<sup>189</sup> The Equality and Human Rights Commission argued that naming and shaming children prosecuted for breach of an ASBO is inconsistent with the principles of the child's best interests, welfare and rehabilitation.<sup>190</sup> Friends, Families and Travellers said that ASBOs are used disproportionately on Gypsies and Travellers.<sup>191</sup>

101. The Youth Justice Board advocate a tiered approach to responding to anti-social behaviour by children.<sup>192</sup> Liberty conceded that there may be circumstances when an ASBO or non-prosecution alternatives might be effective, such as where they are used in a targeted way as a "last chance" to avoid a criminal record.<sup>193</sup>

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<sup>182</sup> Fourteenth Report of Session 2008-09, *Legislative Scrutiny: Welfare Reform Bill; Apprenticeships, Skills, Children and Learning Bill; Health Bill*, HL Paper 78, HC 414.

<sup>183</sup> *Ibid.*, para. 2.14.

<sup>184</sup> *Ibid.*, para. 2.15.

<sup>185</sup> *Ibid.*, para. 2.22.

<sup>186</sup> Ev 123

<sup>187</sup> Ev 123

<sup>188</sup> Ev 177, 191

<sup>189</sup> Ev 70, 178

<sup>190</sup> Ev 95

<sup>191</sup> Ev 97

<sup>192</sup> Ev 203

<sup>193</sup> Ev 123

102. The Scottish Children's Commissioner told us that the position in Scotland is different to the rest of the UK as Scottish local authorities have not made use of the ASBO legislation to the same extent. She suggested that this was:

... perhaps because we have a tradition of having a more welfare-based approach to this sort of issue, the anti-social behaviour agenda and the fact that it links into the criminal side does not fit in with the Scottish tradition.<sup>194</sup>

103. We asked the Minister whether she considered that there were lessons to be learnt from the Scottish system. She agreed, but suggested that the juvenile justice system in England has "been developed and has many more tools within it which are designed to prevent children and young people being taken into custody and being criminalised".<sup>195</sup>

104. In its report, the UN Committee expressed concern at the restrictions imposed by ASBOs on children's freedom of movement and peaceful assembly and recommended that the UK reconsider their use.<sup>196</sup> The Committee also noted the following concerns:

- the ease of issuing such orders, the broad range of prohibited behaviour and the fact that the breach of an order is a criminal offence with potentially serious consequences;
- that ASBOs, instead of being a measure in the best interests of children, may in practice contribute to their entry into contact with the criminal justice system; and
- that most children subject to them are from disadvantaged backgrounds.<sup>197</sup>

It recommended that the UK conduct an independent review of ASBOs, with a view to abolishing their application to children.<sup>198</sup>

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

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<sup>194</sup> Q 7

<sup>195</sup> Q 40

<sup>196</sup> UNCRC's Concluding Observations on the UK, *op. cit.*, para. 35.

<sup>197</sup> UNCRC's Concluding Observations on the UK, *op. cit.*, para. 79.

<sup>198</sup> *Ibid.*, para. 80; Ev 52

## 5 Asylum-seeking, refugee and trafficked children

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106. Article 22 of the UN Convention provides that states should ensure that a child who is seeking refugee status or who has been determined to be a refugee shall receive appropriate protection and humanitarian assistance. In addition, children who are seeking asylum or who have been granted refugee status are entitled to full enjoyment of their rights under the Convention, such as not to be discriminated against, to be treated with humanity and respect, to have their voices heard and for the best interests of the child principle to apply.

107. States are required to protect children from all forms of sexual exploitation and sexual abuse and to take measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity, the exploitative use of children in prostitution or other unlawful sexual practices, and the exploitative use of children in pornographic performances and materials.<sup>199</sup> In addition, states must take all appropriate measures to prevent the abduction of, the sale of, or traffic in children for any purpose or in any form.<sup>200</sup>

### Reservation to Article 22

108. In our last Report on the UNCRC, we noted the UK's continued reservation to Article 22 of the Convention which stated as follows:

The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under [UK] law to enter and remain in the UK, and to the acquisition and possession of citizenship, as it may deem necessary from time to time.

109. At the time, we were unconvinced by the Government's defence of its position in relation to the reservation to the UNCRC relating to refugee children, describing it as "far-fetched". We recommended that the Government demonstrate its commitment to the equal treatment of all children by withdrawing the reservation to the CRC relating to immigration and nationality.<sup>201</sup> In our Report on the *Treatment of Asylum Seekers*, we recommended that the reservation should be withdrawn as it was not needed to protect the public interest and undermined the international reputation of the UK.<sup>202</sup>

110. **Since then, we are pleased to note that the UK Government has withdrawn its reservation to Article 22.** Both the UN Committee and witnesses to our inquiry<sup>203</sup> also welcomed the UK's removal of its reservation to Article 22. As Bail for Immigration Detainees (BID) and the Children's Society put it, in their joint submission:

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<sup>199</sup> Article 34 UNCRC.

<sup>200</sup> Article 35 UNCRC.

<sup>201</sup> See note 5 above, para. 87.

<sup>202</sup> See note 9 above, para. 181.

<sup>203</sup> Ev 46, 66, 83, 121, 140, 155

This move, long overdue, means that all children in the UK are entitled equally to the protections afforded by the Convention regardless of their immigration status.<sup>204</sup>

111. However, witnesses were “alarmed to learn that according to Phil Woolas [MP, the Minister for Borders and Immigration] ‘no additional changes to legislation, guidance or practice are currently envisaged’”.<sup>205</sup> According to the Immigration Law Practitioners Association (ILPA) substantial changes are required to ensure full compliance with the UNCRC.<sup>206</sup> The Children’s Society suggested that:

The withdrawal of the reservation demands a root and branch review of the way that the asylum system treats children and young people to ensure that the decision-making through out the asylum process fully evaluates and acts upon their best interests.<sup>207</sup>

Caroline Sawyer speculated that withdrawal of the reservation would do nothing to prevent British children with a foreign parent from being deported “voluntarily”, where their parent is being deported.<sup>208</sup>

112. The Children’s Commissioners told us that they were collectively discussing with the Government the practical implications of the withdrawal of the reservation. The Children’s Commissioner for England made clear that the Commissioners “do not oppose Government’s legitimate right to decide who stays in this country and who goes” but:

We believe ... that children seeking asylum experience serious breaches of their rights, and the immigration control we believe takes priority over human rights’ obligations to these children.<sup>209</sup>

The Children’s Commissioner for England said that the Commissioners wanted to know exactly what the withdrawal of the reservation would mean in practice, and asked “what difference will a child tomorrow in Yarl’s Wood see as a result of the removal of the reservation?”<sup>210</sup>

**113. We welcome the Government’s decision to withdraw its reservation to Article 22 of the Convention. This reservation had excluded children seeking asylum from the full range of rights under the Convention. Whilst the UK Government may legitimately exert control over its borders, removal of the reservation expresses the value given to protecting the rights of asylum-seeking children and acts as a reminder that such people are first and foremost children, who deserve to be treated with humanity whilst they remain in the UK. We are surprised however that the UK does not consider that any changes are required in the light of the removal of the reservation. At the very**

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<sup>204</sup> Ev 34

<sup>205</sup> Ev 101, 155; this was confirmed to us in writing by the Home Secretary in a letter dated 11 November 2008: “No additional changes to legislation or significant amendments to guidance and practice are currently envisaged but all relevant UKBA [UK Border Agency] staff will be advised through our internal communications network when the formal process of withdrawing the reservation is completed.”

<sup>206</sup> Ev 101

<sup>207</sup> Ev 65

<sup>208</sup> Ev 161

<sup>209</sup> Q 17

<sup>210</sup> Q 17; Yarl’s Wood is an immigration removal centre in Bedfordshire.

least, we would expect that training and policy papers would need to be updated in order to ensure that decision makers have access to correct and authoritative information as to the current legal requirements. We recommend that the Government justify its argument that the withdrawal of the reservation to Article 22 of the UNCRC does not require any change to current practice or policy in this area.

## Asylum-seeking and refugee children

114. Whilst welcoming the UK's withdrawal of its reservation, the UN Committee expressed concern that:

- asylum-seeking children continue to be detained;
- there is a lack of data on the number of children seeking asylum;
- there is no independent oversight mechanism, such as a guardianship system, for an assessment of reception conditions for unaccompanied children who have to be returned; and
- children over 10 years of age may be prosecuted if they do not possess valid documentation upon entry to the UK (Section 2, Asylum and Immigration Act 2004).<sup>211</sup>

115. It recommended that the UK Government:

- intensify efforts to ensure that detention of asylum-seeking children and migrant children is always used as a last resort and for the shortest appropriate period of time;
- ensure that UKBA appoints specially-trained staff to conduct screening interviews of children;
- consider appointing guardians for unaccompanied children;
- provide disaggregated statistical data in its next report on the number of children seeking asylum, including those whose age is disputed;
- give the benefit of the doubt in age-disputed cases of unaccompanied children seeking asylum;
- ensure adequate safeguards upon return, including an independent assessment of conditions and family environment; and
- consider amending Section 2 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 to allow for a guaranteed defence for unaccompanied children who enter the UK without valid immigration documents.<sup>212</sup>

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<sup>211</sup> UNCRC's Concluding Observations on the UK, *op. cit.*, para. 70.

<sup>212</sup> UNCRC's Concluding Observations on the UK, *op. cit.*, para. 71.



### **Detention of children seeking asylum**

116. The Government's policy on immigration detention of children is that "children are detained only where necessary and for as short a period as possible ... only where this is necessary to effect the removal of their family".<sup>213</sup> However, during our inquiry into the *Treatment of Asylum Seekers*, we noted that a growing number of children and families were being detained.<sup>214</sup> We found that the current process of detention does not consider the welfare of the child, children can be detained for lengthy periods with no automatic review of the decision, and that where the case is reviewed, assessments of the welfare of the child are not taken into account. We concluded that asylum-seeking children should not be detained and that the detention of children for the purpose of immigration control is incompatible with children's right to liberty and is in breach of the UK's international human rights obligations. We recommended that alternatives should be developed for ensuring compliance with immigration controls where it is considered necessary. Finally, we recommended that, in the absence of an end to the detention of children, minimum safeguards should be put in place to ensure that the human rights of children are protected as far as possible.<sup>215</sup>

117. During our current inquiry, many witnesses again expressed serious concerns at the continuing detention of asylum-seeking children and families. In their joint submission, BID and the Children's Society called for an end to the immigration detention of children<sup>216</sup> and, along with other witnesses, raised a number of specific concerns including:

- The Government has not made the case for detaining families. There is no evidence of a systematic risk of their absconding, it is costly<sup>217</sup> and incompatible with their welfare.<sup>218</sup>
- Children are detained for increasingly lengthy periods, and detention is not used sparingly nor as a measure of last resort, as required by the UNCRC.<sup>219</sup>
- There is insufficient statistical data and monitoring of children in detention<sup>220</sup> and asylum-seeking or refugee children more generally.<sup>221</sup>
- Safeguards for children in detention are "confusing, contradictory and do not provide adequate protection for children".<sup>222</sup> The majority of families in detention

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<sup>213</sup> Ev 74

<sup>214</sup> See note 9 above, para. 238.

<sup>215</sup> *Ibid.*, paras. 258, 259 and 261.

<sup>216</sup> Ev 60, 100, 121, 190

<sup>217</sup> Ev 34; detaining a child costs £130 per day

<sup>218</sup> According to press reports of a recent study by paediatricians and psychologists, 73% of children in UK immigration detention centres examined for the study had developed clinically significant emotional and behavioural problems since being detained. Reported in *The Guardian*, *Children made "sick with fear" in UK immigration detention centres*, 13 October 2009. Study by Lorek A., Ehntholt, K., Wey, E., Githinji, C., Rossor, E., Wickramasignhe, R., *The Mental and Physical Health Difficulties of Children held within a British Immigration Detention Centre: A Pilot Study* Child Abuse and Neglect, the International Journal, September 2009.

<sup>219</sup> See also Ev 94, 155

<sup>220</sup> See also Ev 100

<sup>221</sup> Ev 94, 155

<sup>222</sup> Ev 36

do not know about safeguards such as welfare assessments and Ministerial authorisations.

- To avoid detaining children, families are separated and parents are detained, which is damaging to the family and may expose the child to harm.<sup>223</sup>

118. Witnesses drew attention to the “Millbank Project” in Kent, which ended in Summer 2008, in which families awaiting deportation were housed in a residential centre rather than a detention facility. The pilot project aimed to set up an alternative removal process which encouraged closer case work activity with families in supported accommodation, rather than in detention facilities. It was hoped that families would voluntarily return to their countries of origin. In the event, only one family involved in the pilot project chose to leave through the Assisted Voluntary Returns process. BID and the Children’s Society said:

This is a missed opportunity ... families told us that it was never made clear to them why they were being sent to Millbank: they were simply given 14 days to enter the pilot or have their support stopped. Some had less than a week to make arrangements to sell their possessions and take their children out of school. Some families did not know where they were going until they arrived at Millbank. The referral criteria for the pilot were so confused that some of those selected could not leave the UK because it had already been judged unsafe for them to return to their country of origin.<sup>224</sup>

119. The Children’s Commissioner for England suggested that the pilot was never properly set up in the first place, which meant that its conclusions needed to be challenged. He said:

We would certainly welcome a model, perhaps along the lines of the Australian system, which consists first of all, of much earlier engagement with families, getting their trust very early in the process before it becomes locked into adversarial conflict... The proper testing of alternatives to detention still needs to be done in this country.<sup>225</sup>

However, as Scotland’s Commissioner put it:

If people are really scared to go home, nothing anybody is going to do is going to persuade them to go home.<sup>226</sup>

120. The Scottish Children’s Commissioner told us that a similar pilot on alternatives to detention is being launched in Glasgow, based on an independent group of houses akin to hostels, which will try to encourage voluntary return.<sup>227</sup> The Scottish Commissioner said that “we are hoping that will show that you can keep children out of these institutions and still have a reasonable way of implementing the asylum policy”.<sup>228</sup>

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<sup>223</sup> Ev 155

<sup>224</sup> Ev 37

<sup>225</sup> Q 20

<sup>226</sup> Q 22

<sup>227</sup> Q 21

<sup>228</sup> Q 19

121. When we asked the Minister about the Millbank Pilot, she noted that the Government was very disappointed with its results as they were “hoping that it would provide a body of good practice that could help to promote further voluntary removal of families so that detention of children with families would not be as necessary to fulfil immigration policy”.<sup>229</sup> Anne Jackson, Director of the Child Wellbeing Group from the Department, said that lessons from the Millbank project would be fed into the Glasgow project.<sup>230</sup>

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

### **Disputes over age**

123. In our Report on the *Treatment of Asylum Seekers*, we expressed concern at the treatment of children whose ages were disputed by the authorities.<sup>231</sup> We were not convinced that the Home Office was ensuring that the “benefit of the doubt” was being given to separated asylum-seeking children or that local authorities received appropriate training and support to enable them to undertake an integrated assessment process. We also noted that age-disputed children were detained as adults in contravention of Government policy and case law<sup>232</sup> and recommended that such practice should cease.<sup>233</sup> We concluded:

[...] that where an asylum seeker’s age is disputed even where the benefit of the doubt has been give, he or she should be provided with accommodation by the appropriate social service department in order for an integrated age assessment to be undertaken ... The process for dealing with age disputes should be reviewed ... with a view to ensuring that no age disputed asylum seeker is detained or removed unless and until an integrated age assessment has been undertaken.<sup>234</sup>

124. According to witnesses and the UN Committee, the poor treatment of age-disputed children remains of concern.<sup>235</sup> Voice and other witnesses told us that the principle that age-disputed children should be treated as children unless proved otherwise was still not followed.<sup>236</sup> The Refugee Children’s Consortium and ILPA argued, as we concluded in our *Treatment of Asylum Seekers* Report, that x-rays should never be used to determine age<sup>237</sup>

<sup>229</sup> Q 90

<sup>230</sup> Qq 96 & 97; see also *Review of the Alternative to Detention (A2D) Project*, Andrew Cranfield for UKBA, May 2009.

<sup>231</sup> See note 9 above, paras 197-204.

<sup>232</sup> See note 9 above, para. 203.

<sup>233</sup> See note 9 above, para. 204.

<sup>234</sup> See note 9 above, para. 204.

<sup>235</sup> Ev 60, 83, 101, 155, 188

<sup>236</sup> Ev 60, 83, 101, 155, 188

<sup>237</sup> Ev 110, 156

and Liberty suggested that specialist independent centres for assessing the age of asylum-seeking children should be created.<sup>238</sup> In its response to our Report, the Government justified the use of x-rays, stating that “the margin of error associated with x-rays appears to be considerably smaller than other techniques”.<sup>239</sup> **We are disappointed that, more than two years after our Report on the *Treatment of Asylum Seekers*, age-disputed children continue to be poorly treated and to experience the problems we previously identified. We reiterate our previous recommendations that x-rays and other medical assessment methods should not be relied upon to determine age, given the margin of error. The process for dealing with age disputes should be reviewed with a view to ensuring that no age-disputed asylum seeker is detained or removed unless and until an integrated age assessment has been undertaken.**

### ***Welfare, education and support***

125. The Refugee Children's Consortium argued that asylum-seeking and refugee children still face substantial inequality of treatment because they:

... are now the only children who do not have any formal link with the Department for Children, Schools and Families ... While the welfare of children rests with a department that has no targets in relation to the treatment of children, and objectives that run counter to children's best interests, it is difficult to see how the standard of treatment set out in Article 3 of the UNCRC (primacy of a child's welfare) will ever be achieved.<sup>240</sup>

The Children's Society suggested that the difficulties that refugee and asylum-seeking children face in gaining access to education were due in part to the absence of a link with the DCSF:

For as long as this group of children remain without any link to the DCSF it is difficult to see how policies and practices in education will not ignore, or discriminate against them.<sup>241</sup>

126. The Minister told us that the DCSF had a role in relation to unaccompanied children, as they are viewed in the same way as looked-after children and are included within the programmes which flow from the provisions of the Children and Young Persons Bill.<sup>242</sup> However, she did not suggest that asylum-seeking children more generally, such as those who are accompanied or who have refugee status, fall within her area of responsibility. This contrasts with the evidence of the Office of the Children's Rights Director for England which described a two-tier approach to children leaving care which distinguished between indigenous care leavers and asylum-seeking care leavers.<sup>243</sup>

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<sup>238</sup> Ev 122

<sup>239</sup> Seventeenth Report of Session 2006-07, *Government Response to the Committee's Tenth Report of this Session: The Treatment of Asylum Seekers*, HC 790, HL Paper 134, para. 34.

<sup>240</sup> Ev 154

<sup>241</sup> Ev 67; see also Ev 156 on difficulties faced by asylum-seeking and refugee children in accessing education

<sup>242</sup> Q 87

<sup>243</sup> Ev 149

127. At a local level, Voice suggested that there was inadequate local authority support for and accommodation of asylum-seeking children.<sup>244</sup> Voice also spoke of attempts by local authorities to avoid their responsibilities under the Children Act 1989, which was contrary to Government guidance.<sup>245</sup>

128. On the other hand, witnesses also referred to positive developments in the area of welfare and support such as the UK Border Agency's (UKBA) *Code of Practice for Keeping Children Safe from Harm* which came into force on 6 January 2009<sup>246</sup> and the Government's commitment to introducing a duty on UKBA which is equivalent to Section 11 of the Children Act 2004 to safeguard and promote the welfare of children.<sup>247</sup> This has now been introduced in the Borders, Citizenship and Immigration Act 2009, on which we reported earlier this Session.<sup>248</sup> In our Report on the Bill, we welcomed the new duty as a human rights enhancing measure stating:

We welcome the Government's express acceptance that every child matters as much if they are subject to immigration control as if they are British citizens ... We will be looking carefully for evidence that this welcome change in policy will now make a practical difference to the many and well-documented human rights problems suffered by children in the UK who are subject to immigration control.<sup>249</sup>

129. Further information on both of these developments was provided to us by the Department, which told us that:

The Government has ... decided that the [UK Border] Agency should be subject to a duty to have regard to the need to safeguard and promote the welfare of children.<sup>250</sup>

And that:

The UKBA are keeping a close eye on progress and being alert to the need for further improvements in practice.<sup>251</sup>

130. We asked the Minister to explain the changes that she considered to be necessary to ensure that the UKBA complies with its new duty and to ensure that they meet it. Anne Jackson, Director of the Child Wellbeing Group from the Department, explained that the new Code of Practice:

... requires all UKBA staff to ... keep children safe from harm by ensuring that immigration procedures are responsive to the needs of children and young people and identifying and being able to identify young people at risk of harm and then knowing who to refer on to if they identify such a young person. This code, as I say,

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<sup>244</sup> Ev 149, 187

<sup>245</sup> Ev 187; section 20 Children Act 1989 (duty of local authority to provide accommodation for children in need within its area)

<sup>246</sup> Ev 34, 60, 155

<sup>247</sup> Ev 34, 60

<sup>248</sup> Ninth Report of Session 2008-09, *Legislative Scrutiny: Borders, Citizenship and Immigration Bill*, HL Paper 62, HC 375.

<sup>249</sup> *Ibid.*, para. 1.15.

<sup>250</sup> Ev 73

<sup>251</sup> Ev 74

is quite new, so we will be looking to see what impact it has and then to strengthen it further in the light of the new duty.<sup>252</sup>

131. Despite these positive developments, witnesses were clear that they were not sufficient in themselves and made a number of recommendations as to how practice in this area could continue to be improved, including by:

- developing a child rights approach to the asylum system;<sup>253</sup>
- applying the principle of the best interests of the child, especially in cases where there was to be forceful removal of a child or return of a separated child to his or her country of origin;<sup>254</sup>
- facilitating access to an independent guardian for all separated children;<sup>255</sup>
- ensuring that asylum-seeking children are given the same rights and protection as other children;<sup>256</sup> and
- training all staff on the Code and providing more information about how the Code will be policed.<sup>257</sup>

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

## Trafficked children

133. In our Report on *Human Trafficking*, we considered the position of children who have been trafficked.<sup>258</sup> We concluded that the support available to trafficked children in legal proceedings, in dealings with other authorities, and in their daily lives, is a matter which needed to be reviewed urgently. We were not persuaded that, in general, local authorities had developed the necessary expertise to cater for the very special needs of trafficked children.<sup>259</sup>

134. The UNCRC welcomed the UK's intention to ratify both the Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography, and the

<sup>252</sup> Q 89

<sup>253</sup> Ev 140

<sup>254</sup> Ev 156, 185, 190

<sup>255</sup> Ev 60, 94, 101, 140, 185, 190

<sup>256</sup> Ev 140

<sup>257</sup> Ev 155

<sup>258</sup> Twenty-Sixth Report of Session 2005-06, *Human Trafficking*, HL Paper 245, HC 1127.

<sup>259</sup> *Ibid*, para. 165.

Council of Europe Convention on Action against Trafficking in Human Beings. It recommended that the UK:

- collect data on the extent of sexual exploitation and abuse of children;
- treat child victims of sexual exploitation, including child prostitution, exclusively as victims in need of recovery and reintegration and not as offenders;
- ratify the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Abuse;
- provide the necessary resources for an effective implementation of the Anti-Trafficking Action Plan; and
- implement the Trafficking Convention by ensuring that child protection standards for trafficked children meet international standards.<sup>260</sup>

135. Since the Committee's Report, the UK has ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution, in February 2009.<sup>261</sup> In our last Report on children's rights, we noted the Government's commitment to ratifying the Convention and looked forward to the Government taking early legislative action so as to be in a position to sign and ratify the Optional Protocol.<sup>262</sup> **We are pleased to note that the UK has now ratified the Optional Protocol on the Sale of Children, Child Pornography and Child Prostitution and will be looking, in the future, for evidence of its effects on UK practice for trafficked children.**

136. Whilst witnesses welcomed the UK's ratification of the Council of Europe Convention Against Trafficking,<sup>263</sup> the NSPCC suggested that the Government's approach to implementation had been "a very narrow and legalistic application of the Convention that we do not consider to be in keeping with the victim-centred spirit and purpose of the Convention itself".<sup>264</sup> Witnesses also told us that problems still remained, including:

- a lack of awareness and identification of trafficked children and a lack of support and care available to them;<sup>265</sup>
- a focus on immigration control continues to take precedence over concerns about the welfare of trafficked children and a child protection and child rights-based response to their situation;<sup>266</sup>
- inappropriate criminalisation of trafficked children;<sup>267</sup>
- no "safe house" facilities for child victims of trafficking in the UK;<sup>268</sup>

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<sup>260</sup> UNCRC's Concluding Observations on the UK, *op. cit.*, paras 74-76.

<sup>261</sup> Ratified on 20 February 2009.

<sup>262</sup> See note 5, para. 91.

<sup>263</sup> Ev 83

<sup>264</sup> Ev 141

<sup>265</sup> Ev 141

<sup>266</sup> Ev 141

<sup>267</sup> Ev 62, 83, 141

- low numbers of convictions for trafficking offences related to children (such as of perpetrators of trafficking); and
- difficulties for trafficked children in obtaining immigration status.<sup>269</sup>

137. According to ECPAT UK:

At any given time a minimum of 600 children, known or suspected of being trafficked, will be in the asylum system or will have been in the asylum system before going missing from local authority care. This represents 10% of the Home Office quoted figure of 6,000 total number of unaccompanied asylum seeking children supported by local authorities.<sup>270</sup>

**138. We intend to follow up our previous inquiry into human trafficking before the end of the current Parliament and will raise some of these issues in that context.**

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<sup>268</sup> Ev 83

<sup>269</sup> Ev 67

<sup>270</sup> Ev 83



## 6 Other issues

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### Children and armed conflict

139. Article 38 of the Convention obliges states to take all feasible measures to ensure that children under the age of 15 do not take a direct part in hostilities. The Optional Protocol to the Convention on the Rights of the Child on Children in Armed Conflict, which the UK ratified in 2003,<sup>271</sup> extends this protection by committing states to taking all feasible measures to ensure that members of their armed forces under the age of 18 do not take a direct part in hostilities.<sup>272</sup> At the time of its ratification of the Optional Protocol, the UK made a declaration to Article 1 of the Optional Protocol as to its understanding of the meaning of that provision, which we have previously criticised as being overbroad and serving to undermine the UK's commitment not to deploy under-18s in conflict zones.<sup>273</sup>

140. The UNCRC reported on the UK's compliance with the Optional Protocol for the first time in its 2008 report. It made a series of recommendations including that the UK should:

- train all members of the armed forces and all relevant professionals on the Optional Protocol;
- publicise and promote the provisions of the Optional Protocol to adults and children;
- review its interpretative declaration to Article 1 to ensure that children are not exposed to the risk of taking direct part in hostilities;
- review its interpretative declaration to Article 3 (according to which the UK's minimum age for recruitment was 16 years) and raise the minimum age for recruitment into the armed forces to 18 years;
- reconsider its policy of active recruitment of children into the armed forces and ensure that it does not occur in a manner which specifically targets ethnic minorities and children of low-income families;
- review the requirements for permitting the discharge of child recruits;
- adopt and implement legislation criminalising the recruitment and involvement of children in hostilities contrary to the Optional Protocol;
- ensure and enforce extraterritorial jurisdiction for these crimes;
- ensure that legislation, codes, manuals and directives are in accordance with the Optional Protocol;
- collect data on and assist with the recovery and social reintegration of former child soldiers who enter the UK;

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<sup>271</sup> Ratified on 24 June 2003.

<sup>272</sup> Article 1 Optional Protocol to the Convention on the Rights of the Child on Children in Armed Conflict.

<sup>273</sup> Seventeenth Report of Session 2004-05, *Equality Bill*, HL Paper 98, HC 497, para. 41. UNCRC Concluding Observations on the UK, *op. cit.*, para. 88.

- abolish the handling and use of firearms for all children;
- ensure that child soldiers captured by UK forces are detained as a measure of last resort and in adequate conditions for their age and vulnerability; are guaranteed periodic and impartial reviews of their detention; and have access to independent complaint mechanisms;
- ensure that children in conflict with the military law are dealt with within the juvenile justice system; and
- expressly prohibit within legislation, the sale of arms to countries where children are known to be or may potentially be recruited or used in hostilities.

141. The Department told us:

We recognise the importance of providing special treatment for young people under the age of 18 serving in the Armed Forces and our policy is not to deploy under-18s on operations and we have introduced administrative guidelines and procedures to ensure they are withdrawn from their units before they are deployed to hostilities.<sup>274</sup>

142. According to the Quakers, 28% of all recruits to the UK armed forces in 2007–8 were aged under 18 and the UK is unique in the EU in recruiting under-18 year olds into the armed forces.<sup>275</sup> They suggested that this led to risks to the physical and mental well-being of adolescents.<sup>276</sup> Some witnesses questioned whether under-18 year olds should be required to make a binding contract so far in the future and criticized the differential minimum service periods for under-18 year olds compared to adults.<sup>277</sup> The Quakers and the Children's Rights Alliance for England suggested that there should be discharge as of right up until a person's eighteenth birthday.<sup>278</sup>

**143. We note the UN Committee's extensive set of recommendations to the UK on compliance with the Optional Protocol. We recommend that the UK adopt a plan of action for implementing the Optional Protocol, including these recommendations, fully in the UK, together with a clear timetable for doing so.**

## Child poverty

144. One aspect of the UN Committee's recommendations on care was to avoid children being taken into alternative care as a result of low parental income. The Committee noted the widening gap in child mortality between the most and the least well-off groups and recommended that inequalities in access to health services be addressed through a coordinated approach across all Government departments and greater coordination between health policies and those aimed at reducing income inequality and poverty. The Committee emphasised that an adequate standard of living was essential for a child's

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<sup>274</sup> Ev 77

<sup>275</sup> Ev 153

<sup>276</sup> Ev 153

<sup>277</sup> Ev 151; under-18s and adults must serve a minimum of 4 years, but time served up to eighteenth birthday does not count towards that period.

<sup>278</sup> Ev 153; see also Ev 62

physical, mental, spiritual, moral and social development and that child poverty affects infant mortality rates, access to health and education as well as everyday quality of life of children. Specifically, the Committee recommended that the UK should:

- adopt and adequately implement legislation aimed at reducing child poverty by 2020, including by setting measurable indicators for its achievement;
- prioritise children and families in most need of support;
- intensify efforts to provide material assistance and support programmes for children; and
- reintroduce a statutory duty for local authorities to provide safe and adequate sites for Travellers.<sup>279</sup>

145. Witnesses welcomed the Government's plan to legislate to achieve the target of eradicating child poverty by 2020<sup>280</sup> but argued that this "should not detract from the pressing need for Government to invest the necessary resources to reach the interim target of halving child poverty by 2010".<sup>281</sup> 11 Million argued that "legislative reform on its own will not be enough" and called for "£3 billion to be invested".<sup>282</sup> Save the Children suggested that for legislation to be effective, it must include a definition of the eradication of child poverty, focus on children living in severe and persistent poverty, introduce statutory duties on each devolved administration to end child poverty and to publish a child poverty strategy, link to Government spending decisions, require policies to be "poverty-proofed" at both national and local levels and provide a clear mechanism for independent scrutiny and engagement with stakeholders.<sup>283</sup>

146. Witnesses noted that child poverty was more prevalent in Northern Ireland than in Great Britain (38% of children live in poverty in Northern Ireland compared to 20% in Great Britain),<sup>284</sup> specific groups of children are more at risk of poverty (such as children with autism<sup>285</sup> and disabled children<sup>286</sup>), poverty and other forms of disadvantage have a significant impact on engagement with education<sup>287</sup> and educational achievement is lower for children from economically disadvantaged backgrounds.<sup>288</sup> In addition, asylum-seeking children are not counted for the purposes of the child poverty measure<sup>289</sup> but, according to the Children's Society, should be.<sup>290</sup> As ILPA put it:

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<sup>279</sup> UNCRC's Concluding Observations on the UK, *op. cit.*, para. 65.

<sup>280</sup> Ev 67, 160

<sup>281</sup> Ev 48

<sup>282</sup> Ev 29

<sup>283</sup> Ev 160

<sup>284</sup> Ev 86

<sup>285</sup> Ev 183

<sup>286</sup> Ev 86

<sup>287</sup> Ev 86, 128

<sup>288</sup> Ev 56

<sup>289</sup> Ev 156

<sup>290</sup> Ev 67

The poverty of certain children under immigration control is not being eradicated, it is being written out of the picture.<sup>291</sup>

147. We asked the Children's Commissioners whether they considered that the current economic climate should affect the Government's commitment to eradicating child poverty. They considered that the commitment should remain in place, regardless of the current economic downturn.<sup>292</sup> The Northern Irish and Welsh Commissioners expressed concern about the narrowness of the definition of child poverty<sup>293</sup> and suggested that it should not only consider financial poverty but also poverty of opportunity.<sup>294</sup> The Commissioner for Wales told us:

If we are going to [end child poverty], we need a very clear route map and we do not have the route map at the moment.<sup>295</sup>

148. During oral evidence, we asked the Minister whether it was envisaged that a failure to adopt a target or a strategy to achieve the target of eradicating child poverty could be challenged by judicial review. At the time, Ministers had not decided on this issue but Anne Jackson suggested that at present, targets and local area agreements are not susceptible to judicial review.<sup>296</sup> Since we took evidence on this issue, the Government has published its Child Poverty Bill which we are currently subjecting to detailed scrutiny for its compatibility with human rights. **We aim to report on the Bill before its Report stage in the Commons.**

## Education

149. The UN Convention recognises the right of the child to education.<sup>297</sup> In its report on the UK, the Committee expressed concern at persisting significant inequalities in school achievement of children living with their parents in economic hardship. It also noted that several groups of children have problems being enrolled in school or continuing or re-entering education (such as children with disabilities, children of Travellers, Roma children, asylum-seeking children, dropouts and non-attendees, and teenage mothers). It also expressed concern at children's limited consultation rights or rights to complain. The Committee made a series of detailed recommendations, including that the UK should:

- reduce the effects of the social background of children on their achievement in school;
- provide additional resources to ensure the right of all children to a truly inclusive education, including for children from disadvantaged, marginalized and "school-distant" groups;
- provide alternative quality education for children out of school;

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<sup>291</sup> Ev 111

<sup>292</sup> Q 16

<sup>293</sup> Q 16

<sup>294</sup> Q 16

<sup>295</sup> Q 16

<sup>296</sup> Q 114

<sup>297</sup> Article 28 UNCRC.

- use permanent or temporary exclusions as a last resort, reduce the number of exclusions and provide social and psychological assistance to children in conflict with school;
- ensure that children without parental care have a representative who actively defends their best interests;
- tackle bullying and violence in school, including through teaching human rights, peace and tolerance;
- strengthen children's participation in all matters that affect them; and
- provide a right of appeal for children who are able to express their views.<sup>298</sup>

150. Witnesses raised many different concerns around the subject of education, some of which we have dealt with in other Chapters of this Report.<sup>299</sup> We attempt here to summarise the most significant other issues which witnesses brought to our attention, some of which echo the UN Committee's own observations. These include:

- a lack of suitable educational provision within local areas to meet the particular needs of children with special educational needs and disabilities,<sup>300</sup> and no national strategy for including all disabled pupils in mainstream schools;<sup>301</sup>
- looked-after children miss schooling, have poor educational outcomes and find it difficult to access extra-curricular activities;<sup>302</sup> they perform poorly at school and are less likely to go onto further and higher education;<sup>303</sup>
- teenage mothers experience problems in gaining access to education, including lack of child care;<sup>304</sup>
- unequal access to education and educational attainment for minority ethnic (especially Roma and Traveller) children;<sup>305</sup>
- widespread bullying in schools,<sup>306</sup> including bullying on the basis of sexual orientation,<sup>307</sup> disability, ethnicity<sup>308</sup> or mental health;<sup>309</sup> inaction on the part of many schools to bullying complaints;<sup>310</sup>

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<sup>298</sup> UNCRC's Concluding Observations on the UK, *op. cit.*, para. 67.

<sup>299</sup> E.g. criminal justice (Chapter 4 above), asylum-seeking, refugee and trafficked children (Chapter 5 above).

<sup>300</sup> Ev 55, 128

<sup>301</sup> Ev 40

<sup>302</sup> Ev 179

<sup>303</sup> Ev 56, 179

<sup>304</sup> Ev 56

<sup>305</sup> Ev 56, 86, 91, 95, 198

<sup>306</sup> Ev 58, 61

<sup>307</sup> Ev 34, 91

<sup>308</sup> Ev 198

<sup>309</sup> Ev 90, 182

<sup>310</sup> Ev 58

- high rate of temporary and permanent exclusions, with some groups disproportionately affected;<sup>311</sup>
- young Gypsies and Travellers complain that they are subject to exclusions and restricted timetables, and receive insufficient support with school work;<sup>312</sup>
- insufficient or poor quality alternative education for children who are unable to attend school;<sup>313</sup> and
- children are denied the right to participate in many procedural and substantive aspects of the education system.<sup>314</sup>

151. Witnesses recommended that:

- The UNCRC should be included in the national curriculum.<sup>315</sup>
- Looked-after children with SEN should have an independent right to appeal against decisions made about them.<sup>316</sup>
- Temporary and permanent exclusions should be monitored more closely.<sup>317</sup> There should be a statutory right of appeal for all excluded children and children's views should be taken into account through the establishment of independent education advocates.<sup>318</sup>
- Children with sufficient understanding should be allowed to make an informed decision to opt-out of collective worship and religious education<sup>319</sup> or collective worship should be replaced with inclusive assemblies.<sup>320</sup>
- Discrimination on the grounds of religion and belief should be prohibited in school admissions.<sup>321</sup>

**152. We will return to some of these issues when we consider education as part of our scrutiny of the Equality Bill.**

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<sup>311</sup> Ev 58; e.g. children with special educational needs, Ev 187; Ev 94; Ev 158; e.g. looked-after children in foster care, Ev 181; Ev 40

<sup>312</sup> Ev 96

<sup>313</sup> Ev 57

<sup>314</sup> Ev 57, 61

<sup>315</sup> Ev 185

<sup>316</sup> Ev 94

<sup>317</sup> Ev 94

<sup>318</sup> Ev 159

<sup>319</sup> Ev 64, 135

<sup>320</sup> Ev 33

<sup>321</sup> Ev 33, 137

## 7 Conclusion

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153. It is twenty years since the UN General Assembly adopted the UN Convention on the Rights of the Child.<sup>322</sup> The Convention entered into force for the UK in 1991. Since then, there has been much to commend the UK on in relation to its practice towards children, including positive developments we cover in this Report. Key milestones include the UK's removal of its reservations to Articles 22 and 37 of the Convention and its ratification of Optional Protocols relating to Child Pornography and Children in Armed Conflict. All of these steps have the capacity to afford greater protection to children in the UK. However, as we note in this Report, there is still much more for the UK to do, particularly for those children who live on the margins of society or who come from groups which do not always command popular public support. We draw attention in our Report to the particular problems faced by Gypsy and Traveller, looked-after, asylum-seeking and trafficked children and those caught up in the criminal justice system. We are especially concerned by what appears to be an increasingly negative attitude towards children. Our intention is for this Report to highlight some of the future priorities for the Government in promoting, protecting and securing the rights of children in the UK in the twenty-first century.

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<sup>322</sup> The UN Convention on the Rights of the Child was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. The UK signed the Convention on 19 April 1990 and ratified it on 16 December 1991. The Convention entered into force on 2 September 1990.

## Conclusions and recommendations

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### UK report to the UN Committee on the Rights of the Child

1. We recommend that the UK's next report to the UN Committee should again focus on addressing the UN Committee's most recent Concluding Observations, but with clearer links to future plans (and how their success can be assessed) as well as to the work of the devolved administrations and local government. (Paragraph 11)

### Implementation of the UNCRC

2. We welcome the publication of the Children's Plan and Progress Report, including the Annex pointing to the Government's priorities for implementing the UN Committee's recommendations in England. We note the Scottish Government's decision to consult on implementation of the UN Committee's recommendations in Scotland and suggest that this is an example of good practice which should be followed across the UK. (Paragraph 17)
3. Although we recognise that the devolved administrations have responsibility for certain areas of children's rights, we note that the UK Government is ultimately responsible for ensuring that it complies with its international human rights obligations under the UN Convention on the Rights of the Child ("UNCRC"). The role of the UK Government is both to co-ordinate national efforts on implementing the Convention and to report to the UN Committee on progress. (Paragraph 18)
4. We agree with witnesses that it is not advisable to leave implementation to each nation to deal with separately. We recommend that the UK Government devise a comprehensive and detailed plan for implementation of the UN Committee's recommendations across the UK. This should be completed in conjunction with the devolved administrations and the Children's Commissioners, and be subject to widespread consultation. Crucially, the participation of children and young people should be actively sought and facilitated at all stages in the process, including during the implementation stage. In our view, such a Plan would be beneficial to the Government, devolved administrations, service providers and children and young people themselves. The finalised plan should be published and subjected to regular monitoring and evaluation. We recommend that the Government publishes annual reports in order to monitor progress on implementation more regularly than is required by the UN monitoring process. (Paragraph 19)
5. The Government has not persuaded us that children's rights are already adequately protected by UK law, nor that incorporation of the UNCRC is unnecessary. We agree with those witnesses who emphasised the benefits of incorporation, accompanied by directly enforceable rights. It is significant that all four Children's Commissioners in the UK, with their extensive experience of working with children, think it would make a real practical difference to children if the UNCRC were incorporated into UK law. However, we recommend that further information be given by the Government about the extent to which the UNCRC rights are or are not already protected by UK law. (Paragraph 28)



6. We reiterate our recommendation on the merits of including children's rights within any Bill of Rights for the UK. We are pleased to note that the Government is open to the possibility of their special protection, but are disappointed that this does not extend to creating directly enforceable rights or using the Bill of Rights to incorporate the UNCRC. We urge the Government to ensure that it consults widely on this question to ascertain how many of those working closely with children share the Government's view that it would make no practical difference to the lives of children. (Paragraph 30)
7. We are disappointed that the Government has rejected even our modest proposal that the UNCRC be made the framework of local Children and Young People's Plans. We do not consider the Secretary of State's response to be an adequate answer to the case we made in our Report [on the Apprenticeships, Skills, Children and Learning Bill]. We do not understand why the Secretary of State is content to draw up his own Children's Plan with regard to the principles and Articles of the UNCRC, but is not prepared to require the authorities drawing up local Children's Plans to do the same. We ask the Secretary of State to reconsider and to ask the relevant local authorities to draw up their plans with due regard to the need to implement the UNCRC and the recommendations of the UN Committee. (Paragraph 31)

### Attitudes towards children and discrimination

8. We were pleased to hear the Minister's commitment to do more to address negative, damaging and unfounded stereotyping of children and young people within society. Innovative and proactive solutions are required to address this problem, which has the potential to do real harm to the status and aspirations of children living in the UK, who have much to contribute to society. Such solutions should be timely, well-targeted and funded. We recommend that the Government bring forward proposals to deal with this issue and look forward to receiving the evaluation of the Government's communications campaign in due course. (Paragraph 38)
9. We are concerned at the range of problems which were described to us, many of which would have a serious and negative impact on the lives of children and young people. We are particularly troubled, as the UN Committee was, by the evidence of discrimination against especially vulnerable groups of children. The UNCRC implementation plan we have recommended should focus on proposing specific measures in relation to these groups. (Paragraph 40)
10. We doubt that prohibiting age discrimination against children would have the unintended consequences mentioned by the Minister. In particular, we consider that it would be possible to draft an appropriate provision which would prohibit discrimination on the grounds of age in relation to goods, facilities and services, except where it can be justified. This would allow age-appropriate services to be provided where there was good reason for doing so, such as to respond to the needs of a young child. We recommend that the Equality Bill be amended to extend protection from age discrimination to people regardless of their age in relation to the provision of goods, facilities and services, except where discrimination on the grounds of age can be justified. (Paragraph 45)

## Children in the criminal justice system

11. Whilst we welcome the Government's commitment to reduce the number of first-time entrants to the juvenile justice system, this conflicts with the continuing expansion of the range of offences which apply to children. For the Government's goal to be achieved, it must be coupled with action across Government, particularly the Home Office, to refrain from creating additional offences which lead to the greater likelihood of children being criminalised. In addition, offences on the statute book which may be committed by children should be reviewed with a view to repealing those that are not necessary, such as those that have never been used or have never been the subject of a prosecution. (Paragraph 51)
12. We are particularly concerned by the high number of children from especially vulnerable and marginalised groups within the criminal justice system. The Government should review and explain why such a disproportionate number of children who are looked-after, Gypsies and Travellers or have autism, are present within the criminal justice system, and why existing strategies appear to be failing. Such children, who are already likely to have experienced significant disadvantage and even discrimination in their early lives, require specific and targeted measures and support, outside of the criminal justice system. (Paragraph 57)
13. We were pleased to hear the Minister's comments in oral evidence that as children's Minister she would try to safeguard and protect children, including those involved in prostitution. However, her subsequent written response, which reiterates the Government's line on why children involved in prostitution should continue to be criminalised, directly contradicts her oral evidence. This, as we have stated in previous Reports, flies in the face of international standards and the strong observations of the UN Committee; and also breaches the principle that victims of crime should not be criminalised. (Paragraph 60)
14. We are not persuaded by the Minister's response [on the age of criminal responsibility], which goes against the strong recommendations of the UN Committee and of practice in comparable states. We fail to understand why criminal penalties are necessary to ensure that other services such as family intervention programmes are made available. Whilst we do not underestimate the effects on communities of the offending of some very young children, we do not believe that the UK's current response is consistent with its international obligations to children. Indeed, we consider that resort to the criminal law for very young children can be detrimental to those communities and counter-productive. We endorse the views of witnesses who advocate a welfare-based and child-rights oriented approach. This has the merit not only of being consistent with the UN Convention, but also of bringing about early and positive change in children's lives to prevent them from entering the criminal justice system in the first place. (Paragraph 66)
15. We would like to see a real reduction in the numbers of children being detained in the UK each year. There is a lack of clarity about the trends in the incidence of child detention, both on remand and sentenced. We are also concerned that some very vulnerable children are significantly more likely to be detained than others. We urge the Government to comply fully with its obligations under the Convention, in

particular to ensure that custody is only used as a measure of last resort and to address the reasons for the over-representation of certain groups of children in detention. (Paragraph 77)

16. We commend the Government for having finally removed its reservation to Article 37 UNCRC, as we have advocated for many years. (Paragraph 79)
17. We are disappointed to hear of continuing breaches of Article 37 UNCRC, despite the Government's purported intention fully to comply with the Convention, and urge the Government to do all that is required, as a matter of urgency, to ensure that it and the devolved administrations are able fully to meet the UK's international obligations. (Paragraph 83)
18. We reiterate our strong concerns that pain compliance is still used as a tactic against young people in detention, and used disproportionately against vulnerable girls. We are particularly concerned that this remains the case, even though the independent review recognised that the use of pain compliance techniques would be irreconcilable with the UN Convention. We find this situation to be alarming and to go against the Government's espoused commitment to the best interests of the child. The Minister failed to persuade us that such techniques are necessary or consistent with the Convention. We reiterate our previous conclusions that techniques which rely on the use of pain are incompatible with the UNCRC. (Paragraph 94)
19. We are pleased to note the Government's positive proposals for improving the education of detained children and young people, including those with special educational needs, which are consistent with the UNCRC. (Paragraph 99)
20. Anti-social behaviour is an issue which rightly causes widespread concern within the UK. We do not underestimate the extent to which anti-social behaviour, by children or adults, can fundamentally blight the lives of individuals and communities. We commend the Government's commitment to tackling this issue. Indeed, human rights law may require it where the effect of the anti-social behaviour is to interfere with the rights of others to respect for their home or not to be discriminated against. We question, however, the degree to which anti-social behaviour orders (ASBOs) hasten children's entry into the criminal justice system, before other strategies have been tried. (Paragraph 105)

### **Asylum-seeking, refugee and trafficked children**

21. We are pleased to note that the UK Government has withdrawn its reservation to Article 22 UNCRC. (Paragraph 110)
22. We welcome the Government's decision to withdraw its reservation to Article 22 of the Convention. This reservation had excluded children seeking asylum from the full range of rights under the Convention. Whilst the UK Government may legitimately exert control over its borders, removal of the reservation expresses the value given to protecting the rights of asylum-seeking children and acts as a reminder that such people are first and foremost children, who deserve to be treated with humanity whilst they remain in the UK. We are surprised however that the UK does not consider that any changes are required in the light of the removal of the

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

23. We welcome the Government's commitment to finding alternatives to detention of asylum-seeking families. However, the evidence we have heard leads us to believe that realistic alternatives have not yet been properly set up, tested or evaluated. We urge the Government to evaluate and learn the lessons of the Millbank Pilot and apply them to future projects, including the pilot in Glasgow. In particular, we agree with witnesses who suggest that alternatives to detention will only be effective if they are commenced sufficiently early and accompanied by good communication with families so as to encourage them to engage with the authorities. (Paragraph 122)
24. We are disappointed that, more than two years after our Report on the *Treatment of Asylum Seekers*, age-disputed children continue to be poorly treated and to experience the problems we previously identified. We reiterate our previous recommendations that x-rays and other medical assessment methods should not be relied upon to determine age, given the margin of error. The process for dealing with age disputes should be reviewed with a view to ensuring that no age-disputed asylum seeker is detained or removed unless and until an integrated age assessment has been undertaken. (Paragraph 124)
25. We welcome the steps taken by the Government in adopting a new Code of Practice and statutory duty which have the potential to provide greater protection to the human rights of child asylum seekers. We urge the Government to ensure that all staff are appropriately trained on their new responsibilities, that robust mechanisms are put in place to monitor and ensure compliance with the duties and that accessible information is provided to those seeking asylum on how they can expect to be treated by the UK Border Agency in the light of these responsibilities. We will continue to monitor developments in this area. (Paragraph 132)
26. We are pleased to note that the UK has now ratified the Optional Protocol on the Sale of Children, Child Pornography and Child Prostitution and will be looking, in the future, for evidence of its effects on UK practice for trafficked children. (Paragraph 135)
27. We intend to follow up our previous inquiry into human trafficking before the end of the current Parliament and will raise some of the issues raised with us in that context. (Paragraph 138)

### **Children and armed conflict**

28. We note the UN Committee's extensive set of recommendations to the UK on compliance with the Optional Protocol to the Convention on the Rights of the Child on Children in Armed Conflict. We recommend that the UK adopt a plan of action

for implementing the Optional Protocol, including these recommendations, fully in the UK, together with a clear timetable for doing so. (Paragraph 143)

### **Child Poverty**

29. We aim to report on the Child Poverty Bill before its Report stage in the Commons. (Paragraph 148)

### **Education**

30. We will return to some of the issues [identified by witnesses] when we consider education as part of our scrutiny of the Equality Bill. (Paragraph 152)

# Formal Minutes

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**Tuesday 13 October 2009**

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Bowness	John Austin MP
Lord Dubs	Dr Evan Harris MP
Lord Lester of Herne Hill	Mr Virendra Sharma MP
Lord Morris of Handsworth	Mr Edward Timpson MP
The Earl of Onslow	

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Draft Report (*Children's Rights*), proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 153 read and agreed to.

Summary read and agreed to.

*Resolved*, That the Report be the Twenty-fifth Report of the Committee to each House.

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

Written evidence was ordered to be reported to the House for printing with the Report.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

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[Adjourned till Tuesday 20 October at 1.30pm.]

## Witnesses

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### Tuesday 10 March 2009

Page

**Sir Al Aynsley-Green**, Children's Commissioner, **Ms Kathleen Marshall**, Scotland's Commissioner for Children and Young People, **Mr Keith Towler**, Children's Commissioner for Wales and **Ms Patricia Lewsley**, Northern Ireland Commissioner for Children and Young People.

Ev 1

### Tuesday 24 March 2009

**Baroness Morgan of Drefelin**, Parliamentary Under-Secretary of State and **Ms Anne Jackson**, Director, Child Wellbeing Group, Department for Children, Schools and Families

Ev 11

## List of written evidence

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1	Letter from the Chairman to Baroness Morgan of Drefelin, Parliamentary Under-Secretary of State, Department for Children, Schools and Families, dated 2 April 2009	Ev 22
2	Letter to the Chairman from Baroness Morgan of Drefelin, dated 8 May 2009	Ev 23
3	11 Million	Ev 28
4	Accord	Ev 32
5	Bail for Immigration Detainees and The Children's Society	Ev 34
6	British Irish Rights Watch	Ev 38
7	Centre for Studies on Inclusive Education (CSIE)	Ev 39
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9	Children's Commissioner for Wales	Ev 44
10	Children England	Ev 47
11	Children's Law Centre and Save the Children	Ev 49
12	Children's Legal Centre	Ev 54
13	Children's Rights Alliance for England	Ev 59; 64
14	The Children's Society	Ev 64
15	Commission on Families and the Wellbeing of Children	Ev 68
16	Department for Children, Schools and Families	Ev 72
17	Doctors Opposing Circumcision	Ev 78
18	ECPAT UK	Ev 82
19	Equality Commission for Northern Ireland	Ev 86
20	Equality and Diversity Forum	Ev 89
21	Equality and Human Rights Commission	Ev 91
22	Friends, Families and Travellers	Ev 95
23	Howard League for Penal Reform	Ev 98
24	Immigration Law Practitioners Association	Ev 100
25	Joint Epilepsy Council (JEC)	Ev 111

26	Law Society of Scotland	Ev 114; 116
27	Liberty	Ev 120
28	Mencap	Ev 126
29	National Association of Head Teachers	Ev 128
30	National Children's Bureaux (NCB)	Ev 128
31	National Organisation Circumcision Information Resource Centre of Northern Ireland	Ev 132
32	National Secular Society	Ev 134
33	National Society for the Prevention of Cruelty to Children (NSPCC)	Ev 138
34	NORM UK	Ev 142
35	Northern Ireland Commissioner for Children and Young People (NICCY)	Ev 144
36	Office of the Children's Rights Director for England (OCRD)	Ev 148
37	Peace Pledge Union	Ev 151
38	Prison Reform Trust	Ev 152
39	Religious Society of Friends (Quakers)	Ev 153
40	Refugee Children's Consortium	Ev 154
41	Save the Children	Ev 157
42	Dr Caroline Sawyer, Oxford Brookes University	Ev 161
43	Scope	Ev 163
44	Scotland's Commissioner for Children and Young People	Ev 168
45	Scottish Refugee Council	Ev 172
46	Standing Committee for Youth Justice (SCYJ)	Ev 174
47	The Adolescent and Children's Trust (TACT) and Children Law UK	Ev 178
48	TreeHouse	Ev 180
49	UK Coalition to Stop the Use of Child Soldiers	Ev 184
50	United Nation's Children's Fund (UK) (UNICEF)	Ev 185
51	UN Refugee Agency (UNHCR)	Ev 186
52	Voice	Ev 186
53	Wales United Nations Convention on the Rights of the Child Monitoring Group	Ev 188
54	Young Equals Coalition	Ev 194
55	Young Gypsies and Travellers	Ev 197
56	Young Researcher Network	Ev 198
57	Youth Justice Board for England and Wales	Ev 200



## List of Reports from the Committee during the current Parliament

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First Report	The UN Convention on the Rights of Persons with Disabilities	HL Paper 9/HC 93
Second Report	The Work of the Committee in 2007-08	HL Paper 10/HC 92
Third Report	A Bill of Rights for the UK? Government Response to the Committee's Twenty-ninth Report of Session 2007-08	HL Paper 15/ HC 145
Fourth Report	Legislative Scrutiny: Political Parties and Elections Bill	HL Paper 23/ HC 204
Fifth Report	Counter-Terrorism Policy and Human Rights: Annual Renewal of Control Orders Legislation 2009	HL Paper 37/HC 282
Sixth Report	UN Convention on the Rights of Persons with Disabilities: Government Response to the Committee's First Report of Session 2008-09	HL Paper 46/HC 315
Seventh Report	Demonstrating respect for rights? A human rights approach to policing protest	HL Paper 47/HC 320
Eighth Report	Legislative Scrutiny: Coroners and Justice Bill	HL Paper 57/HC 362
Ninth Report	Legislative Scrutiny: Borders, Citizenship and Immigration	HL Paper 62/HC 375
Tenth Report	Legislative Scrutiny: Policing and Crime Bill	HL Paper 68/HC 395
Eleventh Report	Legislative Scrutiny: 1) Health Bill and 2) Marine and Coastal Access Bill	HL Paper 69/HC 396
Twelfth Report	Disability Rights Convention	HL Paper 70/HC 397
Thirteenth Report	Prisoner Transfer Treaty with Libya	HL Paper 71/HC 398
Fourteenth Report	Legislative Scrutiny: Welfare Reform Bill; Apprenticeships, Skills, Children and Learning Bill; Health Bill	HL Paper 78/HC 414
Fifteenth Report	Legislative Scrutiny: Policing and Crime Bill (gangs injunctions)	HL Paper 81/HC 441
Sixteenth Report	Legislative Scrutiny: Coroners and Justice Bill (certified inquests)	HL Paper 94/HC 524
Seventeenth Report	Government Replies to the 2 <sup>nd</sup> , 4 <sup>th</sup> , 8 <sup>th</sup> , 9 <sup>th</sup> and 12 <sup>th</sup> reports of Session 2008-09	HL Paper 104/HC 592
Eighteenth Report	Counter-Terrorism Policy and Human Rights (Fifteenth Report): Annual Renewal of 28 Days 2009	HL Paper 119/HC 726
Nineteenth Report	Legislative Scrutiny: Parliamentary Standards Bill	HL Paper 124/HC 844
Twentieth Report	Legislative Scrutiny: Finance Bill; Government Responses to the Committee's Sixteenth Report of Session 2008-09, Coroners and Justice Bill (certified inquests)	HL Paper 133/ HC 882

Twenty First Report	Legislative Scrutiny: Marine and Coastal Access Bill; Government response to the Committee's Thirteenth Report of Session 2008-09	HL Paper 142/ HC 918
Twenty-second Report	Demonstrating respect for rights? Follow-up	HL Paper 141/ HC 522
Twenty-third Report	Allegations of UK Complicity in Torture	HL Paper 152/HC 230
Twenty-fourth Report	Closing the Impunity Gap: UK law on genocide (and related crimes) and redress for torture victims	HL Paper 153/HC 553
Twenty fifth Report	Children's Rights	HL Paper 157/HC 318
Twenty sixth Report	Legislative Scrutiny: Equality Bill	HL Paper 169/HC 736

### Session 2007-08

First Report	Government Response to the Committee's Eighteenth Report of Session 2006-07: The Human Rights of Older People in Healthcare	HL Paper 5/HC 72
Second Report	Counter-Terrorism Policy and Human Rights: 42 days	HL Paper 23/HC 156
Third Report	Legislative Scrutiny: 1) Child Maintenance and Other Payments Bill; 2) Other Bills	HL Paper 28/ HC 198
Fourth Report	Government Response to the Committee's Twenty-First Report of Session 2006-07: Human Trafficking: Update	HL Paper 31/ HC 220
Fifth Report	Legislative Scrutiny: Criminal Justice and Immigration Bill	HL Paper 37/HC 269
Sixth Report	The Work of the Committee in 2007 and the State of Human Rights in the UK	HL Paper 38/HC 270
Seventh Report	A Life Like Any Other? Human Rights of Adults with Learning Disabilities: Volume I Report and Formal Minutes	HL Paper 40-I/HC 73-I
Seventh Report	A Life Like Any Other? Human Rights of Adults with Learning Disabilities: Volume II Oral and Written Evidence	HL Paper 40-II/HC 73-II
Eighth Report	Legislative Scrutiny: Health and Social Care Bill	HL Paper 46/HC 303
Ninth Report	Counter-Terrorism Policy and Human Rights (Eighth Report): Counter-Terrorism Bill	HL Paper 50/HC 199
Tenth Report	Counter-Terrorism Policy and Human Rights (Ninth report): Annual Renewal of Control Orders Legislation 2008	HL Paper 57/HC 356
Eleventh Report	The Use of Restraint in Secure Training Centres	HL Paper 65/HC 378
Twelfth Report	Legislative Scrutiny: 1) Health and Social Care Bill 2) Child Maintenance and Other Payments Bill: Government Response	HL Paper 66/HC 379
Thirteenth Report	Government Response to the Committee's First Report of Session 2006-07: The Council of Europe Convention on the Prevention of Terrorism	HL Paper 67/HC 380
Fourteenth Report	Data Protection and Human Rights	HL Paper 72/HC 132
Fifteenth Report	Legislative Scrutiny	HL Paper 81/HC 440

Sixteenth Report	Scrutiny of Mental Health Legislation: Follow Up	HL Paper 86/HC 455
Seventeenth Report	Legislative Scrutiny: 1) Employment Bill; 2) Housing and Regeneration Bill; 3) Other Bills	HL Paper 95/HC 501
Eighteenth Report	Government Response to the Committee's Sixth Report of Session 2007-08: The Work of the Committee in 2007 and the State of Human Rights in the UK	HL Paper 103/HC 526
Nineteenth Report	Legislative Scrutiny: Education and Skills Bill	HL Paper 107/HC 553
Twentieth Report	Counter-Terrorism Policy and Human Rights (Tenth Report): Counter-Terrorism Bill	HL Paper 108/HC 554
Twenty-First Report	Counter-Terrorism Policy and Human Rights (Eleventh Report): 42 days and Public Emergencies	HL Paper 116/HC 635
Twenty-Second Report	Government Response to the Committee's Fourteenth Report of Session 2007-08: Data Protection and Human Rights	HL Paper 125/HC 754
Twenty-Third Report	Legislative Scrutiny: Government Replies	HL Paper 126/HC 755
Twenty-Fourth Report	Counter-Terrorism Policy and Human Rights: Government Responses to the Committee's Twentieth and Twenty-first Reports of Session 2007-08 and other correspondence	HL Paper 127/HC 756
Twenty-fifth Report	Counter-Terrorism Policy and Human Rights (Twelfth Report): Annual Renewal of 28 Days 2008	HL Paper 132/HC 825
Twenty-sixth Report	Legislative Scrutiny: Criminal Evidence (Witness Anonymity) Bill	HL Paper 153/HC 950
Twenty-seventh Report	The Use of Restraint in Secure Training Centres: Government Response to the Committee's Eleventh Report	HL Paper 154/HC 979
Twenty-eighth Report	UN Convention against Torture: Discrepancies in Evidence given to the Committee About the Use of Prohibited Interrogation Techniques in Iraq	HL Paper 157/HC 527
Twenty-ninth Report	A Bill of Rights for the UK?: Volume I Report and Formal Minutes	HL Paper 165-I/HC 150-I
Twenty-ninth Report	A Bill of Rights for the UK?: Volume II Oral and Written Evidence	HL Paper 165-II/HC 150-II
Thirtieth Report	Counter-Terrorism Policy and Human Rights (Thirteenth Report): Counter-Terrorism Bill	HL Paper 172/HC 1077
Thirty-first Report	Monitoring the Government's Response to Human Rights Judgments: Annual Report 2008	HL Paper 173/HC 1078
Thirty-second Report	Scrutiny of Mental Health Legislation: Government Response to the Committee's Sixteenth Report of Session 2007-08	HL Paper/ HC 1079

# Oral evidence

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## Taken before the Joint Committee on Human Rights

on Tuesday 10 March 2009

Members present:

Mr Andrew Dismore, in the Chair

Lord Bowness

Lord Dubs

Lord Morris of Handsworth

John Austin

Dr Evan Harris

Mr Virendra Sharma

Mr Edward Timpson

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### Memorandum submitted by Children's Commissioner, SCCYP, NICCY, Children's Commissioner for Wales

*Witnesses:* **Sir Al Aynsley-Green**, Children's Commissioner, **Ms Kathleen Marshall**, Scotland's Commissioner for Children and Young People, **Mr Keith Towler**, Children's Commissioner for Wales and **Ms Patricia Lewsley**, Northern Ireland Commissioner for Children and Young People, gave evidence.

**Q1 Chairman:** Good afternoon everybody and welcome to the Joint Committee on Human Rights' evidence session on Children's Rights. We are joined by Sir Al Aynsley-Green, the Children's Commission for England, Kathleen Marshall, who is Scotland's Commissioner for Children and Young People, Keith Towler, Children's Commissioner for Wales and Patricia Lewsley, the Northern Ireland Commissioner for Children and Young People. Welcome to you all. We have four witnesses and what we propose to do is direct our questions to one of you rather than all four so do not feel you have to all answer all the questions or we will be here all night. If you violently disagree with what one of your colleagues has said, put your hand up or draw my attention to it but I will take it that whoever responds everybody else agrees with unless it is something really burning. Perhaps I could start with Sir Al. The UNCRC found a general climate of intolerance and negative public attitudes towards children in the UK. Why do you think that is? Is it new or is it something that has been there for a while? What has caused it to develop?

**Sir Al Aynsley-Green:** It is a very important question. I do believe, on the evidence we have, that there is a climate of intolerance, increasingly so, against children and particularly young people in our society today. The evidence that I offer to you includes, first of all, the analysis of media coverage for children and young people. Children and Young People Now a few months ago published a piece of research which showed that 71 per cent of media articles about children and young people were negative with pejorative phrases like thug, hoody, yob, feral, et cetera, being used routinely. More recently CRAE, the Children's Rights Alliance for England, has just published only yesterday an interesting document which I can commend to you, and we can make sure you get it, on how journalists can promote human rights and equality. Then in December of last year the National Children's Bureau and the Young Researcher Network published this research on Media Portrayal of

Young People: Impact and Influences. Especially important in this report were the views of children and young people themselves. I also draw to your attention the Barnardo's report published at the end of last year which was a YouGov survey of adult's attitudes towards children. Some of these statistics were quite startling in terms of the view that some children were a menace to society, the streets were infested by children, something must be done to protect us from children, et cetera. That Barnardo's report was quite shocking in exposing attitudes of adults to children.

**Q2 Chairman:** Is this new? I recall reading that one of the ancient Greek philosophers was moaning about young people in the days of ancient Athens. Is it a tendency throughout history for adults to complain about children?

**Sir Al Aynsley-Green:** We can go back to Shakespeare's time where he talked about the wish for adolescents not to be present. There has been a challenge through the centuries for the emerging young adults and their testing the boundaries of society but I do think what is happening now is unprecedented in terms of the persistent demonisation of children and young people. One of the most powerful examples of this intolerance by society is the increasing use of the mosquito deterrent. This is a device which is being installed with no regulation and no need to display a notice that it is in use. It is a device designed specifically to target the ear of the young. Once you are passed the age of 25 or so you lose the ability to hear high pitched noises. I understand more than 5,000 of these devices have been installed across the country deliberately designed to stop children and young people gathering. Of course there are two sides to a story and many shopkeepers may have difficulties with groups of people standing outside their shops, not all of them of course being children, but we feel this is entirely indiscriminate. If there was a device that was targeting the elderly in the same way there would be uproar. This is indiscriminate; any young

## Ev 2 Joint Committee on Human Rights: Evidence

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10 March 2009 Sir Al Aynsley-Green, Ms Kathleen Marshall, Mr Keith Towler and Ms Patricia Lewsley

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ear can hear it. We now hear from the parents of babies and children who now understand why their children become upset when they go to some locations. We hear from parents of autistic children, these children being exquisitely sensitive to abnormal noises. The second point is it is not tackling the root cause of the problem, which is why do children and young people gather there. I go out where they are gathering and listen to them. I walked the streets of a north country city recently in a blizzard and the children told me "We have nowhere to go, nothing to do. Adults do not like us and adults will not work with us." Things can be done differently. In Corby, for example, where Phil Hope is the local MP, he and his colleagues on the City Council worked with police and the residents and have gone a great job there. These devices were being installed in a very troubled estate. They got them switched off but the quid pro quo was investing in outreach youth workers and somewhere for the kids to go. Within a few weeks of this being changed there was a 42 per cent reduction in call-outs to the police. We can provide for you substantial evidence about increasing intolerance towards children and especially young people in our society.

**Q3 Chairman:** What can the government do about it? You have mentioned a couple of things there? Anything else in terms of improving attitudes rather than the core problem?

**Sir Al Aynsley-Green:** One of the really important things is to demonstrate how by listening and involving children and young people everyone will win. We were so concerned about this skewing towards demonisation that two years ago we launched our first attempt with the 11 Million Takeover Day where we invited organisations to show how they could engage with children and how by so doing they would get value from it. In the first year we had 10,000 children who were engaged with us in 500 organisations including some parliamentarians and local authorities. This exercise demonstrated the importance of listening to and engaging with children and young people. I think we need to start a momentum which swings away from this demonisation. The CRAE report on how the media can be more positive in its portrayal of children is very, very important but it is society that needs to understand the value of children in our midst.

**Q4 Chairman:** You said a strategy is needed to combat negative perceptions of children but you also comment on the poor implementation of existing children's strategies in your memorandum. How would a formal strategy help?

**Ms Lewsley:** We have a ten-year children's strategy in Northern Ireland that we had some input into but unfortunately the action plan coming out of that was not worth the paper it was written on because it was a cut and paste exercise of departments around the issues that they were already doing instead of looking at some of the innovative solutions that they could do. If you have an overall strategy where we can all feed into, if you are talking about some kind

of ten-year children's strategy in Westminster then it is in my local jurisdictions then having the opportunity to have their own feed into that. The big issue for us would be around the issue of poverty. Gordon Brown has his own quota that he wants to meet. We become statistically insignificant in Northern Ireland in order for him to meet that quota so what we need is our own child poverty targets in each of the jurisdictions in order for us to meet that and a strategy that goes with that. I note through our own OFMDFM committee they have done a child poverty inquiry and it is important that the Assembly takes that on board. Talking specifically about a children's strategy, again the point for us is we need to have a strong robust ten-year children's strategy. We are about to embark on our second action plan and we would say there has been very little comment on the first one. We need to ensure that whatever that does we need to ensure that delivers for children and young people. Like Sir Al said, we need to hear the voice of young people in that to see how they can contribute to a children's strategy and what they feel needs to come out of it so it can be delivered to them.

**Q5 Chairman:** Has the children's plan made a real practical difference to children's lives?

**Sir Al Aynsley-Green:** In terms of children's rights, which is a separate issue, I certainly think the landscape has been transformed over of last eight years. I am the first to commend the current administration for how they have taken it into the heart of government. When we look at the policies that have come out, I do not think anybody really could dissent from the need for these policies. As I tour the country, everywhere I go, through the creation of children's trusts and the new local authority legislative arrangements, there are definitely things happening. It is patchy and some places are much better than others but if everything that was good that I had seen was being done everywhere we would be in a very different landscape. In terms of policy I really do support what is happening and I also support the thinking from the other political parties. The challenge is to make a difference at the front line, at the grass roots in communities, and this is everybody's business: it is parents, families, schools, communities, faiths and government. There is a limit to what government can do by legislation; it is everybody's business.

**Q6 Mr Sharma:** How would children benefit if age discrimination provisions encompassed under-18s?

**Mr Towler:** In the evidence that we gave to the UN Committee on the Rights of the Child we were very concerned about discriminatory issues in relation to children and we took a very strong line about the extent to which although there has been in some of the administrations a clear view about anti-discriminatory practice, in reality, and it echoes the point that Sir Al was making earlier, we have seen very little progress in the way that we had hoped or anticipated. The key issue for me is the extent to which children as a group face significant discrimination on the basis of age and are excluded

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because of their age from so many opportunities. There is a real issue for the way in which, just picking up some of the themes we have already discussed, children and young people perceive that themselves because that discrimination is pretty clear to them. Issues in relation to benefits, issues in relation to the way in which they are allowed to participate or not participate in particular issues, those issues around discrimination are acute and all of us as Commissioners would face those issues pretty much every day in relation to how children feel an acute sense of right and wrong because children inherently do. They might not have the language to talk about discrimination but they inherently know when something is right or wrong.

**Q7 Lord Morris of Handsworth:** Anti-social Behaviour Orders are one of the main routes into the criminal justice system for young people in most of the United Kingdom. Why is the situation different in Scotland?

**Ms Marshall:** I think Scottish local authorities were never keen on Anti-social Behaviour Orders in the first place when the legislation was going through. It was very controversial and there was a general feeling that there were more positive ways of dealing with what anti-social behaviour there was. Despite quite a lot of political pressure at some points to use the anti-social behaviour legislation more, Scottish local authorities just have not done it. I do feel that if they felt it would have helped they would do it. There were only 14 Anti-social Behaviour Orders on children under 16 between 2004 and 2008. Also in Scotland breach of an Anti-social Behaviour Order for an under 16 cannot lead to a custodial sentence and it feeds in more with the Children's Hearing System which is welfare-based. Perhaps because we have a tradition of having a more welfare-based approach to this sort of issue the anti-social behaviour agenda, and the fact that it links into the criminal side, does not fit in with the Scottish tradition. People do use some of the more informal things like the acceptable behaviour contracts which are at a voluntary level but it has not been found necessary to use it and I do not think we are doing any worse than the rest of the UK for that lack.

**Q8 Lord Morris of Handsworth:** Perhaps you can tell us if you think that the rest of the UK can learn something from the Scottish experience that has just been relayed to us?

**Sir Al Aynsley-Green:** If we are talking about anti-social behaviour, let us be clear at the outset that this is a major concern in our society today. Not all anti-social behaviour is committed by children. We need to keep a very clear perspective of that. The public needs to be reassured that something is being done and so in one sense the application of an ASBO is attractive. One hears repeatedly anecdotes of how applying ASBOs to known troublemakers has transformed local communities. The challenge of course is what happens after that and this is where I have my greatest difficulty. There has, as far as I am aware, never been a rigorous, robust national evaluation of ASBOs to assess the evidence whether

they do actually stop or prevent crime and anti-social behaviour. I have seen some young people who have had ASBOs applied to them and their lives have been transformed. They have been pulled up short and they have had to address the error of their ways but sadly we know that increasing numbers are having ASBOs applied to them and sometimes they can be seen to be a badge of honour.

**Q9 Lord Morris of Handsworth:** What are the lessons that the rest of the UK can learn from the Scottish experience?

**Sir Al Aynsley-Green:** I think the most important point is what Kathleen said just now that the Scottish system is a welfare-based system rather than a punitive system. I believe passionately that children must be brought up to understand the boundaries of good behaviour and to be held to account if they transgress those boundaries. The UNCRC endorse this view that there is a tendency to criminalisation and punishment above the best interests of children. I think we can learn a great deal from the Scottish system.

**Q10 John Austin:** One thing which you seem to be saying is that there is nothing in principle wrong with an ASBO but it is the application and the targeting of it. Is there a difference between the Scottish and the English experience? In relation to Scotland, what is very popular with my local newspapers is naming and shaming. I would like to hear Kathleen's comments on why that is not a good idea?

**Ms Marshall:** For starters it is against the Convention on the Rights of the Child which is as good a reason as any when we are looking at the concluding observations. It is just the whole tradition about labelling children at an early age as troublemakers and criminals. I know they feel it very badly themselves. I remember speaking to one young girl who had just gone out of the Children's Hearing System and had her first criminal conviction and she was saying "That is me now. I will never get a new job." It was a kind of hopelessness. I think if children and young people feel they are branded then that actually puts them into the spiral of hopelessness. We really have to support them and try to get them through that. We have to have faith in our children and regard them as of all people the most redeemable and not condemn them to that label, telling them they can do better than that and urging them on. The Children's Hearing System has always had anonymity attached to it and perhaps because we do have that strong culture the whole naming and shaming idea does not fit very well with what we have been doing. I do not think anyone has shown us any evidence that going down that route is actually going to make things any better. Why should we change to do that if it is not going to make things better? We would rather keep with the welfare-based system that we have.

**Mr Towler:** I wanted to say that the All Wales Youth Offending Strategy, which is a strategy drawn up in partnership between the Welsh Assembly Government and the Youth Justice Board, picks up the kind of welfare issues, the welfare model, that

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Scotland have taken forward and comes up with a principle that children within the Youth Justice System should be treated as children first and as offenders second. As a consequence of that, what we have seen in Wales is Youth Offending Services working collaboratively with other agencies looking at wrapping support around a child and would take the view of an Anti-social Behaviour Order as a failure if those wrap-around services could not work. Although we are tied to the England and Wales approach, we have seen a strategic intent built on prevention, a partnership between the Welsh Assembly government and the Youth Justice Board, which is being refreshed at the moment but which has seen some real benefits from a preventative model being taken forward based on a welfare system.

**Sir Al Aynsley-Green:** I support what Keith has said about the need for early intervention and early recognition, the Family Nurse Partnerships, for example, which are being rolled out in England identifying families, mothers in particular, at risk and giving intensive support to these young parents with young children. The evidence from the US is quite compelling that this can be effective. I have seen some fantastic examples of very good practice. In Worcester, for example, there is a YISP programme which identifies kids who are at risk of causing serious mayhem and it listens to what they have to say about their lives and then tries to wrap a programme around it which will convert them. Of course we have to persuade the public that this approach actually delivers benefit and is not a touchy-feely, wishy-washy approach. I do believe early intervention and prevention is very important.

**Q11 Mr Timpson:** Whilst we are still talking about the branding of children and why the Criminal Justice System can play its part in that, there is the minimum age of prosecution of children. I know this is something the CRC has looked at and recommended that it should be raised to between 14 and 16. Can I ask, first of all, whether there would be any exceptions to that raising of the minimum age in terms of any particular offences, thinking back to high profile children's cases in the past, but also how the progress is going in Scotland in trying to move forward that raising of the minimum age of prosecution of children across Scotland?

**Ms Marshall:** If I could answer the second one first, there has been a Bill published now which will be raising the age to 12 in Scotland. 12 is the minimum acceptable international standard according to the UN Committee on the Rights of the Child. While we are certainly pleased that there is a proposal to raise it, we would prefer if it was higher but as long as that is a starting point and we can move up from there. That is already on the cards. In terms of exceptions, no there would be no exceptions and the UN Committee is very clear about that. There is a sense in which if you have a child under 12 who commits an horrendous crime there is something very seriously wrong and no-one would ever dispute that. Surely we should be looking to think what has happened to that child and how can we try to get that

child on the right track rather than trying them in an adult court, for example, in an adversarial system where they are never going to have equality of arms no matter what we try to do in that kind of court system. They are not going to have quality of arms. The proposal in Scotland at the moment is that it will raise it to 12 which will make us respectable internationally. It will not actually have a huge impact in practice because in the past five years I believe there have only been five or six children under 12 who have actually been prosecuted. Despite that, as soon as you start talking about raising the age there is a question of language. You talked about the minimum age of prosecution and sometimes that seems more helpful to say that. When you talk about the age of criminal responsibility people think you are arguing that children have no moral responsibility for what they do and that is not the situation at all. Of course they will often know the difference between right and wrong but they may not realise the full implications of it. It is a question not about saying they do not know what they are doing but how do we respond to this in the best most principled and most effective way. It is also not about saying that you do nothing. In our Children's Hearing System they will go to the Children's Hearing System. There is a lot of progress with things like restorative justice models, for example, and they can have various interventions. We could do with a lot more I have to say but it is not about doing nothing. It is not about saying they have no moral responsibility; it is about saying we do something that we hope will be effective to try and turn them around and put them on the right line.

**Sir Al Aynsley-Green:** I think we all remember the James Bulger murder by two ten-year olds with horrific media images of a child being led away by the hand by ten-year olds. The contrast between what happened to those ten-year olds in England compared to what happened to a very similar circumstance in Norway illustrates this point. The ten-year olds were tried through the criminal prosecution system in this country whereas in Norway they were seen to be extremely vulnerable children with a totally different approach. It is interesting that some academics have argued that the media coverage of the James Bulger murder was one of the tipping points which started to move public opinion away from the view that children were angels to some that were demons which has triggered the subsequent development. I do think we should be learning from other countries how they can look at a more welfare-based approach for very young children who commit serious crimes.

**Q12 Mr Timpson:** Despite the Bulger case we are still at the minimum age of prosecution of ten in England and Wales as opposed to Scotland, if the Bill goes through, which will leapfrog from eight to 12. Although there may be some resonance within public opinion that there needs to be a shift there still has not been progress made on the statute book. What are the barriers for this minimum age being raised across the whole of the UK as opposed to just

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being done piecemeal as has happened in Scotland? Is it a culture shift? Is it general public opinion or is just class? Where do those barriers lie?

**Mr Towler:** I think one of the big barriers is about public opinion and political strength to do something that may be perceived by the public to be a very soft act. I echo everything that Kathleen and Sir Al have said. I think raising the age of criminal responsibility is a pivotal discussion that we need to have in this country. It illustrates the extent to which we value our children in terms of how we respond to them when they are getting into trouble. The question we need to be asking is why that is happening, not that we do not do anything but what is the route to resolution. For children as young ten and 11 the route to resolution should not be our criminal justice system. I think in terms of a debate the courage is about political courage to take a stance on something in the face of perhaps a media response and a public response that might not be sympathetic to a move of that nature.

**Q13 Mr Timpson:** Can I move on to talk about detention of children and adults together or separately? You will be aware that the UK recently removed the reservation under Article 37(c) of the UNCRC saying that essentially we have moved on, we have solved the problem and we do not need that reservation in place any longer. Are you satisfied that the government is doing enough to comply with that Article? I know from reading some of the literature we have been provided that there have been some concerns particularly in Northern Ireland and Scotland that young girls are still not being separated out in prisons from older women. Are you satisfied that perhaps enough is being done by government to address that problem?

**Ms Lewsley:** No, the fact that the reservation to Article 37 is there we need to look at it and it needs to be implemented. The problem for us is we actually have women and young women housed in the same environment as males in Hydebank. We do not even have a separate women's prison in Northern Ireland. The fact that we have young women in with adult women makes it even more concerning. We also have young males in an adult prison as well in the Hydebank Young Offenders Centre unlike Woodlands which is the Juvenile Justice Centre. Some of the legislation around that is quite confusing because the Youth Justice Act 2002 brought 17-year olds into the remit of the Youth Justice Centre and legislation for sending 17-year olds to the Youth justice centre rather than the Young Offenders Centre but the restrictions on the sentencing part made that difficult whether they were sent the Youth Justice Centre or the Young Offenders Centre. We have some young people who are younger who should not be in Youth Offending Centres and should be in the Youth Justice Centre and they are not. The issue for us between the two is that we have seen a huge change in the Youth Justice Centre with regard to the delivery of services and support for those young people whereas when they are in the Young Offender's Centre they are still in a prison regime so it is all about punishment and all of

that rather than rehabilitation and trying to encourage them to take another path once they come out of that kind of system. We need to look at it in the round. There could be much more we believe needs to be done, particularly around young women, and we need to review that legislation that allows the accommodation of young people particularly at 15 and 17 much better.

**Q14 Chairman:** Could I come on to the issue of restraint? It is an issue that has been reported on quite a lot over the last 18 months or so as I am sure you are aware. Do you agree with the independent review that the use of pain compliance, even in exceptional circumstances, would be irreconcilable with UNCRC?

**Sir Al Aynsley-Green:** Again let us be realistic about the circumstances of sometimes highly disturbed and even dangerous young people in prison. In the course of my work using my power of entry I have visited a number of institutions. I have seen for myself the atmosphere inside these places. I have also seen for myself violence erupting in front of me quite unexpectedly and within a few seconds there was a violent altercation between young men who were very seriously intent on harming each other. That is the reality prison officers have to face. Quite clearly there has to be some approach to handling that. The debate is extensive and prevention of that kind of outburst is key. I do raise questions about the culture within the prison service. For example, in this present day and age one would not dream of sending a disturbed young person to an adult psychiatrist for care yet in the prison service the prison staff are not specialists in the care of juveniles. We do feel there should be some special attention paid to the recruitment and training of prison officers who understand young people and also the means of preventing violence arising from the circumstance. In terms of the restraint review, we regret that the review was tightly focused on the issue of the immediate concern over restraint. We would have much preferred a wider review of why we are incarcerating so many young people in the first place. We are also concerned that use of pain distraction techniques has not been removed completely. The UNCRC has been quite emphatic in its condemnation of this arguing that pain should never be used on especially young people who in their lives have been exposed to violence and pain and suffering as a way of resolving conflict. We do think that the approach needs to be changed. I would highlight one other issue which I do not think has had sufficient attention which is the high levels of restraint applied to girls in prison. I draw to your attention this report published just two weeks ago by Nacro and the CFBT Trust which looks at the provision of care for girls in custody. Of course there are some startling statistics here which I could just sensitise the Committee to, the fact that the use of custody for girls has risen sharply. Overall custody has risen by 56 per cent but those for girls increased by 297 per cent. We are locking away more girls than ever before yet 40 per cent of these girls suffered violence at home, 33 per cent had sexual abuse, 71



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per cent have some form of psychiatric disorder, more than 89 per cent are engaging in self-harm, 49 per cent are drug dependent and around 50 per cent have literacy levels below the average 11-year old, and 71 per cent have been involved in social care prior to their admission. I give you those statistics to emphasise the extreme vulnerability of these girls. Against this point we know that girls are only 7 per cent of the youth custody population but 20 per cent of all restraints in the secure estate have been performed against girls. Why is that the case? There needs to be very serious questions asked of the specific issue of girls in custody linked to the issue of restraint. I return, if I may, to my introductory comment: let us understand the reality of the difficulty that prison officers have to face in dealing with these sometimes very dangerous young people.

**Ms Lewsley:** It is slightly different in Northern Ireland where we have seen our numbers reduced and that is because of some of the reports that have come out of the Criminal Justice Inspectorate, a report by the Office of the First Minister and Deputy First Minister and some of that has been due to the fact of the kind of training that prison officers and others are now given on how they handle that. It is a more underlying philosophy approach of managing juveniles in custody and individual planning for each child.

**Q15 Chairman:** Is this what Sir Al is recommending in terms of specialist prison officers?

**Ms Lewsley:** Yes, but not just the general training of prison officers and how they manage but also about the rules that are put in when there is an incident, how that is reported and the fact that parents are then told that this has happened and why it has happened, the child is told what has happened and they have an opportunity to add to the report or take from it some of the issues that may have been reported that they feel were untrue and the whole possibility of the healthcare officer being informed of the incident as well. It is a complete package and that is important. As Sir Al says, in Northern Ireland 65 per cent of our young people in our Juvenile Justice System have a learning disability of some sort and sometimes that is around communication. If our young people do not understand some of the words that are meted out to them that has a consequence for them if they do not understand. That even happened for us in Northern Ireland around ASBOs where young people were not aware what they actually meant if they were served on them and even for some parents who did not understand the consequences of them. There is a whole issue around communication for us as well.

**Q16 Mr Sharma:** My question is on child poverty. The government has already argued that significant progress has already been made on child poverty. How can the government reduce child poverty during the recession? Can legislation make a difference or will it just be a statement of intent?

**Mr Towler:** There are two big things I would like to say in response to that: one is that the child poverty target that the government sets to end child poverty

by 2020, to half it by 2010, is something that all of us feel extremely strongly about and would want to make sure, taking the point you are saying about economic downturn at the moment, that that commitment to ending child poverty by 2020 is a commitment that needs to stay in place. What we really require is a cross-cutting approach, to use the jargon, to ending child poverty and to target those who are at greater risk of poverty. It seems critical to me that we tend to think very much about poverty in a financial sense but this is also about poverty of opportunity. Education as the key to lifting children out of poverty is something I think we really need to hold on to. Like the other Commissioners, I will spend a lot of time meeting with children and young people every week and the aspirations that those children and young people have in some of our poorest communities are incredibly low. They do not expect to get many offers to go and do exciting things that you and I might have taken for granted in our childhood. There has been a lack of progress. We have seen what progress we have made financially stalled. I am concerned about the way in which we are now defining what child poverty looks like and how we, as a government, will get to the point where at 2020 we can say we have ended child poverty. It seems to me that if we are going to get there we need a very clear route map and we do not have the route map at the moment. There is an issue for the devolved administrations about the extent to which each one of the devolved administrations is doing what it can do in relation to child poverty, something that I welcome in terms of what the Welsh Assembly government is doing. This is where the devolved administrations and the UK Westminster government really do need to identify what that route map is. What are the stages that are going to get us to ending child poverty by 2020? At the moment I am not convinced, and I do not think my colleagues are, that we know what those stages are.

**Ms Lewsley:** The worry is that we will hit any of the statistics put out there. I think Keith is right that it is about poverty in its wider sense and not just about financial poverty. I know that the Northern Ireland Assembly, the ministerial sub-group, have made poverty one of its six priorities. I would like to see that kind of joined-up government and it is not the responsibility of one department but it is the responsibility of all departments to eradicate that. When we talk about poverty in its wider sense it is about poverty of opportunity. In the last couple of weeks I have met a number of young people, one who would like to have done GCSE art but could not do it because they knew the first day they went back to school they would have to pay £10 for art materials and that would have meant that they would have gone two days without food or a day and a half without electricity and they were would prepared to put their parent in that position. That was poverty of opportunity. To the young person who I met who is 17 and just come out of the care system living independently on £40 a week: a £20 food voucher and £20 to heat and do all the other things she needs to do. You have to have great respect for young people like that because how easy

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it would be for them to turn to crime to be able to help themselves live and do whatever they need to do. The other big issue for me is we have highlighted the issue of child care as being one of the biggest stumbling blocks around poverty to enable, particularly single parents, to enter the world of work and to be able to support them in some way. I know that our Assembly is looking at the issue but they have a long road to go before they ever meet the targets they have been set.

**Q17 Lord Dubs:** Could I turn to the question of children who are asylum seekers? The UK government has recently withdrawn its reservation to Article 22 of the NCRC. What practical difference do you expect to see as a result of that withdrawal?

**Sir Al Aynsley-Green:** That is a very important question. We are already talking with government over the practical implications of this, but with a reference to the general issue of asylum we do not oppose government's legitimate right to decide who stays in this country and who goes. We cannot accept everybody who might want to come to these shores so it is a question of how it is done which is of concern to us. We have adopted the approach of looking at the child's journey through seeking asylum. What are the milestones: first point of contact with the authorities, the screening process, residential care for unaccompanied asylum seekers and the process of arrest, detention and deportation at the end point. We have looked at each of these milestones using my powers of entry to go and listen to what children and young people have to say about their experiences. This is what we collectively bring to the table: we bring the views and the experiences of children. We believe, and we proposed in our report to the UNCRC, and as you know we all worked together on this, that children seeking asylum experience serious breaches of their rights, and the immigration control we believe takes priority over human rights' obligations to these children. We do hope and welcome this removal of the reservation but we want to know exactly what that will mean in practice to the plight of children who are arrested. There is this pejorative or emotive phrase of dawn raids, of children being taken from their homes, taken to deportation removal centres like Yarlswood and their experiences. What difference will a child tomorrow in Yarlswood see as a result of the removal of the reservation? We have no doubt at all that there are many aspects of the journey which require exposure, that the damaging impact of the process is profound for many children and at the end of the day does every child matter? This of course is the title for the report published this morning from immigration lawyers. I give great commendation to government for the steps it has taken for making every citizen child matter through its policy but I argue that how we treat these most vulnerable, damaged, exposed children should be a barometer of how we regard children collectively. I fear there is much to be done to improve the lot of these vulnerable children.

**Q18 Lord Dubs:** Could I direct my next question to Kathleen Marshall and it is again about children and detention? I think you said recently the fact that detention of children is still used too frequently and not always as a last resort.

**Ms Marshall:** In the asylum context?

**Q19 Lord Dubs:** Yes. Is it ever justifiable to detain children in that context?

**Ms Marshall:** It is one of these situations where people will give you very, very hard cases to try to get you to say that in some situations it might be and then you are opening the breach to that. I would prefer to say it should never be possible to detain children. We do have a pilot starting in Glasgow for alternatives to detention and we are hoping that will show that you can keep children out of these institutions and still have a reasonable way of implementing the asylum policy. I would give a 100 per cent to that that we should not detain children.

**Q20 Lord Dubs:** I understand that the government not long ago decided to set up a centre in Kent which should prevent children being detained, that is instead of Yarlswood, but they seem to have moved away from the idea. Do you have any further information about that and why it happened?

**Sir Al Aynsley-Green:** I have some limited insight into it. I think the view I hear from men in the field is that that pilot was not really properly set up in the first place and its evaluation and the conclusions need to be challenged. We would certainly welcome a model, perhaps along the lines of the Australian system, which consists first of all, of much earlier engagement with families, getting their trust very early in the process before it becomes locked into adversarial conflict. I think that the proper testing of alternatives to detention still needs to be done in this country.

**Q21 Chairman:** What is the alternative you use in Glasgow?

**Ms Marshall:** They are just setting it up at the moment. It is an independent group of houses, a more hostel-type situation, and this idea of having the ongoing relationship is certainly part of it and I think that has been part of the problem before. The immigration authorities will post people things and send out letters but it is not received in the context of understanding that people think they have done and then it all comes as a surprise. This whole idea of the relationship and having an alternative and trying to make it clear to people that they are moving along a process and trying to encourage voluntary return is just about to be trialled in Scotland.

**Q22 Lord Dubs:** I hope I am allowed to say that what you have said is music to our ears.

**Ms Marshall:** What difference should the removal of the reservation make? We have had a lot of progress in Scotland. The legacy cases of children who have been here a long time have been speeded up and over 90 per cent have been allowed to stay but it is the actual decisions. If people are really scared to go home, nothing anybody is going to do is going to

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persuade them to go home. You sometimes hear these cases where you think who on earth could think that it is all right to return this terrified mother and child, one I have heard about very recently, to a place that anyone would think is really, really scary. It is about how children's interests are taken into account when decisions are actually made I think is one of the critical things that we have to move forward on.

**Q23 John Austin:** Can I go on to the UN Convention on the Rights of Persons with Disabilities and the vexed issue of education. Some of us might feel that insufficient resources have been made available to make integrated mainstream education work effectively. Patricia Lewsley may have been saying the same thing in her report when she said that the government has yet to develop or invent a strategy to increase the number of pupils attending integrated schools. Do you think that there is necessarily a conflict between the concept of the needs of the child and the provision of sometimes separate specialist education and the Convention? Are you necessarily opposed to what the minister is arguing for when he says that there will be a reservation and an interpretative declaration?

**Ms Lewsley:** We have huge problems around this reservation particularly when it is around education and not being inclusive. Our own Minister of Education has done a review of special educational needs and inclusiveness and part of the problem is that it has been blocked because, for whatever political reason, they do not want the inclusive part of it and they are saying that some of the people that are in this inclusive should not be in it. The biggest issue for us and the negative impact of this reservation for children in Northern Ireland is that we have already seen some of our children having to go from Northern Ireland to England to be educated particularly post-primary. I am talking in particular about children who are deaf. You can imagine the welfare of that child being taken away from its family, put into a school in England somewhere where there is not that kind of family network around it, no support mechanism, maybe coming home once a term or twice a year. For us, that has a negative impact and is certainly not in the best interests of children. What we would like to see is that mainstreamed at home so there is provision for those children to be educated at home. I think the other thing is that it is about how this is addressed from the point of view of how it is eased in. People do not expect this to happen overnight but in fact if we see some steps towards inclusion of children in mainstream education, and the fact that we will always probably have the need for special schools because not all children can enter mainstream and it is about that choice. The core of all this is about the support mechanism that these children have when they go into mainstream.

**Q24 John Austin:** It is not so much the principle of the reservation that the government may enter but how the government may interpret that reservation.

**Ms Lewsley:** And implement it.

**Sir Al Aynsley-Green:** I agree with Patricia and the word "choice". There is no one size fits every child who has one of these difficulties. Each child needs a personalised programme and what is in the best interests of the child. Inclusivity means different things to different people. I was up in Rochdale opening a new education complex where they had built a special school for children but part of a campus where these children were very much included in the ethos of the site. They were included in the sporting facilities and they were really there as genuine children but at the same time they had the staff and resources to cope with their special needs. It does depend, I would argue, on the resources and it depends on availability of staff above all to address these children's needs. If you look at the difficulties of children with autism and the difficulties of those with dyslexia, to name just two conditions, when I have been to schools that specialise in the care of these children they get much better outcomes than those that are looked after perhaps as an add-on to the general inclusive situation.

**Q25 Mr Timpson:** The Children, Schools and Families Sub-Committee which also sits recently heard evidence from Christine Gilbert, chief executive at Ofsted, about the high figures in the latest Ofsted report of child deaths. Perhaps I could address this to Sir Al to start with. Do you see those figures of 282 child deaths during that period of April 2007 to August 2008, of which I think 17 were later reclassified as not having been a result of abuse or neglect, as a failure of our child protection system?

**Sir Al Aynsley-Green:** I would like to take the general context of deaths of children. The death of any child clearly is a tragedy for all concerned and there are many factors which lead to a child's death. I welcome the creation of CEMACH, the confidential inquiry into the deaths of children, and this is all children not just those who are in the care of the State. Already this is demonstrating important issues. For example, in my own work in the past I have looked at the deaths of children from head injury and there are usually avoidable factors which can be pulled out which can lead to improvements in services. I certainly think that in the context of safeguarding children and child protection we must investigate why any child dies and that should be done comprehensively and transparently and lessons learned from it. That is the nub: how do we learn the lessons from the investigation of any child who dies.

**Mr Towler:** I agree completely. One of the recommendations that we as Commissioners put to the UN Committee which they did not pick up was the issue about deaths in custody of children. We called collectively for a public inquiry into deaths in custody. That was unfortunately not picked up by the UN Committee but it remains a huge concern and the same principles that Sir Al outlined should apply.

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**Ms Lewsley:** It also talks about early intervention and picking up some of these signs before we get to the stage of fatalities. Certainly for us the numbers are rising in Northern Ireland with the number of children who are at risk or on the At Risk Register particularly from physical abuse. It has risen by 488 cases this year alone which is difficult. That is your first warning sign and unless there is some kind of early intervention and prevention then some of those 488 will end up as fatalities.

**Q26 Mr Timpson:** Do you draw any comfort from the fact that Ofsted have said that over and above their comprehensive area assessment, which they are now going to undertake, they are also going to do regular child protection inspections of each children's services department? Do you welcome that or do you still feel more needs to be done?

**Ms Lewsley:** There probably is more that needs to be done. We would say, particularly in Northern Ireland, we have legislation and we have policies but it is about communication. We had an incident of a nine-year old whose life was taken by her mother. Her mother had told three different counselling services plus two hospitals that she had these thoughts of taking not just her life but her daughter's but there was no communication; nobody ever thought of telling the child protection team that this was an issue. Where we have the policies and the legislation there it is how we implement that and get that across to all departments.

**Mr Towler:** One of the things that have become really clear to me in Wales recently in the last month or so is how we take that forward in relation to front line field work staff in social work. The moral among social work teams at the moment in children's services is not good. They are doing perhaps one of the most important jobs we ask any public servant to do and it is a workforce that is under an awful lot of pressure at the moment. The public take a great interest in the failings of social services and individual social workers. The balance about how we take this forward, bringing the workforce with us, thinking about training, thinking about the way in which we can support front line social workers is a really important point that should not be overlooked.

**Sir Al Aynsley-Green:** It is also important to remind ourselves that countless children are being effectively protected despite these difficulties. I cannot believe there will ever be a system which prevents any tragedy completely.

**Q27 Mr Timpson:** Can I move on to a very brief topic around the Coroners and Justice Bill which is currently going through the Committee stage. One of the proposals within it currently, and we will see what comes out of the Committee stage, is the establishment of information sharing orders which would also encompass information from Contact Point about children. This Committee has previously expressed some concerns about the Contact Point system. Do you have concerns about

the proposal that that information on children held at Contact Point may become embroiled in the whole issue of information sharing and data sharing between agencies both in the public and private sector?

**Ms Marshall:** I am not sure what Contact Point is?

**Q28 Mr Timpson:** Contact Point is effectively a database holding information about children.

**Ms Marshall:** We do have that in Scotland.

**Mr Towler:** I am not sure if it applies in Wales.

**Sir Al Aynsley-Green:** The only point I would make is listening to the views of children and young people themselves about Contact Point and our information suggests they are very concerned about that eventuality and information being leaked or accessed by people who may be inappropriate. At the end of the day what really matters in child protection is how individual staff work together, and shared information is key to this. We need to see the impact of the introduction of Contact Point. The collocation of staff is essentially fundamental to how we can get better child protection.

**Ms Marshall:** Information sharing has been a constant issue in Scotland. There was a part of a Protection of Vulnerable Groups Bill recently that was about mandatory information sharing. That part of the Bill was withdrawn partly because myself, as well as many other child and youth organisations, were concerned that the threshold was too low and, as Sir Al said, young people were very concerned that information would be shared too widely. The other thing was it did not actually hit the mark. All my experience in child protection the main issue has been getting information from GPs and GPs would not have been affected by the Bill because they are self-employed. We have to make sure that whatever we do about information sharing it is targeted and that the threshold is not so low that young people will not access services for fear of breach of confidentiality.

**Q29 Dr Harris:** I am sorry I have not been here but I have another Select Committee dealing with science, completely different. I wanted to ask Sir Al about something that we have reported on which is the rights of children in respect of religious freedom in schools. We have argued that Gillett-competent children should not be made by the school, or indeed by their parents, to worship if it is not their choice. Your evidence did not say anything on that and I was wondering whether you are aware the Children's Rights Alliance have raised it and whether that is something you are aware of, the act of compulsory collective worship in schools?

**Sir Al Aynsley-Green:** It is something we are aware of but we have not got evidence in terms of what the views of children are that I can share with you today.

**Q30 Chairman:** Can I ask about you the UN Convention and its incorporation into domestic law. Beverley Hughes said last year that it would be a fruitless task. How do you respond to that?

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**Ms Lewsley:** Obviously we now have a Bill of Rights that has been produced in Northern Ireland and I suppose for us ten years ago we would not have thought that that was possible because of the political make-up in Northern Ireland and we are worried will it actually be swayed how it will be kept on the shelf and gather dust. That was our opportunity to embed the UNCRC in a Bill of Rights for Northern Ireland and see that come to fruition. That is the stage we are at. We are worried that it could be slowed down and not brought to fruition but at least we have a Bill of Rights that is in black and white and the UNCRC is embedded in that and it is how we move that forward. Depending on the length of time that takes then we might have to look at what other mechanism we need to look at to try and challenge government to get it into domestic law.

**Q31 Chairman:** There is a devolution issue here in relation to the Bill of Rights debate generally which is dealt with at length in our own reports on the Bill of Rights and Freedoms which we published last summer. Coming to the devolution dimension, does it make things more difficult when it comes to incorporating things like the Convention?

**Mr Towler:** It makes it challenging. I have listened to debates from lawyers in the Welsh Assembly government who talk about the difficulties of UNCRC and enshrining it in a measure that the Assembly might want to take forward. The question there is about who is it difficult for. Is it difficult for you as a lawyer or is it about us as the Welsh Assembly government getting this right for children? The danger, particularly with devolved administrations, is we might find devolved administrations moving at a different pace and what we need is an issue around children's rights which applies across the UK.

**Q32 Chairman:** I suppose that is a general question for Al. As far as England is concerned, we have got the Bill of Rights debate which is rumbling along or rather not rumbling along because we still have not seen the government's green paper on this although it has been promised for an awful long time. Is there a risk that the progress of children's rights generally becoming bogged down whilst we wait for the wider constitutional reform issues around the Bill of Rights debate which may or may not make specific reference to children's rights?

**Sir Al Aynsley-Green:** I think that one has to accept the reality of parliamentary process and this may well take some time. My first important point is just to remind you what happens in Sweden. I know Sweden is held up repeatedly as a Holy Grail for children in society but I have been there several times as Children's Commissioner to drill down to examine what happens there. In the Swedish

parliament there is an office in the Riksdagen in Stockholm whose only function is to UNCRC proof every aspect of emerging legislation and budget from government. There is a children's impact assessment of legislation. We feel there is great mileage to follow that model at least in the short-term before this legislation comes through, to take a much more robust process to look at emerging legislation from the children's perspective and especially the children's rights perspective. My second point is we know the UN Committee agreed with us that there is tremendous ignorance about the UNCRC in this country. We know that less than 25 per cent of children and young people know anything about it and what is even more alarming to me as I tour the country and in my speeches I ask dip stick questions of the audience how many of you have read and understand the UNCRC. I can tell you it is a minority of professional staff working every day of their lives with children who understand what the UNCRC is all about. The challenge for us is to increase awareness, and the government is held to account by the concluding observations on this, but also to show how by using a rights-based approach you can get a better outcome for children. I give you one example that I am very persuaded about and this is the Rights Respecting Schools Programme which DCSF has supported. I think there are about 600 schools across the country on a programme that has its origins in Cape Breton in Canada. I have been to many schools, especially in Hampshire where it started, which demonstrates how by using a rights-based culture in a school you can transform behaviours and outcomes. The UNCRC is not taught on a Friday afternoon as part of citizenship; it is lived with even very young children being brought up to understand respect for each other, responsibilities for each other as well their rights. In places like Andover they are so persuaded of this they hope to make the town the first rights respecting authority in the country. I think the legislation is just one approach. We have to tackle the underlying culture and above all show how by using a rights-based approach we get better outcomes.

**Q33 Chairman:** We heard in Northern Ireland about BORIS from the Northern Ireland Human Rights Commission when they were giving evidence to us a couple of weeks ago and the importance of a bill of rights in schools there.

**Ms Marshall:** The Scottish government are considering right-proofing all legislation and possibly including a statement on children's rights in policy memoranda accompanying Bills. They have been trialling a children's rights impact assessment so they are starting the process.

**Chairman:** Thank you very much. It has been a very useful session for us. We will be having a session with the minister in a few weeks time.

**Tuesday 24 March 2009**

Members present:

Mr Andrew Dismore, in the Chair

Bowness, L

Dubs, L

Lester of Herne Hill, L

Morris of Handsworth, L

Onslow, E of

Prashar, B

Dr Evan Harris

**Memorandum submitted by Department for Children, Schools and Families**

*Witnesses:* **Baroness Morgan of Drefelin**, a Member of the House of Lords, Parliamentary Under-Secretary of State, Department for Children, Schools and Families, and **Ms Anne Jackson**, Director, Child Wellbeing Group, Department for Children, Schools and Families, gave evidence.

**Q34 Chairman:** Good afternoon everybody. I am joined by Baroness Morgan of Drefelin, Parliamentary Under-Secretary of State for the Department for Children, Schools and Families, and Anne Jackson who is the Director, Child Wellbeing Group, Department for Children, Schools and Families, in our second evidence session on the issue of children's rights. Welcome to you both; do you want to make any opening statement or shall we get straight on.

**Baroness Morgan of Drefelin:** The advice I had was that the Committee were quite keen to get straight on with it so I am happy to do that.

**Q35 Chairman:** Very good, okay. Perhaps we will start by asking you about UNCRC who found a "general climate of intolerance and negative public attitudes towards children" in the UK. Why do you think that is and what are you doing about it?

**Baroness Morgan of Drefelin:** Sadly we know, for example, when we look at the research that Barnardo's did recently codifying some of the attitudes of young people in our country that generally speaking attitudes can be very critical and negative about young people, and that is why as a government we are working extremely hard to change that perception. For example, one of the concluding observations from the UN Committee on the Rights of the Child, to whom obviously we went recently to make our five-year account of how we are working towards the Convention, was that we should be working more to raise awareness of a number of issues, one being the need to work to change the perceptions of young people, so as a department we are working with other departments and a number of different agencies to literally develop PR and communication campaigns which can change the perception of young people. We know that young people around the UK make a tremendously positive contribution to our society; we know that the vast majority of young people behave well at school, achieve, make great contributions as volunteers, and what we want to be able to do through things like a National Youth Week, by working with NGOs and young people's organisations is help to make that more widely understood. We feel very strongly that there is an awful lot more as a government that we could do.

**Q36 Chairman:** Some 70 per cent of press comment about young people is negative according to certain research. What can you do to try and change that?

**Baroness Morgan of Drefelin:** One of our proposals is to work together with youth organisations to create a National Youth Week. If I give an example around behaviour we know that the vast majority of young people behave very well, so we have been working with local media who are sometimes more receptive to positive stories about young people to get positive stories in the local media, but it is a real challenge and we are investing in a targeted PR and communications campaign to change that. It will be something that will be evaluated and I would have thought that the Committee would be interested to see how we do basically.

**Q37 Earl of Onslow:** The Government has said that it is not in favour of extending age discrimination to children under 18. How would extending age discrimination to cover the under-18s dilute existing protection, which is the reason given by the Government?

**Baroness Morgan of Drefelin:** If we think about a lot of policy that is designed to support young people, whether it is about providing age-appropriate education or looking, for example, at the child to adult ratios in the early years setting it is actually about providing age-appropriate services. If we were not able to do that then I cannot see that that would be a benefit and in the interests of children. I do not know if Anne wants to add anything.

**Ms Jackson:** That is essentially the reasoning because within a group of children and young people there are very different sorts of services and support that we want to give for children under-five and young people so that we are responsive to their needs as they grow up. We wanted to protect the ability to do that.

**Earl of Onslow:** I must say I completely agree with that; it is obvious that you do not provide the same sort of services to five-year olds as you do for 14-year olds.

**Q38 Lord Dubs:** Can I turn to the Laming Report? It is very clear that the professionals involved with child protection issues are under a duty to have regard to safeguard and promote the welfare of the children that they work with, and that has been

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accepted practice has it not? Does the Laming Report not show that there has been a real failure and that this whole duty has not been working?

**Baroness Morgan of Drefelin:** The Laming Report has made 58 recommendations for how the system of child safeguarding in this country can be further developed from that that was introduced following his original inquiry into the events surrounding the tragic death of Victoria Climbié. The main policy thrust that came out of that inquiry was the introduction of the Every Child Matters reforms. Importantly what Lord Laming's report has done is to make clear that that general direction of travel was correct and the right way to go, but there is an awful lot more that we need to do. That programme is a ten-year programme and we are halfway through that. He has made very specific recommendations about how local authorities and their partners should improve accountability through, for example, children's trusts and the role of local safeguarding children boards and so on, so there is an awful lot that he has had to say about the development of the social work profession as well which has given the Government—and of course as Government we have accepted every single one of his recommendations and taken urgent steps to put in place, for example, a national safeguarding delivery unit which is being headed up by Sir Roger Singleton. We are taking very significant steps now but we are also developing a detailed action plan which we will publish by the end of April, and what that will do is set out exactly how each one of those recommendations will be fulfilled. We are in no way complacent about the enormous amount of work that there is still to do to be absolutely clear that we are doing everything that we can to protect children in this country.

**Q39 Lord Dubs:** Can I just take the discussion one point further? In the National Health Service there have been some pilots of a "human rights" approach to service provision, which focuses on the rights of patients. Do you think there is scope for something similar for the child protection agencies?

**Baroness Morgan of Drefelin:** I do not know enough about those pilots. What I would say is that one of the things we are concerned about following on from the debate around the events in Doncaster and Haringey is this question of how we can make the debate around what is the most appropriate way to safeguard children in a community more open, and one of the proposals that we have made in reaction to Lord Laming's report is to look at including lay members onto the local safeguarding children boards. That we felt was a way of creating more openness and involvement in the community. I am not sure that that is necessarily answering your question.

**Lord Dubs:** Thank you.

**Q40 Baroness Prashar:** I want to move on to the area of the criminal justice system and ASBOs. ASBOs are used against children much less frequently in

Scotland and they are not necessarily a kind of entry to the criminal justice system. Do you think that there are things that we can learn from Scotland?

**Baroness Morgan of Drefelin:** Do I think we can learn from Scotland? We can learn from anywhere and everywhere to be fair. We need to be looking at cross-fertilisation of ideas within the UK, particularly as we are looking at this from a UNCRC perspective and thinking about being the UK state party co-ordinating our responses to the progress on the Convention. We obviously will think very carefully about how things go in Scotland but there is a difference between the Scottish system—not just in regard to how they use ASBOs—and our system and because they have their system of children's hearings it is fair to say we have learned from their system of children's hearings. The juvenile legal system in England now has been developed and has many more tools within it which are designed to prevent children and young people being taken into custody and being criminalised, so the answer is probably yes.

**Q41 Dr Harris:** Do you think that a child prostitute is a victim or a criminal?

**Baroness Morgan of Drefelin:** A victim.

**Q42 Dr Harris:** Why is it that they are still considered criminals by our system?

**Baroness Morgan of Drefelin:** I would hope very much that they are not.

**Q43 Dr Harris:** The CRC has recommended the decriminalisation of under-18s involved in prostitution and this was suggested by the minister in the Home Office as something they would consider during the passage of the Criminal Justice and Immigration Act. Vernon Coaker gave the assurance that the Government would give further consideration to this matter. The Policing and Crime Bill going through at the moment has a prostitution section; the opportunity has not yet been taken to decriminalise under-18s but have you had any discussions with your colleagues in the Home Office, or have your officials, about whether the opportunity can be taken to comply with the CRC recommendation and meet the needs that you and I both share, given the exchange we have just had?

**Baroness Morgan of Drefelin:** I am not completely up to date on that. Within the safeguarding directorate in the department we are working with either the Home Office or the Ministry of Justice on the development of new guidance. Can I take the opportunity to come back to you on that in more detail?

**Q44 Dr Harris:** Of course, but I just want to explore it further—and I accept that you may not be up to speed on it. The issue is that obviously if it is still a criminal offence even if you do not prosecute—and there have been very few prosecutions of under-18s—it makes it easier for those controlling prostitutes to control them because they know that they can be told they are breaking the law, and obviously the more you criminalise these things the

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further you drive people engaged in it from the police and from protection, so there is a separate debate about whether it should be criminalised. The more you criminalise it the worse the situation for under-18s; do you accept that that is a problem?

**Baroness Morgan of Drefelin:** My concern would be to look at the issue and the question entirely from the perspective of the child and the safeguarding needs of that child, so that would be the prism through which I would look at the question.

**Q45 Dr Harris:** Do you agree with the argument that might be bounced in the tabloids I suppose that decriminalising under-18s in prostitution for example—but that is not the only example I guess—sends out a message that it is okay to be a prostitute as an under-18?

**Baroness Morgan of Drefelin:** I would find it hard to imagine the Government ever wanting to give a message which says it is okay to be a prostitute.

**Q46 Dr Harris:** My question was do you accept the argument that complying with the CRC recommendation that you should decriminalise victims in some way sends out a message that it is okay, that it is acceptable to be a prostitute because you are decriminalising the under-18s?

**Ms Jackson:** I want to suggest that there are one or two things to look at here. One is the issue of criminality and right or wrong around prostitution but the other thing, sitting alongside that, is the response that you make towards any young person found in that position and the need to focus on support for that young person in responding to the situation. The issue is about balancing those two things really.

**Q47 Dr Harris:** I accept that but I come back to my question. The Standing Committee on Youth Justice which consists of, among others, Barnardo's, the Children's Society, Children's Rights Alliance, Howard League, Justice, NACRO, National Youth Agency, NCB, NSPCC, The Prince's Trust, Prison Reform Trust and so on, all argue that child prostitutes should be decriminalised in order that they can be better accessed because they are victims of rape essentially. How can it be right to criminalise the victims of rape? My question is do you, as a minister, think it is sending a message if you decriminalise these victims that it is okay to be a prostitute. Do you accept that argument?

**Baroness Morgan of Drefelin:** I cannot accept that it would ever be okay for a child to be a prostitute, that is the first point. I certainly could not accept that it was the right thing to criminalise the victims of rape, so that would be the second point, and I would always want to ensure as a children's minister that we were working to safeguard and protect the child. Those would be the three approaches that I would bring to looking at how we would take forward any requests from any other government department to deal with these issues.

**Chairman:** Perhaps you would let us have a memorandum about where you are with the Home Office because obviously there is a good opportunity with the Bill presently before the House to hopefully make some progress on this issue. Lord Morris.

**Q48 Lord Morris of Handsworth:** Just sticking with the same theme, Minister, as you know the minimum age of prosecution in Scotland has been raised to 12; will this new age limit be extended to England and Wales?

**Baroness Morgan of Drefelin:** We have no plans to look at the age of criminal responsibility. It has been ten since 1963 and the approach that the Government takes is that having the age set at ten does two things: one, it gives us the opportunity to engage in early intervention and ensure that all the opportunities that have been recently set out through the youth crime action plan can come into play at an early age.

**Q49 Lord Morris of Handsworth:** I hear your response that there are no plans but in the light of that comment how is the Government's approach consistent with the basic interests of the child?

**Baroness Morgan of Drefelin:** Our approach is to ensure that where a child starts to display early signs of offending behaviour there is the opportunity through many early interventions to support that child, whether it is through either family intervention programmes or referral to other services to encourage them to learn different behaviour. That is the process, but also where young people do engage in a serious offence that is something that we recognise we have to take very seriously and address.

**Q50 Lord Bowness:** Minister, the Convention on the Rights of the Child has called on us to establish the principle that detention of children should only be a measure of last resort. We are told by various organisations that there are over 2600 children in custody as at the end of January of this year, which does not compare very well with other European countries. Can I ask you, did the Government accept the recommendation that custody for children should only be a matter of last resort and, if they do, why have we got 2600 or more currently in custody?

**Baroness Morgan of Drefelin:** As I understand it the number of young people in custody has actually peaked and is coming down. We would be very much of the view that we want to work to reduce the number of young people who are offending and where there is an opportunity to offer services and encourage those young people back into school, back into normal behaviour alongside their peers and their community; that would be something that we would want to do. Where a young person commits a serious offence, having already been through the system, possibly a referral order, possibly having already exhausted the out of court disposals that are available through the system, then as a last resort and also in order to balance the needs of the community it is right that there should be the option of a custodial sentence.



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**Q51 Lord Bowness:** Thank you for that, Minister, but you are talking about sentences and we are actually also talking about custody. The number of children in custody on remand, we are advised, has increased by over 40 per cent in seven years and, what makes it even worse, is that the vast majority of those who are held on remand in custody are then acquitted or given a non-custodial sentence. What are we going to do to stop that manifestly unfortunate situation?

**Baroness Morgan of Drefelin:** I do not have the figures for young people on remand but it is regrettable if, as you say, those figures are increasing. I will happily look further at it and come back to you on that.

**Q52 Earl of Onslow:** Minister, I accept that you are not Justice Minister but during the passage of the last Criminal Justice Bill it came out that the United Kingdom has a hundred times greater percentage of children in custody than do the Fins, for instance, and it was obvious then—and it appears to be not getting any better—that this question of last resort is not being applied. We cannot have an increase of 41 per cent in seven years of children being locked up without something being seriously wrong. Is your department hammering on the doors of the Justice Department saying “Look, I am responsible for children and it is disgraceful that a large number of children should be locked at, and the moment they are locked up they are on the fast track to further criminality”? We know all of that; it is ridiculous to have our children locked up.

**Baroness Morgan of Drefelin:** Can I reassure you that the Department for Children, Schools and Families works very closely with other government departments to make sure that the interests of the child are promoted. The best example of that is the Youth Crime Action Plan which was published towards the end of last year, with significant investment, and what that plan is all about is prevention, support and making sure that young people are given the opportunity to make the most of what their communities have to offer them to play a full part in education and that we take all possible steps before we consider custody.

**Q53 Earl of Onslow:** Did it say too many children are going to prison?

**Baroness Morgan of Drefelin:** The aims are clear and that is to reduce offending; if we can succeed in reducing offending we help children achieve what we call our Every Child Matters outcomes, which are basically about living a full life and taking advantage of all the opportunities that our communities offer us, so yes we do not want children to be criminalised or imprisoned.

**Q54 Lord Lester of Herne Hill:** You have not answered the Earl of Onslow’s question at all; the question is have you or your colleagues in your department sat down with the Ministry of Justice ministers and officials and said that the record at the moment is disgraceful; we are out of step with the rest of Europe, the figures are appalling, what can we

do about it? That seems to me to be what we are really asking you, what have you actually done about it?

**Baroness Morgan of Drefelin:** We have produced the Youth Crime Action Plan in partnership with—

**Q55 Lord Lester of Herne Hill:** Have you met with the Ministry of Justice and discussed the figures?

**Baroness Morgan of Drefelin:** I have not met with them.

**Q56 Lord Lester of Herne Hill:** Has anyone in your department or not?

**Baroness Morgan of Drefelin:** Beverley Hughes actually played a lead in developing that strategy so she works very closely with other government ministers on this matter.

**Q57 Lord Bowness:** Minister, just to digress slightly following the questions that have been asked, it is not really a question of strategies or trying to stop people offending, it is what do you do when somebody has offended or, in the case when they are on remand, is alleged to have offended. Is it not a case that really the resources are all in the wrong place? There is all this money being spent on keeping people in custody and not really adequate money being spent on alternative ways of dealing with the problem.

**Baroness Morgan of Drefelin:** I would disagree because we would see the continuum of investment from Sure Start Centres and Children’s Centres through to family intervention projects, support to help parents deal with children when they are showing the earliest signs of offending, support with helping children back into school when they suffer exclusion which we know is an early indicator of potential future criminality, so there is a continuum and when you look at the investment that we have made in children’s services you can see that we have a very strong commitment to ensuring that all children have the opportunity to thrive and do well, and that means making sure that they do not end up in custody.

**Q58 Chairman:** Dealing with the point that everybody has the opportunity perhaps you could just clear up one minor point: why do children in custody not have a statutory right to education?

**Baroness Morgan of Drefelin:** In fact we are through the Apprenticeships and Learning Bill, which is currently in the House of Commons, in effect creating a system—

**Ms Jackson:** We are bringing children in the criminal justice system within the general bounds of education provision, so there will be responsibilities to ensure that those children access their education as do other children, including those with special educational needs.

**Baroness Morgan of Drefelin:** The point about that is it is a very important change because what it means is that local authorities who have responsibility for the provision of education in the community will have responsibility for the provision of education in the secure estate. What that will

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mean also is that for young people who are in custody the home local authority will have a responsibility to ensure that they are provided with a suitable education while they are in custody and also that when they leave custody their needs are properly catered for. That is a very important development and it is one where you can see the role of our department really making a difference.

**Q59 Lord Morris of Handsworth:** Will resource be allocated to this new duty that local authorities will have?

**Baroness Morgan of Drefelin:** Absolutely; we cannot expect local authorities to deliver education—

**Q60 Lord Morris of Handsworth:** We are just seeking reassurance on the record, Minister; that is all.

**Baroness Morgan of Drefelin:** Yes. We invest really significantly in education and we would see investing in education in the secure estate as extremely important.

**Q61 Lord Morris of Handsworth:** I am talking about the additional resource for the additional responsibility that local authorities will have under the Bill when it goes through.

**Baroness Morgan of Drefelin:** Exactly how that will work I do not have to hand but I can assure you that we are very, very careful about putting new responsibilities on local authorities without providing additional resources.

**Q62 Chairman:** There will be an uplift in central government support to local authorities to meet the additional cost of educating children in custody.

**Baroness Morgan of Drefelin:** I am afraid I am not an expert on the way that local authority formulas work but I can certainly come back to the Committee on that.

**Q63 Chairman:** We would like a memorandum on that as well.

**Baroness Morgan of Drefelin:** We will be happy to do that.

**Q64 Lord Bowness:** Minister, last year—and you may want to write to the Chairman about this because I am not sure whether strictly speaking it is your department or not.

**Baroness Morgan of Drefelin:** I will give it a go though.

**Q65 Lord Bowness:** I am sure you will. The UK has removed its reservation on the Convention on the Rights of the Child which provides for adults and children to be detained separately, and the Government has said, I understand, that this “gives formal recognition to our achievement in setting up a discrete custodial estate for young people” and your own memorandum referred to that as well. We have had evidence before the Committee from certainly Northern Ireland and Scotland of mixed units still existing, particularly in connection with detoxification wings in prisons because there are no separate facilities for girls. That would seem to be a

bit of a gap between what is actually happening and the Government’s aspiration. Can you tell us where we are on all of that?

**Baroness Morgan of Drefelin:** We need to be clear about our role as the state party co-ordinating our responses to the UN Convention, so we are clear about what we deliver for England and Wales and in order to move the reservation obviously we consult with Northern Ireland and Scotland. I will happily come back to you on the detail of that but the reason that we withdrew the reservation was because we want to fulfil the Convention.

**Q66 Lord Bowness:** I should say Northern Ireland has said that “boys under the age of 18 in Northern Ireland continue to be held with adult males in prison service custody” so that is in conjunction with the question of girls being placed in adult detoxification wings in prison where there are no separate facilities. We have had specific evidence on that so if this could be covered I am sure the Chairman and the rest of the Committee would be very grateful.

**Ms Jackson:** I was just going to add that we would obviously consult with Scotland and Northern Ireland in terms of their responsibilities for their juvenile estate. Before lifting the reservation ministers from the four nations will be meeting periodically to look at the response to the UNCRC and the progress against all of the articles.

**Q67 Earl of Onslow:** We now come to questions of restraint. It appears that the Government’s response to the independent review concluded that “a degree of pain compliance may be necessary in exceptional circumstances” but recognised that this would be “irreconcilable” with the UN Convention on the Rights of the Child and would be unpopular with the Children’s Commissioners, JCHR and others (pages 7-8 of the review report).

**Baroness Morgan of Drefelin:** I do not have the review to hand to see what that quote is but I have looked at the review, obviously, and we have accepted all the recommendations. We are working to implement them.

**Q68 Chairman:** Except one which is the key one, which is whether children could be restrained not for the purposes of preventing harm to themselves or others but using pain as part of the distraction technique, punching them on the nose.

**Baroness Morgan of Drefelin:** The independent review did conclude that in very particular and rare circumstances—

**Q69 Chairman:** But they accepted that as irreconcilable with the UNCRC and also of course with our own Committee.

**Baroness Morgan of Drefelin:** I am not familiar with that exact quote I am afraid.

**Q70 Earl of Onslow:** This is a report of our Committee, this JCHR, and we made this quite clear, and what the Government has said is that it is not going to do anything about it. Why?

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**Baroness Morgan of Drefelin:** Sorry, Chairman, I apologise, I thought you were talking about the independent report that the department commissioned and not your report.

**Q71 Earl of Onslow:** We published a report in 2008 and we concluded that it was contrary to the UK's human rights obligations that restraint should be used in order to maintain "good order and discipline". The statutory instrument which sought to enable restraint to be used for this purpose, in order to clarify the law, the Government argued, has now been quashed by the courts. Before this, restraint was used to maintain good order and discipline 16 times between April and September 2008. The Government established an independent review and its report, and the Government's response, were published in December 2008. The review made over 50 recommendations, most of which have been adopted, including abolition of the nose distraction technique. The review concluded, however—and this is the point—that "a degree of pain compliance may be necessary in exceptional circumstances" but recognised that this would be "irreconcilable" with the UN Convention on the Rights of the Child and would be unpopular with the Children's Commissioners, JCHR and others (pages 7-8 of the review). Why?

**Ms Jackson:** That is the position. As you say, the nose distraction technique has been removed but the independent chairs of the review into restraint did conclude, reluctantly, that there were still going to be exceptional cases, particularly perhaps with older and potentially very disruptive young offenders, where distraction techniques involving so-called pain compliant methods would still be used. In accepting those the Government has been working with the secure estate to set up a new system of restraint for these secure training centres and in youth offender institutions.

**Q72 Chairman:** Do you accept that this is irreconcilable with the Convention obligations?

**Baroness Morgan of Drefelin:** I do not know that I can accept that because I think that what the review has recommended and this Government has taken on board—

**Q73 Chairman:** But do you accept it as irreconcilable?

**Baroness Morgan of Drefelin:** Sorry, are you talking about the independent review?

**Q74 Chairman:** Yes.

**Baroness Morgan of Drefelin:** The use of pain distraction and the use of restraint should occur in very particular and clearly defined circumstances.

**Ms Jackson:** The review was not giving a legal position there but they did acknowledge the tension, which we all accept, but in terms of our response to the review we accepted the recommendations of the report that this was the best way forward in terms of the interests of the young people in those institutions.

**Chairman:** That is not the question; the question is do you accept that the position now is irreconcilable with the obligations of the Convention.

**Lord Lester of Herne Hill:** Could you explain to me what they are talking about? What do we mean by "nose distraction technique" and "a degree of pain compliance"? What is that about; what do they do to the children?

**Q75 Chairman:** Punch them on the nose.

**Baroness Morgan of Drefelin:** As I understand it is literally when the staff are involved in controlling a young person and, according to the material I have seen, in order to perhaps stop a young person from biting a member of staff or another young person then pain distraction is used.

**Q76 Lord Lester of Herne Hill:** What does pain distraction mean? I am sorry, these are euphemisms, what are we talking about, pain distraction?

**Baroness Morgan of Drefelin:** It means that a member of staff will inflict pain on the—

**Q77 Lord Lester of Herne Hill:** They will assault a child inflicting some kind of injury as self defence, is that what you are talking about?

**Baroness Morgan of Drefelin:** I would not accept that they are intending to inflict an injury.

**Q78 Lord Lester of Herne Hill:** I am sorry to be so thick but I do not understand what "nose distraction technique" means and exactly what is the degree of force that is being used, with what intention and consequence?

**Baroness Morgan of Drefelin:** One of the findings from the independent review was that in order to create consistency across the secure estate and in order to answer exactly questions like that a new form of restraint should be developed that is accredited, that all staff should be trained and there should be a consistent application of these techniques across the secure estate. We have accepted the recommendations.

**Lord Bowness:** Chairman, can we just be clear because, like Lord Lester, I do not understand what nose distraction is. To be honest I thought we had got a typing error here and I thought we were talking about a noise distraction that people under a certain age can hear but those of us who are rather more past it cannot.

**Chairman:** The nose distraction technique is punching him on the nose.

**Q79 Lord Bowness:** It must be a little more subtle than that to have such a fancy title.

**Baroness Morgan of Drefelin:** The advice I received is that nose distraction is—

**Q80 Chairman:** As you said, it has been abolished now.

**Baroness Morgan of Drefelin:** Yes, but just for the record the term is used to describe pressure on the base of the nose and the Government has accepted that this technique should be ended.

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**Q81 Lord Lester of Herne Hill:** What is a degree of pain compliance about other than that? What is the degree of pain compliance that may be necessary in exceptional circumstances?

**Baroness Morgan of Drefelin:** I believe, Chairman, it is the use of wrist flexion.

**Chairman:** Bending the wrist back. Okay, let us move on.

**Q82 Earl of Onslow:** Minister, restraint was used on children around 14000 times in the 20 months between October 2006 and June 2008 in prisons, secure training centres and local authority secure children's homes. Can you be sure that it is always being used as a last resort? For your information, restraint is used disproportionately in STCs, 44 per cent of all injuries caused by restraint occur in STCs, girls comprising just seven per cent of children in custody account for 20 per cent of restraint injuries. These figures seem to me quite disturbing. Can you explain and elucidate for me?

**Baroness Morgan of Drefelin:** I like the noble Lord find it very concerning that we have the need for restraint within our secure estate and I am pleased that the Government has been able to accept the recommendations of the independent review because within those recommendations there is a clear recommendation that there should be a transformation of the training of the staff who work in these institutions and that there should be a very clear understanding of the behaviour management programme that staff should adopt. The first stage should always be de-escalation of the situation and there should always be a record of any intervention, and any restraint should also include a very clear period of reflection indeed for the individual and the staff so that there is always the opportunity for that young person to understand exactly what has happened and why it has happened, and that there should be proper record-keeping and evaluation.

**Q83 Earl of Onslow:** As you say that there is proper record-keeping, or at least that is what I understood you to say—

**Baroness Morgan of Drefelin:** I am not sure that we are satisfied that there is comprehensive enough record-keeping.

**Earl of Onslow:** You are not satisfied with the record-keeping. Have you any evidence that the numbers are falling or are they rising or are they staying constant?

**Q84 Chairman:** It seems to me that if you are not satisfied about the record-keeping they would be higher rather than lower would they not?

**Baroness Morgan of Drefelin:** Yes, they could be.

**Ms Jackson:** A recent Parliamentary question gave some figures for the use of these techniques in secure training centres in the first three months of this year and identified that out of about 350 incidents it had been used six times, so that suggests that the incidence is indeed falling.

**Q85 Earl of Onslow:** As I alluded to in my previous question it does seem that the restraint is being used disproportionately on girls; can you explain to me why that is and does it not worry you?

**Baroness Morgan of Drefelin:** Of course I am concerned about that and the advice I have had is that restraint is used in a situation where staff are concerned about the safety of the individual and particularly self-harm is an issue amongst girls. I am advised that restraint is used in order to protect girls from self-harm on occasion and that that is an explanation for that statistic.

**Q86 Earl of Onslow:** Is the potential for self-harm among young ladies or girls of the same proportion as it is for restraint? I do not know the answer to this but how much more likely are young girls to self-harm compared to young men?

**Baroness Morgan of Drefelin:** I am afraid I cannot remember the figure but girls are much, much more likely to engage in self-harm than boys. I will come back to you on that because I have not got it to hand.

**Chairman:** Okay, another memorandum. Lord Dubs.

**Q87 Lord Dubs:** I appreciate that some of our questions relate to areas of your responsibility shared with other government departments and I understand the difficulty, but I want to turn to asylum-seeking and refugee children. What role does your department play in determining policy in this area?

**Baroness Morgan of Drefelin:** We have a number of roles. First and foremost we view unaccompanied asylum-seeking children—and there are around 8000 a year in England—very much as we would any looked-after child. We have responsibility for children in care and therefore we view unaccompanied asylum-seeking children as children in care and so, for example, we have recently developed, following on from the *Care Matters* White Paper the Children and Young Persons Bill which includes a raft of initiatives that are designed to improve the outcomes for looked-after children. Unaccompanied asylum-seeking children are part of that programme and we very much hope that regardless of their immigration status while they are looked-after children they will receive all the benefits that that programme will bring.

**Q88 Lord Dubs:** Thank you. What changes do you think are necessary to ensure that the UK Border Agency complies with its new duty of having regard to the need to safeguard and promote the welfare of children? What do you think they need to do to ensure that they actually meet the duty?

**Baroness Morgan of Drefelin:** What we know is that since they developed their code of practice there has been a real improvement in the promotion of the welfare of children in the immigration system and that is relatively recent, that code of practice. When the duty comes in, all being well—because it has not happened yet—that then will make it even more clear that under the Children Act it puts the UK Border Agency on a par with any other agency.

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Obviously the UK Border Agency is a UK-wide body and that is why we had to create that duty in that way.

**Q89 Lord Dubs:** I understand that. In your submission there are some expressions you use which are a little bit vague. You talk about the UK Border Agency “keeping a close eye on progress” and “being alert to the need for further improvements in practice”. That can either mean you are doing a lot or it can mean you are not doing anything; they are rather vague expressions. Do you want to comment on that or is it too early in the day for that?

**Ms Jackson:** If I could just comment, a good deal of preparatory work has gone into the introduction of the code from January this year and what specifically it requires all UKBA staff to do is to keep children safe from harm by ensuring that immigration procedures are responsive to the needs of children and young people and identifying and being able to identify young people at risk of harm and then knowing who to refer on to if they identify such a young person. This code, as I say, is quite new so we will be looking to see what impact it has and then to strengthen it further in the light of the new duty.

**Q90 Lord Dubs:** That is a better response than the slightly vague terminology to which I referred. Can I ask one more question and it is really about the detention of children and families. There was a pilot in Kent, Millbank, which the Government put forward as being the answer to Yarl’s Wood. Could you tell me something about where we have got to with that and what can we learn from that?

**Baroness Morgan of Drefelin:** I would say we were very disappointed with the results of that pilot. In truth we were hoping that it would provide a body of good practice that could help to promote further voluntary removal of families so that detention of children with families would not be as necessary to fulfil immigration policy. Through the pilot—I do not know whether there is going to be a formal report—we know that it was not very effective.

**Q91 Lord Dubs:** Thank you for that. It is very disappointing because there was so much concern about keeping children in Yarl’s Wood—you will be familiar with all the arguments that have gone on—and here we have had one of your fellow ministers say you have got a new approach, we are going to try it out in Kent, and that may be the way to avoid children being detained, but now we find it does not seem to have worked and we do not actually know why. Is it possible we could have a report on that because a lot of us think that detaining children is normally unacceptable and if this was the way forward it is a pity it has failed.

**Baroness Morgan of Drefelin:** We are not giving up, that would be the right thing to point out. There is going to be another pilot in Glasgow so we are continuing to try and develop new approaches.

**Q92 Chairman:** When you say “disappointed with the pilot” disappointed from what perspective, disappointed from the perspective of looking after

the children well or disappointed from the perspective that you could not get them to go home voluntarily?

**Baroness Morgan of Drefelin:** Disappointed because the hope was that we could develop an approach which would further minimise the number of children who would be detained.

**Q93 Lord Lester of Herne Hill:** Could you clarify one thing for me? I see this imposition of a duty on the UK Border Agency but is it absolutely clear—and it may not be you but the Home Office would know the answer—that the British Airports Authority staff have not had delegated to them anything to do with asylum or immigration, so that the responsibility which you are placing on the Border Agency is theirs and theirs alone, or is there some grey area in which some of this discretionary policy could be exercised, not by the Border Agency but actually by BAA staff? That is an issue which is very important, obviously, in the context of the current Bill—does Ms Jackson or the Minister know the answer to my question?

**Baroness Morgan of Drefelin:** No. I would have no reason to believe that any part of this duty could be delegated to another authority, but I would want to check that.

**Q94 Lord Lester of Herne Hill:** Could you do it really quickly because we have this issue next week in the Lords.

**Baroness Morgan of Drefelin:** Certainly, I will do it very quickly.

**Q95 Dr Harris:** On this Millbank pilot you said you were disappointed; has it been evaluated and has that evaluation report been published, because it is not really a pilot unless you do both of those things, is it, it is just a secret experiment otherwise.

**Baroness Morgan of Drefelin:** We do not want to be secret about it at all. I do not know exactly how it is going to be reported.

**Q96 Dr Harris:** Have you seen a report which leads you to conclude the results are disappointing; if so when do you plan to publish it so that we can see where you are coming from?

**Ms Jackson:** The report is being looked at now by some independent consultants. We had hoped it would be ready a little bit before now but it is not yet, but obviously we will be very happy to share that once it comes round. The reason why we know it has been disappointing so far is because the throughput of families has been very small and so inevitably that means that we have not been able to test it out. The other thing I would say is that we are going to be looking at the lessons from this for the Glasgow pilot—

**Chairman:** You will let us have a copy of the report on this pilot.

**Q97 Dr Harris:** You cannot really start the new pilot in Glasgow until you have published the evaluation of the previous pilot, can you; otherwise how do we know that you are adjusting the scheme to take into account the conclusions?

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**Ms Jackson:** The Glasgow pilot is being developed now, it is still under discussion, and so it will be in time for the report into the Millbank pilot to feed in.

**Dr Harris:** I hope so.

**Lord Lester of Herne Hill:** Could I switch, please, to ask you a question about the interpretative declaration proposed to be made to the Disabilities Rights Convention? The Minister, Jonathan Shaw MP, explained that it was proposed to make an interpretative declaration that the UK general education system includes mainstream and special schools, and that would make it clear that special schools are considered part of the UK's general education system and that parents have the right to request a preference for a special school. He went on to say "A reservation is proposed to allow for circumstances where disabled children's needs may best be met through specialist provision, which may be some way for their home—so they will need to be educated outside their local community. This also maintains parental choice for schools outside the local community." I do not know whether the actual terms of the reservation and the interpretative declaration have been published?

**Chairman:** They have been circulated.

**Q98 Lord Lester of Herne Hill:** In that case I apologise for not having noted that, but the question is this: as you probably know the Human Rights Commission among others has raised the problem in their view that a reservation would contradict the Government's commitment to inclusive education, so the question is how you reconcile the Government's stated commitment to inclusive education for children with disabilities with the proposed reservation and interpretative declaration the UN Convention. How do you square the two?

**Baroness Morgan of Drefelin:** I will have a go, though I am not sure whether I will satisfy you. First and foremost we are looking at around about one per cent of all children with disabilities who are educated in special schools. The number of special schools has actually fallen but the percentage, the one per cent, has remained constant for some time. Therefore the vast majority of disabled children are educated in the mainstream and in their communities. We feel strongly that to offer the opportunity for a very, very small proportion of disabled children to attend a special school that might cater specifically for their particular needs when 99 per cent of others are in the mainstream is not undermining. All those children who attend a special school almost certainly, should they wish or should their parents wish, would be able to attend a mainstream school, so it is about making sure that we are providing the education facilities and services that suit most or all disabled children.

**Q99 Lord Lester of Herne Hill:** Is the language of the reservation, which I have not read, sufficiently tightly drawn to make it quite clear that it is only in that very tiny minority of cases that the Government would ever contemplate putting children into a

special school in the way that is reserved here? I have not got the text, I do not know whether you have the text in front of you.

**Baroness Morgan of Drefelin:** I assume the text I have got is the same as the text that other people have received and it starts by stating that "The United Kingdom Government is committed to continuing to develop an inclusive system where parents of disabled children have increasing access to mainstream schools and staff which have the capacity to meet the needs of disabled children" and it goes on from there. We have stated our commitment to an inclusive mainstream system of education but because we are of the view in Government that we cannot sign up to a Convention and just do our thing, we have to be clear, that is why we are including the interpretative declaration.

**Q100 Dr Harris:** On to ground you will be familiar with now; I want to ask you about the concept of giving competence, phrasal competence to, for example, girls who are mature enough and have the understanding to make their own decisions about access to contraception and abortion. Are you familiar with the concept?

**Baroness Morgan of Drefelin:** Possibly not as familiar as you are.

**Q101 Dr Harris:** After the *Gillick* case there was this provision whereby it was decided that a doctor can provide contraceptive advice to a girl, even if she is below the age of 16, without parental knowledge or consent if the child does not want to allow for that—you are with me Ms Jackson on this—as long as the doctor is of the view that there is sufficient capacity, maturity and understanding. That is established in law; is there any argument why the threshold should not be the same when it comes to children's rights to decide whether they want to pray in school?

**Baroness Morgan of Drefelin:** Obviously we have thought about this very carefully and it is a matter that comes up for debate from time to time. We had a debate about it in the Education and Skills Bill when it came through the Lords last time and I appreciate that people do have a view that the same argument should apply to participating in religious education.

**Q102 Dr Harris:** Or collective worship, both.

**Baroness Morgan of Drefelin:** I appreciate they are different. We have thought long and hard about it but we do feel that on balance it is not right that we should put schools in the position where they have to make those decisions and that we should continue with the position where parents can withdraw their children.

**Q103 Dr Harris:** Why is that, why do you not think schools should be put in the position to deal with the issue of compulsory prayer for girls when they are already in that position with regard to contraception advice confidentially from the school nurse. Why is it that you feel that, what is the justification for that position and the distinction between abortion and

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contraception on the one hand: 15-year olds allowed, not wanting to pray to a God they do not believe in: 15-year olds not allowed to opt out?

**Baroness Morgan of Drefelin:** It is a balance of the practical running of the school and the challenges that schools face. There are very strong reasons for maintaining the situation that we have.

**Q104 Dr Harris:** What are those strong reasons other than the practical issues that you claim apply to schools?

**Baroness Morgan of Drefelin:** They are very practical reasons.

**Q105 Dr Harris:** Which are?

**Baroness Morgan of Drefelin:** To ask teachers to make those kinds of judgments when, in fact, if the parents wish to withdraw their child up to the age of 16 from religious worship then they can do that without any problem.

**Q106 Dr Harris:** Where is it with human rights—because that is what we are talking about here, the right of someone not to be forced to pray to a God they do not believe in, or not to be allowed to pray to a God they do believe in when other people have that arranged for them in schools—where is it that practical considerations, even if I accept that this was a difficulty, should trump fundamental human rights? What other examples are there? It is convenient to restrain children, it is practical, but we do say that they should not be physically restrained. What is the justification in this case?

**Baroness Morgan of Drefelin:** What I would say—and I am not sure that I can satisfy you so perhaps I have to accept that—is that we do accept that parents bring up children in this country, not the Government and not schools and we would, up until this age, expect parents to be sensitive to the needs of their children but it is their responsibility up until 16.

**Q107 Chairman:** Can we move on to the UN Convention and the widespread calls for it to be incorporated into UK law, but the Government thinks that is fruitless. Why do you think that is the case?

**Baroness Morgan of Drefelin:** I am not sure I would accept the word “fruitless”.

**Q108 Chairman:** It is your word, a “fruitless task”.

**Baroness Morgan of Drefelin:** Is it my word?

**Q109 Chairman:** It is Beverley Hughes’ phrase.

**Baroness Morgan of Drefelin:** What I would say is that we are extremely committed to making the UN Convention on the Rights of the Child a reality and we do that through a number of different vehicles, whether it is through our own legislation, the Children Acts of 2004 and 1989, other Education Acts and other examples and through our policies like Every Child Matters, like Care Matters that I was talking about earlier on, so we do not see that we need to incorporate the Convention into law in order to honour the obligations.

**Q110 Chairman:** There are specific implementation plans for Scotland and Wales but not for England, and the Children’s Plan for England takes account of some but not all of the CRC recommendations. Why have you decided not to draw up a strategy for implementing all the recommendations for England?

**Baroness Morgan of Drefelin:** Do you mean the recommendations from the Committee?

**Q111 Chairman:** From the Convention on the Rights of the Child, including the observations.

**Baroness Morgan of Drefelin:** We have produced a document called *Children’s Plan: One Year On* which is looking at progress with the Children’s Plan and to be clear the Committee were extremely pleased with the Children’s Plan and did recognise that we had made an enormous amount of progress, and they did give us very important feedback which we take very seriously. In our *Children’s Plan: One Year On* document we have set out clearly how we will be taking forward the concluding observations, but taking account of the devolved administrations and as we are the co-ordinating state party I am meeting the ministers from the devolved administrations in early summer to discuss how we can produce a clear articulation of what the UK’s response to the concluding recommendations should look like.

**Q112 Chairman:** One last question from me on the consultation paper on child poverty. This envisages placing a duty on local authorities to adopt a target for reducing child poverty in its area and a strategy for achieving that target. If a local authority failed to adopt a target or a strategy to achieve it, would that failure be subject to judicial review?

**Baroness Morgan of Drefelin:** I will have to defer to Anne.

**Ms Jackson:** The consultation paper invited views on a number of options for highlighting child poverty amongst local authorities and targets were one such option, a strategy and a local duty were others. We are just now looking at the responses to that consultation before ministers decide which way we go forward. In terms of an authority not doing its utmost to eradicate child poverty the main losers will be obviously the children themselves plus the impact across a whole range of things that the authority is going to try and achieve.

**Q113 Chairman:** But that is not what I asked you; I asked you would that failure to adopt a target or a strategy, whichever it happens to be, be judicially reviewable?

**Ms Jackson:** Ministers have not decided what response they are going to take in terms of local authority duties or strategies but, broadly, any obligation on local authorities or any failure to make progress would be subject to the same sort of range of performance monitoring and regulatory instruments as applies across the whole range of authorities’ businesses.

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**Q114 Chairman:** What about judicial review?

**Ms Jackson:** It depends on the way in which a duty or target comes out. At the minute targets are not susceptible to judicial review and local area agreements are not susceptible to judicial review.

**Q115 Lord Lester of Herne Hill:** That is not correct. If you look at the case of the *Family Planning Association (Northern Ireland)* about abortion you will find the Court of Appeal in Northern Ireland judicially reviewed a failure even to try to hit the target under a general target duty, so it is not quite true although I appreciate your difficulty in answering a legal question. Can I just ask you this: when you look at the question the Chairman has asked you about not incorporating the words of the Child Convention will you please go through each article and explain in due course in writing to us how each article is given sufficient domestic legal effect to

make it unnecessary to incorporate the Convention, because only then can we really be satisfied by that question's answer.

**Ms Jackson:** Apologies, I was talking about the local area agreements system.

**Q116 Lord Lester of Herne Hill:** I know, but I was going back to the earlier question about why they are not going to incorporate the Convention. We need chapter and verse as to why it is not necessary so can we be given chapter and verse, please, going through it article by article to show us that there are effective domestic legal remedies if that particular provision is breached because then we will understand the Government's position in saying it is fruitless to incorporate it in general. We need to have chapter and verse.

**Baroness Morgan of Drefelin:** We will do our best.

**Chairman:** Okay, you will do your best. Thank you very much, the evidence session stands adjourned.

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# Written evidence

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**Letter from the Chairman to Baroness Morgan of Drefelin, Parliamentary Under Secretary of State,  
Department for Children, Schools and Families**

Thank you for appearing before the Joint Committee on Human Rights on 24 March. As I indicated on the day, there are a number of areas arising from the session in which we would like further information. I also have a number of questions dealing with matters which were not covered in oral evidence.

The issues arising from the oral evidence are as follows:

- Q43—you offered more information on guidance relating to child prostitutes
- Q51—you offered more information on recent trends in the number of children held on remand
- Q62—you offered more information on the financial implications for local authorities on extending the statutory duty to education to custodial establishments
- Q65—you offered more information on the steps being taken to implement changes arising from the Government’s withdrawal of the reservation to Article 37(c) of the UNCRC, given the evidence we have received that children are being held with adults in some institutions in Northern Ireland and Scotland
- Q69—we would be grateful for your view on whether you agree with the independent review of the use of restraint in secure training centres that the use of pain compliance was “irreconcilable” with the UNCRC (pages 7–8 of the review)
- Q86—you offered more information on the reasons why girls in custody were more likely than boys to self-harm
- Q93—you offered to check whether asylum or immigration duties have been, or could be, delegated to BAA staff
- Q96—we would be grateful to receive a copy of the review of the Millbank pilot or, if it is not yet available, an indication of when we might receive it
- Q116—we wish to receive an analysis of the domestic legal remedies available in relation to breach of each article of the UNCRC.

Our additional questions are as follows:

- What steps are you taking to awareness of the UNCRC in the UK?
- Are you intending to establish a stakeholder’s group to monitor progress in dealing with the CRC Committee’s concluding observations, as exists in Scotland?
- How were the CRC Committee’s recommendations prioritised, in order to arrive at the list in Annex A of “The Children’s Plan—a Progress Report”?
- In its response to the independent review of the use of restraint, the Government accepts in principle that any restrained young person should be seen by a registered nurse or medical practitioner within 30 minutes of an incident, but states that “any establishment will need to form a judgement whether it necessary to do so in particular cases” (rec 37, page 19). Can you explain why establishments should be able to continue using their discretion as to whether or not to require restrained young persons to be medically examined?
- Similarly, why has the recommendation that “all injuries should be photographed” (rec 38, p19) not been fully accepted?
- Can you provide more detail of the work which is being done to prepare for ratification of the UNCRC Optional Protocol on the sale of children, child prostitution and child pornography?
- Why was the rule requiring those who join the armed forces at 16 to commit to a minimum of six years service, whilst those who join at 18 need only serve a minimum of four years, reinstated? And what steps have been taken to inform the CRC Committee that the rule has been reinstated, given that the Committee welcomed the lifting of the rule in its Concluding Observations on UK compliance with the Optional Protocol to the UNCRC on the involvement of children in armed conflict?

**Letter to the Chairman from Baroness Morgan of Drefelin, Parliamentary Under Secretary of State,  
Department for Children, Schools and Families**

Thank you for your letter of 2 April requesting further information from the Department on matters relating to children's rights.

I was pleased to attend the JCHR hearing on 24 March and I hope we were able to convey the Government's commitment to the UNCRC and our ambitions to make children's rights a reality in the UK.

We have made significant progress since ratification of the Convention on the Rights of the Child, as highlighted by the UN Committee during the hearing in Geneva. They welcomed the Government's progress in implementing the UNCRC and our ambitions to improve the lives of all children and young people. The lifting of the final two reservations relating to immigration and children in custody with adults is proof that the Government is delivering for all children, including the most vulnerable, such as asylum seeking children and children in custody.

We have also received confirmation from the UN Secretary General on the ratification of the Optional Protocol on the sale of children, child prostitution and child pornography.

However, I hope it was also clear when we met that I believe there is no room for complacency. We know there is more to be done to realise our ambitions for children and young people. All four nations in the United Kingdom have developed—and are now implementing—far-reaching, long-term strategies to deliver improved outcomes.

Our ambitions for children as set out in the Children's Plan, along with our priorities for taking forward the UN committees Concluding Observations, will enable us to take huge strides in our goal to make this country the best place in the world for children and young people to grow up.

I attached our response to your request for further information.

ADDITIONAL INFORMATION TO THE JOINT COMMITTEE ON HUMAN RIGHTS

*Q43—you offered more information on guidance relating to child prostitutes*

*Q43 Response:* As noted during the evidence hearing, this issue has arisen during the passage of the Policing and Crime Bill, and we have underlined our reasons for maintaining the current law in this context.

The discussion at the JCHR hearing understandably focused on the child protection issues in favour of amending the current law. We are aware of the arguments in favour of amending the law so that it would no longer be possible to prosecute children for loitering and soliciting, however, there are also some powerful arguments for maintaining the status quo.

We have made clear that children who have been forced or coerced into loitering and soliciting by traffickers or pimps should always be treated as victims. This is reflected in, and has been established as current practice, by guidance issued by the Department for Children, Schools and Families in 2000 on Safeguarding Children in Prostitution, which is in the process of being updated. Since the guidance was issued, the number of prosecutions and convictions of children for loitering and soliciting has fallen significantly, so that the criminal law is now used only in exceptional cases. In 2007, one child was convicted, and one was cautioned for this offence.

It is primarily for these exceptional cases that the current law must be retained. These cases could involve prostitutes who, for whatever reason, have refused the support and protection of social services or voluntary organisations, and are persistently found soliciting on the streets. In these cases, criminal justice intervention is often the most appropriate way of ensuring that they can be removed from the street and any immediate danger, and may also offer them the prospect of court intervention that actually makes a difference.

We want to ensure that the approach taken is one that ensures the best interests of all children involved in prostitution. The current approach achieves this and we are keen to guard against any adverse consequences that may arise through a change in the law which would prevent criminal justice intervention in the exceptional cases where it may be necessary to protect children who are victims. Together with colleagues from the Home Office and the Ministry of Justice, we are continuing to consider this matter fully and continue to keep the issue under review through regular engagement with relevant stakeholders, including Local safeguarding Children's Boards, ACPO, CPS and children's organisations.

*Q51—you offered more information on recent trends in the number of children held on remand*

*Response* : It was suggested that the number of young people in custody on remand had increased by over 40 per cent over a seven year period. Data provided by the Youth Justice Board indicates that during the last seven years there was a 10 per cent decrease. Details are provided in the following table:

YOUNG PEOPLE REMANDED IN CUSTODY OR TO SECURE CONDITIONS, 2002–08							
	2002	2003	2004	2005	2006	2007	2008
Total	5638	5513	5721	5605	5512	5368	5102

The collated data does not indicate how many young people remanded in custody or to secure conditions were acquitted or received a non-custodial sentence.

*Q62—you offered more information on the financial implications for local authorities on extending the statutory duty to education to custodial establishments*

*Q62 Response*: The Apprenticeships, Skills, Children and Learning Bill currently before Parliament contains clauses to align education, as far as practicable, with the mainstream sector, including bringing young people in custody under the primary legislative regime.

Local authorities will receive additional funding in order to exercise their new duty to secure suitable education and training for young people in juvenile custody in their area. Funding for education and training for children and young people in juvenile custody is currently directed through the Youth Justice Board, and upon implementation of the new duties, it will be re-routed through the new Young People Learning Agency, and on to Local Education Authorities with juvenile custodial establishments in their area. This will support their new responsibility to secure education for children and young people in custody. Therefore the implication for local authorities with juvenile custodial establishments in their area, is that they will have new duties to secure provision, and they will receive additional funding to achieve this.

*Q65—you offered more information on the steps being taken to implement changes arising from the Government's withdrawal of the reservation to Article 37(c) of the UNCRC, given the evidence we have received that children are being held with adults in some institutions in Northern Ireland and Scotland*

*Q65 Response*: The decision to withdraw our reservation to article 37 (c) was taken by the UK Government following full consultation with Scotland and Northern Ireland.

The Scottish Executive is fully committed to the UK Government's decision to remove its reservation to article 37 (c). However, the current situation in Scotland remains that there are circumstances where young people under-18 are held together with adults. The Scottish Prison Service is currently exploring ways in which it can take forward the development of separate accommodation for all under-18s in custody, and the Scottish Executive is also bringing forward legislation to ensure that under-16s cannot be remanded into prison custody.

The Northern Ireland Office has taken steps to ensure that Northern Ireland is fully compliant with article 37 (c). The Criminal Justice Order 2008 allowed for all young women under the age of 18 to be accommodated at Woodland Juvenile Justice Centre which is an under-18 establishment. A small number of 17 year old boys are held at Hydebank Wood Young Offenders Centre which is a split site establishment with separate accommodation provided for under-18s and 18–21 year old men.

*Q69—we would be grateful for your view on whether you agree with the independent review of the use of restraint in secure training centres that the use of pain compliance was "irreconcilable" with the UNCRC (pages 7-8 of the review)*

*Q69 Response*: The Government does not agree that the use of pain-compliant techniques in extreme circumstances is contrary to the UN Convention on the Rights of the Child. (It may be necessary to take action bring an incident under control quickly and safely to prevent potentially serious injury to the young person being restrained, to another trainee or to a member of staff.) The co-chairs of the independent Review of Restraint voiced an opinion to that effect, as an incidental comment on their recommendation that such techniques were necessary to keep young people and staff safe, and to protect them from physical harm as much as possible. The co-chairs had not, as far as we are aware, taken legal advice on this point. The Government's own view is that the co-chairs' recommendation is compatible with the provisions of the Convention.

*Q86—you offered more information on the reasons why girls in custody were more likely than boys to self-harm*

*Q86 Response: In the last quarter of 2008 (September-December), girls accounted for 7% of the under-18 custodial population but accounted for 48% of incidents of self-harm in custody.*

The prevalence of self-harm amongst girls reflects the evidence from non-custodial settings. A 2004 report for ChildLine, conducted by the Mental Health Foundation and the Camelot Foundation, showed that in 2003/04, ChildLine counselled 4,300 callers who reported self-harming behaviour of whom nine in ten were girls under the age of 18.

The Government recognises that many young people who enter custody have a history of mental health needs, as well as a history of self harm. The Government has secured improvements in healthcare arrangements of young offenders including the provision of 24-hour health care and physical and mental health screening. The Government has also strengthened safeguarding arrangements in custody, including access to an independent advocacy services and better and safer physical environments.

In March 2007, the Government produced a framework document for promoting mental health for young offenders. This framework was supported with an initial £15 million and a further £1.5 million in the financial year (2008–09). The framework is due to be evaluated towards the end of this year. Staff in custodial establishments remains vigilant to ensure that a vulnerable population is not placed at risk through self-harm.

*Q93—you offered to check whether asylum or immigration duties have been, or could be, delegated to BAA staff;*

*Q93 Response:* No immigration or asylum functions have been delegated to the British Airports Authority by the UK Border Agency. Obviously we work on their premises but they do not carry out any immigration or asylum functions on our behalf. If a case required detention at a port, the person in question would be transferred directly from the immigration officer to a UK Border Agency contractor without the BAA being involved.

The new provisions in the Borders, Citizenship and Immigration Bill (clause 9) will enable the Director of Border Revenue to delegate customs revenue functions. The functions which are delegable in this way are administrative in nature. This is in keeping with the current arrangements under which HM Revenue and Customs use commercial contractors to store and dispose of seized alcohol and tobacco. In the future, we envisage that commercial contractors will carry out similar functions on behalf of the UK Border Agency. Where a function is delegated, the Director of Border Revenue must monitor the exercise of the function by the person to whom it is delegated, and the person must comply with the directions of the Director in exercising that function. In addition, the Children's Duty will apply to those persons exercising delegated functions.

*Q96—We would be grateful to receive a copy of the review of the Millbank pilot or, if it is not yet available, an indication of when we might receive it*

*Q96 Response:* The report is still being finalised by the external consultant. We expect it to be publicly available in May and will forward a copy to the Committee as soon as it is.

*Q116—we wish to receive an analysis of the domestic legal remedies available in relation to breach of each article of the UNCRC.*

*Q116 Response:* The question assumes that there is a direct legal remedy which could be relied upon in respect of any breach of the UNCRC. However, the UK meets its obligations under the UNCRC through a combination of legislation, policy initiatives and guidance which evolve as policy moves on in each jurisdiction in the UK. The UK's periodic reporting to the UN Committee reports to them regularly on developments. The Department will shortly be commissioning an updated high-level mapping of the legislation and policy that supports the UNCRC in England. This will be designed to reflect developments since the 2008 Report arising from the Children's Plan and other legislative and policy developments. We will be happy to share this overview with the Committee once it is available.

Where UNCRC obligations are met through a particular legislative provision, any remedies provided for in relation to that legislation would apply. Over and above specific legal provision, decisions of public authorities may be challenged for any failure to comply with the Human Rights Act or by means of judicial review. And more broadly, rights under the UNCRC may be asserted through complaints mechanisms or through resort to figures such as the Local Government Ombudsmen. The Children's Commissioner for England does not have a casework function but it is part of his remit to consider the operation of complaints procedures. The Department is currently working with the Commissioner on this as part of 11 Million's business plan commitment to understand how complaints procedures work in practice for children and young people.

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Additional questions are as follows:

(I) *What steps are you taking to awareness of the UNCRC in the UK?*

*Response:* The Government has done much to raise awareness of the UNCRC but does recognise that it has more to do to, and is addressing this in partnership with other organisations as part of its strategies to address the UN Committee’s recommendations.

The Government has funded a number of initiatives aimed at raising awareness of the UNCRC such as the development of a curriculum resource for teachers on the UNCRC to be used with key stage 3 pupils.

The DCSF provides funding to UNICEF for their Rights Respecting Schools initiative. This programme aims to help provide children with a practical understanding of the personal meaning of their rights, and those of others, by relating the principles of the UNCRC closely to everyday behaviour in the classroom and school.

Training related to human rights and the UNCRC is available for a wide range of professionals working with children.

The Children’s Workforce Development Council (CWDC)—who have a remit to ensure that those who work with children and young people have the best possible training, qualifications and support, covering about 500,000 workers, including early years and childcare, education welfare and social care for children and young people—and is taking measures to raise awareness of the convention.

The CWDC has created a Common Core of skills which describes the UNCRC alongside legislation of which practitioners should take account. The Common Core is now being embedded in training across the children’s workforce.

(II) *Are you intending to establish a stakeholder’s group to monitor progress in dealing with the CRC Committee’s concluding observations, as exists in Scotland?*

*Response:* Each Devolved Administration will address the UN Committees Concluding Observations as appropriate to their national requirement. However, I am meeting with the Devolved Administration Ministers in early June to discuss a UK wide approach to addressing the Concluding Observations, and the possibility of devising a UK wide action plan.

The Government is working closely and regularly consults with key stakeholders such as Non—Government Organisations, the Children’s Commissioner and children and young people in taking forward the UN Committees Concluding Observations. We are maintaining the positive, collaborative approach with our stakeholders that helped our preparation for Geneva and will work with them to address our priorities as set out in the children’s plan one year on. Through this mechanism the Government is held to account on how it is implementing the convention.

(III) *How were the CRC Committee’s recommendations prioritised, in order to arrive at the list in Annex A of “The Children’s Plan—a Progress Report”?*

*Response:* The Children’s Plan which set out the Government’s ambitions for all children and young people is underpinned by the UN Convention on the Rights of the Child (UNCRC).

At the hearing in Geneva, the committee welcomed the Children’s Plan and its links to the UNCRC and making implementation of the Convention a reality on the ground.

The Concluding Observations provide a helpful framework for further action by Government, building on measures already in place, to make children’s rights under the Convention a reality.

The Government carefully considered all the UN Committee’s recommendations along with our long term ambitions for children and young people as set out in the children’s plan and in consultation with key stakeholders, identified areas within the recommendations where more could be done to implement the convention further. This was the basis in which Annex A of the Children’s plan—a progress report was devised.

There remain areas where the UK Government and the UN Committee differ in views, such as the need for legal incorporation of the Convention into domestic law (which is not standard UK practice), the appropriateness of a legal ban on smacking children, the minimum age of criminal responsibility and the use of Anti Social Behaviour Orders (ASBOs).

(IV) *In its response to the independent review of the use of restraint, the Government accepts in principle that any restrained young person should be seen by a registered nurse or medical practitioner within 30 minutes of an incident, but states that “any establishment will need to form a judgement whether it necessary to do so in particular cases” (rec 37, page 19). Can you explain why establishments should be able to continue using their discretion as to whether or not to require restrained young person’s to be medically examined?*

*Response:* Due to the variations in size, different types of establishment have different levels of access to medical care. All secure training centres, for example, have on-site nursing cover. Secure children’s homes, however—some of which are very small—do not have that level of cover and it would not be practicable to provide it. Without on-site nursing care, it is not possible to require routine examination within 30 minutes. The Government takes the view that establishments need to decide in each individual case whether the young person needs to be medically examined within 30 minutes.

(V) *Similarly, why has the recommendation that “all injuries should be photographed” (rec 38, p19) not been fully accepted?*

The Government was doubtful of the purpose and value, or appropriateness for vulnerable young people, of photographing all injuries routinely.

(VI) *Can you provide more detail of the work which is being done to prepare for ratification of the UNCRF Optional Protocol on the sale of children, child prostitution and child pornography?*

*Response:* The UK Government announced in September 2008 that it was ratifying the Optional Protocol Protocol on the sale of children, child prostitution and child pornography. Last November the UK Mission in Geneva wrote to the UN Secretary General requesting ratification of the Optional Protocol. The Government has received confirmation from the UN Secretary General that the Optional Protocol has been ratified with effect from 20 March 2009.

(VII) *Why was the rule requiring those who join the armed forces at 16 to commit to a minimum of six years service, whilst those who join at 18 need only serve a minimum of four years, reinstated? And what steps have been taken to inform the CRC Committee that the rule has been reinstated, given that the Committee welcomed the lifting of the rule in its Concluding Observations on UK compliance with the Optional Protocol to the UNCRF on the involvement of children in armed conflict?*

*Response:* This question relates to the changes in minimum term of service introduced by the Army Terms of Service Regulations 2007, which came into effect on 1 January 2008.

The changes were intended to reflect the Army’s move to the Versatile Engagement. Under this engagement, soldiers no longer sign up for 22 years but for an initial engagement of 12 years. Prior to 1 January 2008, soldiers enlisting served a minimum commitment period of four years calculated from the “relevant date” which was “the date of attaining the age of 18 years or the date of attestation, whichever is the later”. Therefore those that were under the age of 18 years in enlistment served a minimum commitment of four years from their 18th birthday. Unfortunately the 18th birthday element was omitted from the final version of the revised 2007 Regulations and this was not spotted until later in the year. Therefore, since 1 January 2008, soldiers enlisting will have served the minimum commitment on completion of four years’ service irrespective of their age on enlistment, which was not the intention.

Action was therefore taken by the Army in August 2008 to rectify this and ensure that the operational staffing levels of the Army were maintained: soldiers under the age of 18 years are not fully deployable on operations and the aim is to achieve a minimum of four years fully deployable service from each individual. Accordingly, the Army Terms of Service (Amendment etc.) Regulations 2008 came into effect on 6 August 2008 in order to reinstate the minimum commitment period that soldiers who enlist before attaining the age of 18 years must serve in the Regular Army before being able to transfer to the reserve.

All Service personnel under 18 years of age who have completed 28 days service have a right of discharge within the first six months of service by giving not less than 14 days notice in writing to the Commanding Officer if they decide that the Armed Forces is not a career for them. In addition, Service personnel Under 18 years three months who have passed their statutory six month period for “discharge as of right”, and have registered, before reaching their 18th birthday, clear “unhappiness” at their choice of career, can request permission to leave the Armed Forces. The changes to the Army Terms of Service Regulations 2007 in no way affects an under-18s ability to leave as of right before his/her 18th birthday, and those who joined before the mistake was corrected will be allowed to leave after four years service irrespective of their age at attestation.

The Committee were informed that the rule had been reinstated both in the oral examination session on the Optional Protocol in September 2008 and in the written evidence<sup>1</sup> provided to the Committee ahead of the examination. No formal response to the Committee’s observations is required and we have not made any informal approach at this stage as the Ministry of Defence, in consultation with Other Government Departments, is considering how best to take forward the recommendations made.

8 May 2009

<sup>1</sup> CRC/C/OPAC/GBR/Q/1/Add.1 Question 7. Available on the UNCRF web site (<http://www2.ohchr.org/english/bodies/crc/index.htm>).

## Memorandum submitted by 11 MILLION

### 1. WHO ARE WE?

11 MILLION is a national organisation led by the Children's Commissioner for England, Sir Al Aynsley-Green. The Children's Commissioner is a position created by the Children Act 2004.

### 2. INTRODUCTION

The UK Government reported to the UN Committee on the Rights of the Child in 2008. As part of the reporting process, the four UK Children's Commissioners submitted a joint report to the UN Committee.<sup>2</sup> This response is based on that report which, along with submissions from NGOs and children, directly influenced the UN Committee's Concluding Observations.<sup>3</sup>

### 3. POSITIVE PROGRESS

3.1 We agree with the UN Committee that there have been positive developments and improvements in children's lives since the UK reported in 2002. These include the Children Act 2004, *Every Child Matters* (ECM) and the Children's Plan. We believe that these are significant changes which will take time to embed fully, though some results are already manifest eg improved access to childcare, the *Sure Start* and children's centre programmes, extended schools and investment in youth services. The ambition of the Children's Plan to make England the best place in the world for children to grow up is one we strongly support.

3.2 However, it is clear from the Committee's 124 recommendations that more needs to be done to enhance, promote and safeguard the rights and best interests of children and to ensure that children's rights are at the heart of policy-making in the UK.

### 4. DISCRIMINATION AGAINST CHILDREN

4.1 11 MILLION shares the UN Committee's concerns about "the general climate of intolerance and negative public attitudes towards children, especially adolescents... including in the media".<sup>4</sup> The Children's Commissioners' report raised concerns about the negative portrayal of young people, with 71% of media stories on them being negative and a third of articles being about crime. Young people feel the media represent them as anti-social, to be feared, selfish, criminal and uncaring.<sup>5</sup> The Government shares these concerns and we welcome *Aiming High for Young People*<sup>6</sup> and endorse Government initiatives, like National Youth Week, and other approaches, challenging the negative views of young people.

4.2 The Committee highlighted how this intolerance "may often be the underlying cause of further infringement of their rights",<sup>7</sup> in particular, the right to freedom of movement and peaceful assembly. Related to this the Committee condemned the use of Anti-Social Behaviour Orders (ASBOs), dispersal zones and the use of "mosquito devices." We support the Committee's recommendations that the Government should reconsider the use of ASBOs, "mosquito devices" and that they should "take urgent measures to address the intolerance and inappropriate characterisation of children, especially adolescents, within society, including the media."<sup>8</sup>

4.3 As highlighted by the Committee, the forthcoming Equality Bill offers a legislative opportunity to enhance children's protection from discrimination and thereby promote their rights and outcomes. Including under-18s in the Bill's proposed age discrimination prohibition and age strand of the single public equality duty is crucial to achieving this goal. We are pleased that the Government has signalled that it is willing to seriously consider this latter proposal.<sup>9</sup>

### 5. DISABLED CHILDREN

We welcome the measures that the Government has taken to better meet the needs of children with disabilities, in particular *Aiming High for Disabled Children*<sup>10</sup> and the Children and Young Persons Act 2008, which include greater investment, improved services, short breaks and transition support. We support the Committee's recommendation that the Government should "develop a comprehensive national strategy for the inclusion of children with disability in society". Along with the Committee, we would like the Government to ratify the UN Convention on the Rights of Persons with Disabilities.

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<sup>2</sup> UK Children's Commissioners' Report to the UN Committee on the Rights of the Child, June 2008, available at [www.11MILLION.org.uk](http://www.11MILLION.org.uk)

<sup>3</sup> Committee on the Rights of the Child, Considerations of Reports Submitted by State Parties under Article 44 of the Convention, Concluding Observations, United Kingdom of Great Britain and Northern Ireland, 3 October 2008, CRC/C/GBR/CO/4.

<sup>4</sup> Committee on the Rights of the Child, *op cit*, para 24.

<sup>5</sup> YouthNet and the British Youth Council, *Respect? The Voice Behind the Hood* (2006).

<sup>6</sup> Department for Children, Schools and Families and HM Treasury, *Aiming High for Young People: A 10-year strategy for positive activities* (July 2007).

<sup>7</sup> Committee on the Rights of the Child, *op cit*, para 24.

<sup>8</sup> Committee on the Rights of the Child, *op cit*, para 25.

<sup>9</sup> A more detailed analysis of age equality in the context of children may be found in 11 MILLION's Submission to the Joint Committee on Human Rights on the Equality Bill, 2 December 2008 at [www.11MILLION.org.uk](http://www.11MILLION.org.uk)

<sup>10</sup> Department for Education and Schools and HM Treasury, *Aiming High for Disabled Children: Better support for families* (May 2007).

## 6. EDUCATION

6.1 11 MILLION welcomes the progress made by Government in seeking to reduce inequalities in educational outcomes. However, educational inequalities persist and England has one of the highest associations of social class with educational performance in the OECD.<sup>11</sup> We remain particularly concerned about educational outcomes for poor white boys, Afro-Caribbean pupils and Gypsy and Traveller children, children who are looked after and children with SEN.<sup>12</sup> We support the Committee's recommendation that Government should "strengthen its efforts to reduce the effects of the social background of children in their achievement at school".<sup>13</sup> We are very pleased that the Government has considerably invested in education and improved standards and levels of attainment. We particularly support the Narrowing the Gap initiative, 21st Century Schools<sup>14</sup> and the Gifted and Talented programme and believe these will result in real progress. We also hope that implementation of the Children and Young Persons Act 2008 will result in improvements to the educational attainment of children in care.

6.2 Inequalities are also evident in school exclusion rates with a clear correlation between social disadvantage and exclusion. There has been little progress in reducing exclusions. Gypsy and Traveller children have the highest permanent exclusion rates and are over three and half times more likely to be excluded than other children, and pupils with statements of special educational needs are over nine times more likely to be excluded.<sup>15</sup> Children in care are over seven times more likely to be excluded from school than the rest of the school population.<sup>16</sup> We support the Committee's recommendation that exclusions from school should be a "means of last resort" and their use reduced.

6.3 We welcome the Government's investment and measures to improve provision and outcomes for children with SEN,<sup>17</sup> which represents progress towards the Committee's recommendation of investing "considerable resources in order to ensure the right of all children to a truly inclusive education".<sup>18</sup>

6.4 11 MILLION supports the new duty in the Education and Skills Act 2008, requiring governing bodies of maintained schools to invite and consider the views of children and hope this will result in greater participation of children in schools.

6.5 We welcome the Government's support of various initiatives to address bullying, but it is concerning that 39% of children report being bullied at school.<sup>19</sup> We hope that the National Healthy Schools Programme's Anti-Bullying Guidance, produced in partnership with 11 MILLION, will be a helpful resource for schools. We welcome the Government's commitment to strengthen bullying complaints procedures.

6.6 We share the Committee's concern that the right to complain regarding educational provision is restricted to parents, representing a particular problem for looked after children. We support the Committee's recommendations that children without parental care should have a representative to defend their best interests and that children should have the right to appeal against their exclusion as well as the right to appeal to the special educational needs tribunal.

## 7. CHILD POVERTY

7.1 11 MILLION supports the Government's commitment to end child poverty by 2020 and we welcome the plans to introduce legislation to end child poverty.<sup>20</sup> However, legislative reform on its own will not be enough and it has been estimated that a further £3 billion<sup>21</sup> needs to be invested to meet the Government's target of halving child poverty by 2010. Over the last two years there has been a rise in the number of children in poverty and there are currently 3.9 million children (30%) living in poverty in the UK.<sup>22</sup> More attention needs to be given to reduce the extent of in-work poverty and to ensure there are safeguards for the minority of parents unable to work either due to ill health, disability or the caring needs of their children. The UN Committee raised concern about the Government's strategy not being sufficiently targeted at those groups of children in most severe poverty.

<sup>11</sup> K Hansen and A Vignoles A *The United Kingdom education system in a comparative context* in S Machin and A Vignoles (eds) *What is the Good of Education?* (2005) Princeton University Press; 51% of pupils in England not eligible free school meals achieved five or more GCSEs grade A\*-C in 2007-08 compared with 24% of pupils who were eligible—Source: Department for Children, Schools and Families (DCSF) Attainment by Pupil Characteristics, England 2007-08, November 2008.

<sup>12</sup> Department for Education and Skills, *Ethnicity and Education: The Evidence on Minority Ethnic Pupils*, DFES Research Topic Paper: RTP01-05 (2005); R Cassen and G Kingdon G, *Tackling Low Educational Achievement*, (2007) Joseph Rowntree Foundation.

<sup>13</sup> Committee on the Rights of the Child, *op cit*, para 67a).

<sup>14</sup> Department for Children, Schools and Families, *21st Century Schools: A World-Class Education for Every Child* (2008).

<sup>15</sup> DCSF, *Permanent and Fixed Period Exclusions from Schools in England 2006-07*, June 2008.

<sup>16</sup> DCSF, *Outcome indicators for children looked after, 12 months to 30 September 2007—England*, April 2008.

<sup>17</sup> "Balls announces new action and investment of £38 million for children with special educational needs" (11 December 2008), [www.dcsf.gov.uk](http://www.dcsf.gov.uk)

<sup>18</sup> Committee on the Rights of the Child, *op cit*, para 67d).

<sup>19</sup> OFSTED, *TellUs3 Survey*, October 2008.

<sup>20</sup> Child Poverty Unit, *Ending Child Poverty: making it happen* (2009).

<sup>21</sup> *End Child Poverty*, [www.endchildpoverty.org.uk](http://www.endchildpoverty.org.uk); D Hirsch, *What will it take to end child Poverty? Firing on all cylinders*, 2006, Joseph Rowntree Foundation. This report estimated £4 billion was needed to reach the target of halving child poverty by 2010, with the Government committing almost £1 billion in the 2008 budget, a further £3 billion is needed to reach the target.

<sup>22</sup> Department for Work and Pensions *Households Below Average Income (HBAI), 1994-95-2006-07* (2008).



7.2 While inequality has fallen faster in the UK than other countries, it still has one of the highest levels of income inequality in the developed world<sup>23</sup> and in 2008 income inequality in the UK was at its highest level since the late 1940s.<sup>24</sup> More needs to be done to address the structural causes of poverty, including the high levels of inequality (income, health and educational) in the UK.

## 8. CRIMINALISATION OF CHILDREN

8.1 We are concerned that children are increasingly being drawn into the formal criminal justice system for minor offences and behaviour that in the past would not have been defined as criminal and/or would have been dealt with through informal means. Since 2002, the number of under-18 year olds involved with the criminal justice system has risen by 27%.<sup>25</sup> This is at a time when the juvenile crime rate remained stable. This rise has been partly attributed to the police “Offences Brought to Justice” targets, the expansion of pre-court sanctions<sup>26</sup> and the Government’s anti-social behaviour measures, particularly ASBOS.<sup>27</sup> The Committee expressed concern about the use of ASBOs on children and recommended “an independent review on ASBOs with a view to abolishing their application to children”.<sup>28</sup>

## 9. CHILDREN IN DETENTION

9.1 The youth justice system in England has a poor record of compliance with the UNCRC and the best interests of the child are not sufficiently reflected in youth justice policy, legislation and practice. The high numbers of children in custody in England has been criticised by the UN Committee and by the Human Rights Commissioner.<sup>29</sup> It is troubling that a quarter of children in custody have learning disabilities, a third with major mental health needs, 12% are locked up for breach and a third for non-violent offences.<sup>30</sup> We support the Committee’s recommendation that the Government should “develop a broad range of alternative measures to detention” and that the principle of detention to be used as a last resort should be established as a “statutory principle”.<sup>31</sup> 11 MILLION welcomes the Government’s Youth Crime Action Plan and its focus on a more welfare based approach and the emphasis on early intervention and prevention.

9.2 We support the Committee’s recommendation that the Government should “provide a statutory right to education for all children deprived of their liberty”.<sup>32</sup>

9.3 The Children’s Commissioners raised serious concerns that 30 children have died in custody since 1990 yet there has never been a public inquiry. Child Death Overview Panels now have responsibility for reviewing the death of every child, including those in custody. We would like reports of children who die in custody to be made public and for them to be considered by LSCBs as part of the Serious Case Review process. The same should apply to children who suffer serious injury whilst in custody, including self-inflicted injury.

9.4 The Children’s Commissioners, the UN Committee and Commissioner for Human Rights have expressed serious disquiet about the over-use of physical control and restraint on children in custody. While we welcome the Government’s commitment to reduce the use of restraint in response<sup>33</sup> to the independent review of restraint,<sup>34</sup> we are disappointed that the opportunity was not taken to ensure compliance with the UNCRC. A further regret is that the review did not result in the withdrawal of restraint methods that deliberately inflict pain, eg pain distraction techniques. The review falls short of the Committee’s recommendations that “restraint should only be used as a last resort exclusively to prevent harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished”.<sup>35</sup>

9.5 We are also disappointed at the narrowness of the review and the failure to set it within the wider context of how children are treated in the youth justice system, including custody. There are increasing numbers of vulnerable children being locked up in unsafe environments with high levels of self-harm and bullying, intimidation and violence and who are being subject to the degrading treatment of restraint and strip-searching.<sup>36</sup> There is an urgent need to review the way we deal with children in trouble with the law.

<sup>23</sup> Organisation for Economic Cooperation and Development, *Growing Unequal? Income Distribution and Poverty in OECD Countries* (2008).

<sup>24</sup> Institute for Fiscal Studies, *Poverty and inequality in the UK: 2008* (2008).

<sup>25</sup> IPPR, Communities can hold youth to account and reduce re-offending, June 2008, <http://www.ippr.org.uk/pressreleases/?id=3180>

<sup>26</sup> Professor Rod Morgan, Summary Justice: Fast—but Fair, Centre for Crime and Justice Studies, August 2008.

<sup>27</sup> Committee on the Rights of the Child, *op cit*, para 79b).

<sup>28</sup> Committee on the Rights of the Child, *op cit*, para 80.

<sup>29</sup> Thomas Hammarberg, Commissioner for Human Rights, Memorandum: Rights of the child with focus on juvenile justice (2008) Council of Europe.

<sup>30</sup> Prison Reform Trust, *Criminal Damage: why we should lock up fewer children* (2008).

<sup>31</sup> Committee on the Rights of the Child, *op cit*, para 78b).

<sup>32</sup> Committee on the Rights of the Child, *op cit*, para 78e).

<sup>33</sup> The Government’s Response to the Report by Peter Smallridge and Andrew Williamson of a Review of the Use of Restraint in Juvenile Secure Settings (December 2008) TSO.

<sup>34</sup> P Smallridge and A Williamson, *Independent Review of Restraint in Juvenile Secure Settings* (2008) Ministry of Justice and Department for Children, School and Families.

<sup>35</sup> Committee on the Rights of the Child, *op cit*, para 39.

<sup>36</sup> HM Chief Inspector of Prisons for England and Wales, Annual Report 2005–06 (2007).

9.6 The restraint review failed to take account of a recent judicial review,<sup>37</sup> which quashed the Secure Training Centre (Amendment) Rules and found that restraint for the purpose of good order and discipline is in breach of article 3<sup>38</sup> and article 8<sup>39</sup> of the ECHR. A further judicial review<sup>40</sup> identified the importance of the UNCRC in relation to the use of restraint on children and questioned the findings of the restraint review, identifying that it was based on a number of false assumptions.<sup>41</sup> There is an urgent need for clarity on the impact of these judgments on the use of restraint across the juvenile secure estate.

## 10. ASYLUM

10.1 The Children's Commissioners' report identified that children seeking asylum experience serious breaches of their rights and that immigration control takes priority over human rights obligations to these children and their families. We hope that the removal of the reservation to article 22 of the UNCRC signals a commitment from Government to considerably improve the treatment of these children, and that their human rights and best interests will be given greater precedence. We also welcome the Government's commitment to change legislation to make the UK Borders Agency (UKBA) subject to a duty to promote the welfare of children. 11 MILLION is working with the UKBA to achieve positive change and ensure the best outcomes for asylum-seeking children.

10.2 11 MILLION is highly concerned about the damaging impact of detention on children and their parents and we would like to see an end to the unnecessary detention of children for immigration purposes. Detention of children is not always being used as a measure of last resort or for the shortest appropriate time and it is troubling that the length of detention has been increasing. 11 MILLION has found that the best interests and welfare of the child are not given sufficient priority in the decision to detain or to continue detention. In addition, children have told us that the arrest process is an extremely distressing experience and it is unacceptable that some children are transported in vans without breaks or access to food. While asylum-seeking children continue to be detained there is a need for major improvements to the immigration removal centre, particularly in the provision of health care and mental health support.

10.3 We agree with the Committee's recommendation that the benefit of the doubt should be applied to age disputed cases and that expert guidance should be obtained on how to determine age.

10.4 The best interests principle must be of paramount consideration in the decision to return children and we agree with the Committee that there need to be greater safeguards in place when children are being returned, "including an independent assessment of the conditions upon return, including family environment".<sup>42</sup> The UN Committee and the Children's Commissioners recommend the appointment of guardians for separated children. We welcome the UKBA's Code of Practice<sup>43</sup> and 11 MILLION is engaged in ongoing dialogue with UKBA on the issue of safe returns.

10.5 11 MILLION supports the Committee's recommendation that section 2 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 should be amended "to allow for an absolute defence for unaccompanied children who enter the UK without valid immigration documents."<sup>44</sup>

## 11. AWARENESS OF THE UNCRC

Awareness of the UNCRC is very low. We support the Committee's recommendation that the Government should "ensure that all of the provisions of the Convention are widely known and understood" by children, parents and professionals and the Convention should be included in the national curriculum and in professional training. 11 MILLION is working with DCSF to take steps to improve awareness and knowledge of the Convention across England.

## 12. RECOMMENDATION

11 MILLION would like the Government to produce an action plan addressing how they will take forward the 2008 UN Committee on the Rights of the Child's Concluding Observations.

February 2009

<sup>37</sup> R (C) and the Secretary of State for Justice [2008] EWCA Civ882.

<sup>38</sup> Article 3 of the ECHR—Freedom from torture or inhuman or degrading treatment or punishment.

<sup>39</sup> Article 8 of the ECHR—Right to respect for private and family life.

<sup>40</sup> *R (on the application of Carol Pounder) v HM Coroner for the North and South Districts of Durham and Darlington* [2009] EWHC 76 (Admin).

<sup>41</sup> *Ibid*, para 42.

<sup>42</sup> Committee on the Rights of the Child, *op cit*, para 71f).

<sup>43</sup> UK Border Agency, *UK Border Agency Code of Practice For Keeping Children Safe From Harm* (2008).

<sup>44</sup> Committee on the Rights of the Child, *op cit*, para 71g).

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## Memorandum submitted by Accord

### ACCESS BY VULNERABLE GROUPS AND SEGREGATION

#### *Admissions*

Most schools with a religious character are currently able to use religious oversubscription criteria in their admissions arrangements. The government does not collect data on the use of religious admissions requirements but from independent research we know that they exist in over 90 per cent of religious voluntary aided secondary schools. The proportion of schools of other types with religious admissions criteria is lower, but, even so, at secondary level three fifths of voluntary controlled schools have religious admissions, as do 11 per cent of academies/city technology colleges and one per cent of foundation schools.<sup>45</sup>

The proportions of voluntary controlled schools at primary level which select according to religion are thought to be significantly lower, but we are aware of no national statistics on religious admissions at primary level.

#### 1. *Indirect social selection*

Research by Professor Anne West<sup>46</sup> of the LSE and by the Runnymede Trust<sup>47</sup> has found that the complex selection procedures are used by religious schools give a significant advantage to wealthier, more educated and more determined parents. In response to concerns about socially selective admissions arrangements, the government has made significant improvements to the School Admissions Code and strengthened the ability of the Schools Adjudicator to challenge unfair practices. While we support the changes that have been made to tackle social selection as far as they go, we believe that any state school admissions framework based on religious discrimination is unjust and outdated.

Even if the new code were to be successful in eradicating practices such as pre-admission interviews and questions about the marital status of parents, it is highly likely that religious schools would retain a socially privileged intake. This is because surveys show that churchgoers are disproportionately middle class but, despite this, regular church attendance is considered an acceptable criterion in school admissions.<sup>48</sup> Additionally, within the various religious populations it is the most advantaged families who are most likely to apply faith schools, in particular those faith schools that are considered elite. Because of the influence of school league tables and school reputation it is easy for trends set in motion by differences in intake to become self-perpetuating.

#### 2. *Indirect ethnic selection*

It is true that some religious schools have many non-white pupils, but the headline statistics on school denomination and ethnicity do not tell the whole story. Catholic schools, for example, are disproportionately based in urban areas and accept many students from African and Caribbean backgrounds. However, the proportion of Bangladeshi pupils taught in London religious secondary schools is just one per cent, or a quarter of that in non-denominational schools. There therefore a risk that in areas with a strong overlap between religion and ethnic identity, religious admissions procedures can reinforce ethnic segregation, a problem highlighted in the Cante Report. Furthermore, those black ethnicity pupils who do attend faith schools are less likely to be free school meal eligible or to have low prior attainment than those in community schools.<sup>49</sup>

#### 3. *Religious selection*

The impact of religious admissions criteria on social and ethnic selection are very important, but they should not be allowed to obscure the problems directly caused for individuals and society by religious discrimination.

##### (a) *Individuals*

For parents who are unable to meet the religious criteria of faith schools discrimination can greatly diminish school choice. It is the strength of community schools that they are open to all regardless of beliefs, but the consequence of the current system is that religious families usually have a greater choice of schools.

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<sup>45</sup> *Secondary school admissions in England: Policy and Practice*, Prof Anne West, Eleanor Barham and Audrey Hind, March 2009 <http://www.risetrust.org.uk/Secondary.pdf>

<sup>46</sup> *Ibid.*

<sup>47</sup> *Faith Schools: Right to Divide?*, Dr Rob Berkeley, December 2008, <http://www.runnymedetrust.org/uploads/publications/pdfs/RightToDivide-2008.pdf>

<sup>48</sup> A 2009 Tearfund survey found that 26 per cent of British people attend church at least once a year, with "AB social class (34 per cent) and owner occupiers without a mortgage (32 per cent) among the groups overrepresented and "C2 social class (21 per cent); DE social class (22 per cent); single people (19 per cent) and council tenants (19 per cent)" among those underrepresented. It should also be noted that only 15 per cent of adults attend church at least every month, but many school admissions policies require regular church attendance at a particular church over the course of several years. In an oversubscribed school, such policies will inevitably select out all but the most religious and/or most organised and determined parents <http://www.tearfund.org/News/Press+releases/Church+is+where+the+heart+is.htm>

<sup>49</sup> "Religious Schools in London: School Admissions, Religious Composition and Selectivity" Allen, R. and West, A. (2009) Oxford Review of Education, forthcoming (p12).

Consider, for example, two families—one Catholic, the other not religious—who wish to send their daughter to a secondary school in Liverpool. Both families are happy to send their child to either a religious or a community school because both prioritise factors such as proximity to home, results and friendship groups over the denomination of the school. The prevalence of schools with religiously discriminatory admissions means that the religious family will have a greater choice of schools, even though the denomination of the school is of little consequence to them.

In inner city areas of London and the North West, as well as in rural areas with a limited choice of schools, these problems are acute and cause great distress to parents who see no reason why their children's prospects should depend on their religious convictions, or lack of them.

We would be interested to know the view of the JCHR on whether Article 14, Schedule 1 of the HRA read in conjunction with Article 2 Part 2, may be breached in cases where educational prospects and school choice are very severely limited for those of particular religious or non-religious beliefs.

#### (b) *Society*

According to a recent poll conducted on behalf of the EHRC, religion is today thought to be a significantly more divisive factor in British society than race.<sup>50</sup>

Guidance issued by the government and by non government bodies on the issue of community cohesion stresses the importance of overcoming religious, cultural and ethnic divisions through regular, meaningful contact between different groups.<sup>51</sup> The passing of a duty on schools to promote community cohesion was a small step forwards and has led to some worthwhile projects that seek to break down barriers between communities.

However, religious (as opposed to cultural and ethnic) divisions between young people are unique because they are directly promoted through discriminatory school admission policies. It is notable that the duty to promote community cohesion—which itself resulted from the failure to pass a quota system to open up faith school admissions—has done virtually nothing to tackle directly discriminatory admissions policies. We question the wisdom of a set of policies that seek to ameliorate divisions within and between communities, while at the same time leaving state-funded schools free to discriminate. Direct discrimination by public bodies should be the first thing to be tackled, not the last.

## PARTICIPATION

### *Collective worship*

We welcome the work that that the JCHR has already conducted on the human rights implications of collective worship and Religious Education. While we agree that extending the ability to withdraw from worship to children of sufficient maturity would be a significant step forward, we favour the replacement of collective worship with inclusive assemblies. This is because an opt-out system provides no entitlement to alternative educational provision for those who opt out, whether this is an inclusive assembly or something else. More broadly, an opt out system is inherently divisive and negates the idea of assembly as a shared activity for the whole school.

### *Sex education*

Article 24 of the UNCRC recognises children's right to information to help them stay healthy but we believe that this is undermined by the current right of parents to withdraw their children from Sex and Relationships Education. Although relatively few children are withdrawn from SRE lessons, it is likely that many of those who are withdrawn do not receive adequate sex education at home either. We are also concerned about the right of religious schools to teach SRE in accordance with their religious ethos as this may affect the scope and objectivity of information given to students.

In a document intended for schools in his diocese and beyond, the Catholic Bishop of Lancaster wrote that “the secular view on sex outside of marriage, artificial contraception, sexually transmitted disease, including HIV and AIDs, and abortion may not be presented as neutral information” [emphasis in original]. While the bishop is not entirely clear about what he considers the “secular” view on these issues to be, we believe that attitudes such as this can seriously weaken schools' attempts to provide comprehensive SRE.

<sup>50</sup> “Three in five (60 per cent) of the general population and two in three (66 per cent) of those in ethnic minority groups think religion is more divisive than race today.” <http://www.ipsos-mori.com/content/news/as-obama-is-inaugurated-how-have-public-attitudes-.ashx>

<sup>51</sup> Page 10, *Guidance on the Duty to Promote Community Cohesion*, quoting the Commission on Integration and Cohesion [http://www.teachernet.gov.uk/\\_doc/11635/Guidance per cent20on per cent20the per cent20duty per cent20to per cent20promote per cent20community per cent20cohesion per cent20pdf.pdf](http://www.teachernet.gov.uk/_doc/11635/Guidance%20on%20the%20duty%20to%20promote%20community%20cohesion.pdf)

*Bullying*

We remain concerned about homophobic bullying in faith schools. Research by Stonewall has shown that while homophobic bullying is a problem in many schools, it is a particular issue in schools with a religious character. Stonewall also found that victims of homophobic bullying are less likely to report incidents to teachers in faith schools and discovered incidences where schools and teachers used religious beliefs to justify inadequate responses to homophobic incidents.<sup>52</sup>

April 2009

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**Memorandum submitted by Bail for Immigration Detainees and The Children's Society**

**INTRODUCTION**

1. This submission is made jointly by Bail for Immigration Detainees (BID) and The Children's Society as part of our three-year partnership project "Outcry!", funded by the Diana Princess of Wales Memorial Fund, to end immigration detention of children.

2. We believe that child asylum seekers and migrants are children first and foremost and should be treated as such regardless of their immigration status. We are opposed to the use of immigration detention for families as we believe its use is disproportionate and that children are harmed by the very act of being detained. We do not believe the government has made a case for detaining families and in our experience there is no evidence that they are systematically at risk of absconding if they are not detained. We also believe that at a cost of £130 per day<sup>53</sup> the detention of children is a shameful waste of taxpayers' money.

3. BID and The Children's Society both gave evidence to the JCHR inquiry on the treatment of asylum seekers. We welcome and endorse the findings of the JCHR that:

"The detention of children for the purpose of immigration control is incompatible with children's right to liberty and is in breach of UK's international human rights obligations. [...] Asylum seeking children should not be detained."<sup>54</sup>

We share the view of the JCHR's Chair that "[s]uch things should not happen in a civilised society"<sup>55</sup> and that "[a]lternatives should be developed for ensuring compliance with immigration controls where this is considered necessary."<sup>56</sup>

4. We are grateful for the opportunity to contribute to the JCHR's inquiry into children's rights. We would be pleased to provide further evidence in person to the JCHR or to provide further written information on any aspect of this submission. We would urge the JCHR to find suitable avenues to take evidence from families who have experienced detention themselves and we would be happy to help facilitate this.

**DEVELOPMENTS IN LAW AND POLICY AFFECTING CHILDREN IN IMMIGRATION DETENTION**

5. Since the JCHR's inquiry into the treatment of asylum seekers, there have been several legislative and policy developments affecting the government's responsibilities towards children in immigration detention:

- On 18 November 2008 the government removed its immigration reservation to the UN Convention on the Rights of the Child. This move, long overdue, means that all children in the UK are entitled equally to the protections afforded by the Convention regardless of their immigration status.
- On 6 January 2009 the UK Border Agency's (UKBA) Code of Practice for Keeping Children Safe From Harm came into force. The Code, issued under Section 21 of the UK Borders Act 2007, applies both to the Agency's staff and contractors working on behalf of the Agency, including those working with children in immigration detention. It is too soon to tell how the Code is being applied in practice.
- During the passage of the Children and Young Person's Bill in 2008 the government agreed in future legislation to introduce a duty on UKBA equivalent to Section 11 of the Children Act 2004 to safeguard and promote the welfare of children. A clause to introduce this duty, which already applies to other public authorities such as the police and prison service, is contained within the Borders, Immigration and Citizenship Bill (clause 51).

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<sup>52</sup> *The School Report* Stonewall, 2007, <http://www.stonewall.org.uk/other/startdownload.asp?openType=forced&documentID=1704> and *The Teachers' Report*, Stonewall, 2009 <http://www.stonewall.org.uk/other/startdownload.asp?openType=forced&documentID=1659>

<sup>53</sup> *Hansard* 11 November 2008: Column 973W.

<sup>54</sup> Joint Committee on Human Rights, *The Treatment of Asylum Seekers: Tenth Report of Session 2006–07*, para 259.

<sup>55</sup> *Hansard* 13 December 2007: Column 145WH.

<sup>56</sup> Joint Committee on Human Rights, *The Treatment of Asylum Seekers: Tenth Report of Session 2006–07*, para 259.

6. We are encouraged to see UKBA confirming that “[t]he welfare of children within Britain’s immigration system is a number one priority”,<sup>57</sup> that “every child does matter, as much if they are subject to immigration control as if they are British citizens” and that children “are seen first, foremost and fully as children rather than simply as migrants subject to immigration control”.<sup>58</sup>

7. However we are yet to see any tangible evidence of these commitments being translated into practical action that affects families in immigration detention. It is our view that despite the government’s commitments, the situation for children in immigration detention is now as urgent and as damaging as it was when the Chair of the JCHR commented in February 2007 that “[the JCHR’s visit to Yarl’s Wood Immigration Removal Centre] has enabled us to lift a stone and find a pretty horrible picture underneath.”<sup>59</sup>

8. We would welcome the JCHR’s recognition that for the government’s commitments to have meaning, it must accept that the immigration detention of children is incompatible with their welfare. For example, we would have liked to see the government use the opportunity of the Borders, Immigration and Citizenship Bill to introduce a clause to end the immigration detention of children. We will be pressing them to do so.

#### CURRENT IMMIGRATION DETENTION PRACTICE

9. Children continue to be detained for the purposes of immigration control and for increasingly lengthy periods contrary to government policy and in breach of Article 37(b) of the UN Convention on the Rights of the Child.

10. Despite its commitment to treating them as children first and foremost, UKBA’s Enforcement Instructions and Guidance still stipulate that “[f]amilies, including those with children, can be detained on the same footing as all other persons liable to detention”<sup>60</sup> with no particular consideration to their vulnerabilities as children. The general detention criteria, under which families have been detained since 2001, state that “detention must be used sparingly, and for the shortest period necessary”.<sup>61</sup>

11. However, in her report of an unannounced inspection of Yarl’s Wood conducted in February 2008, Her Majesty’s Chief Inspector of Prisons (HMIP) found:

“The average length of stay of children had apparently increased [since her last inspection] from eight to 15 days although in some cases the total time detained was much longer [. . .] of 450 children held at Yarl’s Wood between May and October 2007, which included a period of chicken pox quarantine, 83 were held for more than 28 days.”<sup>62</sup>

Put plainly, HMIP found that 18% of children (nearly one in every five) held during that six month period experienced more than a month of detention.

12. Based upon the findings of her inspection at Yarl’s Wood, HMIP concluded:

“The plight of detained children remained of great concern. While child welfare services had improved, an immigration removal centre can never be a suitable place for children and we were dismayed to find cases of disabled children being detained and some children spending large amounts of time incarcerated. [. . .] Any period of detention can be detrimental to children and their families, but the impact of lengthy detention is particularly extreme.”<sup>63</sup>

13. In October 2008 the concerns of the UN Committee on the Rights of the Child also led it to recommend the UK government should “intensify its efforts to ensure that detention of asylum-seeking and migrant children is always used as a measure of last resort and for the shortest appropriate period of time, in compliance with article 37(b) of the Convention.”<sup>64</sup>

14. In our experience supporting families, detention is used neither sparingly nor as a last resort. Since mid-October 2008 BID has supported 28 families—the average period of their detention was 6.5 weeks. Frequently families were maintaining contact with the immigration authorities before they were arrested and detained and there was no reason to suggest they would stop reporting regularly. Four of the families have been removed and 11 families have been released from detention on temporary admission or granted bail.

15. A Freedom of Information Act request released on 16 May 2007 showed that over 40% of children detained at Yarl’s Wood go on to be released.<sup>65</sup> Despite repeated requests to do so the government does not routinely release information on the outcome of detention for families. However, based on our casework experience we do not believe this figure has altered and that approximately two out of every five families detained at Yarl’s Wood are eventually released following unnecessary, expensive and traumatising periods in detention.

<sup>57</sup> UK Border Agency, UK Border Agency commits to keeping children safe from harm, 6 January 2009.

<sup>58</sup> UK Border Agency, Code of Practice for Keeping Children Safe From Harm, January 2009, paras 1.6–1.7.

<sup>59</sup> Joint Committee on Human Rights, The Treatment of Asylum Seekers: Tenth Report of Session 2006–07, Q549.

<sup>60</sup> UK Border Agency, Enforcement Instructions and Guidance, para 55.9.4.

<sup>61</sup> UK Border Agency, Enforcement Instructions and Guidance, para 55.1.3.

<sup>62</sup> Her Majesty’s Chief Inspector of Prisons, Report of an unannounced inspection of Yarl’s Wood Immigration Removal Centre 4–8 February 2008, August 2008, paras 4.21–22.

<sup>63</sup> Her Majesty’s Chief Inspector of Prisons, Report of an unannounced inspection of Yarl’s Wood Immigration Removal Centre 4–8 February 2008, August 2008, Introduction.

<sup>64</sup> UN Committee on the Rights of the Child, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, 20 October 2008, para 71a.

<sup>65</sup> Freedom of Information Act request released on 16 May 2007 containing data from October 2005 to September 2006.

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 STATISTICS ON CHILDREN IN IMMIGRATION DETENTION

16. We are extremely concerned that the routine data kept by UKBA and its contractors on the children it detains is so wholly inadequate that it makes it difficult to monitor or hold the government to account.

17. Our concerns relate to several types of information. Firstly the quarterly and annual statistics published by the Home Office on *Control of Immigration*. These outputs provide such limited “snapshot” information on children in immigration detention that it is not possible to track “cohorts” or to know how many children were detained over a given period, the outcome of their detention, the children’s nationality or at what point in a child’s asylum claim they were detained.<sup>66</sup>

18. Concerns over data are shared by HMIP in her 2008 report of Yarl’s Wood:

“We were concerned about ineffective and inaccurate monitoring of length of detention in this extremely important area.<sup>67</sup> [ . . . ] the monitoring figures that were provided to the team to show length of cumulative detention were found to be wholly inaccurate. For example, children who we were confidentially told had been in detention for 275 days were later said to have been in detention for 14 and 17 days.”<sup>68</sup>

19. The UN Committee on the Rights of the Child also made the broader point that “[t]here is a lack of data on the number of children seeking asylum” and recommended that the government “[p]rovide disaggregated statistical data in its next report on the number of children seeking asylum, including those whose age is disputed”.<sup>69</sup>

20. We are also concerned about the level of management information UKBA keeps about the children it detains. For example, it is entirely unacceptable that statistics are not routinely gathered on the number of age disputed minors held in detention or the number of these disputed cases that are found to be children. This information is not being routinely collated by individual immigration removal centres or centrally by UKBA.

21. It is UKBA’s policy “not to detain [unaccompanied] children other than in the most exceptional circumstances’. However,

“Where an applicant claims to be a child but their appearance very strongly suggests that they are significantly over 18 years of age, the applicant should be treated as an adult until such time as credible documentary or other persuasive evidence such as a full ‘Merton-compliant’ age assessment by Social Services is produced which demonstrates that they are the age claimed.”<sup>70</sup>

If statistics are not routinely collected (a) on the number of such cases held in detention and (b) the number who are later found to be children, we do not believe UKBA can itself know, or be satisfactorily held to account by others, on its policy.

22. This was brought to the attention of Lin Homer by voluntary sector members of the National Asylum Stakeholder Forum in November 2008 but at the time of writing we are still awaiting a decision by UKBA on whether this information will be collected and published. It would be useful for the JCHR to clarify UKBA’s position.

23. This is particularly important given that the UN Committee on the Rights of the Child voiced its concern that:

“As also acknowledged recently by the Human Rights Committee, asylum-seeking children continue to be detained, including those undergoing an age assessment, who may be kept in detention for weeks until the assessment is completed.”<sup>71</sup>

24. We, like the JCHR,<sup>72</sup> believe that in cases where age is disputed the individual must not be detained until they are independently assessed as an adult.

## SAFEGUARDS FOR CHILDREN IN IMMIGRATION DETENTION

25. We do not believe immigration detention is an environment in which children can be kept safe from harm. Moreover government safeguards to keep children in detention safe are confusing, contradictory and do not provide adequate protection for children. The fact that the government does not know how many children they detain, where or for how long is a safeguarding issue in itself.

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<sup>66</sup> Home Office, *Control of Immigration: Quarterly Statistical Summary United Kingdom, July–September 2008*, Tables 8(a)–11. The only available information is the number of children detained on a given day broken down by gender, place of detention, length of detention and number removed from the UK directly from detention.

<sup>67</sup> Her Majesty’s Chief Inspector of Prisons, *Report of an unannounced inspection of Yarl’s Wood Immigration Removal Centre 4–8 February 2008*, August 2008, Introduction.

<sup>68</sup> Her Majesty’s Chief Inspector of Prisons, *Report of an unannounced inspection of Yarl’s Wood Immigration Removal Centre 4–8 February 2008*, August 2008, para 4.22.

<sup>69</sup> UN Committee on the Rights of the Child, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, 20 October 2008, paras 70(b) and 71(d).

<sup>70</sup> UK Border Agency, *Enforcement Instructions and Guidance*, para 55.9.3.1.

<sup>71</sup> UN Committee on the Rights of the Child, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, 20 October 2008, para 70(a).

<sup>72</sup> Joint Committee on Human Rights, *The Treatment of Asylum Seekers: Tenth Report of Session 2006–07*, para 260.

26. The stated aim of UKBA's Code of Practice is to prevent "an identifiable state of affairs continuing where this is plainly having an adverse effect on a child."<sup>73</sup> We firmly believe that detention is one such identifiable state of affairs. We are disappointed that while the Code identifies detention and enforcement action as areas where particular attention must be taken to safeguard the needs of children, there is no stated commitment to look again at detention policies to analyse and make changes where it is clear that they cause harm.

27. Given the government's commitment to introduce a Section 11 equivalent duty on UKBA we believe the need to end the immigration detention of children and their families is even more pressing. Detaining children in immigration removal centres is never an appropriate response to safeguarding concerns, and does nothing to promote their welfare.

28. The mechanisms the government believes safeguard children in immigration detention continue to be unacceptably opaque and inaccessible to families. The vast majority of the families we support in detention have not heard of "welfare assessments" or "ministerial authorisations". Documents from these procedures are not routinely disclosed to the families involved, the families do not know if they have taken place and are not aware of the function of these procedures in reviewing their detention.

29. We endorse the JCHR's previously stated concern that the detention process "does not consider the welfare of the child, meaning that children and their needs are invisible throughout", that where a child's detention is reviewed 'assessments of the welfare of the child who is detained are not taken into account' and that "[i]t is difficult to understand what the purpose of welfare assessments are if they are not taken into account by Immigration Service staff and immigration judges."<sup>74</sup>

30. In February 2007 the former Immigration Minister, Liam Byrne MP, informed the JCHR that "to date I have not refused any request for extended detention"<sup>75</sup> through a ministerial authorisation at 28 days. It would be helpful for the JCHR to establish the new Minister's record in this regard.

31. We are also concerned that the Code does not apply to children who have, or who have a family member who has, committed a criminal offence and are liable for a deportation order. The Code states they are excluded from the presumption in favour of not detaining a family and the policy to detain unaccompanied children only in the most exceptional circumstances.<sup>76</sup> We believe the Code's commitment to "children first and foremost" should apply to all children.

#### THE GOVERNMENT'S USE OF ALTERNATIVES TO DETENTION FOR CHILDREN

32. We welcome the government's commitment to alternatives to detention for children and their families. Our starting point for discussions on alternatives is that the first presumption must be freedom, and any restrictions on liberty must be proportionate. However we are concerned that the manner in which the government is piloting alternatives is ill-considered and causing further harm to some of the families involved.

33. The government's drivers for its practice models and evaluations have been cost and the number of families leaving the UK rather than on the experience of families going through the pilot or an understanding of what factors make families more likely to engage with options to remain or leave the UK.

34. This is a missed opportunity as well as causing suffering to families caught up in coercive practices. For example in our review of the Millbank pilot in Ashford, Kent (which ended in summer 2008), families told us that it was never made clear to them why they were being sent to Millbank: they were simply given 14 days<sup>77</sup> to enter the pilot or have their support stopped. Some had less than a week to make arrangements to sell their possessions and take their children out of school. Some families did not know where they were going until they arrived at Millbank. The referral criteria for the pilot were so confused that some of those selected could not leave the UK because it had already been judged unsafe for them to return to their country of origin.

35. A "family returns" pilot is due to commence in Glasgow in spring 2009 and we urge the government to learn from its experiences at Millbank and through other enforcement pilots such as Clannebor in Yorkshire and the implementation of Section 9. Threats and coercion do not encourage families, who have already suffered serious upheaval and distress, to comply. International experience, including in Australia and Sweden, provides evidence that successful schemes work in a supportive, transparent way, so that families and their advisers understand the system and can feel confident that they have been given a fair hearing.

*February 2009*

<sup>73</sup> UK Border Agency, Code of Practice for Keeping Children Safe From Harm, January 2009, para 1.8.

<sup>74</sup> Joint Committee on Human Rights, The Treatment of Asylum Seekers: Tenth Report of Session 2006–07, para 258.

<sup>75</sup> Joint Committee on Human Rights, The Treatment of Asylum Seekers: Tenth Report of Session 2006–07, Q528.

<sup>76</sup> UK Border Agency, Code of Practice for Keeping Children Safe From Harm, January 2009, paras 3.2 and 3.24.

<sup>77</sup> Initially this was seven days.



### Memorandum submitted by British Irish Rights Watch

British Irish RIGHTS WATCH (BIRW) is an independent non-governmental organisation that has been monitoring the human rights dimension of the conflict, and the peace process, in Northern Ireland since 1990. Our vision is of a Northern Ireland in which respect for human rights is integral to all its institutions and experienced by all who live there. Our mission is to secure respect for human rights in Northern Ireland and to disseminate the human rights lessons learned from the Northern Ireland conflict in order to promote peace, reconciliation and the prevention of conflict. BIRW's services are available, free of charge, to anyone whose human rights have been violated because of the conflict, regardless of religious, political or community affiliations. BIRW takes no position on the eventual constitutional outcome of the conflict.

British Irish RIGHTS WATCH welcome this opportunity to participate in the Joint Committee on Human Rights (JCHR) inquiry into children's rights. We have focussed our comments on the interaction between less lethal force and children in Northern Ireland.

The Police Service of Northern Ireland (PSNI) have within their arsenal AEPs, a type of plastic bullet, and tasers; we believe these weapons could seriously injure or even kill a child. AEPs are most often used in riot situations; BIRW's concern here stems from the rise in recreational rioting in Northern Ireland, where children as young as five may be present.<sup>78</sup> Our concern about tasers is centred upon the extreme danger the effect of a large electric shock could have on a child and the potential for a child to be accidentally hit by a taser.

#### CONCERNS ABOUT AEPs

In 2005, the Police Service of Northern Ireland (PSNI) introduced the attenuating energy projectile (AEP) to replace the plastic bullet, following research commissioned by the Northern Ireland Office to search for a less lethal alternative to the plastic bullet. However, as the Oversight Commissioner for the PSNI commented,<sup>79</sup> the AEP is not an alternative, but simply a different type of plastic bullet. The plastic bullet has had a long and bloody history in Northern Ireland; 17 people have died as a result of the use of rubber and plastic bullets between 1970 and 2005; many others sustained serious injuries. Nine of the 17 victims were aged 18 or under, the youngest being 10 years old.

AEPs were used within three weeks of their introduction; 21 AEPs were fired on 12 July 2005 in Ardoyne, and a further 11 on 4 August 2005 in North Belfast, all of them by the police.<sup>80</sup> A very large number of AEPs were also fired over the period 11 to 13 September 2005, during serious rioting following a ruling by the Parades Commission. Of a total 281 AEPs fired between July and September 2005 by the police, 211, or 75%, hit their mark. BIRW has concerns that the injuries caused by AEPs have not been sufficiently recognised. We draw attention to research published in the *Emergency Medicine Journal* which examined patient's records from emergency departments in areas in which there had been rioting and AEPs fired.<sup>81</sup> It found that six out of 14 patients presented with injuries to the face, neck or head.

BIRW has concerns that the probability of these weapons causing serious injury to children and young people caught up in riot situations are high. Officers are trained to use the belt-buckle area as the point of aim at all ranges, thus mitigating against "upper body hits."<sup>82</sup> Unfortunately, this guidance does not mitigate the possibility of striking the abdomen or the genitals nor does it really acknowledge the fact that children are small and thus the risk of collateral damage increased. Further, the guidance provides that, unless there is a serious and immediate risk to life, use at under one metre or aiming the weapon to strike a higher part of the body at any range is prohibited. Yet a range of only one metre is exceptionally close and must increase significantly the potential to cause injury. The guidelines also specifically recognise the fact that AEPs can cause fatalities<sup>83</sup> and that they can ricochet and thus have the potential to harm others apart from the intended target.<sup>84</sup> In 1998, the United Nations' Committee against Torture again found "the continued use of plastic bullet rounds as a means of riot control" to be a matter for concern, and recommended their abolition.<sup>85</sup> In 2002, the United Nations' Committee on the Rights of the Child said; "The Committee is concerned at the continued use of plastic baton rounds as a means of riot control in Northern Ireland as it causes injuries to children and may jeopardize their lives".<sup>86</sup>

Although AEPs have not been used in a serious riot situation for a number of years, they remain part of the PSNI's arsenal and could be used at any time. BIRW continues to have very serious concerns that the potential for AEPs to cause serious injury and death, particularly to the most vulnerable in society such as children. In July 2008, the UN Committee on Civil and Political Rights highlighted its concern at the use

<sup>78</sup> Police appeal for calm over riots, *BBC News*, 6 September 2005.

<sup>79</sup> Office of the Oversight Commissioner, Report 11, September 2004, p 52.

<sup>80</sup> Reply to Freedom of Information request made to the PSNI: F-2005-02695, 19 December 2005 (July and August).

<sup>81</sup> See *Injuries caused by the attenuated energy projectile: the latest less lethal option*, by Maguire K, Hughes D, Fitzpatrick S, Dunn F, Roche L, Baird C, *Emergency Medical Journal*, November 2006.

<sup>82</sup> ACPO Attenuating Energy Projectile (AEP) Guidance, amended 16 May 2005, paragraph 1.17.

<sup>83</sup> *Ibid*, paragraph 4.1.

<sup>84</sup> *Ibid*, paragraph 7.5.

<sup>85</sup> Conclusions and recommendations of the Committee against Torture: United Kingdom of Great Britain and Northern Ireland, A/54/44, 11 November 1998.

<sup>86</sup> Concluding observations: United Kingdom of Great Britain and Northern Ireland, Committee on the Rights of the Child, CRC/C/15/Add.188, 9 October 2002.

of AEPs and emerging medical evidence that they may cause serious injuries and concluded: “The State party should closely monitor the use of Attenuating Energy Projectiles (AEPs) by police and army forces and consider banning such use if it is established that AEPs can cause serious injuries.”<sup>87</sup>

#### CONCERNS ABOUT TASERS

Tasers (electric stun guns) were introduced into Northern Ireland in January 2008 as part of a three month pilot scheme. There was strong opposition from NGOs and others to this decision, particularly as the Chief Constable had declined to carry out an Equality Impact Assessment prior to their introduction. This disregard for the impact of tasers on vulnerable groups, combined with a lack of adequate respect for both human rights standards and international implementation bodies such as UN Committees, is disturbing.

The lack of data on the long-term effects on the body of exposure to electric shocks powerful enough to incapacitate and the known risk of causing heart attacks give rise to significant concern. Tasers also raise the possibility of violating the prohibition on torture and cruel, inhuman and degrading treatment because, as has been vividly demonstrated in a *Panorama* documentary,<sup>88</sup> they inflict intolerable pain. Whilst we accept that the use of force will inevitably inflict some pain on its victims, with tasers the infliction of pain is the means of incapacitating people, rather than a side effect of their use. Furthermore, where other means are used it is possible for the operator to use restraint and to try to avoid inflicting unnecessary pain. However, with a taser, a high level of pain is inevitable; the impact of such a substantive voltage on a child is very serious.<sup>89</sup>

Manufacturers of tasers recommend that they should not be fired on anyone with a dysfunctional heart, pregnant women, or small children.<sup>90</sup> This renders them impractical: police officers can have no way of knowing just by looking at someone that s/he has a dysfunctional heart, or has a pacemaker. Similarly, it is not always possible to tell that a woman is pregnant. There is also scope for accidental injury to such persons, and to children, especially in crowds. In two surveys conducted in America on the use of the M26 Advanced Taser used in a UK trial, over 50% of the persons confronted with the weapon were impaired by alcohol, drugs or mental illness.<sup>91</sup> According to Amnesty International, since 2001, over 150 people have been killed in the USA by tasers. One person, Brian Loan, who had a heart condition, died in the UK on 14 October 2006, three days after being struck by a taser.<sup>92</sup>

Tasers have been used three times in Northern Ireland since their introduction. The first time involved a hostage situation, where small children were present;<sup>93</sup> the second on a man with a gun; and the third during a disturbance amongst youths.<sup>94</sup> No injuries have, as yet, been reported. The use of tasers is subject to oversight by the Police Ombudsman; but, as yet, no investigations into their use have been concluded.

Finally, we draw attention to the recent conclusion by the UN Committee on the Rights of the Child which issued categorical advice to the United Kingdom, as follows: “The State party should treat Taser guns and AEPs as weapons subject to the applicable rules and restrictions and put an end to the use of all harmful devices on children.”<sup>95</sup> In contrast, the PSNI, during their Equality Impact Assessment, indicated their belief that the use of tasers was human rights complaint, despite the UN Committee’s statements on this issue. We believe that the potential of AEPs and tasers to seriously harm children and should be withdrawn from use.

February 2009

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#### Memorandum submitted by the Centre for Studies on Inclusive Education (CSIE)

We are writing in response to the Committee’s call for evidence on children’s rights, following the report of the Committee on the Rights of the Child published on 3 October 2008. We were particularly concerned to note the latter Committee’s regret that its previous recommendations with regard to education had not been followed up. This submission focuses on the persistent discrimination against children on the grounds of disability and on other aspects of discrimination against children in education.

<sup>87</sup> Concluding observations of the Human Rights Committee, United Kingdom of Great Britain and Northern Ireland, 30 July 2008, <http://daccessdds.un.org/doc/UNDOC/GEN/G08/433/42/PDF/G0843342.pdf?OpenElement>

<sup>88</sup> Less Lethal, BBC *Panorama* documentary transmitted on 9 December 2001.

<sup>89</sup> According to [www.taser.com](http://www.taser.com), the taser M26 Advanced, the type used by the PSNI, has Peak open circuit arcing voltage of 50,000 V; Peak loaded voltage of 5,000 V, average voltage over duration of main phase 3400 V, average over full phase 320 V, average over one second 1.3 V.

<sup>90</sup> Phase 3 Report, Chapter 3, paragraph 32.

<sup>91</sup> Phase 4 Report, Chapter 7, Appendix B.

<sup>92</sup> Death sparks Taser safety concern, *BBC Internet News*, 18 October 2006.

<sup>93</sup> First use of taser stun gun in NI, *BBC News*, 21 August 2008.

<sup>94</sup> Taser used at disturbance, by Allison Morris, *Irish News*, 26 January 2009.

<sup>95</sup> Concluding observations, United Kingdom of Great Britain and Northern Ireland, 20 October 2008, <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

The report of the Committee on the Rights of the Child highlighted many groups of children and young people facing barriers to enjoying their right to education; among them disabled children, children of Travellers, Roma children, asylum seeking children and teenage mothers. Among other concerns, the Committee noted the persistently high exclusion rates and, in Northern Ireland, the problem of segregation and of academic selection at the age of 11. The Committee also noted the lack of a comprehensive national strategy for the inclusion of disabled children into society and recommended legislative and other measures to address this, including training for teachers and awareness-raising campaigns aimed at encouraging inclusion and preventing discrimination and institutionalization. The UK has also been told by the Committee on the Rights of the Child to take account of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, the Committee's General Comment No 9 on the rights of children with disabilities, and to ratify the UN Convention on the Rights of Persons with Disabilities. These international instruments share an unconditional commitment to inclusive education, which the UK has repeatedly been called upon to implement.

CSIE remains concerned that children's rights seem to be given disgracefully low priority in a number of areas. Significantly, even though the rights of disabled adults have recently been acknowledged and endorsed through intense legislative and policy activity, the Department for Children, Schools and Families (DCSF) lags behind other government departments and cross-governmental policy initiatives including the Department of Health, the Department of Work and Pensions and the Cabinet Office. Members of the Committee will know this from your seventh report *A life like any other*. While the report rightly offered criticisms about the slow and imperfect implementation of such policies, it is certainly the case that *Our Health Our Care Our Say*, *Valuing People*, and *Getting a Life* all make absolutely explicit the right of disabled adults to inclusion in ordinary life and mainstream institutions. By contrast, the DCSF's own policies such as *Every disabled child matters* mention only "inclusion in society", never in the specific social context of schools. In our view this is tantamount to a conscious and studied avoidance.

Chiefly, however, we would particularly like to draw your attention to the fact that no national strategy is in place for the inclusion of all disabled pupils in mainstream schools; no guidance or support is available for schools on making and implementing plans to include all the children in their locality who are currently in segregated provision. The task is not elaborate, expensive or utopian. It has in fact largely been fulfilled in a tiny number of local authority areas. The national picture, however, is alarmingly inconsistent. CSIE has shown<sup>96</sup> that in 2004 the London Borough of Newham had the lowest percentage of pupils in special schools (0.06%) while South Tyneside had the highest rate (1.46%). In other words, approximately one in 1,667 children attended special schools in Newham and one in 68 in South Tyneside. This degree of variation between local authorities is far greater than geographical context could ever account for. The fact that there is a postcode lottery on such a fundamental human rights issue is unacceptable.

Such a postcode lottery is far from new in this country. At the time when mass education was first being developed, the Elementary Education (Defective and Epileptic Children) Act of 1899 allowed local education authorities the possibility of creating provision for children deemed unfit for mainstream schooling, but only if they wanted to. It is particularly sad to see that 110 years on, there is still no clear strategic direction from central government on the educational provision for disabled children.

What is needed (and what is still missing) in order to overcome discrimination in the form of segregation is above all else the requisite strategic leadership at a national level, particularly from the DCSF. Discrimination affects two key groups of children: those who are segregated from the outset on grounds of being significantly disabled (especially those labelled with severe or profound and multiple learning difficulties), and those who start off in ordinary mainstream school but end up being permanently excluded on grounds of their behaviour. By the DCSF's own admission,<sup>97</sup> provision for disabled children and young people is improving but there remains significant cause for concern in a number of areas; for example, evidence shows that disabled pupils are at increased risk of being bullied and disproportionately likely to be excluded from their school.

The DCSF's responses to calls for this strategic leadership have been twofold.

Firstly, according to its Special Educational Needs section, it is up to local authorities to decide on the rate and extent to which they promote inclusion (if at all). While we endorse the commitment to local flexibility, such a stance is painfully reminiscent of the 1899 Act (see above); the lack of strategic leadership in a matter significant enough to transform young people's lives is unforgivable. Disabled adults have repeatedly argued that education in segregated settings leads to adult lives in the margins of society. CSIE considers it essential that the DCSF listens to the voice of disabled adults, recognises the potential harm to people's lives that such an educational apartheid can cause, and urgently reviews its strategic role in upholding the rights of disabled children. In many other areas, after all, the department has chosen to be very prescriptive (for example, it currently removes from local authority control schools failing to attain 30% A\*-C passes at GCSE with English and Maths).

<sup>96</sup> Rustemier, S & Vaughan, M (2005). *Segregation trends—LEAs in England 2002–2004: Placement of pupils with statements in special schools and other segregated settings* Bristol: CSIE.

<sup>97</sup> Secretary of State Report on progress towards disability equality across the children's and education sector, published on 1 December 2008.

Secondly, the department and its ministers say that the DCSF cannot dictate to parents a particular type of provision for their disabled children; segregation and inclusion, the department claims, are matters of parental choice. But this raises two significant issues:

- We do not need to point out to members of this Committee that human rights can never be a matter of “choice”. We strongly believe that the State has a responsibility to uphold the human rights of all its citizens, young or old. Allowing for “choice” of segregated education, thereby condoning a practice which breaches children’s right to education without discrimination, seems as unethical as allowing for “choice” of child labour or enforced imprisonment. The confusion between rights and choice was sharply demonstrated in the response of the DCSF minister responsible for special needs, Sarah McCarthy-Fry, to questions put to her at the department’s most recent presentation to the ODI on its progress under the duty to promote disability equality (1 December 2008). The minister stated that even if every school in the country were fully capable of including all children, there would still be a need for (segregated) special schools because some parents would still choose them—and this in spite of the fact that, as she also stated, the government regards inclusion as the *preferable* choice. In offering parents the choice of segregation, the state is contravening children’s basic human rights.
- The idea that parents do have a choice, under the present system, is in any case a myth. Children in segregated schools are often there because they have been rejected by their local mainstream school (if indeed they ever got as far as the door). Many parents who “choose” a special school placement do so because they believe, or have been told by professionals, that mainstream provision is not possible for their child. In other words, that mainstream provision is currently structured in a way that it cannot respond to the diversity of learners. This means that many parents do not have the “choice” of mainstream at all, rendering a special school placement an unwelcome inevitability. To say that they have chosen this is misleading and, potentially, insulting. Parents of disabled children have told CSIE that they do not dare to conceive or hope that their child can have social relationships with their peers; this is due to the extraordinarily negative messages that surround disability in society at large. The very small minority of parents who do dare to pursue their choice of mainstream, often have to do so through countless meetings with local authority officers and school managers, if not through a strenuous battle involving the Special Needs Tribunal. For the majority who cannot countenance this, there continues to be enforced segregation within the system.

The enormous controversy surrounding the future of special schools in this country might be mistaken as an indication that there are lobbies on both sides putting forward conflicting matters of principle. This is not so. On the one hand children’s rights organisations, charitable organisations for disabled children and their umbrella groups (such as the Council for Disabled Children), as well as organisations of disabled adults, many of whom attended segregated schools themselves, all strongly support inclusive education on the moral principle that segregated schooling amounts to educational apartheid. Children learn from one another as much as they learn from adults and the curriculum planned for them, if not more. During their school years they also form friendships that can last a lifetime. It is unethical to deprive disabled children of the opportunity to grow up and learn alongside their non-disabled peers. In assessing some children’s “needs”, many professionals focus on physical, sensory or mental impairments and place children in institutions alongside others with similar impairments. No adult would choose their workplace by these criteria. The moral argument for inclusion is strong and remains undisputed. On the other hand there are parents and professionals, most of whom have a vested interest in a particular school, claiming that segregated schools offer specialized provision not available in mainstream schools. The two positions are not mutually exclusive. There is nothing that takes place in a special school that cannot happen in mainstream or is not already happening somewhere. For more information on CSIE’s position on segregated provision please see [www.csie.org.uk/inclusion/faq.shtml](http://www.csie.org.uk/inclusion/faq.shtml)

We note that none of the above represents a position unique to CSIE. The House of Commons Education and Skills Committee in the report of its inquiry in special educational needs provision in England (*Special Educational Needs*, published in July 2006) called for a major review of provision with a view to grant special educational needs (SEN) a central position in the national education agenda. The report heavily criticized the government for its unclear, if not conflicting, messages of commitment to inclusion and for remaining reluctant, despite Audit Commission recommendations in 2002, to review the current SEN framework, branded “no longer fit for purpose”. Finally, it called for the government to commit to a national framework with local flexibility, clarifying its overarching strategy for SEN and disability policy; to seriously consider the impact of league tables on school admissions and act to separate SEN from the raising attainment agenda; and to “radically increase investment in training its workforce”, current and future, on issues of SEN and disability.

We also believe you should consider very carefully the disturbing fact that discrimination is woven into the very structure of the DCSF itself. The department has a “Schools” directorate which deals with everything directly relevant to children’s education, and a separate “Children and Families” directorate which deals with social care issues such as child protection and early years. The department’s “Special Educational Needs and Disability” section comes under the second of these directorates, not the first. This indicates almost a throwback in attitude to before 1970, when disabled and “maladjusted” children were the

responsibility of the then Ministry of Health, not of Education. And it certainly ensures that civil servants in the Schools Directorate have no incentive to give proper or due consideration to the place of disabled children and those with emotional difficulties within the mainstream curriculum and the standards agenda.

From a cross-governmental perspective this raises a very practical question: how can we achieve the goals of adult policies on inclusion while we continue to segregate our future disabled adults and those whose adult behaviour society will find most problematic? Furthermore, from your own committee's wider perspective of justice and human rights, is not this contradiction between adult and child policies a clear contravention of the principle of human rights for *all children in general*, inasmuch as certain rights are in principle being reserved for adults that are not available to children?

In summary, we remain deeply concerned that DCSF policy on including disabled children in mainstream schools is weak and out of step with other government departments and cross-governmental policy initiatives for disabled adults. The imperative for mainstream provision for all is not yet widely understood and involves a re-examination of conventional ways of seeing disability. UK legislation has, for over 25 years, stipulated that disabled children should be educated in their local mainstream school, as long as this is consistent with their parents' wishes and does not affect the education of other children. This begs two questions, which we hope can be addressed as a result of this consultation:

- What is the justification for allowing parents of disabled children to veto the inclusive education which their child has a right to?
- What steps have been taken to reform mainstream provision, so that the presence of disabled children is not seen as a threat to the education of others?

February 2009

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#### **Memorandum submitted by the "Children are unbeatable!" Alliance**

*The "Children are unbeatable!" Alliance ([www.childrenareunbeatable.org.uk](http://www.childrenareunbeatable.org.uk)) includes more than 400 organisations and many prominent individuals seeking equal protection for children under the law on assault, through the complete removal of the "reasonable punishment" defence and other similar justifications of punitive violence against children.*

1. We welcome the Joint Committee's short inquiry, following up on the October 2008 concluding observations of the Committee on the Rights of the Child. These observations repeat with added emphasis the Committee's concern and recommendations concerning the lack of complete prohibition of corporal punishment of children, already made in its concluding observations on the first two UK reports under the Convention on the Rights of the Child, in 1995 and 2002 (see paras. 40–42, reproduced below).

2. The UK Government has received consistent and strongly-expressed recommendations, not only from the Committee but from a range of other international and regional human rights monitoring bodies, that its human rights obligations require the removal of legal defences justifying punitive violence against children ("reasonable punishment" in England, Wales and Northern Ireland and "justifiable assault" in Scotland), to give children equal protection under the criminal law on assault.

3. The Government, in response, trivialises the issue and substitutes its own interpretation of its obligations for that of these authoritative UN and other monitoring bodies. The Joint Committee has already expressed concern and disappointment at Ministers' lack of respect for the views of the Committee on the Rights of the Child, referring to the Committee's General Comment No 8 on the right of the child to protection from corporal punishment and other cruel or degrading punishment (Joint Committee 11th Report of session 2007–08, para 30). In addition to the Committee's successive recommendations in its concluding observations on the UK's reports, this General Comment has explained in detail States' obligations under the CRC to prohibit and eliminate all corporal punishment of children, providing a clear definition (Committee on the Rights of the Child, General Comment No 8, 2006; see definition in para 11).

4. Judges of the UK's highest courts have emphasized the importance of the Convention on the Rights of the Child, and also the importance of the interpretation of it by the Committee on the Rights of the Child. In a 2005 House of Lords judgment, Baroness Hale of Richmond described the Committee as "the authoritative international view of what the UN Convention requires", noting that it is "charged with monitoring our compliance with the obligations which we have undertaken to respect the rights of children". And in 2008 the Court of Appeal, in a judgment concerning restraint of children in detention, quoted Baroness Hale's comments and echoed the Joint Committee in stating it was "very disappointed" at a minister's "apparent lack of respect for the views of the UN Committee", referring to the Committee's General Comment No 8.

5. This is not a trivial matter for children, nor for the overall promotion of human rights: respect for human dignity and physical integrity is the foundation of everyone's human rights. Children's equal right to this respect is plainly breached by the maintenance of a unique defence for punitive violence against children in legislation across the UK. There is no more symbolic reflection of the denial of children's status as individual people and rights holders.

6. As Thomas Hammarberg, Commissioner for Human Rights, Council of Europe, concludes his issue paper on “Children and corporal punishment: the right not to be hit—also a children’s right” (updated 2008): “How can we expect children to take human rights seriously and to help build a culture of human rights, while adults not only persist in slapping, spanking, smacking and beating them, but actually defend doing so as being ‘for their own good’? Smacking children is not just a lesson in bad behaviour: it is a potent demonstration of contempt for the human rights of smaller, weaker people.”

7. The issue is not complex: as adults, we take for granted the full protection of the criminal law on assault, wherever we are and whoever the perpetrator. Why should children be singled out for less protection? The babies and young children who are smacked the most are smaller and more vulnerable than most adults and face far more difficulty in gaining help and protection. There is no rational justification for reducing children’s legal protection when violence is disguised as discipline. No government would defend any level of punitive violence against women, confused elderly people, or people with learning difficulties. So why children?

8. The Government no longer defends smacking *per se*; Ministers state that the Government does not condone smacking. It also states it does not wish to “criminalize decent parents” (see, for example, Responding to Human Rights Judgments: Government Response to the Joint Committee on Human Rights’ Thirty-first Report of Session 2007–08, January 2009, page 23). But equalizing children’s protection from assault does require the criminalization of any assault which would be a criminal offence if directed at an adult—no more and no less. In normal circumstances, adults are not prosecuted for minor assaults on other adults and, as the then Director of Public Prosecutions reassured the Joint Committee in evidence in 2004, nor would minor smacking of children be prosecuted except in special circumstances. It is unlikely that prosecuting a parent for “minor” smacking would pass the public interest test or be in the victim child’s best interests. There is also the *de minimis* principle (oral evidence by Ken Macdonald QC, DPP, to Joint Committee, 19 May 2004).

9. The responsible Department for Children, Schools and Families appears to base its resistance to complete removal of the “reasonable punishment” and similar defences on the fact that a majority of parents have indicated in opinion polls that they are opposed to the reform. But, as we hope the Joint Committee will emphasise in its Inquiry report, public, or parent, opinion cannot be upheld as a justification for not fulfilling human rights obligations. The Government has also stated—in its published response to a memorandum from the Council of Europe’s Commissioner for Human Rights on corporal punishment—that it does not accept “that the term violence is appropriate for the level of physical punishment for which the defence of reasonable punishment is available in English or Northern Irish law or for which the defence of justifiable assault is available in Scots law”. This is disingenuous in the extreme and conflicts with hundreds of thousands of children’s daily experience: smacking is a form of violence which invariably invades the child’s physical integrity and hurts their human dignity. The statement contrasts strangely with the Government’s adopted policy of zero tolerance of domestic violence.

10. The UK Government has received consistent and repeated recommendations to fulfil its human rights obligations by ending the legality of punitive violence against children:

- from the Committee on the Rights of the Child, in 1995, 2002 and 2008;
- from the Committee on Economic, Social and Cultural Rights, in 2002;
- from the Committee on the Elimination of Discrimination against Women, in 2008;
- from the European Committee of Social Rights, in 2005;
- from the Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, in a strongly-worded memorandum in October 2008; and
- from various States during the Universal Periodic Review of the UK’s human rights record at the Human Rights Council, April 2008.

11. There has been substantial progress towards prohibition of all corporal punishment, including in the home, across Europe. Of the 27 EU member states, the UK is now one of just four which have not either prohibited all corporal punishment or publicly committed themselves to achieve this reform soon.

## CONCLUSION

12. The Joint Committee has a unique and powerful role in seeking to hold the UK Government to account for its human rights obligations to children. We hope it will pursue energetically with the Government the removal of the remaining legal defences of punitive violence against children.

February 2009

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**Memorandum submitted by the Children's Commissioner for Wales**

## INTRODUCTORY COMMENTS

The work of the Children's Commissioner for Wales is underpinned by the United Nations Convention on the Rights of the Child (UNCRC).<sup>98</sup> The UNCRC was adopted as the basis of all policy making for children and young people by the Welsh Assembly Government and forms the basis of the Seven Core Aims for all children and young people.

The Children's Commissioner for Wales along with his three fellow Commissioners across the United Kingdom provided both written<sup>99</sup> and oral evidence to the United Nations Committee on the Rights of the Child on 2008.

I share the Joint Committee on Human Rights concern about the Government's implementation of children's rights in the United Kingdom. This was reinforced by the considerable number of Concluding Observations made by the United Nations Committee on the Rights of the Child in 2008.<sup>100</sup>

As an independent national children's human rights institution along with the other Children's Commissioners across the United Kingdom, I shall be monitoring the Government's response to and implementation of the Concluding Observations. I hope that, through thorough implementation, the United Kingdom will be able to report real progress in realising these during the next reporting cycle, currently scheduled for 2014.

It is crucial that we close the gap between policy intent and practice for all children and young people across the United Kingdom. This was an issue that I highlighted in my recent annual report<sup>101</sup> and is particularly pertinent to a small number of the Committee's selected topics.

*Children in detention (including the use of restraint and deaths in custody); criminalisation of children;*

In my recent annual review I made reference to issues relating to youth justice, based on the direct work that my team undertake with children and young people held in the secure estate.

*We have one of the lowest ages in Europe for criminal responsibility (10 years) and many of the children in Wales who commit criminal offences are detained in England, far from their families, friends and communities. My staff visit young people in the secure estate and we are aware of the negative impact on them both in terms of family contact and isolation. We assist so that suitable accommodation and support is provided when they are released, that children in need are assessed and that support identified in special educational needs statements is being provided.*

*The UNCRC makes it clear that those under 18 should be held in custody only as a last resort. Where detention is necessary I believe that they should remain in Wales, close to their families and all the services they will need to access for their rehabilitation. While this issue is of serious concern in terms of breaches of these young people's rights, the numbers involved are not so large as to make it impractical for responsibilities for youth justice and the secure estate to be devolved.*

The United Kingdom Children's Commissioners' joint report to the United Nations Committee on the Rights of the Child drew attention to the use of restraint on children. The Commissioners recommended that the *UK Government and devolved administrations should ensure that restraint against children is used only as a last resort and only to prevent harm to the child or others. Pain distraction techniques should not be used on children. The UK Government should withdraw SI2007/1709 widening the use of restraint in Secure Training Centres.*<sup>102</sup>

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<sup>98</sup> Convention on the Rights of the Child <http://www.unhcr.ch/html/menu3/b/k2crc.htm>

<sup>99</sup> UK Children's Commissioners' Report to the UN Committee on the Rights of the Child (2008) Available from [http://www.childcom.org.uk/publications/UNCRC\\_report\\_final\\_ENGLISH.pdf](http://www.childcom.org.uk/publications/UNCRC_report_final_ENGLISH.pdf)

<sup>100</sup> Concluding Observations United Kingdom and Northern Ireland Available from <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

<sup>101</sup> Children's Commissioner for Wales (2008) Annual Review 07-08.

Available at [http://www.childcom.org.uk/publications/Annual\\_review08\\_english.pdf](http://www.childcom.org.uk/publications/Annual_review08_english.pdf)

<sup>102</sup> UK Children's Commissioners' Report to the UN Committee on the Rights of the Child (2008) Available from [http://www.childcom.org.uk/publications/UNCRC\\_report\\_final\\_ENGLISH.pdf](http://www.childcom.org.uk/publications/UNCRC_report_final_ENGLISH.pdf)

The United Nations Committee on the Rights of the Child, having reviewed all of the evidence presented, stated that they *remain concerned at the fact that, in practice, physical restraint on children is still used in places of deprivation of liberty* and recommended that

39. The Committee urges the State party to ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished.

In December 2008, the Independent Review of Restraint<sup>103</sup> and the Government's response<sup>104</sup> to that review were published. The Government's response in my view is in direct conflict with the Committee's Concluding Observation as it still allows for the use of wrist locks. The Government's response also makes very little reference to children's rights and this is a major obstacle to ensuring that future strategy, policy and practice in this important area are compliant with the UNCRC.

I fully support each of the Concluding Observations made by the UN Committee in October 2008 and will be working with all potential partners to see their full implementation. I am further concerned that there is a hardening of attitudes to children and young people<sup>105</sup> who are increasingly being dealt with by the police. I am very concerned that children can be sentenced to custody for breaching an Anti Social behaviour Order (ASBO) despite not having broken the law to have been awarded that ASBO.

One of the Children's Commissioners' recommendations not taken forward by the UN Committee was the call for a public inquiry into deaths in custody. I am concerned that the deaths of a number of extremely vulnerable children have not been systematically reviewed to ensure that other vulnerable children are not placed at a similar risk. We have to ensure that children are not seen as failing our systems, instead we need to realise that our systems fail children and do not respect children's rights.

#### *Discrimination against children on the grounds of age or disability;*

In February 2005, the United Kingdom Government established a review of discrimination law. A reference group was established to advise Ministers and officials. In June 2007 the consultation paper "*A Framework for fairness: proposals for an Equality Bill for Great Britain*" were published and the closing date for responses was September 2007.

In June 2008, the white paper was published, *Framework for a fairer future—the Equality Bill*.<sup>106</sup> In October 2008, Harriet Harman QC, Secretary of State for Equality, announced in Parliament that the new Equality Bill would include protection from age discrimination in the provision of goods, facilities and services but only for those aged 18 and over. Additionally, it was stated that the integrated equality duty on public authorities will not apply to education or children's services.

#### *Protection from age discrimination in goods, facilities, and services*

I am extremely disappointing that under-18s are set to be excluded from the protection from age discrimination in the provision of goods, facilities and services despite clear representation from the children's sector.

In research carried out by the Children's Rights Alliance for England (CRAE) for the United Kingdom Government in 2007, under 18 year olds were asked across the United Kingdom, whether they had ever been treated unfairly because of their age, gender, disability, amount of money their family had, skin colour, religion or culture, the beliefs or behaviour of parents/carers, the child's own beliefs, language, sexual orientation or something else. Over 3,900 children and young people participated in the on-line survey in the United Kingdom. 43% reported that they had been treated unfairly because of their age.

There is much evidence of children and young people experiencing unfair treatment because of their age in the United Kingdom. For example:

- 16 and 17 year olds receiving lower levels of certain benefits despite paying the same social security contributions.<sup>107</sup>
- 16 and 17 year olds do not benefit from the minimum wage which is guaranteed to the adult population.<sup>108</sup>
- Public places such as leisure centres and libraries and transport facilities being unfit for adults with babies and young children.
- Children and young people being treated unfairly in public spaces eg in shops,<sup>109</sup> using public transport, or where "Mosquito" devices<sup>110</sup> are in use.

<sup>103</sup> Peter Smallridge and Andrew Williamson (2008) *Independent Review of Restraint in Juvenile Secure Settings* Available from [http://www.justice.gov.uk/docs/restraint\\_review.pdf](http://www.justice.gov.uk/docs/restraint_review.pdf)

<sup>104</sup> *The Government's response to the Report by Peter Smallridge and Andrew Williamson of a Review of Restraint in Juvenile Secure Settings* (2008) Available from <http://www.justice.gov.uk/docs/govt-response-restraint-review.pdf>

<sup>105</sup> Under 12s are implicated in 2,500 crimes in three years.

Available at <http://www.walesonline.co.uk/news/wales-news/2009/01/26/under-12s-are-implicated-in-2-500-crimes-in-three-years-91466-2277717/>

<sup>106</sup> <http://www.equalities.gov.uk/publications/FRAMEWORK%20FAIRER%20FUTURE.pdf>

<sup>107</sup> UK Children's Commissioners report to the UN Committee on the Rights of the Child.

<sup>108</sup> *Ibid.*

<sup>109</sup> Save the Children (2006) Children and young people in Scotland talk about discrimination.

<sup>110</sup> UK Children's Commissioners Report to the UN Committee on the Rights of the Child.



The United Nation's Committee on the Rights of the Child recently stated in their Concluding Observation 2008 that British children are at risk of being treated unfairly because of a "general climate of intolerance" towards them and that the United Kingdom should "take urgent measures to address the intolerance and inappropriate characterisation of children, especially adolescents, within society, including the media."<sup>111</sup> Discrimination against children and young people and groups of children and young people is in direct contravention of Article 2.1 of the UNCRC.<sup>112</sup> The UN Committee welcomes the United Kingdom Government's plans "to consolidate and strengthen equality legislation, with clear opportunities to mainstream children's right to non-discrimination into the UK Anti-Discrimination Law" and also requests that "all necessary measure are taken to ensure that cases of discrimination against children in all sectors of society are addressed effectively, including with disciplinary, administrative or—if necessary—penal sanctions."<sup>113</sup>

The proposed exclusion of children from protection against age discrimination is in itself discriminatory and contradicts the underlying values of equality and discrimination law and the United Nations Convention. Vulnerability and dependency are no justification for exclusion from protection from discrimination; indeed they strengthen the need for such protection.

I believe that legislation to prohibit age discrimination beyond the work place has the potential to transform the lives of children and young people as well as older people by helping to ensure that people are always treated with respect in our society whatever their age. In the absence of legislation that protects children and young people from negative age discrimination many current discriminatory practices are simply not questioned or addressed.

#### *Asylum seeking children;*

The Joint United Kingdom Children's Commissioners' report to the UN Committee on the Rights of the Child, highlighted the many breaches of children's rights within the asylum system. The Committee made a number of key recommendations in relation to these children which I fully support. My colleagues and I were pleased that the Government withdrew its reservation to article 22 during the reporting process and it will be vital that this impacts on the daily experiences of children seeking asylum in the United Kingdom.

In my Annual Review for 2007–08, I wrote:

*Many of the children and young people who seek sanctuary in Wales have very positive experiences which reflect the genuine care and support in the community and in schools. However there continue to be fundamental breaches of their rights and we made a number of number of representations pursuant to section 75A of the Children's Commissioner for Wales Act 2001 in respect of their detention for long periods of time, transportation conditions from Wales to England, healthcare and overseas student fees. There were some welcome changes in the provision of healthcare but a disappointing response to our representation that children seeking asylum should not be charged overseas student fees if they have been educated in Wales. We have also made representations at a local level where children have the right to the support and protection of social services. We have worked closely with other bodies in Wales and with the English Children's Commissioner to try and improve policy and practise for these vulnerable children.*

#### *Child poverty*

I fully support the Concluding Observation of the Committee that

*an adequate standard of living is essential for the child's physical, mental, spiritual, moral and social development and that child poverty also affects infant mortality rates, access to health and education as well as everyday quality of life of children. In accordance with article 27 of the Convention, the Committee recommends that the State party:*

- a) adopt and adequately implement the legislation aimed at achieving the target of ending child poverty by 2020, including by establishing measurable indicators for their achievement;

The current economic situation and rising utility costs pose a great threat to child poverty levels across the United Kingdom. Fuel poverty is of increasing concern and steps to ensure that more children are not affected need to be taken. Poverty is a children's rights issue as it impacts on children's enjoyment and exercise of their rights. Poverty also affects the educational attainment of children and it is clear to me that greater focus should be placed on the role of education in alleviating the impact of child poverty.

<sup>111</sup> UN Committee on the Rights of the Child (2008), para 24; Concluding Observations—United Kingdom of Great Britain and Northern Ireland, Geneva. United Nations.

<sup>112</sup> Article 2.1 requires State parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without any discrimination or any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

<sup>113</sup> UN Committee on the Rights of the Child (2008), para 24; Concluding Observations—United Kingdom of Great Britain and Northern Ireland, Geneva. United Nations.

It remains unacceptable that more than one in four children in Wales lives in poverty. The task of ensuring that those children at the greatest risk of poverty—including black and minority ethnic children, those in large families, lone parent families, disabled children and children with disabled parents, children leaving care and those in severe and persistent poverty—are prioritised and supported is the hardest but they must be supported more effectively than is the case at present.

To date, the United Kingdom Government's approach to ending child poverty has made little impact on the levels of inequality in income, health and education. While I welcome Welsh Assembly Government's many initiatives and publications on this issue, it is a sad fact that implementation has been slow and progress regrettably inadequate.

My predecessor as Children's Commissioner made a stand on this issue and it is something that I had no hesitation in identifying as a priority concern for me when I was appointed

I will continue to speak out to ensure that action is taken to defend and preserve the progress already made. The slow rate of progress may be regrettable, but to lose ground would be inexcusable.

#### CONCLUDING COMMENTS

I welcome the focus of the Joint Committee on Human Rights on children's rights, particularly given the impetus of the recent UN Committee's Concluding Observations. It is vital that the United Kingdom Government as the State Party signatory to the UNCRC is held to account by national human rights institutions such as the Children's Commissioners across the United Kingdom and by bodies such as yourselves. I support the written evidence submitted by my fellow Children's Commissioners from across the United Kingdom.

It will be extremely important that the United Kingdom Government and the devolved administrations take account of any report that is published as an outcome from this inquiry when they are developing their national action plans.

*February 2009*

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### **Memorandum submitted by Children England**

#### INTRODUCTION

1. Children England welcomes the decision of the Joint Committee on Human Rights (JCHR) to undertake a short inquiry on children's rights, following up the recent concluding observations of the UN Convention on the Rights of the Children on the UK as well as several JCHR reports.

2. As the leading membership organisation for the children, young people and families voluntary sector, Children England is in a unique position to represent charities that work with children, young people and families. Our members include the largest children's charities in the country through to small local groups. Our mission is to create a fairer world for children, young people and families by championing the voluntary organisations which work on their behalf.

3. This short submission does not attempt to cover each aspect of Children England's concern in relation to children's rights. Rather it sets out some of the key themes that we believe must be addressed, and we would urge the Committee to consider embarking on a more detailed inquiry into children's rights in the UK.

#### BUILDING A CULTURE OF CHILDREN'S RIGHTS

4. Almost 20 years on since the UN Convention on the Rights of the Child, a great deal of progress has been made in children's rights. The *Every Child Matters* agenda has ensured that children's policy has been at the forefront of government thinking, whilst more recently the ambitions and proposals set out in the Children's Plan are commendable and have real potential.

5. However, there is still a real need not only to ensure that the principles of children's rights are thoroughly embedded throughout policymaking and practice, but also that there is a clear and common understanding of what children's human rights mean.

6. Much more needs to be done by Government and bodies such as the Equalities and Human Rights Commission and the Office of the Children's Commissioner to ensure that the public has a good understanding of children's human rights. We share the previously voiced concerns of the Children's Rights Alliance for England, who have observed that 79% of its members do not think that the public has a good understanding of children's rights and that only 20% of its members agreed that Government Ministers have a good understanding of children's rights.

7. We are especially concerned that children are too often negatively portrayed in the media and in political debate and that this weakens the concept of children's rights. If we are serious about building a culture of children's human rights then there needs to be a more sophisticated approach within a human rights framework to how to support children who pose challenges, such as those who break the law or who have behavioural problems.

8. The Committee should give serious consideration to how it can promote the greater participation of children in decision-making. As Children England's own work on issues such as Placeshaping (as part of the Speaking Out Project in partnership with the National Council for Voluntary Youth Services) has shown, when children are involved in making decisions it is not only empowering for those involved but can also lead to better-informed policymaking which can promote the rights of other children.

9. We would welcome the JCHR giving sustained consideration to how a greater shared understanding of children's human rights can be built and how a human rights culture can be better developed.

#### PROTECTING THE RIGHTS OF THE MOST VULNERABLE

10. We welcome the Committee's announcement that issues of particular interest include children in detention, asylum seeking children and child trafficking victims. We would also urge the Committee to focus on other particularly vulnerable groups, especially children in care and care leavers, children with disabilities, homeless children and children in contact with the youth justice system.

11. We are especially concerned that many of the most vulnerable children are drawn into a youth justice system which too often is unable to meet their needs. Whilst there is an undoubted need to address problematic and criminal behaviour, drawing children into a stigmatising criminal justice system isn't always the answer. There needs to be greater investment in diversionary schemes and solutions including adolescent mental health services, family support, restorative justice and mediation. There also needs to be greater investment in prevention if future generations of vulnerable children are not to be drawn into the youth justice system.

12. Vulnerable children could benefit greatly from access to an improved and standardised complaints system along with appropriate support and advocacy.

13. In light of the particular vulnerabilities of many children in care, the Committee may want to particularly explore the case for unrestricted access to independent advocacy being available to children in care on a statutory basis.

#### SOCIAL AND ECONOMIC RIGHTS

14. We welcome the Committee's focus on how best to enshrine in law the Government's goal of eradicating child poverty by 2020, in view of the right of every child to an adequate standard of living under Article 27 of the UN Convention on the Rights of the Child. It is vital, however, that the focus on 2020 should not detract from the pressing need for Government to invest the necessary resources to reach the interim target of halving child poverty by 2010. Child poverty legislation must also define child poverty—and ensure that housing costs are taken account of in any measurement.

15. We urge the Committee to engage with the children, young people and families voluntary sector to ensure that its knowledge, skills and experience of working with children in and on the edges of poverty is taken fully account of in taking forward work on children's economic rights. Tackling inequalities and social exclusion, as well as child poverty, must be at the heart of work to uphold children's rights.

#### SUPPORTING THOSE WHO WORK WITH CHILDREN

16. It is essential that those who work with children are equipped to protect and promote the rights of the children they work with. This requires appropriate training and ongoing professional development, as well as a policies and procedures in place to ensure appropriate support and monitoring.

17. Children England is currently working with the Children's Workforce Development Council to explore ways of ensuring the children, young people and families voluntary sector workforce continues to receive adequate support. We urge the Committee to acknowledge the importance of ensuring training and support for all those who work with children and families, and the need for sustained government funding to take this forward.

18. We are concerned that a great deal of expertise within the children, young people and families voluntary sector risks being lost because of uncertainty around funding, not least because of short-term contracts and late decisions about contract renewals. Protecting children's human rights requires first class, experienced staff and we can ill afford to risk losing highly qualified staff from the sector because of uncertainty about statutory sector funding for vital services.

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NEXT STEPS

19. Children England would like the Committee to build on its current call for evidence and launch a more detailed systematic inquiry into children's human rights. Twenty years on from the United Nations Convention on the Rights of the Child such an inquiry could not be timelier. We note the impact that many of the Committee's previous inquiries have had and believe that a detailed focus on an issue such as building a culture of children's rights or protecting the rights of children in the care of the state could make a real difference.

20. Children England would be keen to work with the JCHR in any way that would be useful, including through facilitating discussions through our membership or arranging for a selection of voluntary organisations that work with children, young people and families—including smaller charities whose voices are often not heard—to give evidence to the committee.

February 2009

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**Memorandum submitted by the Children's Law Centre/Save the Children**

INTRODUCTION

1. The CLC (hereafter CLC) is a children's rights NGO which uses the law to promote, protect and realise children's rights. SC (hereafter SC) is the UK's leading international children's charity, working to create a better future for children. Both organisations are founded on the principles of the UN Convention on the Rights of the Child (hereafter the UNCRC) and work to make the principles and provisions of the UNCRC a reality for all children in Northern Ireland.

2. We welcome this opportunity to jointly submit evidence to the Joint Committee on Human Rights in connection with its inquiry on children's rights.

FOCUS OF SUBMISSION

3. The CLC and SC made a detailed submission to the UN Committee on the Rights of the Child (hereafter the UN Committee) which addressed all eight thematic clusters of rights within the UNCRC—that submission provided a detailed analysis of a very wide range of issues from a children's rights perspective and included recommendations to the UK government as well as to the Northern Ireland Executive and the Northern Ireland Assembly.<sup>114</sup> For the purposes of this submission we have decided, in view of the gravity of the issues concerned, including fundamental right to life issues, to focus on a group of issues which fall broadly under the twin heading of criminalisation of children and youth justice.

JURISDICTION

4. As the Joint Committee will be aware responsibility for criminal justice and policing matters in Northern Ireland is in the process of being devolved. As such while responsibility for addressing many of the issues detailed below still falls within the remit of Westminster, jurisdiction is expected to transfer to Northern Ireland within the next number of months.

PRACTICAL IMPACT OF THE UK'S WITHDRAWAL OF ITS RESERVATION TO ARTICLE 37 (c) UNCRC

5. CLC and SC welcomed the long overdue withdrawal of this reservation. At the time of the UK examination by the UN Committee in September 2008 we highlighted the fact that both boys and girls under 18 years of age were being detained alongside adults.<sup>115</sup> While all young girls are now held in the Juvenile Justice Centre,<sup>116</sup> despite the UK's withdrawal of its reservation for the UK as a whole boys under 18 years of age in Northern Ireland continue to be held with adult males in prison service custody. This practice is in clear breach of Article 37 (c) of the UNCRC as well as other international human rights standards including the UN Standard Minimum Rules on the Administration of Juvenile Justice (Beijing Rules paragraph 26.3), the UN Committee on the Rights of the Child's General Comment No 10 on Children's Rights in Juvenile Justice (2007) (paragraph 28.c) and the Council of Europe Rules for Juvenile Offenders (2008) (paragraph 59.1). It also raises an issue of potential gender discrimination in relation to the provision of appropriate placement for detention of young males.

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<sup>114</sup> Save the Children and Children's Law Centre Northern Ireland NGO Alternative Report (March 2008) [www.childrenslawcentre.org](http://www.childrenslawcentre.org)

<sup>115</sup> *ibid* p6-7

<sup>116</sup> Article 96 of the Criminal Justice (NI) Order 2008 amends article 3 of the Criminal Justice Children (NI) Order 1998 and states that in addition to other grounds the court can make a juvenile justice centre order in respect of a young person who has attained the age of 17 "...if the court has been notified by the Secretary of State that there is no suitable accommodation for that child available in the Young Offenders Centre". The practical effect of this provision is that 17 year old girls are no longer detained in Prison Service Custody given that there is no young offenders centre for girls in Northern Ireland.

6. The UK government's statement to the UN Committee that in Northern Ireland "*only in very exceptional circumstances are children ever accommodated with adults*" is not true.<sup>117</sup> Northern Ireland Office (NIO) figures show that during 2003–05 the average population of under 18s in the Young Offenders Centre included 26 young people (68%) on remand and 12 sentenced young people (32%).<sup>118</sup>

7. Schedule 11 of the *Justice (Northern Ireland) Act 2002* (enacted in August 2005) placed 17 year olds within the jurisdiction of the youth courts. However, the powers of the courts to make Juvenile Justice Centre Orders in respect of 17 year olds are restricted—only those who will not reach the age of 18 during the period of the Order; who have not received a custodial sentence within the previous two years and with regard to whom the court after considering a report by a probation order considers that it is in his/her best interest to make such an order can be accommodated in the Juvenile Justice Centre.<sup>119</sup> 17 year old males not meeting these criteria must serve their period of detention in Hydebank Wood Young Offenders Centre, operated by the Northern Ireland Prison Service and accommodating 15–21 year old males on remand, committal or conviction.

8. Additional provisions also exist which permit the detention of children with adults. 16 and 17 year olds can be detained with adults in Prison Service custody under the *Treatment of Offenders (Northern Ireland) Act 1968*. *Article 13 of the Criminal Justice (Children) (Northern Ireland) Order 1998* states that those aged at least 15 deemed to be at risk of harming themselves or others must be remanded to Prison Service custody, and, under paragraph 6 Schedule 2, children in the Juvenile Justice Centre deemed to be at the same risk may be sent to the prison system. The Criminal Justice (NI) Order 2008 allows for "vulnerable" young men to be sent to the Juvenile Justice Centre, but the definition of vulnerable is narrow.

9. An announced inspection of Hydebank Wood Young Offenders Centre in November 2007 by the Criminal Justice Inspectorate Northern Ireland (CJINI)<sup>120</sup> documented a long catalogue of concerns in relation to the management of young boys within this adult prison facility. These included:

- (a) No policy for managing children and no adequate child protection policy.
- (b) Disciplinary outcomes were overly punitive, with excessive use of cellular confinement as a punishment for minor offences.<sup>121</sup>
- (c) Juveniles were routinely strip searched on arrival.
- (d) No separate arrangements existed for the escort of juveniles.
- (e) No formal induction programme existed for juveniles.
- (f) Inadequate healthcare provision and the need for a more caring and therapeutic approach for those at risk and those withdrawing from substance use.
- (g) Little if any planning to meet the individual educational needs of juveniles.
- (h) No separate resettlement policy for juveniles.

10. The CJINI report recommended that the Northern Ireland Prison Service should either remove young men under the age of 18 from Hydebank Wood or provide appropriately resourced, dedicated accommodation with a regime capable of meeting the needs of this population.

11. More recently the annual report for 2007–08 by the Independent Monitoring Board questioned "*the rationale of housing boys under 18 at Hydebank Wood when there is no discernable difference in their regime and the regime of older male inmates*".<sup>122</sup>

12. An additional issue which arises with the detention of boys under 18 with adults in the Young Offenders Centre is in relation to access to education, leisure facilities and freedom of association when on remand. Boys who are on remand in the Young Offenders Centre have no access to education and very limited access to leisure facilities; often being confined to their cells for a considerable period of the day. Further it would appear to be the case that children detained in Hydebank Wood who are under the compulsory school leaving age do not have access to the curriculum. This position is entirely unsustainable when one considers the British Government's obligations under the Human Rights Act 1998 and the UNCRC to provide education to all children and young people—Article 28, to ensure that all children have access to leisure and recreation—Article 31 and to uphold the right of all children to freedom of association—Article 15.

<sup>117</sup> United Kingdom of Great Britain and Northern Ireland Third and Forth Periodic Reports to the UN Committee on the Rights of the Child (July 2007) CRC/C/GBR/4

<sup>118</sup> NIO Statistics and Research Branch

<sup>119</sup> Article 3 Criminal Justice Children (NI) Order 1998

<sup>120</sup> Criminal Justice Inspectorate Northern Ireland Report of an announced inspection of Hydebank Wood Young Offenders Centre 5–9 November 2007

<sup>121</sup> The report noted that some children were locked in their cells on a basic regime for long periods in conditions similar to cellular confinement. One child was held this way for six weeks and had been denied a visit with his mother because of a minor altercation with staff. (HP14)

<sup>122</sup> Independent Monitoring Board (2008) Hydebank Wood Prison and Young Offenders Centre. Independent Monitoring Board's Annual Report for 2007–08. Limavady, Priz'n'Press. p 6. As with the 2007 CJINI inspection report into Hydebank Wood, this report also expressed concern in relation to the adequacy of provision of mental health care services for young boys currently being held in Hydebank Wood and recommended that services be reviewed to ensure sufficient and appropriate resources to meet the assessed needs of children.

13. At present there are 14 boys under 18 years of age being held in Hydebank Wood.<sup>123</sup> While the Prison Service maintains that accommodating these young boys on a separate landing constitutes accommodating them in a separate facility all evidence points to the fact that this is neither a separate facility nor is there a separate regime in operation, a practice which is a clear breach of Article 37 (c) of the UNCRC. In addition, Hydebank Wood is an adult facility staffed by employees of the Prison Service who are not trained in dealing with the needs of children and young people and are often not Access NI checked for their suitability to work with children and young people.

14. The Northern Ireland Office should with urgency move all young boys under 18 currently detained in Hydebank Wood Young Offenders Centre to the age appropriate regime of Woodlands Juvenile Justice Centre (JJC). It should outline its plan of action and time frame in relation to this, detailing how it intends to address the prerequisites, including tackling the pressures created on places in the Juvenile Justice Centre through the inappropriate detention of various groups of children there (see next section).

#### DETENTION AS A MEASURE OF LAST RESORT?

15. The UN Committee expressed concern to the UK government about the high numbers of children deprived of their liberty and on remand and recommended that the UK government establish the principle that detention should be used as a measure of last resort and for the shortest period of time as a statutory principle.<sup>124</sup>

16. In Northern Ireland there is clear evidence that this is not happening with the overuse and inappropriate use of remand as well as the greater use of custodial sentencing than in other jurisdictions within the UK.

17. The *Criminal Justice (Northern Ireland) Order 1998* provides for the detention of children aged 10–17. Use of custodial sentences is supposed to be restricted to serious crimes and protection of the public, although grave crimes can result in a specified period of custody in conditions ordered by the Secretary of State. The Court is compelled to provide justification for each custodial sentence. Analysis of figures provided by the Office of the First and Deputy First Minister shows that, between 1999 and 2004, on average 10% of young people under 18 in Northern Ireland convicted of an offence were sentenced to immediate custody.<sup>125</sup> This was greater than the proportion of under-18s receiving a custodial sentence in England and Wales during the same period, which was on average 8%.<sup>126</sup> Latest figures show that, in 2006, 7% of under-18s found guilty of an offence were sentenced to immediate custody (ie 89 out of 1,273).<sup>127</sup>

18. Research conducted by the Northern Ireland Human Rights Commission (NIHRC) into protecting children's rights in custody in Northern Ireland<sup>128</sup> found that the proportion of children admitted on remand from court was disproportionately high compared to numbers actually sentenced. Figures from the Youth Justice Agency annual report 2006–07 corroborate the NIHRC finding, indicating that court ordered remand made up 55% of initial admissions to the Juvenile Justice Centre.<sup>129</sup> By comparison committal on sentence was low at 42 out of 436 initial admissions in 2005–06 or 10%.<sup>130</sup>

19. The Northern Ireland Office, the PSNI, the Public Prosecution Service and the Northern Ireland Court Service should adopt measures to ensure that custody is a measure of last resort and reduce the number of children on remand as well as the amount of time spent on remand.

20. Looked after children are over represented in the criminal justice system and in custody in particular. In a review of 10–13 year olds admitted to custody in the Juvenile Justice Centre between January 2003 and August 2004, 17 of the 29 children admitted to custody were admitted from a residential care facility. Worryingly these 17 children had 40 admissions to custody between them.<sup>131</sup> Children who are disruptive in care homes and who present management problems are frequently moved via the Police and Criminal Evidence Order 1998 to the Juvenile Justice Centre.<sup>132</sup> Between April 2006 and March 2007 there were 436 admissions to custody in the Juvenile Justice Centre—36% of these were under PACE, 54% on remand and only 10% on committal. This “leakage from the care system” has been highlighted by various bodies including the NIHRC<sup>133</sup> and the Northern Ireland Commissioner for Children and Young People.<sup>134</sup>

<sup>123</sup> Figures supplied by Hydebank Wood Prison and Young Offenders Centre on 10 February 2009.

<sup>124</sup> CRC/C/GBR/CO/4/paragraphs 78 and 79

<sup>125</sup> Office of the First Minister and Deputy First Minister (2007) *Northern Ireland Report to the United Nations Committee on the Rights of the Child*, September 2007, Belfast: OFMDFM, p100

<sup>126</sup> Allen, R. (2006) *From Punishment to Problem Solving. A new approach to children in trouble*, London: Centre for Crime and Justice Studies, Kings College London, p24

<sup>127</sup> NIO (2008) *Court Prosecutions and Sentencing for 10 to 17 Year Olds 2006*, Research and Statistical Bulletin 12/2008, Belfast: NISRA, p9

<sup>128</sup> Convery U and Moore L, Still in our Care: Protecting Children's Rights in Custody in Northern Ireland, NIHRC Belfast 2006

<sup>129</sup> Youth Justice Agency, Annual Report and Accounts 2006–07, Youth Justice Agency of Northern Ireland, Belfast, 2007, p48.

<sup>130</sup> *Ibid*, p48.

<sup>131</sup> McKeaveney, P 2005 Review of 10–13 year olds entering custody January 2003–August 2004 Belfast Youth Justice Agency.

<sup>132</sup> Under article 39 of the Police and Criminal Evidence (NI) Order 1989 (PACE) when a child is charged with an offence and bail cannot be granted for one of the reasons set out under article 39(1) or the police officer has reasonable grounds for believing that the child should be detained in his or her own interests, he/she can be detained in a place of safety. The definition of place of safety includes a juvenile justice centre or hospital.

<sup>133</sup> *Op cited* note 11 p34–36

<sup>134</sup> Northern Ireland Commissioner for Children and Young People *Children's Rights in Northern Ireland 2004* p 234

21. A recent inspection of Woodlands Juvenile Justice Centre by the Criminal Justice Inspectorate Northern Ireland reconfirmed the existence of this pattern of movement from care to custody—it noted that 30% of all admissions during 2006-2007 came from looked after backgrounds; the percentage of looked after children in the Juvenile Justice Centre fluctuated between 22% to 58% of all residents on any given day.<sup>135</sup> The Criminal Justice Inspectorate in its report expressed concern at “the high turnover rate of children being placed in Woodlands and the disproportionate amount of young people who came direct to the Centre from residential care placements”.<sup>136</sup> Kit Chivers, the former Chief Inspector with the Criminal Justice Inspectorate commented “inspectors were uneasy that young people could be placed in custody when the courts, police or social care agencies were unsure how to deal with them” and noted that “such placements breach international safeguards and remain more pronounced in Northern Ireland than elsewhere in the UK”.<sup>137</sup>

22. The Northern Ireland Office should ensure that custody is never used because there is no alternative facility for a looked after child. The NIO should conduct immediate research into the reasons for the over representation of children from looked after backgrounds in custody and act swiftly on the findings in order to ensure that custody is always and only used as a measure of last resort. Alongside this there is a need for a review of the PACE provisions to ensure that particular consideration is given to looked after children, with special provisions being put in place so that this group of very vulnerable children only come into contact with the criminal justice system when appropriate and in exceptional circumstances.

#### CRIMINALISATION OF CHILDREN

23. The issue of criminalisation of children through a variety of means formed a recurrent theme in the UN Committee’s recent examination of the UK government. A number of recommendations were directed towards addressing this phenomenon including raising the minimum age of criminal responsibility,<sup>138</sup> conducting an independent review of ASBOs with a view to abolishing their application to children,<sup>139</sup> protecting children against unlawful or arbitrary interference with their privacy through retention of DNA<sup>140</sup> and adopting measures to address the intolerance and inappropriate characterization of children within society.<sup>141</sup> There is growing concern in Northern Ireland among many agencies and organisations working with children and young people, as well as among children and young people themselves, about the pernicious effects of stigmatization, demonisation and criminalisation of children and young people through a combination of legislative and policy approaches as well as societal discourse and attitudes, often fuelled by hostile media coverage of issues relating to young people.

#### MINIMUM AGE OF CRIMINAL RESPONSIBILITY

24. In Northern Ireland, following the abolition of the rebuttable presumption of *doli incapax* in 1998 the age of criminal responsibility is 10 years of age, making it among not just the lowest in Europe but in the world.<sup>142</sup> As such it falls seriously below current international standards which recommend that state parties such as the UK should consider raising the age of criminal responsibility to 14 or 16 years of age.<sup>143</sup> The current Chairperson of the UN Committee Professor Yanghee Lee, in her address at the annual Children’s Law Centre lecture in March 2008 noted that “it (is) the general understanding of the Committee that industrialized, democratic societies would go even further as to raising ( the minimum age of criminal responsibility) to even a higher age, such as 14 or 16”.<sup>144</sup> In December 2008 the NIHRC echoed this call from the UN Committee, recommending that government raise the minimum age of criminal responsibility to between 14–16 years in line with international standards.<sup>145</sup>

25. In June 2005 the then High Commissioner for Human Rights with the Council of Europe Alvaro Gil-Robles described his “*extreme difficulty*” in accepting that “a child of 12 or 13 could be criminally culpable”.<sup>146</sup>

26. The current development of a Bill of Rights for Northern Ireland presents an obvious opportunity to address the current unacceptably low age of criminal responsibility and to raise it in line with international standards as well as tailoring it to respond to the particular circumstances of Northern Ireland ie a society emerging from conflict where many children’s lives have been blighted by conflict with the law and ensuing criminalisation.

<sup>135</sup> Criminal Justice Inspectorate Northern Ireland Inspection of Woodlands Juvenile Justice Centre May 2008

<sup>136</sup> *Ibid* vii

<sup>137</sup> [http://www.cjini.org/NewsAndEvents/Press-Releases/2004-\(4\)/August/Inspectorate-finds-juvenile-justice-centre-to-\(1\).aspx](http://www.cjini.org/NewsAndEvents/Press-Releases/2004-(4)/August/Inspectorate-finds-juvenile-justice-centre-to-(1).aspx)

<sup>138</sup> *Op cited* at note 7 paragraph 78.a

<sup>139</sup> *ibid* paragraph 80.

<sup>140</sup> *ibid* paragraphs 36 and 37. Following the recent judgement by the European Court of Human Rights (*S v Marper v UK* 2008) government should urgently be putting in place provisions to ensure it complies with the judgement.

<sup>141</sup> *Ibid* paragraph 25a

<sup>142</sup> Muncie and Goldson 2006 “*States of Transition: Convergence and Diversity in International Youth Justice*” in Muncie and Goldson eds. *Comparative Youth Justice*, Sage Publications 2006

<sup>143</sup> UN Committee on the Rights of the Child General Comment No 10 (2007) *Children’s Rights in Juvenile Justice*

<sup>144</sup> Yanghee Lee, Professor “The Convention on the Rights of the Child—from Geneva to Northern Ireland, Bringing Children’s Rights Home”. *Children’s Law Centre Annual Lecture* 2008.

<sup>145</sup> NIHRC (2008) *A Bill of Rights for Northern Ireland : Advice to the Secretary of State for Northern Ireland*.

<sup>146</sup> Council of Europe (2005) Report by Mr. Alvaro Gil-Robles Commissioner for Human Rights on his visit to the UK 4–12 November 2004 paragraph 105.

#### NON-COMMENCEMENT OF CUSTODY CARE ORDERS

27. Article 56 of the Justice (Northern Ireland) Order 2002 made an amendment to the Criminal Justice (Children) (Northern Ireland) Order 1998 for the introduction of Custody Care Orders for 10–13 year olds (inclusive). Under this provision a child subject to a Custody Care Order would be placed in a secure accommodation setting, rather than in a youth justice setting. However, due to the failure to commence this provision, 10–13 year olds who are remanded in custody or receive a custodial sentence are currently sent to the Juvenile Justice Centre where they are detained with older children up to the age of 17 years. The ongoing non-commencement of Custody Care Orders also represents a failure by government to respond to the UN Committee’s recommendation that it “*develop a broad range of alternatives to detention for children in conflict with the law...*”<sup>147</sup>

28. Figures cited earlier indicate that in the period between January 2003 and August 2004 29 children between the ages of 10–13 years were admitted to custody,<sup>148</sup> while figures obtained by the Irish News daily newspaper indicate that in the past year thirteen children aged between 10–13 years were detained in Woodlands JJC.<sup>149</sup> Given the unacceptably low age of criminal responsibility in Northern Ireland, coupled with the non commencement of these orders, children as young as ten years of age are not only criminalised but are afforded no special protection within the youth justice system.

29. The Northern Ireland Office (NIO) should expedite commencement of Article 56 of the Justice (Northern Ireland) Act 2002, thereby removing 10–13 year olds from the remit of the Youth Justice system.

#### ANTI-SOCIAL BEHAVIOUR ORDERS (ASBOs)

30. The UN Committee’s recent recommendations to the UK government in relation to the use of ASBOs<sup>150</sup> consolidated an earlier recommendation by the UN Human Rights Committee to the UK government on ensuring that ASBOs were compliant with the provisions of the Covenant on Civil and Political Rights as well as ensuring respect for the privacy rights of those subjected to ASBOs.<sup>151</sup>

31. The children’s rights concerns in relation to ASBOs generally have been well rehearsed and the Joint Committee is no doubt familiar with them. It is our firm view that ASBOs are in breach of Articles 6, 8 and 14 of the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and Articles 2,3,12 and 40 of the UN Convention. However there are specific concerns in relation to their use within the Northern Ireland context which we would wish to draw the Joint Committee’s attention to.<sup>152</sup> The removal of reporting restrictions, known as “naming and shaming” could be particularly dangerous in Northern Ireland given the influence of non-state forces and past connotations of anti-social behaviour.

32. A recent inspection of the operation and effectiveness of ASBOs in Northern Ireland found that while the numbers of ASBOs issued in the initial period after their introduction was less than in England and Wales their numbers were increasing in a similar pattern, pointing to the need for close monitoring of their use.<sup>153</sup> It is also worth noting that this increased use included a disproportionate use against children. Despite the widespread concerns in relation to ASBOs and their non compliance with the UN Convention the government has recently introduced interim orders on an *ex parte* basis, accentuating the significant concerns which already existed.<sup>154</sup>

33. Within the broader policy context we do not believe that ASBOs which are essentially punitive in nature, sit easily with the overarching preventative/restorative justice framework for children and young people which government claims forms the central tenet of its approach to youth justice since its major Criminal Justice Review in 2002.

34. The government should respond to the UN Committee’s recommendation on ASBOs ie it should conduct an independent review on ASBOs with a view to abolishing their application to children.

#### COMMUNITY SAFETY STRATEGY

35. A further, and potentially extremely serious undermining of a broadly preventative approach to youth justice is posed by the current consultation by the NIO on their proposed Community Safety Strategy “Together, Stronger, Safer”.<sup>155</sup> This proposed strategy if adopted would without doubt fuel what the UN Committee has described as “*the general climate of intolerance and negative public attitudes towards children, especially adolescents...*”<sup>156</sup> and stands diametrically in opposition to the UN Committee’s recommendation

<sup>147</sup> Op cited at note 8 paragraph 78 (b)

<sup>148</sup> Op cited at note 14

<sup>149</sup> Irish News “*Care Home Crisis puts Young with Criminals*” 29 January 2009

<sup>150</sup> Op cited note 8 paragraphs 35 and 80

<sup>151</sup> UN Human Rights Committee (2008) Concluding Observations of the Human Rights Committee United Kingdom of Great Britain and Northern Ireland. CCPR/C/GBR/CO/6 paragraph 20.

<sup>152</sup> ASBOs were introduced in Northern Ireland in 2004 through the Anti Social Behaviour (Northern Ireland) Order 2004.

<sup>153</sup> Criminal Justice Inspectorate Northern Ireland (2008) Anti-Social Behaviour Orders. An inspection of operation and effectiveness of ASBOs. October 2008. Belfast CJINI. p vii

<sup>154</sup> Criminal Justice (Northern Ireland) Order 2008

<sup>155</sup> Northern Ireland Office consultation on Together, Safer, Stronger—Community safety in Northern Ireland 2008–09. Included in the consultation document are proposals for dispersal zones, parenting support orders, parenting support contracts, noise nuisance, individual support orders and test purchase powers for alcohol.

<sup>156</sup> Op cited at note 8 paragraph 24



that government “[take] urgent measures to address the intolerance and inappropriate characterization of children, especially adolescents.”<sup>157</sup> Tellingly the consultation paper doesn’t contain a single reference to the UK’s obligations under the UN Convention but rather contains a range of proposals which were broadly or specifically criticised by the UN Committee in September 2008.<sup>158</sup>

36. In addition to the children’s rights concerns in relation to this document it is our view that it simply transposes questionable initiatives from other jurisdictions and as such pre-empts and undermines the role of our locally elected political representatives. It is our firm view that the NIO should desist with the development/imposition of this Strategy which significantly breaches children’s rights.

#### CONCLUSION

37. The issues raised in this submission constitute the most serious of breaches of children’s rights under international law. Given the very recent recommendations by the UN Committee in relation to the whole area of youth justice and the increasing criminalisation of children in our society there is now a pressing obligation on government to respond fully to these recommendations. We would urge the Joint Committee to examine government closely regarding their intentions in relation to the UN Committee’s recommendations in this area.

February 2009

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### Memorandum submitted by the Children’s Legal Centre

#### INTRODUCTION

1. This submission was prepared by the Children’s Legal Centre—an independent national charity aimed at promoting children’s rights in the UK and worldwide. The Children’s Legal Centre has particular expertise in the area of education law, being one of the leading providers of education law advice and casework in England. The Centre submitted an alternative report to the UN Committee on the Rights of the Child to inform its periodic review of the UK Government.<sup>159</sup> The report focused exclusively on education, and examined the extent to which the right to education has been implemented in England.<sup>160</sup> This submission presents a summary of the report, which analysed the key issues of concern for the UN Committee in relation to the Government’s implementation of the right to education.

2. The UN Committee on the Rights of the Child, in its concluding observations on the UK Government, outlined a number of key areas in which the Government has failed to implement fully the right to education in England. These concerns included:

- the persistence of significant inequalities in access to education and educational outcomes for children from vulnerable groups (children living in economic hardship, children with disabilities, children of Travellers, Roma children, asylum-seeking children, drop-outs and non-attendees and teenage mothers). The UN Committee also noted that children in custody do not have a statutory right to education;
- inadequacy of participation by children in young people in all aspects of Restriction of the right to complain regarding educational provisions to parents;
- the serious and widespread problem of bullying; and
- the high number of permanent and temporary school exclusions, which disproportionately affect children from vulnerable groups.

3. In its alternative report on the right to education in England, the Children’s Legal Centre examined these key concerns and made a number of recommendations on how to address these concerns, in order to ensure that the Government fully adheres to the right to education contained in the UN Convention on the Rights of the Child.

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<sup>157</sup> *ibid* paragraph 25

<sup>158</sup> These include a definition of anti social behaviour and restrictions on freedom of movement and peaceful assembly through introduction of dispersal zones.

<sup>159</sup> The report is available at: <http://www.childrenslegalcentre.com/research/Researchprojects/currentukprojects.htm>

<sup>160</sup> This submission deals exclusively with how the right to education has been implemented in England, owing to the particular expertise of the Children’s Legal Centre in education law and practice in England.

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 INEQUALITIES IN ACCESS TO EDUCATION AND EDUCATIONAL OUTCOMES

4. *Children in custody do not have a statutory right to education.* Many children in custody are not educated under the National Curriculum and do not receive education that is full-time. Also, support for children in custody with Special Educational Needs (SEN) is severely lacking.

*Recommendations*

- The Education Act 1996 should be amended so that the statutory guarantee to education applies to children serving sentences in detention.
- Consideration should be given to providing education for young offenders in community schools, as a means of helping prepare young offenders to reintegrate into society.
- Where children in detention continue receiving education in detention, the Government should ensure that Local Authorities (LAs) are responsible for the education of children in detention and juvenile detention facilities should work more closely with them.
- Statistics on the number of hours spent on education and training for children of compulsory school age who are in secure institutions should be collated—disaggregated by type of education or training received—and regularly reviewed.
- The LAs duty to provide support specified in a Statement of Special Educational Needs should continue when a child is in a juvenile detention facility.

5. *Children in immigration detention do not have a statutory right to education.* Detained refugee and asylum-seeking children are educated within detention centres, which compromises their welfare, development and future education and opportunities. Educational provision in immigration detention centres is unsatisfactory—of poor quality, with a narrow curriculum, a lack of individual learning plans or accreditation systems and a lack of suitable target-setting.

*Recommendations*

- LAs should be under an obligation to provide education to asylum-seeking children, and the statutory guarantee to education should apply to children seeking asylum.
- Asylum-seeking children should be educated at schools in the community, rather than in immigration detention.
- Where children continue to be educated in immigration detention centres, the Government should introduce monitoring and assessment mechanisms in order to regularly monitor and improve the quality of education provided to detained children.

6. Many refugee and asylum-seeking children experience unacceptable delays in gaining access to education; many are placed in schools unable to meet their needs; and for many of these children, access to the full curriculum is restricted due to financial obstacles. In addition, a lack of specificity in funding arrangements mean that refugee and asylum-seeking children will not always receive important financial support they require to access education. Access to further education is also limited as the Education Maintenance Allowance that supports post-16 education does not apply to asylum-seekers.

*Recommendations*

- The Government should introduce targeted, ring-fenced funding to increase access of refugee and asylum-seeking children to education.
- The Government should provide guidelines on the placement of refugee and asylum-seekers under the dispersal policy, ensuring that refugee and asylum-seekers are placed in areas with suitable educational provision available to meet their or their children's needs.
- The Government should collect disaggregated data and set targets in order to monitor and improve the educational outcomes of refugee and asylum-seeking children.
- The Government should introduce guidelines for LAs, setting out strict timelines for making educational placements of refugee and asylum-seeking children.

7. The Government has failed to ensure that children with special educational needs (SEN) and disabilities have equal access to suitable, appropriate education. There is a lack of suitable educational provision for children with SEN and disabilities. A flexible continuum of educational provision should be made available in each LA area to meet the needs of children with SEN and disabilities. However, for these children, particularly for those children with autism and Aspergers Syndrome, there is a lack of suitable educational provision in many LA areas to meet the needs of these children. Many children with SEN are not properly assessed in terms of the type of provision and support they require, which hinders their access to the most suitable education. In addition, attainment levels are not properly monitored for this group of children. In addition, many mainstream schools do not effectively adapt their systems, curriculum, and teaching methods to meet the needs of children with SEN.

*Recommendations*

- The Government should conduct an audit to identify areas in which there is a lack of suitable provision for children with SEN and disabilities.
- Resources should be made available to ensure that there is a range of sufficient educational provision available to meet the needs of children with SEN and disabilities, both in mainstream and alternative school settings.
- The Government should encourage mainstream schools, including well-performing schools, to accept more children with SEN and disabilities.
- Admissions of children with SEN should be carefully monitored to ensure that all mainstream schools are accepting an adequate number of children with SEN and disabilities.
- The Government should develop a national framework setting out minimum standards on the provision of suitable education for children with SEN. In particular, the Government should act on the recommendations of the House of Commons Education and Skills Committee and ensure that LAs develop a child-centred approach with regard to each stage of the statementing process, in particular in the assessment of needs, allocation of resources and placement.
- The Government should set challenging targets for LAs on educational outcomes for children with SEN.
- In accordance with the recommendation of the House of Commons Education and Skills Committee,<sup>161</sup> the Government should clarify its position on SEN, particularly on inclusion of children with SEN in mainstream schools, and produce a clear, over-arching policy for SEN.
- The Government needs to significantly increase investment in training its workforce so that all staff, including teaching staff, are fully equipped and resourced to improve outcomes for children with SEN and disabilities.

8. For the 60,000 children in care, many have missed a significant amount of schooling. Also, educational outcomes for these children continue to be poor compared to their peers.

*Recommendations*

- The Government should set clear targets for educational access and attainment of children in care, to ensure that children in care can achieve the same educational outcomes as their peers. LAs should be given sufficient resources to allow them to achieve these targets. They should also set regular inspection, monitoring and evaluation systems against these targets.
- The Government should ensure that teachers receive effective, in-depth training on the needs and challenges faced by children in care. They should also ensure that foster parents receive training and support necessary to allow them to contribute positive guidance and support to children in their care.
- The Government should also set targets for reducing the number of placements that children in care go through, in order to avoid disruption to their lives and their education.

9. Educational attainment is much lower for children from economically disadvantaged backgrounds, as educational achievements are strongly linked to their parents' social and economic backgrounds.

*Recommendation*

- The Government should thoroughly review and address factors which impair the ability for economically disadvantaged children to be engaged with the education system and their ability to achieve their full potential.

10. Teenage mothers continue to experience obstacles in gaining access to education, which the Government has largely failed to address.

*Recommendation*

- The Government should increase funding for child care for teenage mothers, to allow more young people to continue in education or training.

11. Children from minority ethnic backgrounds continue to experience unequal access to education and educational attainment. Many Roma and Traveller children are not registered in school and, as a group, have very low school attendance rates. Also, Roma and Traveller children have low educational attainment compared to their peers. Children of African and Afro-Caribbean origin experience systemic racism in the education system, which has resulted in poor educational outcomes for these children compared to that of their peers.

<sup>161</sup> House of Commons Education and Skills Committee, *Special Educational Needs*, Third Report of Session 2005–06, Volume 1, p 6.

*Recommendations*

- The Government should initiate compulsory training of school staff (particularly teachers) to sensitise staff to the experiences of minority ethnic students in the education system, and reduce the negative stereotyping and low expectations staff may have about children, based on their ethnic background.
- The Government should ensure that LAs increase the number of Traveller sites in their area to allow children to become more settled and better able to access education.
- The Government should provide targeted, ring-fenced funding to schools to increase access to the education system for children from Roma and Traveller backgrounds.

12. For the 135,000 children each year who are unable to attend school (due, for instance, to medical needs, exclusion, bullying or school phobia), the Government has failed to ensure that they receive appropriate, suitable alternative educational provision. Alternative educational provision is often insufficient and of poor quality.

*Recommendations*

- The Government should ensure that LAs develop information collection systems which will allow them to identify children who are not in school. This should allow them to monitor each child in their area, to ensure that every child, including those who cannot attend school, receive suitable, quality education.
- Schools should be placed under an obligation to advise LAs of all children on school rolls who are not currently receiving full-time education on school premises.
- The 2008 Government White Paper on alternative provision makes a number of recommendations for improving the quality of alternative educational provision. These recommendations should be implemented as a matter of priority to ensure that all children, whether in school or not, receive suitable quality education.

## CHILD PARTICIPATION AND COMPLAINTS

13. Children are denied the right to participate in many procedural and substantive aspects of the education system. In many areas, the law recognises the parent/s as the holder of the right to education, to the exclusion of children, which has, in practice, resulted in the denial of children's participation in decision-making concerning their education.

14. Children do not have a right to express their views in relation to school admission, including choice of school. The law does not impose an obligation on LAs to consider the wishes of the child by, for instance, allowing the child to make submissions as to what type of educational provision would best suit him or her and at which school the child would like to be educated.

15. Children do not have a separate right of appeal against school admission or exclusion decisions or against decisions concerning SEN provision. This means that, where parents are disinterested or anxious about pursuing an appeal on their child's behalf, the child will be unable to enforce important procedural rights in relation to their education. This is particularly concerning for children in care, who must rely on their foster carer, who is employed by the LA, to initiate the appeal. Children who are in care, but have not been placed with foster carers, must rely on their LA social worker to appeal school admission and exclusion decisions.

16. Many children do not have the ability to participate effectively in decision-making within their schools, and systematic forms of participation, such as participation in school councils, is not a statutory right for children in England. Empirical studies indicate that participation in schools generally occurs on a one-off or isolated basis, rather than being embedded in a systematic process.

17. Parents have the unconditional right, in English law, to withdraw their child from sex and relationships education and collective worship. There is no obligation on the part of LAs or schools to consider the views of the child in relation to any withdrawal.

*Recommendations*

- The Government should legislate to give children a statutory right to make representations, and to have these representations taken into account, concerning school admissions, including choice of school.
- The Government should give children a separate statutory right to appeal against school admission and exclusion decisions. It should also give children a separate right of appeal to the Special Educational Needs and Disability Tribunal concerning SEN provision by LAs. Children who make an appeal against school admissions, exclusions and SEN provision should have access to free, quality legal representation.

- Children should be given a statutory right to participate in decision-making in schools. This could include the right to participate in school councils.
- The unconditional right of parents to remove their child from sex and relationships education and collective worship should be withdrawn.

#### BULLYING

18. Despite Government attempts to tackle wide-spread bullying in English schools, it is still very common in many schools across England, and continues to cause many children to miss school for periods of time, or to withdraw from attending school completely.

19. Some children are particularly vulnerable to bullying, including those with SEN or visible medical conditions. Racist and homophobic bullying is also particularly widespread.

20. Studies have highlighted the inaction on the part of many schools to bullying complaints. Children in England do not have recourse to any effective complaints mechanisms following inaction on the part of schools where they have been bullied. In relation to bullying, schools are not subject to the oversight of the Local Government Ombudsman. Therefore, even where schools fail to follow anti-bullying policies, children can only complain to school governors, the LA or the Secretary of State.

#### *Recommendations*

- The Government should, as a matter of priority, investigate and share best practice in tackling bullying in schools. Anti-bullying strategies should include responding to particular types of bullying (racist, homophobic and bullying of children with disabilities or SEN in particular).
- The Government should mandate that schools develop more direct work with children and young people to enhance their participation in formulating and implementing anti-bullying strategies.
- In order to measure schools' progress in listening to pupils and to facilitate the sharing of best practice, the methods used by schools to consult with children and young people about bullying and in the development of anti-bullying strategies should be included as a topic for Ofsted inspections.
- The Government should consider introducing an independent investigator to address bullying complaints when they remain unresolved.

#### EXCLUSIONS

21. A large number of children continue to be excluded from school every year. There were 8,680 permanent and 363,270 fixed-period exclusions from schools in England in 2006–07. Many more children were “informally” excluded, as schools will use methods other than official exclusion to keep children off school premises, including persuading parents to remove children from school and keep them at home.

22. Some groups of children—children with SEN, Roma and Traveller children, children of African and Afro-Caribbean origin, economically disadvantaged children and children in care—continue to be excluded at much higher rates than the whole school population.

#### *Recommendations*

- The Government should set targets for reducing the number of both fixed-term and permanent exclusions and identify and eradicate informal exclusions. These targets should aim at reducing the disproportionate rate at which groups of children—including Black and Minority Ethnic children, children in care, children from disadvantaged backgrounds and children with SEN—are excluded.
- Measures aimed at reducing exclusions should include new initiatives and approaches to respond to challenging behaviour in schools without resorting to exclusion.

## Memorandum submitted by the Children's Rights Alliance for England

### ABOUT CRAE

1. CRAE seeks the full implementation of the United Nations Convention on the Rights of the Child (UNCRC) in England. Our vision is of a society where the human rights of all children are recognised and realised.

### INTRODUCTION

2. We welcome the decision of the Parliamentary Joint Committee on Human Rights (the "JCHR") to conduct this inquiry following the 2008 Concluding Observations of the United Nations Committee on the Rights of the Child (the "UN Committee"). We have called on the Government to publish a full response to the Concluding Observations, setting out its plans to implement the UN Committee's recommendations.

3. The Government has set itself the ambitious target of making England "*the best place in the world for children to grow up*"<sup>1</sup>. Given the United Kingdom's position as a leading nation we should aim for nothing less. However, the Government's vision cannot be achieved until children's rights under the UNCRC and other human rights instruments are fully recognised and realised. To this end, we seek the incorporation of the UNCRC into UK law.

4. In this submission we restrict ourselves to the subject areas identified in the JCHR's call for evidence. However, considerable further concerns exist such as the increasing erosion of children's privacy in a range of contexts. We would be happy to provide further written or oral evidence on these matters. More comprehensive information is contained in the findings of our recent nationwide children's rights investigation<sup>2</sup> and the 2008 edition of our annual report, "*The State of Children's Rights in England*"<sup>3</sup>.

### CHILDREN IN CONFLICT WITH THE LAW

5. CRAE is a member of the Standing Committee for Youth Justice and we endorse their submissions to this inquiry.

#### *Criminalisation of children*

6. We refer to the UN Committee's 2008 Concluding Observations and wider international criticism of the UK's appalling record on the criminalisation and incarceration of children, 30 of whom have died in prison since 1990. A complete overhaul of the treatment of children in conflict with the law is required in order to bring the UK into line with its human rights obligations. This should include the abolition of anti-social behaviour orders for children and a statutory safeguard making child custody a genuine last resort.

#### *Restraint in child prisons*

7. The recently published restraint review<sup>4</sup> and the Government's response to it<sup>5</sup> fail to address the human rights breaches which were identified in 2008 by the JCHR<sup>6</sup> and several international and regional human rights bodies (including the UN Committee<sup>7</sup>, the Council of Europe's Human Rights Commissioner<sup>8</sup> and the UN Human Rights Council<sup>9</sup>), and which were among the issues considered by the European Committee for the Prevention of Torture during its recent UK visit<sup>10</sup>.

8. The review and the Government's response fail to address the findings of the Court of Appeal in *AC*<sup>11</sup>. Key outstanding issues include:

- 8.1 The Government continues to endorse deliberately painful restraint techniques in breach of articles 3 and 8 of the European Convention on Human Rights (ECHR), interpreted in light of the UNCRC. We do not accept the Government's contention that the techniques are necessary. We have also called on the Government urgently to review its refusal to disclose the Physical Control in Care manual and to clarify its current and past policy on the purposes for which deliberately painful restraint techniques are authorised.
- 8.2 We have asked the Government to make clear, in its forthcoming review of legislation on the restraint of children in custody, that restraint is not permitted to ensure good order and discipline. We also seek the explicit statutory prohibition of corporal punishment in child prisons.
- 8.3 We have called on the Government to hold an Article 3 public inquiry into the past unlawful restraint of children in secure training centres (STCs), for action to be taken to hold institutions and individuals to account and for those who have been subjected to unlawful force to be enabled to seek redress. This call is made in light of the Court of Appeal's finding in *AC* that children in STCs were restrained illegally over a long period, including the use of "*distraction*" techniques.

*Detention with adults*

9. We welcome the Government's withdrawal of the UNCRC reservation concerning the separation of children from adults in detention. However we refer to the annex to this submission, provided by the Howard League for Penal Reform, which details continuing breaches of this requirement. The Howard League's submissions reflect anecdotal evidence received by CRAE's legal advice service.

*Detention conditions*

10. We refer to the concerns about detention conditions raised by children in conflict with the law who participated in the children's rights investigation. These included recommendations from children for longer visiting hours and more time for telephone calls to their families.<sup>12</sup>

## ASYLUM SEEKING CHILDREN

11. CRAE is a member of the Refugee Children's Consortium (RCC). We endorse the RCC's submission to the Committee and the joint submission by Bail for Immigration Detainees (BID) and The Children's Society.

12. The planned child welfare duty and recently introduced UKBA Code of Practice are welcome developments. However, for the requirements of the UNCRC and other human rights instruments to be met in full, radical changes are required. This includes addressing the following issues:

- 12.1 Family destitution caused by the inability to work and limited access to welfare benefits.
- 12.2 The treatment of age disputed children.
- 12.3 The detention of children for immigration purposes.
- 12.4 The need for a statutory requirement to appoint guardians for separated asylum-seeking and migrant children.

13. We also refer to the issues raised by asylum-seeking children who participated in the children's rights investigation, revealing barriers to education and healthcare, and negative stereotyping by the media.<sup>13</sup>

## AGE DISCRIMINATION

14. In its 2008 Concluding Observations, the UN Committee raised concerns about the negative perception of children in UK society and recommended that the Government should use the Equality Bill to address negative age discrimination against children. However, the Government currently plans to exclude children from this protection, in clear breach of their right to equal treatment.<sup>14</sup>

15. Age discrimination against children still goes unrecognised and is often not taken seriously. However, the evidence we have received from children and their parents shows that it is a real problem in children's daily lives. Examples include the difficulties faced by 16 and 17 year-olds trying to access social services and mental health services;<sup>15 16</sup> children being treated unfairly in public spaces (including the use of mosquito devices);<sup>17 18</sup> and the unsuitability of public transport for babies and young children.<sup>19 20</sup>

16. As well as disputing the existence of age discrimination against children, Government claims it would be too difficult to introduce protection because of children's distinct needs. However, we believe measures to provide legal protection for age discrimination can still recognise children's unique status and allow for the continuation of age-specific services and genuine service requirements.

17. CRAE co-ordinates the Young Equals campaign group which calls on Government to include the following provisions for children in the Equality Bill:

- 17.1 Protection from age discrimination in the provision of goods, facilities and services.
- 17.2 Inclusion of schools and children's services in the age element of the new integrated public sector equality duty.
- 17.3 Duty to make reasonable adjustments in public transport and in access to public buildings for infants and young children. We refer to the Young Equals submission to this inquiry for further detail.

## Disability discrimination

18. We refer to the UN Committee's recommendations concerning discrimination against children with disabilities in relation to their right to family life, their rights to be heard and to participate actively in the community, their right to education and their right to play. We believe the ratification of the UN Convention on the Rights of Persons with Disabilities without reservations is urgently required to address these and other human rights breaches.

19. We also refer to the evidence provided by children with disabilities who participated in the children's rights investigation, revealing barriers to learning and leisure facilities, and inadequate access to public transport.<sup>21</sup> One young disabled person commented:

*... I would like all people to be able to go to the museum and to meet more deaf people there, go and see films. Television programmes would have signing or subtitles. There would be deaf related news as well. Those things would be nice.*

## EDUCATION

### *Right to influence decision-making*

20. The UN Committee has again called for the introduction of a statutory right for children in England to influence decision-making in education<sup>22</sup>. Evidence collected in the children's rights investigation reflected a continuing lack of meaningful participation.<sup>23</sup> Children said they wanted genuine feedback from teachers and other adults about how their views had been taken into account, and involvement in more serious decisions such as teacher recruitment and setting behaviour policies.<sup>24</sup>

21. The Education and Skills Act 2008 placed a new duty on Governing bodies to 'invite and consider' the views of pupils. We seek the introduction of regulations to enshrine children's right to influence as broad a range of issues as possible, supported by robust statutory guidance.

### *Right to appeal exclusions*

22. The UN Committee has recommended that children should be given the right to appeal against school exclusion.<sup>25</sup> We welcome the Government's proposal to consult on this matter in Spring 2009.

23. Seventy-four per cent of respondents to the children's rights investigation who had experienced school exclusion reported that they had not been asked for their side of the story before being excluded. Sixty-nine per cent said they were given no information about how they could challenge the decision or get involved in the exclusion process.

24. We believe that all children of sufficient age and understanding should have the right to appeal against school exclusions, the findings of SENDIST and admission decisions. Processes should be child-centred, providing access to independent advocates, to facilitate children's active participation.

### *Right to protection from bullying and violence*

25. Following calls from the UN Committee in 2002 and 2008 to "tackle bullying and violence in schools", this still emerged as a major problem in the children's rights investigation. Children cited physical, emotional and cyber bullying between students as well as bullying of children by teachers, with reports that schools are not always effective in tackling these problems.<sup>26</sup> These concerns are reflected by anecdotal evidence received by CRAE's legal advice service.

### *Right to education and discrimination*

26. The children's rights investigation revealed significant evidence of unequal access to education for minority groups such as asylum seeking children and traveller children. One traveller child commented:<sup>27</sup>

*... I think they should like get gypsies jobs and that where they can sit and settle, for a place for them to learn to read and write and get themselves a business and that, instead of how they go on about, the telly and newspapers and that, about the gypsies, but I think it is wrong. I think like they treat us like scum.*

## EFFECTIVE PARTICIPATION FOR CHILDREN IN CARE

### *Influencing decision-making*

27. Effective involvement in decision-making is a continuing problem for children in care, despite some improvements in legislation. Many children reported to the investigation that they had little say in far-reaching decisions such as placement moves and being taken into care,<sup>28</sup> with serious implications for their right to respect for their private and family life. These concerns are reflected in anecdotal evidence received by CRAE's legal advice service.

### *Making complaints*

28. Lack of access to independent information and support for making complaints was consistently cited by children during the investigation. Those that were aware of complaints mechanisms often felt unable to use them because they felt they would not be believed, because procedures were not independent, or because complaining was not encouraged. One child commented:<sup>29</sup>

*I've done a lot of complaints in about three kids' homes that I've been in and never heard anything back... I've even wrote to managers and everything and never ever got a reply, probably because I'm too low life and I'm the one in care... I've never seen them rip it up or anything. I can't say that they do that.*



## ERADICATING CHILD POVERTY

29. We welcome the Government's proposal for legislation on eradicating child poverty. The legislation must define "eradication of child poverty", specify interim dates to mark key milestones towards the 2020 goal and require Government to publish annual progress reports. The Government should establish a clear role for inviting independent external challenge and ensure that the child poverty strategy is firmly linked to their other spending decisions, particularly in this challenging economic climate.

## EQUAL PROTECTION AGAINST VIOLENCE

30. International human rights bodies have repeatedly called on the UK Government to make punitive violence against children illegal, including the UN Committee in its 2008 Concluding Observations. The Government's failure to remove the "reasonable punishment" defence for charges of common assault against children remains a serious blot on the UK's human rights record.<sup>30</sup> CRAE endorses the submission to this inquiry by the Children Are Unbeatable! Alliance.

## CHILD TRAFFICKING VICTIMS

31. CRAE calls on the Government to end the criminalisation of child victims of trafficking and provide safe accommodation and guardians for these children. We refer to the submission by ECPAT UK for further detail.

## PARTICIPATION OF CHILDREN IN THE ARMED FORCES

32. The Government has a significant way to go to ensure compliance with the Optional Protocol on the involvement of Children in Armed Conflict (OPAC). Of particular concern is the ongoing recruitment of 16 and 17 year olds into the armed forces. The Government has repeatedly stated that it has no intention to raise the age of recruitment.<sup>31</sup> Upon signing OPAC, the Government retained the right to send under-18s into conflict in cases of "genuine military need" and "if not practicable to withdraw such persons before deployment"<sup>32</sup>, in direct conflict with the UNCRC best interests principle.

33. Other issues of concern are:

- 33.1 Recruitment methods (including targeting children from the poorest backgrounds, failing to give accurate information about life in the armed forces and misleading advertising).
- 33.2 The reintroduction of rules requiring those who join the armed forces at 16 to commit to a minimum of six years of services, whilst those who join at 18 need only serve a minimum of four years.
- 33.3 The treatment and support available to young recruits and deaths of under-18 year olds whilst in training.<sup>33</sup>

34. For further information, we refer to submissions to this inquiry by members of the UK coalition to end the use of child soldiers.

For more information, please contact Katy Swaine, legal director, telephone 020 7278 8222 extension 30; kswaine@crae.org.uk

## REFERENCES

- <sup>1</sup> Department for Children, Schools and Families (December 2007). *The Children's Plan*.
- <sup>2</sup> Children's Rights Alliance for England (November 2008). *What do they know? Investigating the human rights concerns of children and young people living in England*. The investigation, conducted in 2007 and 2008, examined the experience of children and young people in exercising their rights in school, at home, and in their communities. The investigation was developed and led by children and young people who conducted focus group interviews and online surveys with 1,400 of their peers living across England.
- <sup>3</sup> Children's Rights Alliance for England (November 2008). *The State of Children's Rights in England: Review of the UK Government's implementation of the Convention on the Rights of the Child – 2008*. This is an updated version of the comprehensive submission made by CRAE on behalf of over a 100 NGOS to the UN Committee on the Rights of the Child in March 2008.
- <sup>4</sup> Smallridge P and Williamson A (June 2008). *Independent review of restraint in juvenile secure settings*.
- <sup>5</sup> Joint Youth Justice Unit (December 2008). *The Government's Response to the Report by Peter Smallridge and Andrew Williamson of a Review of the Use of Restraint in Juvenile Secure Settings*.
- <sup>6</sup> Parliamentary Joint Committee on Human Rights (7 March 2008). *Use of restraint in secure training centres* (HL 65/HC 378)
- <sup>7</sup> UN Committee on the Rights of the Child (October 2008). *Concluding observations: UK and Northern Ireland*. (CRC/C/GBR/CO/4).
- <sup>8</sup> CommDH (October 2008). *Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe following his visits to the United Kingdom (5–8 February and 31 March to 2 April 2008) (Issue reviewed: Rights of the child with focus on juvenile justice)*.

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- <sup>9</sup> Human Rights Council (May 2008). *Report of the Working Group on the Universal Periodic Review, United Kingdom of Great Britain and Northern Ireland (A/HRC/8/25)*.
- <sup>10</sup> European Committee for the Prevention of Torture website, accessed February 2009, [www.cpt.coe.int](http://www.cpt.coe.int)
- <sup>11</sup> *R (AC) v Secretary of State for Justice* [2008] EWCA Civ 882. Recently followed by the High Court in *R (Carol Pounder) v HM Coroner for the North and South Districts of Durham and Darlington* [2009] EWHC 76 (Admin).
- <sup>12</sup> Children's Rights Alliance for England (November 2008). *What do they know? Investigating the human rights concerns of children and young people living in England*, page 50.
- <sup>13</sup> *Ibid*, pages 19, 47–50.
- <sup>14</sup> Government Equalities Office (June 2008). *Framework for a Fairer Future—The Equality Bill*.
- <sup>15</sup> Office of the Children's Commissioner (January 2007). *Pushed into the shadows. Young people's experience of adult mental health facilities*.
- <sup>16</sup> Office of the Children's Commissioner (October 2008). *Out of the shadows? A review of the responses to recommendations made in Pushed into the Shadows*.
- <sup>17</sup> Children's Rights Alliance for England (2008). *Get ready for Geneva submission to the UN Committee on the Rights of the Child*.
- <sup>18</sup> Mosquito devices are electronic devices being used across England to stop teenagers from congregating in public places. They work by emitting an unpleasant high-pitched noise only heard by young people.
- <sup>19</sup> House of Commons Transport Committee (October 2006). *Bus Services across the UK, Eleventh Report of session 2006–06*.
- <sup>20</sup> County Council of The City of Cardiff and County of Cardiff (2006). *Family Friendly Cardiff, A Report of the Children and Young People Scrutiny Committee*.
- <sup>21</sup> *Ibid*, pages 50, 60, 62 and 68.
- <sup>22</sup> Committee on the Rights of the Child, Forty-ninth session, Concluding observations: UK and Northern Ireland (CRC/C/GBR/CO/4) 20 October 2008. This echoes the Committee's recommendations during its day of general discussion in 2006, its Concluding Observations on the UK in 2002 and its 2001 general comment on education.
- <sup>23</sup> Children's Rights Alliance for England (November 2008). *What do they know? Investigating the human rights concerns of children and young people living in England*, pages 15–17, 24.
- <sup>24</sup> *Ibid*, page 65.
- <sup>25</sup> UN Committee on the Rights of the Child (2008). *Concluding observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4)*, paragraph 67h.
- <sup>26</sup> Children's Rights Alliance for England (November 2008). *What do they know? Investigating the human rights concerns of children and young people living in England*, pp 55–57; 66–67.
- <sup>27</sup> *Ibid*, page 53.
- <sup>28</sup> *Ibid*, pages 16–17, 33.
- <sup>29</sup> *Ibid*, pp 24 and 49.
- <sup>30</sup> Section 58 of the Children Act 2004.
- <sup>31</sup> The UK signed the OPAC in September 2000 and ratified it in June 2003. The declaration was made upon signature and confirmed upon ratification.
- <sup>32</sup> House of Commons written answers, 21 October 2008: *Hansard* Column 188W; 10 November 2008: *Hansard* Column 776W.
- <sup>33</sup> Blake N QC (March 2006). *The Deepcut review. A review of the circumstances surrounding the deaths of four soldiers at Princess Royal Barracks, Deepcut between 1995 and 2002*.
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### Supplementary Memorandum submitted by the Children's Rights Alliance for England

#### ABOUT CRAE

1. CRAE seeks the full implementation of the United Nations Convention on the Rights of the Child (UNCRC) in England. Our vision is of a society where the human rights of all children are recognised and realised.

#### EDUCATION

##### *Religious worship in schools*

2. CRAE believes that all children who have sufficient understanding to make an informed decision should be able to opt in or opt out of collective religious worship in schools. This is in accordance with article 12 (the right to be involved in matters affecting them) and article 14 (freedom of thought, conscience and religion) of the UNCRC. Children may wish to opt themselves in to collective worship following withdrawal either by themselves or their parents. Currently the law only allows for sixth form students to opt out of collective worship.

3. We believe that "sufficient understanding to make an informed decision" is a more effective wording than "sufficient maturity, intelligence and understanding" which is the current criteria recommended by the JCHR. We are concerned that the latter wording could be used to severely restrict the application of any new right. CRAE's suggested criteria reflect section 16 of the Children and Young Persons Act 2008, in relation to a child's decision not to have an independent visitor.

4. Belief in a religion (or none) is not conditional on a certain level of intelligence; rather it is a personal choice. We are concerned that the law might mean that young people who might be perceived as "less intelligent" by teachers or other authorities, for example children with learning difficulties and disabilities or special educational needs, might not be able to choose for themselves whether to participate in worship.

June 2009

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### Memorandum submitted by The Children's Society

#### 1. INTRODUCTION

1.1 It is The Children's Society's aspiration that children should have the status in law of being citizens of equal value and personal dignity to all others, protected from negative discrimination and less favourable treatment. We believe that the UN Convention on the Rights of Child (UNCRC) embodies the legal and practical standards that would make real this aspiration and that it should be made directly enforceable in domestic legislation and courts. We welcome the concluding observations of the United Nations committee on the rights of the child (CRC) published on 3 October 2008, and urge this Committee to question the Government on its proposed timetable for meeting the CRC's recommendations.

1.2 The Children's Society is a member of a number of representative bodies who have made separate submissions to this Inquiry, namely the Refugee Children's Consortium, the Standing Committee for Youth Justice and Young Equals. We wholly endorse the contents of these submissions and would refer the Committee to them for fuller treatment of a number of the issues raised below.

#### 2. CHILDREN IN DETENTION

2.1 The CRC's concluding observations noted that, in relation to children in trouble with the law "*the number of children deprived of liberty is high, which indicates that detention is not always applied as a measure of last resort; the number of children on remand is high*".<sup>162</sup> It recommended that "*the State party develop a broad range of alternative measures to detention for children in conflict with the law and establish the principle that detention should be used as a measure of last resort and for the shortest period of time as a statutory principle*".<sup>163</sup>

2.2 The current numbers of children held in custody in England are too high. The Government's recent Youth Crime Action Plan (YCAP) referred to "the small number of young people who do end up in custody".<sup>164</sup> We strongly refute this assertion. As at July 2008, 2,938 children were detained in the juvenile secure estate, this is not a small number and compares unfavourably to the majority of European countries.<sup>165</sup> Therefore we are very disappointed that the YCAP does not contain a stronger commitment by Government to reducing custodial numbers. We believe that the existing sentencing framework militates against such a reduction and must be re-evaluated in order to give credence to the Government's claim that it wants to see custody for children used only as a measure of last resort.

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<sup>162</sup> Op cit footnote 1 Para 77 (c) and (d).

<sup>163</sup> Committee on the Rights of the Child, Forty-ninth session, Concluding observations: UK and Northern Ireland (CRC/C/GBR/CO/4) 20 October 2008.

<sup>164</sup> HM Government (2008) Youth Crime Action Plan 2008, para 4.1.

<sup>165</sup> Figure taken from YJB website <http://www.yjb.gov.uk/en-gb/yjs/Custody/CustodyFigures/>

2.3 The report of the joint independent review of restraint of children in custody was published in December 2008. The Children's Society was disappointed that the Government's response, published at the same time, failed to address the serious human rights breaches identified in 2008 by your committee<sup>166</sup> and highlighted again in the UNCRC's concluding observations.<sup>167</sup>

2.4 Children in families continue to be detained in Immigration Removal Centres (IRCs) for significant lengths of time with no judicial oversight, contrary to both article 37 of the CRC and the Government's own policy. In the light of the damning reports about the failure to protect children and safeguard their welfare and subsequent recommendations of Her Majesty's Inspectorate of Prisons (HMIP)<sup>168</sup> we continue to press the Government to bring an immediate end to the detention of children and their families.

2.5 We are equally concerned to see an end to the practice of separating families by detaining the parent(s) without their children. The Government views this as preferential to detaining children<sup>169</sup> but we believe it to be in contravention of article 9 of the CRC, highly damaging to the family and in some cases a risk to the child. We are unconvinced by the Government's position that this practice is consistent with Article 8 of the ECHR.

### 3. THE PRACTICAL IMPACT OF THE WITHDRAWAL OF THE UK'S RESERVATIONS ON IMMIGRATION AND CHILDREN IN CUSTODY WITH ADULTS

3.1 We strongly welcome the Government's decision to withdraw the immigration reservation to the UNCRC but we share, with other members of the Refugee Children's Consortium serious concern to learn that according to Phil Woolas "no additional changes to legislation, guidance or practice are currently envisaged".<sup>170</sup> The withdrawal of the reservation demands a root and branch review of the way that the asylum system treats children and young people to ensure that the decision-making through out the asylum process fully evaluates and acts upon their best interests.

3.2 While we welcome the withdrawal of the UK's reservation to article 37 and the Government's stated policy intention never to accommodate children in prison custody with adults, we remain concerned that the Government continues to incarcerate children in YOIs that are part of a prison service estate which is designed for adults (and who are 96% of its clientele). This constitutes a breach of article 40 (3) that requires detention facilities to be "*specifically applicable to children*". Children who are locked up most only ever be held as a measure of last-resort in appropriate, child-centred accommodation.

3.3 In light of the withdrawal of the reservation to article 37 the current situation in which age disputed young people are frequently uncovered in immigration detention with adults, is particularly incongruous. Of 165 age dispute cases dealt with at Oakington by the Refugee Council in 2005, 89(53.9%) turned out to be children. In other periods that figure has been found to be as high as 72%. We urge the Committee to investigate why age disputed young people are still detained, why these cases are not recorded (either upon entry or if they come to light while a young person is being held) and why there is no set process for dealing with an allegation that a child is held in detention as an adult.

### 4. DISCRIMINATION AGAINST CHILDREN ON THE GROUNDS OF AGE OR DISABILITY

4.1 We call on the Committee to urge the Government to urgently ratify the UN Convention on the Rights of Persons with Disabilities without reservations.

4.2 There is significant evidence that disabled children and young people continue to face high levels of discrimination both on an individual and institutional level:

4.2.1 Disabled Children and still not being heard and taken seriously, in accordance with their rights under article of the UNCRC. Despite an increasing focus on children's participation, disabled children are much less likely than non-disabled children to participate at any level, particularly those with complex needs or communication impairments.<sup>171</sup>

4.2.2 Disabled children are overrepresented amongst the child population in the looked after system and those living in institutions on a long-term basis.<sup>172</sup>

<sup>166</sup> Parliamentary Joint Committee on Human Rights, Session 2007–08, Eleventh Report: Use of restraint in secure training centres, 7 March 2008 (HL 65/HC 378).

<sup>167</sup> Committee on the Rights of the Child, Forty-ninth session, Concluding observations: UK and Northern Ireland (CRC/C/GBR/CO/4) 20 October 2008.

<sup>168</sup> Recent inspections took place on the following dates: Tinsley House full announced inspection (10–14/03/08) published 27/08/08; Yarls Wood full announced inspection (04–08/02/08) published 26/08/08.

<sup>169</sup> Border and Immigration Agency Code of Practice for Keeping Children Safe from Harm Consultation—Pro Forma for Responses, 25 April 2008.

<sup>170</sup> Hansard, 24 November 2008.

<sup>171</sup> Franklin, A and Sloper, P. (2007) Participation of disabled children and young people in decision-making relating to social care, York, Social Policy Research Unit.

<sup>172</sup> [see CRAE UNCRC report p 11 and 19].

- 4.2.3 A very high proportion of children involved in anti-social behaviour proceedings have learning difficulties and mental health problems. This seriously calls into question the treatment of disabled children in this context.<sup>173</sup>
- 4.2.4 Disabled children require services from both universal and specialist health services. Despite their crucial importance however, families using our services frequently report that universal health services are inaccessible. Families also experience a postcode lottery in accessing specialist health services. An investigation by the Disability Rights Commission revealed “*an inadequate response from the health service to the major physical health inequalities experienced by some of the most socially excluded citizens: those with learning disabilities and/or mental health problems*”. This included disabled children and young people.
- 4.2.5 Disabled children experience a lack of access to accessible information. For examples the Government failed to produce consultations, including *Youth Matters*, and the Welfare Reform Green Paper, in an accessible format, despite guidance stating that it is good practice to do so.
- 4.2.6 The Disability Equality Duty [Disability Discrimination Act 2005] requires schools to involve disabled pupils in the development and review of their disability equality scheme. Evidence from The Children’s Society practice suggests disabled pupils are rarely involved or even know about their school’s disability equality scheme.

4.3 The Children’s Society is very concerned about the issue of age discrimination against children and young people. We are committed to children’s equality with adults and recognise the many ways in which children can be discriminated against both in law and in everyday lived experiences. While there are many laws that have made provision for children’s rights and protection as individuals in some areas, in others continued and overt discrimination exists, for example in not assuring equal legal protection from assault for children as that provided for adults.

4.4 We are members of the Young Equals coalition that is campaigning to stop children being treated less favourably on grounds of age. The coalition seeks legal protection for children and young people from unfair age discrimination in the provision of goods, services and facilities in the proposed Equality Bill and for education and children’s services to be included in the integrated equality duty.

## 5. ASYLUM SEEKING CHILDREN

5.1 Some progress has been made towards improving the treatment of asylum seeking and refugee children since this Committee’s Inquiry into the Treatment of Asylum-Seekers in 2006, including the publication of the Code of Practice under section 21 of the UK Borders Act 2007, the Government’s subsequent commitment to introduce a duty equivalent to section 11 of the Children Act 2004 in the Borders, Citizenship and Immigration Bill currently before Parliament and the removal of the UK’s immigration reservation to the UNCRC. However it remains to be seen whether these very welcome statements of intent will be translated into concrete improvements in the lives of these children. The current reality for whom is that their best interests continue to be subjugated to the requirements of immigration control.

5.2 Within this context, The Children’s Society is particularly alarmed to find itself supporting increasing numbers of destitute children with families, age disputed young people and unaccompanied minors who become 18.<sup>174</sup> Child destitution is neither necessary, proportionate nor humane and is inconsistent with Article 8 of the ECHR. Moreover we fear that this already desperate situation could be made even worse under the proposals currently being developed for reform of the support regime. These could include powers to remove support from unaccompanied children as they approach 18 and from families at any stage in the process if they are deemed to be non-compliant.

5.3 We also remain strongly opposed to section 9 of the Asylum & Immigration (Treatment of Claimants, etc) Act 2004 and urge the Committee to press Government to exercise its power under section 44 of the Immigration, Asylum and Nationality Act 2006 to repeal it.

<sup>173</sup> See British Institute of Brain Injured Children November 2005 campaign update *Ain’t misbehavin’*. Young people with learning and communication difficulties and anti-social behaviour. BIBIC has carried out research on the prevalence of disabled children being issued with ASBOs. Over a third of youth offending teams took part in the research: 35% of these said children with a diagnosed mental health disorder or an accepted learning disability had been given an ASBO. The organisation is concerned that “*children are in danger of being penalised for their disabilities and that they are likely to be marginalised further by this action*”. Research by Squires, P. (2005) *New Labour and the Politics of Anti-social Behaviour*, *Critical Social Policy*, 26 (1), pp 144–168 also found that half of anti-social behaviour cases involved children with clinically diagnosed ADHD, in addition to other cases where children had learning difficulties.

<sup>174</sup> See for example, *Living on the Edge of Despair*, The Children’s Society 2008.

## 6. CHILD TRAFFICKING VICTIMS

6.1 We continue to be very concerned about the difficulty of obtaining immigration status for trafficked children. A discovery that a child has been trafficked can cause their asylum claim to fail because of the limitations of the 1951 Refugee Convention and the way it is interpreted. This creates a barrier to successful prosecutions as there is no guarantee of security for the child, and so we are unable to reassure them about the consequences of giving evidence. There is also a human cost, as it makes already frightened children more afraid and leaves them in limbo with no certainty about the future.

6.2 An amendment is required to the legal definition of trafficking as set out in section 4 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 because the current narrow definition does not adequately cover all forms of exploitation. It does not include all those subject to abuse of power or in a position of vulnerability, or where “requests or inducements” have been made via a third party for example babies and very small children who are trafficked by an adult. There is now evidence that this loophole is preventing successful prosecutions.<sup>175</sup> The Policing and Crime Bill and the Borders, Immigration and Citizenship Bill that are both before the UK parliament, provide an opportunity to amend the definition.

6.3 The CRC recommended that “*The State party should always consider, both in legislation and in practice, child victims of these criminal practices, including child prostitution, exclusively as victims in need of recovery and reintegration and not as offenders*”.<sup>176</sup> In order to implement this recommendation we urge the Government amend clause 15 of the Policing and Crime Bill currently before Parliament to abolish the power to prosecute of a child over the age of 10 for offences under section 1 Street Offences Act 1959.

## 7. EDUCATION

7.1 We have seen no progress in relation to the difficulties refugee children face accessing and participating fully in education because of the demands of the immigration and asylum support processes. Article 22 of the 1951 Convention sets out that refugees should have the same access to elementary education and remission of fees, but it is in practice difficult for them to achieve this. For example we are aware from our practice that some young people who arrive in the UK at the ages of 14 or 15 are placed into pupil referral units or sixth form colleges rather than mainstream school. For as long as this group of children remain without any link to the DCSF it is difficult to see how policies and practices in education will not ignore, or discriminate against them.

7.2 Disabled children are 13 times more likely to be excluded from school. Official figures show that in 2005–06, 39 in every 10,000 pupils with a statement of SEN were permanently excluded. The figure for pupils with SEN but without a statement is 43 and for those with no SEN only five. Beyond these figures lies a significant number of further exclusions as are pupils are “informally” or “unofficially” excluded from school.<sup>177</sup>

7.3 Many Traveller and Gypsy children live on the side of the road in constant fear of evictions, caused by a shortage of Traveller sites and an urgent need for approximately 4,500 transit and residential pitches.<sup>178</sup> This has an impact on these children’s education as they are unable to access school places and face prolonged interruptions to their education. Traveller children in The Children’s Society projects frequently report experiencing bullying and other forms of discrimination in schools.

## 8. CHILD POVERTY

8.1 We welcome the Government’s commitment to enshrine the 2020 commitment to eradicate child poverty in legislation during the 2009 session of Parliament. The Children’s Society believes that this promise is intrinsic to securing the conditions for good childhoods for all and putting the target into legislation provides a vehicle for ensuring the necessary policies and mechanisms are in place to keep it.

8.2 The Children’s Society is a founding member of the Campaign to End Child Poverty and endorses the coalition’s Statement of Principles on legislating for the eradication of child poverty by 2020 that is appended to this submission.

8.3 It is vital that the asylum-seeking children are counted for the purposes of the child poverty measure. They are not currently and as a result they have been excluded from efforts to raise children’s standard of living.

<sup>175</sup> On 16 May 2008 Peace Sandberg was jailed for 26 months at Isleworth Crown Court after being found guilty of facilitating illegal entry into the UK. The illegal entry in question was that of a baby believed to have been purchased in Nigeria, allegedly so that Ms Sandberg could claim to qualify for priority housing in the UK. Ms Sandberg was not prosecuted for trafficking because it was concluded that the definition of trafficking in section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 was inadequate to cover the circumstances in this case.

<sup>176</sup> Committee on the Rights of the Child (2008) Consideration of reports submitted by states parties under article 44 of the Convention. Concluding observations: United Kingdom of Great Britain and Northern Ireland. para 74 <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

<sup>177</sup> DfES (2007) Statistical First Release: Permanent and Fixed Period exclusions from schools and exclusion appeals in England, 2005–06.

<sup>178</sup> Pat Niner, The provision and condition of local authority sites in England, 2002.

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## 9. CRIMINALISATION OF CHILDREN

9.1 The most significant factor contributing to the criminalisation of children and young people is the low age of criminal responsibility. The CRC recommended that this should be raised substantially.<sup>179</sup> Such a move would immediately divert large numbers of younger children from the criminal justice process and release resources that could be invested into more effective, informal, responses to their behaviour.

9.2 Additionally a number of specific Government policies have contributed to “net-widening” which has increased levels of criminalisation of young people in recent years, some examples of which are given below:

9.2.1 The framing of sex offences legislation in the Sexual Offences Act 2003 means that, for example, two children aged 12 who engage in sexual touching by mutual consent (however legally invalid that consent may be), are both automatically committing a criminal offence. Hence the child who is considered absolutely *incompetent* to consent to sexual activity, is at the same time held in law to be absolutely competent to face prosecution for the same activity. The absence of the presumption of *doli incapax*, repealed in 1998, only makes this anomaly more stark.

9.2.2 Clause 29 of the Policing and Crime Bill introduces a new offence of persistently possessing alcohol in a public place. Under 18s can be prosecuted for this offence if they are caught with alcohol in a public place three times within a 12-month period. The maximum punishment is a level two fine (currently £500). If enacted this will criminalise children by the creation of an offence that does not even have a functional analogy in the case of an adult. We do not agree that this new offence is either necessary or helpful. For young people who are drinking at harmful levels and getting into trouble, the most effective method of supporting them will be through voluntary access to education and treatment, rather than drawing them into the criminal justice system.

9.3 Finally we repeat our longstanding call for reform to the youth justice system to put children’s welfare concerns at its centre. This should be based on the principle of treating children in trouble with the law as children first and foremost. The majority have experienced/are experiencing chaotic and damaging childhoods that require support by mainstream or specialist services. Addressing these needs rather than simply punishing a child’s problematic behaviour is best for the child and for society as a whole.

February 2009

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## Memorandum submitted by the Commission on Families and the Wellbeing of Children

### 1. INTRODUCTION TO THE FAMILY COMMISSION

1.1 The Commission on Families and the Wellbeing of Children (the Commission) was established in April 2004 to consider the relationship between the state and the family in providing children with a humane and caring upbringing in the 21st century. It was established by the Family and Parenting Institute and NCH (previously known as the National Children’s Home), with support from the Joseph Rowntree Foundation.

### 2. AIMS OF THE FAMILY COMMISSION

2.1 The Commission’s brief was to seek to promote the wellbeing of children through addressing some of the core issues and dilemmas faced by society in managing the relationship between the state and the family.

2.2 In order to achieve its aims the Commissioners considered the developing boundaries between the state and the family, examining what is supportive on the one hand and insufficiently supportive or detrimental to human rights on the other.

2.3 In undertaking its review of family policy and in developing its recommendations, the Commission was guided by a set of values which recognise the scope and limitations of the state’s locus in family life together with society’s obligations to support the care and upbringing of children.

2.4 In determining the dividing line between family autonomy and legitimate state intervention at a range of levels and in a variety of forms, and the scope of the state’s obligations to support families, the Commission was guided by two internationally accepted instruments establishing the dimensions of human and children’s rights—the Human Rights Act 1998 and the United Nations Convention on the Rights of the Child 1989.

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<sup>179</sup> UN committee on the rights of the child, 49th session, Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, 3 October 2008 (CRC/C/GBR/CO/4).

### 3. THE FAMILY COMMISSION'S SUBMISSION TO THE JOINT COMMITTEE ON HUMAN RIGHTS' INQUIRY INTO CHILDREN'S RIGHTS

3.1 This submission will focus on the criminalisation of children. Firstly, the Commission draws the Inquiry's attention to a central problem arising from recent developments in juvenile justice within the UK—the effective *lowering* of the age of criminal responsibility to 10. Secondly, the Commission highlights the problem of dual responsibility for juvenile crime between the parent and young person. Thirdly, the Commission suggests that the Inquiry considers the issue of welfare of the child once in the criminal justice system in relation to taking responsibility for any crime or behaviour. Finally, the Commission draws the Inquiry's attention to the lack of acknowledgement of children's rights in relation to antisocial behaviour initiatives.

### 4. THE ABOLITION OF *DOLI INCAPAX*

4.2 The age of criminal responsibility in England and Wales is 10 despite the recommendations in the Ingleby Report (1960) and by others that it be raised to 12 or 14 in line with most Western European societies.<sup>180</sup> In Scotland it is eight, but in the context of a welfare rather than a judicial model of youth justice. One argument for retaining the relatively low age of 10 was that the system protected 10–13 year old children inclusive by the presumption of *doli incapax*, a long established principle that children of this age were “incapable of crime” due to their immaturity, unless proven otherwise. Unless criminal intent could be established, therefore, offenders under the age of 14 were subject, broadly speaking, to welfare disposals rather than criminal prosecution. *Doli incapax* was abolished by the Crime and Disorder Act 1998. This was done without a review of the law relating to children's behaviour, which had been recommended by the Law Lords in *C vs DPP* 1995; the Law Lords had anxieties over the impact of the low age of criminal responsibility operating without the protection of *doli incapax*.

### 5. A BALANCED AND CONSISTENT POLICY

5.1 The Commission is of the view that an effective and credible criminal justice system requires that the rights and interests of victims, offenders and communities be held in appropriate equilibrium. This balance is not being met in current criminal justice policy exemplified by the Crime and Disorder Act 1998 and the Anti-Social Behaviour Act 2003.

5.2 A central problem arising from recent developments in juvenile justice is the growing contradiction between the effective lowering of the age of criminal responsibility to 10, which implies that children over the age of nine have the same knowledge of what constitutes crime as a mature adult, and the simultaneous raising of the presumption of parents' responsibility for their children's offences. In particular the abolition of *doli incapax* and the coercive nature of parenting orders have created, in effect, a questionable new reality of dual responsibility for juvenile crime. This inconsistency goes beyond existing forms of parental liability for the conduct of children, and blurs the crucial distinction between the duty of care and responsibility for conduct.

5.3 When children commit offences it is right for them to be accountable for their actions, according to their age and understanding. Account should be taken of what is known of the psychological development of children in establishing the age of criminal responsibility. The Scottish Law Commission's (2002) recommendation that the age be set at 12, with restrictions on the prosecution of young people under the age of 16, is reasonable in this regard.

### 6. WELFARE OF THE CHILD WITHIN THE YOUTH JUSTICE SYSTEM

6.1 The principle of “responsibility” in law has two definitions depending on which branch of the judicial system is in operation. Within family law, young people and children are viewed as operating at some point on a competency spectrum that can be ascertained through use of the Gillick test. The viewing of children and young people as at developing stages of understanding allows issues of welfare to be at the forefront of any decisions taken on behalf of the young person and removes the confusion of having to acknowledge any personal responsibility on the part of the minor.

6.2 However, within youth justice, the removal of the presumption of rebuttable *doli incapax* introduces the concept of criminal responsibility immediately following a child's 10th birthday. This has the effect of placing the child or young person under the full glare of judicial scrutiny and resultant from the youth justice system's central aim of reducing reoffending, pushes considerations of welfare to the background.

6.3 The principle aim of the youth justice system is the prevention of re-offending. Although the paramountcy of the welfare of the child has been well established in existing laws, once within the youth justice system the prevention of offending or re-offending can supplant considerations of welfare. It may be argued that the prevention of offending or re-offending will increase the welfare of the child, yet unfortunately it does not address whether the means employed to stop offending in themselves improve welfare. There is certainly a benefit to be had from reviewing the impact on child wellbeing of the enforcement side of youth justice.

<sup>180</sup> The average age of criminal responsibility in other European countries is 14–15 years.



6.4 Through focus on responsibility for crimes committed and the removal of the presumption of *doli incapax* we have arrived at a position in which, once within the youth justice system, a child is viewed first and foremost as an offender rather than as a child in trouble. This view is further entrenched by a system that at this point begins to narrowly conceive the notion of welfare of the child or young person as prevention of future offending (Hollingsworth 2007a; Phoenix 2006; and reflected in Judicial Studies Board literature).

6.5 Sections 10 and 11 of the Children Act 2004 place a statutory duty on key agencies to improve the well-being of children and to safeguard and promote their welfare. Under the Children Act 2004, well-being is linked to helping children to achieve the five *Every Child Matters* outcomes. The Children Act 2004 also requires each local authority to establish a Local Safeguarding Children Board (LSCB) to safeguard and promote the welfare of children.

6.6 In contrast, Sections 17, 37, 38, 39 and 115 of the Crime and Disorder Act 1998; the Criminal Justice and Court Services Act 2000; and the Criminal Justice Act 2003 state that the primary aim of the youth justice system is to prevent offending and re-offending. The police, Youth Offending Teams and probationary services, which also work to these provisions and under the ethos that the second principle remit is to prevent offending are amongst the agencies expected to participate in the LSCBs. Although the two roles are not entirely dichotomous, there is certainly a tension.

6.7 The introduction of the Crime and Disorder Act 1998 was an attempt to make the youth justice system more cohesive. Provisions within this Act were intended to be the beginnings of the creation of a youth justice system in which those in need of punishment were punished; but equally a system in which those with welfare issues would be helped out of a life of criminality. And yet the youth of young offenders seems to be of little consequence in the youth justice system that has subsequently been developed which in practice leaves police, YOTs and magistrates with little option but to enforce increasingly punitive measures (Phoenix 2006).

6.8 The Criminal Justice and Immigration Act 2008 has recently introduced another tier of changes to youth justice. It states that prevention of offending and reoffending is the principal aim when considering a sentence for a child or young person. Although the court must also have regard to the welfare of the young offender in accordance with Section 44 of the Children and Young Person's Act 1933 to ensure that welfare needs are considered when sentencing, welfare needs are not to have equal status to, or override, the main aim of preventing offending. It also reiterates the desire for young people to take responsibility for their behaviour and actions.

6.9 A prevailing central message from youth justice reforms has been the reduction of offending through an increase in the demand that young people should take responsibility for their offending behaviour. One criticism of the new youth justice system has been the extended reach, increasing the potential for young people to be drawn into the criminal justice system. Both Goldson (2006 and 2007) and Rod Morgan, the former Chair of the YJB have been critical of what they have perceived as a net-widening in which increasing numbers of young people and behaviours have become subject to formal (criminal) youth justice action (MacDonald and Telford; 2007).

## 7. CHILDREN'S RIGHTS AND ANTISOCIAL BEHAVIOUR INITIATIVES AND LEGISLATION

7.1 The over-riding focus of the youth justice system is a reduction in offending and reoffending by young people. As such the numbers of young people receiving court sentences and ASBOs should ultimately be reducing. However, both Home Office figures and the YJB show that convictions have increased at a substantial rate since the introduction of various measures aimed at young people.

7.2 The problems of antisocial behaviour have been highlighted, especially that perpetrated by young people, as a problem that affects whole communities. The Crime and Disorder Act 1998 and the Anti-social Behaviour Act 2003 together form the bedrock on which the Respect Action Plan was based. However, they seemingly have at their heart a disregard for the rights of children and young people, who have never offended and yet are subject to restrictions against future potential misdemeanours.

7.3 Figures from the Home Office point to a steady increase in the numbers of Anti Social Behaviour Orders (ASBOs) issued against young people each year—rising steeply from just a few shortly after their introduction in April 1999 to over 1,500 by 2005.<sup>181</sup> Figures from the Youth Justice Board also suggest that offences involving 10 to 17 year olds that result in a court or pre-court disposal have risen by 11.4% from 2002–03 to 2005–06 (MacDonald and Telford; 2007). This is a significant rise. The reasons for these rises are complex but certainly include changes to sentencing structures and behaviours deemed to be of a sentencing severity. Although the Crime and Disorder Act 1998 attempts to introduce a range of diversionary tactics to remove children and young people from the criminal justice system, it also introduces a range of alternative sentences if children are thought to be acting in an antisocial manner. The use of such measures effectively criminalises behaviour in respect of children which would not attract criminal sentences if it were committed by adults.

<sup>181</sup> <http://www.crimereduction.homeoffice.gov.uk/asbos/asbos2.htm>

7.4 Recent legislation has also extended the age range of the reach of interventions. Section 11 of the Crime and Disorder Act 1998 allows children under the age of 10 to be subject to child safety orders where they have breached a child curfew, or acted in an anti-social manner, or committed an act that would be considered a crime if they were over the age of 10.

7.5 Curfews were initially introduced in Section 12(1) of the Criminal Justice Act 1991 as a form of community sentence for offenders over the age of 16. Section 43(1) of the Crime Sentences Act 1997 extends curfews to the under 16s. Both of these provisions were repealed and replaced by Section 37 of the Powers of Criminal Courts (Sentencing) Act 2000, subsequently amended by the Anti-social Behaviour Act 2003. Local Curfew Schemes allow a local authority in consultation with the Home Office to ban children from being in a public space during certain hours unless they are accompanied by an adult.

7.6 Original guidance on Child Curfew schemes under Section 14 of the Crime and Disorder Act 1998 states that these schemes are not intended to interfere with children going about legitimate activities even if those activities appear to breach the curfew. However, in the case of removal of young people under 16, this is not so. Section 30(6) of the Anti-social Behaviour Act 2003 gives the police the power to return to their home any young person under 16 who enters a relevant locality regardless of the behaviour or actions of any particular child. Thus the Anti-social Behaviour Act 2003 places limitations on the civil liberties of young people for no other reason than that of being under 16 years of age. In addition, to date there has been no assessment of the efficacy of dispersal orders on their own, although a study and report by the National Audit Office (2006) suggested that a tiered approach to tackling antisocial behaviour can be effective. Nonetheless, the implied interests of the community are put above any consideration of the infringement of the individual rights of young people who have yet to commit an offence.

7.7 A judicial review into child curfews in 2005<sup>182</sup> found that the powers of the police under Section 30(6) of the Anti-social Behaviour Act 2003, to remove children to their homes during curfew hours were permissive only, meaning that a police officer could not compel a child to return home against his/her will (Hollingsworth; 2006). Part IV of the Anti-social Behaviour Act 2003 provides additional mechanisms for the police to deal with localised problems; firstly the power to remove children under 16 years to their homes and secondly, in certain situations, to disperse groups of people regardless of their age. Both powers require that the area has already been designated a “relevant authority”. In the case of the latter, in addition there is a requirement that a uniformed officer must have reasonable grounds for thinking that the presence of the group has resulted, or is likely to result, in antisocial behaviour—thereby creating a direct link between behaviour and the exercising of statutory power.

7.8 The UK’s international obligations under the UN Convention on the Rights of the Child 1989 (UNCRC) dictate that any antisocial legislation cannot treat all children as though they are potential sources of antisocial behaviour as that would fail to treat each child as an autonomous human being. In 2002 the UN Committee recommended that the Government review the use of ASBOs because it considered that they were incompatible with the UNCRC. This is because they are “status offences” and also because they can be imposed without compliance with the minimum fair trial guarantees in Article 6 of the Convention. As has already been noted, rising numbers of ASBOs were made against 10 to 17 year olds (Home Office; 2003). At the same time, Hollingsworth has noted that the Government’s increasing emphasis on the responsibilities of young people is not being matched by better recognition of their rights, particularly as conferred under the European Convention on Human Rights (Hollingsworth; 2006).

## 8. REFERENCES

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<sup>182</sup> R (W) v Commissioner of the Police of the Metropolis and Another (2005) EWHC 1586 (Admin), [2005] 1 WLR 3706.

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## Memorandum submitted by the Department for Children, Schools and Families

### 1. INTRODUCTION AND UNCRC

The Government is fully committed to the United Nations Convention on the Rights of the Child (UNCRC). Our ambitions to improve the lives of all children and young people have been clearly set out in the Children's Plan and this is underpinned by the General Principles of the UNCRC.

September 2008 saw the completion of the UK's reporting year on the implementation of the Convention, culminating with an oral hearing in Geneva. The UN Committee on the Rights of the Child issued the Government with their "Concluding Observations" in October 2008.

The UN Committee welcomed the Government's progress in implementing the Convention and our unwavering ambition to improve the lives of all children and young people. They specifically welcomed the Children's Plan and its links to the UNCRC, making implementation of the Convention a reality on the ground.

The Government withdrew the remaining Reservations to the UNCRC against article 22 (refugee children) and article 37c (children in custody with adults). The lifting of these reservations is further proof that the Government is delivering on its mission to improve the lives of all children, including the most vulnerable, such as asylum seeking children and children in custody.

The UN Committee's Concluding Observations provide a helpful framework for further action by Government, building on measures already in place, to make children's rights under the Convention a reality.

As State party, the UK Government remains responsible for overall coordination of the UNCRC across the UK.

In December 2008, we published an update to the Children's Plan which sets out England's priorities for taking forward the UN Committee's recommendations. Each Devolved Administration will address the UN Committee's recommendations as appropriate to their national requirements.

The Government will continue the "four nations" approach taken throughout the reporting process and will continue to hold regular dialogues with officials across the UK.

In taking forward the UN Committee's Concluding Observations we will continue to build on our strong links and partnerships with Non-Government Organisations (NGOs), the Children's Commissioners and in particular children and young people.

The paragraphs below provide the Government's response to the JCHR select committee's call for evidence.

### 2. CHILDREN IN CONFLICT WITH THE LAW

**The Select Committee has asked for: The practical impact of the withdrawal of the reservation against Article 37c; what the Government is doing on the treatment of children in detention; the use of restraint; death in custody and criminalisation of children.**

#### (a) *Impact of removing the reservation against article 37c*

Removing the reservation gives formal recognition to our achievement in setting up a discrete custodial estate for young people under 18, in which they are not mixing with older offenders.

Specialist training in working with young people is being extended to cover all custodial staff working in young offender institutions for under-18s.

#### (b) *Children in detention*

The Government has made it very clear that custody for young people under 18 should be the last resort. Custody will be used when other interventions would not adequately protect the public from harm or where they have not worked. Courts are required by law to consider all possible alternatives before passing a custodial sentence. In the vast majority of cases, young people can be more effectively dealt with in the community under proper supervision where they can remain in key services such as education and health. However, there are serious and persistent offenders for whom community alternatives either have already failed (often repeatedly failed) or are not realistic because of the seriousness of the offence. Deciding what sentence is appropriate in the circumstances of the individual case is, and should remain, a matter for the courts.

In the Youth Crime Action Plan, the Government is committed to a set of principles in relation to custody for young people. They include:

- promoting the positive development of young people in custody and ensuring that their local authority is involved. In particular, we will address under-achievement in education and the development of relevant skills and qualifications.

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(c) *Use of restraint*

The behaviour of some young people in custody is extremely challenging and can put the safety of other young people and of staff at serious risk. However, the relevant legislation and the Youth Justice Board's code of practice *Managing Children and Young People's Behaviour in the Secure Estate* make it clear that physical restraint is only to be used as a last resort, where all other options have not succeeded or could not succeed. Following the inquests into the deaths in custody of Gareth Myatt and Adam Rickwood (both in 2004), the Government commissioned an independent review of use of restraint in juvenile secure settings. The review,<sup>183</sup> together with the Government's response,<sup>184</sup> was published on 15 December 2008. The review looked in depth at the range of issues relating to use of restraint, particularly the question of safety. It recommended substantial changes in relation to the systems approved for use in young offender institutions and secure training centres. It also recommended that all systems used in the under-18 secure estate should be accredited and proposed significant improvements relating to training, monitoring, inspection and reporting. The Government accepted almost all of the review's recommendations. We are now pressing ahead with the implementation of these recommendations.

(d) *Criminalisation of children*

The Government does not want to see the unnecessary criminalisation of children and has taken significant steps, notably through the Youth Crime Action Plan,<sup>185</sup> to both prevent children and young people falling into crime and, where they do display the early signs, to ensure that there are sufficient opportunities to avoid formally entering the criminal justice system. In 2007–08, in England, 10,000 fewer young people entered the criminal justice system for the first time compared to the previous year. The Government's goal is to reduce the number of first-time entrants to the criminal justice system aged 10–17 by one fifth from current levels by 2020.

(e) *Death in custody*

The Prisons and Probation Ombudsman automatically investigates the deaths of children in custody and has a duty to carry out an independent investigation into the circumstances surrounding deaths in accordance with Article 3 of E European Charter of Human Rights. The Ombudsman's reports also focus on learning the lessons to help prevent deaths in custody in future. An inquest is held into the death of every young person in custody. Inquests are wholly independent and have a jury which must take into account the evidence presented and come to a conclusion about the probable cause of death. All inquests are compliant with Article 2 of the European Charter of Human Rights.

Following the recommendations made by the coroners investigating two deaths in 2004, the Government published an Action Plan addressing each of the recommendations in turn and setting out work under way to address the recommendations. The latest update to the Action Plan was published in December 2008.<sup>186</sup>

### 3. REFUGEE AND ASYLUM SEEKING CHILDREN

**The Select Committee ask for evidence on: practical impact of the removal of the reservation against article 22; the treatment of Asylum seeking children (with particular interest in the balance of child wellbeing versus deportation).**

(a) *Children in the immigration system*

The UK Border Agency (UKBA) is committed to dealing sensitively with children. It has introduced a statutory Code of Practice for Keeping Children Safe from Harm<sup>187</sup> that requires UKBA staff and contractors to be responsive to children's needs in the immigration process. In particular, it requires them to be vigilant for any indications that children might be at risk of harm and to make appropriate referrals to a relevant statutory child protection body. The Code also requires UKBA staff to be trained in specific children's issues. The Government has also decided that the Agency should be subject to a duty to have regard to the need to safeguard and promote the welfare of children, equivalent to that in section 11 of the Children Act 2004. The Borders, Citizenship and Immigration Bill currently before Parliament includes a clause to achieve this.

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<sup>183</sup> *Independent Review of Restraint in Juvenile Secure Settings* Peter Smallridge and Andrew Williamson, December 2008.

<sup>184</sup> *The Government's Response to the Report by Peter Smallridge and Andrew Williamson of a Review of the Use of Restraint in Juvenile Secure Settings*; December 2008, Cm 7501.

<sup>185</sup> H M Government *Youth Crime Action Plan 2008*, July 2008.

<sup>186</sup> *The Government's response to Coroners' recommendations following the inquests of Gareth Myatt and Adam Rickwood*, December 2008.

<sup>187</sup> UK Border Agency *Code of Practice for Keeping Children Safe from Harm*, issued under Section 21 of the UK Borders Act 2007, UKBA, December 2008.

*(b) Reservation against article 22 (immigration)*

On 21 September 2008, following public consultation, the Government announced its intention to remove its general reservation relating to immigration on the UN Convention on the Rights of the Child (UNCRC). The reservation was formally lifted on 18 November 2008. Withdrawing the reservation was made possible largely because of the way UKBA has transformed child protection arrangements since 1991. The UKBA are keeping a close eye on progress and being alert to the need for further improvements in practice.

*(c) Children in detention*

Children are detained only where necessary and for as short a period as possible. Children are usually detained under Immigration Act powers only where this is necessary to effect the removal of their family. Unaccompanied children may be detained in the following limited circumstances:

- very exceptionally, overnight whilst alternative arrangements are made for their care;
- on the day of a planned removal, to facilitate their safe and supervised escort between their place of residence and the port; and
- in exceptional circumstances where it can be shown that an ex-foreign national prisoner aged under 18 poses a serious risk to the public and a decision to deport or remove him/her has been taken.

Where the detention of families with children is prolonged, this is often because their parents frustrate the removal process. The Courts have held that continued detention in such circumstances remains lawful.

*(d) Use of force (restraint)*

It is sometimes necessary to use force to effect the removal from the UK of failed asylum seekers, illegal immigrants and foreign national prisoners. Where children are involved, UKBA uses force only where there is an imminent threat or harm to an individual or to property. It is used only as a last resort when all other avenues of compliance with removal have been exhausted and it must be justified, necessary and proportionate to the situation. Where approval is given to use force on a child, it is carried out using approved Physical Protection in Care techniques; only rarely in very disruptive cases will the use of restraints be appropriate.

The use of force on children in detention is extremely rare and would be considered only for the safety or protection from harm of the child.

*(e) Asylum seeking children*

The complex welfare issues of unaccompanied asylum seeking children are of paramount importance. Such children and young people are not returned to countries unless the family has been satisfactorily traced or acceptable reception and care arrangements are in place. This applies even where unaccompanied asylum seeking children have been found not to need international protection.

In these circumstances discretionary leave may be granted until they reach the age of 17½. Young people have the chance to make a fresh application for permission to stay in the country after this point, or leave the UK. Anyone making a further application to stay on the basis that they are at risk of persecution will need to demonstrate a well founded fear of persecution.

## 4. DISCRIMINATION AGAINST CHILDREN IN EDUCATION

**The Select Committee has asked for evidence on : discrimination against children on the grounds of age or disability (in relation to the Equality bill); discrimination against children in education (access by vulnerable groups, child participation, complaints, bullying exclusions and segregation).**

*(a) Discrimination on the grounds of age or disability*

School children already benefit from protection against discrimination on grounds of disability under the Disability Discrimination Act (DDA) and this protection will not be diluted in the new equality bill.

The age provisions in the proposed Equality Bill will not extend to the under 18s. Extending age legislation to children could have unintended effect of diluting protection that are in place rather than enhancing it.

A Child's age is closely related to its needs and development and therefore children need to be treated differently as they grow and develop, services for children are tailored in an age-appropriate way and schools are organised according to age. However, pupil will still be well-protected under all the other equality strands such as (disability, ethnicity, gender, religion or belief, gender identity and sexual orientation/identity) and under the general duties of care that schools have to provide.

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(b) *Access to education by vulnerable groups*

The Government's aim is a society where all children and young people achieve their full potential and where the momentum of success, enjoyment and learning continues into their adult lives regardless of their social class, ethnicity, gender or ability.

Narrowing attainment gaps between advantaged and disadvantaged groups of pupils remains a top priority for the Government. There is evidence that the gap is narrowing for pupils eligible for free school meals, and for most ethnic groups; sustained rise for black pupils particularly welcome.

However we recognise that there is still more work to be done. The Government places a particular emphasis on support for those groups most at risk of underachieving such as Gypsy, Roma and Traveller pupils.

Personalisation and focus on individual progress will further narrow remaining gaps. Strong performance in primary years bodes well for future.

(c) *Children with disability*

The Government is committed to continuing to develop an inclusive education system, whilst recognising both that the general education system in the UK includes a range of provision, including mainstream and special schools, and that some children's needs are best met by specialist provision, which, particularly for those in rural areas, can be some distance from their home. Nor does the Government want to reduce parental choice if such specialist provision was no longer available. So, while mainstream schools can and do work collaboratively with local authorities' support services and special schools, in order to ensure that the wide spectrum of special needs are met, we are seeking an interpretive declaration/reservation to Article 24 of the UN Convention of Rights of People with Disabilities Convention. Following representations we are considering how these concerns should be expressed to best reflect the Government's commitment to inclusion of disabled people.

Aiming High for Disabled Children is the government's transformation programme for disabled children and young people jointly delivered by DCSF and DH. The Government is investing £340 million of revenue funding to improve services such as Short Breaks (£280 million), Transition support for disabled young people (£19 million) and Accessible childcare (£35 million).

In addition, Aiming High will provide whole system improvements through national expectation setting, performance management and user involvement. These include establishing Core offer standards (building on existing NSF Standard 8) and measuring parental experience of services for disabled children through a disability indicator.

(d) *Child participation*

The Government is committed to engaging the views of children and young people in developing policy. The development of the Play Strategy is a prime example, being based on over 9000 consultation responses from children and young people including disabled children.

The DCSF's Children and Youth Board (CYB) was established as part of the *Every Child Matters* programme, where a commitment was made to ensuring the participation of children and young people in shaping the services that affect their lives. The Board is made up of 25 Children and Young people aged 8–18 representing a wide range of backgrounds across the Country. The CYB work directly with Ministers and officials on policy development.

Since its establishment in 2004 the CYB has been instrumental in shaping the DCSF thinking and designing of services for children. The Board has been involved in a range of policy areas including the Teenage Pregnancy Strategy, Youth Matters, Guidance for schools on Disability Discrimination Act 2005, improving school behaviour and the Children's Plan. They also played an important role in the recruitment of the first Children's Commissioner for England. The Children and Youth Board provide an important channel through which the Department seeks young people's views on policies and provides the opportunity to better tailor and implement policy to the needs of children and young people themselves.

The Government encourages schools to involve pupils in decisions on issues which affect them.

In March 2008, the Government updated *Working Together: Listening to the voices of children and young people guidance*<sup>188</sup> which promotes the participation of children and young people in decision-making in schools and provides advice on the principles and effective practice that support such involvement.

On 17 November 2008, the Government introduced a duty on governing bodies of maintained schools to consider pupils' views on matters, which affect them. Schools will have to consult their pupils on a core set of policies which will be set out in regulations; however they are not restricted to these areas and can consult pupils on any matters they choose that are not prescribed in the regulations. There will be a full consultation during Spring 2009 on the matters on which school must consult and which will be prescribed in regulations. The new duty will come into force from September 2010.

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<sup>188</sup> DCSF(2008) Working Together: Listening to the voices of children and young people  
<http://www.teachernet.gov.uk/wholeschool/behaviour/participationguidance/>

(e) *Complaints*

We will be consulting in the Spring on the broad principle of giving children and young people the right to appeal decisions on exclusions and special educational needs (SEN) assessments and statements. We have already, through the Education and Skills Act (2008), given young people from 16 onwards the right to appeal decisions on admissions. The consultation will consider what, if any, additional support is needed to help children and young people through the appeals process. We have recently consulted on giving parents and young people the right to apply to the new complaints service.

(f) *Exclusions*

Our focus is on preventing bad behaviour from degenerating to the point where exclusion—and particularly permanent exclusion—is necessary. We asked Sir Alan Steer to review the progress made in improving behaviour in recent years and to look at what more might be done, including increasing the effectiveness of behaviour and attendance partnerships.

Sir Alan produced an initial report in March 2008<sup>189</sup> which recommended involving all schools in partnerships for improving behaviour and tackling persistent absence—98% of secondary schools are reported to be working this way. He reiterated his findings in his more recent report and identified key characteristics of effective behaviour partnerships. We are taking this forward through legislation in the Apprenticeships, Skills, Children and Learning Bill, which has just (4 Feb 2009) been introduced to Parliament. The legislation will require all secondary schools to cooperate in these partnerships.

We are working with local authorities and schools to encourage a collaborative approach to managing support and provision for pupils at risk of exclusion and those already excluded and to promote the use of preventive strategies to reduce the need for exclusion. Nearly all secondary schools are now working together in local partnerships to improve behaviour and tackle persistent absence.

We plan to undertake a consultation in Spring 2009 on giving pupils under 18 a right of appeal following their permanent exclusion from school.

In May 2008, we published the White Paper, “*Back on Track*”, setting out our proposals for transforming the quality of alternative education provision. Central to the “*Back on Track*” strategy is a focus on early intervention, stronger accountability and increased and better partnership working between all involved—local authorities, maintained schools, special schools, pupil referral units and voluntary/private sector providers. The White Paper emphasised that we want schools and local authorities to make more, and better, use of alternative provision as a form of early intervention to address behavioural problems.

(g) *Bullying*

The Government has sent a strong message to all that bullying is not acceptable in our schools, making it clear that all forms of bullying, including those motivated by prejudice, must not be tolerated and should always incur disciplinary sanctions. Providing a safe and happy learning environment is integral to achieving the wider objectives of school improvement: raising attainment, improving school attendance; promoting equality and diversity; and ensuring the welfare of all members of the school community. Since 1999 all schools have had a legal duty to have measures in place to prevent all forms of bullying in schools. Staff have new powers also to regulate the conduct of pupils when they are outside the school premises.

We have published a comprehensive suite of guidance, *Safe to Learn*<sup>190</sup> embedding anti-bullying work in schools, which provides schools with advice on how to prevent and tackle all forms of bullying including prejudice-driven bullying and cyberbullying.

We also published tailored guidance on how to prevent and tackle the bullying of children with SEN and disabilities in schools in May 2008, and this forms part of our “*Safe to Learn*” suite of guidance. It provides schools with advice on their statutory obligations in respect of children with SEN and disabilities, and outlines a range of strategies and approaches to tackling this form of bullying.

The Anti-Bullying Alliance and National Strategies are working with Local Authorities and schools to ensure the guidance is effectively implemented in schools, and to provide challenge and support, where necessary.

(h) *Community Cohesion*

In England, the Children’s Plan (section 3.96) sets out our aim to achieve a situation where children understand others, value diversity, apply and defend human rights; fulfil their potential and succeed at the highest level possible, with no barriers to access and participation in learning and to wider activities, and no variation between outcomes for different groups; and have real and positive relationships with people from different backgrounds, and feel part of a community, at a local, national and international level.

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<sup>189</sup> <http://www.dcsf.gov.uk/behaviourandattendance/uploads/Steer%20interim%20260308FINAL.pdf>

<sup>190</sup> <http://www.teachernet.gov.uk/wholeschool/behaviour/tacklingbullying/safetolearn/>

There is a duty on maintained schools to promote community cohesion which came into effect in September 2007, and which Ofsted have inspected since September 2008. We have published Guidance<sup>191</sup> (in July 2007) and also produced an online resource pack<sup>192</sup> for schools (in May 2008). We are working to encourage local authorities to consider schools and youth services as an integral part of their community cohesion strategies.

## 5. VICTIMS OF CHILD TRAFFICKING

**The Select Committee has asked for evidence on: child trafficking victims including ratification of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography ( what changes are needed and what is required).**

### (a) *Child trafficking*

Responsibility for the care, protection and accommodation of child trafficking victims falls within the designated responsibilities of local authorities. Separated and vulnerable children from abroad enjoy exactly the same entitlements as all UK born or resident children.

In July last year we published our revised *National Action Plan on Human Trafficking* and we ratified the Council of Europe Convention on Action Against Trafficking in Human Beings in December. Both strengthen our existing identification and protection arrangements for child victims of trafficking.

### (b) *UNCRC Optional Protocol on the sale of children, child prostitution and child pornography*

The UK Government signed the Optional Protocol in 2001. It has strengthened the law, developed a range of practical measures to assist law enforcement agencies, children's services and other organisations, and strengthened mechanisms for international cooperation. The UK is currently taking the necessary formal steps to complete the process of ratifying the Optional Protocol.

## 6. CHILD POVERTY

**The Select Committee ask for evidence on how best to enshrine in law the Government's goal of eradicating child poverty by 2020, in view of the right of every child to an adequate standard of living under article 27.**

Significant progress has already been made: between 1998/99 and 2006/07, some 600,000 children have been lifted out of relative poverty and the number of children living in absolute poverty has halved from 3.4 million to 1.7 million children (HBAI 2005–06). We estimate that had the Government done nothing and simply uprated the 1997 tax and benefit system in line with prices, around 2 million more children would be likely to live in poverty today. In addition, Government measures over the past two years will result in lifting around a further 500,000 children out of relative poverty.

In 2008 the Government stated its intention to introduce legislation to enshrine in law our pledge to eradicate child poverty. This will reinforce the 2020 commitment to eradicate child poverty and help to ensure that we stay on course and take action now to tackle the causes as well as the consequences of poverty. Legislation will set out a clear definition of success and create an accountability framework to drive and accelerate progress at national and local level. We are currently consulting with stakeholders on how legislation can best drive the action needed, with a Bill to be introduced in Spring this year. Current proposals include the nature and level of targets, a duty to set a strategy, a duty to report annually on progress, and the establishment of an expert commission to feed into the strategy.

## 7. PARTICIPATION OF CHILDREN IN THE ARMED FORCES

As the Government made clear in its interpretive declaration on the Optional Protocol on the Involvement of Children in Armed Conflict, the minimum age of entry into the UK Armed Forces remains at 16 and recruitment is totally voluntary. No applicant under 18 years of age may join the Armed Forces unless the application is accompanied by the formal written consent of his/her parent or guardian.

We recognise the importance of providing special treatment for young people under the age of 18 serving in the Armed Forces and our policy is not to deploy under-18s on operations and we have introduced administrative guidelines and procedures to ensure they are withdrawn from their units before they are deployed to hostilities. We believe that our policies on under-18s are robust and compliant with national and international law. Naturally, we will continue to keep them under review.

In financial 2007–08 a total of 5,980 under-18s were recruited into the Armed Forces (Royal Navy 830; Army 4,750; Royal Air Force 400), which represents approximately 28% of the total intake.

*February 2009*

<sup>191</sup> [http://www.teachernet.gov.uk/wholeschool/Communitycohesion/Community\\_Cohesion\\_Guidance/](http://www.teachernet.gov.uk/wholeschool/Communitycohesion/Community_Cohesion_Guidance/)

<sup>192</sup> <http://www.teachernet.gov.uk/wholeschool/Communitycohesion/communitycohesionresourcepack/>



## Memorandum submitted by Doctors Opposing Circumcision

### INTERNATIONAL HUMAN RIGHTS LAW AND THE CIRCUMCISION OF CHILDREN

#### INTRODUCTION

The various codes of medical ethics that have been enunciated by the medical societies of western nations require medical doctors to respect the human rights of their patients.<sup>1-7</sup> It is, therefore, necessary to consider circumcision of children in the light of international human rights law. According to The United Nations Children's Fund (UNICEF):

Human rights are those rights which are essential to live as human beings—basic standards without which people cannot survive and develop in dignity. They are inherent to the human person, inalienable and universal.<sup>8</sup>

This chapter will examine the position of circumcision of children (who are unable to consent to surgery) that was introduced into medical practice in the nineteenth century, under international human rights law, which was adopted by the nations of the world in the twentieth century.

The era of human rights may be considered to have started with the formation of the United Nations at San Francisco in 1945 because the *Charter of the United Nations* requires that body to promote universal respect and observance of human rights for all—without distinction as to race, sex, language, or religion.<sup>9</sup>

Children possess two kinds of human rights:

- General human rights that every human possesses, universally, simply by reason of being a human being.
- Special human rights that every child possesses, universally, simply by reason of minority.

UNICEF explains:

Human rights apply to all age groups; children have the same general human rights as adults. But children are particularly vulnerable and so they also have particular rights that recognize their special need for protection.<sup>10</sup>

Doctors who treat child-patients, therefore, have an ethical duty to respect and honour both the general human rights and the special human rights of the child-patient.

#### GENERAL HUMAN RIGHTS

The General Assembly of the United Nations, acting to fulfill its obligations under the Charter, adopted the *Universal Declaration of Human Rights* (UDHR) in 1948.<sup>11</sup> The UDHR recognizes the rights of all to security of the person (Article 3), to freedom from inhuman, cruel, or degrading treatment (Article 5), and the rights of motherhood and childhood to special protection (Article 25.2), all of which are applicable to circumcision.

The General Assembly adopted the *Covenant on Civil and Political Rights* (CCPR) in 1966.<sup>12</sup> That Covenant has several provisions, which are applicable to the circumcision of children. Each nation that is a state-party under the CCPR, which took effect in 1976, pledges to enforce those rights for its citizens. The United States ratified this covenant on 8 September 1992 with various reservations, understandings, and declarations that limit its value. Articles 7 and 24 are applicable to circumcision.

Article 7 provides:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 9 provides:

1. Everyone has the right to liberty and security of person.

Article 24 provides:

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

One must bear in mind that non-therapeutic circumcision is a radical, irreversible operation that excises healthy, functional tissue from the body of the child<sup>13</sup> without medical justification and without the consent of the child, and which permanently destroys various physiological functions. According to Svoboda:

Reasons for concern with the procedure under human rights principles include a profound loss of highly specialized and sensitive sexual tissue, which also serves important protective functions, loss of bodily integrity, traumatic and highly painful disfigurement, complications with a range of severity up to and including death, and the impermissibility of any mutilation of children's sexual organs performed with neither their consent nor medical justification.<sup>14</sup>

Applicable general human rights include *security of the person* and *freedom from cruel or degrading treatment*. In addition, the two instruments recognize the right of the child to special *protection* by reason of his minority.

#### ADDITIONAL PARTICULAR HUMAN RIGHTS FOR CHILDREN

The General Assembly of the United Nations has acted twice to enunciate and protect the rights of the child. First, in 1959, the General Assembly adopted the *Declaration on the Rights of the Child (DRC)*,<sup>15</sup> which expanded and further defined the rights of the child to special protection. The DRC enunciated ten general principles for the protection of children, of which Principles 1, 2, 8, 9, and 10 are applicable to child circumcision:

1. The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.
2. The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.
8. The child shall in all circumstances be among the first to receive protection and relief.
9. The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.
10. The child shall be protected from practices which may foster racial, religious and any other form of discrimination.

The DRC, however, was binding on no one, so in 1989, the United Nations General Assembly adopted the *Convention on the Rights of the Child (CRC)*,<sup>16</sup> which enunciated specific rights which the states-party were required to implement in their domestic laws. One-hundred one nations have become states-party to the CRC. Two nations are not states-party to the CRC. They are Somalia, which has no functional government, and the United States,<sup>17</sup> where deep opposition exists. The implementation of the CRC varies from nation to nation. In the United States, even though the CRC has not been ratified by Congress, it still sets a benchmark for the protection of children.

The CRC has a number of articles, which are relevant to child circumcision. They include Articles 2, 3, 4, 6, 19, 24(3), 34, 36, 37, and 39. All nations except Somalia and the United States, therefore, have pledged to implement the provisions of the CRC for the protection of children within their respective borders.

#### *Article 2(1)*

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

This article establishes the universality of child rights. As UNICEF says:  
All children have the same rights.<sup>18</sup>

There are no exceptions.

#### *Article 3*

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

This article establishes "best interests" as the guidance by which decisions concerning the child are made. The second part establishes the obligation of the state to provide protection and care for the well-being of the child.

#### *Article 4*

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 4 establishes the obligation of the state-party to take action to implement the provisions of the CRC.

#### *Article 6*

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 6 acknowledges that children have the same right to life as adults. Article 6 is particularly relevant to such countries as South Africa, where children regularly lose their lives in “initiation schools” where they are circumcised. It is also relevant to circumcision in the advanced Western nations, where children sometimes die of bleeding or infection after circumcision.

#### *Article 19*

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 19 recognizes the right of children to special protection from all forms of mental or physical violence or abuse.

#### *Article 24*

Article 24 recognizes the right of the child to health. Article 24.3 is relevant to the traditional and injurious practice of male circumcision.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

Article 24.3 makes clear that children have a right to protection from the traditional practice of child circumcision.

#### *Article 34*

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.

The penis is a sexual organ, so circumcision is a violation of this article.

#### *Article 36*

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.

Doctors exploit the presence of the foreskin on male children as an excuse to do a circumcision and collect a fee for the surgery. Children have a right under this article to protection from such exploitation.

#### *Article 37(a)*

- a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

This article provides the child with a right to freedom from cruel, inhuman, and degrading treatment. Circumcision excises functional tissue from the human body and degrades the sexual and protective functions of the prepuce. This is cruel, inhuman, and degrading treatment.

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### Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

By this article, children have a right to whatever treatment will help in the recovery from the effects of circumcision.

Smith, writing for the Netherlands Institute of Human Rights (Studie—en Informatiecentrum Mensenrechten), reported that male circumcision is an obvious violation of the human rights of the child, equivalent to female circumcision.<sup>18</sup> All members of society, including parents and professionals, have a duty to protect the rights of children.<sup>20</sup> We shall see in a later chapter how this impacts the medical ethics of the circumcision of male children.

### INTERNATIONAL BIOETHICS INSTRUMENTS

Two international instruments apply human rights to medical ethics. Children—who lack the capacity to consent—are granted special protection.

#### *European Convention on Human Rights and Biomedicine.*

Article 20 of this convention states:

No organ or tissue removal may be carried out on a person who does not have the capacity to consent under Article 5.<sup>21</sup>

#### *Universal Declaration on Bioethics and Human Rights.*

This Declaration by UNESCO states in Article 8:

In applying and advancing scientific knowledge, medical practice and associated technologies, human vulnerability should be taken into account. Individuals and groups of special vulnerability should be protected and the personal integrity of such individuals respected.<sup>22</sup>

Non-therapeutic excision of healthy tissue from the human body quite clearly is an unethical violation of human rights when carried out on a child because this amputative excision of healthy functional tissue is a violation of human rights.

Circumcision of a child requires the consent of a surrogate.

### RECOMMENDATION

The violation of a child's rights by circumcision occurs when a surrogate grants consent for circumcision. Circumcision should only be carried out when an adult grants consent for his own circumcision. We recommend, therefore, that Parliament make granting of consent for circumcision by a surrogate unlawful.

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January 2009

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### Memorandum submitted by ECPAT UK

*Child trafficking victims (including ratification of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography)*

1. In 2006–07 the JCHR undertook a major enquiry into human trafficking to which ECPAT UK submitted oral and written evidence; this report was published in October 2006. ECPAT UK firmly supported the main recommendation from the JCHR's report which was that “a more victim-centred approach to dealing with human trafficking was necessary in order to meet the UK's human rights obligations.”

2. ECPAT UK has mapped over 25 countries where trafficked children have originated from over the past five years. ECPAT UK's research in London (2002,<sup>193</sup> 2004<sup>194</sup>) and Manchester, Newcastle and West Midlands (2007<sup>195</sup>), presents a complex picture of child trafficking. The majority of trafficked children are already highly vulnerable in their home country before they become the targets of traffickers. Some children trafficked to the UK have already been exploited and abused, and many appear to have been living in households with adults who do not have parental responsibility. The circumstances of them travelling with traffickers are often the result of being deceived, sold or coerced rather than abduction or kidnapping.

3. Significantly, many children believe they are coming to a better life, some not having any idea they are coming to Europe, and innocently go along with offers of education or employment. Once in the UK children experience exploitation through domestic servitude, forced labour, sexual exploitation, cannabis cultivation, street crime, forced marriage and benefit fraud. ECPAT UK research shows that the vast majority of children appear to come from Africa, China and Vietnam. In Operation Pentameter, launched in 2006 to identify and rescue trafficked women in saunas and brothels around the UK, 84 foreign females

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<sup>193</sup> Somerset, C (2002) “What the Professionals Know”. ECPAT UK.

<sup>194</sup> Somerset, C (2004) “Cause for Concern”. ECPAT UK.

<sup>195</sup> Beddoe, C (2007) “Missing Out”. ECPAT UK.

were identified as victims of trafficking, 12 of these were under 18: of those 12 children nine were of African origin and three were European. Operation Pentameter II identified 167 victims, including 13 children aged between 14 and 17, who were rescued across Britain and Ireland.

4. On the basis of past research and interviews across local authorities around the UK, ECPAT UK estimates that at any given time a minimum of 600 children, known or suspected of being trafficked, will be in the asylum system or will have been in the asylum system before going missing from local authority care. This represents 10% of the Home Office quoted figure of 6,000 total number of unaccompanied asylum seeking children supported by local authorities.<sup>196</sup> The ECPAT UK figure of 600 children is a very conservative estimate based on limited data.

5. ECPAT UK has welcomed the progress the Government has made recently on trafficking; namely the ratification of the Council of Europe Convention on Action against Trafficking in Human Beings (the Convention) and the withdrawal of the reservation to the UN Convention on the Rights of the Child relating to immigration and nationality.

6. In our experience trafficked children usually arrive in the country either without identification documents or with false documents. In accordance with the Convention [Article 10 (3)] in cases where the age of the trafficking victim is unclear the young person should be given the benefit of the doubt, presumed to be a child and provided with special protection until his or her age is verified. To date there has been no directive or guidance from the Home Office, Department for Children, Schools and Families or the Association of Local Government to Local Authorities on how they are to enforce this Convention requirement. Currently many child victims of trafficking are age assessed by Local Authorities as over 18 based on non-medical grounds. These assessments are routinely and successfully challenged by children's legal advisors. However, during the interim period these children are deemed to be "age disputed" and this can often lead to inappropriate housing and no protection. There are too many age-disputed cases and the Government must take urgent steps to improve decision-making. In 2005 nearly half (45%) of all asylum applicants presenting as separated children were age disputed and treated as adults.<sup>197</sup>

7. If a trafficked child is assessed to be over 18 by the Home Office during an asylum application they can become subject to the dispersal process, as such child victims of trafficking can be quickly placed around the country in inappropriate accommodation with unknown adults. This process must be reviewed in light of Article 10 of the Convention.

8. ECPAT UK acknowledges that the Government has gone beyond the minimum 30 day figure set in the Convention and set the recovery and reflection time for trafficking victims at 45 days. ECPAT UK believes this should be further extended to 12 months. The current proposals for residence permit for trafficked children are unclear. ECPAT UK considers that a system of renewable residence permit for children must offer greater protection than the currently available systems of discretionary leave until a child is 17 years and six months. Indefinite leave to remain must be an option for trafficked children, especially those who are in grave danger of abuse, exploitation and re-trafficking if they are returned to their home country. Immigration status should not be contingent on the child's co-operation with criminal investigations. This incentive approach is at odds with a human rights approach to the treatment of the child.

9. ECPAT UK was pleased that the Government set up the Human Trafficking Centre in 2006. The UK HTC was set up to be "the central point of development of law enforcement expertise and operational coordination".<sup>198</sup> However we are concerned that the UK HTC is failing to act with the requisite urgency in matters relating to trafficked or suspected trafficked children. A key responsibility for the UK HTC is to develop measures to protect and support victims and it is not clear how this assistance is being provided.

10. UK HTC presents itself a multi-agency centre but there is currently no child protection team within the centre, nor is there a visible child protection policy on the UK HTC website. UKHTC does not appear to fall under Section 11 of The Children Act (2004) placing a duty of care on all UKHTC personnel. ECPAT UK would like to see all UKHTC policies audited against child protection and safeguarding policies, and that competency based training on child protection is mandatory for all staff.

11. ECPAT UK has called for a National Rapporteur on Human Trafficking, with a specific responsibility for children, to be established to act as a focal point on trafficking. The National Rapporteur should have statutory powers to request information from police, immigration authorities, child protection agencies (both government and non-government). The Rapporteur would be responsible for gathering data, analysing trends and emerging issues, independent oversight and making recommendations for improvement in the implementation of the UK Action plan on tackling Human Trafficking.

12. There continue to be no "safe house" facilities for child victims of trafficking in the UK. Safe accommodation is the central point around which every other service should co-ordinate. ECPAT UK considers the appropriate safe accommodation model to be a holistic and integrated approach with other support services that can provide an interface with specialist legal, interpreting, medical and counselling services. In some cases the child will also require secure accommodation to safeguard them from the threat

<sup>196</sup> Home Office consultation document "Planning Better Outcomes and Support for Unaccompanied Asylum Seeking Children," p6 .2007

<sup>197</sup> Crawley, Dr Heaven "When is a child not a child? Asylum, age disputes and the process of age assessment" (Centre for Migration Policy Research, Swansea University) published by the Immigration Law Practitioners Association (ILPA). 2007

<sup>198</sup> UK Action plan on tackling Human Trafficking, p9. March 2007

of traffickers. Young people need to feel safe and secure before disclosing their story or giving evidence. A range of safe accommodation options should be developed including emergency accommodation and specialist foster care with appropriately trained foster carers.

13. The UK signed the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography to the UN Convention on the Rights of the Child (CRC) in 2007. ECPAT UK is pleased that Government announced in September 2008 that ratification was imminent<sup>199</sup> but would like to see a timetable in place for ratification without further delay.

#### *Criminalisation of children*

14. *ECPAT UK continues to be disappointed and frustrated at the treatment of trafficked children coerced into criminal activities. As a signatory of the CRC and in the spirit of the "Every child matters" approach the Government should ensure that trafficked children are treated as victims rather than criminals. The best interest of the child should be the cornerstone of the Government's strategy and action plan for combating child trafficking. ECPAT UK believes that it is wrong to prosecute children for crimes that they are forced into committing or are unaware they are taking part in criminal activity.*

15. The Government should follow the recommendations from the Concluding Observations of the UN CRC Committee and "intensify its efforts to ensure that detention of asylum-seeking and migrant children is always used as a measure of last resort and for the shortest appropriate period of time, in compliance with article 37 (b) of the Convention." (Recommendation 71, October 2008)

16. ECPAT UK supports the CRC Committee's recommendations to increase the age of criminal responsibility in the UK. Children in Scotland can be held criminally responsible at the age of eight years old. In England, Wales and Northern Ireland the minimum age is 10. In many of the Nordic countries the age for criminal responsibility is set at 15 and in Belgium it is 18 years old. The Council of Europe's European Committee of Social Rights (which monitors State compliance with the European Social Charter) as well as the UN CRC Committee and other UN Treaty Bodies have all recommended substantial increases.

17. Current information gathered from local authorities and police suggests that: the trafficking of Chinese children has increased in recent years and coincides with the numbers of Chinese children going missing from local authority care; the trafficking of Vietnamese children for cannabis cultivation has increased and so too the trafficking of Roma children from Romania and Bulgaria for street crime such as bag-snatching.

18. ECPAT UK has been gravely concerned by the number of Vietnamese children who have been prosecuted and convicted for drug and immigration offences following raids of so called "Cannabis Factories". During raids on cannabis factories, often the only people arrested are those who are in the house at the time, tending the plants who are often children who have been trafficked. These children are victims of crime and should be seen as child witnesses' not as perpetrators, yet case evidence available to ECPAT UK shows children as young as 14, both boys and girls, being convicted for drug offences and immigration offences who have been sentenced and awaiting deportation. The Refugee Council has documented 18 such cases in a yet to be published report. These children spent between six to 24 months in a Young Offenders Institution. Testimonies of children in custody clearly show the patterns of exploitation, coercion, deception and threat but no adult has yet been prosecuted for the trafficking of children into cannabis cultivation.

19. ACPO guidance in 2007 to Chief Constables advised of the potential for child trafficking in cannabis factories and CPS guidance issued in 2007 and updated in 2009 instructs police and prosecutors to refer to the UK HTC for UK HTC to make enquiries regarding identification related to trafficking. The guidance states that "where there is clear evidence that the youth has a credible defence of duress, the case should be discontinued on evidential grounds." The guidance also states that in cases where the child is believed to be a victim of trafficking, and is believed to have been working under duress, he or she should be protected under child care legislation and could become a prosecution witness. However, many trafficked children are not identified as such and even when they are, support provided is often insufficient. Yet, according to ECPAT UK case referrals arrests and prosecutions continue.

20. It is worth underlining the vulnerability of trafficked children in these situations who have no support from family or friends, often the only contacts they have are their traffickers. These children will often be unable to speak or understand English and will not have passports or be aware of their immigration status.

21. Rather than the criminalisation of children ECPAT UK would like to see the prosecution of the perpetrators of trafficking. ECPAT UK is concerned about the low numbers of convictions for trafficking offences related to children. The conviction of offenders allows for justice for the victims of trafficking and provides protection from further contact between trafficker and victims and acts as a deterrent. To date there have been 92 convictions for trafficking for sexual exploitation, and four for trafficking for forced labour. In 2008, 19 people were convicted of trafficking for sexual exploitation and, of those, four received suspended sentences. In 2008, there were four convictions for trafficking for the purpose of forced labour. The average length of sentence for the offence of trafficking is 4.69 years and the maximum sentence is 14 years. (3 Feb 2009: Column 174WH)

<sup>199</sup> DCSF press notice 22 September 2008, [http://www.dcsf.gov.uk/pns/DisplayPN.cgi?pn\\_id=2008\\_0209](http://www.dcsf.gov.uk/pns/DisplayPN.cgi?pn_id=2008_0209)

22. It is important to note that UK legislation for trafficking offences included within The Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants etc.) Act, 2004 is inadequate to deal with the many offences that constitute what we now understand of child trafficking, specifically the trafficking of children for criminal activity; and the trafficking of babies and young children who cannot speak for themselves. The latter is relevant in cases of trafficking for benefit fraud and illegal adoption.

23. Where child trafficking has been prosecuted under “Facilitation” offences in immigration legislation offenders have received sentences significantly lower than those that have been prosecuted under dedicated trafficking legislation. As “Facilitation” offences are considered a victimless crime they do not trigger victim unit processes and victims are not ordinarily notified of significant events such as the release of the offender.

24. ECPAT UK is mindful that professionals dealing with victims of trafficking are often unaware of the Code of Practice for Victims of Crime, issued the Criminal Justice System, in 2005. As a result child victims are not being made aware of their rights and entitlements contained in the Code and the subsequent complaints procedure to the authorities and the Parliamentary Ombudsman.

25. ECPAT UK, along with other children’s organisations, believes that a system of guardianship for separated children is the only mechanism that will ensure that all actions and decisions with respect to that child will be made in their best interests. This is particularly important for trafficked children. A Guardian would assist the trafficked child navigate across the boundaries of statutory services, legal advisors and non-government agencies to support the child in every aspect of their wellbeing. ECPAT UK research shows that when trafficked children go missing from local authority care there has been very little cooperation between agencies, and across local and international boundaries, to trace children and make contact with their families. A system of Guardianship is recommended by the Convention and is also supported by the CRC Committee in their concluding observations.

#### CASE STUDIES

This case study is based on a case to which ECPAT has provided advice and support

##### Age Assessment case study

In 2008 a Local Authority age assessed M who was known to have been trafficked for domestic servitude. At the time of the age assessment M had given her date of birth as 16 and the police, UKBA and specialist support agencies had all accepted her age as 16 years.

During the early stages of the police investigation the Local Authority social workers visited suspects to obtain background data on M. These suspects later provided documents obtained from her country of origin that showed a date of birth as over 18.

Both suspects have now been arrested on suspicion of trafficking and yet the Local Authority has assessed M to be over 18 on the basis of documents they provided. None of the documents are originals and the Local Authority has stated they have no way of proving if they are fraudulent yet they have used this information to discredit M’s own account of her age and thus strengthen the suspects claim that M is not a child. It is known by police and the Local Authority that at least one of the documents was fraudulent. The Local Authority has rejected an independent age assessment provided by a paediatrician showing her age as 16.

This case study is taken from a forthcoming report from the Refugee Council on Cannabis factories and is used with permission

##### Criminalisation of children case study

T was an orphan who had lived in an orphanage since he was about three years old. When he was about eight years old he was taken from the orphanage by a man who fostered him for two years. T did housework and chores for his foster family.

When T was about 10 years old, he was told that he and his carer were to leave Vietnam. They left with a group of others and travelled through many countries, eventually arriving in the UK in the back of a lorry.

When they arrived, T was left to live on his own for a couple of weeks, after which time his carer returned and took him to a cannabis factory where he was later arrested. T was 17 when he was referred to the Refugee Council. It is not clear exactly how old he was on arrival in the UK, but it appears that several years passed between his leaving Vietnam and arriving in the UK.



### Memorandum submitted by the Equality Commission for Northern Ireland

“Young People should be at the forefront of global change and innovation. Empowered they can be key agents for development and peace. If, however, they are left on society’s margins, all of us will be impoverished”

(Kofi Annan, former Secretary General of the United Nations)

#### INTRODUCTION

The Equality Commission for Northern Ireland (“the Commission”) is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment, sex discrimination and equal pay, race relations, age, sexual orientation and disability. Our remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under section 75 of the Northern Ireland Act 1998 and the disability duties in the Disability Discrimination (Northern Ireland) Order 2006.

The Commission’s general duties include:

- working towards the elimination of discrimination;
- promoting equality of opportunity and encouraging good practice;
- promoting positive/affirmative action;
- promoting good relations between people of different racial groups;
- overseeing the implementation and effectiveness of the statutory duties on relevant public authorities; and
- keeping the legislation under review.

Children and young people are protected by the full range of anti-discrimination legislation as cited above, with particular protection afforded under the Employment Equality (Age) Regulations (Northern Ireland) 2006. Further, children and young people are included in the provisions of Section 75 of the Northern Ireland Act which statutorily requires public authorities to promote equality of opportunity and good relations in their public policies and functions.

The Commission welcomes the opportunity to contribute to this inquiry. Given our particular remit, the focus for our contribution to this inquiry will be in relation to discrimination and inequalities experienced by children and young people in Northern Ireland. The Commission is currently prioritising addressing inequalities in relation to children and education. As such, the Commission requests that the attached document “*Every Child an Equal Child*” is accepted by the committee as a core element of our evidence to this inquiry.

#### POVERTY, EMPLOYMENT AND INCOME

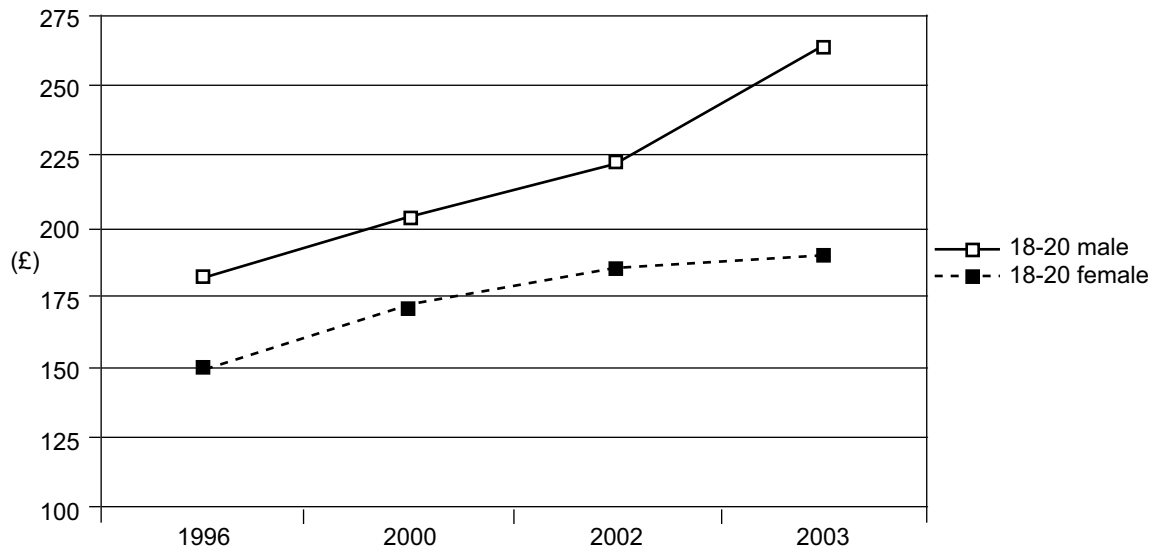
Children in Northern Ireland make up 25% of the population. More than one third of children (122,000) live in poverty, with an estimated 44,000 living in extreme poverty. Child poverty is more prevalent in NI than GB with an estimated 38% of children in Northern Ireland living without basic necessities compared to 20% in Britain. Families of disabled children are more likely to live in poverty.

Given the nexus between inequality and poverty, the Commission has paid particular attention to inequalities that present a risk of poverty within the context of current provisions on the Employment Equality (Age) Regulations which currently covers employment only and on wider public policy issues which are impacted upon by Section 75 requirements.

The Commission has been consistent in our position on employment matters relating to children young people, in particular on the National Minimum Wage (NMW)

With the introduction of the National Minimum Wage (NMW), the Commission had argued for the inclusion of people under the age of 18 within its scope. The Commission has consistently opposed the “banding” system within the NMW with lower rates for 16–17 and 17–18 year olds. Unfortunately there has not been a great deal of research carried out in Northern Ireland on the NMW’s age banding and any consequent problems, however information from the Citizens Advice Bureau which runs the advice line for the NMW here indicates that the majority of complaints being received are coming from the 18 to 21 age group.

There is no evidence that the NMW has impacted significantly on the Gender Pay Gap for younger people as a clear differential in wage levels has been showing up from age 18 to 20 (Figure 1).<sup>200</sup>



The concentration of young women in “training posts” and the gender segregation of these posts which are exempt from NMW coverage may account for the differential showing up at age 18. However there is a shortage of reliable information indicating causality in this area that needs to be addressed. Additionally, the shortage of information on the operation of the NMW in the two lower pay bands is preventing a clear picture of the effects of this directly discriminatory practice from developing. As an additional concern, children from the age of 13 to 16 have no statutory minimum hourly rate for their work, and as has been pointed out by the Children’s Law Centre, children and young people often are forced by circumstances to work to supplement low family incomes and facilitate access to 3rd level education. In relation to childhood poverty, research carried out in 2004<sup>201</sup> illustrated that there are higher levels of severe childhood poverty (across all three measures) in Northern Ireland compared to the rest of the UK.

The clearest counter argument in relation to the age banding of the NMW however lies in its lack of proportionality in terms of a “justification” under the Employment Directive. While it is aimed at promoting a legitimate labour market aim, ie promoting the labour market prospects of vulnerable young people, its application to all young people makes it inherently disproportionate.

#### POVERTY, INEQUALITY AND EDUCATION

As noted above the Commission is prioritising work in the area of education currently, recognising that educational achievement has a profound influence on improving life chances and the correlation between inequalities in education and child poverty, in particular persistent poverty cycles that exist here for many equality groups. There is clear evidence that children and young people, who are already at risk of being marginalised in society, including Traveller children, disabled children and working class boys (in particular in Northern Ireland, working class Protestant boys), often have lower levels of educational attainment.

As a somewhat stark illustration of the effect of poverty or deprivation on life chances, a child born in a deprived ward of Northern Ireland in 2001 was likely to live six years less than their more affluent contemporaries and, in 2006, this gap had only narrowly reduced to 5.8 years.<sup>202</sup> Infant mortality rates in deprived wards are a fifth higher than those for the general population<sup>203</sup> and while there have been extensive improvements in relation to cancer prevention and treatment, the incidence of cancer is up to 74% higher in deprived areas than more affluent ones.<sup>204</sup>

In relation to **education and inequalities** generally, as cited earlier, the Commission attaches our recent publication “*Every child an equal child*” which we submit as evidence to this inquiry.

#### PROPOSED EXTENSION OF CURRENT ANTI-DISCRIMINATION PROVISIONS

The commission welcomes the recent proposal from the European Commission to make provision for the extension of legislation prohibiting legislation on the grounds of age to goods, facilities and services. This will provide additional protection for children and young people in vital areas such as education, health and housing.

<sup>200</sup> Youth Barometer 2005 Youth Council for Northern Ireland.

<sup>201</sup> The Bottom Line: Severe Child Poverty in Northern Ireland (Monteith and McLaughlin, 2004).

<sup>202</sup> Department of Health, Social Services and Public Safety Northern Ireland 2007, Inequalities monitoring update 2.

<sup>203</sup> Ibid.

<sup>204</sup> Ibid.

The Commission responded to consultation on the discrimination law review in GB and proposals for Single Equality Act (GB) in September 2007, calling for the removal of a blanket exclusion of children (ie people under 18) from the scope of any protection.

Historically, the Commission has not supported blanket exclusion under any of the anti-discrimination statutes and the ongoing development of European anti-discrimination law is based on the widest scope of protection to all citizens with limited exemptions that fall outside the general principle of the promotion of equality. The Commission does not therefore support the blanket exclusion of people under the age of 18 from statutory protection against discriminatory acts on the grounds of age in the provision of goods, facilities and services, etc. The Commission assumes that the Government will take into account views on the extent to which such an exception is considered compatible with human rights legislation and the United Nations Convention on the Rights of the Child (UNCRC).

The Commission would stress that there is no equivalent blanket exemption under the Age (Employment) Regulations 2006, which prohibit discrimination on the grounds of age, and the introduction of an age bar on non-employment related provisions would create a “disconnect” with the Employment Regulations.

The Commission also notes that age discrimination as regards the provision of goods, facilities and services and other non-employment related areas is protected under Ireland’s Equal Status Act 2000. Although there is a blanket exclusion as regards people under 18, this exemption has resulted in considerable difficulties and its repeal has been repeatedly recommended by Ireland’s Equality Authority.

Given the importance of provision of goods, facilities and services to children and young people, the Commission urges the committee to support its view on including children and young people within the scope of legislation within GB and NI.

#### SECTION 75 AND CHILDREN’S PARTICIPATION IN DECISION MAKING

Section 75(1) of the Northern Ireland Act 1998 requires a public authority,<sup>205</sup> designated for the purpose of the Act, in carrying out its functions relating to Northern Ireland to have due regard to the need to promote equality of opportunity:

- (a) between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- (b) between men and women generally;
- (c) between persons with a disability and persons without; and
- (d) between persons with dependants and persons without.

Section 75(2) requires that, without prejudice to its obligations under subsection (1), a public authority shall in carrying out its functions in Northern Ireland have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

Under Schedule 9 (1) of the Northern Ireland Act 1998, the Equality Commission has a duty to:

- (a) keep under review the effectiveness of the duties imposed by Section 75; and
- (b) offer advice and guidance to public authorities and others in connection with these duties.

Section 75 of the Northern Ireland Act 1998 requires that public authorities in carrying out their functions relating to Northern Ireland to have due regard to the need to promote equality of opportunity in respect to nine categories, one of which is age. Children and young people comprise one end of the age spectrum and like individuals belonging to all other section 75 categories have multiple identities, for example, as girls or boys, as black and minority ethnic children, as disabled children, or as gay and lesbian young people.

A central plank of Section 75 of the Northern Ireland Act is consultation with individuals and groups affected by a public policy. Public authorities must consult with children and young people on policies that impact on their lives. To support designated public authorities to undertake effective consultation with children and young people, the Commission has published guidance “*Let’s talk, Let’s Listen*” which offers advice and good practice examples on including children and young people in public policy decision making. A copy of this Guidance is attached for additional information.

<sup>205</sup> Section 75 of the Northern Ireland Act 1998 defines a public authority as follows:

- “(a) any department, corporation or body listed in Schedule 2 to the Parliamentary Commissioner Act 1967 (departments, corporations and bodies subject to investigation) and designated for the purposes of this section by order made by the Secretary of State;
- (b) any body (other than the Equality Commission) listed in Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996 (bodies subject to investigation);
- (c) any department or other authority listed in Schedule 2 to the Ombudsman (Northern Ireland) Order 1996 (departments and other authorities subject to investigation);
- (d) any other person designated for the purposes of this section by order made by the Secretary of State”.

The involvement of children and young people in decision making about their future development is essential in giving them a sense of ownership and encouraging participation. Research by the National Children's Bureau and the Young Life and Times Survey have indicated that the involvement of children and young people in the development of strategies to deal with issues such as bullying, is at the core of effective measures to address the problem. The development of the curriculum is centrally driven increasingly with reference to macro economic factors, rather than with a view to developing an individual child to their full capacity and in spheres where they have an interest. As with other services, education is something that is "done" to children and young people rather than something that they play a part in shaping.

(Article 12 UNCRC) The United Nations Convention on the Rights of the Child says children have a right to be heard on issues and decisions that affect their lives. Young people are very often excluded from consultation processes and more importantly decision making processes. This is particularly relevant to issues around access to information and services around sexual health, community safety issues, crime and law and order, education and mental health services. Research by Youth Action<sup>206</sup> has shown that young people increasingly feel isolated from civic society and are disengaging from political and decision making processes.

The Commission has recently completed the first strategic review of effectiveness of section 75 (final report attached) and whilst much has been achieved through this groundbreaking approach to mainstreaming equality in public policy and decision making, many challenges were highlighted during the review. In responding, the Commission is working with government and other key partners to better realise the full potential of this creative legislation, enhancing the public policy process to focus more on positive impacts and outcomes for those experiencing inequalities, essentially ensuring that Section 75 can improve the quality of people's lives in Northern Ireland, as the legislation intended.

The Commission would welcome the opportunity to discuss in more detail with the committee, the impact which section 75 can have on achieving better equality for children and young people, better relations in Northern Ireland through work with children and young people. We also wish to discuss how children and young people can have their rights recognised through participating more effectively in public policy decision making.

#### CONCLUSION

The Commission welcomes the opportunity to contribute to this inquiry, recognising its timelines for our work in respect of refining the implementation of Section 75 and in terms of proposals to extend anti-discrimination legislation on the grounds of age to goods, facilities and services. The Commission is ambitious for greater equality and better relations for children and young people here; we continue to use our powers and duties to increase their participation as active members of a society attempting to rebuild a sense of community after many years of conflict. Children and young people are central to the process and the Commission is keen to contribute to shaping and achieving the necessary changes. We look forward to an opportunity to discuss the contribution we make with the Joint Committee.

*February 2009*

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#### **Memorandum submitted by the Equality and Diversity Forum**

1. The Equality and Diversity Forum is the network of national organisations committed to progress on age, disability, gender, gender identity, race, religion or belief, sex, sexual orientation and broader equality and human rights issues.

2. We welcome your inquiry into children's rights, an area that we feel tends to receive insufficient attention. Our members include some organisations that specialise in issues concerned with children but the Forum itself is not involved in all of the issues within the inquiry's terms of reference. We have therefore limited our memorandum of evidence to three topics:

- Discrimination against children on ground of age or disability;
- Physical punishment; and
- Discrimination against children in education.

3. We welcome the Government's announcement in September 2008 that it is removing its reservations to the UN Convention on the Rights of the Child in respect of immigration and children in custody with adults.

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<sup>206</sup> "Its always in the back of your mind", Youth Action research report, 2006.

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 DISCRIMINATION AGAINST CHILDREN ON THE GROUNDS OF AGE OR DISABILITY

4. We are mindful of the findings reported UK's report to the UN Committee on the Rights of the Child (UNCRC) that:

the most common form of unfair treatment reported by children and young people related to that based on age (43%), followed by gender (27%) and beliefs (18%). Reporting of age discrimination increased with age from 29% for under 11s to 64% for 16–17-year-olds. Of those who described themselves as having a special need or disability, 55% felt that they had experienced unfair treatment for this reason. 38% of Black children, compared with 31% of Asian children, reported that they had been treated unfairly because of the colour of their skin. In terms of religion, Muslim children (38%) and Sikh children (31%) were most likely to report that they had been treated unfairly because of their beliefs. Looked after children and Traveller children also reported experiences of unfair treatment because of their status/colour.<sup>207</sup>

And the further concerns noted by the UN Committee on the Rights of the Child in its concluding observations in its 49th session in October 2008:

the Committee is concerned that in practice certain groups of children, such as: Roma and Irish Travellers' children; migrant, asylum-seeking and refugee children; lesbian, bisexual, gay, and transgender children (LGBT); children belonging to minority groups, continue to experience discrimination and social stigmatization. The Committee is also concerned at the general climate of intolerance and negative public attitudes towards children, especially adolescents, which appears to exist in the State party, including in the media, and may be often the underlying cause of further infringements of their rights.<sup>208</sup>

These findings highlight not only the effects of their particular status on the way that children are treated but also the effects of multiple discrimination (ie discrimination experienced on more than one ground). We consider that there should be provisions in the next Equality Bill to provide an effective remedy for multiple discrimination.

5. The EDF considers that there should be no discrimination against children either on grounds of their age or on grounds of their disability. At the same time we recognise the need for services and policies relating to children that are designed in an age-appropriate way. This may of course in some instances involve children being treated more favourably than adults. Equally, it may involve maintaining some restrictions (such as age bars on buying alcohol or tobacco) affecting children and young people.

6. It is also important to ensure that children do not fall through age gaps in provision. There appears to be evidence, for example, that in some areas children are excluded on age grounds from some children's health and social care services before they have reached the age that allows them access to adult services.

7. The EDF welcomes the fact that the UK government has signed up to the UN Convention on the Rights of Persons with Disabilities. However, we would urge the Government to complete the process by ratifying the Convention promptly without reservations. We welcome the announcement on 3 February 2009 that the Government will sign the optional protocol. This would have clear benefits for children with disabilities.

## PHYSICAL PUNISHMENT

8. Although children and their rights fall outside the remit of some of our member organisations, many of our members are deeply concerned that physical punishment of children remains lawful in our country. There are a number of reasons for this concern. We recognise that for many people this is a sensitive and personal issue. However, we also see it as one of equality and of human rights where reform is necessary to protect some of the most vulnerable members of society. The most recent detailed research evidence of which we are aware shows that two thirds of mothers say that they smack their babies before the age of one and one fifth of children had been hit with implements. Law reform would lead to a change in behaviour and we believe that prosecution of parents is likely to be rare. We support the view of the UN Committee on the Rights of the Child that equal protection against assault for children is "an immediate and unqualified obligation". We are concerned that although the Committee on Economic, Social and Cultural Rights recommended prohibition to the UK in 2002, this has not yet been implemented and consequently in 2005 the European Committee on Social Rights found the UK in this respect to be in breach of the European Social Charter. We also note that the European Court of Human Rights has made clear that violent discipline cannot be justified on grounds of religious belief.

9. We are concerned that the UK is one of only four of the 27 countries in the EU that has not provided equality protection against assault for children or made a commitment to do so. In the UK we are aware that both your Committee and the Health Select Committee (2003) have argued that UK law should be brought in to line. All of the major professional associations concerned with safeguarding children including the Royal College of Paediatrics and Child Health take that view.

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<sup>207</sup> Quoted in *Consolidated Third and Fourth Periodic Report to the UN Committee on the Rights of the Child*, UK Government, 2007, page 34, paragraph 3.2.

<sup>208</sup> UN Committee on the Rights of the Child, 49th session, October 2008, para 24.

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 DISCRIMINATION AGAINST CHILDREN IN EDUCATION

10. The EDF considers that it is clear that discrimination and harassment do occur in schools and have damaging consequences for children and young people. Where such discrimination and harassment are allowed to go unchallenged or are even perpetrated by those employed in the school, the damaging effect may extend beyond the individual pupils affected by the poor example set to other pupils. Consequently discrimination and harassment within education do need to be prohibited.

11. A 2007 Stonewall report, *The School Report*, concluded that 65% of lesbian and gay secondary school pupils in Great Britain had experienced homophobic bullying, 41% of these had been physically bullied and 17% had experienced death threats.<sup>209</sup> Mencap reported in 2007 that “an incredible 82% of children with a learning disability are bullied—this is 280,000 children” and six out of 10 are physically hurt.<sup>210</sup> The Office of the Children’s Commissioner for England has reported that disabled children are twice as likely as their peers to become targets for bullying.<sup>211</sup> In 2006 the National Autistic Society reported that it had found that “at least 40% of parents of children with autism and 60% of children with Asperger’s syndrome report that they have been bullied at school; but because of the nature of the condition, it is likely that this figure is understated”.<sup>212</sup> The UK charity Beatbullying has just reported that of over 800 children between 11 and 16-years of age 23% reported being bullied because of their religion or belief.<sup>213</sup> Although few statistics are available, charities representing transgender and intersex people report that children who do not identify with the gender in which they are being brought up are also particularly likely to be bullied and are more likely to leave education early as a result.

12. These are not figures that can be easily dismissed or ignored and the EDF shares the concerns expressed by the UNCRRC when they noted that bullying “may hinder children’s attendance at school and successful learning”.<sup>214</sup>

13. There are also problems with enrolling in school for some groups. We are particularly conscious of the problems experienced by the children of Gypsies and Travellers who often find it difficult to enrol in schools partly because of the difficulty that their parents experience in finding appropriate places to live. Whilst some education authorities provide a Traveller Education Support Service there are many who do not and a statutory requirement to put in place such a service could raise the education achievement level for Gypsy and Traveller children.

February 2009

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 Memorandum submitted by the Equality and Human Rights Commission

## INTRODUCTION

1. The Equality and Human Rights Commission (“the Commission”) is an independent statutory body established under the provisions of the Equality Act 2006 with powers to enforce equality legislation on age, disability, gender, race, religion or belief, sexual orientation and transgender status in Great Britain and a unique mandate to promote the understanding of the Human Rights Act in England and Wales with a limited jurisdiction for human rights issues in Scotland.<sup>215</sup> The Commission liaises with the Equality Commission for Northern Ireland which has the equivalent equality remit for that region.

2. The Commission heralds a major shift in the way we tackle inequality and promote human rights in GB. The Commission works across all the grounds of equality—gender, gender identity, race, disability, age, sexual orientation, and religion—and much of the important work of the predecessor commissions (the CRE, EOC and DRC) has been taken on by the Commission and will continue to be developed in its work. The Commission’s mandate applies to people of all ages.

3. The Commission has a tripartite mandate of equality, human rights and good relations. The importance of fundamental rights is reflected in our strategic priorities and our vision.<sup>216</sup>

4. The Commission’s duties in relation to human rights are:

— to promote understanding of the importance of human rights;

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<sup>209</sup> [http://www.stonewall.org.uk/education\\_for\\_all/research/1790.asp](http://www.stonewall.org.uk/education_for_all/research/1790.asp)

<sup>210</sup> *Bullying wrecks lives: the experiences of children and young people with a learning disability*; Mencap 2007.

<sup>211</sup> *Bullying Today: A Report by the Office of the Children’s Commissioner*, 2006 see also *Spotlight briefing: Bullying and disability*, The National Children’s Bureau, 2007.

<sup>212</sup> *B is for Bullied*, National Autism Society, 2006.

<sup>213</sup> Interfaith Report, *Beatbullying*, November 2008.

<sup>214</sup> UN Committee on the Rights of the Child, 49th session, October 2008, para 66(c).

<sup>215</sup> The Commission has jurisdiction over human rights issues in Scotland where it relates to a power “reserved” to the Westminster parliament. In relation to powers “devolved” to the Scottish parliament, the Scottish Commission for Human Rights (SCHR) have jurisdiction.

<sup>216</sup> Our vision is a society built on fairness and respect, where people are confident in all aspects of their diversity.

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- to encourage good practice in relation to human rights; and
  - to encourage public authorities to comply with the Human Rights Act<sup>217</sup> (HRA).

#### EHRC'S HUMAN RIGHTS INQUIRY

5. In the first six months of its operation, the Commission launched a human rights inquiry.<sup>218</sup> The aims of this inquiry are to assess progress made in the 10 years since the enactment of the Human Rights Act towards the effectiveness and enjoyment of a culture of respect for human rights in GB and to consider how the current human rights framework might be developed to realise the Commission's vision of a society built on fairness and respect, confident in all aspects of its diversity. The Commission intends to publish the findings and recommendations of the inquiry in April 2009.

#### IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD

6. Although the UK Government has ratified the UN Convention on the Rights of the Child it has not incorporated the Convention into domestic law. Consequently, the Convention is not directly enforceable in national courts and there can be no individual cause of action for breach of the Convention. However the Convention is increasingly being quoted in Human Rights Act judgments, so has persuasive authority in the courts.

7. The guiding principle and bedrock of the Convention—that the best interests of the child shall be a primary consideration—is not implemented in all areas of policy and legislation. The Commission would like to see that this principle applies in all court proceedings, including criminal proceedings where a child is the defendant. We would also like to see this principle applying in immigration and asylum procedures.

8. Some of the rights contained in the Convention on the Rights of the Child have been implemented into domestic law by the incorporation of the European Convention on Human Rights (ECHR) in the Human Rights Act.

9. The Commission considers that it is possible to implement many of the rights set out in the Convention which have not yet been implemented into domestic law through the UK signing, ratifying and incorporating into domestic law, via the Human Rights Act 1998, Protocols 4,<sup>219</sup> and Optional Protocol 12<sup>220</sup> of the ECHR. The UK Government has undertaken since 1999 to sign and ratify Protocol 7, noting that the only obstacle to doing so is amending three discriminatory rules of matrimonial property law.<sup>221</sup> Those steps would help to bring the UK domestic law in line with the CRC. The Commission awaits the Government's consultation paper on a Bill of Rights for Britain and hopes that this process leads to a strengthening of the Human Rights Act over time, and the constitutional protection of all of the civil and political rights contained in all of the international human rights treaties.

10. Discrimination and social stigmatisation continue to be experienced by certain groups of children: Roma and Irish Travellers' children; migrant, asylum-seeking and refugee children; lesbian, bisexual, gay, and transgender children (LGBT); and children belonging to other minority groups.

11. The Commission recommends:

- strengthening awareness-raising and other preventative activities against discrimination and, if necessary, taking affirmative action for the benefit of vulnerable groups;
- investing considerable additional resources in order to ensure the right of all children to a truly inclusive education which ensures the full enjoyment to children from all disadvantaged, marginalized and school-distant groups and which teaches human rights, peace and tolerance in schools; and
- the UK Government's proposal to introduce a Single Equality Bill should include the adoption of an integrated equality duty which has the flexibility to identify and meet the needs of harder to reach or neglected groups, including children.

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<sup>217</sup> Section 9 of the Equality Act.

<sup>218</sup> [www.equalityhumanrights.com/en/projects/humanrightsinqury/Pages/HumanrightsInquiry.aspx](http://www.equalityhumanrights.com/en/projects/humanrightsinqury/Pages/HumanrightsInquiry.aspx)

<sup>219</sup> Protocol 4 strengthens article 5 of the ECHR (right to liberty) and includes the right to liberty of movement and freedom to choose residence for everyone lawfully within the territory of a state. Protocol 7 provides procedural safeguards relating to the expulsion of aliens, ensures a right of appeal in criminal matters, provides for compensation for wrongful convictions, protects against an individual being tried or punished twice, and provides for equality between spouses.

<sup>220</sup> Optional Protocol 12 provides a free-standing right to non-discrimination similar to article 26 of the ICCPR.

<sup>221</sup> *Review of International Human Rights Instruments (Amended)*, 27 October 1999. See also Department of Constitutional Affairs, *International Human Rights Instruments: The UK's Position, Report on the outcome of an Inter-Departmental Review* (2004), summarised in a press release of 22 July 2004:

<http://www.gnn.gov.uk/content/detail.asp?ReleaseID=124322&NewsAreaID=2&NavigatedFromSearch=True>

*Issues of particular interest*

Children in detention (including the use of restraint and deaths in custody)

12. The Commission welcomes the outcome of the Court of Appeal case of R (on the application of C) v Secretary of State for Justice, which quashed the statutory instrument allowing the use of physical restraint to maintain good order and discipline in secure training centres. The Commission intervened with written submissions in the hearing, arguing that the Government failed in its statutory obligations to carry out a race equality impact assessment before introducing the new statutory instrument.

13. The Commission welcomes the report from the Independent Review of Restraint in Juvenile Secure Settings, and in particular welcomes the recommendation that safe restraint techniques must be used which do not rely on pain compliance. We agree with the recommendation that force should only be used to prevent risk of harm, and that only approved restraint techniques should be used. We also support the recommendation that force and restraint should only be used in the context of an overall approach to behaviour management.

14. The UK Government should amend the legislation on the use of physical restraint to make it explicitly clear that the use of physical restraint is not permissible for the purposes of good order and discipline in any setting where children are in custody.

15. There should be six monthly reports to Parliament on the number of restraint incidents broken down by the specific purposes for which restraint was necessary and ethnic origin of the detainee.

The practical impact of the withdrawal of the UK's reservations on immigration and children in custody with adults to the UN Convention on the Rights of the Child (UNCRC)

16. We welcome the withdrawal of the UK's reservation to Articles 22 and 37(c) of the UN CRC. We would like to see the Government going further, and would like to see the signing, ratification and incorporation into domestic law Protocol 4 to the European Convention on Human Rights through the Human Rights Act to prevent the frequent transfers of asylum-seeker children from one area to another.

17. The Commission would also like to see Article 40 of the UN CRC put into full effect. In particular this means that children receive a fair hearing, taking into account their age and maturity, and that children who commit offences are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence that they have been sentenced for.

#### DISCRIMINATION AGAINST CHILDREN ON THE GROUNDS OF AGE OR DISABILITY

##### *Age discrimination*

18. The Commission's position in respect of age discrimination is that discrimination on the grounds of age should be unlawful if it is based on prejudice or stereotypes, or is not evidence based, justified and proportionate. Because discrimination on the grounds of age can sometimes be objectively justified, direct discrimination should not automatically be unlawful (in contrast to race, gender, etc, where direct discrimination can never be justified). The above two principles are the basis of both current domestic law and the existing EU Directive.

19. The Commission therefore considers that age discrimination should be unlawful in the delivery of goods and services, as well as in employment and that age discrimination directed at children and young people should also be unlawful unless justified. The Commission will work towards the introduction of provisions in the Equality Bill to ensure that children and young people are protected against discrimination, with appropriate exemptions to meet the particular needs of different age groups.

##### *Disabled children in specialist care*

20. We would like to see children in long term residential placements benefiting from the safeguards afforded to children with looked after status for example, monitoring and regular reviews of their care.

#### ASYLUM SEEKING/REFUGEE CHILDREN

21. There should be a duty to have regard to the child's best interests in the exercise of immigration and nationality functions. Detention of children as a last resort should be a statutory principle.

22. The UK Government should collect and publish either annual or quarterly statistics on the number of children detained under Immigration Act powers.

23. Unaccompanied Asylum Seeker Children should have looked- after status and be entitled to remain in care or foster care until the age of 21 as other looked-after children.



24. The Commission would like to see the following:

- detention of asylum-seeking and migrant children is always used as a measure of last resort and for the shortest appropriate period of time;
- the appointment of guardians to unaccompanied asylum-seekers and migrant children; and
- the return of unaccompanied asylum seeker children happens with adequate safeguards, including an independent assessment of the conditions upon return, including family environment.

25. The Government has refused to sign and ratify Protocol 4 to the ECHR; article 2 of Protocol 4 provides that everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his residence. The Commission urges the ratification and incorporation of Protocol 4 to prevent the forced transfers of asylum seeker families and their children from one area to another within Great Britain.

26. There is also a partial exemption to the public sector equality duty in relation to race and that is for immigration and nationality functions. In the exercise of immigration and nationality functions a public authority does not have to promote equality of opportunity. This provides weaker protection for children who are subject to immigration control, and to asylum-seeking children in particular Child trafficking victims (including ratification of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography).

27. The Commission welcomes the announcement that all necessary legislative and other measures have been taken to initiate the process of ratifying the Optional Protocol on the sale of children, child prostitution and child pornography.<sup>222</sup> We are aware of the Government's consideration that it first needs to introduce a range of new offences<sup>223</sup> to ensure that it is fully compliant with the Protocol and that this requires primary legislation. The Commission is of the view that the decision to ratify the Protocol ought not to rest on the prior adoption of statutory law, as these legislative changes can follow after the ratification of the Optional Protocol, and urge the adoption of this protocol at the earliest opportunity.

#### DISCRIMINATION AGAINST CHILDREN IN EDUCATION

##### *Special Educational Needs Statements*

28. The UK Government should act promptly to ensure that looked—after children with special educational needs (SEN) have an independent right to appeal decisions on support for their needs.

##### *School exclusions and attainment levels*

29. The frequency and duration of temporary exclusions should be monitored more closely and there should be a review of the adequacy of the Pupil Referral Units.

30. The strategies which have been adopted by the UK Government to tackle the high exclusion rate of black pupils should be extended to tackle the high rates of exclusion and low levels of attainment for Gypsy and Traveller children and other groups who are similarly affected eg looked—after children, children with SEN and asylum seekers.

##### *Bullying and harassment*

31. The Government must ensure that its guidance for schools on how to respond to bullying behaviour and to victims of bullying focuses on all forms of discrimination and this should be supported by a comprehensive training programme for staff, and action on bullying should be monitored by inspection bodies.

32. A proactive “whole school approach” is essential to tackle all forms of bullying. The proposed single equality duty will be crucial in ensuring that schools take the necessary steps to tackle problems such as homophobic bullying and bullying on religious grounds. This would build on the current equality duties requiring schools to tackle bullying on the grounds of gender, race and disability.

##### *How best to enshrine in law the Government's goal of eradicating child poverty by 2020, in view of the right of every child to an adequate standard of living under Article 27 UNCRC*

33. The Commission welcomes the Child Poverty Bill, as it will put a renewed emphasis on the Government's commitment to ending child poverty. A cross government approach is essential to achieving the 2020 target as success will depend on:

- improving childcare provision, both pre-school and up to age 14, both its quality and quantity;
- improving access to flexible working arrangements;

<sup>222</sup> As stated in the Concluding Observations of the Committee on the Rights of the Child for the UK, CRC/C/GBR/CO/4.

<sup>223</sup> The Government will need to criminalise the trafficking of people for the sake of exploiting their labour, transfer of organs and illegal adoptions.

- training and where necessary re-skilling people;
- preparing people for work; and
- providing support both as they prepare for work and also when they start back in employment.

34. A Child Poverty Act, once on the statute books, will place the issue of Child Poverty on the agenda for future governments and commit them to continuing to make progress towards the target of eradication of child poverty by 2020.

35. We also welcome the government proposals on Welfare Reform and the determination to offer the many sectors of workless people the support to get back to work. However work only becomes an effective route out of poverty if it is sustainable, sufficiently well paid, accessible for people who need to have some form of flexibility in their working arrangements (for caring responsibilities, reasonable adjustments, etc.) and there is available, affordable childcare. Many groups simply do not have access to these kind of jobs.

36. The EHRC has an important role to play in identifying who is at risk of poverty in its many forms, communicating to the public the multiple layers of disadvantage and their relationship to poverty, in order to move towards a more equal society.

#### CRIMINALISATION OF CHILDREN

##### *Age of criminal responsibility*

37. There should be an independent review of the effect of the abolition of the rebuttable presumption that a child aged 10 to 14 is incapable of committing an offence. The recent reports that Ministers are considering raising the age of criminal responsibility in Scotland is a welcome development and the Commission would like to see similar considerations taking place in England and Wales, following recommendations from the UN Committee.

##### *ASBOs*

38. The “naming and shaming” of children who are prosecuted for breach of an ASBO is inconsistent with principles of the child’s best interests, welfare and rehabilitation, and should cease.

39. As part of their equality duties under the Race Relations Act 1976, the Disability Discrimination Act 1995 and the Sex Discrimination Act 1975, local authorities and the police should ensure that they monitor the impact of their anti-social behaviour policy on racial and disabled groups and gender and collect data on the number of ASBOs served, broken down by ethnicity, disability, special educational needs and gender. This data should be included in Criminal Justice statistics placed in the public domain.

#### PARTICIPATION OF CHILDREN IN THE ARMED FORCES

40. The Commission welcomes the Government’s ratification of the Optional Protocol on the Involvement of Children in Armed Conflict. The Commission does not consider that children and young people under the age of 18 should be recruited into the armed forces at all, and is keen to see all reservations to this protocol being dropped, and to establish when the protocol will be brought into full effect.

*February 2009*

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### **Memorandum submitted by Friends, Families and Travellers**

#### INTRODUCTION

Friends, Families and Travellers (FFT) is a national voluntary organisation providing information, advice and support to all Travellers regardless of their ethnicity throughout the UK and campaigning for the basic human rights of Traveller communities and individuals. The Young People’s Project works with over a hundred young Travellers across Sussex predominantly between the ages of 10 to 18.

FFT wishes to submit the experiences of education and discrimination encountered by young Travellers to the Committee directly. Between 2007 to 2008 FFT received funding from the EHRC to run a cultural awareness project called ‘Getting Results’ with a group of 20 Romany Gypsy, Irish Travellers and young Rroma children. This project explored young people’s experiences at school, discrimination and social stigmatisation encountered on a perpetual basis.

In the winter of 2008 a 10 week programme was held with adults from the Travelling communities delivering a series of workshops including arts and crafts, photography, dance, rap lyric writing, poetry and film making exploring identity. Through these workshops a 20 minute film was made with young people and their families with the Gypsy Media Company. This film highlights experiences encountered in the education

system and discrimination faced. A group of 10 young Travellers between the ages of 13 to 20 delivered 10 cultural awareness training sessions to teachers, youth workers and Connexions PA's across Sussex using the film.

In this film a 12 year old Romany boy is asked do you like school and he replies "nah" when asked why he said "because the teachers often look at me funny, and I get called a dirty pikey". A 10 year old Irish Traveller girl was asked the same question and replied "no, I get called a Gypo, and they say they don't want me in the school". A 14 year old Romany girl responds by saying "they hate us, they don't even want us in this world".

These are the experiences commonly expressed by the young people FFT works with. On occasions we hear that school is "OK" but repeatedly concerns are highlighted of racist bullying occurring in classes in front of teachers, and on occasions by teachers, the play ground and on the way home which we are informed is rarely proactively challenged by the adults in authority.

One of the training sessions delivered by young Travellers to a youth service provider in an area with a high Traveller population highlighted the concern of severe lack of understanding of Traveller communities when it became blatantly apparent that the youth worker professionals attending the session were unaware that the use of the word "pikey" is severely offensive and racist terminology commonly used towards Travellers.

Young people delivering this training have challenged myths, stereotypes and negative stigmatisation expertly on a whole range of issues to professionals offering services to excluded young people. The young Travellers involved in this project hear and experience this abuse daily and have been committed to challenging it.

Additional experiences encountered by young Travellers in school working with FFT:

- Harassment and bullying encountered, particularly racist harassment which is frequently not adequately challenged, particularly when walking home.
- Parents understandably loosing trust in schools for not challenging racism and discrimination experienced by their child.
- Racist language being used towards a young Traveller who responds by physically defending themselves and then being excluded for lashing out, however the child who initially caused the dispute by using racist language reportedly not being punished or challenged.
- Lack of understanding of cultural beliefs, including privacy such as changing for sports lessons.
- Difficulties in completing home work due to lack of space at home when living in a caravan and often lack of support from parents who may not have attended school.
- Difficulties with peers, their lack of understanding and behaviour including discussions of a sexual nature.
- Allegations of being a thief if items go missing at school and not being searched or treated equally with peers.
- Finding lessons difficult, long and the syllabus often inappropriate to needs.
- Many young Travellers say they learn more useful skills from their families than at school.
- Literacy difficulties and insufficient additional support can affect behaviour in classes, this is reportedly not addressed, which can frequently result in restricted timetables including one hour a day organised attendance.
- Experiences of bullying and racism not addressed results in many parents choosing to home educate their children which can affect social development, self esteem and confidence, increasing social isolation and chronic exclusion.
- Difficulties in gaining a place on a school roles particularly with families living a nomadic lifestyle.
- Disrupted schooling can result in issues not being addressed including referrals to educational psychologist, special educational needs assessments, monitoring of rare genetic health conditions.
- Exclusions and restricted timetables are common with both girls and boys that FFT works with.

NON DISCRIMINATION ARTICLES 2, 3, 6, 12

*Education, Leisure and Cultural Activities Article 66*

It is clear and has been repeatedly evidenced that young Travellers face immense discrimination and social stigmatisation daily. Many of the young people that engage with FFT never go places independently, particularly girls due to the fear of such racist abuse. Young Travellers often live in extremely isolated and environmentally unsafe locations that would be deemed as inhabitable for household dwelling, have no access to public transport, safe places to play, resulting in young Travellers often not gaining the same social

developmental skills as their peers. Poor and discriminatory experiences in school heightens this isolation, social exclusion and hence infringement of human rights. Traveller young people have the right to play and leisure activities equal to their peers.

### *Recommendations*

- Racism, bullying and harassment being proactively challenged and severe sanctions being introduced if not adhered to—to both pupils and staff members.
- Funds being made available for compulsory cultural awareness training to all teachers, teaching assistants, governors, educational psychologists, school welfare officers, special educational needs assessors, school nurses, connexion PA's, administrators, kitchen staff and other employees engaging with young people in the education system.
- Peer mentors to be recruited in schools from Traveller background to advocate on behalf of Traveller pupils and to report any incidences of concern to school governors and teachers and all incidences being recorded and monitored.
- School governors being targeted from Traveller communities.
- Traveller culture being positively acknowledged in the school educational syllabus including in history lessons, PSHE, cultural studies.
- Alternative outdoor educational programmes being made more widely available for young Travellers who are struggling in mainstream educational establishments.
- Schools working proactively with Traveller pupils parents and visiting them to increase relations if needed often due to lack of understanding and mistrust of school and statutory procedures.
- Exclusions and restricted timetables to be used in the very last resort and adequate support being provided to prevent this.
- Adequate support for young people with literacy and numeracy support.
- Continued invaluable support of the Traveller Education Support Service.
- Safe spaces to be made available in schools for vulnerable pupils during lunch breaks where behaviour is monitored by staff and inappropriate and racist bullying actively challenged, with respite and fun activities available.
- Positive imagery made available throughout the school and national Romany month celebrated.
- Cultural activities to be made available throughout the school syllabus.
- Funds to be targeted to celebrate Traveller culture and to provide fun and leisure services via sources such as the Youth Development Service's youth opportunity funding, positive activities for young people and the Children's fund. Barriers to accessing funding bids by chronically excluded and targeted Traveller groups including accreditation criteria to be wavered.
- To reduce negative stereotyping and stigmatisation it is obviously crucial to made the mass media accountable for its slanderous reports and inaccuracies. This is continually an upwards struggle with the contents of articles frequently having dangerous repercussions and increasing negative public attitudes and intolerance. These inaccurate and negative opinions then filter in to the education system and schools where it can become necessary to challenge both pupils and parents.

### ADEQUATE STANDARD OF LIVING

- FFT strongly supports the reintroduction of the statutory duty for local authorities to provide safe and adequate sites for Travellers. It is crucial that this includes both transit and permanent site provision.

### ASBO'S DISPROPORTIONATELY USED

- FFT is in favour of ASBO's not being used on children.
- FFT is in favour of Traveller ethnic monitoring data being used to monitor the disproportional use of ASBO's against Traveller young people. FFT wants to highlight that some young Travellers choose not to disclose their Traveller ethnicity often due to racism and discrimination experienced.
- FFT has worked with families experiencing unusual use of orders including one used when a boy had a horse in his back garden. FFT has worked with a family to have a photo and personal details of a child removed from a council website due to an ASBO.

## EQUAL ACCESS TO HEALTH CARE

- FFT works with families who have extreme difficulties in gaining access to GP surgeries as temporary residents, particularly families who live a nomadic lifestyle and have no permanent address and are forced to use A&E departments. FFT also works with families who have severe problems in accessing oral health and dentists, in cases with children needing 10 primary teeth removed.
- FFT is currently undertaking an A&E research project with Sussex University.

February 2009

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### **Memorandum submitted by the Howard League for Penal Reform**

The Howard League for Penal Reform welcomes the opportunity to contribute to the Joint Committee on Human Rights inquiry on children's rights.

#### INTRODUCTION

The Howard League for Penal Reform is the oldest penal reform charity in the world. In 1947 we became one of the first non-governmental organisations to be granted consultative status with the United Nations and have many years experience of monitoring the application of international treaties ratified by the UK government, including the UN convention on the rights of the child (UNCRC). In 2007 we published an independent submission to the United Nations Committee on the Rights of the Child (enclosed). Our report, *Punishing Children: a survey of criminal responsibility and approaches across Europe*, published in 2008 is also enclosed.

In 2002, we set up a legal department to represent children and young people in the penal system, following a successful judicial review against the Home Office that forced it to recognise that the Children Act 1989 protects children in prison. The Howard League legal team has represented hundreds of children and has a track record of success in forcing improvements to prison conditions.

In 2006, we published an independent inquiry, conducted by Lord Carlile of Berriew QC into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's home.<sup>224</sup>

Our submission is based on our extensive research and our legal work with children in detention in prisons, secure training centres and local authority secure children's homes.

#### 1. CHILDREN IN DETENTION

Lord Carlile of Berriew QC, who conducted the independent inquiry with the assistance of an eminent expert advisory group, found that some of the treatment of children in custody, such as the use of restraint, forcible strip-searching and solitary confinement, would in any other setting be considered abusive and could trigger a child protection investigation.

##### 1(a) *The use of restraint*

The Howard League for Penal Reform remains concerned about the widespread use of restraint in prisons and privately run secure training centres (STCs). We also have grave concerns about the continuing use of pain compliant techniques, which used in any other circumstances could trigger a child protection or police investigation.

Evidence obtained by the Howard League for Penal Reform under the Freedom of Information Act 2000 found that between October 2006 and June 2008, restraint was used 6,001 times on children in prison, 4,380 times on children in STCs and 3,695 times on children in local authority secure children's homes.

Despite the fact that only eight per cent of the juvenile population in custody are held in STCs, 31 per cent of all restraint incidents between October 2006 and June 2008 occurred in these privately run jails. Children in STCs were also the most likely to be injured during restraint. STCs accounted for 44 per cent of all injuries after restraint. 18 per cent of restraint incidents resulted in injuries in STCs, compared to 14 per cent in prisons and six per cent in local authority secure children's homes.

The Howard League for Penal Reform is concerned that restraint is being disproportionately used on girls in detention. Girls comprise just seven per cent of the population of children in custody yet 20 per cent of restraints were carried out on girls between October 2006 and June 2008.

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<sup>224</sup> The Howard League for Penal Reform (2006) *The Lord Carlile of Berriew QC: an independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's homes.*

The Howard League for Penal Reform condemned the government's recent decision to allow private security companies to continue using pain on children as young as 12. We believe the practice of inflicting pain is likely to put children in danger and could result in serious injury or death, as has already happened with two children in STCs.

#### 1(b) *Deaths in custody*

Since January 2002, six children have died in penal custody, including four children in prison and two children in STCs. The youngest child to die was just 14 years old. One child, Gareth Myatt, died following restraint by staff in Rainsbrook STC. The inquiry conducted by Lord Carlile of Berriew QC and published by The Howard League for Penal Reform was launched in the wake of the death of Gareth Myatt.

The SP inquiry is investigating the treatment of SP, a girl who repetitively tried to take her own life and injure herself while in prison custody but was placed in solitary confinement, prison cells usually designed for punishment. The decision to conduct an inquiry into SP's treatment resulted from the government's acceptance of the argument put forward by the Howard League that the level and seriousness of SP's life threatening self-harm whilst in prison triggered the state's obligation to investigate under article 2 of the ECHR. The Howard League for Penal Reform has represented SP for five years and is representing her at the inquiry.

The Howard League for Penal Reform is concerned about the deaths of children in custody and also the high levels of self-harm. We believe that the use of prison custody and privately-managed STCs for children is inappropriate and may be dangerous.

### 2. THE PRACTICAL IMPACT OF THE WITHDRAWAL OF THE UK'S RESERVATION ON CHILDREN IN CUSTODY WITH ADULTS TO THE UNCRC

The Howard League for Penal Reform welcomes the fact that the UK government has withdrawn its reservation on article 37(c) of the UNCRC. This does have practical implications for the YJB and the Prison Service as the Howard League for Penal Reform has evidence that some girls aged 17 in prison are being placed on adult detoxification wings in prison as there are no separate facilities for girls.

The Howard League legal team has recently made a formal complaint in relation a 17 year old client in this position. Our client was told that there were places available on the juvenile unit on site but was placed with adult women prisoners because there were no detoxification facilities on the juvenile unit. She was the only person under 21.

The prison argued that it acted in our client's best interests in placing her in the adult section since she was able to access specialist medical services which were not available in the juvenile section. However, we consider the provision of such facilities only on the adult wing and subsequent placing of children who need those services on the adult wing to be a clear, unjustified and deliberate breach of the requirement to separate children from adults. It is foreseeable that children will have urgent need of substance misuse services including 24 hour nursing care and therefore arrangements should be made to ensure that these are available on the juvenile wing.

### 3. THE CRIMINALISATION OF CHILDREN

England and Wales detains more children than any other country in Western Europe. We have one of the lowest ages of criminal responsibility, set at 10 years old, and lock up children as young as 12. On 30 January 2009 there were 2,680 children in custody, including three children aged 12, 30 children aged 13 and 123 children aged 14. There are also a range of non-custodial penalties specifically aimed at children under the age of criminal responsibility, such as child safety orders. Our report, *Punishing Children*, outlines our criminal justice system in relation to children.

The Howard League for Penal Reform believes children are not being held in custody for the shortest possible time. Since the Criminal Justice Act 2003, a range of new sentences designed to ensure "public protection" have been available for children, including indefinite sentences for public protection. These sentences fail to take into account the development of the child and may have a detrimental impact on mental health.<sup>225</sup> There are currently 41 children in custody serving indeterminate sentences.

The Howard League for Penal Reform believes that the government response to children's behaviour is primarily punitive and fails to take account of the best interests of the child.

<sup>225</sup> The Sainsbury Centre for Mental Health (2008) *In the Dark: the mental health implications of imprisonment for public protection*, available at [www.scmh.org.uk/pdfs/In\\_the\\_dark.pdf](http://www.scmh.org.uk/pdfs/In_the_dark.pdf)

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 CONCLUSIONS

The Howard League for Penal Reform is seriously concerned about the treatment and conditions for children in penal custody and has evidence that their rights are often ignored and at times blatantly disregarded.

We do hope that you find the two reports enclosed useful. The Howard League for Penal Reform would welcome the opportunity to provide oral evidence to the inquiry if required.

February 2009

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### Memorandum submitted by the Immigration Law Practitioners Association

#### A. ABOUT ILPA

1. The Immigration Law Practitioners' Association (ILPA) is a professional association with some 1,000 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA exists to promote and improve the giving of advice on immigration and asylum, through training, disseminating information and providing evidence-based research and opinion. ILPA is represented on numerous government and other stakeholder and advisory groups

#### B. EXECUTIVE SUMMARY

2. ILPA's submission deals with the UK's protection of all children<sup>226</sup> subject to UK immigration control in the UK, whether accompanied or unaccompanied, seeking asylum or not. We have dealt with the following matters highlighted by the Committee as being of particular interest:

- children in detention;
- the practical impact of the withdrawal of the UK's reservation on immigration... to the UN Convention on the Rights of the Child (UNCRC);
- asylum seeking children;
- child trafficking victims;
- discrimination against children in education;
- the right of every child to an adequate standard of living under Article 27 UNCRC; and
- criminalisation of children.

3. Inevitably all these give rise to questions of discrimination against these children on the grounds of their status as children under immigration control. We have paid close attention to the UN Committee on the Rights of the Child Conclusions on the UK's periodic report under the Convention, published 3 October 2008<sup>227</sup> and concur with the Committee's observation that:

26. The Committee regrets that the principle of the best interests of the child is still not reflected as a primary consideration in all legislative and policy matters affecting children, especially in the areas of... immigration...

27. The Committee recommends that the State party take all appropriate measures to ensure that the principle of the best interests of the child, in accordance with article 3 of the Convention, is adequately integrated in all legislation and policies which have an impact on children, including in the area of... immigration.

#### C. THE PRACTICAL IMPACT OF THE WITHDRAWAL OF THE UK RESERVATION TO THE UNCRC ON IMMIGRATION

4. The Convention on the Rights of the Child does not have direct effect in domestic legislation in the UK and the UK must use its national laws, including the Human Rights Act 1998, in combination with those international obligations that do have direct effect, such as certain provisions of European Community Law, guidance and practice, to give effect to it.

5. Prior to lifting of the reservation Liam Byrne MP (then Home Office Minister of State for Immigration, citizenship and nationality) stated:

“There are two reviews which are currently being undertaken, first about how we implement the Home Secretary's commitment to sign the Council of Europe Convention on Human Trafficking .... Secondly, we are also looking at how we lift the immigration reservation on the UN

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<sup>226</sup> The term “children” is used here to mean children in the UK and abroad subject to immigration control. Including: children seeking asylum; children seeking entry to the UK; children who are separated from caregivers or within families; children with refugee status or leave to remain. The term also refers to children under 18, but may include siblings of the children of the above and those who are entitled to services under The Children (Leaving Care) Act, despite attaining the age of 18.

<sup>227</sup> Committee On The Rights Of The Child Forty-Ninth Session, *Consideration Of Reports Submitted By States Parties Under Article 44 Of The Convention, Concluding Observations, United Kingdom of Great Britain and Northern Ireland*, CRC/C/GBR/CO/4, 3 October 2008 at [www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf](http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf)

Convention of the Child, so if we are to implement commitments in those two areas it is quite likely that there will have to be carve-outs across not just immigration legislation but also benefits legislation and potentially NHS legislation as well.”<sup>228</sup>

6. The current Minister, Phil Woolas MP’s stated in a written answer on the timescale for ensuring full compliance with the UNCRC that, apart from the UK Border Agency’s Code of Practice “*no additional changes to legislation, guidance or practice are currently envisaged.*”<sup>229</sup>

7. As set out in this submission, ILPA considers that substantial changes are necessary to ensure full compliance with the UNCRC and to give effect to the recommendations of the Committee and that the UK is currently acting in ways contrary to its obligations under the Convention.

### C.1 Section 21 of the UK Borders Act 2007 and the Code of Practice on keeping children safe from harm

8. Section 21 of the UK Borders Act 2007 introduced a statutory Code of Practice on keeping children safe from harm. During the passage of the Children and Young Persons Act 2008 the House of Lords voted in favour of the UK Border Agency’s being subject to a duty equivalent to that in s 11 of the Children Act 2004 and the government made a commitment to give effect to this. Clause 51 of the Borders, Citizenship and Immigration Bill currently before Parliament is intended to fulfil this commitment. Minister of State Phil Woolas MP is quoted as stating:

“*It is right that the UK Border Agency is judged by the same standards as every other authority that deals with children.*”<sup>230</sup>

### C.2 The Code of Practice

- The Code of Practice was issued on 6 January 2009.<sup>231</sup> It is too soon to assess the effect of the Code on practice and procedure. We are concerned at the overall limitations of the Code, in particular: The Code makes only one reference to the UNCRC.<sup>232</sup>
- The Code makes no reference to the child’s need for legal representation<sup>233</sup> and none to the need for a guardian, despite the UN Committee on the Rights of the Child specific recommendation on guardianship.<sup>234</sup>
- The Code focuses on safeguarding and says little about promoting children’s welfare, which is required of all agencies subject to s.11 Children Act 2004.
- Despite the specific recommendation of the UN Committee on age disputes,<sup>235</sup> the Code is silent on age assessment procedures and process or on the duties owed to those whose age has yet to be determined, many of whom.<sup>236</sup>
- The Code fails to place a duty on UK officials abroad ie entry clearance posts.
- Despite the specific recommendation of the UN Committee.<sup>237</sup> The Code envisages for the continued detention of children and for excessive periods.

9. Evaluation and monitoring will be essential in ensuring that the Code is adhered to and that it is implemented in accordance with the UNCRC. It is unclear how this will be achieved, and in particular wholly unclear how the UK Border Agency will monitor and evaluate compliance with the Code by its private contractors. There is a need for clear, transparent procedures by which UK Border Agency officials and private contractors are trained and reviewed on their observance of the Code.

### C.3 Clause 51 of the Borders, Citizenship and Immigration Bill

10. Clause 51 of the Borders, Citizenship and Immigration Bill does extend beyond safeguarding to promoting children’s welfare. It is not clear when the duty enshrined in clause 51 will come into force and the government should be pressed on this. Nor is it clear how the government will ensure that that this separate clause is given the same meaning and effect of s.11 of the Children Act 2004, in particular in ensuring that guidance issued under s.11 is also binding upon the UK Border Agency.<sup>238</sup>

11. The clause imposes a duty only on staff “in the UK”. Thus it does not cover UK Border Agency officials based abroad for example in consular posts and at juxtaposed controls. This has particular implications for the early identification and support for trafficked children and suggests a risk of breach of

<sup>228</sup> Oral evidence before the Joint Committee on Human Rights, 19 February 2008.

<sup>229</sup> *Hansard*, HC Report, 24 November 2008 col 825W.

<sup>230</sup> UK Border Agency commits to keep children safe from harm, UK Border Agency [www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/keepingchildrensafefromharm](http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/keepingchildrensafefromharm) Press Release 6 January 2009.

<sup>231</sup> The UK Borders Act 2007 (Code of Practice on Children) Order 2008 SI 2008/3158.

<sup>232</sup> At paragraph 1.5, where it lists it with other international conventions.

<sup>233</sup> There is one reference to the legal representative, at paragraph 6.4 on staff training.

<sup>234</sup> See the UN Committee’s report, *op cit* at 71.1.(c). There is one reference to a “legal guardian” in paragraph 6.4, but this is in a different context, that of “parent or legal guardian”.

<sup>235</sup> See the UN Committee’s report, *op.cit.* at 71.1.(e).

<sup>236</sup> See ILPA’s report *When is a child not a child?* May 2007 available from [www.ilpa.org.uk](http://www.ilpa.org.uk).

<sup>237</sup> See the UN Committee’s report, *op.cit.* at 71.1.(a).

<sup>238</sup> See the Joint Committee on Human Rights 17th report of session 2004–05 23 March 2005 *Review of international human rights instruments*, HL 99/HC 264 at para 48 on this subject.



Article 11 of the UNCRC. Further, ILPA members have also encountered cases in which UK Border Staff at consular posts have failed to accept applications for refugee family reunion made by children and have instead expected children to travel, alone, to neighbouring countries, without the necessary funds or travel documentation. For example, in one case, the children were refused the right to make an application for family reunion to join a parent who had been accepted as a refugee in the UK. It took several years of litigation before a challenge to this refusal succeeded. During this time the children suffered severe psychological and physical ill health.

12. It has been suggested by UK Border Agency officials in conversations that to impose a duty on those outside the UK would give them wide-ranging obligations to examine and intervene in the situations of children in their countries. This reflects a failure to understand the legislation. The duty is confined to the exercise of functions of the Secretary of State relating to immigration, nationality, customs and the immigration acts. The British High Commission in Ghana, if it suspects that a document submitted to it as part of an application is not genuine, refers this to the appropriate Ghanaian authority so that prosecution of the person presenting the document can be considered. No one is suggesting that this entails a general duty on the High Commission to seek out false documents in Ghana in general.<sup>239</sup> If this can be done, why cannot a British High Commission or Embassy concerned that a child is at risk make the appropriate referrals in accordance with the Code to child welfare authorities in the country, or consider the implications of that risk for the issuing of a visa?

#### C.4 *Forced Returns of Children*

13. One area where the UK must look at the practical impact of removal of the reservation is that of forced returns of children. The effect of its policies and practices here are not limited to children seeking asylum. The UK is failing to respect its obligations under Article 3 of the UNCRC, that the interests of the child be a primary consideration.

14. UK Border Agency practices in this area risk placing a child at possible risk of serious harm contrary to national law and the UK's international obligations. The EU Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers<sup>240</sup> reads as follows (extracts only):

##### *Article 19*

##### *Unaccompanied minors*

1. Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation. Regular assessments shall be made by the appropriate authorities.

...

3. Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of his or her family as soon as possible. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardizing their safety...

15. Thus Article 19(3) does not give free rein to family tracing. There is the qualification "protecting the unaccompanied minor's best interests" and the caveat beginning "In cases where there may be a threat...".

16. Nor is it anywhere suggested that it is appropriate for the enquiries to be made by the immigration authorities of the State. The Asylum Seekers (Reception Conditions) Regulations 2005,<sup>241</sup> state:

##### *Tracing family members of unaccompanied minors*

6.—(1) So as to protect an unaccompanied minor's best interests, the Secretary of State shall endeavour to trace the members of the minor's family as soon as possible after the minor makes his claim for asylum.

...

(2) In cases where there may be a threat to the life or integrity of the minor or the minor's close family, the Secretary of State shall take care to ensure that the collection, processing and circulation of information concerning the minor or his close family is undertaken on a confidential basis so as not to jeopardise his or their safety.

17. This is incompatible with telephoning a number stated to be that of the child's family and announcing oneself as the UK authorities as has been done by the UK Border Agency in cases where children were represented by ILPA members, including cases where the child has subsequently been found to have been trafficked and been recognised as a refugee.

<sup>239</sup> See the report of the Independent Monitor for Entry Clearance Refusals *Report on my visit to Accra* May 2008 [www.ukvisas.gov.uk/resources/en/docs/2258700/2258742/imvisitaccramay08](http://www.ukvisas.gov.uk/resources/en/docs/2258700/2258742/imvisitaccramay08)

<sup>240</sup> OJ L31/18 6.2.2003.

<sup>241</sup> SI 2005/7.

18. The Asylum Policy Instruction on Disclosure and Confidentiality has been under review since at least June 2008.<sup>242</sup> The last known version states:

*5.4 Authorities in the claimant's country of origin*

The Statement of Confidentiality tells the asylum claimant that 'information you give us will be treated in confidence and the details of your claim for asylum will not be disclosed to the authorities of your own country'.

Caseworkers must not disclose any information about an individual's asylum claim to the country of origin while the claim is under consideration, unless the claimant has given his explicit consent for the transfer of the data. To do so may be unlawful and may also jeopardise the safety of the claimant in the event that he returns to his country of origin or the safety of members of his family who have remained there.

19. We also recall the Home Secretary's evidence to the Home Affairs Committee on 13 November 2008:

*"Q76 Ms Buck: ...*

Jacqui Smith: First of all, can I just be completely clear. Any asylum claim is completely confidential...The UK Border Agency would never disclose information to the authorities of an applicant's country of origin which would identify that person as an asylum applicant. That is a very important part of our role in maintaining our tradition of providing protection to individuals in fear of persecution. If an application then is refused the claimant has got the right of appeal to the Asylum and Immigration Tribunal, an opportunity to seek judicial review through the higher courts. Once somebody has gone through all of those processes and if their claim is not upheld then of course the responsibility of the Government is to facilitate the return of that person as quickly as possible. ...In those circumstances, and those circumstances only, it is sometimes the case that we work with officials of other countries solely to help us pursue the documentation of those individuals."

20. The child must give explicit, informed consent for the transfer of information. Any disclosure absent this may be unlawful, as the guidance states. It may, as the guidance states jeopardise the safety of the claimant or members of the family. These matters are not less true just because the instruction is no longer on the website.

21. Mr Jeremy Oppenheim, the then UK Border Agency's "Children's Champion" said at the UK Border Agency Corporate Stakeholder meeting on 16 May 2008 'We have to remove these children'. Not so. The UK Border Agency *wishes* to remove children whose claims for asylum have failed, but its *obligations* are to respect UK law and policy, on children and child protection and on immigration and to respect the UK's international obligations, towards those seeking international protection and towards children.

22. We recall the answer given by the Parliamentary Under Secretary of State Lord West of Spithead of 14 November 2007.<sup>243</sup>

"An unaccompanied child under the age of 18 would not be considered for removal from the UK unless it's been established that the country to which the child is to be removed that adequate reception arrangements are in place. The Home Office must liaise with social services and/or the nominated guardian with responsibility for the care of the child in the UK to ensure the removal is effected in the most sensitive manner possible."

23. Put simply, the question of whether a child should be given international protection from persecution or breach of human rights on return is a matter for the UK Border Agency. The question of whether forced return will put the child at risk of harm or not be in the child's best interests engages the wider child protection framework, laws and guidance. No matter what procedures the UK Border Agency puts in place it cannot displace that wider framework of obligations.

24. It is difficult to overstate the shortcomings of the UK Border Agency's current approach to forced returns of unaccompanied children but an immigration judge's determination of May 2008 provides a glimpse of these.<sup>244</sup> The Home Office did not appeal the decision and recognised the child appellant as a refugee following the determination. In short form the child gave a telephone number stated by the child to be that of the parents in the home country. Local consular staff, at the behest of UK Border Agency officials, tried the number without her informed consent. The person who answered at first confirmed that the speaker was the parent, spoke of being frightened, and hung up. That was the only "contact" with the supposed adequate reception arrangements. The immigration judge states:

"...it was [ ] clear that the Respondents were aware of some of the circumstances which [the social worker] was able to describe today but had not seen fit to appraise their Presenting Officer of the situation or to include it in the reasons for refusal letter or appraise the Tribunal.

...

<sup>242</sup> See

[www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/disclosureandconfidentiality.pdf?view=Binary](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/disclosureandconfidentiality.pdf?view=Binary)

<sup>243</sup> *Hansard* HL 14 November 2007 Col WA18.

<sup>244</sup> Cited with permission.

I find it somewhat unfortunate that the different agencies involved do not appear to have had a full and frank exchange of information particularly as this may have led to this young and vulnerable child being returned to a potentially very dangerous situation.

...

I should first consider the claim made by the Respondents that adequate reception arrangements be made in...

...

The whole basis of the Respondents' conclusions in this matter are set out in an email from the British Consulate [...cited in full in the determination]

...

I do not find that this even begins to approach to any reasonable standard to say that adequate reception arrangements have been made for the Appellant. ...

These emails of course need to be read in their entirety so that the true meaning is not distorted. However, having read these emails in their entirety it would appear that the emphasis is on the need to remove the Appellant rather than assessment of either her condition or the conditions to which she would be removed.

...

the Appellant does not have a nominated guardian.

...

Of even more concern to me is that the fact that the Respondents are very much aware that the Appellant may have been trafficked...[the social worker] was able to tell me that following her full asylum interview the Appellant had been interviewed further by officers on behalf of the Respondent from a specialist unit...there had been liaison between the Home Office, social services and the police in respect of this aspect of the Appellant's circumstances. What concerns me is that the Respondents have not referred to any of this in the reasons for refusal letter and it would also appear that the officers dealing with unaccompanied minor [gender] have also not been kept abreast of these developments."

...[the social worker] went on to say that the keenness and persistence of the people trying to get hold of [the Appellant's] address led her to believe that the Appellant had been trafficked. That information was passed to the port authorities and to the Home Office crime agency and to the airport security...The Respondents have not provided any information about this."

25. In the recent Court of Appeal case, *CL(Vietnam)* [2008] EWCA Civ 1551, Lord Justice Keene describes what the Home Office did in practice to establish that the country was safe for the child.

6. There is a Home Office document headed "consideration" and dated 22 July 2002 which concludes by stating:

"Despite the fact that Applicant is a minor it is considered that he can be returned to Vietnam as it has been established that there are adequate care provisions for children returned to Vietnam. See attached letter from the British Embassy in Hanoi."

....

8. The British Embassy letter was one dated 4 July 2001. It stated:

"The Law on Care, Protection and Education of Children of Vietnam states that all children, including orphans, shall be given appropriate care and education by the state. All children homes are run by the Ministry of Labour, Invalids and Social Affairs. Some receive additional financial assistance from foreign NGOs.

In principle, childcare ceases at the age of 18 but, in practice, continues until individuals have found a job. Vietnam is a secular society with no restriction on religious practices."

26. Lord Justice Sedley, giving the concurring judgment, stated:

31. ... the Home Office policy...of course designed in large part...to give effect to the United Kingdom's international obligations, here in particular the European Convention on Human Rights and the International Convention on the Rights of the Child

32. ... I find it disturbing that a document as bland and jejune as the letter which Keene LJ has quoted was relied on by the Home Office when deciding something as important as the safe return of a child to another country. The letter is plainly a recital of a formal answer obtained from the Vietnamese authorities. The Immigration Judge recorded evidence from the Home Office's own in-country information which shows that the reality for tens of thousands of Vietnamese children was very different.

27. There could be no better illustration of the UN Committee on the Rights of the Child's comment, at paragraph 70 of its Conclusions:

(c) there is no independent oversight mechanism, such a guardianship system, for an assessment of reception conditions for unaccompanied children who have to be returned;

28. ILPA members have experience of cases in which UK Border Agency officials have got in touch with adults in the child's country of origin without the informed consent of the child and also without a proper assessment of the child's protection claim, which may involve the implicit involvement of the family in case of a trafficked child and/or failure to assess possible ill-treatment a child's ill-treatment at the hands of family members. As the examples above illustrate, there continues to be reliance upon unsubstantiated evidence to justify forced returns. A lack of full and frank disclosure of sources when considering adequate reception arrangements and treatment on return may be explained by the paucity of that information when, as in the cases above, it is brought to light by the determined efforts of representatives. The decision to share, or not to share, information about a child should always be based on professional child welfare judgement, supported by the cross-Government *Information Sharing: Practitioners' Guide* published by the DfES in 2006 and the DfES additional guidance *Information sharing: Further guidance on legal issues*.<sup>245</sup>

29. The Government continues to focus its work on forcibly returning unaccompanied asylum seeking children to their country of origin. It was suggested in the consultation paper *Planning Better Outcomes and support for unaccompanied asylum-seeking children*,<sup>246</sup> as opposed to focusing its efforts on fairly assessing the protection claims of children. It has not been easy to obtain information about what is happening but it is ILPA's understanding that the Home Office is looking at the possibility of returning children other than to members of their family/primary caregivers, ie returning them to orphanages, whatever names these are given, in the country of origin. On 9 October 2008 ILPA succeeded in obtaining the following comment from Mr Oppenheim, the then UK Border Agency "Children's Champion"

"We have been looking at returning unaccompanied young people to a number of countries and, as part of this, officials have recently visited Pakistan, Afghanistan and Bangladesh. We are now considering the issues arising from these visits."

30. Information since then has been scant, but we understand that the UK Border Agency is now working with the Foreign and Commonwealth Office and the Department for International Development. This is a matter on which the Committee could usefully seek further information.

31. Unaccompanied children are not the only subjects of concern. Members have encountered cases whereby children are being forcibly removed from the UK with parent(s) who may pose a risk to their welfare/safety without a proper assessment of risk on return. Failure to make provision for guardians in proceedings before the UK Border Agency and the Asylum and Immigration Tribunal puts these children at risk. Returns of children should only ever take place where this is shown to be in accordance with Article 3 of the UNCRC.

### C.5 Third Country Cases and discrimination against children in challenging removals

32. In some cases in which ILPA members have been involved, the Government has sought to rely upon a presumption (and indeed in some cases little more) that a third country will afford a child protection. One area in which this arises is when it is held that a child should have claimed asylum in a safe third country, so that considerations of both child protection and international protection from persecution apply. In such cases the only challenge is likely to be by way of judicial review. But here children have a particular problem, because they face discrimination because of their status as a child in judicial review challenges to their removal. The UK Border Agency Enforcement Instructions and Guidance state at Chapter 60.4 (we have expanded the acronyms that pepper the Guidance):

"We need to ensure that persons subject to enforced removals have sufficient time between the notification of R[emoval] D[irections]s and the date/time of removal to seek legal advice and/or apply for J[udicial] R[eview]."

33. They set out a procedure whereby there must be a minimum of 72 hours (including two working days) between notification of removal and the removal. But at Chapter 60.6 they set out an exception to this procedure:

"An exception to the minimum 72 hour notification period (60.4 and 60.5) may be made where prompt removal is in the best interests of the person concerned due to:

- Medically documented cases of either potential suicide or risk of self-harm,
- In T[hird] C[ountry] U[nit] cases, removal of unaccompanied children in liaison with Social Services and the receiving country."

34. The rhetoric of "best interests" is used to seek to justify a lesser protection for children. For in these cases not only is the child not notified, the legal representative is not notified either. ILPA members have first hand evidence that these provisions do not act to protect the best interests of the child. In one case a child, accepted by the UK as a child, was returned to a third country to claim asylum there. That country

<sup>245</sup> See [www.everychildmatters.gov.uk/resources-and-practice/IG00065](http://www.everychildmatters.gov.uk/resources-and-practice/IG00065)

<sup>246</sup> [www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/uasc/](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/uasc/)

had not, when the child had been there, accepted the child as a child. The Third Country Unit of the UK Border Agency obtained no assurances that he would be so treated on his return. And the child was not, but was instead left to fend for their self in dire need until back in touch with the UK representative who managed to secure a court order that the child be returned to the UK. Which was done.

#### C.6 Children and special immigration status

35. Provision was made in the Criminal Justice and Immigration Act 2008 for a new “special immigration status” for those who cannot be deported because of risks or torture or other grave violations of their human rights on return but who otherwise would face deportation either because of behaviour that excluded the person from the 1951 UN Convention Relating to the Status of Refugees by reason of Article 1F therein or because of a criminal conviction. The new status is indefinite yet denies individuals and families, to whom it is given, any opportunity to work or access mainstream support, restricting them to a level of support possibly similar to that provided to asylum seekers but delivered by means of vouchers and allows for the imposition of stringent conditions relating to residence and reporting, including electronic tagging. Under the Act, family members, including family members, including children may be subject to this status and these conditions not for any action of their own but for that of a family member. This cannot be reconciled with Article 3 of the UNCRC and the need to make the best interests of the child a primary consideration.

#### C.7 Division of responsibility between government agencies

36. The UNCRC requires that all children be treated equally without discrimination on account of their race, nationality or any other status. The best interests of children should be a primary consideration. There is a need to ensure that children under immigration control are dealt with as far as possible by the Department for Children, Schools and Families and that there is not the assumption that the UK Border Agency take the lead on decisions on so many aspects of their lives. The DCSF play a crucial role in policy development relating to children and the UK Border Agency cannot be expected to achieve equivalent expertise and cannot be relied upon to place the needs of children highly enough among its many competing priorities. Examples of concerns include leaving the support of children in families who have claimed asylum to the UK Border Agency.

### D. CHILDREN SEEKING ASYLUM

37. The current Asylum Process Guidance on children makes no reference to the UNCRC, unlike older versions of Asylum Policy Instructions.<sup>247</sup> ILPA has provided detailed comments on drafts of an Asylum Policy Instruction on children but it has yet to see the light of day. The latest version seen by ILPA did not make reference to the UNCRC. The Committee should ask to see the latest version of the Instruction the timetable for its implementation and publication. The treatment of children seeking asylum is one area where changes to guidance and practice are required.

#### D.1 Guardianship

38. One area where the UK is falling far short of its international obligations is on the question of guardianship for unaccompanied children seeking asylum, a matter specifically highlighted by the UN Committee on the Rights of the Child.<sup>248</sup> The United Nations High Commissioner for Refugees (*UNHCR*) *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (1992)* addresses the need to appoint a guardian at paragraph 214. Both the UN Committee on the Rights of the Child and UNHCR recommend that a guardian or adviser should be appointed as soon as an unaccompanied child is identified and that the guardian or adviser should be maintained until the child has either reached the age of majority or has permanently left the UK.

39. In debates on the Children and Young Persons Bill in 2008 the Lord Adonis stated:

“...mention has been made of the difficulty that children have in giving clear instructions to solicitors. Obtaining relevant information from children can, of course, present difficulties, but it is the responsibility of solicitors who have a recognised specialism in asylum and immigration practice to ensure that relevant information is obtained to represent their client effectively”.<sup>249</sup>

40. UK Border Agency officials have made similar statements. Legal representatives are not substitutes for guardians; the roles are different. ILPA wrote to the Lord Adonis on 2 April 2008<sup>250</sup> to point out that a legal representative is not free to act on an appreciation of the child’s best interests irrespective of the particular instructions the child may have given. The legal representative is in difficulty when the child is not competent to give instructions. ILPA members have represented children under 10 when the matter at issue was whether the adult with whom the child was living was a carer or a trafficker. The child’s instructions

<sup>247</sup> Section 4: General Principles—UN Convention on the Rights of the Child. This drew special attention to the core principles of best interests, right to participation and non-discrimination.

<sup>248</sup> Conclusions, *op cit*, para 71 (c).

<sup>249</sup> *Hansard* HL Report 17 March 2008 Col 38 et seq.

<sup>250</sup> Letter available at [www.ilpa.org.uk/submissions/menu.html](http://www.ilpa.org.uk/submissions/menu.html)

were that the adult was a carer. Whereas the Official Solicitor can intervene in cases before the higher courts there is no provision for the appointment of a guardian in cases being dealt with by the UK Border Agency or before the Asylum and Immigration Tribunal. UK Border Agency

41. The European Union (EU) Reception Directive<sup>251</sup> states:

“Article 19

Unaccompanied minors

1. Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation. Regular assessments shall be made by the appropriate authorities.”

42. The EU Qualification Directive<sup>252</sup> states:

“Article 17

Guarantees for unaccompanied minors

1. With respect to all procedures provided for in this Directive and without prejudice to the provisions of Articles 12 and 14, Member States shall:

- (a) as soon as possible take measures to ensure that a representative represents and/or assists the unaccompanied minor with respect to the examination of the application. This representative can also be the representative referred to in Article 19 of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (1);
  - (b) ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself/herself for the personal interview. Member States shall allow the representative to be present at that interview and to ask questions or make comments, within the framework set by the person who conducts the interview. Member States may require the presence of the unaccompanied minor at the personal interview, even if the representative is present.
2. Member States may refrain from appointing a representative where the unaccompanied minor:
- (a) will in all likelihood reach the age of maturity before a decision at first instance is taken; or
  - (b) can avail himself, free of charge, of a legal adviser or other counsellor, admitted as such under national law to fulfill the tasks assigned above to the representative; or
  - (c) is married or has been married....

43. Under Article 10 of the Council of Europe Convention on Action Against Trafficking in Human Beings,<sup>253</sup> when a child who is unaccompanied has been trafficked, States are obliged to appoint a legal guardian who will act in the best interests of that child, take steps to ascertain his or her identity and nationality, and locate his or her family.

44. The UK has failed to implement provisions in Article 19 of the Reception Directive (2003/9/EC) which states:

“Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation. Regular assessments shall be made by the appropriate authorities”

## D.2 *Discrimination contrary to Article 2 UNCRC*

45. The Final Act of the Conference that adopted the UN Convention Relating to the Status of Refugees 1951 recommended that States take the measures for ensuring family reunion for refugees.<sup>254</sup> The UK recognises the entitlement of adults who are recognised as refugees to be reunited with their minor children, but does not recognise the entitlement of minor children recognised as refugees to be reunited with their parents. This treatment is discriminatory, contrary to Article 2 of the UNCRC. Recognition as a refugee is recognition that the child stands in need of international protection and cannot enjoy family life in the country of origin. The UK’s approach appears to confuse the recognition of a child as a refugee with the granting of other leave to a child in recognition of their status as an unaccompanied child.

<sup>251</sup> 2003/9/EC.

<sup>252</sup> 2004/83/EC.

<sup>253</sup> CETS No. 197, opened for signature 16 May 2005, into force 1 February 2008.

<sup>254</sup> See UNHCR Handbook, op cit paras 181 to 188.

### D.3 *Other shortcomings in guidance and practice*

46. The UN Committee on the Rights of the Child said in its Conclusions:

“70. The Committee welcomes the State party’s commitment to withdraw the reservation on article 22 as well as the introduction of a new asylum procedure in March 2007 whereby all asylum applications from children are considered by specially trained “Case Owners”, who are especially trained to interview children.”

47. However, when one considers the procedures those caseworkers are trained to implement, there are reasons to conclude that children’s rights are not respected in the asylum determination procedure. Applications from children must be lodged in the same way as those from adults. Children of five continue to be fingerprinted, children under five are also photographed and children of 12 or over are required to report to UK Border Agency officials. In the specific context of interviews, children are asked to approve interview records, by signature, without having the records read back to them for accuracy. ILPA’s Chair, Sophie Barrett-Brown, wrote to Matthew Coats, an Executive Director of the UK Border Agency, on 5 March 2008:

“I write now to raise with you ILPA’s concerns regarding the introduction into the asylum interview of a question asking a child/young person to “approve the content of the interview”. Our members report that this question is being put to their young clients at the end of the interview without the client being given an opportunity either to have the interview read back to them in their own language or to have had an opportunity to read through the interviewer’s notes taken during the interview.”

48. Mr Coats indicated that the suggestion would be considered but there has been no change, and no further response. Without clear and appropriate guidance and instructions, training will not lead to respect for children’s rights.

### D.4 *Legal Representation*

49. The asylum determination procedure is complex and the rights of children cannot be protected adequately unless the child has competent legal representation. In our January 2008 response to The Legal Services Consultation on its proposed bid round for contracts for legal aid from 2010 ILPA expressed concern that the legal services was predicating its plans upon those of the UK Border Agency for Specialist Local Authorities to work with unaccompanied children. ILPA observed:

“Even when the designated SLAs are set up, they will not take in all child clients. They will not take in (at least at the outset) age disputed cases. Nor will they take in age disputed young people in detention, children reunited with family members or children in families who make an asylum claim in their own right... The proposals do not take in children who have immigration as opposed to asylum cases”.

50. The UK Border Agency ploughed ahead with processing children’s claims in March 2007 under the New Asylum Model without there being any special arrangements in place between the Legal Services Commission and their suppliers to provide legal advice and representation specifically to children. Children continue to enter the New Asylum Model process unrepresented or to lose representation during the process. The Legal Services Commission proposals increase the risk that legal representatives specialist in representing children, particularly those in smaller firms, will not be able to have contracts in 2010. The work of the Legal Services Commission deserves as much scrutiny as that of the UK Border Agency in seeking to establish the risks to children’s rights in the asylum system. Specialist provision for children will be of little avail if generalist measures have driven the representatives specialised in representing children out of legal aid work. If competent expert representatives are unable to continue to provide representation under legal aid, this will put children in the asylum system at risk.

51. ILPA is a member of the Refugee Children’s Consortium and warmly commends to the Committee the Consortium’s submission to this enquiry on the question of children seeking asylum.

## E. CRIMINALISATION OF CHILDREN

52. ILPA members continue to see cases where children are prosecuted for arriving without immigration documents or for illegal entry<sup>255</sup> without any evidence that consideration has been given to the age of the child or the actions taken by adults who have taken responsibility for these children.

53. Despite Crown Prosecution Service guidance,<sup>256</sup> ILPA members continue to see children who have been trafficked continue to face prosecution, for example when found in cannabis factories.

54. The government’s consultation paper *The Path To citizenship* proposed that citizenship would be denied those with convictions for certain criminal offences, who would face expulsion from the UK and the route to citizenship lengthened for those with other convictions. It was proposed in *The Path to Citizenship* that parents could face expulsion or a longer route to citizenship for the activities of their children. The

<sup>255</sup> For an example of this in the reported cases see *R v Bei Bei Wang* [2005] EWCA Crim 293.

<sup>256</sup> Prosecution Of Young Defendants Charged With Offences Who Might Be Trafficked Victims, 1 October 2008, see [/www.cps.gov.uk/legal/h\\_to\\_k/human\\_trafficking\\_and\\_smuggling/#\\_Prosecution\\_Young](http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/#_Prosecution_Young)

document *Making Change Stick* that accompanied the Draft (partial) Immigration and Citizenship Bill proposed that while on the proposed new “probationary citizenship” status people would be denied access to services (unspecified but at an educated guess including welfare benefits, access to education and health care). Neither provision has been included in the Borders, Citizenship and Immigration Bill but as we understand it they remain the long-term policy intention and the Bill constitutes the first steps in implementing that policy. We consider that these proposals contravene Articles 3 and 40 of the UNCRC and risk, in the cases of some of the children affected, contravening the obligation in Article 39 of the UNCRC to promote the recovery and reintegration of a child who has suffered any form of neglect, exploitation or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment, or armed conflicts.

55. There are similar concerns that the automatic deportation provisions contained in the UK Borders Act 2007 may be used against those who were children at the date of their conviction. This appears contrary to the decision of the European Court of Human Rights in *Maslov v Austria*<sup>257</sup> a case concerning a 10-year exclusion order issued against Mr Maslov when he was 16 years old, and becoming final when he reached the age of majority (18). The Court held that the 10-year exclusion order had not been necessary in a democratic society. A decisive feature of the case was Mr Maslov’s age when he had committed the offences. The European Court of Human Rights noted the obligation to take into account the best interests of the child and held that these included obligations to facilitate the reintegration of the child.

#### F. TRAFFICKED CHILDREN

56. Many of our comments above, on the Code of Practice, on the new clause 51 duty and its limitation to UK, on forced returns and on criminalisation of children are applicable to trafficked children.

57. During debates on the definition of trafficking under Section 4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004, the Refugee Children’s Consortium raised concerns that the proposed definition of trafficking, now found in section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 was inadequate to ensure prosecution of those who trafficked babies and young children. So it has proved, as set out in the evidence submitted by the Refugee Children’s Consortium to the Joint Committee on Human Rights Enquiry into the Policing and Crime Bill 2009. ILPA and fellow members of the Refugee Children’s Consortium have urged the government to make amendment of the legislation a matter of priority. This is necessary to comply with the UK’s obligations under Article 35 of the UNCRC, under the Palermo Protocol<sup>258</sup> and under the Council of Europe Convention on Action Against Trafficking in Human Beings.

58. Traffickers often facilitate the entry of children into the UK through visa applications in a false identity, using false names. ILPA members have represented children in cases where the UK Border Agency has forced children to adopt the false names given to them by alleged traffickers and given the children documents such as Asylum Registration Cards in the name the child says is not their own and that might identify to them to the alleged traffickers, thus jeopardising the safety and welfare of the child as well as causing tremendous distress. It has taken strenuous efforts on the parts of representatives, including preparedness to litigate, to get the cards in the false name withdrawn. It is contrary to Articles 8 and 39 of the UNCRC.

#### G. AGE ASSESSMENTS

59. Current age assessment processes of the Government are wholly inadequate as detailed in ILPA’s Report *When is A Child Not a Child?*<sup>259</sup> and acknowledged by the UN Committee in its Conclusions.<sup>260</sup> If a child is not recognised as a child will not be recognised as a person entitled to the protection of the UNCRC or the provisions of national law.

60. Age assessment is not an exact science. ILPA members continue to see cases where all the evidence is compatible with a child’s being a child, as they say that they are but evidence other than the testimony of the child is also compatible with their being over 18. These are treated as age disputes. They should not be. The process of dispute and its contentious resolution is harmful to children. The first and most essential step is confine age disputes to a minimum of cases, not have it as the first thing on the agenda when a child presents to immigration control. All too often the dispute appears to arise as a result of UK Border Agency officials mere assessment of a child’s physical appearance. These officials are not qualified to arrive at such decisions. There is also grave concern at local authority practice in this area.

61. The Government’s age assessment working group met for the last time in August 2008. Family and immigration context. To date we are aware neither of the outcome of the Working Group nor the Government’s plans in this area. One subject deliberated by the working group was the question of X-rays

<sup>257</sup> *Maslov v Austria* (application no. 1638/03), 26 June 2008—Grand Chamber—violation of Article 8 (right to respect for private and family life).

<sup>258</sup> The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, done in November 2000 in Palermo, a protocol to the UN Convention Against Transnational Organised Crime.

<sup>259</sup> May 2007.

<sup>260</sup> Op cit paragraph 71(1)(c).



as a tool for assessing age. ILPA considers that the use of X-rays for non-therapeutic purposes is unlawful and direct the Committee to the Opinion of then Nicholas Blake QC (now Blake J) and Charlotte Kilroy that:

“No individual, and in particular no child, can lawfully be ‘subjected’ to a medical examination. This would be an assault.”<sup>261</sup>

#### H. CHILDREN IN DETENTION

62. The detention of children is contrary to Article 37 of the UNCRC and the UN Committee voiced its grave concerns about the practice in its Conclusions,<sup>262</sup> yet members routinely encounter instances of children being detained with adults either alone (in cases of age dispute) or within a family unit, often for lengthy periods with no judicial oversight.

63. As noted by the UN Committee<sup>263</sup> data on children is inadequate. There are no published statistics to show how many children are detained with their families, where or for how long. No information is recorded about age disputed children in detention.<sup>264</sup>

64. The UK Border Agency’s increasing use of detention to separate a child from their parents/primary caregiver should also be scrutinised. This has been put forward as a preferred approach<sup>265</sup> to avoid the detention of children. This is clearly not in accordance with Article 9 of the UNCRC, disrupts family unity and may expose a child to harm. Detention is never the best environment for children and can badly affect their physical, and emotional, health and wellbeing.<sup>266</sup>

65. The UK Border Agency and Social Services have failed to disclose evidence to support assertions that appropriate child protection assessments are being made in detention centres. Members have encountered cases whereby children have been placed into detention with parent(s) who have been investigated for child cruelty. Reports from HM Inspector of Prisons about Tinsley House and Dungavel stress that no progress had been made in relation to independent assessment of the welfare and developmental needs of children, and that even the internal procedures laid down for detaining children were not being followed.<sup>267</sup>

66. The only solution that seems to be working is to seek damages for detention. We draw to the attention of the Committee the press release issued by Bhatt Murphy solicitors on 9 February 2008.<sup>268</sup>

“In a settlement approved by the High Court on 9 February 2009 the Home Office accepted that a family from the Republic of Congo were unlawfully arrested and unlawfully detained at Yarl’s Wood Detention Centre .

The family—who included a one year old baby and a child of eight—were asylum seekers at the time and they have now been given leave to stay in the country. Their claim related to their arrest and detention between 6 June 2006 and 3 August 2006 (57 days) and 29 September 2006 and 2 October 2006 (three days). On both occasions they were detained at Yarl’s Wood Detention Centre.

In the face of court proceedings brought by the family, the Home Office has accepted that their arrests and subsequent detentions was unlawful as they could not have been lawfully removed from the country.

Both detentions followed much criticised “dawn raids” with large numbers of uniformed officers arriving to arrest the family at their then homes in the West Midlands, as well as the controversial practice of detaining children under the Immigration Act.

These events caused both children to suffer psychiatric damage, the younger child suffering from an adjustment disorder and the older child also suffering post traumatic stress disorder. The children remained in detention despite the fact that Bedfordshire Social Services and a psychologist raised with the Home Office their concerns about the impact of the detention on them.”

<sup>261</sup> 7 November 2007.

<sup>262</sup> Paragraph 71(a).

<sup>263</sup> Conclusions, op.cit. paragraph 70(b).

<sup>264</sup> The HM Chief Inspector of Prisons for England and Wales reports: “Other centres, including Yarl’s Wood, had no accurate record of length of detention: indeed, we were initially told that some children had spent 275 days in detention, only to be informed later that this was a recording error and the figure should have been 14 and 17 days.” (HM Chief Inspector of Prisons for England and Wales Annual Report 2007–08).

<sup>265</sup> Border and Immigration Agency Code of Practice for Keeping Children Safe from Harm Consultation—Pro Forma for Responses, 25 April 2008.

<sup>266</sup> See for example, Save the Children Fund UK (2005) No Place for a Child: Children in UK immigration detention: Impacts, alternatives and safeguards.

<sup>267</sup> Inspections took place on: Dungavel (14–16 December 2004 and 7–10 October 2002) Scotland, Tinsley House (1–5 November 2004 and 18–20 February 2002) Gatwick Harmondsworth (16–18 September 2002) Nr Heathrow, Oakington (4–6 March 2002) Cambridgeshire.

<sup>268</sup> Available at <http://www.medicaljustice.org.uk/content/view/596/67/>

## I. EDUCATION

67. Not only the UNCRC but also, in the case of refugee children, Article 22 of the 1951 Convention Relating to the Status of Refugees, make provision for access to education without discrimination. Members continue to see cases where children do not access appropriate education because of their immigration status. Restrictions on financial support based on immigration status and/or length of residence prevent many children from having any opportunity to achieve their Article 29 rights under the UNCRC. For example, some young people who arrive in the UK at the ages of 14 or 15 are placed into pupil referral units or sixth form colleges rather than mainstream school. Others who arrive after the beginning of the academic year may take very long periods to access education if indeed, in the case of those nearing 16, they manage to do so at all.

## J. ERADICATING CHILD POVERTY

68. The poverty of certain children under immigration control is not being eradicated, it is being written out of the picture: the Government's target measure does not include the children of asylum seekers.<sup>269</sup>

69. Destitution is used as an enforcement measure for families at the end of the asylum process who can be denied all support under s 9 of the Asylum & Immigration (Treatment of Claimants etc...) Act 2004). Although the government took powers to repeal s 9 and related provisions in s 44 of the Immigration, Asylum and Nationality Act 2006, it has never exercised those powers of repeal and indeed the current intention is not to do so.

70. Members see increasing numbers of destitute children within families, age disputed young people and unaccompanied minors who become 18.<sup>270</sup>

71. The government has discussed changing the system of asylum support. We urge the Committee to seek assurances that this will not further put children at risk, will respect the principle of family unity and will not under any circumstances remove support from families nor remove support from unaccompanied children as they approach 18. Such measures are contrary to Articles 2 and 3 of the UNCRC.

72. We are concerned at leaving care provisions for children under immigration control. Children who have previously been looked after by Local Authorities (LA's) under the Children Act 1989 are consistently failing to access protective benefits and services which they are entitled to under the Children (Leaving Care) Act 2000.

73. Members continue to see a significant number of cases in which children are being supported by their Local Authority under s17 of the Children Act 1989 rather than support under s20 of the same Act. This affects the child/young person's access to Full leaving care support:

- A personal advisor, a needs assessment and a pathway plan.
- Maintenance and accommodation.
- Assistance with education, training and employment.
- Vacation accommodation if they are in higher education Other support and assistance.

*February 2009*

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### **Memorandum submitted by the Joint Epilepsy Council (JEC)**

1. The JEC is an umbrella body of 26 charitable organisation members, representing about half a million people with epilepsy in Britain, their families and carers. The JEC also provide the secretariat to the APPG on Epilepsy.

2. This submission will concentrate on discrimination against children on the grounds of disability in education. Many of the points we make are specific to epilepsy however much will be relevant to pupils with medical conditions and special educational needs (SEN) more generally.

3. About 60,000 young people under 18 have epilepsy in the UK. Half of these children are estimated to be under-achieving academically in relation to their intellectual level. (The Epilepsy Task Force, Burden of Epilepsy; a health economics perspective, Joint Epilepsy Council, 1999.) About 7,500 of these young people with epilepsy suffer serious regression in their learning, with psychiatric and behavioural syndromes including autistic spectrum disorders and obsessional or challenging behaviour as well as their epilepsy. This submission does not concentrate on this worst affected group but on the education of children with epilepsy in mainstream schools.

4. The following describes the specific effects of epilepsy on education and points to the problems experienced by many teachers in understanding the challenges faced by the affected pupil.

<sup>269</sup> HM Treasury (2007) PSA Delivery Agreement 9: Halve the number of children by 2010–11, on the way to eradicating it by 2020 states that the 'Delivery Agreement ... does not specifically cover the children of asylum seekers'.

<sup>270</sup> See for example, *Living on the Edge of Despair*, The Children's Society 2008.

“As well as the potential for seizures to make the child miss lessons, epilepsy can cause short- and long-term memory problems, difficulties with concentration and information retention. Often teachers don’t fully understand why a child may appear to lack effort or attention and achieve poorly. Variable behaviour can be misinterpreted as being wilful.”

Professor Brian Neville (former Prince of Wales’s Chair of Childhood Epilepsy).

5. There is a strong link between difficult-to-control epilepsy and learning disabilities. Among people known to learning disability services in the UK, prevalence is 20–30% (Bell G S, Sander J W. The epidemiology of epilepsy: the size of the problem. *Seizure* 2001; 10(4):306–314). To put this in plainer language, roughly a quarter of those known to learning disability services have epilepsy. The high significance of epilepsy to any attempt to improve outcomes for pupils with SEN is therefore obvious however there is a serious lack of recognition for this condition in DCSF policy, Initial Teacher Training (ITT) and Continuing Professional Development (CPD).

6. There is a widespread perception that pupils with SEN are a small minority of the school population. We therefore welcomed the clear statement in a Written Answer that in reality one in five of all pupils have special educational needs:

*Mr. Ancram: To ask the Secretary of State for Children, Schools and Families what proportion of funding for schools in England was directed to students with special needs and learning difficulties in 2007–08; and what proportion of the school student body they comprised. [227901]*

*Sarah McCarthy-Fry: . . . As at January 2008, 20% of pupils had special educational needs (SEN), 2.8% had SEN “statements” and 17.2% had SEN without statements . . .*

7. DCSF Policy—lack of recognition for epilepsy. Epilepsy is defined by DCSF as a purely medical condition despite the obvious and measurable effects it has on education. As a result, it is not included in the Department’s key SEN documents, The Special Educational Needs Code of Practice and Removing Barriers to Achievement. This latter states that every child has the right to a good education and the opportunity to fulfil their potential. This is not currently the case for children with epilepsy.

8. Some light was thrown on current Government intentions by this extract from a letter from Sharon Hodgson MP. The meeting referred to was with Sarah McCarthy-Fry MP, Minister responsible for SEN, during the week commencing 23 February 2009. Sharon wrote:

“One of the areas I wanted to press on was the need for both DCSF and the Department of Health to look at how they can work together to share information which will benefit service users. I raised the specific example of Epilepsy and asked whether it would be possible for greater acknowledgement of the fact that for some medical conditions there is a strong link to Special Educational Needs (SEN) prevalence. I am assured that this will be considered as part of a review of the categories of need but that for the time being needs such as epilepsy will continue to be registered under the category of disabled.”

9. The difficulty with this approach is that to define a child with epilepsy as having, for example, “communication difficulties” is only of use for the purposes of counting. It does not help to tackle those communication difficulties as the steps needed to be taken to help that child will be different from those needed to help other children with that challenge. There are no current plans for a review of the categories of need so far as we are aware.

10. Further, this lack of recognition actively hampers the teacher by failing to provide advice. Improvements to ITT and CPD to better enable teachers to work with pupils with SEN will need to be supported by DCSF in the way it provides advice to schools and teachers about conditions such as epilepsy.

11. The current DCSF position is difficult to justify and can only hamper genuine progress given the level of correlation between epilepsy and learning difficulties, the sheer scale of the numbers affected, the new initiatives to improve educational outcomes for pupils with SEN and proposals for more children with SEN to be educated in mainstream schools.

12. We note that last year the Government announced £18 million of funding for a masters qualification in teaching and learning. It is imperative that the qualification is required to contain work on supporting pupils with SEN.

13. We welcome the £3.5 million of funding recently pledged to the Training and Development Agency for Schools for the roll-out of SEN units in primary undergraduate and postgraduate certificate in education courses and the estimated £8 million more that will be spent over the next three years to embed SEN programmes in all teaching qualifications. However, as epilepsy is not included in *The Special Educational Needs Code of Practice*, it is questionable how much assistance to the tens of thousands of pupils with epilepsy, representing about a quarter of all those known to UK learning disability services, this will be.

14. School medication policies are variable and need reviewing. The consequences for children with epilepsy include being sent to hospital unnecessarily, needlessly missing lessons and further damaging their educational potential. Even for those children whose epilepsy is well-controlled, the effects of the powerful drugs they are taking can include impaired memory and attention (Effects of antiepileptic drugs on learning . . . Shannon H E and Love P L, *Epilepsy & Behavior* Vol 10, Issue 1, Feb 2007).

15. The 2005 Departmental guidance entitled *Managing Medicines in Schools and Early Years Setting* encourages schools and local authorities to develop local policies on the management of pupil's medicines and on supporting pupils with medical needs, taking account of local resources and their various responsibilities. It is for schools and local authorities to set their own policy, including the training needs of staff. Anecdotal evidence is often strongly critical of individual schools medication policies concerning epilepsy. National minimum standards are required.

16. Is a postcode lottery any more acceptable in education than it is in health? Must pupils with SEN accept that the support they receive in school is dependent on variable local decision-making? And how well does this sit with the Disability Discrimination Act 1995, which requires schools not to treat disabled pupils less favourably?

17. Duty to provide for disabled pupils. There is a duty under the SEN and Disability Act 2001 (amending the Disability Discrimination Act 1995) "for schools and many early years settings to take 'reasonable steps' to ensure that disabled pupils are not placed at a substantial disadvantage in relation to the education and other services they provide. This means that they must anticipate where barriers to learning lie and take action to remove them as far as they are able." All too often, those barriers remain in place for pupils with epilepsy.

18. The JEC has called for several initiatives from Government including:

- Specific consideration for epilepsy, commensurate with its correlation to learning difficulties, in the Government's planning, policy and guidance for the education sector.
- A commitment by the Government to collect data on the population of children and young people with epilepsy, and the special educational needs they experience, when implementing the Children's Plan commitment to improve SEN data collection.
- Specific consideration for epilepsy, commensurate with its correlation to learning difficulties, during initial teacher training and continuous professional development for education professionals when implementing the Children's Plan commitment to improve SEN training.
- A review of school medication policies.

19. Given the accepted current inadequacies of ITT in preparing teachers for working with pupils with SEN, the time that will be needed to secure improvements and the fact that current teachers will not benefit from this training, immediate steps to improve the contribution made by CPD could be achieved by ensuring that an element of SEN training is embedded in the five INSET days set aside for CPD in the school year.

20. As one in five pupils have SEN, it would seem reasonable to ensure that 20% of the INSET days should be devoted to SEN, at least for a limited period. This could be achieved by either setting aside one of those days for specific training on SEN or by requiring 20% of each day to be SEN-specific.

21. One alternative suggestion might be to allow current teachers the option to elect further SEN-specific training particularly where they have pupils with certain SEN in their classes. We note that the new Education Bill includes a right for teachers to request further training. The objection to election is that given the high proportion of pupils with SEN, it is inevitable that all teachers will need the skills to support pupils with SEN. Election alone would only continue the very patchy nature of the distribution of the skills required. And what if the teacher with those "certain SEN" in their class declines to take up the option of further training? It will be the pupil who will suffer.

22. The JEC have heard objections to the setting aside of one INSET day for SEN purposes. The five INSET days are decided by teachers and governors and are usually a part of the school's development plan, which is often linked to targets identified by OFSTED and also unique factors affecting the school at a given time such as bullying or racism. However, the failure to date to address SEN adequately cannot be continued on the grounds that there is no time for it. Whenever a deficiency requires correction, extra provision must be made available or other priorities may need to be adjusted.

23. Other challenges. People with epilepsy experience many specific challenges throughout life and especially in healthcare, education and employment. If you would like more detail, *Wasted Money, Wasted Lives*, an APPG on epilepsy report into the human and economic cost of epilepsy services is available to download at: [www.jointepilepsycouncil.org.uk/inquiry.asp](http://www.jointepilepsycouncil.org.uk/inquiry.asp)

24. Epilepsy basics:

- common serious neurological condition;
- characterised by recurrent, unprovoked epileptic seizures;
- often controllable, but not curable, with powerful drugs; and
- surgery works in some cases but availability is limited

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## Memorandum submitted by the Law Society of Scotland

### INTRODUCTION

The Family Law Sub-Committee of the Law Society of Scotland (the Sub-Committee) welcomes the opportunity to assist the Joint Committee on Human Rights with their inquiry on children's rights.

This paper looks at the following issues:

- children in detention; and
- children's right to express views in relation to education.

### *Children in detention*

In Scotland, the vast majority of children under 16 who are in detention have been placed there by the Children's Hearing system.<sup>271</sup> They are held in secure units, which contain only children and young people under the age of 18. Although only children under the age of 16 may be referred to the Children's Hearing system, a young person may remain under a Supervision Requirement until the age of 18. In criminal matters a young person who is over the age of 16 and under the age of 18 may have their case referred to the Children's Hearing System.<sup>272</sup> A child or young person may therefore be held in Secure Accommodation if a Children's Hearing grants authorisation in addition to a Supervision Requirement, or under a place of Safety Warrant,<sup>273</sup> or if ordered by a court.<sup>274</sup>

If a Children's Hearing grants authorisation for secure accommodation, such authorisation may only be granted for a maximum period of three months<sup>275</sup> at a time. The child's case must be reviewed after each three-month period. Place of Safety Warrants may only be granted for a duration of 21 days, with the Hearing only being empowered to grant two warrants immediately succeeding the initial warrant.

The criteria for authorising placement in Secure Accommodation are clearly set out in section 70 (10) of the Children (Scotland) Act 1995:

“... that the child—

- (a) having previously absconded, is likely to abscond unless kept in secure accommodation, and, if he absconds, it is likely that his physical, mental or moral welfare will be at risk: or
- (b) is likely to injure himself or some other person unless he is kept in such accommodation.”

Thus the welfare of the child is the paramount consideration and the purpose of secure accommodation is the management of the behaviour of the child and the prevention of further risk while the child receives the necessary supports to deal with the causes of their behaviour. The purpose of detention in secure accommodation is not the punishment of the child or young person.

The Scottish Government, through the Secure Accommodation (Scotland) Regulations 1996 has set down basic standards for the care of children and young people held, and monitors the units where such care is provided through inspections.

There are concerns, however, concerning the actual day-to-day treatment received by such children and young people in secure accommodation and compliance of their treatment with the articles of the United Nations Convention on the Rights of the Child.

These include:

1. Article 16 requires that children be protected from arbitrary or unlawful interference with their right to privacy. The practice at some units of routinely requiring children who have been outwith the unit to remove all their clothing and to do “star” jumps clad only in a dressing gown, while their clothing is searched is not compatible with Article 16. While it may be necessary to search children where there is reason to believe that they have secreted drugs or dangerous items it should not be routine.
2. There has been a practice at some units of requiring children to conduct all telephone conversations in the presence of staff as a routine measure. This is not compliant with the article 16 right to privacy unless there is reasonable cause to believe that it is necessary for the protection of the child, or others that such confidentiality be breached.
3. Article 13 requires respect for medical confidentiality. Children must be allowed access to medical practitioners without the unit requiring that they disclose the reason, or the medical practitioner being required to disclose details of the consultation to the unit. In the case of a chronic or serious medical condition, it will be necessary to encourage the child to permit the unit to have details of the illness or condition and treatment.

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<sup>271</sup> Children (Scotland) Act 1995, s 70 (9).

<sup>272</sup> Criminal Procedure (Scotland) Act 1995 s 49.

<sup>273</sup> s 69 (11).

<sup>274</sup> Criminal Procedure (Scotland) Act 1995 s 44, s 51.

<sup>275</sup> Secure Accommodation (Scotland) Regulations.

4. The same Article 13 principle requires that children held in secure accommodation have access to a complaints system that respects their right to complain without that complaint being read first by the staff of that unit. The current complaints system does not have procedures which prevent staff opening the sealed envelope in which the child places any complaint.
5. Article 3 requires that States Parties ensure, among other things the health of children. Children held in secure accommodation should have guaranteed access to fresh air and physical activity. All too often access to exercise and fresh air can be dependant on staff being free and willing to supervise.
6. The duties of States Parties in Article 3 require that the staff of secure units be able to provide for the health of the child and, in order to ensure the effective care for the mental health of children in secure accommodation, consideration could to be given to:
  - (a) separation of particularly vulnerable child who are in secure because of behaviour that is a danger to themselves from those children who are held because they are a risk to other;
  - (b) “in house” specialist treatment for problems such as self harming and eating disorders so that children can be treated effectively without need to be taken from the unit to treatment which can be at a distance from the unit; and
  - (c) effective training in the management of self-harming and eating disorders for unit staff.
7. It is praiseworthy that the Scottish Government has stated that no child is to be held in adult prison accommodation. This should be extended to the transportation of children and young people so that no child or young person is transported in adult cellular transport or with adult prisoners. In addition, it should be the requirement that no child can be subjected to adult pain restraints whether within a unit, a holding area in court or during transport.

#### *Children’s right to express views in relation to education*

Article 12 of the United Nations Convention on the Rights of the Child requires states parties to assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. The article goes on to require that children be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or appropriate body, in a manner consistent with the procedural rules of national law.

The requirements of article 12 are reflected in the provisions of the Children (Scotland) Act 1995, and in particular in section 11(7)(b) when a court is considering whether to make an order relating to parental responsibilities or parental rights. The court is required to give the child an opportunity to express a view, if the child does so wish then to give the opportunity to do so and finally to have regard to any views the child does express. It has been recognised that this provision reflects the terms of article 12 and failure to give the child the opportunity to express a view is treated as an error of law.<sup>276</sup> There are similar provisions affecting the children’s hearing and the sheriff in proceedings relating to the protection of children’s welfare.<sup>277</sup> There are no corresponding provisions in relation to education.

Education is clearly a matter affecting the child for the purposes of article 12. The Scottish Parliament has recognised that article 12 applies in the sphere of education. Section 2(2) of the Standards in Scotland’s Schools etc. Act 2000 requires education authorities to have regard, so far as reasonably practicable, to the views (if there is a wish to express them) of the child or young person in decisions that significantly affect that child or young person, taking account of the child or young person’s age and maturity. This duty is not dissimilar from the obligation on a parent to have regard to the views of children.<sup>278</sup> What is missing is any provision for the child to have the opportunity to be heard in judicial and administrative proceedings relating to education. As is recognised by article 12 itself a general requirement to have regard to the views of the child is likely to be ineffective unless there is a specific mechanism to give the child the opportunity to express a view as part of the procedure relevant to judicial or administrative proceedings.

Within the field of education there are four areas in particular where children’s views are relevant but there is no procedural requirement to give the child the opportunity to express a view:

1. *Placing requests.* The only person entitled to make a placing request for a child of school age to attend a particular school is a parent.<sup>279</sup> The only person who may appeal to an appeal committee<sup>280</sup> and make an appeal to the sheriff<sup>281</sup> is a parent. There is no provision for the child to be given the opportunity to be express a view to either the appeal committee or the sheriff. This is contrary to the terms of article 12(2).

<sup>276</sup> *S v S*, 2002 SC 246.

<sup>277</sup> Children (Scotland) Act 1995, s 16(2).

<sup>278</sup> Children (Scotland) Act 1995, s 6(1).

<sup>279</sup> Education (Scotland) Act 1980, s 28A.

<sup>280</sup> Education (Scotland) Act 1980, s 28C.

<sup>281</sup> Education (Scotland) Act 1980, s 28F.

2. Exclusion appeals. When a child of school age is excluded from school the parent may refer the exclusion to an appeal committee and may appeal to the sheriff.<sup>282</sup> The Standards in Scotland's Schools etc Act 2000 gave pupils with legal capacity the same right to appeal as the parent.<sup>283</sup> While this does reflect some concession to children's rights the following problems remain:
  - If the parent appeals, but not the child, there is no provision for the child to be given the opportunity to express a view to the appeal committee or the sheriff.
  - Only a child with legal capacity may appeal. The test of legal capacity is whether a child has a general understanding of what it means to instruct a solicitor.<sup>284</sup> No legal aid is available for a child to instruct a solicitor in a reference to an appeal committee. In practice a child is unlikely to be able to instruct a solicitor without legal aid. The right conferred on the child is therefore ineffective in most cases.
  - It is unclear whether both the parent and the child have a right to appeal, or whether an appeal by one will preclude an appeal by the other. Both may have an interest in appealing, but their positions may differ. The lack of clarity undermines the effectiveness of the provision as an appeal right for either.

These difficulties indicate that further consideration is required to make the procedures relating to exclusion compliant with article 12(2).

3. References to the Additional Support Needs Tribunal. The ASNT was established pursuant to the Education (Additional Support for Learning) (Scotland) Act 2004. It operates under the Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2006.<sup>285</sup> It deals with matters relating to co-ordinated support plans for children for the purposes of their education. Although this is a new tribunal with new rules, no consideration appears to have been given to article 12. The rules are actively restrictive in relation to giving the child the opportunity to be heard. Rule 33 provides that the tribunal may permit a child under the age of 12 to give evidence only where it considers (a) that the evidence of the child is necessary to enable a fair and just hearing of the reference; and (b) that the welfare and interests of the child will not be prejudiced by so doing. If the child is allowed to give evidence the convenor may appoint a person with appropriate skills or experience to facilitate the giving of evidence by the child. The latter provision is consistent with article 12, but the lack of any other procedure for the child's views to be made known to the tribunal does not accord with article 12(2).
4. Consultation on changes in education. When an education authority proposes to make certain changes in the provision of education they are bound to undertake consultation.<sup>286</sup> The changes include closing a school, changing the site of a school, providing a new school and altering the way places in schools are allocated or changing guidelines for dealing with placing requests. Regulations specify who should be consulted and in what way the consultation should be carried out.<sup>287</sup> Parents and other interested persons and groups are given an opportunity to express a view. While this is not a judicial process, consultation is an important administrative process. It would be consistent with article 12 for the position of children to be recognised in the relevant regulations. It would be relatively straightforward to include in the regulations a mechanism for giving children in attendance at a school affected by a proposal the opportunity to express a view.

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### Second memorandum submitted by the Law Society of Scotland

#### INTRODUCTION

The Family Law Sub-Committee of the Law Society of Scotland (the Sub-Committee) welcomes the opportunity to assist the Joint Committee on Human Rights with their inquiry on children's rights.

This paper looks at the issue of the criminalisation of children.

#### CRIMINALISATION OF CHILDREN

The vast majority of children who infringe the criminal law in Scotland are dealt with through the children's hearings system, a system that is premised on a treatment model of juvenile justice. However, it remains possible for a child in the 8–15 age group to be prosecuted in the ordinary criminal courts and offending young people aged 16 and over are usually dealt with in that forum.

The following issues may be of particular interest to the Joint Committee on Human Rights.

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<sup>282</sup> Education (Scotland) Act 1980, s 28H.

<sup>283</sup> S 41.

<sup>284</sup> Age of Legal Capacity (Scotland) Act 1991, s 2(4A).

<sup>285</sup> SSI 2006/88.

<sup>286</sup> Education (Scotland) Act 1980, s 22A.

<sup>287</sup> Education (Publication and Consultation etc ) (Scotland) Regulations 1981, SI 1981/1558, as amended.

### *Age of criminal responsibility*

Criminal responsibility can attach, in Scotland, from the time a child is eight years old<sup>288</sup>: one of the lowest ages of criminal responsibility in the world.<sup>289</sup> Where a child is below eight years old, he or she has no criminal capacity and cannot commit an offence. Usually, the child's chronological age at the time of the alleged offence is used in establishing criminal responsibility, but where it can be demonstrated that a child's actual mental capacity is less than the chronological age, the former will govern responsibility.<sup>290</sup>

The European Convention on Human Rights is silent on the issue of age of criminal responsibility. It was not until the decision of the European Court in *T v United Kingdom* and *V v United Kingdom*<sup>291</sup> that a definitive ruling on the implications of article 6(1) in the context of juveniles was provided. That case followed the much-publicised trial and sentencing of two 10 year-olds, convicted of the murder of a two year-old, in England, in 1993. The Court found that, despite the provision of legal representation and special arrangements made in the way the court proceedings were conducted, the accused, by virtue of their ages and states of mind, were unable to participate effectively in the proceedings and, thus, had been denied the right to a fair hearing, in breach of Article 6(1).<sup>292</sup> However, given the lack of consensus amongst member states on the matter, it found no breach of Article 3 (prohibition of torture) in respect of the age criminal responsibility itself. That it is the opportunity to participate effectively, rather than the actual age of criminal responsibility, that is crucial from a European Convention perspective was confirmed by the Court in its more recent decision in *SC v United Kingdom*.<sup>293</sup> *There, an 11 year-old boy of low intellectual ability had been convicted of robbery, in England. While the Court again found a violation of article 6(1), it restated its position in the following terms:*

“[T]he attribution of criminal responsibility to, or the trial on criminal charges of, an 11 year-old child does not of itself give rise to a breach of the Convention, as long as he or she is able to participate effectively in the trial.”<sup>294</sup>

While the United Nations Convention on the Rights of the Child requires that an age of criminal responsibility should be identified, it does not specify what that age should be,<sup>295</sup> a failing of the Convention continued from the Beijing Rules. However, the UN Committee on the Rights of the Child took the opportunity to expand on its expectations in terms of compliance with the Convention in juvenile justice matters when it published *General Comment No 10: Children's rights in juvenile justice*.<sup>296</sup> There, it noted the wide range of ages of criminal responsibility amongst states parties and made its own position very clear when it described them as ranging “from a very low level of age 7 or 8 to the commendably high level of 14 or 16”<sup>297</sup> and found that setting the age below 12 “not to be internationally acceptable”.<sup>298</sup> That it should take this position is unsurprising given that it had criticised the low age of criminal responsibility in each and every one of its *Concluding Observations on the United Kingdom and Northern Ireland*.<sup>299</sup>

This criticism has not gone unheeded in Scotland. In 2000, an advisory group to the Scottish Parliament recommended raising the age of criminal responsibility to 12,<sup>300</sup> the Scottish Executive responded<sup>301</sup> and referred the matter to the Scottish Law Commission. The Commission recommended that any rule on the age at which children cannot be found guilty of an offence should be abolished,<sup>302</sup> albeit it also recommended that it should no longer be competent to prosecute a child below the age of 12.<sup>303</sup> It believed that the point of having an age of criminal responsibility was to protect children from a punitive criminal justice system. Since most children accused of an offence in Scotland are dealt with by the welfare-based children's hearings system, the Commission argued that there is no need to extend such protection to Scottish children. This

<sup>288</sup> Criminal Procedure (Scotland) Act 1995, s 41.

<sup>289</sup> See, *Age of Criminal Responsibility* (Scot Law Com Discussion Paper No 115, 2001), Appendix E and A Lockyer and F H Stone (eds), *Juvenile Justice in Scotland: Twenty-Five Years of the Welfare Approach* (T&T Clark, 1999), p 245. Both illustrate that most European countries and many in other parts of the world have an age of criminal responsibility considerably higher than 8, with many countries opting for 14, 15 or 16.

<sup>290</sup> Various national newspapers reported a case of an 11-year-old boy who was originally charged with attempted murder having allegedly stabbed a nine-year-old girl, the charges being dropped when psychologists found that the boy had a mental age below 8; see, *The Times*, January 22, 2001, p 1.

<sup>291</sup> (2000) 30 E.H.R.R. 121, para.3. That report relates to the case brought by V (application no 24888/94) and the decision is virtually identical to that in *T v United Kingdom* (application no 24724/94).

<sup>292</sup> *Ibid*, para 108. It also found breach of Article 6(1), in respect of the Home Secretary's role in setting the tariff, and Article 5(4), in respect of sentencing as it impacted on the lawfulness of detention.

<sup>293</sup> (2005) E.H.R.R. 10.

<sup>294</sup> *Id*, para 27.

<sup>295</sup> Art 40(3)(a).

<sup>296</sup> CRC/C/GC/10, 25 April 2007.

<sup>297</sup> *Id*, para 30.

<sup>298</sup> *Ibid*, para 32.

<sup>299</sup> *Concluding Observations on the United Kingdom and Northern Ireland*, 15 February 1995, CRC/C/15/Add 34, paras 40–43; *Concluding Observations on the United Kingdom and Northern Ireland*, 9 October 2002, CRC/C/15/Add.188, paras 59 and 62; *Concluding Observations of the Committee on the Rights of the Child on the United Kingdom of Great Britain and Northern Ireland*, CCR/C/GBR/CO/4, 3 October 2008, para 78.

<sup>300</sup> *It's a Criminal Waste: Stop Youth Crime Now: Report of the Advisory Group on Youth Crime* (Edinburgh, Scottish Executive, 2000), para 7.

<sup>301</sup> *Scottish Executive Response, It's a Criminal Waste: Stop Youth Crime Now* (Edinburgh, Scottish Executive, 2000).

<sup>302</sup> Report on the Age of Criminal Responsibility (Scot Law Com No 185, 2001), rec.1. For a discussion of the Report and recommendations, see, C McDiarmid, “Age of Criminal Responsibility: Raise It or Remove It?” 2001 J R 243 and E E Sutherland, “The Age of Reason or the Reasons for an Age? The Age of Criminal Responsibility” 2002 S.L.T. (News) 1.

<sup>303</sup> Report on the Age of Criminal Responsibility, rec 2.



reasoning is flawed. First, not every child accused of an offence in Scotland is dealt with by the hearings system, since prosecution of a person under the age of 16 is not only competent, it happens.<sup>304</sup> Second, the UN Convention mandates providing for an age of criminal responsibility. It does not make it optional, depending upon the kind of system in place. If the Scottish Law Commission's recommendations were implemented, Scots law would, thus, be in violation of the UK's international obligations. At the time of writing, no draft legislation, implementing the Commission's proposals has been brought forward. There are encouraging signs that the age of criminal responsibility will be revisited by the Scottish Parliament, in the near future, with indications that it may be raised to 12.<sup>305</sup>

### *Sexual Offences (Scotland) Bill*

The age of consent to sexual activity in Scotland is currently 16 years old. Where two heterosexual 15 year-olds engage in what would be consensual sex, but for their ages, the male commits an offence, but the female does not,<sup>306</sup> albeit he would most probably be dealt with by the children's hearing (as an offender) rather than a court. Clearly, the present gender-based discrimination offends against both the European<sup>307</sup> and UN Conventions.<sup>308</sup> The Scottish Law Commission examined this issue and recommended decriminalising consensual sexual activity where the parties are between 13 and 15 years old. It recommended that, instead, it should be possible to refer the young people to a children's hearing on the basis that their conduct warranted further exploration of their welfare (a non-offence referral).<sup>309</sup> Amid somewhat hysterical reaction in sections of the media, mischaracterising the proposal as "legalising under-age sex", the Scottish Government chose to ignore this eminently sensible proposal and, instead, introduced the Sex Offences (Scotland) Bill which would render the action of both young people criminal.<sup>310</sup> The proposed legislation here would not simply be disempowering: that is, it would not simply put obstacles in the way of young people seeking to engage in an activity that most of the adult community would prefer them to postpone. It would brand them as criminals—and as criminals of a particularly odious kind. There has been very considerable opposition to the proposed legislation.

### *Status offences*

A "status offence" is an offence which can only be committed by young people, there being no adult equivalent. A number of the grounds for referral to a children's hearing—being "beyond parental control", "falling into bad associations or . . . [being] exposed to moral danger", having "failed to attend school regularly without reasonable excuse" or having misused alcohol, any drug, or a volatile substance—look remarkably like status offences.<sup>311</sup> Do status offences pose a problem under either the European or UN Conventions? Failure to attend school without a reasonable excuse can probably be dealt with fairly swiftly, since the European Convention provides that a minor may be deprived of his or her liberty "by lawful order for the purpose of educational supervision", always providing that the deprivation of liberty is "in accordance with a procedure prescribed by law".<sup>312</sup> What of the other grounds? It could be argued that status offences pass international muster since they indicate a need for protection of the child and, thus, serve the promotion of the child's welfare,<sup>313</sup> or that they serve a preventive function in diverting the child from future, clearly criminal, conduct. On the other hand, status offences may stigmatise a child unnecessarily. The Beijing Rules allow for status offences,<sup>314</sup> the Riyadh Guidelines counsel against penalising children for conduct which would not be considered criminal in an adult,<sup>315</sup> and the UN Convention is silent on the matter. In *General Comment No 10*, the UN Committee on the Rights of the Child clarified matters when it recommended the abolition of status offences "in order to establish equal treatment under the law for children and adults".<sup>316</sup>

### *Prosecution of children and young people under 16*

Despite the creation of the children's hearings system, it has always been possible for a child below the age of 16 to be prosecuted in court, albeit such prosecution must be "at the instance of the Lord Advocate". Successive Lords Advocate have addressed their responsibility by issuing guidelines, indicating which offences should be considered for prosecution, with the most recent dating from 1996.<sup>317</sup> There are three

<sup>304</sup> Prosecution requires the consent of the Lord Advocate: Criminal Procedure (Scotland) Act 1995, s.41(1). Successive Lords Advocate have issued directions on prosecution, with the latest being reproduced in Appendix B to *Age of Criminal Responsibility* (Scot Law Com Discussion Paper No.115, 2001).

<sup>305</sup> M Howie, "Let's stop treating eight-year-olds as criminals, says Lord Advocate", *The Scotsman*, 26 November 2008, p6.

<sup>306</sup> Criminal Law (Consolidation) (Scotland) Act 1995, s 5(3).

<sup>307</sup> Article 6 when read with article 14.

<sup>308</sup> Articles 2, 37 and 40.

<sup>309</sup> Scottish Law Commission, *Report on Rape and Other Sexual Offences* (Scot Law Com No 209, 2007), paras 4.43–4.57.

<sup>310</sup> SP Bill 11 (2008), ss 21 and 22.

<sup>311</sup> These are set out in the Children (Scotland) Act 1995, s 52(2)(a), (b), (h), (j) and (k), respectively.

<sup>312</sup> Art 5(1)(d). In addition, the importance of education is reinforced in the First Protocol, Art. 2.

<sup>313</sup> UN Convention, Art. 3. See also: the duty to protect the child from abuse, neglect and exploitation (Art 19); and the obligation to protect the child from sexual exploitation (Art 34).

<sup>314</sup> Rule. 3.1.

<sup>315</sup> Guideline 56.

<sup>316</sup> Para 8.

<sup>317</sup> For ease of reference, these, along with "Explanatory Notes" can be found in Appendix B to *Age of Criminal Responsibility* (Scot Law Com Discussion Paper No 115, 2001).

categories of offences covered. First are offences which require prosecution on indictment, including the pleas of the Crown, certain statutory offences, and other serious offences like assault to severe injury and possession of a class A drug with intent to supply. The second category is restricted to persons over the age of 15 years where disqualification from driving is either a mandatory or optional sentence upon conviction, not being a disposal available to a children's hearing. The third category covers children over the age of 16 who are subject to a supervision requirement. It should be noted that a reporter's decision not to refer a child to a hearing does not preclude prosecution.<sup>318</sup>

While the European Convention does not prohibit the prosecution of children under the age of 16 and the European Court accepts such prosecutions as competent,<sup>319</sup> these children are entitled to all the usual protections of the European Convention on Human Rights.<sup>320</sup> It will be remembered that, often, the crucial issue is whether a young accused person can participate effectively in the proceedings as required by article 6(1).<sup>321</sup> The UN Convention applies to all persons under the age of 18 and, thus, both its general provisions and its specific provisions on juvenile justice apply to all persons below that age. While these do not necessarily preclude subjecting children to trial, they certainly discourage the practice, particularly when all the considerations in Articles 37 and 40 are taken into account.

The publicity associated with the trial and what happens to a child thereafter, particularly after release from prison, pose further dangers to respect for children's rights. It is worth remembering that, while the UN Convention requirement on respect for the child's privacy "at all stages of the proceedings"<sup>322</sup> probably does not cover post-conviction publicity, this aspect is covered by the injunction that child-offenders should be "treated in a manner consistent with the promotion of the child's sense of dignity and worth" and that account should be taken of their "age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society".<sup>323</sup> In Scotland, the prohibition on disclosing the identity of any child involved is automatic:<sup>324</sup> that is, it applies unless it is dispensed with, in whole or in part, by the court where it is satisfied that to do so "is in the public interest".<sup>325</sup> It was particularly unfortunate that this was done in one case prior to the accused's appeal against conviction being heard, since her conviction was overturned on appeal.<sup>326</sup> Once the proceedings are completed (ie after any appeal has been heard) the Scottish Ministers may dispense with reporting restrictions, again, either in whole or in part, and if such dispensation is in the public interest.<sup>327</sup> A proposal was mooted to amend the legislation to remove the automatic reporting restrictions where an under-16-year-old was convicted of a serious offence<sup>328</sup> but, happily, nothing seems to have come of it. A particularly enlightened view of the need to protect the privacy of children convicted of a very serious offence can be found in the decision in England to protect the identity of Robert Thompson and Jon Venables after their release and to prevent reporting in respect of their new identities and whereabouts.<sup>329</sup>

### 16 and 17 year-olds

Once a young person reaches the age of 16, he or she will usually face prosecution in an adult criminal court and many of the concerns expressed in relation to the prosecution of children under the age of 16 apply to the prosecution of 16 and 17 year-olds.<sup>330</sup> Of course, the young person's ability to participate effectively in the proceedings will increase as he or she matures, but practitioners should remain vigilant to the possibility of a young client's capacity in this respect. It will be remembered that the UN Convention applies to all persons "below the age of 18 years of age"<sup>331</sup> and the UN Committee on the Rights of the Child took the opportunity, in *General Comment No 10*,<sup>332</sup> to remind states parties that this meant all such young people came within the ambit of the Convention's juvenile justice provisions and urged states parties where 16 and 17 year-olds were treated as adult criminals to "change their laws with a view to achieving a non-discriminatory full application of the juvenile justice rules to all persons under the age of 18".<sup>333</sup>

<sup>318</sup> *Mackinnon v Dempsey*, (High Court), November 9, 1984, unreported.

<sup>319</sup> *SC v United Kingdom* (2005) E.H.R.R. 10, particularly para 27, quoted above.

<sup>320</sup> So, for example, undue delay in proceeding with a prosecution may result in the conviction being overturned. See, *Dyer v Watson* 2002 S.C. (P.C.) 89 and *McLean v H.M. Advocate* 2000 S.L.T. 299.

<sup>321</sup> *T v United Kingdom, V v United Kingdom* (2000) 30 E.H.R.R. 121.

<sup>322</sup> Art 40(2)(vii).

<sup>323</sup> Art 40(1).

<sup>324</sup> Criminal Procedure (Scotland) Act 1995, s 47(1).

<sup>325</sup> 1995 Act, s 47(3)(b).

<sup>326</sup> *Cordona v H.M. Advocate* 1996 S.L.T. 1100.

<sup>327</sup> 1995 Act, s 47(3)(c).

<sup>328</sup> Consultation Paper on Identification of Children: Proposals to Amend section 47 of the Criminal Procedure (Scotland) Act 1995 (Edinburgh, Scottish Office, 1996).

<sup>329</sup> *Venables and another v. News Group Newspapers Ltd* [2001] 1 All E.R. 908. See also, *McKerry v. Teesdale and Wear Valley Justices*, [2001] E.M.L.R. 5, where the court criticised the lifting of reporting restrictions in respect of a 15-year-old persistent offender charged with theft.

<sup>330</sup> In addition, young people over 16 face the possibility of an order for lifelong restriction: Criminal Procedure (Scotland) Act 1995, s 210F, added by the Criminal Justice (Scotland) Act 2003. While this is not the same as a sentence of life without parole (prohibited for a person under 18 in terms of the UN Convention, art 37(a)), it may be inconsistent with the provisions of art 40(1).

<sup>331</sup> Article 1.

<sup>332</sup> CRC/C/GC/10, 25 April 2007.

<sup>333</sup> *Id.*, para 38.

When the Advisory Group on Youth Crime looked at alleged offenders in this age group, it recommended a number of fresh approaches, including the possibility that at least some of them might be dealt with by the children's hearings system.<sup>334</sup> Sight was lost of this proposal along the way and, instead, a system of youth courts was piloted.<sup>335</sup> The pilot schemes have been evaluated independently.<sup>336</sup> While youth courts appear to succeed in processing cases more quickly than do regular courts, there are very real concerns about their operation,<sup>337</sup> not least because the full range of support services was not put in place.<sup>338</sup> There is a fear that what was conceived as a more individualised and hands-on system might be no more than a façade, with the youth court being nothing other than a regular court that moves faster.<sup>339</sup> In addition, there is a concern that, if a person is referred to the youth court on the basis that he or she is a "persistent offender", then the sheriff knows at least that the accused has a criminal record—something that is in breach of the usual rules—raising the possibility of a human rights challenge. As a result, it appears that youth courts may be put on hold and that the possibility of referring some 16 and 17 year-olds to a children's hearing will be revisited.<sup>340</sup>

February 2009

### Memorandum submitted by Liberty

#### INTRODUCTION

1. Liberty is delighted to respond to the Committee's Inquiry into Children's Rights. The protection of children's human rights is a key campaigning priority for Liberty. In this short response we highlight several relevant areas in which we are currently lobbying, campaigning and taking test litigation. While this response is not comprehensive, we hope that it will give an overview of the areas where we believe that action is required.

2. It is worth noting at the outset that Liberty has concerns over the growing demonization of young people both in certain quarters of the media as well as in wider public discourse. Indeed the UN Committee on the Rights of Child which reported on UK compliance in September last year noted their concern at the "general climate of intolerance and negative public attitudes towards children, especially adolescents, which appears to exist in the UK, including in the media".<sup>341</sup> Sadly, it seems that negative stereotyping of young people has informed the development of much of the law and policy relating to children over recent years. This is especially so in the criminal justice sphere. Children it seems have become either "good" or "bad". Anti-social louts or innocent victims. Simplistic and cartoon-like type-casting is as unrealistic as it is unhelpful. Liberty takes the opportunity presented by this Inquiry to urge parliamentarians to desist from short-term point-scoring by 'playing politics' with our children.

#### PHYSICAL RESTRAINT

3. Liberty welcomed the Court of Appeal decision in July 2008 to quash Regulations that allowed the use of restraint techniques in Secure Training Centres. Introduced in 2004, the physical restraint methods (which allowed the pulling back of thumbs and short sharp shocks to the nose) were permitted where considered necessary to restore good order and discipline. While the Court of Appeal rightly held that the use of such techniques contravened Article 3 of European Convention on Human Rights<sup>342</sup> Liberty was hugely disappointed that despite the landmark Court of Appeal ruling, a Government review triggered by the deaths in custody of two children<sup>343</sup> (following the use of physical restraint) declined to rule out the use of such physical restraint when it reported in December 2008. Liberty is similarly disappointed that the Government—in response to the review—failed to take the opportunity to uphold the decision by the Court of Appeal.<sup>344</sup> Instead, the Ministry of Justice announced that two techniques that had been temporarily banned would be permitted for six months until "safer" techniques were identified. It is a national embarrassment that the most fundamental and inalienable right of all—the right not to be subjected to

<sup>334</sup> The recommendations of the Advisory Group included: examining the possibility of a bridging project, to transfer as many 16–17-year-old offenders from the courts to the hearings system; developing a broader range of interventions and programmes to be available to procurators fiscal and the courts in dealing with this group, reducing the use of custody and fines (and consequent fine default) in respect of 16–17-year-olds; improving multi-agency co-ordination; broadening the training of those involved in delivery; and increasing dissemination of information about the system: *Report of the Advisory Group on Youth Crime, op cit*, s. 2, para. 7.

<sup>335</sup> *Report of the Youth Court Feasibility Project* (2002).

<sup>336</sup> *Evaluation of the Airdrie and Hamilton Sheriff Youth Court Pilots* (Edinburgh, Scottish Executive, 2006).

<sup>337</sup> L Piacentini and R Walters, "The Politicization of Youth Crime in Scotland and the Rise of the 'Burberry Court'" (2006) 6(1) *Youth Justice* 43.

<sup>338</sup> L Piacentini and R Walters, "The Politicization of Youth Crime in Scotland and the Rise of the 'Burberry Court'" (2006) 6(1) *Youth Justice* 43, p 49.

<sup>339</sup> *Evaluation of the Airdrie and Hamilton Sheriff Youth Court Pilots*, para 4.2.

<sup>340</sup> L Adams, "Call to lift age limit on child hearings Scotland still lagging behind over 2002 UN findings" *The Herald*, 19 January 2008, p 5.

<sup>341</sup> Full report available at: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

<sup>342</sup> Incorporated into domestic law under the *Human Rights Act 1998* (HRA).

<sup>343</sup> For more information on the tragic deaths of Adam Rickwood and Gareth Myattsee [http://inquest.gn.apc.org/pdf/2008/INQUEST\\_press\\_release\\_restraint\\_review\\_report.pdf](http://inquest.gn.apc.org/pdf/2008/INQUEST_press_release_restraint_review_report.pdf)

<sup>344</sup> <http://www.justice.gov.uk/docs/govt-response-restraint-review.pdf>

torture, inhuman and degrading treatment—cannot be guaranteed for the most vulnerable in our society—our children, when they are entrusted into the hands of the state. The use of violent physical restraint techniques against children in detention is wholly unacceptable and Liberty urges the Committee to continue to treat this issue as a matter of urgent priority.

## CHILDREN & ASYLUM

### *Withdrawal of the UK's reservation to the CRC*

4. Liberty welcomes the Government's recent withdrawal of the UK's reservation to the UN Convention on the Rights of the Child (CRC). The reservation had reserved the Government's right, notwithstanding the provisions of the Convention, to legislate "as it may deem necessary" in respect of individuals who fall under immigration control, and in respect of matters relating to citizenship. The reservation dehumanised migrant children and was wholly unjustified.<sup>345</sup>

### *Duty regarding the welfare of children*

5. We also welcome clause 51 of the Borders, Immigration & Citizenship Bill (currently before Parliament) which mirrors the welfare duty contained in section 11 of the Children Act 2004. As the Joint Committee on Human Rights noted at the time:

"the exclusion of agencies dealing with asylum seeking children from the duty under [the Children Act] to promote the welfare of children... amounted to unjustified discrimination against asylum-seeking children on the grounds of nationality."

However while we welcome the inclusion of a duty to cover those in the immigration system, as currently worded, clause 51 falls short—only covering the treatment of children "who are in the United Kingdom". Immigration officials exercise many of their functions in relation to children outside of the UK.<sup>346</sup> Conscious of the frequent reports of abuse and heavy-handedness in the removals process Liberty believes that immigration officials and contractors should be subject to the same duties in their dealings with children when outside the UK as they are within the jurisdiction. Liberty has suggested an amendment to clause 51 which would extend the duty outside of the jurisdiction.<sup>347</sup> We sincerely hope that this amendment might be tabled in due course.

### *Children in immigration detention*

6. We are pleased that the Committee has decided to bring the detention of children in the asylum system within the scope of this inquiry. This is an important and pressing issue which has not received sufficient political attention, despite the dedicated work of a number of organisations specialising in this field.<sup>348</sup> We are particularly concerned about the amount of time people are spending in immigration detention, the failure to consider more proportionate alternatives to detention, the brutality experienced on journeys to and from airports and the lack of follow-up. Asylum-seekers and other migrants in the UK are entitled to the same essential human rights and freedoms as British nationals. Their rights can only be limited to the extent that is truly necessary and proportionate to the fair administration of the immigration system. This principle certainly applies no less to children than it does to adults.

7. The area of particular concern for children is the continued incarceration of children in immigration detention centres.<sup>349</sup> A report issued in 2007 by the Children's Rights Alliance for England and the National Children's Bureau highlighted the link between immigration detention and fear, distress, depression and physical sickness on the part of children subjected to it.<sup>350</sup> Earlier, the Children's Commissioner for England had stated, after visiting one detention centre, that it was "not possible to ensure that children detained in Yarl's Wood stay healthy, stay safe, enjoy and achieve, make a positive contribution and achieve economic well-being".<sup>351</sup>

<sup>345</sup> For more information see <http://www.liberty-human-rights.org.uk/publications/pdfs/liberty-consultation-response-keeping-children-safe-from-harm.pdf>

<sup>346</sup> This includes both at entry clearance posts and in the course of removals.

<sup>347</sup> See our briefing for Committee Stage of the Bill in the House of Lords:

<http://www.liberty-human-rights.org.uk/pdfs/policy-09/liberty-s-cte-briefing-on-the-borders-citizenship-immigration-bill.pdf>

<sup>348</sup> Cf Bail for Immigration Detainees (<http://www.biduk.org/>) and Refugee Council (<http://www.refugeecouncil.org.uk/>)

<sup>349</sup> The Refugee Council has estimated that over 2,000 children were detained in 2004, and that over 30% of children are detained for over seven days.

<sup>350</sup> *Meeting the obligations of the Convention on the Rights of the Child in England: Children and young people's messages to Government*, April 2007, p44-45, 70.

<sup>351</sup> Cited at eg Bail for Immigration Detainees, *Obstacles to Accountability: Challenging the Immigration Detention of Families*, June 2007, p 15.

8. The CRC Committee lent international support for a review of current policy in September 2008 stating:

“the Committee is concerned that as also acknowledged recently by the Human Rights Committee, asylum-seeking children continue to be detained, including those undergoing an age assessment, who may be kept in detention for weeks until the assessment is completed”.<sup>352</sup>

Liberty has consistently pressed for reform of the law in this area. We believe that the detention of adults and children for administrative convenience violates Article 5 of the HRA and is not justified. The impact of detention on children is particularly damaging and anecdotally Liberty aware of several horror stories concerning children who are detained in this way.

9. Another example of unsatisfactory law and policy in this area is the current practice for age-determination of asylum-seeking children. Under UK law, an unaccompanied child asylum seeker is entitled to be looked after by the local authority as a child, rather than dispersed around the country with adult asylum seekers. However, Home Office policy requires that if a local authority deems the individual to be an adult, the immigration authorities will allow that person to be detained as an adult and possibly deported or removed to a “safe” third country.

10. In September 2008 Liberty intervened in the Court of Appeal after two young asylum seekers brought a joint appeal against Croydon Borough Council and Lambeth Borough Council. “A” fled Afghanistan after his father was killed and he was forced to leave his home. Although a doctor calculated that he was 15 years old, Croydon Social Services claimed he was over 18 and refused to provide him with children’s support. He became homeless. “M” fled Libya in fear of political persecution and although the Asylum and Immigration Tribunal assessed him as under 18, Lambeth Borough Council denied him proper support after deciding he was an adult. The Court of Appeal considered if local authorities should retain sole responsibility for determining the age of unaccompanied child asylum seekers. Liberty argued that the current system is unfair because local authorities must take financial responsibility for child asylum seekers and so have a vested interest in deciding a refugee is an adult in an attempt to save scarce resources. Liberty suggests that a better solution would be the creation of specialist independent centres for the assessment of the age of asylum-seeking children. While the case was ultimately unsuccessful in the Court of Appeal an appeal is planned in the House of Lords.

11. The CRC Committee raised concerns in several other areas regarding the treatment of asylum seeking children including: “(b) a lack of data on the number of children seeking asylum; (c) no independent oversight mechanism, such as a guardianship system, for an assessment of reception conditions for unaccompanied children who have to be returned; (d) Section 2 of the 2004 Asylum and Immigration Act permits the prosecution of children over the age of 10 if they do not possess valid documentation upon entry to the United Kingdom”.

12. Liberty takes this opportunity to endorse the observations of the Committee and to press for reform of the treatment of asylum seeking children. Sadly, examples abound of Government policies and practices exhibiting disregard and disrespect for the rights of non-nationals, including non-national children.<sup>353</sup> One statutory provision which has given rise to serious human rights concerns with regard to children is Section 9 of the *Asylum and Immigration (Treatment of Claimants, etc) Act 2004*. This allows support to be withdrawn from a failed asylum-seeker, who may have dependant children, if the Home Secretary considers that they have failed to take reasonable steps to leave the UK voluntarily, even if that person’s children are then taken into care. In June 2007, the Government announced that, following unsatisfactory pilots, it would not be applying section 9 on a blanket basis in the future. The provision, however, remains in force and at the disposal of the authorities.

13. We cannot ignore, in this context, the stigmatisation and marginalisation of asylum-seekers and other immigrants evident in certain quarters of British society. This may be attributed in part to the misrepresentation of such people by elements of the media as a drain on public resources, a threat to British identity, and even a danger to our health and national security.<sup>354</sup> Such stereotyping encourages prejudice, and injures both the individuals targeted and society as a whole.<sup>355</sup> However, the media cannot be held solely responsible for the ignorance and ill-will towards migrants that colours some sections of public opinion. Politicians and officials are guilty too. The “politics of asylum” has operated both to encourage hostile public perception and to undermine the developing values and law of human rights in the UK. Migrants have been treated in inhumane, degrading and discriminatory ways as a result of laws passed by Parliament, policies pursued by Government and decisions taken by officials. As we creep closer to a General Election, Liberty has issued an Election Asylum Pledge which we urge all MPs and parliamentary candidates to sign.<sup>356</sup>

<sup>352</sup> <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

<sup>353</sup> Cf our comments in Liberty and Education Action, *Evidence to the Joint Committee on Human Rights: Treatment of Asylum Seekers*, October 2006.

<sup>354</sup> Cf our comments in Liberty and Education Action, *Evidence to the Joint Committee on Human Rights: Treatment of Asylum Seekers*, October 2006.

<sup>355</sup> See the website of the Information Centre about Asylum and Refuge (ICAR):

<http://www.icar.org.uk>

<sup>356</sup> <http://www.liberty-human-rights.org.uk/issues/5-asylum/liberty-asylum-election-pledge.shtml>

## CHILDREN AND LAW ENFORCEMENT

*Custody*

14. In their UK report the CRC Committee expressed concern that the number of children deprived of their liberty in the UK is high indicating that detention is not a measure of last resort. Liberty has similar concerns. Custody should and must be the last resort for children. We do not intend to rehearse the arguments for custody as a last resort: the legal, moral and practical imperatives are well documented. However, despite this, and despite high recidivism rates for those institutionalised at a young age, Liberty is concerned that political point-scoring continues to dominate the youth justice agenda. Only last year we witnessed calls for presumptive custodial sentences for knife possession for under 18s. Not only would such a policy directly conflict with the UK's obligations under international human rights law<sup>357</sup> the approach also belies a fundamental understanding about the root cause of much of the knife possession among young people.

15. Liberty welcomes the CRC Committee recommendations that the UK “develop a broad range of alternative measures to detention for children in conflict with the law; and establish the principle that detention should be used as a measure of last resort and for the shortest period of time as a statutory principle”.<sup>358</sup> Liberty would urge the Government to take heed of this recommendation and, at the very least, to desist from legislating to allow for the increased imprisonment of young people—many of whom resort to knife possession through fear and intimidation.

*ASBOs*

16. Liberty's concerns over the use of ASBOs are well documented. We believe they mix criminal and civil law, set people up to breach them, are increasingly counterproductive and used as a panacea for all ills. Our concerns over section 30 of the *Anti Social Behaviour Act 2003*, which gives police the power to disperse groups of people, are similar in that there is no need for any individual to be suspected of involvement in criminal activity before being subjected to a dispersal order. Breach of an order (such as by returning to the area) is a criminal offence. Similar to an ASBO, the behaviour leading to breach does not have to be criminal.

17. When the *Crime and Disorder Act 1998* was passed the ASBO was intended to be a targeted response to a specific problem. It would be used to address difficulties faced by individuals in using traditional civil law remedies such as an injunction to prevent anti-social behaviour. Instead the state would take action on the individual's behalf through the ASBO. Since then the civil order (with breach a criminal offence) has been seen as the answer to nearly every problem of crime or disorder. There has been a constant and persistent blurring of what constitutes criminal activity and a continued move away from the courts as the mechanism for imposing preventative and punitive sanctions.

18. ASBOs and other non prosecution alternatives are more effective if targeted, such as being used as a “last chance” to avoid a criminal record. The problem with over-use and over-reliance on these orders is that, rather than providing an alternative to prosecution, they become a fast track to criminality. The study on ASBOs carried out by the Youth Justice Board published in November 2006 found that “nearly half of the young people whose case files were reviewed, and the vast majority of young people who were the subjects of in-depth interviews, had been returned to court for failure to comply with their order. The majority had “breached” their ASBO on more than one occasion”.<sup>359</sup> Ever increasing extension of and reliance on non-criminal orders is likely to exacerbate the many concerns highlighted in the Youth Justice Board report. Indeed the CRC Committee last year called for a review of ASBOs with a view to abolishing their application to children.<sup>360</sup>

*Youth Justice and the Government's Youth Crime Action Plan*

19. In October 2008 the Government consulted on their cross-governmental Youth Crime Action Plan. Liberty has concerns about both the tone and the substance of the Youth Crime Action Plan. Much of the terminology and wording belies a worrying attitude towards young people's use of public spaces. Similarly the pitch of the consultation seems to further reinforce an “us” and “them” approach to the young, divorcing

<sup>357</sup> Article 37(b) of the Convention on the Rights of the Child (CRC) states that: “The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”.

<sup>358</sup> *Ibid.*

<sup>359</sup> <http://www.yjb.gov.uk/publications/Resources/Downloads/ASBO%20Summary.pdf>. Despite evidence that ASBOs are proving counter-productive the Government seems determined to create ever more civil orders to deal with the behaviour of young people. Government amendments have recently been introduced to the Policing & Crime Bill which would create another civil order that could restrict clothing, movements and associations of young people. Sadly, the conditions envisaged are more akin to those permitted under a control order than an ASBO. Liberty will be commenting on these amendments in more detail in our Report Stage Briefing for the Policing & Crime Bill in the House of Commons.

<sup>360</sup> The Committee also called for a review of the use of Mosquito devices: “The Committee recommends that the State party reconsider the ASBOs as well as other measures such as the mosquito devices insofar as they may violate the rights of children to freedom of movement and peaceful assembly, the enjoyment of which is essential for the children's development and may only subject to very limited restrictions as enshrined in article 15 of the Convention”. Liberty along with the Children's Commissioner is currently campaigning for Mosquito devices to be banned: <http://www.liberty-human-rights.org.uk/issues/young-peoples-rights/stamp-out-the-mosquito.shtml>

“young people” from a benign and passive “public” or “community”. Liberty believes that this approach reinforces divisions between generations and does little to further the twin aims of addressing youth crime and victimhood.

20. One of the recommendations contained in the consultation was that police should be urged to use all discretionary powers at their disposal in dealing with young people. Police powers legislation has, over recent years, become increasingly broad and discretion based. While the use of professional discretion has always been a necessary part of day to day police work, broadly defined discretionary powers are not a boon for police. In fact they can place huge and onerous pressures on police who are required to use their coercive powers in accordance with human rights principles of necessity and proportionality. Community policing and policing the young, in particular, involves sensitive operational judgments. The importance of good policing relations with the young cannot be underplayed and heavy-handed or overuse of policing powers does not sit easily with this objective. The Youth Crime Action Plan consultation itself recognised the problems of disengagement and mistrust citing an ACPO and youth training project in Norfolk where “before the session young people were skeptical of the police with 70% saying that the police didn’t understand the things that matter to young people”.<sup>361</sup> This is perhaps a telling verdict on the scant regard to policing engagement inherent in over-broad legislation. Liberty believes that additional Government pressure to make use of all powers available at all times sends a confusing and unfair message to police who are often better placed to judge the use of their powers on a case-by-case basis.

21. The consultation also proposed engaging young people with street-based teams of youth workers and ex-gang members. Liberty welcomes practical and realistic proposals to engage with young people engaged or at risk of engaging in criminal activity. We are however concerned at the vague additional proposal that “where there is a failure to comply, street-teams will be able to employ increasingly tough punishments”. It appears from the consultation that a street-based approach to policing has been piloted in the Camden Borough of London with a focus on early intervention in conflicts between young people principally through mediation and encouraging productive activities. It is not clear from the pilot example what “compliance” refers to. It is also unclear what powers “street-teams” will have, who will authorise any such powers and what accountability structures (if any) will govern their work. If no new legislation is anticipated we imagine that that the Community Safety Accreditation Schemes (CSAS) will be used. CSAS were introduced in the *Police Reform Act 2002*. They allow civilians to be given powers traditionally reserved for the police. Council officers, private security guards, NHS trusts and housing associations and others can be accredited by authorisation of a Chief Constable. So far 1,400 people nationwide have been given these powers. We are deeply concerned by the continued growth of a system that allows the exercise of summary powers (such as the imposition of on-the-spot fines) by people who lack the training to deal with potentially confrontational situations. We are especially concerned at the use of this ‘policing on the cheap’ system to deal with young people. Handing out summary punishments can inflame a volatile situation. We are also concerned by the lack of proper accountability, particularly when accreditation is given to those in the private sector. If someone wishes to make a complaint about a police officer or PCSO they can go to the police station and ultimately have recourse to the Independent Police Complaints Commission (IPCC) if necessary. It is not clear how “street teams” might be accountable. While Liberty supports efforts to divert young people away from the criminal justice system we are extremely wary of any further moves towards summary justice style powers or the extension of powers to those that are unaccountable and untrained.

22. The government consultation also dealt with perceptions about the youth justice system, stating: “we must tackle perceptions that the youth justice system is too lenient”. It also pointed out that when members of the public are given the full facts of cases they tend to suggest less severe sentences than those received. We entirely agree that public mistrust and misunderstanding of the sentencing system, both for adults and the young, is problematic. For the sentencing of young people, the necessary emphasis on rehabilitation and avoidance of custody means that public perceptions of “being soft on crime” are a continuing concern. There is, of course, no easy solution to these perception problems. However part of the problem, certainly when a custodial sentence is inevitable, arises from a lack of clarity in the sentencing process. When a custodial sentence is passed, the language used rarely reflects the actual period to be spent in custody. Sentences of youth custody, though relatively uncommon, often involve significant publicity. If the language of sentencing reflected the likely custodial period it would help improve public confidence in sentencing policy.

23. The consultation also identified greater public involvement in community sentencing. It suggested, for example, that the public might be able to identify appropriate community sentence projects. Within the scope of appropriate activity for community sentence work we agree this might be a useful way of ensuring positive outcomes from community sentencing. We would, however, be concerned to see “local people having more opportunity to see . . . action being taken to tackle youth offending” if the action involves gimmicks such as brightly coloured boiler suits. Public shaming of those subject to community sentences is neither necessary nor proportionate.

24. The consultation further proposed that judges and magistrates are to be encouraged to use their discretion to remove reporting restrictions. The purpose of this is, “to improve the transparency of the youth

<sup>361</sup> Page 45 of the consultation document.

justice system". Article 40(2)(b)(vii) of the United Nations Convention on the Rights of the Child (UNCRC) states that defendants under the age of 18 should have the right to privacy at all stages of criminal proceedings. Any reversal of this presumption should have a strong public policy basis. We do not accept that a vaguely expressed desire to improve transparency can provide justification for removing the presumption of reporting restrictions or for failing to comply with the UNCRC.

#### CHILDREN & EQUALITY

25. Liberty welcomes plans for an Equality Bill that we understand is due for publication later in this parliamentary session. As there is no text yet available our comments here will be limited. While there will be much to welcome in the proposed Bill, statements from Ministers so far have indicated that the unified equality protections and duties due to be consolidated within the Bill will exclude those under 18. Liberty can see no principled or practical reason for children to be excluded from an Equality Bill. While there may be areas where exceptions to the non-discrimination principle are required<sup>362</sup> Liberty does not see why these cannot be exactly that—exceptions—instead of a general exclusion of those under 18 from non-discrimination. If the Government is serious about protecting young people, including those under 18 within statutory non-discrimination protections is an ideal place to demonstrate their intention. Exclusion here will certainly send the wrong message.

#### CHILD PROTECTION & CHILD PRIVACY

##### *Retention of DNA*

26. The CRC Committee noted with concern that: "data regarding children is kept in the National DNA Database irrespective of whether the child is ultimately charged or found guilty".<sup>363</sup> Liberty has consistently lobbied for reform of the DNA retention regime in England & Wales. DNA can currently be taken from anybody arrested for a recordable offence. Once taken, DNA samples and profiles can (and in the vast majority of cases are) retained indefinitely. We have consistently argued that proportionality needs to be built in to any retention scheme. The principle of proportionality should inform (a) whether a DNA profile is to be retained and (b) the duration for which the profile should remain on the database. You might, for example, expect that the DNA profiles for those convicted of the most violent and sexual offences be retained indefinitely. Relevance, seriousness, and propensity for re-offending should inform retention regulation.

27. Our arguments on DNA retention have now been supported by the European Court of Human Rights in the judgment in *S and Marper*<sup>364</sup> in which Liberty intervened. The Court held that the indefinite retention of innocent people's DNA on the NDNAD was a breach of Article 8 of the ECHR. The Government is now obliged to review the current regime to ensure compliance with the judgment. While the Home Secretary has announced that those under 10 will be removed from the database, Liberty is concerned that the Government is going to stop short of implementing a proportionate retention regime that adequately reflects the stigmatisation of children whose DNA profiles are held. There is little doubt that the under 10s must be removed—they are, after all, below the age of criminal responsibility and so retention on a crime detection and prevention database is totally indefensible. With regard to children, Liberty believes that the Government should go further. DNA is hugely intimate and the retention of DNA by the State represents a shift in the relationship between the individual and the State in each individual case. Maintaining a distinction between DNA retention for adults and children would recognise the stigmatisation of DNA retention.<sup>365</sup> As such, we believe that there should be a separate regime for the taking and retention of DNA from those under 18. Specifically: the State should not seek to take DNA from children unless there are exceptional circumstances; and a presumption in favour of DNA profile removal should exist at the point of reaching 18.

##### *ContactPoint*

28. On 26 January 2009, Ministers announced that ContactPoint (formerly known as the Children Index) was commencing the first stage in delivery. ContactPoint is the name given to the database created under the *Children Act 2004*. The genesis for the database was Lord Laming's report into the death of Victoria Climbié in January 2003. It should be emphasised that there is little dispute over the professed policy driver behind the creation of the database. The idea that appropriate information sharing could and should take place between appropriate bodies with issues of concern being flagged for action was and remains absolutely non-contentious.

<sup>362</sup> For example non discrimination in the provision of goods and services would require an exception to prevent the sale of alcohol to those under 18.

<sup>363</sup> At paragraph 36 of the Committee's concluding observations.

<sup>364</sup> Judgment was handed down on 4th December 2008: <http://www.bailii.org/eu/cases/ECHR/2008/1581.html>

<sup>365</sup> Liberty expressed concern last year after Gary Pugh, Director of Forensic Sciences at Scotland Yard and the DNA spokesman for the Association of Chief Police Officers (ACPO), suggested that DNA could be taken from children as young as five if they demonstrated behavioural problems in the classroom: "You could argue the younger the better. Criminologists say some people will grow out of crime; others won't. We have to find who are possibly going to be the biggest threat to society". The full interview can be found at: <http://www.guardian.co.uk/society/2008/mar/16/youthjustice.children>



29. Liberty's concerns relate to the necessity and potential counter-productivity of the plan and the sheer volume of data that is to be retained. At the heart of the proposals for a universal child database was the implicit suggestion that the previous law was insufficient. The existing relevant statutory express provisions allowing information had been contained in the *Children's Act 1989* and the Data Protection Act 1998 (DPA). The DPA, for example, explicitly allows information sharing in order to protect the vital interests of the person about who the information is held or to assist with the prevention and detection of crime. It is therefore misleading to imply that information sharing was prohibited before the *Children Act 2004*. What Victoria Climbié's case did demonstrate was a serious lack of understanding, resource and training by the care professionals involved.

30. Nonetheless, the creation of a centralised database containing information on every child has pressed ahead. Regulations made under the *Children Act 2004* in 2007 set out in more detail the functioning of the database. Schedule 1 of the Regulations provides the information that will be held on the database,<sup>366</sup> and Schedules 2 and 3 provide who will have access to the database.<sup>367</sup> As with any mass informational database, privacy (and security) implications flow from the type of information contained and the access regime permitted. As established, a very broad range of individuals has the potential to access the database including bodies involved in the criminal justice system. We are not clear how this access regime equates with the stated aim of an index to facilitate contact between care professionals. In addition many granted access to ContactPoint are not professional and therefore not accountable to any professional body.

31. While Liberty agreed that steps were needed to improve child protection including an appropriate information sharing regime for children at risk, we did not see the justification for the creation of a database encompassing information on every child in England. The creation of a database, and information sharing per se, cannot by themselves address child protection problems. We also felt that the creation of a mass informational system with scope for the retention and dissemination of huge amounts of data could be counter-productive. Too much information could mean children genuinely at risk could be overlooked. Liberty also has ongoing concerns about the security of ContactPoint. Over the past 18 months large volumes of personal information has been lost by Government. Improper access to an insecure centralised index containing information on every child in England could be hugely damaging. A centralised database containing sensitive information on all children would be a honeypot for those wishing to do children harm.

February 2009

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### Memorandum submitted by Mencap

#### 1. INTRODUCTION

1.1 Mencap welcomes the opportunity to contribute to this inquiry.

1.2 Mencap is the leading charity working with children and adults with a learning disability, their parents and carers. We are fighting for a world where everyone with a learning disability has an equal right to choice, opportunity and respect, with the support they need.

1.3 Mencap is concerned that children and young people with a learning disability have not secured the fundamental right to feel safe in their schools or local community. Research shows that the incidence of bullying of children and young people with a learning disability is extremely high.<sup>368</sup>

1.4 Mencap's view is that all children with a learning disability have a right to feel safe. We support the recommendations of the UN Committee on the Rights of the Child in 2008<sup>369</sup> that the UK Government and devolved administrations must prioritise the safeguarding of disabled children.

1.5 Mencap wants the Government to take action to ensure that children with a learning disability secure their fundamental right to feel safe.

#### 2. BULLYING OF CHILDREN AND YOUNG PEOPLE WITH A LEARNING DISABILITY

2.1 In 2007, Mencap undertook a survey of 507 children and young people with a learning disability aged eight to 19 years. The workshops were held in 46 schools across England, Wales and Northern Ireland to find out more about their experiences of bullying in and out of school. This is the first time that so many children and young people with a learning disability have been asked about their experiences of bullying in the UK.

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<sup>366</sup> This includes: name, address, date of birth, contact details for parents and carers, school attended, GP practice, other practitioners/services working with the child.

<sup>367</sup> Huge numbers will have access to the database including children's charity employees, local authority employees, police force employees, teachers, probation officers etc.

<sup>368</sup> Mencap (2007) *Bullying Wrecks Lives: the experiences of children and young people with a learning disability*.

<sup>369</sup> Committee on the Rights of the Child (2008) Consideration of reports submitted by States parties under Article 44 of the Convention: Concluding Observations.

2.2 The results of the survey showed that 8 out of 10 children with a learning disability had been bullied.<sup>370</sup> This is twice as likely as for other children.<sup>371</sup>

2.3 The research revealed that children with a learning disability are bullied wherever they go; not just in school but in the street, the park and on public transport. eight out of 10 children with a learning disability said they were scared to go out because of bullying.

2.4 Six out of 10 children with a learning disability said they had been physically hurt by bullies, in many cases this could be classified as assault or abuse “I had to be taken to hospital to have 18 stitches in my forehead.”

2.5 Seven out of 10 children and young people with a learning disability are verbally abused.

2.6 Four out of 10 children with a learning disability said the bullying didn’t stop even when they told someone. One child told Mencap “I told my teachers at school and they said I had special needs so I should get used to it as I would get bullied all my life.”

2.7 Mencap’s research showed that over half of the children with a learning disability who had been bullied stopped going to the places where the bullying happened. This increased their isolation and restricted their opportunities.

2.8 *Case Study:* Ben is a young man aged 15 with a learning disability who experienced persistent bullying both verbal and physical. This happened both in and out of school. The ongoing bullying left Ben terrified to go outside. Having previously been an independent young man, he began to have recurring nightmares and refused to leave the house. Whenever he heard children’s voices outside he would cower and beg his mum not to let them near him. Last year Ben and his Mum moved to a new home in a different area. Ben, now aged 19, is receiving counselling to help him deal with the ongoing distress that the bullying has caused.

2.9 The effects of disablist bullying are pronounced and in many cases it is preventing children with a learning disability from living full and happy lives. Children with a learning disability do not feel safe in school or their local communities.

### 3. PREVENTING AND TACKLING BULLYING OF CHILDREN WITH A LEARNING DISABILITY

3.1 Mencap research on Disability Equality Schemes shows that promoting disability equality and eliminating discrimination and harassment is not a priority for schools.<sup>372</sup>

3.2 The Disability Discrimination Act (2005) places a new duty on schools to show how they are promoting disability equality. This duty is a key lever in combating bullying and promoting well-being so that children feel safe in school.

3.3 Mencap has found that only 1 in 40 schools have a Disability Equality Scheme.

3.4 Mencap has found evidence of confusion over legal obligations with the vast majority of Disability Equality Schemes produced by schools being in fact Accessibility Plans.

3.5 Mencap’s contact with schools shows that they are not clear of their responsibilities. The requirement to promote disability is not being taken as seriously as the parallel duty to promote racial equality.

### 4. MENCAP’S RECOMMENDATIONS

4.1 Mencap wants the Government to take action to ensure that children with a learning disability secure their fundamental right to feel safe.

4.2 Mencap recommends that in accordance with the 2008 report of the UN Committee on the Rights of the Child, the Government must prioritise the safeguarding of disabled children and ensure that a robust national strategy is in place.

4.3 Mencap recommends that the Government must ensure that schools and local authorities comply with the law by promoting disability equality and taking action to eliminate harassment, bullying and discrimination.

4.4 Mencap recommends that within the forthcoming Equality Bill, the Disability Equality Duty on public authorities retains its status and is not weakened by the removal of any of the strands currently on the face of the legislation or by a more generalised equality duty.

<sup>370</sup> Mencap 2007 *Bullying Wrecks Lives: the experiences of children and young people with a learning disability*.

<sup>371</sup> Department for Education and Skills 2003, *Tackling Bullying: Listening to the views of children and young people in schools*.

<sup>372</sup> Mencap (2008) *Just not a Priority: schools and disability equality*.

4.5 Mencap recommends that Ofsted makes disability equality a priority when inspecting schools and local authorities and is robust in its assessment of how local authorities are contributing to the well-being of disabled children.

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#### **Memorandum submitted by the National Association of Head Teachers**

1. The National Association of Head Teachers (NAHT) welcomes the opportunity to submit evidence to the inquiry into Children's Rights. The Association represents members across the 0–19 age range and beyond and, as such, is well placed to comment on this issue.

2. The overwhelming majority of school leaders and teachers choose careers in education because of a genuine desire to help children and young people fulfill their potential and lead successful, productive lives. It is therefore no surprise that school leaders and teachers are amongst the most vociferous campaigners for and defenders of the rights of children and young people.

3. It is a matter of great regret to the NAHT that inequalities remain in the British education system and that some children continue to find school a source of disappointment and frustration instead of a source of support and inspiration.

4. Schools work hard each and every day to provide a safe environment for and uphold the rights of the children and young people in their care, but schools do not exist in isolation. Too often the inequalities and social problems that exist outside the school walls arrive through the school gates.

5. Schools attempting to tackle issues such as racism, homophobia, violent and abusive behaviour often find themselves in the unenviable position of contradicting the deeply held convictions of whole families and communities—not simply individual children.

6. When dealing with issues as complex as bullying and social inclusion, innovative approaches are required; this is why NAHT has been championing the UNICEF *Rights Respecting School* agenda which aims to both inform and empower children and young people and promote responsible behaviour, cooperation and active citizenship.

7. Whilst schools are rightly committed to the promotion of equality for all, it is necessary for organisational and safeguarding purposes that schools are able to restrict certain activities on the basis of age.

8. Having highlighted some areas where schools can and do have a significant impact in upholding the rights of children and young people, there are other areas where schools and school leaders are powerless to remedy flaws in the system.

9. Many school leaders are concerned about shortages of provision and/or support for students with disabilities and/or special educational needs. Short stay educational provision is in short supply and many “mainstream” schools are struggling to provide adequately for those students whose difficulties present as disruptive or dangerous for other pupils.

10. Poverty and other forms of disadvantage continue to have a significant impact on engagement with education. Whilst schools can offer extended services, advice and in some cases a child's only hot meal, their ability to overcome the impact of generations of underachievement is limited.

11. The increased emphasis on multi-agency working and co-operation between children's services is welcomed—however—many school leaders have good reason to question the reliability of these new arrangements due to a lack of resources. Too many children wait too long for the support they desperately need due to funding or staffing shortages across the public services.

12. NAHT would be pleased to provide oral evidence to the Committee and expand upon the topics highlighted above.

February 2009

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#### **Memorandum submitted by National Children's Bureaux (NCB)**

##### **1. ABOUT NCB**

1.1 NCB promotes the voices, interests and well-being of all children and young people across every aspect of their lives. As an umbrella body for the children's sector in England and Northern Ireland, we provide essential information on policy, research and best practice for our members and other partners.

##### **1.2 NCB aims to:**

- challenge disadvantage in childhood;
- work with children and young people to ensure they are involved in all matters that affect their lives;

- promote multidisciplinary cross-agency partnerships and good practice;
- influence government policy through policy development and advocacy;
- undertake high quality research and work from an evidence-based perspective; and
- disseminate information to all those working with children and young people, and to children and young people themselves.

1.3 NCB has adopted and works within the UN Convention on the Rights of the Child.

1.4 In 2003, NCB was commissioned by the Youth Justice Board for England and Wales (YJB) to produce a report on the use of physical intervention within secure settings for under 18 year-olds.<sup>373</sup> The purpose of the report was to describe and analyse the approaches to restraint in STCs, Young Offender Institutions and secure children's homes to support the YJB in ensuring a more consistent approach.

1.5 In 2007, NCB was commissioned by the YJB to work in conjunction with them to assess current safeguarding policy and practice across the secure estate.<sup>374</sup>

1.6 In 2008, NCB was commissioned by the Department of Children, Schools and Families to undertake a review of Restrictive Physical Intervention in Secure Children's Homes.<sup>375</sup>

## 2. CHILDREN IN DETENTION

2.1 Before considering the treatment of children<sup>376</sup> within secure settings, we would like to comment on the various ways that children enter such a setting. Reasons for placing a child in secure care may include punishment, protection of the child and/or the public, treatment and rehabilitation. They may also be detained for immigration purposes, but we are not addressing such children within this submission.

2.2 Although the nature of locked institutions for children varies, they are a feature of most Western societies. Public authorities are faced with challenges about how best to provide services for children whose behaviour or needs are so extreme that they represent a risk to themselves or to society. The causes of such behaviour are complex, incorporating a range of psychosocial factors including: poor mental health; severe personal and social deprivation; physical, sexual or emotional abuse; intellectual impairment. One response to these challenges is to place such children in locked residential establishments. This denies children their liberty and is expensive. It is therefore important that such a step is taken only when necessary, and that the types of locked provision available are fit for purpose in addressing the child's problematic behaviour and the unmet needs that may be causing it.

2.3 There are three main systems through which children and young people in England can be placed in a secure setting:

- *Criminal justice*. From the age of 10 years, children can be remanded or sentenced to a period in custody because they have committed an offence.
- *Welfare*. Children can be detained in a secure children's home because they are deemed to be a risk to themselves or others and are likely to abscond from an open setting.
- *Psychiatric*. Children can be compulsorily detained in a psychiatric unit in order to receive treatment for a mental illness. There is a range of in-patient provision, including secure and forensic units.

Different legal processes and professionals are involved in each case, although there may be considerable overlap in the needs of the young people and individual young people may also spend time in more than one type of locked institution.

2.4 Responses to young people's challenging behaviour appear to have changed over recent years in England, with increases in secure custodial and psychiatric provision alongside a decline in welfare placements. Since 1992 there has been a 90% increase in children and young people in custody,<sup>377</sup> with 2,905 remanded or sentenced in October 2008. Meanwhile, there has been a declining number placed in secure children's homes on welfare grounds: only 60 such children were accommodated in England at 31 March 2008. The number of overall psychiatric in-patient beds for children increased by 26% between 1999 and 2006, when there were 91 units with 1,128 beds. The proportion of bed increases was most significant in the forensic, independent and specialist sector with a decline in the number of beds for younger children.<sup>378</sup> It is difficult to establish the numbers of children who are compulsorily detained, particularly as significant numbers are still being cared for on adult wards (30,000 in 2005–06).

<sup>373</sup> Hart, D and Howell S (2003) *Report to the Youth Justice Board on the use of Physical Intervention within the Juvenile Secure Estate* www.yjb.gov.uk

<sup>374</sup> *A Review of Safeguarding in the Secure Estate 2008*. www.yjb.gov.uk

<sup>375</sup> Hart, D (2008) *Restrictive Physical Interventions in Secure Children's Homes*. www.everychildmatters.gov.uk

<sup>376</sup> For reasons of brevity, we are using the term "children" to refer to children and young people under the age of 18

<sup>377</sup> NACRO (2006) *Reducing custody—a systemic approach*

<sup>378</sup> Department of Health (2006) *Report on the implementation of standard 9 of the National Service Framework for Children, Young People and Maternity Services*

2.5 The rationale for this distribution of secure provision is unclear: research has shown that the “risk factors” are virtually the same across settings/pathways for a spectrum of poor outcomes including mental health problems, offending behaviour and out of home care.<sup>379</sup> It is known that children in the care system are over-represented in custodial populations but the reasons for this are poorly understood.<sup>380</sup> There is also an over-representation of children with mental health<sup>381</sup> or learning difficulties<sup>382</sup> in the criminal justice system. There are gaps in our understanding about the processes that determine the specific destinations for individual children.

2.6 The overlap between their needs suggests that children within the three pathways to secure care may be to some extent the “same” children who could have been diverted down a different route if their challenging behaviour had been defined differently. This is important because the nature of the secure setting chosen has implications for the type of intervention that will be offered and the ways in which the child will be perceived subsequently.

2.7 Recent studies on the use of secure children’s homes in England and Wales<sup>383</sup>,<sup>384</sup> Scotland<sup>385</sup> and Northern Ireland<sup>386</sup> reveal a lack of clarity about the intended outcomes of such placements, other than to keep the child and society safe. The extent to which the child would receive therapeutic intervention or other services to tackle the unmet needs that placed them at risk was often difficult to identify. This raises questions about whether the child is any better able to cope on release and whether intensive intervention in the community would in some cases be a viable alternative.

2.8 Child welfare systems are determined by a nation’s theoretical framework for understanding the reasons for troubled or troublesome children.<sup>387</sup> For example, a study looking at the incarceration of young people in England and Finland found that, although there were ostensibly low rates of custody in Finland, a “shadow” youth justice system was in operation whereby troubled and troublesome young people were more likely to be compulsorily detained than in England in a range of psychiatric or social care institutions.<sup>388</sup>

2.9 In its 2008 examination of the UK’s compliance with the UN Convention on the Rights of the Child, the UN Committee on the Rights of the Child recommended that the state party should develop a range of alternative measures to custody (para 78a).

2.10 NCB supports this recommendation and is calling for an Inquiry, overseen by the JCHR, into the right of troubled and troublesome children to effective support. This would be based on evidence about the best way of identifying and meeting their needs and the response they currently receive within the UK. In particular, we would like to question existing policy and provision for children entering secure care. Do all such children need to be deprived of their liberty and, if so, are the types of establishment where they are placed fit for purpose in meeting their needs?

### 3. PHYSICAL RESTRAINT

3.1 The recent *Independent Review Of Restraint in Juvenile Secure Settings*<sup>389</sup> for the government described the inconsistent approaches within custodial settings for children and made a number of recommendations for change, most of which have been accepted by government. NCB contributed to the review by undertaking a separate examination of restrictive physical intervention in secure children’s homes and we welcome many of its findings. There are a number of areas, however, where we feel children’s rights may continue to be jeopardised.

3.2 Following the *Review*, two new methods of physical restraint will be developed: one for use in YOIs and the other in STCs. Both will include an element of pain for use in exceptional circumstances. We wish to raise a number of concerns about this decision:

- NOMS have been asked to develop an Adapted control and restraint (C&R) technique for YOIs with four stages of intervention: defusion, non-painful techniques, pain-complaint techniques and debriefing. C&R is currently based solely on pain-compliance and is widely held to be effective by NOMS and prison service personnel. We would question whether they are best placed to develop and fully implement an alternative that requires such a different approach. The main focus of

<sup>379</sup> NACRO (2008) *Some facts about children and young people who offend—2006*.

<sup>380</sup> Darker, I., Ward, H., and Caulfield, L. (2008) An analysis of offending by young people looked after by local authorities. *Youth Justice*, 8 (2): 134–148.

<sup>381</sup> Hagell, A (2002) The mental health of young offenders. *Bright futures: working with vulnerable young people*.

<sup>382</sup> Talbot, J (2008) *No-one Knows: Experiences of the Criminal Justice System by Prisoners with Learning Disabilities and Difficulties*

<sup>383</sup> Held, J Consulting Ltd (2006) *Qualitative Study: the use by Local Authorities of Secure Children’s Homes*. Research Report 749. Department for Education and Skills.

<sup>384</sup> Deloitte (2008) *Developing the Market for Welfare Beds in Secured Children’s Homes: DCSF Research Report RR055*. Department for Children, Schools and Families

<sup>385</sup> Walker, M. Barclay, A. Hunter, L. Kendrick, A. Malloch, M. Hill, M. and McIvor, G. (2005) *Secure Accommodation in Scotland: its role and relationship with “alternative” services*. Scottish Executive

<sup>386</sup> Sinclair, R and Geraghty, T (2008) *A Review of the Use of Secure Accommodation in Northern Ireland*.

<sup>387</sup> Gilbert, N. (1997) (ed.) *Combating child abuse: International Perspectives and Trends*.

<sup>388</sup> Pitts, J and Kuula, T (2006) *Incarcerating Young People: An Anglo-Finnish Comparison*. *Youth Justice*. 5 (3): 147–164

<sup>389</sup> Smallridge, P and Williamson, A (2008) *Independent Review Of Restraint in Juvenile Secure Settings*. MoJ & DCSF

NOMS is adult offenders and they do not have expertise in the psychological or physical needs or young people. A previous attempt to pilot a non-pain compliant method was unsuccessful and we suggest a different approach is needed if that experience is not to be repeated.

- The prison service have been asked to develop the new method for use in STCs, Again, we would question whether they have sufficient expertise in children’s physiological and psychological needs.
- STCs have not hitherto been authorised to use pain-complaint techniques but the new system will alter this by introducing wrist locks. We would question the evidence that such techniques are needed.
- Although it is intended that pain complaint methods will be used only following a risk assessment and will be closely monitored, experience suggests a tendency to resort to the “heaviest” methods available. It is difficult to ensure that any monitoring arrangements are sufficiently rigorous to identify situations where restraint, or specific techniques, have been used unnecessarily. This is particularly difficult for external/independent monitors who were not present when the incident took place and are dependent on the quality of recording.

3.3 In its 2008 examination of the UK’s compliance with the UN Convention on the Rights of the Child,<sup>390</sup> the UN Committee on the Rights of the Child expressed concerns about the use the physical restraint in secure institutions and urged the UK Government to:

*“ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished”* (para 39).

3.4 The two most recent reports by the Joint Chief Inspectors<sup>391,392</sup> have also expressed concern about restraint, in residential as well as custodial settings, and have recommended that the government issue guidance emphasising that restraint should not be used to gain compliance and should not rely on pain compliance.

3.5 The *Independent Review* referred to in para 3.1 above only considered restraint in custody: restraint in other settings has not been reviewed and neither has the topic of solitary confinement. There continues to be a need for such a review.

3.6 NCB continues to be concerned about the criteria for the justifiable use of restraint. Although the STC Rule change to allow STCs to use restraint in order to ensure “good order and discipline” has been rescinded, it continues to be a legally justifiable reason in schools and YOIs. NCB contends that the restriction on the use of restraint to “risky” situations is an essential safeguard; the term “good order and discipline” is not defined and therefore open to abuse. Although the government has accepted the *Review* recommendation to re-examine relevant legislation and guidance, this is only in relation to the secure estate. It will allow the re-analy of education staff, including those working within custodial or social care establishments, operating this lower threshold for the use of restraint.

3.7 NCB contends that there is a conflict between the YJB Code of Practice on behaviour management<sup>393</sup> and the Prison Service rules on the Use of Force<sup>394</sup> regarding the legitimate grounds for using restraint. A fundamental principle of the Code was that restraint should be used only where there was a clear and specific risk—and never simply to secure compliance with staff instructions. The PSO allows for the use of restraint if a child refuses a “lawful order” if it jeopardises the “good order” of the establishment.

3.8 The decision to order a fresh inquest into the death of Adam Rickwood<sup>395</sup> would suggest that the justification for the use of restraint is contentious in law. No timescale has been established for any revised guidance and staff report some difficulty in interpreting the guidance on the criteria for using restraint as it stands. Even when the guidance is amended, staff will be required to interpret the criteria on a case-by-case basis. There is a need for an informed debate on the situations where restraint is justified, particularly in relation to children who are not presenting an immediate risk of injury to themselves or others. This would provide greater clarity for both staff and children.

<sup>390</sup> UN Committee on the Rights of the Child (2008) Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain & Northern Ireland [www.ohchr.org](http://www.ohchr.org)

<sup>391</sup> CSCI (2005) Safeguarding Children: the second joint Chief Inspectors’ Report on arrangements to safeguard children [www.safeguardingchildren.org.uk](http://www.safeguardingchildren.org.uk)

<sup>392</sup> Ofsted (2008) Safeguarding Children : the third joint Chief Inspectors’ report on arrangements to safeguard children. [www.safeguardingchildren.org.uk](http://www.safeguardingchildren.org.uk)

<sup>393</sup> Youth Justice Board for England and Wales (2006) Managing Children and Young People’s Behaviour in the Secure Estate: A code of practice <http://www.yjb.gov.uk>

<sup>394</sup> The Use of Force. (Prison Service Order 1600). HM Prison Service

<sup>395</sup> R v HM Coroner for the North and South Districts of Durham and Darlington [2009] EWHC 76 (Admin)

3.9 NCB is calling for a rights-based review of approaches to children's behaviour management across all relevant services. This should include schools, residential settings, foster care, hospitals, secure establishments, police and immigration detention centres. Such a review must consider the circumstances when it is legitimate to use restraint, strip searching and single separation and the safety, effectiveness and impact of particular methods. This will require research evidence, which is currently lacking.

February 2009

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**Memorandum submitted by the National Organisation Circumcision Information Resource Centre of Northern Ireland**

I welcome the opportunity to participate in a call for evidence by the Joint Committee on Human Rights regarding the current problems experienced by children in the United Kingdom and the protection of their human rights.

I am writing you concerning those children in our society who are subjected to genital mutilations at an age when they are incapable of providing consent, who are further discriminated against on the basis of their parents cultural background and a lack of factual information.

There are many charities involved in education and raising awareness in this area of child health and human rights we work nationally and internationally. We come from a variety of background and include members of the Jewish, Muslim and Christian communities. Many of us became involved in this work because we are parents of damaged children and only became aware of the facts after our children had surgery. As you can imagine this work is extremely difficult due to the taboos surrounding the discussion of the genitals in general, due to the religious and cultural aspects of these practices and due to the most intimate nature of the problems experienced by survivors.

Whilst being equally concerned about the genital mutilation of all children I will focus on the circumcision of male children as currently there is some degree of protection for female children due to a greater public awareness of the harmful nature of the procedure, the excellent work of FORWARD and the development of the Metropolitan Police's, Project Azure.

Currently however there is a total lack of a public knowledge that male circumcision is harmful to the developing child and the adult he will become.

10 years ago Baroness Jenny Tonge speaking in the House of Commons said that the eradication of both practices was essential.

“Speaking from a medical point of view, it would be helpful if, when we campaign for the abolition of genital mutilation, we included male genital mutilation. I am sure that the hon. Gentleman would agree that there is no medical reason for male circumcision. Many small boys are seriously damaged by that operation being done by unlicensed practitioners and people who do not know how to do it properly. It may broaden the issue and make it easier for certain cultural groups to accept if we go for both forms of operation, not just one of them.”

Although there are those who have argued that circumcision is benign, the Canadian Children's Rights Council is quite clear on the damage caused by male genital mutilation. With Finland calling for an outright ban until the child is old enough to consent.

Circumcision often causes an ulceration at the urethral opening (meatal ulceration), affecting 20% to 50% of all circumcised infants. In many cases, the opening narrows (meatal stenosis), although it may take years for the condition to be noticed. The normal urinary stream in the male is a spiraling ribbon. The urinary stream in meatal stenosis is needle-like, prolonged and frequently associated with discomfort.

Circumcision also affects sexual pleasure. The inner layer of the foreskin produces smegma, which keeps the glans soft. Without its protective and moisturizing cover, the sensitive glans becomes dry and leathery, resembling skin instead of a mucous membrane. In addition to maintaining glans sensitivity, an intact, mobile foreskin also provides indirect stimulation during intercourse.

Recently *More 4 News* reported on the circumcision of a male child by a mechanic in the community in England and at a recent conference in London, the Metropolitan police confirmed that deaths have occurred from male circumcision nationally.

Many parents believed and still do that genital mutilations are beneficial for the health and well being of their children however, UK courts have interceded in the past to protect the best interests of children whose parental belief systems have put children at risk.

In June 2007 the British Medical Association which had previously offered general guidance on male circumcision stated:

“That any decision to provide medical or surgical treatment to a child, or any decision to withhold medical or surgical treatment from a child, should: consider the ethical, cultural and religious views of the child’s parents and/or carers, but without allowing these views to override the rights of the child to have his/her best interests to be protected.”

Male circumcision was not specifically mentioned in this guidance however it cannot be in the best interest of a child to be subjected, without its consent, to an irreversible surgical procedure, which has proven adverse consequences both in terms of potential complications for some and reduced penile sensation in adulthood for all.

In September 2008, a new campaign was launched in London with members of those working nationally and internationally in this area. Paul Mason the Children’s Rights commissioner for Tasmania stated that

“Unnecessary genital surgery on babies is said to be cheaper and easier than on adults. All abuse of babies is easier. They are powerless and history will judge us by how we protect the powerless.”

It is always beneficial not to carry out surgery when there are other non-invasive alternatives. A recent series of circumcisions for religious reasons in an NHS facility reported an 18% complication rate.

The overall rate of significant complications for circumcision may be of the order of 2%–10%. Complication rates of up to 55% have however been reported for circumcision. Recent studies have reported sexual dysfunction rates of 27% to 38% secondary to male circumcision.

Whilst having every respect for those from diverse cultural backgrounds doctors have legal and ethical duties to their child patients to render competent medical care based on what the patient needs, not what someone else expresses. The majority of parents and doctors work with the best interests of their children at heart however many parents and doctors have been sadly misinformed and are uneducated in this area.

Nick Malone of the Sexual Problems Clinic in Edinburgh Royal Infirmary has said:

“If the good doctors brushed up on their science a little, we could bypass these tiresome refutations and focus on more pertinent issues of legality, human rights and consent.”

It may be argued, with some degree of persuasiveness, that religious circumcision must be made available through doctors to minimise the harm. The high rates of complications for circumcisions in NHS hospitals and the later high rate of sexual dysfunction remind us that male circumcision is a traditional practice prejudicial to the health of children.

The Female Genital Mutilation states that in applying the law,

“no account shall be taken . . . that the operation is required as a matter of custom or ritual.”

Clearly then we have discrimination when it comes to protecting boys whose parents come from the Jewish or Muslim faith.

Parents asserting their right to circumcise their children assert that their right to manifest one’s religious beliefs is guaranteed by article 9 of the European Convention on Human Rights (ECHR). That article of the ECHR however includes a permission to restrict that right where necessary to protect the rights and freedoms of others. Such a restriction is appropriate to protect children from the harm inherent in circumcision.

It is quite clear that like female genital mutilation male genital mutilation is a harmful traditional practice in the sense of Article 24(3) of the UN Convention on the Rights of the Child and is discriminatory under Section 75 of the Northern Ireland Act.

Circumcision, of male or female children is only ever justified if the patient’s life is at risk if it is not performed—for example if there is a tumour or a gangrenous infection and if the patient is a sexually active and psychologically sound adult, and provides proper consent after being fully informed of all potential consequences.

This is a question of children’s rights over their own bodies this is a choice they must all be allowed to make for themselves as adults.

In December 2008 members of the National Organisation Circumcision Information Resource Centre of Northern Ireland and NORM UK met with the Commissioner for Children and Young People in Northern Ireland to discuss the problems with regard to lack of consent of the child, lack of informed consent of parents and ways in which children could be empowered in this area.

The original reasons to make dissociation between the practices of male and female genital mutilation were pragmatic because it was believed at the time that the fight against female genital mutilation would be more difficult if male circumcision was also challenged. This has proved not be the case as despite legislation 15,000 female children are still at risk in the UK therefore education is central for the eradication of these practices.



On 2 March we will have new base in Belfast in Bryson House to continue education and outreach in this area.

I trust that the committee will look at this area as a matter of urgency before another child dies.

February 2009

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### Memorandum submitted by the National Secular Society

#### CHILDREN'S RIGHTS

This revised submission, which is not confidential, is made in response to the Call for Evidence on Children's Rights, set out in Press Notice No. 3, Session 2008–09, 17 December 2008. In order to observe the word limit we have had to allude to areas of concern in broad terms, but have added a bibliography of URLs to support our evidence and to provide further information.

While we acknowledge that this is only a short enquiry, we hope that the Committee will take the opportunity to consider whether—as we contend—there are some very much broader issues that need to be acknowledged as areas requiring further scrutiny. The broader issues, while more difficult to pin down, are probably more insidious than most specific direct discrimination.

At the broadest level, some of these questions of children's rights also involve the rights of parents and go to the very heart of the modus operandi of the educational system. It operates in significant ways to the detriment of both non-religious parents and children, and to people—whether religious or not—who do not want their child to be educated mainly with others of one faith or in a school with a religious ethos. Another consequence of the Government's policy on encouraging a greater number of religious schools is the near-inevitability of new faith schools that are of a minority faith. Most will not only be almost entirely mono-faith, but largely mono-ethnic and mono-cultural. To impose a duty on schools to promote cohesion operating within a system that must by its nature avoid cohesion is the very opposite of joined-up government. The policy will also contribute, quite unnecessarily and without any saving of resources, to community tensions at a time when avoiding them could not be of a higher priority.

The submission below opens by questioning the strength of the Government's commitment to the Convention on the Rights of the Child, examines the religious context, addresses discrimination on specific religious matters, and concludes by noting they raise much broader questions.

#### *How committed is the Government to conforming to the UN Convention on the Rights of the Child?*

“When taken in its entirety, the evidence given by Baroness Morgan of Drefelin on the Human Rights of Children to the Joint Committee on Human Rights (24 March 2009, Q101–Q111) seems to us to reveal a disturbingly cavalier attitude on the part of the Government to Children's Rights. When pressed about the incorporation of the Convention into UK law, Lady Morgan assured the Committee that “[the Government is] extremely committed to making the UN Convention on the Rights of the Child a reality”. She then outlined a number of piecemeal “vehicles” (referring to legislation and [non-statutory] policy) and concluded “we do not see that we need to incorporate the Convention into law in order to honour the obligations”.

This evidence session would lead any objective observer to doubt the Government's commitment to conform to all of its Convention obligations. The shortfall was evident both conceptually and in specific practical matters. An example of the latter was Lady Morgan seeking to justify requiring children aged 15 to worship against their will by citing practical difficulties about establishing which pupils were of sufficient maturity, understanding and intelligence—despite Baroness Walmsley dismissing this obstacle effectively in the debate on the Education and Skills Bill. We agree with Baroness Walmsley that there is no substance behind the claimed practical difficulties, leaving uncomfortable questions about the real motives for the Government's continued reliance on this pretext.

Furthermore, the JCHR has repeatedly branded such attempted justifications by the Government as illegitimate, for example, in terms such as “Administrative burdens alone do not meet the necessity requirement for interference with the rights of children to respect for their Article 9 ECHR rights”. It is clear that the Government intends to continue forcing older children to worship against their will in the full knowledge that this contravenes their Human Rights. So it is no wonder that the Government is doing everything it can to avoid being made statutorily accountable for conforming in all respects to its Convention obligations.

Indeed, when Rt Hon Beverley Hughes MP<sup>396</sup> has referred to the “... arduous process of incorporating it all together in one big piece of legislation, which would frankly be a completely fruitless task”, and the Baroness (Q109) makes a spurious commitment about “making the [UNCRC] a reality” while showing equal reluctance to incorporate the Convention into UK Law, the Government has all too clearly demonstrated its disingenuousness on this important matter.

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<sup>396</sup> (Minister of State for Children, Young People and Families) in the debate on Children and Young Persons Bill, 24 June 2008, at Col. 46 <http://www.publications.parliament.uk/pa/cm200708/cmpublic/children/080624/pm/80624s01.htm>

## RELIGIOUS CONTEXT

According to a National Centre for Social Research study:<sup>397</sup> “Two thirds [of 12–19 year olds] do not regard themselves as belonging to any religion, an increase of ten percentage points in as many years (from 55 per cent in 1994 to 65 per cent in 2003). The comparison with 2003 shows how rapidly adherence is dissolving.” This hugely significant result is broadly confirmed by an earlier study of 29,124 young people in years nine and ten in which 58% either disagreed or were uncertain about the proposition *I believe in God*.<sup>398</sup> The number of young people under 20 attending church halved in just sixteen years from 1989 (1,518,000) to 2005 (760,000).<sup>399</sup> Anglican Sunday school attendance has dropped from 1.4 million in 1944 to much less than 0.1 million now.<sup>400</sup> The scale of these reductions taken together with a school system that is, if anything, catering more for the religious causes Human Rights concerns. The wider context is that adult church attendance has been continuously declining in Britain for 60 years and this is independently forecast to continue; normal Sunday attendance in 2050 will be less than 90,000 (sic). More detailed statistical information will be provided on request.

## COLLECTIVE WORSHIP AND RELIGIOUS EDUCATION

We are concerned about the requirement in the School Standards and Framework Act 1998, s 70, for every school pupil each day to take part in—not merely attend—an act of collective worship. We believe it is an abuse of the rights of children of any age for the state to require them to worship. We have recently received a distressed letter from a parent in Bedfordshire illustrating these concerns, given in Appendix 1, paragraph 2 onwards.

and accordingly:

*Recommendation 1: That the requirement in School Standards and Framework Act 1998, s 70 for each school pupil each day to “take part in” an act of collective worship be removed.*

Under the Education and Inspections Act 2006, s 55, the Government allowed pupil opt-out, but only for pupils restrictively defined as “sixth form pupils”, which definition inappropriately linked it to the compulsory school age. We believe this runs counter to older children’s rights, as—for example—in *Gillick v West Norfolk and Wisbech Area Health Authority*. We commend the support given by the JCHR for amendments to the Education and Inspections Act 2006 to permit pupils with sufficient maturity, understanding and intelligence to make an informed decision to be able to withdraw themselves from Collective Worship.

We record in Appendix 2 the objections cited by the Government and Conservative peers during the Education and Skills Bill in Summer 2008 to acceding to the JCHR’s recommendations on self-withdrawal of pupils of sufficient maturity, intelligence and understanding—together with our ripostes. The JCHR’s recommendations were broadly in line with our Recommendation 2. Such withdrawal from academies is not statutory and does not apply in funding agreements to all academies.

*Recommendation 2: That the pupil opt-out for Collective Worship initiated in the Education and Inspections Act 2006 s 55 be extended by changing “sixth form pupil” to “competent pupil” which should be defined as a pupil with sufficient maturity, understanding and intelligence to make an informed decision about whether or not to withdraw themselves from Collective Worship. The opt-out should be extended to Religious Education.*

*Recommendation 3: Withdrawal from Collective Worship and Religious Education by both parents and older pupils should be a statutory right in all maintained schools and academies. It should be made mandatory to make this clear in the school prospectus and on the school website and forbidden to discourage the exercise of this right.*

Provisions for determination under the SSFA 1998 (Schedule 20) do not seem capable of being applied to situations where no religious worship (as opposed to non-Christian worship) is considered more appropriate, which could, but may not necessarily, be to promote cohesion. We are aware of a school in Monkseaton, Tyneside, which has been refused permission to opt out of Collective Worship. We can also see that some may argue for allowing multiple determinations where a school has a significant proportion of pupils from a number of faiths, but the more this occurs, the less cohesive the school will be. In a recent case in Meersbrook, Sheffield,<sup>401</sup> disputes over Collective Worship led to the head teacher’s absence from school for many months and then resigning, as did the Chair of the Board of Governors. This would have

<sup>397</sup> <http://www.dfes.gov.uk/research/data/uploadfiles/RR564.pdf> Young People in Britain: The Attitudes and Experiences of 12 to 19 Year Olds (Publ 2004) ISBN 1 84478 291 3

<sup>398</sup> The Fourth R for the Third Millennium Education in Religion and Values for the Global Future Ed LJ Francis J Astley and M Robins Publ. Lindisfarne Books (2001) ISBN 1-85390-507-0, Table 1, more fully reported in L.J. Francis The social significance of religious affiliation among adolescents in England and Wales (University of Bangor)

<sup>399</sup> Religious Trends published by Christian Research No 6 2006/2007 derived from Table 5.7

<sup>400</sup> Religious Trends published by Christian Research No 2 2000/2001 derived from Table 2.15

<sup>401</sup> <http://www.guardian.co.uk/education/2009/feb/10/secondarieschools-schools> Guardian 10 February 2009 (Headline: Sheffield teacher quits over multi-faith assembly. “Attempt to promote tolerance” resulted in racism accusations after hymns included in joint Christian and Muslim worship.)

been avoided if Collective Worship had not been mandatory. A Muslim, who has a sister at the school, said: “When Mrs Robinson took over she said she wanted one assembly for all the students. We didn’t have a problem with that, but wanted a [secular] assembly where no hymns were sung and topics involving all the children could be discussed. But after a while, hymns were introduced again and we objected.”

*Recommendation 4: Collective Worship should be abolished for schools and academies without a religious character. Attendance at Collective Worship for schools and academies with a religious character should be made entirely optional. Pressure on pupils to attend should be expressly forbidden.*

An objective analysis of Religious Education shows it to be heavily centred on promoting religion. The Non-Statutory Framework for Religious Education itself devotes only about four lines in 50 pages or so to “a secular world view”. Two of these four passing references are further diminished by the addition of the phrase “where appropriate”. The combined effect of these paltry references is to all-but dismiss or ignore the non-religious majority.

Unsurprisingly, text books based on the Framework show a similarly distorted view. We can provide extracts from one of, or possibly the, leading GCSE *vade mecum* based on this Non-Statutory Framework which devotes less than half a page out of 150 pages to non-belief. Symptomatic of the tone of the volume is its disturbingly negative stance on homosexuality, failing to balance negative religious positions with views from religious and other people that homosexuality is a natural variation.

The foundations of the Framework are “learning about religion” and “learning from religion”. The latter seems to translate in both the Framework and material deriving from it into:

- (a) everything that is good is religious in origin
- (b) people who are not religious are lacking and
- (c) practically no thought process is complete without considering the religious aspect.

A short extract from this leading text book is reproduced in Appendix 5. The last words, from the section on homosexuality, read “always support your view with teaching” which would lead most adults, let alone young people, to assume that the only “correct” answer is the very narrow religious one they portray.

The combined effect of this whole approach must be irrelevant, disturbing or offensive to the high proportion of both parents and pupils who are not religious or do not rely on religious sources for their moral compass. It is therefore unsurprising that the NSS is receiving a growing number of complaints from parents about the increasingly proselytising nature of RE. There also appears to be an element of subject creep by including topics only peripherally appropriate for RE such as the environment—apparently giving the misleading impression that only religious people care about the planet and suggesting that those who do should be religious.

As must be obvious from the decline of religious adherence not matched by any reduction in the statutory religious requirements in schools, many parents are unhappy that RE is in reality Religious Instruction, albeit more subtly packaged than when the subject had that more honest description and was openly confessional. The normal riposte to such complaints is to point to the statutory right of withdrawal, but in practice to exercise it would be put the child under unreasonable pressure. Parents are reluctant to withdraw their children from either CW or RE unless they are mature older secondary pupils, as otherwise they are likely to be ostracised or bullied—sometimes even by staff. The combined effect is that many parents are forced to permit their children to be subjected to passive or even active proselytisation and they write to us to say this causes them great distress. We have even had evidence of a Church of England school requiring pupils to pray three times a day.

Lord Adonis implies that RE is always objective:

“I simply note that there is now a non-statutory national framework\* for religious education (NFRE) which seeks to ensure that it constitutes a broad and balanced understanding of religion. More local standing advisory councils on religious education are now adopting syllabuses based on the framework\*.” (Lords Committee stage 21 July 2008: Cols 1607–08).

Schools Minister Jim Knight has written similarly in reply to the JCHR.

We disagree with these Ministers that RE is objective, and are not alone in holding this view. At Committee, Lady Walmsley pointed to the fallacy:

“If all RE lessons *were* of the [objective, critical and pluralistic manner] described by [Jim Knight] in his letter, we would probably not be speaking to these amendments today, but they are not. In many schools, they are mainly or even fully directed at one particular religion, and, instead of teaching about religion, they teach that the religion in question is the one true religion.”

We note that although the subject has been renamed Religious Education, it remains Religious Instruction in Voluntary Aided Schools. There is not even any requirement to teach about other religions, far less that there are people who do not see any necessity to have one. It should be remembered that pupils attending

these schools may not come from families wanting any religious education, far less confessional instruction. Voluntary aided schools of a religious character are not statutorily required even to refer to other denominations or other faiths—still less to that significant proportion of the population who are religiously unconcerned or not religious. It should especially be borne in mind here that many pupils in such schools do not hold religious beliefs. In a large number of counties, the majority of primary schools are Church of England schools and the only practical one for young children to attend.

*Recommendation 5 (requiring legislative changes but pending the wider changes proposed in Recommendation 6): No maintained school should be permitted to teach only about the school's designated religion, but must devote a reasonable proportion of time to other religions and non-religious perspectives. Confessional teaching should not be permitted.*

SACREs do not allow as of right non-religious representatives to be members, and any non-religious representative does not have a vote. Even if non-religious representatives did have votes, they could expect to be outvoted on any proposal for a “non-religious” determination even if the majority of the parents do not want a religious element in assembly. The non-religious are completely excluded from this process. This is a fundamental flaw in the SACRE provisions.

*Recommendation 6 (requiring legislative changes): Religious Education should be replaced with Philosophy and Ethics, and its “predominantly Christian” nature removed. The new subject should be made part of the national curriculum and the Non-statutory Framework for RE should be withdrawn. Guidance to the new National Curriculum subject should be written by independent academics representative of society as a whole rather than overwhelmingly by religious representatives. SACREs should be abolished. (As noted elsewhere, some move towards this has occurred in a new GCSE,<sup>402</sup> suggesting some appetite to respond to our changing society.)*

It is all-but impossible to achieve the statutory right of withdrawal in RE. The frequent references in the non-statutory religious framework to links to other subjects, show an increasing tendency for RE to appear in one guise or another in other subjects. There have been complaints in the press about Creationism being taught in science lessons<sup>403</sup> and not merely in response to pupils' questions. Unfortunately, debates involving both subjects would be expected to give undue deference to religious sentiments and therefore those advancing the scientific perspective would be hampered. In these circumstances we reluctantly conclude no debate at all in science lessons would be better. We have even had a complaint recently of RE being introduced into music lessons. This gives rise to the following recommendation:

*Recommendation 7: No other subject than RE should be used as a means of conveying religious teachings.*

(By this we do not exclude reasonable cross-curricular references to religious belief, but we do wish to exclude intrusions of dogma that would prompt those of other religions or none to withdraw from the lesson—for example, the explanation of geological layers as being laid down in the Noachian flood.)

## ACCESS

### *Discrimination against the non-religious in access to schools*

We recognise that many church schools are popular among those who are able to attend them. We believe that most of their popularity results from their ability to exclude less welcome pupils through their privileged admissions arrangements. Thus, having a higher proportion of able, aspirant, well-supported and well-adjusted pupils they are usually, but not always, able to produce better exam results. This in turn will create more demand for places, which will increase applicants and potentially allow the selection of yet more gifted pupils. It is now an accepted duty of middle class life that parents feel forced to play the game, feign belief and attend church (and contribute to the collection) in order to obtain the necessary certificate. One school insisted on 48 attendances per annum. We are convinced that what parents want is good schools, not religious schools.

The more church schools benefit in this way from their privileged entry criteria, the greater the disadvantage to community schools in the same catchment area.

On a broader front, we are convinced that non-religious parents (by some measures, the majority) are at a material disadvantage relative to parents who are, or claim to be, religious when applying for school places. The entry criteria for religious schools are privileged over those for community schools, because:

- (a) they enable priority to be given to religious pupils from far away against local pupils who are not from religious families, and
- (b) they permit the use of “Vicars' Certificates”, that facilitate covert selection. We can prove cherry-picking takes place: further independent information provided on request.

<sup>402</sup> <http://www.telegraph.co.uk/education/educationnews/5039275/Druids-Rastafarians-and-atheists-in-new-religious-studies-classes.html> 24 March 2009

<sup>403</sup> <http://www.telegraph.co.uk/education/educationnews/4961698/Creationism-should-be-taught-in-science-lessons.html>

We are not suggesting that there should be a corresponding privileged entry to community schools for those who are disadvantaged in their entry to religious schools, but the fact that there is not such an entry for them means that children without such privileged access to religious schools are, overall, disadvantaged compared with those who have one.

It should not be forgotten that the school places from which they most likely to be excluded are the most sought-after in oversubscribed schools. Indeed the number of religious schools in some areas such as London is disproportionately high. In maintained secondary schools, over 20 per cent of places are in Christian schools, whereas only eight per cent of the population in London attend church on an average Sunday.

More church schools are being built, despite a major fall in the number of teenagers and despite church attendance being in decline for 60 years—and forecast by Christian research to continue declining precipitately. By any measure, the extent of this decline is hugely significant. In 1990, the number of church attenders in Britain on an average Sunday was 1,667,200. It is currently (end 2008) around 600,000 and is forecast to continue to fall rapidly, by 2050 to fall to 14,300 (sic).<sup>404</sup>

In contrast, the non-religious are a large group, as demonstrated in the Context section above.

Given these figures, it is clear that the non-religious are at a major and growing disadvantage in our publicly-funded educational system, probably to an extent to which their Human Rights are infringed.

Our interim recommendations on access are:

- prohibit discrimination on grounds of religion and belief in school admissions
- prohibit interviews of any kind, or reference to religious officials in school selection
- prohibit parents being asked to signify their support for the ethos of a school as part of the admissions process
- introduce a formal system to accurately and fairly gauge local support for new schools and conversions of schools, to which the local education authority should have due regard and could be subject to judicial review for disregarding.
- local authorities should be required to extend the equivalent of denominational transport concessions to those parents specifically seeking a school without a religious character where their nearest school is one of a religious character, and to display the availability of such concessions with equal prominence given to those of denominational transport concessions.

We will shortly prepare a paper to elaborate on measures to combat a) the disadvantage suffered by parents not wishing their children to be exposed to a religious ethos and b) systemic undermining of cohesion, particularly in relation to minority faith schools.

*April 2009*

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#### **Memorandum submitted by the National Society for the Prevention of Cruelty to Children**

The National Society for the Prevention of Cruelty to Children (NSPCC) is the UK's leading charity specialising in child protection and the prevention of cruelty to children. The NSPCC's purpose is to end cruelty to children. We seek to achieve cultural, social and political change—influencing legislation, policy, practice, attitudes and behaviours for the benefit of children and young people. This is achieved through a combination of service provision, lobbying, campaigning and public education.

The NSPCC exists to end cruelty to children through a range of activities which aim to:

- help children who have suffered abuse overcome the effects of such harm;
- prevent children from suffering abuse;
- prevent children from suffering significant harm as a result of ill-treatment;
- help children who are at risk of such harm; and
- protect children from further harm.

We have teams and projects throughout England, Wales and Northern Ireland. Their work includes:

- Providing telephone support for C&YP via ChildLine.
- Providing telephone support for adults concerned about the welfare of a child

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<sup>404</sup> UK Christian Handbook—Religious Trends No 7 2007/2008, published by Christian Research (ISBN 978-1-85321-176-8, Table 12.7.1)

- Providing support for vulnerable children, young people and their families to help keep these C&YP safe and well cared for
- Providing services for children, young people who need help to overcome the impact of abuse.

#### CHILDREN'S HUMAN RIGHTS

The NSPCC seeks to promote children's human rights in our direct services and public influencing activities. We consider that the UK Government has made some progress in accepting the need to embrace a culture of respect for children's rights but there is still a very long way to go; for example Article three of the United Nations Convention on the Rights of the Child (UNCRC), the right for the child's best interests to be given primary consideration, is not well established in English law and practice. The UK Government has an obligation to implement the UNCRC in full; we consider that this should include incorporating the convention into domestic law and making provisions for the convention rights to be enforced through the courts. The NSPCC shares the concerns expressed by the UN Committee on the Rights of the Child about the lack of systematic awareness of the Convention among children, parents and professionals who work with children.<sup>405</sup>

All children should be protected from abuse or maltreatment, in accordance with Article 19 of the UNCRC. When children experience abuse they should have access to therapeutic interventions to help them to overcome its effects and move forward with their lives. In 2008, the UN Committee on the Rights of the Child recommended that the UK Government should provide access to adequate services for recovery, counselling and reintegration for children who experience abuse and maltreatment.<sup>406</sup> The NSPCC is aware of significant problems in the availability of therapeutic services for abuse recovery including low availability of services for children and young people; a lack of specialist services and where specialist services are provided it is often when a child or young person is showing more severe symptoms of mental health and behaviour problems. Children living in rural areas and young people from ethnic minority backgrounds find that services are even less accessible.

In this submission we focus on our experience of providing services to children in detention, children seeking asylum and children who have been trafficked into the UK and whose rights to protection are therefore being breached. In our experience, these are some of the most vulnerable children in our society, many of whom experience abuse and maltreatment. They are often "invisible" to mainstream services and wider society, but we all share a responsibility to safeguard and promote the protection and rights of these children. We also highlight the need to give children equal protection from assault.

#### CHILDREN IN DETENTION

It is an established principle in the UNCRC that children in youth justice settings should always be treated as children first and that the best interests of the child should be paramount in all decisions that affect children in these settings. The UN Committee on the CRC concluding observations' establishes the principle that detention should be used as a measure of last resort and for the shortest period of time as a statutory principle.<sup>407</sup> The NSPCC considers that most children in custody do not need to be locked up to protect others from serious harm. Ministry of Justice data<sup>408</sup> shows that the number of juveniles sentenced has risen by 4% since 2006 and by 23% since 1997 and there has been a 56% rise in the number of female juveniles sentenced between 1997 and 2007. The NSPCC recommends that the resources that are currently put into locking up low-risk children should be diverted into community-based initiatives; the use of prison accommodation for young people should be gradually phased out and the Government should adopt a child welfare and children's rights approach to youth justice, instead of the punitive approach that it currently uses.

The NSPCC is working in partnership with the Children's Rights Alliance for England (CRAE) and INQUEST to call for a ban on the use of painful restraint techniques on children in secure settings. In July 2008 we contributed to the Court of Appeal case *RC v Secretary of State for Justice*,<sup>409</sup> and we have been campaigning to raise awareness of the issue with the public and parliamentarians. We were extremely disappointed that the Review of Restraint in Juvenile Secure Settings concluded that in certain "exceptional circumstances" there is still a place for pain-compliant restraint.<sup>410</sup> The NSPCC considers that restraint should only be permissible where necessary to prevent significant personal injury to the child or another person; this should always be a measure of last resort and for transparent, narrowly defined purposes which should be set out in regulation. The Government has now committed to revising the entire system governing the use of pain restraint however; we remain concerned that the Government's response has failed to

<sup>405</sup> United Nations Committee on the Rights of the Child, concluding observations: United Kingdom of Great Britain and Northern Ireland available at: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

<sup>406</sup> *Ibid.*

<sup>407</sup> *Ibid.*

<sup>408</sup> <http://www.justice.gov.uk/docs/sentencing-statistics-2007.pdf>

<sup>409</sup> *R (C) v Secretary of State for Justice* [2008] EWHC 171 (Admin), CO/6174/07.

<sup>410</sup> Available at: <http://www.justice.gov.uk/docs/restraint-review.pdf>

acknowledge the importance of safeguarding children's human rights.<sup>411</sup> A new system of restraint must include essential safeguards to ensure that children's safety, their human rights and their physical and emotional wellbeing are upheld. In particular the NSPCC is calling on the Government to:

- End the use of pain restraint or distraction techniques across the entire secure estate and implement an explicit legal prohibition of corporal punishment of children in the secure estate.
- Accept the Appeal Court's finding that the amendment rules breach children's human rights, and prohibit restraint for the purpose of maintaining good order and discipline and ensure when reviewing legislation and guidance that this is upheld.
- Introduce clear and consistent minimum standards, guidance and training across the entire secure estate. The Government needs to establish a culture where de-escalation techniques are used and staff feel confident and equipped to use discussion and negotiation to deflect conflict.
- Establish an Article 3 public inquiry into the unlawful use of restraint on children.
- Establish rigorous monitoring of restraint to ensure it is not used unnecessarily and publish these findings for independent scrutiny.
- Ensure that all children who have been restrained are able to access the appropriate support including therapeutic interventions and advocacy services if necessary. The Government must also ensure that there is independent monitoring of the treatment of all children in custody.

#### CHILDREN WHO ARE ASYLUM SEEKERS OR REFUGEES

In line with their status in the CRC, refugee and asylum-seeking children are children first and foremost. The asylum process should not in any way compromise or militate against their proper care, protection and development. We have direct experience of working with asylum-seeking and separated children in our young people's centres, advocacy projects and therapeutic services.

The NSPCC publicly commended the Government for its decision to remove the immigration reservation to Article 22 of the UNCRC. We regard this as an important step towards rectifying some longstanding violations of children's rights. As the Government announced the withdrawal of the immigration reservation only in September 2008 it is too early to assess fully the practical implications of this decision. The NSPCC recommends that the Government should introduce the following measures to safeguard and promote the welfare of children seeking asylum:

- The asylum system should be reviewed and a child-rights approach should be developed to ensure that asylum-seeking or separated children receive the help and support they need to make their application, and recover from the trauma they have experienced.
- All separated children<sup>412</sup> should have access to an independent guardian who can provide support through the asylum screening process.
- Asylum seeking children should never be detained for the purposes of immigration control. Detention, even for a short time is damaging to their physical and emotional health
- Families should not be split for the purposes of immigration control. This includes separating families by detaining certain family members or by forcing families to return separately.
- Asylum seeking children should be afforded the same rights and protection as other children. Currently they are the only group of children the DCSF is not responsible for, this should be amended immediately.
- A specialist support system is needed, including better access to culturally sensitive counselling services, especially for those children who may have experienced torture, political violence and other forms of persecution.
- Asylum seeking children should not be forcibly returned to their country of origin. All decisions about whether to return a child should be based on the principle of best interests.
- Refugee families should receive the same level of income support as other families so that they have the same ability to provide for their children's needs.

#### CHILD TRAFFICKING

The NSPCC has considerable expertise and knowledge of trafficking which comes both from direct services and policy influencing. Our Sexual Exploitation Service (SES) based in East London works with children who have been sexually exploited and are separated from their families and "unaccompanied" children who have been trafficked. We also run the Child Trafficking Advice and Information Line (CTAIL), which helps immigration officers, the police, social workers, and others working or volunteering with

<sup>411</sup> Government's response to the report of the Parliamentary Joint Committee on Human Rights on restraint, dated 17 July 2008.

<sup>412</sup> Separated children are children under 18 years of age who are outside their country of origin and separated from both parents or their previous legal/customary primary caregiver. Some children are totally alone while others may be living with extended family members. All such children are separated children and entitled to international protection under a broad range of international and regional instruments.

children to identify and protect victims of trafficking. The service is funded by the Home Office and Comic Relief, and runs in partnership with the Child Exploitation and Online Protection Centre (CEOP) and End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes (ECPAT UK).

We are concerned that there is a lack of awareness and identification of trafficked children and a lack of support and care available to them. In general we have found that without specific advocacy children who have been trafficked do not trigger an appropriate child protection response. We consider that there is an urgent need to improve the immediate response to children who are identified as having potentially been trafficked to stop such high numbers of these children going missing. We are also concerned that the long-term recovery of those children who have been identified is marred by an unsympathetic and punitive asylum process which discounts much of their evidence of trafficking. We have supported a number of trafficked children who have needed to claim asylum in order to remain in the UK and who have had their claims rejected.

Since our last submission to the Joint Committee on Human Rights in 2006, we remain concerned that a focus on immigration control continues to take precedence over concerns about the welfare of trafficked children and a child protection and child rights-based response to their situation. In this respect we have so far been disappointed by the Government's approach to implementing the Council of Europe Convention on Action against Trafficking in Human Beings, which has been a very narrow and legalistic application of the Convention that we do not consider to be in keeping with the victim-centred spirit and purpose of the Convention itself. There exist a number of special protection measures recommended in the Convention that the Government has so far failed to deliver including offering children the benefit of the doubt in age assessments or implementing elements of best practice such as guardianship and the appointment of a "National Rapporteur".

The NSPCC is concerned that trafficked children maybe inappropriately criminalised. We are aware of problems with children who have been trafficked into the country for the purpose of labour exploitation—specifically children who have been made to work in cannabis factories—who are then prosecuted for drugs crimes rather than the local police and Crown Prosecution Service (CPS) understanding or acknowledging that they have been exploited. The NSPCC considers that this situation is unacceptable and that children exploited for labour are in need of protection and must not be prosecuted. In our view there is an urgent need to develop a clear protocol, agreed between the police and the CPS, for ensuring that such children are not subject to criminal prosecution.

The NSPCC recommends:

- The appointment of an independent guardian or advocate for any child who may have been trafficked as soon as possible in order to provide emotional, practical and legal support to the child.
- Full care status for trafficked children and the development of specific specialist services for child victims (including access to safe accommodation).
- The introduction of a system of renewable residence permits for children who have trafficked which also allow them sufficient time to recover before having to make an asylum claim.<sup>413</sup>
- Children have great difficulty establishing claims for asylum under the 1951 Refugee Convention and as such if a child has been trafficked or experienced other child-specific forms of persecution they should be given leave to remain. It may be appropriate to return a child to their country of origin, but this should only be in cases where the return is the child's "best interests".<sup>414</sup>
- The appointment of a "National Rapporteur"<sup>415</sup> to act as a central point of data collection for information about trafficked children and to provide independent scrutiny and review of progress on child trafficking
- That the UK Government should fully implement the Council of Europe's Convention on Action Against Trafficking in Human Beings in the spirit it is intended and in doing so provide specific funding for specialist protection measures for child victims.

## EQUAL PROTECTION

The NSPCC would urge the committee to consider the need to give children equal protection from assault as part of this inquiry into children's rights as this issue represents a significant children's right violation which the Government has consistently failed to address. Section 58 of the Children Act 2004 provides parents who are charged with common assault against children with a legal defence of "reasonable punishment". This defence is in breach of children's human rights, as established under the UNCRC and

<sup>413</sup> The Joint Committee on Human Rights recommended in its 2006 report that trafficked children be given an automatic right of residence and that this should not be conditional on their willingness to give evidence in criminal proceedings against their traffickers.

<sup>414</sup> Leave to remain in the UK for Children who are the victims of trafficking should not be conditional on their willingness to testify against their traffickers.

<sup>415</sup> The appointment of a National Rapporteur or other comparable mechanism was a recommendation of the European Commission's Experts Group on Child Trafficking in Human Being and the Council of Europe Convention on Action in Human Beings which the UK Government has now ratified. It would comprise of an independent institution that collects data and makes recommendations on the development of policy.



the European Social Charter. In 2008, the UN committee on the Rights of the Child repeated its recommendation that the UK Government should, “as a matter of urgency prohibit all corporal punishment in the family including through the repeal of all legal defences”.<sup>416</sup>

Since the JCHR last considered this issue in 2004, new prosecution guidance issued by the Sentencing Guidelines Council in 2008 means that in practical terms the law is now similar to the situation before the enactment of the Children Act 2004. This is because courts will now consider the principle of ‘reasonable punishment’ when a parent is prosecuted for assault occasioning actual bodily harm, even though the legal defence is no longer available for this charge.<sup>417</sup> We consider that law reform is necessary, not only to fulfil children’s human rights, but also to reduce violence against children; improve the effectiveness of our child protection arrangements and to provide a clear foundation for the promotion of positive discipline, as we set out in our submission of evidence to the Government’s review of the effects of Section 58 in August 2007.<sup>418</sup> We urge the Joint Committee on Human Rights strongly to recommend that the Government should remove the “reasonable punishment” defence from section 58 of the Children Act 2004.

February 2009

### Memorandum submitted by NORM UK

I am a trustee for the registered charity NORM-UK, number 1072831, and would wish to draw the committee’s attention to the following infringements of the human rights of young males.

The NHS discriminates against the male children of religious minorities by carrying out traditional practices prejudicial to the health of such children, thereby subjecting them to inappropriate medical intervention. The European Charter for Children in Hospital, to which Great Britain is a signatory, states at: 5) “Every child shall be protected from unnecessary medical treatment and investigation”. We would argue that removal of a normal un-diseased part from a normal un-consenting child is a breach of the child’s absolute right to freedom from cruel, inhuman or degrading treatment or punishment, (ECHR 3). Neonatal circumcision is a painful operation; the release of stress hormones indicates “pain consistent with torture”.<sup>419</sup> We further argue that it is a breach of child’s right to liberty and security of person, (ECHR 5). We note that these rights, ECHR 3 and 5, are in conflict with the qualified right to manifest religious belief conferred by ECHR 9 (2). However, it is more over a breach of the child’s right to autonomy: the freedom to make informed choices about his own life.

In the light of modern evidence it is no longer acceptable to maintain that male circumcision is a trivial operation. Circumcision removes important erogenous tissue, which always includes the ridged band<sup>420</sup> which is now known to be the most sensitive area on the penis.<sup>421</sup> Circumcision is an irreversible act, which has life-long consequences. It is a fact that no man circumcised as a child will ever know what the sex act is supposed to feel like, he quite simply will not be equipped to do so. There are research studies of men circumcised as adults, for a variety of reasons and these studies show that there is a statistically significant decrease in penile sensation—research has also shown that circumcision may be associated with a risk of premature ejaculation and erectile difficulties. Fink *et al* in their 2002 study discussing the retrospective nature of their research made the point that: “if circumcision was supposed to correct the problem then we would have expected entirely favourable outcomes. Instead we found worsened erectile function and decreased penile sensitivity”.<sup>422</sup> In 2005 the study by Masood *et al* noted that “the poor outcome of circumcision considered by overall satisfaction rates suggests that when we circumcise men, these outcome data should be discussed during the informed consent process”.<sup>423</sup> There are more studies of a similar nature and we would draw the committee’s attention to the following examples: Solinis, A Yiannaki. *Does circumcision improve couple’s sexual life?*<sup>424</sup> Pang MG, Kim DS *Extraordinarily high rates of male circumcision in South Korea: history and underlying causes*<sup>425</sup> and Coursey JW, Morey AF, McAninch JW, Summerton DJ, Secrest C, White P, Miller K, Pieczonka C, Hochberg D, Armenakas N *Erectile function after anterior urethroplasty*.<sup>426</sup>

<sup>416</sup> United Nations Committee on the Rights of the Child, concluding observations: United Kingdom of Great Britain and Northern Ireland available at: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

<sup>417</sup> Sentencing Guidelines Council, (2008) Assault on children and cruelty to a child Definitive Guidelines, available at: [http://www.sentencing-guidelines.gov.uk/docs/Overarching\\_principles\\_assaults\\_on\\_children\\_and\\_cruelty\\_to\\_a\\_child.pdf](http://www.sentencing-guidelines.gov.uk/docs/Overarching_principles_assaults_on_children_and_cruelty_to_a_child.pdf)

<sup>418</sup> See NSPCC response to the DCSF Review of Section 58 of the Children Act 2004, available at: [http://www.nspcc.org.uk/Inform/policyandpublicaffairs/Consultations/2007/s58\\_wdf49990.pdf](http://www.nspcc.org.uk/Inform/policyandpublicaffairs/Consultations/2007/s58_wdf49990.pdf)

<sup>419</sup> Ref: Fleiss P M, Warren J P, *Circumcision* (letters), *The Lancet*, 1995; 345:927.

<sup>420</sup> Taylor J R, Lockwood A P, Taylor A J, *The prepuce: specialized mucosa of the penis and its loss to circumcision*. *Br J Urol* 1996; 77: 291–5.

<sup>421</sup> Sorrells M L, Snyder J L, Reiss M D, *et al*, *Fine-touch pressure thresholds in the adult penis*. *BJU Int* 2007;99:864–9.

<sup>422</sup> Fink K S, Carson C C, DeVellis R F, *Adult Circumcision Outcomes Study: Effect on Erectile Function, Penile Sensitivity, Sexual Activity and Satisfaction*, *J Urol*, 2002; 167(5):2113–6, Fink K S.

<sup>423</sup> *Penile Sensitivity and Sexual Satisfaction after Circumcision: Are We Informing Men Correctly?* S Masood, H R H Patel, R C Himpson, J H Palmer, G R Mufti, M K M Sheriff.

<sup>424</sup> I Solinis, A Yiannaki, *Does circumcision improve couple’s sexual life?* *J Mens Health Gend* 2007; 4(3):361.

<sup>425</sup> Pang M G, Kim D S, *Extraordinarily high rates of male circumcision in South Korea: history and underlying causes*, *BJU Int*. 2001; 89(1):48–54.

<sup>426</sup> Coursey J W, Morey A F, McAninch J W, Summerton D J, Secrest C, White P, Miller K, Pieczonka C, Hochberg D, Armenakas N, *Erectile function after anterior urethroplasty*, *J Urol* 2001; 166(6):2273–6.

There is not one national medical organisation that recommends non-therapeutic male circumcision, there being no compelling medical reason to routinely amputate this normal tissue. The lawfulness of non-therapeutic male circumcision has never been tested in the criminal courts and the only legal authorities on non-therapeutic male circumcision are in family cases and are *obiter dicta*, being a judge's opinion on an inessential issue and therefore without binding authority. It is strongly arguable that as non-therapeutic male circumcision cuts through the full thickness of the skin it is a "wounding" under the Offences Against the Person Act 1861. It is at the very least an assault occasioning actual bodily harm. The Children and Young Persons Act 1933 specifically prohibits, as cruelty, assaults on those under 16 by a person with responsibility for that child.

Any defence that non-therapeutic male circumcision is valid or necessary surgery implies that there is disease present and that the surgery is an effective, appropriate and proportionate treatment for the disease. This is clearly not the case for non-therapeutic male circumcision. An adult can make an informed choice about elective surgery but no one would for a moment argue that one adult should be able to opt for elective surgery on another's behalf, so we should extend the same protection to children, who cannot make an informed choice. To carry out non-therapeutic male circumcision on un-consenting children in a safe medical setting thus avoiding the risks involved of the practice being carried out by lay practitioners and in un-sterile conditions is really a sad admission that we cannot protect children in our society and that the best we can offer is to abuse the child in question as safely as possible. Even this carries risks. In infancy the foreskin is naturally fused to the glans, the mean age for the natural separation of foreskin from the glans is 10.4 years, this means that the removal of tissue from an undeveloped organ is at the very best only guesswork. Non-therapeutic male circumcision carries its own risks—one of the most comprehensive reviews of the studies of circumcision complications put the risk of significant complications in the range of 2% to 10%.<sup>427</sup> This does not include the child's experience of pain—for example The British Association of Paediatric Surgeons latest circumcision advice (2007) states that discomfort lasting longer than seven days occurs in more than one in four circumcision subjects.

The mental health charity Mind recognises circumcision as a physical cause of mental illness in males "The physical and sexual loss resulting from circumcision is gaining recognition, and some men have strong feelings of dissatisfaction about being circumcised. Studies of the practice of circumcision often describe it as 'traumatic'. Research suggests that some boys, and some men, may experience PTSD as a result of circumcision".<sup>428</sup> Our charity, NORM-UK, has received more than a thousand un-solicited letters from men psychologically damaged by non-therapeutic male circumcision.

To have a law that protects only one gender (Female Genital Mutilation Act 2003) is discriminatory. There are many varieties of female genital mutilation some of which are less harmful than male circumcision, even a tiny cut and no ablation of tissue is illegal on a female unless it is necessary for her physical or mental health. The Act makes it clear at s.1(5) that "for the purpose of determining whether the operation is necessary for the mental health of a girl it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual". This is not an issue of competitive suffering; anyone who has anything amputated without their informed consent and for no good medical reason is arguably the victim of an assault. This is an issue of child protection, or rather, our collective failure to provide it. As long as we do not protect boys as well as girls from unnecessary genital surgery we are guilty of discriminating against boys and the men they will become.

In UK domestic law the concept of "parental responsibility" for children has replaced the concept of "parental rights" (Children Act 1989). This change is compatible with the principles of the Human Rights Act 1998 and has been tested in *Gillick vs Wibeck* which notes that parents have a duty to protect and nurture the child rather than having dominion over it. Parental responsibility means acting towards your child in a way which is consistent with the child's best interests. If a parent acts in a way which causes or is likely to cause the child significant harm the state has a right and duty to make arrangements to ensure that the child's welfare is protected (Children Act 1989 S31). Where there is conflict between the right of the child not to be harmed and the parental rights to respect for family life or religious freedom, for example, it is the child's rights which will, in law, prevail. The physical and psychological harm caused or likely to be caused by non-therapeutic male circumcision plainly falls into the category of significant harm. Male circumcision involves the removal of significant tissue from the male genitalia removing with it sensory, mechanical and immunological functions. The United Kingdom does not tolerate any other form of bodily modifications to children such as tattoos or facial scarring and it is surprising that child protection professionals, prosecuting authorities and the courts do not intervene to protect a male child from unnecessary genital surgery requested by carers or parents when they rightly intervene to protect a female child.

The NHS is denying children their absolute ECHR rights and is discriminating against the children of religious minorities by providing a circumcision service to satisfy the wishes of parents. An inequality in the provision of health care is created by allowing children born into some communities to lose their bodily integrity while others can—and should—retain theirs. Children are not born for example as a "Christian child" they are born as a "child of Christian parents". This is an important distinction; adults are only too vociferous in articulating their rights to "freedom of thought conscience and religion" Article 9 (Human

<sup>427</sup> Williams and Kapila, 1993.

<sup>428</sup> [www.mind.org.uk/Information/Factsheets/Men/#Circumcision](http://www.mind.org.uk/Information/Factsheets/Men/#Circumcision)

Rights Act 1998). Non-therapeutic male circumcision contravenes Article 3 “No one shall be subjected to torture or to inhuman or degrading treatment”. Unnecessary genital surgery is at the very least degrading as it permanently alters the form and function of an important body part.

To use an adult’s qualified right (Article 9) to override a child’s absolute right (Article 3) fails to honour or respect the child’s rights.

The state has a special duty of care towards children who cannot enforce their own rights. The UN Convention on the Rights of the Child provides in Article 2:

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.

Importantly, the Convention also provides that:

“States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children” (Article 24.3).

All children are born with a full set of Human Rights and we will be harshly judged by future generations if we fail to protect our children whatever their sex, religion or creed.

February 2009

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### **Memorandum submitted by the Northern Ireland Commissioner for Children and Young People (NICCY)**

The Office of Commissioner for Children and Young People (NICCY) was created in accordance with “The Commissioner for Children and Young People (Northern Ireland) Order” (2003) with a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. Part of our statutory duty involves having due regard to the provisions of the UN Convention on the Rights of the Child (UNCRC). In fulfilment of this duty we monitor the implementation of the UNCRC in Northern Ireland, reporting to the UN Committee on the Rights of the Child every five years.<sup>429</sup>

In 2008 NICCY completed a major review of the current state of children’s rights in Northern Ireland *Children’s Rights: Rhetoric or Reality, A review of Children’s Rights in Northern Ireland*.<sup>430</sup> The evidence presented to this inquiry draws from our submission<sup>431</sup> to the UN Committee on the Rights of the Child and this review of children’s rights which will be launched on 17 February 2009.

NICCY commends the Joint Committee on Human Rights for undertaking this Inquiry into children’s rights. We have presented our evidence under the particular issues outlined by the Joint Committee; we have also inserted some evidence on issues specific to Northern Ireland.

#### **CHILDREN IN DETENTION**

*Use of remand*—Between January 2006 and October 2007, 48% of those in the juvenile justice centre were remanded under Police And Criminal Evidence (NI) Order 1989, 45% were on remand under the Criminal Justice Children (NI) Order 1998 (pending trial or sentence) and only 7% actually on sentence.<sup>432</sup>

There needs to be appropriate alternatives to holding children on remand. Children who are held on remand should be accommodated separately from those who have been prosecuted as committing an offence. Currently children who have been held on remand and subsequently prosecuted do not have their time on remand recognised as part of their sentence. This should be changed to bring them in line with law that governs adults who are on remand.

*Custody*—The use of custody in relation to children should only be used as a last resort reserved for only serious and repeat offenders.<sup>433</sup> There is a need to look at why certain groups of children and young people are over represented in custody, in particular looked after children.

Custody care orders are designed to provide a secure solution to the accommodation needs of 10–13 year olds separate from the upper age range of young offenders. While this has been legislated for under the 2002 Criminal Justice Act, it has not yet been enacted therefore this age group still be sent to Juvenile Justice Centre.

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<sup>429</sup> Further information on the role and remit of NICCY can be accessed at [www.niccy.org](http://www.niccy.org). All research from NICCY referred to in this submission can also be accessed from the website.

<sup>430</sup> Copies of the report can be accessed from 17 February at [www.niccy.org](http://www.niccy.org)

<sup>431</sup> [http://www.niccy.org/uploaded\\_docs/UNCRC\\_REPORT\\_FINAL.pdf](http://www.niccy.org/uploaded_docs/UNCRC_REPORT_FINAL.pdf)

<sup>432</sup> Criminal Justice Inspection Northern Ireland (2008a) *Inspection of Woodlands Juvenile Justice Centre*. Belfast: CJINI.

<sup>433</sup> Para 78 (b) 2008 concluding observations.

*Accommodation*—Children should not be accommodated with adults in prison or juvenile justice centres, female children in particular are not held separately from female adults in Hydebank Wood. In line with the removal of the State party’s reservation to article 37(c) the Northern Ireland Office (NIO) needs to ensure that any child who is detained is not under any circumstances accommodated with adults.

*Restraint*—The use of restraint with young people deprived of their liberty has been raised as a matter of concern for many years- recent inspections by the Criminal Justice Inspectorate (CJINI) show a reduction in the use of restraint in Northern Ireland. The inspections that better staff training coupled with better recording and monitoring of the use of restraint has had a positive impact on its use.<sup>434</sup>

*Education*—The national curriculum is not delivered to children in custody, as the Northern Ireland Office (NIO) has responsibility for their education rather than the Department of Education (DE). Children in custody have no legal entitlement to be educated within the NI curriculum;<sup>435</sup> this is detrimental to these young people and in breach of article 28 of the UNCRC. The responsibility for the education of children in custody needs to be transferred from the NIO to DE. It is discriminatory to deny children in custody access to same education provision as their peers in mainstream education.

*Mental health*—the mental health needs of children in custody are not being met, greater resources are needed to address the individual mental health needs of children in custody.

CJINI’s 2008 report observed that nursing shortages within the centre currently “constrain the centre’s ability to provide therapeutic services and health promotion to children” (CJINI 2008:31). This is particularly concerning in light of the mental health needs of detainees recorded in this report: of the 30 children in residence on 30 November 2007, two thirds had a diagnosed mental health disorder, over half had a history of self harm and just under one third had at least one suicide attempt on record (CJINI 2008).

*Complaints procedures*—CJINI inspection of complaints highlighted the difficulties children in custody faced in accessing complaints procedures, in particular their lack of confidence in the system. CJINI recommended that the complaints system needed to be reformed, in order to raise the awareness of complaints services; introduce age appropriate communication and materials; ensure access to complaints forms; greater confidentiality in complaints

handling; and the implementation of thorough review and evaluation of the complaints procedures. These recommended reforms need to be implemented by the NIO.

#### CRIMINALISATION OF CHILDREN

*Age of Criminal Responsibility*—The current age of criminal responsibility in Northern Ireland is 10, full criminal responsibility to children as young as ten is a breach of children’s rights. The Final Report of the Bill of Rights Forum notes that Northern Ireland has a particularly low age of criminal responsibility, recommending that the age of criminal responsibility should be raised in line with international human rights standards and best practice. The UN Committee on the Rights of the Child in their concluding observations in 2002 and 2008<sup>436</sup> recommend that this be increased.

*Children “at risk”*—Many of the young people who come into contact with the criminal justice system in NI have experienced significant disadvantage or difficulty in their lives, however appropriate intervention programmes are not available to support them. Children who are deemed “at risk” are delivered intervention schemes alongside children who have offended; this may lead to the criminalisation of these children. Greater investment is needed in a range of universal and targeted services and support for children prior to their contact with the criminal justice system; this will avoid the criminalisation of children.

Preventative services for children “at risk” of offending should be delivered separately from those services aimed at children already involved in offending behaviour.

*Youth Courts*—some children aged 16–18 are still prosecuted in adult courts rather than in the Youth Courts, this is an issue raised by the CRC in the 2008<sup>437</sup> concluding observations. There is a need to ensure that children are not, under any circumstances, prosecuted through adult courts or tried as an adult, without the added protections afforded them in the juvenile justice system.

*Anti-Social-Behaviour-Orders*—The low behavioural threshold applied to issuing an ASBO is cause for concern. Breach of this civil order can lead to the criminalisation of children as, rather than diverting them away from the criminal justice system, an ASBO can lead children into it.<sup>438</sup>

<sup>434</sup> Criminal Justice Inspection Northern Ireland (2008a) *Inspection of Woodlands Juvenile Justice Centre*. Belfast: CJINI, and Criminal Justice Inspection Northern Ireland (2004). *Inspection of the Juvenile Justice Centre (Northern Ireland)*. Belfast: CJINI.

<sup>435</sup> Para 78 (e) 2008 concluding observations.

<sup>436</sup> Para 78 (a) 2008 concluding observations.

<sup>437</sup> Para 78 (c) 2008 concluding observations.

<sup>438</sup> Para 80 2008 concluding observations.

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## DISCRIMINATION ON GROUNDS OF AGE

*Physical punishment*—the current law does not afford children the same protection from assault as adults. The law needs to be reformed to ban the use of physical punishment and remove all forms of defence.

*Demonisation of children*<sup>439</sup>—in a review of children’s rights by NICCY,<sup>440</sup> children expressed their concerns about the negative portrayal and demonisation of children. Those children highlighted the injustice of judging all children as “bad” or “anti social”, and the impact that this has on their ability to freely socialise, such as being moved from areas by the police because they are standing in a group of young people. ASBO also has a negative impact on the child’s right to freedom of assembly.

Other research on young consumers by NICCY highlighted the unfair and discriminatory restrictions that are placed on young people when entering shops, such as limiting the numbers of young people that can enter and making them leave their bags at the doors.

A strategy is needed to combat the negative perceptions of children and young people.

## DISCRIMINATION ON GROUNDS OF DISABILITY

*Participation in decision making*—Children who have disabilities do not have access to an independent advocacy service to assist their participation in decision making. Research commissioned by NICCY highlighted the disparities that exist across Northern Ireland for disabled children attempting to access advocacy services.<sup>441</sup> The research recommended that Department of Health Social Services and Public Safety (DHSSPS) develop and resource a comprehensive advocacy strategy, detailing policy and standards. It also recommended that the new Regional Health Board commission the independent advocacy services. This report was presented by NICCY to DHSSPS in 2008 however to date they have not responded to the recommendations of the Commissioner.

*Speech and language therapy*—children in need of speech or language therapy are subject to a postcode lottery of service provision; where they live determines the length of time they will wait for both assessment and therapy. In response to concerns from the Commissioner for Children and Young People DHSSPS established a taskforce on speech and language therapy, that taskforce reported to the Minister in January 2007, to date DHSSPS have not implemented the recommendations from the taskforce.

*Play*—children with disabilities do not have equal access to play and leisure facilities, they face barriers to access that children without disabilities do not face.<sup>442</sup>

## DISCRIMINATION AGAINST CHILDREN IN EDUCATION

*Special Educational Needs (SEN)*—Children with a SEN need to be assessed and given a statement of SEN in order to access the required support. In NICCY’s review of children’s rights,<sup>443</sup> parents and professionals identified problems with the statementing process, mainly the length of time the process takes. This has been reinforced by inspections from the Education and Training Inspectorate which found a lack of consistency in procedures/protocols for assessing need, differential thresholds for intervention and particular difficulties assessing and diagnosing pupils.

*Traveller children and young people*—In 2007, NICCY and the Equality Commission in Northern Ireland jointly launched research report into the adequacy and effectiveness of Traveller Education in Northern Ireland. The research shows the current education system is failing Traveller children. The report highlighted significant areas of both policy and practice where travellers are extremely disadvantaged and discriminated against in comparison with their peers. Examples included; a policy on traveller education which is currently 16 years out of date and pre dates the main pieces of equality legislation, policies and practices relating to travellers differ between Education and Library Boards, Travellers significantly underachieve in comparison to their peers, they experience high levels of bullying and they have poor levels of attendance and high drop out rates.

The statutory response to these inequalities has been poor to date however the Minister for Education has established a task force on Traveller education, it is imperative that the report and recommendations of this task force are implemented and adequately resourced without delay.

*Migrant children*—Figures<sup>444</sup> from the Department of Education, show that the number of children with English as an additional language has increased by 374% in the past five years. In 2004 DE carried out a review of EAL and 2006 they conducted a consultation with parents and teachers, this resulted in the development draft policy on EAL which was published for consultation in 2007. To date there is little information on the current status of this policy.

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<sup>439</sup> Para 25 2008 concluding observations.

<sup>440</sup> *Children’s Rights: Rhetoric or Reality, A review of Children’s Rights in Northern Ireland*, which can be accessed at [www.niccy.org](http://www.niccy.org) from 17 February.

<sup>441</sup> KPMG (2008) *Who Speaks for Us? Review of Advocacy Arrangements for Disabled Children and Young People with Complex Needs*. Belfast: Northern Ireland Commissioner for Children and Young People.

<sup>442</sup> Para 69 2008 concluding observations.

<sup>443</sup> *Children’s Rights: Rhetoric or Reality, A review of Children’s Rights in Northern Ireland*, which can be accessed at [www.niccy.org](http://www.niccy.org) from 17 February.

<sup>444</sup> Department of Education (2008c) *Pupils with English as an Additional Language 2001–02 to 2007–08*. Available from: ([www.deni.gov.uk/index/32-statisticsandresearch\\_pg.htm](http://www.deni.gov.uk/index/32-statisticsandresearch_pg.htm))

Funding for EAL is allocated to schools on a per head basis, calculated using figures from the previous year. However this money is not ring fenced and schools can therefore use it on other resources beyond EAL provision. Money allocated for EAL children must be ring fenced and spent only for that purpose, it should also be allocated on the basis of the numbers of EAL children in the current academic year.

*Segregated education*—the CRC have in their last two period reports highlighted the need for to take action to increase the numbers of children who are educated in integrated schools. Statistics from the Department of Education illustrate that there has been a slight increase in the number of children who are enrolling in Integrated Schools; an increase from 16,494 in 2003–04 to 18,867 in 2007–08.

However despite recommendations from the CRC<sup>445</sup> to date the Government have yet to develop or implement a strategic policy to increase the number of pupils attending integrated schools. Extra resources are needed for integrated education coupled with appropriate measures and incentives to facilitate the establishment of integrated schools.

#### HOW TO ENSHRINE IN LAW THE GOVERNMENT TARGET TO ERADICATE POVERTY BY 2020

It is essential that each of the devolved administrations are held to account for their role in ensuring that children are lifted out of poverty in keeping with the UK government commitment.

The Committee noted with concern the level of persistent child poverty in NI compared to GB (21% compared to 9%). This suggests child poverty is a more deep-seated problem in NI, and consequently, will be harder to tackle. The inequalities associated with poverty impact on areas of children's lives, including their physical and mental health, and educational outcomes

Young People aged 16–17 are severely disadvantaged in comparison to over 25's in terms of benefit rates and the minimum wage for this group of young people are significantly lower; they are also subject to restrictions in relation to the receipt of housing benefits. There can be no justification for these inequalities as there is no evidence that young people aged 16–17-years have lower living costs. If legislation is introduced to harmonise benefit rates and minimum wages would have a positive impact on the rates of child poverty.

10-year strategy for children and young people “our children and young people- our pledge”—OFMDFM should develop a shared agenda and timetable on child poverty between the Children's Strategy and the Anti-Poverty Strategy. This should include clear measurable outcomes, which are tracked and monitored.

To ensure that future policies and legislation do not further discriminate against poor families and do not push them deeper into poverty, all legislation and policies should be poverty proofed.

#### OTHER ISSUES

*Mental Health and learning disability*—The Government- sponsored Bamford Review made a series of recommendations to improve the delivery of Child and Adolescent Mental Health services and Disability services. NICCY was concerned that the Government response to the Bamford Review did not address the issues highlighted in the report. Bamford requires a specific action plan, and as stated above dedicated actions to improve children and young people's outcomes would be a positive way of ensuring the focus on children and young people is maintained. We recommend that the Government revisit the recommendations from Bamford to develop an action plan which outlines the recommendation, what actions are needed to implement it, and who is responsible for implementing it.

*Police technologies*—the introduction of Taser<sup>446</sup>—The Human Rights Advisors to the Northern Ireland Policing Board advised that Taser should not be treated as a “less lethal” weapon but should be treated as “potentially lethal”, they also highlighted that the full effects of Taser on children are not known.

Article 2 of the European Convention of Human Rights places a positive obligation on police officers to protect the right to life enshrined therein; the absence of reliable independent medical evidence on the impact of the use of Taser on vulnerable groups such as children and young people means that it is not possible to conclude that the use of this type of force would meet the requirements of Article 2. The Human rights advisors were clear in their advice; the introduction of Taser has serious human rights implications that need to be fully recognised and addressed before they deploy Taser, NICCY is concerned that this has not been done.

*Play and leisure*—in the NICCY review of children's rights the top issue for children was play and leisure, children do have adequate access to safe, affordable, accessible and age appropriate play.

#### CONCLUSION

NICCY welcomes the opportunity to respond to this inquiry. Since the last State Party Examination in 2002 there have been positive developments in the realisation of children's rights in Northern Ireland, in particular the reintroduction of a devolved locally accountable Government to the Northern Ireland Assembly.

<sup>445</sup> Para 67 2008 concluding observations.

<sup>446</sup> Para 31 2008 concluding observations.

While the Local Assembly has introduced many strategies aimed at improving the lives of children such as the 10-year strategy for children and young people, action on implementing these strategies has been poor.

The biggest problem facing the realisation of children's rights in Northern Ireland is the absence of domestic legislation fully incorporating children's rights in legislation. The development of a Bill of Rights for Northern Ireland presents an opportunity to have the full provisions of the UNCRC incorporated into law.

February 2009

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### **Memorandum submitted by the Office of the Children's Rights Director for England (OCRD)**

#### ABOUT THE OFFICE OF THE CHILDREN'S RIGHTS DIRECTOR FOR ENGLAND

The post of Children's Rights Director for England was created in 2002. It was then hosted by the National Care Standards Commission, became subsequently hosted in 2004 by the Commission for Social Care Inspection, and since 1 April 2007 has been based in the Office for Standards in Education, Children's Services and Skills (Ofsted). The post is required under section 120 of the Education and Inspections Act 2006, with its statutory functions determined by the Office for Standards in Education, Children's Services and Skills (Children's Rights Director) Regulations 2007.

The main statutory functions of the Children's Rights Director are:

- To ascertain, advise and report on the views of children (and where appropriate their parents) about services for children living away from home, receiving children's social care services, or leaving care.
- To advise and assist Her Majesty's Chief Inspector (Ofsted) on children's rights and welfare.
- To raise matters of policy or individual children's issues that the Children's Rights Director considers significant.

Consultation topics are determined by the Children's Rights Director, from issues raised by children themselves, or raised through the inspection work of the current host inspectorate, and (increasingly) at the invitation of Department for Children, Schools and Family (DCSF) officials and Ministers to provide an independent children's voices input to policy developments. A recent, and most relevant, example has been consultation with children to feed into the Government's submission to the United Nations Committee, for the purposes of this 3rd and 4th consideration of the UK.

Office of the Children's Rights Director consultation work has resulted in a series of "Children's Views" reports (41 to date) which are circulated to all the children who took part, to councils with children's social care responsibilities, to Ministers and opposition spokespersons, to DCSF officials, to the UK Children's Commissioners, and to a list of children's organisations and interested individuals and policymakers. All Children's Rights Director reports are published, both as hard copy and pdf versions, the latter of which are posted on our website at: [www.rights4me.org](http://www.rights4me.org).

Whilst I would recommend all of these reports to the Committee I attach here some that may be of particular relevance to the enquiry:

Children on Bullying; Children's Views on Restraint; Looked after in England; Policies by Children; Rights and Responsibilities; Young Carers and Children's Care Monitor 2008.

In this submission, I have focused specifically on the areas highlighted in the 2008 concluding observations of the UN Committee of the UK Report on the compliance with the UN Convention on the Rights of the Child. The following comments relate to children living away from home, receiving children's social care services or young people leaving care and sets out the areas of interest as requested by the Enquiry. This submission is made in my capacity as Children's Rights Director, representing the views and issues raised from children and young people. It is not therefore being made on behalf of Ofsted.

#### GENERAL PROGRESS

It is recognised that there are many areas in which there has been progress in taking forward children's rights. Much of the legislation now, and being brought into place, and the rich infrastructure of children's rights and advocacy services, signal a healthier regard for children's rights and welfare. It is widely acknowledged that children in England are listened to in many more aspects of their lives than at any time in the past, and that there is now better legislation and policy guidance in place to encourage and support this.

The issue is less now that Children's Rights need reflecting in legislation but what is in legislation needs to be reliably delivered to each individual child.

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## CHILDREN IN DETENTION (INCLUDING USE OF RESTRAINT)

Whilst much of the main attention will rightly concern the increasing numbers of children in detention (for reasons of criminal justice, asylum or mental health), there are other children at risk of being arbitrarily and unlawfully deprived of their liberty, whilst in residential care and education, other than by the State.

There is Ministerial and Chief Inspector level support in trying to outlaw practices, mainly in some children's homes and residential special schools, which in effect are restricting the liberty of children entrusted to their care. One area where there is a noticeable silence in terms of government guidance is where this relates to some children with severe disabilities. Whilst the law applies equally to all children I have had a number of individual cases raised by concerned carers where the right to safety and the young person's welfare needs have required some restriction of liberty on a regular basis and this has been in conflict with the legal position. This is an area in which both the law, and the application of it, could be strengthened further in the interests of children's rights.

I reported in *Children's Views on Restraint: The views of children and young people in residential homes and residential special schools*, [December 2004] that whilst accepting that they sometimes needed to be restrained, children and young people have expressed concerns that restraint is sometimes used as a punishment or to get them to comply with something, rather than to avoid likely injury to someone or serious damage to property. Many also reported that sometimes they are hurt during restraint. Most often this is when they are restrained by staff that are not sufficiently trained or experienced enough to know how to physically restrain children safely.

In addition to the recent deaths in secure training centres, following physical restraint, there are many other less well-reported cases of children sustaining serious injury whilst being restrained, which are not confined to custodial settings.

Staff looking after children, in any setting where challenging behaviour is likely, should be trained and skilled in "de-escalating" situations before restraint becomes necessary, in when restraint can and cannot be used, in how to use restraint without causing pain either deliberately or accidentally, in how to use restraint without risk of injury to the child, and in the likely outcomes of restraint for children who are restrained. With the exception of what should not be done there has been no DoH/DCSF guidance given for good practice in restraint techniques across children's settings and whilst each child and setting is unique this leaves the potential for at best inconsistency across the UK and at worst dangerous practice developing. There should be mandatory guidance on training and Local Safeguarding Boards need to have this area of practice firmly on their agenda. Following the Ministry of Justice Review in 2007–08, I would suggest that the Prison Service, who are predominantly focused on adults needs, are not best placed to lead on the development of a single framework for restraint across children's settings, including secure settings.

## DISCRIMINATION AGAINST CHILDREN, INCLUDING EDUCATION (INCLUDING ACCESS BY VULNERABLE GROUPS, CHILD PARTICIPATION, COMPLAINTS, BULLYING, EXCLUSION AND SEGREGATION)

### *Asylum Seeking Children and Care Leavers*

Young people have raised with us their concern at inconsistencies in provision of leaving care assistance to unaccompanied asylum seeking children. In certain parts of England, evidence from our casework would indicate that some councils seemingly operate a two-tier service; one for indigenous care leavers and another for "asylum-seeking" care leavers. One call for advice I received was from an asylum seeking young person living in a children's home. He had been there for over three years and was shortly to be leaving care. Given the inordinate time processing his application for residence, not received to date, and no birth certificate, the young person was left in a state of high anxiety about whether he would be given support after his 18th birthday in gaining accommodation and/or work.

Other evidence from individual casework tends to indicate that many of these children, who subsequently become "looked after" by local councils, are treated as asylum-seekers first and children in care second. Consequently, the needs of immigration policy are often put ahead of the welfare of children. From a children's rights perspective, it is rather perverse that this group of children and young people should ever face the risk of being deported. After all, in law, their parent happens to be the State itself and that fact alone should confer upon such children special rights to protection and safekeeping.

An additional issue raised by many in care and by care leavers has been that of prejudice against those with a history in care ("careism"). In applying for work and in seeking accommodation, many young people had a clear sense that they could be discriminated against simply for being from care. For example one young woman had her university place withdrawn before starting her degree course because the local authority could not guarantee the funding it had promised. Another young person had a job offer withdrawn once the employer became aware she'd been in care. Statistical evidence shows that Looked After Children are more prone to school exclusion, admission refusal and to significant periods of being without a school to go to. These children are also discriminated against by having no independent parent to challenge exclusions of admission refusals, as the Local Authority itself is acting in the place of the parent.

It would greatly promote rights for children in care, as well as those leaving it, if it were made unlawful for anyone to discriminate against them on the grounds of their care status.



*Young Carers*

This is a group of children for whom their rights are often neglected. In my report following consultation with young carers in 2006 we identified that for many, being a young carer meant being unable to do the things other children do. Young carers told us about some of the tasks they do and how being a young carer affected them. They told us about risks they faced and what they thought adults working with young carers should be taught. They gave examples of how they face “nasty and hurtful” comments from other children about their parents’ disabilities and that they have to cope with the reactions and prejudice of the public.

Young carers uniquely risk missing out on welfare and educational needs as they fall between adult and children’s services. They are often seen as a resource to the former and as children in need by the latter.

There is a need for robust support systems within which they can have relief from their caring duties and where they are appreciated with the education system. They requested training to help them with issues such as lifting and medication and understanding from their teachers that if may affect some of their work or attendance.

*Bullying*

In my report *Children on Bullying: A Children’s Views Report by the Children’s Rights Director for England* [January 2008] (319 children and young people) two thirds of children in care or living away from home say that bullying is getting worse and that it is a bigger issue than it used to be.

Most children and young people told us that bullying happened mostly whilst at school, with some happening whilst going “to and from school”. For some children living away from home these figures did not stand up, and many spoke of bullying being a regular occurrence, especially in children’s homes and foster care. 21% of children in care are bullied simply because they are in care.

Children and young people are seeing a growth in electronic means of bullying people and identified “cyber-bullying” and bullying by mobile phone calls and messages as new forms of bullying. Around 40% had some experience of being bullied in this way.

My full report includes fuller details, including suggested strategies from the young people for dealing with bullying. Please see attached for details.

In my 2008 annual monitoring report over 900 children and young people who are living away from home or who are getting help from social care services told us how it was for them by giving us their views on the issues they told us were really important to their lives, including bullying. It was clear that there is most bullying in residential special schools, where over half the children report being bullied often or always. Care leavers and those in foster care reported the least bullying.

*Disability*

In the consultations I have undertaken with children and young people two common themes have arisen relating to disability. One is the definition of disability. We asked children in care to self-report on whether they had a disability and found this to consistently reveal that they identified having emotional and behavioural difficulties as a disability as much as with having a leaning and/or physical disability.

Secondly in case work and consultation we’ve seen very clearly that children with communication difficulties very frequently miss out in consultations, decision making and involvement in policy development. A number of children with disabilities have said to me that they feel competent to communicate with the use of computers but that the professionals who consult or inspect them are not competent in using or understanding this. There is a significant need to further the skills of professionals to counteract this communication deficit and to improve the level of real participation and rights of children with disabilities.

Also see previous section above on bullying where I set out the findings that children with disabilities are more likely to be bullied than any other group of children.

## CHILD TRAFFICKING

Identifying trafficked children’s rights and needs solely in the context of their protection (under Section 47 of the Children Act 1989) is too narrow. There should be a general presumption that all trafficked children are “children in need”, as defined by Section 17 of the Children Act 1989 and, notwithstanding their nationality and immigration status, entitled to receive services appropriate to meeting those needs. This will ensure their wider needs for welfare needs will be taken into account. Some will, additionally, be assessed as requiring “accommodation” (Section 20 of the Children Act 1989). However, the vulnerability of many trafficked children is exacerbated by their lack of status. In the context of individual children’s welfare, and our obligations under the United Nations Convention on the Rights of the Child, it should not be possible for there to be any child currently residing in the UK for whom there is no responsible person or authority identified as having “parental responsibility” for them. In many instances, that “responsible person” should rightly be the local authority.

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## CRIMINALISATION OF CHILDREN

It is estimated that a disproportionate 46% of children who are in prison are or were in care. It is widely documented that looked-after children who enter prison often miss out on the support and care planning services they are entitled to, and as a result their long-term outcomes are very poor.

This merits review and these children should be viewed first and foremost as children in need themselves with their safety and welfare needs being the primary concern.

## PLACEMENT MOVES

By far the largest single category of advice my team is asked for is about children who are being moved by their placing authority, often against their own wishes and due to their authority changing policy and/or due to a shortage of financial resources. This is a concerning trend and the evidence so far shows that these moves are not always in the child's best interests. The stability of the child's placement, given that we know stability results in improved outcomes, is essential and I will be monitoring this trend from a strategic viewpoint in order to take up with DCSF and Ministers should there be a need to do so.

## RESPECT FOR THE VIEWS OF THE CHILD

Linked to the above section there is evidence from individual case work that children are moved without their views being taken into account and against their expressed wishes, given at care planning and review meetings and even to local Children's Rights Officers.

Another issue raised by children is that of the action that they can take if their local council is, in their view, failing to make an appropriate care plan, failing to keep to this, or failing to safeguard and promote their rights or welfare. Children also make little use of complaints procedures which take complaints back to their local council. Children and young people have told us that they find such procedures inaccessible and unlikely to produce a timely redress where their complaint relates to the actions or decisions of the same organisation that is dealing with the complaint.

Views are now frequently sought of children but the views of those who don't want to join consultative groups are often overlooked. There is also a need to find some way to give due weight to views of children of different ages and levels of understanding in making different types of decisions. I have consulted with children on the criteria for assessing a child's understanding of a particular issue and this has been used in Government guidance (Decisions on Sharing Information). Interestingly the young people identified similar criteria in assessing this as in the Gillick competence.

*February 2009*

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### **Memorandum submitted by Peace Pledge Union**

#### UNDER-18s IN THE UK ARMED FORCES

1. There is a major derogation from basic principles of human rights in UK practice regarding recruitment of persons under 18 to the armed forces.

2. Persons may enter the armed forces from the age of 16, but are required to undertake long-term commitments stretching into their adulthood. Entrants to the Royal Navy are obliged to enter a minimum engagement of approximately four years, and entrants to the Royal Air Force are required to enter a minimum engagement of approximately three and a half years. Although written consent is required from parents or guardians of under-18 entrants, it is to be questioned whether it is permissible in human rights terms for minors to enter into a binding contract so far into the future.

3. Under-18 entrants to the Army, who account for far more than half of all armed forces entrants, are actually required to commit themselves to a longer minimum period than adult entrants. The minimum period in both cases is stated to be 4 years from date of entry, but there is a proviso in the case of under-18s that the period from date of entry to the 18th birthday does not count towards that minimum period, but must be served in addition, meaning that a person joining on the 16th birthday is actually required to serve a minimum of six-years. often called "the six-year trap".

3. There is a window of opportunity allowed from the 28th day after entry to the end of the sixth month for an absolute right for under-18 entrants to leave any of the three armed forces, but, as that opportunity largely coincides with basic training, when conditions are less arduous, it does not adequately provide an answer to the young entrants who change their minds at a later stage.

4. There is no other occupation in which a young entrant of just 16 is required to make a binding undertaking up to the age of 22; there is also no other occupation in which simply walking off the job renders one liable to arrest by a civilian police officer and eventually being brought before a court with power to impose imprisonment, for what, at most, in civilian life would be a civil action for breach of contract.

5. So far back as 1991 the Select Committee on the Armed Forces Bill of that year expressed dissatisfaction with the conditions of enlistment for under-18s and recommended the MoD to bring forward proposals for change. The RN and RAF changed their previous respective 6- and 5-year traps to the present position, but the Army increased their previous 5-year trap to the present 6-year trap

6. The UN Committee on the Rights of the Child commented in its 2002 Report, “The Committee is deeply concerned ... that those recruited are required to serve for a minimum period of four years rising to six years in the case of very young recruits”. In 2008 the concern continued.

*February 2009*

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**Memorandum submitted by the Prison Reform Trust**

**CRIMINAL DAMAGE: HOW INNOCENT CHILDREN ARE LOCKED UP ON REMAND**

**KEY FACTS**

- Three quarters of under 18 year olds locked up on remand by magistrates’ court are either acquitted or given a custodial sentence.
- One fifth of population of children in custody in England and Wales are locked up on remand—approximately 600 at any one time
- The number of children imprisoned on remand has increased by 41% since 2000
- 95% of those remanded in custody have pleaded innocent and are awaiting trial, 5% are awaiting sentence.
- A key alternative to custodial remands—remand to non secure local authority accommodation—has declined 43% in the last four years
- In most areas of England and Wales there is no specialist accommodation for under 18 year olds on bail or on RLAA
- 17 year olds on bail who do not have a suitable home address, are usually housed in bed and breakfast accommodation or hostels with minimal supervision.
- Children are routinely detained in police cells overnight despite PACE law which mandates the use of local authority accommodation for children under 17.
- Children can be and are locked up on remand by magistrates with no youth court experience or specialist training.
- Black and Black British children are almost twice as likely to be locked up on remand as white children.
- 29% of boys and 44% of girls remanded in custody have been “looked after” by their local authority.
- If a child is detained overnight by the police, the Youth Offending Team and Defence representative often have only a couple of hours in which to talk to and assess the child, prepare a bail package and present this to the court.

Adam Rickwood committed suicide in August 2004, hours after being restrained by staff in Hassockfield Secure Training Centre. At 14, he was the youngest child to die in penal custody in the last 25 years. Adam was on remand charged with wounding a man—a crime he said he did not do. The secure unit to which Adam was sent was 150 miles from his home. In his last letter to his family he wrote “I need to be at home and with my family I will never get into trouble again in my life. I will do anything to be with you’s but if people try to stop that I will flip”. Adam had a history of self harm and of involvement with social services. In his background he was typical of many of the children locked up on remand: vulnerable, with emotional and behavioural problems.

If Adam had been charged at the same age just five years earlier he would not have been in custody, because the courts were not allowed to lock up those under 15 on remand. But in 1999 the Criminal Justice and Public Order Act was implemented allowing for 12–14-year-olds to be subject to court ordered secure remand. It was the culmination of a series of changes, that gave the courts greatly increased powers to lock up ever younger children on remand.

Today children on remand make up one fifth of the children in custody and half of all receptions in juvenile YOIs. In the last seven years the number of children locked up on remand has increased 41%. The UN Convention on the Rights of the Child says that imprisonment of children should be used “only as a measure of last resort and for the shortest appropriate period of time”, but a third of the children locked up on remand have been charged with a non-violent crime, and three quarters are either acquitted or given a community sentence when they come to trial.

Something is going very wrong when so many children are locked up on remand, but then released into the community when they come to trial. Since September 2007 the Prison Reform Trust has been campaigning to reduce the number of children and young people imprisoned in England and Wales. In June 2008 PRT published a twelve point plan for reducing the child custody population of England and Wales. Point one of that plan was to reduce the number of children remanded in custody. Since then we have analysed why so many children are being locked up on remand and how the tide could be reversed. It's not an easy process because so many agencies are involved—police, defence solicitors, magistrates, social workers, housing officers, YOT workers and the children themselves. But reducing child custodial remands would save many children from the harmful effects of imprisonment and allow the government to redistribute funds towards meeting the welfare and housing needs of these vulnerable children.

February 2009

### Memorandum submitted by the Religious Society of Friends (Quakers)

1. The United Kingdom is unique among Nations of the European Union in recruiting young people into the armed forces at the age of 16.

2. In April 2008 there were 4,650 under 18-year-olds serving in the armed forces.<sup>447</sup> While those under 18 currently constitute about 1% of the trained strength of the armed forces, those recruited under the age of 18 amount to over a quarter of the army's fighting strength. 28% of all recruits in 2007–08 were aged under 18. Recruitment into the armed forces involves significant risks to the mental and physical well-being of adolescents. During the period between 1 January 1994 and 31 December 2003, 28 regular armed forces personnel under the age of 18 died while in service. During 2007 two under 18 year olds died while on training. [PQ reference number PQ 04703U].<sup>448</sup>

#### LEGAL CONTEXT

3. On enlistment into the armed Forces young people become subject to military law. Leaving the armed forces without permission amounts not only to a breach of contract but may be a criminal offence for which young people may be tried under courts martial.

4. Under the Army Terms of Service (Amendments etc ) Regulations 2008 which came into force on 6 August 2008 young people are required to serve for a minimum of four years from their 18th birthday. In the UN Committee on the Rights of the Child consideration of the UK report under the optional protocol to the UN Convention on the Rights of the child on the involvement of children in armed conflict in Geneva (24 September 2008), the Committee welcomed the lifting of the rule requiring young people to serve for a minimum period of four years beyond their 18th birthday (paragraph 18). In fact, at the time of this consideration the rule had already been re-introduced. The introduction of the above rule is potentially discriminatory in requiring under 18-year-olds to enter into more onerous terms and conditions than recruits who are over the age of 18. While those over 18 commit themselves for a period of four years those recruited at 16 commit themselves for a period of six.

5. After an initial period of six months during which young soldiers may choose to leave the armed forces voluntarily, there is no provision for discharge as of right. There are provisions for minors who are clearly unhappy at their choice of career to make a request to leave the army but this is always at the discretion of the commanding officer. The fact that there is a legal obligation to remain in the armed forces makes young and vulnerable recruits potentially more open to bullying. Those who are deeply unhappy may be unwilling or unable to make a request to leave for fear that if refused they may be subject to worse bullying than before. A wider "discharge as of right" would provide a safety valve and would make it easier to raise the issue of bullying in the knowledge that a young person could not be required to remain in a situation against his or her will.

6. On signing the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC), the UK entered an interpretive declaration that deployment of young people would not be precluded where, "the exclusion of children before deployment is not practicable or would undermine the operational effectiveness of the operation" The UK retained the right to send under 18s into conflict where "there is genuine military need" or if it is "not practicable to withdraw such persons before deployment." This interpretive declaration is overly broad and could amount to putting under 18-year-old soldiers in situations of danger. Such a declaration potentially frustrates the intention of the Convention.

7. Under the Convention on the Rights of the Child the UK Government is required to pay attention to the best interests of the child. For the purposes of the Convention any one under the age of 18 is considered as a child. Present Regulations regarding recruitment appear to subordinate the interests of the child to military effectiveness. The best interests of the child would require that the period prior to their 18th birthday be considered educational in the fullest sense of the word. It is important from the point of view of their

<sup>447</sup> www.dasa.mod.uk referred to in answer to Neil Gerrard PQ of 27 October 2008 (229409).

<sup>448</sup> Neil Gerrard PQ of 27 October 2008 (229408).

development that young people can make provisional decisions and to be able to learn from their mistakes. In any other area a young person making a career choice at the age of 16 would not expect to be held to that decision. As long as enlistment takes place at the age of 16 young people should be afforded the opportunity of reconsidering a provisional decision to join the army and be allowed discharge as of right at all times up until their 18th birthday.

8. Under the ILO Convention there is a general prohibition on “work which, by the nature of the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.” Military deployment to a conflict zone could amount to a breach of the ILO Convention even in the case of voluntary recruits as in the United Kingdom.

9. The current regime in the army is unlike any apprenticeship context in that in that breaches of army discipline may lead to criminal sanctions. Those joining the army at 16, often from the poorest backgrounds, do not have the same right to change their course or career as young people learning other trades or professions.

#### CONCLUSION

10. It would be entirely feasible to raise the age of enlistment into the armed forces to 18, while still permitting minors to train while retaining their civilian status. As a first step, the age of enlistment into the armed forces could be raised to 17. As yet the Ministry of Defence has resisted calls to undertake a feasibility study or cost analysis of raising the age of recruitment. While such a change in practice might require greater attention to be given to the retention of qualified soldiers through the development of more rewarding career paths, it would enable the United Kingdom to conform to the spirit of the Optional Protocol. I hope that the Joint Committee on Human Rights will consider this situation in detail and make recommendations that the Armed Forces do not enlist those under the age of 18.

*January 2009*

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### Memorandum submitted by the Refugee Children’s Consortium

#### ABOUT THE REFUGEE CHILDREN’S CONSORTIUM

The Refugee Children’s Consortium works collaboratively to ensure that the rights and needs of refugee children<sup>449</sup> are promoted, respected and met in accordance with the relevant domestic, regional and international standards, in particular:

- The United Nations Convention on the Rights of the Child;
- The European Convention on Human Rights (adopted in 1998);
- The Children Act 1989 & Children (Scotland) Act 1995; and
- The United Nations 1951 Convention relating to the Status of Refugees.

Our response is concerned with refugee and asylum seeking children, although it has implications for other groups of children such as those who have been trafficked.

#### EQUALITY OF TREATMENT

There have been two positive developments in relation to the treatment of asylum seeking children:

- the removal of the UK’s immigration reservation to the Convention on the Rights of the Child; and
- the introduction of c21 of the UK Borders Act 2007 and a subsequent commitment to introduce a duty equivalent to section 11 of the Children Act 2004 in the Borders, Citizenship and Immigration Bill currently before Parliament.

However despite this progress asylum seeking and refugee children still face substantial inequality of treatment. These are now the only children who do not have any formal link with the Department for Children, Schools and Families.<sup>450</sup> The result is:

- a substantial loss of expertise in policy development;
- a growing gap between treatment of children generally and the treatment of asylum seeking children; and
- the primacy of immigration control over children’s best interests.

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<sup>449</sup> The term “refugee children” is used here to mean: children seeking asylum, those with refugee status or leave to remain, those within families or in the U.K. without their usual caregiver. The focus will be on those children under 18, but may include elder siblings of the above and those who, although over 18 are still entitled to services under The Children (Leaving Care) Act.

<sup>450</sup> The only link that we are aware of is through the looked after children status of some children seeking asylum, but the policy framework for unaccompanied asylum seeking children and other looked after children varies widely.

While the welfare of children rests with a department that has no targets in relation to the treatment of children, and objectives that often run counter to children's best interests, it is difficult to see how the standard of treatment set out in Article 3 of the CRC (primacy of a child's welfare) will ever be achieved.

We believe the lack of statistics relating to refugee children is a serious omission. The most pressing example is that there are no published statistics to show how many children are detained with their families, where or for how long and information is not recorded about age disputed children in detention. For example Ann Owers reports:

“Other centres, including Yarl's Wood, had no accurate record of length of detention: indeed, we were initially told that some children had spent 275 days in detention, only to be informed later that this was a recording error and the figure should have been 14 and 17 days.”<sup>451</sup>

The UKBA cannot be confident they are keeping children safe in accordance with c21 of the UK Borders Act 2007 without this information. We are also concerned about the reliance on management information which is not considered robust enough to publish but is routinely used as a basis for policy development.

#### PRACTICAL IMPACT OF RESERVATION WITHDRAWAL

We strongly welcome the Government's decision to withdraw the reservation to the Convention on the Rights of the Child but we were alarmed to learn that according to Phil Woolas “no additional changes to legislation, guidance or practice are currently envisaged.”<sup>452</sup> The remainder of this response sets out the key areas in which we believe the Government falls short of international and national standards for the treatment of children.

#### CHILDREN IN DETENTION

Children in families continue to be detained for significant lengths of time with no judicial oversight, contrary to both Article 37 of the CRC and the Government's own policy. We agree with Ann Owers that:

“The detention of children, sometimes for lengthy periods and too often without effective monitoring of the length of detention, remains a major concern, and is ripe for review, as the UK removes its immigration reservation to the UN Convention on the Rights of the Child.”<sup>453</sup>

We are aware that pregnant women and new mothers still do not always have access to adequate nutrition in contravention of Article 24 of the CRC.

We increasingly come into contact with families where the UKBA has avoided detaining the child by separating the family and detaining the parent(s). This has been put forward as their preferred approach.<sup>454</sup> This is clearly not in accordance with Article 9 of the CRC, it is extremely damaging to the family and in some cases may seriously expose to the child to harm. We are unconvinced by the Government's position that this practice is consistent with Article 8 of the ECHR.

We remain extremely concerned about the fact that there are age disputed young people in detention. The detention of children is directly counter to Article 37, yet RCC members routinely uncover instances of children detained with adults. Of 165 age dispute cases dealt with at Oakington by the Refugee Council in 2005, 89 (53.9%) turned out to be children. In another period over 72% were determined to be children. We urge the Committee to investigate why age disputed young people are still detained, why these cases are not recorded (either upon entry or if they come to light while a young person is being held) and why there is no adequate or transparent process for dealing with an allegation that a child is held in detention as an adult.

#### KEEPING CHILDREN SAFE

We welcome the Code of Practice to keep children safe from harm issued under c21 of the UK Borders Act 2007 although it is too soon to assess its impact. To a large extent this will depend on the efforts made by the UK Border Agency to roll it out, particularly to private contractors such as escort services and private accommodation providers about whom we have very serious concerns. For example, the Medical Foundation for the Care of Victims of Torture recently highlighted serious cases of families in inadequate, unsafe accommodation.<sup>455</sup> We are also keen to see a well developed policing mechanism to ensure the Code is adhered to. We would welcome a commitment that all staff including contractors will be trained in how to use the Code, a deadline by which this will be rolled out and more information about how the Code will be policed.

<sup>451</sup> HM Chief Inspector of Prisons for England and Wales Annual Report 2007–08.

<sup>452</sup> *Hansard*, 24 November 2008.

<sup>453</sup> HM Chief Inspector of Prisons for England and Wales 2007–08.

<sup>454</sup> Border and Immigration Agency Code of Practice for Keeping Children Safe from Harm Consultation—Pro Forma for Responses, 25 April 2008.

<sup>455</sup> BBC News, UK “failing” victims of torture, 10 December 2008.

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## DESTITUTION

We strongly support the Government's commitment to ending child poverty. However asylum seeking children are not counted for the purposes of the child poverty measure and as a result they have been entirely excluded from efforts to raise children's standard of living. In fact, the direction of travel has been in precisely the opposite direction for this group of children. We remain strongly opposed to section 9 of the Asylum & Immigration (Treatment of Claimants, etc) Act 2004 and urge the Committee to press Government to remove this from the statute books. This provision can be achieved without the need for further legislation under section 44 of the Immigration, Asylum and Nationality Act 2006. RCC members are supporting increasing numbers of destitute children with families, age disputed young people and unaccompanied minors who become 18.<sup>456</sup>

The Government is currently considering how to reform the support regime for all asylum applicants including families. We are alarmed by suggestions that a new support regime may aim to remove support from unaccompanied children at their most vulnerable time at 18, and may enable Government to remove support from families at any stage in the process if they are deemed to be non-compliant. We maintain that child destitution is inconsistent with Article 8 of the ECHR and is neither necessary, proportionate or humane. Further, the Government's position that child destitution is necessary because of the actions of parents is in clear breach of Article 2.1 of the CRC—that children are protected against punishment or discrimination on the basis of their parent's actions.

## THE USE OF X-RAYS IN AGE ASSESSMENTS

We remain opposed to the use of x-rays in determining age and we would like to draw the Committee's attention to the opinion of Nick Blake QC and Charlotte Kilroy, relating specifically to the use of x-rays, that:

“No individual, and in particular no child, can lawfully be ‘subjected’ to a medical examination. This would be an assault.”<sup>457</sup>

Obtaining informed consent from a child is a highly specialist skill, and more so when the question is around something so fundamental to identity as age. We endorse the independent regional age assessment centre model put forward by the Immigration Law Practitioners Report, *When is A Child Not a Child*.<sup>458</sup> The RCC was represented on the Government's age assessment working group which met for the last time in August. We have not had any further information since this time and we would welcome clarity about the Government's plans.

## EDUCATION

We have seen no progress in relation to our concerns about education and in particular the difficulties children face accessing and participating fully in education because of the demands of the immigration and asylum support processes.

Article 22 of the 1951 Convention sets out that refugees should have the same access to elementary education and remission of fees, but it is in practice difficult for them to achieve this. For example we are aware from our practice that some young people who arrive in the UK at the ages of 14 or 15 are placed into pupil referral units or sixth form colleges rather than mainstream school.<sup>459</sup> Restrictions on financial support based on immigration status and/or length of residence prevent many children from having any opportunity to achieve their Article 29 rights under the CRC.

## FORCED RETURNS OF CHILDREN

We remain very concerned about the Government's intention to forcibly return unaccompanied asylum seeking children. We have been told that the UKBA is now working with the Foreign and Commonwealth Office and the Department for International Development to achieve this. We believe returns of children should only ever take place where it is proven to be in a child's best interests in accordance with Article 3 of the CRC. We understand that the DCSF is not involved in this which sends out a worrying signal. We cannot see how the Government intends to realise children's rights under Article 3 without the involvement of the DCSF.

*February 2009*

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<sup>456</sup> See for example, *Living on the Edge of Despair*, The Children's Society 2008.

<sup>457</sup> 7 November 2007.

<sup>458</sup> Crawley, H. May 2007.

<sup>459</sup> The Children's Society.

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## Memorandum submitted by Save the Children

### INTRODUCTION

1. Save the Children fights for vulnerable children in the UK and around the world who suffer from poverty, disease, injustice and violence. We work with them to find lifelong answers to the problems they face.

2. We work to ensure that the rights of children in the UK are protected, promoted and respected in line with the UN Convention on the Rights of the Child (UNCRC) and other international human rights instruments.

### GENERAL IMPLEMENTATION OF THE UNCRC

3. The UN Committee on the Rights (the Committee) published its Concluding Observations on the UK in October 2008.<sup>460</sup> While the Committee highlights a number of positive developments, it also raises a large number of concerns and makes over 120 recommendations for action.

4. Save the Children welcomes the Ministerial statement made on 7 October 2008, which broadly welcomes the Concluding Observations and makes a commitment to give them “the careful consideration they deserve”.<sup>461</sup> However, we are disappointed by the UK Government’s more detailed response set out in “*The Children’s Plan—A Progress Report*” published in December 2008.<sup>462</sup>

5. The Progress Report sets out the UK Government’s priorities in taking forward the Committee’s recommendations in relation to issues which concern England or are non-devolved. However, it is not clear what rationale has been used for prioritising the recommendations and what the Government intends to do (if anything) to address the recommendations which have not been prioritised.

6. Despite reiterating the UK Government’s commitment to the UNCRC and stating that the Concluding Observations “provide a helpful framework for further action by Government . . . to make children’s rights under the Convention a reality”, the action proposed will only address a small number of the Committee’s recommendations. Even where action is proposed this is not always adequate to fully address the recommendation.

7. This does not adhere to the Committee’s recommendation that the UK Government “take all necessary measures to address those recommendations from the concluding observations of the previous report that have not yet—or not sufficiently—been implemented as well as those contained in the present concluding observations”.<sup>463</sup>

8. The UK Government also gives a false impression of the Committee’s view of the Children’s Plan, implying that it is considered to be an adequate national action plan on UNCRC implementation. While the UN Committee welcomes the Children’s Plan, it raises concern that the UNCRC is not regularly used as the framework for developing policies within the UK and calls for a comprehensive UNCRC implementation plan.<sup>464</sup>

9. In contrast the devolved governments are proposing comprehensive action to address the Committee’s recommendations. The Scottish Government is currently consulting widely on their response to the Concluding Observations, which includes 142 recommendations for action<sup>465</sup> and will publish an implementation plan in May. The Welsh Assembly Government has committed to developing a five year National Children’s Rights Action Plan and is holding a conference in March to give stakeholders the opportunity to comment on the concluding observations and contribute to the Plan.

10. Save the Children would like to see urgent action taken by the UK Government to ensure that it fully implements the UNCRC and addresses ALL the recommendations made by the Committee.

11. To this end, the Government must ensure that it initially takes forward the Committee’s recommendations which relate to the “General Measures of Implementation”. The “General Measures” relate to the articles of the UNCRC which set out action to be taken by States to ensure that the UNCRC is fully implemented.<sup>466</sup>

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<sup>460</sup> UN Committee on the Rights of the Child (2008) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland.

<sup>461</sup> House of Commons Hansard, Volume 480, Part no. 140, Column 7W7, Ministerial written statements.

<sup>462</sup> Department for Children, Schools and Families (2008) *The Children’s Plan—A Progress Report*.

<sup>463</sup> UN Committee on the Rights of the Child (2008) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, paragraph 7.

<sup>464</sup> UN Committee on the Rights of the Child (2008) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, paragraph 14.

<sup>465</sup> See <http://www.scotland.gov.uk/Publications/2008/12/18090842/0>

<sup>466</sup> The general measures of implementation relate to article 4, which sets out that State Parties must take “all appropriate legislative, administrative and other measures” needed for the implementation of the rights set out in the UNCRC; article 42, which obliges States Parties to make the principles and provisions of the UNCRC widely known to adults and children and article 44.6, which states that States Parties should ensure that State Party and Committee reports are widely available to the public.



12. In particular Save the Children recommends that the UK Government:

- Publishes a detailed UNCRC implementation Action Plan, which includes how it will address all the Committee’s recommendations, including all previous recommendations.
- Brings legislation in to line with the UNCRC.
- Disaggregates sectoral and total budgets across the State Party to show the proportion spent on children.
- Ensures the involvement of civil society, including children, in the implementation of the UNCRC and the follow-up of the Concluding Observations.
- Strengthens its efforts to ensure that the all the provisions of the UNCRC are widely known.
- Takes the opportunity of the upcoming British Bill of Rights to incorporate the principles and provisions of the UNCRC into domestic law.

#### CHILD RIGHTS ISSUES OF PARTICULAR INTEREST TO SAVE THE CHILDREN

##### *Discrimination against children in education*

##### School exclusions

13. Despite noting the “numerous efforts of the State Party in the sphere of education”,<sup>467</sup> the Committee raises a number of areas in need of improvement. In relation to school exclusions, the Committee raises concern about: the high number of permanent and temporary school exclusions; that certain groups of children are disproportionately excluded compared to their peers; inadequate participation rights; and the absence of a child’s right to appeal their exclusion.<sup>468</sup>

14. Save the Children shares these concerns. High numbers of children in England continue to be excluded<sup>469</sup> and despite some positive initiatives such as *Aiming High*<sup>470</sup> and Public Service Agreements 10 and 11,<sup>471</sup> school exclusions continue to disproportionately affect particular groups of children, for example, males of Caribbean ethnicity are three times more likely to be excluded from school;<sup>472</sup> and pupils who have special educational needs account for 55% of all exclusions.<sup>473</sup>

15. The consequences of exclusion for children and wider society are stark, for example, fewer than 15% of permanently excluded children return to mainstream education;<sup>474</sup> one out of three excluded children become NEET at 16 (not in education, employment or training);<sup>475</sup> and the overall annual cost to society of school exclusions has been estimated at between £406 million<sup>476</sup> and £650 million.<sup>477</sup>

16. The Committee set out a number of recommendations relating to exclusions: permanent and temporary exclusions should only be used as a last resort; the number of exclusions should be reduced; children who are able to express their views should have appeal rights against their exclusion; and all children out of school should have an alternative quality education.<sup>478</sup>

17. The Progress Report sets out the UK Government’s expectation that all secondary schools are in behaviour partnerships with a shared commitment to work together to improve behaviour, tackle persistent absence and improve outcomes for children with challenging behaviour. A key principle of the partnership is to intervene early where a child is at risk of exclusion with the specific aim to reduce exclusions. Save the Children welcomes this aim and urges behaviour partnerships to address the over-representation of particular groups of excluded children.

<sup>467</sup> UN Committee on the Rights of the Child (2008) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, paragraph 66.

<sup>468</sup> UN Committee on the Rights of the Child (2008) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, paragraph 65 (d).

<sup>469</sup> In 2006–07, a total of 8,680 children were permanently excluded from school and 363,270 children were given fixed-term exclusions. Department for Children, Schools and Families (2008), Permanent and Fixed Term Exclusions in Maintained Schools in England, 2006–2007 House of Commons written answer 3rd November 2008: Hansard Column 196W.

<sup>470</sup> Department for Children, School and Families (2003) *Aiming High: Raising the Achievement of Minority Ethnic Pupils*. The project’s aim was to raise standards for all young people whatever their ethnic or cultural background and ensure that all education policies truly address the needs of every pupil in every school.

<sup>471</sup> PSAs 10 and 11 commit the Government to keeping all children on the path to success and narrow gaps in attainment between disadvantaged pupils and their peers.

<sup>472</sup> *Ibid.*

<sup>473</sup> Department for Children, Schools and Families (2008) Permanent and Fixed Term Exclusions in Maintained Schools in England, 2006–07.

<sup>474</sup> H Daniels *et al* (2007) Study of Young People Permanently Excluded from Schools, Department for Education and Skills, 2003.

<sup>475</sup> The Bow Group (2007) *Invisible Children 2007*.

<sup>476</sup> Social Exclusion Unit (2001) *Preventing School Exclusion 1*.

<sup>477</sup> New Philanthropy Capital (2004) *Misspent Youth*.

<sup>478</sup> UN Committee on the Rights of the Child (2008) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, paragraph 6.

18. The UK Government has recently committed £26.5 million over the next three years for piloting new forms of alternative educational provision for excluded children. However, despite this welcome commitment, in September 2008, just prior to the Committee's recommendations, the UK Government published revised guidance on exclusions.<sup>479</sup> This guidance does not fully address the Committee's recommendation to provide alternative education to those excluded as it only places a duty on local authorities to provide provision from day six after the exclusion, rather than from day one. The guidance also fails to mention the particular needs of excluded primary school age children.

19. The Education and Skills Act 2008 requires all governing bodies of maintained schools to "invite and consider pupils' views". Following this change to the law the exclusions guidance was amended and advised schools that children should be allowed and encouraged to attend exclusion hearings and to speak on their own behalf, subject to their age and understanding. Although this is a positive step forward, it will not guarantee that children will have their views taken into account nor replace the need for a statutory right to appeal.

20. After consulting with children about their participation in the exclusion process, Save the Children ran a three-year independent advocacy project in England—EAR to Listen—from 2005–08. This initiative targeted early intervention at children most at risk of exclusion and worked with those who had been excluded to support them to remain in or re-enter education.

21. Many children told us that they felt the exclusion process was something that happened to and around them and that the core "problem" was only shifted and not addressed.<sup>480</sup> This contrasts with Scotland and Wales where children have the right to participate in the exclusion process.<sup>481</sup>

22. Our independent advocacy project had an 80% success rate in supporting children at risk of exclusion, or who had been excluded, to re-enter, re-engage or remain in education. Children told us that having an advocate to speak on their behalf or to help them communicate their views, made them feel included in decisions regarding their education and more encouraged to find positive solutions to the problems they were facing.

23. Save the Children urges the UK Government to take the opportunity of its forthcoming review into the exclusion appeals process to introduce a statutory right to appeal for all children and ensure that children's views are fully taken into account in line with article 12 of the UNCRC.<sup>482</sup>

24. Save the Children recommends that the UK Government:

- Addresses all the Committee's recommendations in relation to exclusions.
- Establishes independent education advocates in every local authority in England which can advocate on a child's behalf or help them communicate their views.

#### *Poor educational outcomes for children living in poverty*

25. The Committee recommends that the UK Government "strengthen its efforts to reduce the effects of the social background of children in their achievement in school".<sup>483</sup> We agree. Children living in poverty have lower levels of attainment than their peers and are more likely to leave school without qualifications.<sup>484</sup> Focusing resources on offsetting the impact of poverty is therefore crucial.

26. A number of UK Government reforms, which aim to raise the achievement of all children, but with a particular emphasis on children living in poverty, will help to address this recommendation. These include: extending the co-operation duty of Children's Trusts to schools; introducing local authority-wide targets for pupils eligible for Free School Meals (FSMs); and launching the City Challenge in three English cities, which aims to significantly reduce the numbers of underperforming schools and improve educational outcomes for disadvantaged children over the next three years.

<sup>479</sup> Department for Children, Schools and Families (2008) *Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units*.

<sup>480</sup> *Ibid.*

<sup>481</sup> In Scotland, the Age of Legal Capacity Act (1991) and the Standards in Scotland's Schools Act (2000) require that prior to intention to exclude a meeting to discuss an exclusion should be set up with a young person of legal capacity. In Wales, in January 2004, The Education (Pupil Exclusion and Appeals) (Maintained Schools) Regulations 2003 came into effect. These give children and young people registered at a secondary school or a Pupil Referral Unit the right to be informed in writing of their exclusion and the right to make representations to the governing body about their exclusion.

<sup>482</sup> Article 12 of the UNCRC states that Governments shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

<sup>483</sup> UN Committee on the Rights of the Child (2008) *Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland*, Paragraph 67.

<sup>484</sup> Cassen, R and G Kingdon (2007) *Tackling Low Educational Achievement*, Case Paper 118, London: The Centre for Analysis of Social Exclusion: London School of Economics.

27. Despite the positive change evident in some local authorities and settings and a plethora of investment and initiatives, the underachievement of children living in poverty remains the norm, for example, of those children who qualify for FSMs, less than one in five is currently achieving five good GCSEs including English and Maths;<sup>485</sup> and just over 6% of pupils receiving FSMs remain at school to take A levels, compared to around 40% of students overall.<sup>486</sup>

28. Save the Children urges the UK Government to fully address the UN Committee's recommendation by:

- Increasing investment in early years education to enable more fully funded places for disadvantaged children.
- Ensuring that all low income families qualify for all free additional resources.
- Removing barriers stopping deprivation funding reaching the most disadvantaged pupils at local authority and school level so that the maximum resources can be directed effectively.
- Making sure that the policies and practice of all schools are “poverty proofed”.
- Introducing a “poverty proofing” standard for all schools and pupil referral units, which measures the success of narrowing the gap in educational outcomes between the poorest children and their peers.

#### ENSHRINING THE GOVERNMENT'S GOAL OF ERADICATING CHILD POVERTY IN LAW

29. Save the Children welcomes the UK Government's commitment to legislate to eradicate child poverty by 2020, which takes forward the UN Committee's recommendation.<sup>487</sup> A solid legislative framework will help to ensure that children have their right to an adequate standard of living realised.<sup>488</sup> In order for the legislation to be effective it must include the following:<sup>489</sup>

30. *Definition of “eradication of child poverty”*: The UK Government currently measures children experiencing relative low income, before housing costs, in three ways.<sup>490</sup> The Government has indicated that the UK should be among the best in Europe on the first two measures and that the third measures should approach zero. We agree. The relative low income target should be set at a precise numerical target of 5%<sup>491</sup> or below to ensure that the UK sets its ambitions at achieving the lowest, sustainable rate possible.

31. *Focus on children living in severe and persistent poverty*: Whilst fully supportive of the 60% median poverty threshold as the benchmark for assessing progress towards ending child poverty, Save the Children is concerned that a singular focus could have a negative impact on the most disadvantaged children.<sup>492</sup>

32. It is vital to ensure that the most disadvantaged children are not left behind.<sup>493</sup> The Work and Pensions Committee recommends in a recent inquiry that: “the national strategy on child poverty develops immediate policy initiatives to assist children in severe and persistent poverty and creates an explicit indicator against which progress can be measured”. The UN Committee makes a similar recommendation.<sup>494</sup>

33. *Statutory duties*: Save the Children is concerned that different duties to end child poverty will exist throughout the UK. While we welcome the proposed UK-wide income targets used to define the “eradication” of child poverty and the proposed duty on the UK Government to publish a child poverty strategy, we are concerned that these will not cover devolved areas of policy and will only apply to Westminster. We are calling on each of the devolved administrations to introduce statutory duties to end child poverty by 2020 and to publish a child poverty strategy.

34. Annual progress reports, including data on the extent of child poverty and future priorities, must be published annually and laid before Parliament and the devolved assemblies.

<sup>485</sup> Ibid.

<sup>486</sup> Child Poverty Action Group (2008) 2 Skint 4 School.

<sup>487</sup> UN Committee on the Rights of the Child (2008) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, paragraph 65 (a).

<sup>488</sup> Article 27 of the UNCRC.

<sup>489</sup> These principles are based on those developed by End Child Poverty of which Save the Children is a member: End Child Poverty coalition statement of principles: Legislating for the eradication of child poverty by 2020.

<sup>490</sup> (a) children living in a household whose annual income is below 60% of the contemporary median equivalised household income; (b) children living in a household that is both materially deprived and whose annual income is below 70% of the contemporary median equivalised household income; (c) children living in a household whose annual income is below 60% of the equivalised median income level in 1998–99, held constant in real terms.

<sup>491</sup> The lowest historically in Europe has been 5%.

<sup>492</sup> A recent report identified 1.3 million or 10.2% of children living in severe and persistent poverty, based on a household income of below 50% median and lacking at least three basic necessities (at least one adult and one child necessity) Middleton & Magadi (2007) Severe Child Poverty in the UK, SCUK.

<sup>493</sup> According to the Institute for Fiscal Studies, in 1996–97, 11% of children were in severe poverty and in 2005–06 10.4% remained in severe poverty.

<sup>494</sup> The UK Government must “give priority in this legislation and in the follow-up actions to those children and their families most in need of support.” UN Committee on the Rights of the Child (2008) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, paragraph 65 (b).

35. All strategy documents must be comprehensive and prepared in consultation with the devolved administrations and delivery agencies and include specified interim dates by which steps or key milestones will be achieved. A duty on Government to publish strategy documents every three years and lay them before Parliament is also essential.

36. *Link to Government spending decisions:* The legislation must be linked to key UK Government spending decisions, including Comprehensive Spending Reviews, annual pre-budget reports and budgets, with sufficient resources agreed by Parliament. Achieving constant, sustainable progress on raising family incomes and narrowing the gaps in other outcomes will require adequate resources at both national and local level.

37. *“Poverty-proofing” policies at both national and local levels:* The UK Government must ensure a duty on all Whitehall departments and on local authorities to undertake and publish a poverty impact assessment of all policies. This should also be replicated across the devolved administrations.

38. *Independent external scrutiny body:* There must be a clear mechanism for independent scrutiny and engagement with stakeholders, including children living in poverty.<sup>495</sup> Legislation must require the UK Government to have regard to this body when setting or reviewing its 2020 strategy and producing progress reports.

39. Save the Children recommends that the Child Poverty Bill:

- Is underpinned by the principles set out above, and in particular:
- Focuses on families most in need.
- Places a duty to eradicate child poverty on both the UK Government and the devolved administrations.

#### DISCRIMINATION AGAINST CHILDREN ON GROUNDS OF AGE

40. Save the Children is a member of Young Equals, which is campaigning to ensure comprehensive protection for children in the forthcoming Equality Bill. We endorse the evidence submitted by Young Equals.

February 2009

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#### Memorandum submitted by Dr Caroline Sawyer, Oxford Brookes University

*Issue 2: the practical impact of the withdrawal of the UK’s reservations on immigration and children in custody with adults to the UN Convention on the Rights of the Child (UNCRC)*

It has been suggested that the withdrawal of the reservation will deal with the problem of the small number of children with British citizenship who are expelled with foreign parents. However this does not appear necessarily to be the case.

Expulsions of any person may present difficulties of principle if the person is unwilling to go because of real fears. Expulsion into potential danger is still more difficult if the person being expelled is a child, because of their vulnerability. The expulsion of a British citizen child however presents additional problems, because of the abdication of obligations of protection to the child as citizen and the effective expulsion of that child citizen.

Children may be expelled to dangerous countries or to countries where they have no citizenship rights (where as children they may be allowed to enter without papers). These expulsions are carried out informally as an adjunct to the normal formal removal process, and can include time in an immigration removal centre as part of the enforcement process, before being escorted out of the UK, all at government expense.

These expulsions of British citizens occur when a UK-born child has one British (or settled) and one foreign parent. The child is therefore born British in accordance with s. 1 British Nationality Act 1981, but the right of the foreign national parent to remain in the UK may be dependent on the continuation of the relationship with the British parent. If the British parent dies or abandons the family, for reason of relationship breakdown or illness, the foreign parent may lose the right to remain in the UK as a consequence. Her (or occasionally his) departure may then be truly voluntary, or may be undertaken under the duress of a lack of status—no right to work or access to welfare benefits—or may be enforced physically. The child will be taken along too and treated as if he or she were a foreign national.

It is not legally possible for a British citizen to be formally removed or deported. It is possible for removal or deportation orders to cover family members (NIAA 2002, s. 73; UKBA 2007, s.37), and it may well be that British citizen children have been included in error, because arrangements for the assessment and recording of citizenship are unclear and because assessment of citizenship is often difficult. Thus it is unlikely that a British child would be able to challenge even a formal removal even if the situation were understood; there would be unlikely to be any realistic access to the necessary legal support. Children in the expulsion

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<sup>495</sup> In line with article 12 of the UNCRC.

process are not treated as separate individual citizens but, if they are not included in formal directions, are accommodated and sent out without formalities adjunct to the removal of their parents. No records are kept by the Home Office of the departure of these British children, nor by the Foreign and Commonwealth Office of their arrival in their host country.

The practice of informal but enforced expulsions of British citizen children was confirmed in a Parliamentary Written Answer in July 2008.

21 JULY 2008 : COLUMN 959W—CONTINUED

*Immigration: Children*

Mr. Andrew Smith: To ask the Secretary of State for the Home Department how many children who are British citizens are in immigration detention; and for how long they have been there. [207583]

Mr. Byrne [*holding answer 4 June 2008*]: There were no children with British citizenship in any immigration removal centre as at Thursday, 22 May 2008. The UK

21 July 2008 : Column 962W

Border Agency does not detain children who are British citizens. However, where a foreign national subject to enforced removal is parent to a child with British citizenship, it is possible for that child to accompany the parent through the enforcement process on a voluntary basis. Such situations are not common and would only occur where deemed to be in the child's best interests with all parties in agreement and the parent providing consent. The child's status in the removal centre would effectively be that of a guest.

However, the assertions in the Parliamentary Written Answer about the "child's best interests with all parties in agreement" appear to be untrue. Similar assertions have been made in identical terms in correspondence to Andrew Smith MP by Jacqui Smith, Home Secretary, and by Meg Hillier, Under-Secretary of State for Identity, the latter subsequently confirming that this had been in error. There is no welfare assessment.

The comment about "the parent providing consent" is similarly disingenuous. The parent is given only the alternatives of taking the child with her or leaving the child behind in the care of the local authority. (If the British non-carer parent wishes to retain even contact with the child, in practice the carer parent is given leave to remain in order to facilitate that. If the British parent has care, the foreign parent may be removed and required to rely on contact only by international visits, for which the Immigration Rules provide.)

The practice has also been described by Ministers as analogous to parents taking their children with them when they go to work abroad. Especially where there is a forced removal, this is again disingenuous. Parents going to work abroad are likely to be professionals who can offer their children even more than the basic social protections, and if the situation is uncomfortable they have the choice of returning to the UK. Removals however are effected even into dangerous conditions or extreme poverty and lack of health care, and are designed to be permanent.

Only Ireland and the UK appear to pursue this practice. Countries on the continent are more wary of expelling their own citizens.

Children over the age of seven used to be relatively safe from this practice, but the "Seven Year Child Concession" was withdrawn in December 2008 without any saving provision for British citizens.

9 DEC 2008 : COLUMN 49WS

*Seven Year Child Concession*

The Minister for Borders and Immigration (Mr. Phil Woolas): The United Kingdom Border Agency is withdrawing DP5/96, a concession which has also been referred to as the seven year child concession, as of 9 December 2008. The concession set out the criteria to be applied when considering whether enforcement action should proceed or be initiated against parents of a child who was born here and has lived continuously to the age of seven or over, or where, having come to the UK at an early age, they have accumulated seven years or more continuous residence. The original purpose and need for the concession has been overtaken by the Human Rights Act and changes to immigration rules. The fact that a child has spent a significant period of their life in the United Kingdom will continue to be an important relevant factor to be taken into account by case workers when evaluating whether removal of their parents is appropriate. Any decision to remove a family from the UK will continue to be made in accordance with our obligations under the European Convention on Human Rights (ECHR) and the Immigration Rules.

The problem is that Art 8 rarely works and there is no means within the Immigration Rules for the child to seek leave to remain for the foreign parent. The relevant Rule would be Rule 317, which provides for British people to sponsor certain relatives. There is no provision for minor children to sponsor their parents in order to look after them. The Home Secretary Jacqui Smith was invited to consider making an amendment to Rule 317 by adding a paragraph (g) to allow a minor child who is a British citizen to seek leave to enter or remain for a carer parent without immigration status, with guidance for leave to be allowed especially where the child would otherwise be obliged either to accompany the parent to a place where the

living standards are not acceptable for a British child or else to remain alone in the UK in local authority care. She replied saying there was no need for such a provision because the child's interests were sufficiently safeguarded by welfare assessments. This assertion was made in a paragraph duplicating that of Meg Hillier who, however, subsequently confirmed that the information was incorrect. No such welfare assessments are made. In any case, even if they were, they would not of themselves acknowledge the child's citizenship rights. Thus even if the reservation to the UNCRC is withdrawn, the problem is unlikely to be solved.

The UNCRC equates child welfare with family unity, and (as generally with international instruments) does not govern states' rights to exclude non-nationals. Without a change in the provisions for foreign parents to stay, a welfare assessment based on a UNCRC framework would therefore reach a conclusion based not on the child's best interests as one might expect but on whether it was better for the child to remain alone or to be expelled to somewhere potentially dangerous. Again, it would take no account of the child's citizenship rights. Even if it was concluded that the child's interests would be irrevocably damaged by either prospect, the alternative of the parent's remaining in the UK with the child would not be available save outside the Rules. If the parent were likely to be allowed to stay outside the Rules, that would probably already have happened. If the problem is to be solved by parents' being allowed to stay if the child's welfare assessment requires it, that should be acknowledged in a Rule.

Potential political problems to making this change are:

1. that it might be perceived as an invitation to foreign people to safeguard their immigration position by having British children.
2. that such parents would have to be given a status on which, if they did not succeed in finding work, they would be able to have recourse to public funds.

The answer to 1 is that most people currently think this is the position, and so the current very small numbers would be unlikely to rise. The answer to 2 as well as 1 is that, given the small number, the overall burden is very small, and that it is a small price to pay for respecting the citizenship rights of these children.

For examples of courts' and tribunals' approach to the issue, see *M v London Borough of Islington* [2004] EWCA Civ 235 esp. paras 16 and 24; *AO (unreported determinations are not precedents) Japan* [2008] UKAIT 00056, and Baroness Hale of Richmond in *Naidike and others v Attorney General for Trinidad and Tobago* [2004] UKPC 49.

The judgement of the House of Lords in *Huang v SSHD* [2007] UKHL 11 was considered likely to resolve the problem. However, because there is no provision for a child to sponsor a parent at all, there is nothing onto which to hang a court case on behalf of the child. Only the parent will be served with any order or directions that can be challenged, and the invocation of for example Article 8 ECHR will be focused on respect for the parent's rights rather than the child's. Even though *Beoku Betts* [2008] UKHL 39 requires the impact on other family members of any removal, the situation there did not envisage their accompanying him, thus preserving family life. Moreover one probably requires a court to enforce these ideals, and the parent's application would require a recognition of citizenship rights as private life under Article 8 which the Strasbourg jurisprudence does not find (*Sorabjee* and *Jaramillo v UK* Apps. nos. 23938/94 and 24865/94). Moreover the UK has not ratified Optional Protocol No. 4 to the ECHR, which prohibits the expulsion of a country's own citizens. Accordingly even if the reservation to the UNCRC is withdrawn, these informal expulsions may continue as before, without potential redress.

It seems probable that these British children will almost invariably be from the black or Asian communities. A Parliamentary Written Question as to whether a race impact study has been made of this practice has not yet been answered (and was unfortunately spontaneously rephrased by the Table Office without reference back so that it may have to be asked again) but as no records are kept of the practice it is a Question expecting the answer No. As with the civilian internees in Japanese war camps, it appears that they are treated as not British, notwithstanding that here they have British citizenship as of right through birth in the UK. The implications of continuing to make no provision for the child to apply for the parent to remain in even the hardest of cases is that, although in practice it will rarely come to pass, all British citizen children with a foreign parent are at risk of expulsion from their own country.

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February 2009

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#### Memorandum submitted by Scope

Scope welcomes this opportunity to submit written evidence to the Joint Committee on Human Rights, regarding Children's Rights. We commend the Committee for investigating such an important issue given the recent concluding observations of the UN Committee on the Rights of the Child and in particular in calling for evidence relating to the experiences of disabled children and young people.

Due to the nature of the inquiry and the short timescale for responses, we have not been able to consult directly with disabled children, young people and their families; however we have drawn upon previous evidence we have collected in relation to abuses of disabled children's human rights. We also recognise the

need to limit the length of written responses to the committee and therefore have prioritised issues to present in this submission. In light of this we would, welcome any further opportunity to give oral evidence to the committee on other human rights abuses of disabled children and young people.

Finally, we would like to take this opportunity to remind the Committee that effective consultation with disabled children and young people takes preparation. Scope believes that it is essential for investigations of this type to allow adequate time to engage with disabled children and young people in order to enable them to contribute their views and experiences in an accessible way.

#### SCOPE

Scope's mission is to drive the change to make our society the first where disabled people achieve full equality. Scope runs national campaigns specifically focusing on the human rights of disabled children and young people. Details of Scope's campaigning activity can be found at [www.timetogetequal.org.uk](http://www.timetogetequal.org.uk). Scope has a particular focus on children and young people with cerebral palsy and expertise in complex needs. Research has demonstrated that cerebral palsy is the most common childhood impairment. Scope runs a range of children and young people's services including specialist education from early years through to further education, a fostering service and a brokerage service for short breaks.

#### CHILDREN'S RIGHT TO BODILY INTEGRITY AND TO A DIGNIFIED LIFE

Core to the principles of human rights and social justice is the notion that all people irrespective of their status have a fundamental right to bodily integrity and to live a dignified life. For disabled children and young people, these rights are set out in the Article 17<sup>i</sup> of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) and Articles 6<sup>ii</sup> and 23<sup>iii</sup> of the UN Convention on the Rights of the Child (UNCRC). Despite these founding principles of international convention, many disabled children and young people routinely have their human rights abused in these respects.

Scope has evidence that non-disabled peers and adults routinely make assumptions about the value and quality of the disabled children and young people's lives based on their appearance, how they communicate and their health needs. Assumptions made by adults who are service providers, medical professionals, members of the public and representatives of statutory bodies about a disabled child's mental capacity can result in discrimination and exclusion. These assumptions impact on disabled children's realisation of the right to bodily integrity and to a dignified life.

#### RIGHT TO A DIGNIFIED LIFE

##### *Case study 1*

A student with cerebral palsy and learning difficulties at one of Scope's residential schools was recently admitted to hospital for three days during the school holidays. The student returned directly to school from hospital and when staff collected him it was noticeable that he had lost a significant amount of weight. The student stated that he had not been given any food to eat during his three day stay. When staff challenged the hospital, they responded by stating that they did not know how to feed him.

*Source:* Scope

##### *Case study 2*

A disabled young man who attends one of Scope's educational establishments was admitted to hospital with pneumonia, his parents were contacted and they arrived at the hospital four hours later. When his parents arrived they observed that their son had not been given any oxygen for his pneumonia and "Do Not Resuscitate" had been written on his notes. A formal letter of complaint was written to the hospital, which was responded to 18 months later, by which time the registrar who treated their son was no longer working at the hospital. No further action was taken.

*Source:* Scope

The above incidences happened within the last two years and illustrate the continuing discriminatory attitudes of medical professionals towards disabled children. Disabled children and young people have told us in the past that medical professionals, including their local GPs or school nurses, have treated them in a less than dignified manner. Disabled children and their families have commented on the language that has been used by practitioners which makes assumptions about their quality of life. Whilst not all cases result in the level of neglect portrayed in the case studies, negative encounters can leave disabled children feeling upset, distressed and frustrated. These encounters clearly contravene Article 37<sup>iv</sup> of the UNCRC.

Unfortunately, cases which do involve higher levels of mistreatment and indignity are not as rare as they should be. Many third sector organisations and Disabled People's Organisations working at the grassroots have examples of abuses of disabled people's Human Rights in relation to medical treatment for both routine illnesses as well as life-threatening health issues. A number of the disabled children and young people that we have spoken to have told us that they fear having to go to hospital and some are reluctant to seek medical advice or treatment because they do not believe they will be given equal treatment.

The attitudes and actions of these professionals led to a breach of disabled children's rights under Article 19 of the UNCRC. The article states that:

“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”<sup>v</sup>

Scope would like to see specific legal safeguards introduced to protect disabled children from abuse in hospital. This should ensure that “Do Not Resuscitate” and “Do Not Intubate” orders are put on their medical notes without their express consent. Furthermore it should safeguard disabled children against failure to administer treatment or basic care that would automatically be given to a non-disabled person. We believe there should be a duty to investigate any accusation of undignified treatment and significant penalties should be attached to this type of offence.

Scope would welcome robust Disability Equality Training, with a strong focus on the Social Model of disability aimed at all medical and health professionals as part of their basic training. Compulsory training on the duties of statutory service providers under the Mental Capacity Act should also be introduced and decisions made by medical professionals regularly reviewed in order to prevent discrimination. This is particularly important in relation to life and death decisions as disabled people are often treated as though their lives are less valuable, or in extreme cases, with the view that dying would be in their best interests. The right to life is embedded in the Human Rights Act 1998, Article 6<sup>vi</sup> of the UNCRC and Article 10<sup>vii</sup> of the UNCRPD.

The Government has failed to “ensure that no child is deprived of his or her right of access to such health care services . . . take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children” as set out in Article 24 of the UNCRC. This means that many disabled children and young people are left vulnerable to the prejudices of individual medical and health practitioners. It is therefore pertinent that as the Government moves towards ratifying the UNCRPD it ensures that the experiences above are avoided by full implementing Article 25 and particularly in relation to section F to “prevent discriminatory denial of health care or health services or food and fluids on the basis of disability”. Until this issue is addressed many disabled children will be denied the opportunity to achieve the *Every Child Matters* outcomes.

#### THE RIGHT TO BODILY INTEGRITY

Despite the right to bodily integrity being a fundamental aspect of human rights, it is still not uncommon for disabled children and young people to have their fertility restricted by medical professionals. It has been argued by clinicians that some disabled young people do not have the mental capacity to understand what it is like to have children and as such restriction of their fertility is not problematic. In extreme cases this is used to either restrict the growth<sup>viii</sup> and physical maturation of the child or sterilise them<sup>ix</sup>. This results in a forced intervention in the psychological, emotional and physiological journey towards adulthood.

In 2007 one particular case came to international prominence. In the USA parents of a nine year old disabled young girl (Ashley X) were seeking non-therapeutic surgical intervention to restrict her growth and maturation so she would remain like a child and be easier to care for. Her parent's wishes were supported by their medical advisers and, without approval from the courts, Ashley was given a hysterectomy, had her breast buds removed and received hormone treatment to restrict her growth. It appears that the doctors and the child's parents acted unlawfully by not seeking approval from a court for this intervention yet to date no legal action has been taken against any of the parties involved.

The media's coverage of this case, generated numerous other accounts of sterilisation or intended sterilisation of disabled children and young people. Scope is highly concerned that without tighter legal safeguards medical interventions similar to those in Ashley X case could occur in Britain. At the time of the Ashley X case a spokesperson for the British Medical Association (BMA) said that: “if a similar case occurred in the UK, we believe it would go to court and whatever decision was ruled would be in the best interests of the child”.<sup>x</sup> We were told by people working in the field that these types of cases came to the Family Courts very few people knew about their existence. These cases only usually come to the courts if there is a disagreement between parent and clinician or because the hospital wanted legal clarification before taking any action. Scope believes that such cases should come to court as a matter of course, when parties are considering non-essential intervention, irrespective of whether there is a disagreement or not.

#### Case Study 3

In September 2007 it was widely reported in the British media that the mother of a 16 year old disabled woman who has Cerebral Palsy was seeking a hysterectomy for her daughter so that she avoid what her mother perceived to be the “distress and loss of dignity” that comes with the onset of menstruation<sup>xi</sup>: “She is double incontinent, she has no useful function in her hands or legs, she can't communicate. [My daughter] has an undignified enough life without the added indignity of



menstruation. She will not understand what is happening to her body and it could be very frightening for her<sup>xii</sup>. A consultant gynaecologist from her hospital had backed her decision, was prepared to perform the operation and was seeking legal advice from the NHS.<sup>xiii</sup> In this case the hospital took the decision not to undertake the surgery because the young woman had not started menstruating so there was no “problem” to address.

The reality is that disabled young people are still routinely having their right to retain their fertility denied. As such, many disabled people are unnecessarily infantilised and do not receive the equal status accorded non-disabled people in becoming an adult. What is particularly problematic is the notion that it is acceptable to render disabled children’s bodies “more convenient” for care givers.<sup>xiv</sup> It is the dignity of this young woman, Ashley X and other disabled children which becomes compromised. It disappears off of the radar, with no accountability, no transparency of process and no mechanisms by which the voice or representation of the disabled people can be heard. Furthermore their rights under Articles 7 and 15 of the UNCRPD become severely abused.<sup>xv</sup>

Scope believes that there must be a legal requirement to seek a court judgement where any invasive or irreversible procedures or therapies are being considered for a disabled child or young person who cannot consent. This is especially important if, like in the case of Ashley X, the intervention is not to treat a diagnosed medical condition or illness. We believe there is a real need for public scrutiny of these decisions. Furthermore due to the lack of transparency in the process and the evidence being behind closed doors, we have little confidence in how decisions are made before they reach the family courts. This lack of transparency makes it difficult for third parties to intervene and represent the best interest of the child. This is particularly important in cases where the child has little or no speech and need an independent advocate to represent their rights and best interests. Scope believes that the Family Courts should introduce a mechanism by which interested parties could find out about these cases with enough time to intervene.

#### THE VOICE OF THE DISABLED CHILD

The voice of the child in these cases are neglected in favour of assumptions and prejudices of a professional adult. There is clearly a contradiction here in relation the power relationship between adult and child and the governing principles of the UNCRC. A key question in the complex case of young woman above is who is really representing the young woman’s best interests? Scope believes that in many cases parents and clinicians are acting in what they do believe to be the best interests of the child. In the majority of these cases parents are not receiving adequate day to day support or information services. This leads parents and medical professionals to pursue interventions which do not necessarily match the best interests of the child in every situation.

The Government has taken significant steps in making a commitment and issuing guidance to place young people’s own voices at the heart of children’s policy, however we concerned over the extent to which this is realised on the ground. The national picture is characterised by a postcode lottery, dependent on a few local examples of good practice. Currently, there are few examples of independent advocacy or effective self-advocacy being used. The UN Committee on the Rights of the Child in its concluding observations in 2008 criticised the Government for the fact that many disabled children still have no say around decisions that fundamentally affect their lives.

When disabled children are at risk of being treated with indignity and having their bodily integrity invaded, it is vital that they have access to independent advocacy, communication equipment and appropriate support mechanisms. Scope believe that the Government should commit to strengthening the voice of the young person by embedding the children’s rights perspective and principles of the UN Convention on the Rights of the Child into the transition process. This will create an increase in demand for services to support the young person’s voice in the form of independent advocacy or self-advocacy. Scope would encourage the Government to strengthen their recognition of independent advocacy as a vital vehicle for enabling disabled children and young people to have choice and control over their lives, and to commit to adequately resourcing and building capacity for this service. Advocacy provision is patchy across the UK and non-existent in some areas. Currently there is no statutory right to independent advocacy or self-advocacy support in these cases of non-essential medical intervention and in the rare instances where support and services do exist they are chronically under-funded. This situation is getting worse as many advocacy schemes are threatened with closure as local authorities withdraw funding.

Scope welcomed the Mental Capacity Act which created an assumption of capacity unless proved otherwise and puts a duty on statutory service providers to support people to make their own decisions. It also gives some disabled young people the right to an Independent Mental Capacity Advocate (IMCA). We remain concerned, that individuals only get access to an IMCA for life-changing decisions on health and living arrangements and only then if people have no family or friends to represent their wishes. Furthermore, Scope is concerned that, with two exceptions, this Act relates to disabled people over the age of 16 years. One of these exceptions is that “offences of ill treatment or wilful neglect of a person who lacks capacity within Section 2(1) can also apply to victims younger than 16 (Section 44)”. However under the Act only people aged 18 and over can make an advance decision to refuse medical treatment.

Scope believes that in situations where a disabled child lacks capacity they should always have access to an independent advocate to represent their rights. This would address concerns within the current legal process that the best interests of the child are strongly influenced by the desires and wishes of parents and medical professionals. Without a statutory right to independent advocacy, disabled children who lack mental capacity will be vulnerable to invasive non-essential medical intervention, without anyone safeguarding their right to bodily integrity. This is obviously problematic in cases where parents and clinicians agree on non-essential medical treatment and if not subjected to legal review. This safeguard is essential for disabled children to enjoy Article 12 of the UNCRC.<sup>xvi</sup>

In its move towards ratifying the UNCRPD the Government must keep in mind the criticism made of it by the UN Committee on the Rights of the Child in 2008. In particular it must take address that recommendations made by the committee that the Government should:

“take all necessary measures to ensure that legislation providing protection for persons with disabilities, as well as programmes and services for children with disabilities, are effectively implemented; provide training for professional staff working with children with disabilities, such as medical, paramedical and related personnel, teachers and social workers; develop a comprehensive national strategy for the inclusion of children with disability in the society; [and] undertake awareness-raising campaigns on the rights and special needs of children with disabilities, encourage their inclusion in society and prevent discrimination and institutionalization”.

If the Government do not heed the Committee’s advice many more disabled children and young people will be treated with indignity and have non-essential medical intervention behind closed doors.

Thank you for taking the time to read Scope’s written evidence. Scope would welcome the opportunity to give oral evidence to the Committee to expand further on these and other issues affecting the Human Rights of disabled children and young people.

- <sup>i</sup> UNCRPD (Article 17) Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.
- <sup>ii</sup> UNCRC (Article 6) States Parties recognize that every child has the inherent right to life [and] States Parties shall ensure to the maximum extent possible the survival and development of the child.
- <sup>iii</sup> UNCRC (Article 23) States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.
- <sup>iv</sup> UNCRC (Article 37) States Parties shall ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.
- <sup>v</sup> Cont. “Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement”.
- <sup>vi</sup> UNCRC (Article 6) States Parties recognize that every child has the inherent right to life [and] States Parties shall ensure to the maximum extent possible the survival and development of the child.
- <sup>vii</sup> UNCRPD (Article 10) States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.
- <sup>viii</sup> Schmidt, E B. (2007) “Making Someone Child-sized Forever?: Ethical considerations in inhibiting the growth of a developmentally disabled child” *Clinical Ethics* 2(1): 46–49.
- <sup>ix</sup> C.f. Stansfield, A J, Holland, A J & Clare, I C H. (2007) “The Sterilisation of People with Intellectual Disabilities in England and Wales during the period 1988 to 1999” *Journal of Intellectual Disability Research* 51(8): 569–579.
- <sup>x</sup> The Telegraph Online (2007) “A Genuine Moral Dilemma, Say doctors”: <http://www.telegraph.co.uk/news/worldnews/1538647/A-genuine-moral-dilemma%2C-say-doctors.html>
- <sup>xi</sup> Daily Mail, (2007) *Why I Want Surgeons to Remove my disabled Girl’s Womb*, Monday, 8 October 2007: 5.
- <sup>xii</sup> The Daily Telegraph (2007) *Daughter Who Must Never Grow Up*.
- <sup>xiii</sup> Daily Mail (2007) *Truly Humbling*, Friday, 12 October 2007: 30–31.
- <sup>xiv</sup> Tom Shakespeare writes that “if it is permissible to alter surgically disabled people for the convenience of their caregivers, this suggests that disabled bodies are objects without value and beauty and not worthy of respect . . . No clear evidence appears to have been provided in either case [Ashley X or Katie Thorpe] to prove that growing to adult stature or having normal female body shape or menstruation will be harmful or distressing to the individual, as opposed to inconvenient or confusing to her caregivers”.

<sup>xv</sup> UNCRPD (Article 7) States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children [and] In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration [and] States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

UNCRPD (Article 15) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation [and] States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

<sup>xvi</sup> UNCRC (Article 12) States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child [and] For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

February 2009

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### Memorandum submitted by Scotland's Commissioner for Children and Young People

As Scotland's Commissioner for Children and Young People, my role is to promote and safeguard the rights of children and young people. In doing so, I may promote best practice by service providers and keep law, policy and practice under review with a view to assessing their adequacy and effectiveness. I also raise awareness and understanding of children and young people's rights. In carrying out these statutory functions, I must have regard to the United Nations Convention on the Rights of the Child (UNCRC).

I welcome the JCHR's inquiry into children's rights and the opportunity to submit written evidence. The comments below are informed by the general work of my office. Since taking up my post in 2004, I have worked on a range of children's rights issues, engaging with children and young people themselves as well as those who work with them. My evidence is also informed by my involvement in the UK's recent periodic report to the Committee on the Rights of the Child. Working jointly with the Children's Commissioners in England, Wales and Northern Ireland, I submitted an "alternative" report to the Committee and participated in the pre-sessional working group in June 2008.<sup>496</sup> Inevitably, the Commissioners' joint report could not cover all children's rights issues in the UK. In the limited space available, the Commissioners sought to identify issues of mutual concern across the UK and which we believed could be usefully raised with the Committee. We welcomed the Committee's Concluding Observations in October 2008 in which the concerns raised in our report were well reflected.

In my evidence, I have chosen to focus on specific issues but would encourage the JCHR to take the UK Commissioners' joint report into account during its inquiry into children's rights. While some issues raised in the report have been progressed since its publication (for example, the removal of the UK's reservations to the UNCRC), the vast majority are still relevant today.

#### GENERAL COMMENTS

Generally, progress has been made within Scotland and the UK in the implementation of the UNCRC. However, as is made plain by the Committee's Concluding Observations, much remains to be done. In particular, we still have some way to go in our attitudes towards children and our failure to perceive them as rights-holders rather than as objects of our protection. There is also much to be done with regard to the mainstreaming of children's rights and adopting rights-based approaches to law, policy and practice.

During this recent UN state reporting cycle, I have been particularly pleased by the open and consultative approach taken by the Scottish Government. This approach has been facilitated by a dedicated children's rights team within the Government which takes the lead on issues relating to the UNCRC. The value of having such a team has been demonstrated in recent months by the drafting of an action plan which sets out the Scottish Government's response to the Concluding Observations. This plan of action is currently being consulted on. That the Scottish Government is actively considering its response to the Concluding Observations is a marked improvement from previous governmental responses: in the past, governments at both UK and devolved levels have tended to shelve Concluding Observations and have not developed plans for how they might be implemented. I hope that the Scottish Government's response to date is indicative of greater consideration of children's rights within government more generally.

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<sup>496</sup> UK Children's Commissioners, *UK Children's Commissioners' Report to the UN Committee on the Rights of the Child* (June 2008) available at [www.sccyp.org.uk](http://www.sccyp.org.uk).

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 SPECIFIC ISSUES

In your call for evidence, you noted that the JCHR is particularly interested in a number of issues. I will address some of these issues as well as raising additional areas of concern. I am also aware that other children's rights issues will be addressed in more detail by my counterparts in the UK.

*Withdrawal of the UK's reservations*

I welcome the removal of the UK's reservation to Article 37(c) of the UNCRC but remain concerned that since its removal, young people under the age of 18 have been held alongside adults in prison in Scotland. Article 37(c) clearly states that children deprived of their liberty shall be separated from adults unless it is in their best interests not to do so. While we have much to be proud of in Scotland with regard to our welfare-based children's hearing system, we continue to imprison far too many 16 and 17-year-olds. It is imperative that we do more to develop alternatives to custody. When detention is necessary, it should be for the shortest time possible in child-centred settings.

*Discrimination against children on the grounds of age*

In its Concluding Observations, the UN Committee notes the "general climate of intolerance and negative public attitudes towards children, especially adolescents, which appears to exist in the State party, including in the media, and may often be the underlying cause of further infringements of their rights".<sup>497</sup> This echoes a common complaint from young people themselves that they are regarded as a homogenous group, treated unfairly, ostracised and portrayed in a negative manner.

It is in this context that Anti-Social Behaviour Orders (ASBOs), Dispersal Orders and the use of "Mosquito" devices should be examined. I would like to point out that the picture with regard to ASBOs and Dispersal Orders in Scotland is fundamentally different from that in England. Between 2004 and 2008, the Scottish authorities imposed 14 ASBOs on 12 to 15-year-olds, while in 2006 alone, 1,054 ASBOs were imposed on 10 to 17-year-olds in England and Wales.<sup>498</sup> Moreover, in Scotland, breach of an ASBO cannot result in a custodial sentence for a child under the age of 16. The Scottish Government is currently undertaking a review of anti-social behaviour legislation and its effectiveness, which is very welcome. I understand that other, less punitive measures are used more frequently, notably Acceptable Behaviour Contracts (ABCs). However, I remain concerned that the law and the discourse around anti-social behaviour targets young people and has the effect of limiting their opportunities to socialise and use public spaces; incidentally, in many areas of the country there is a lack of other things to do for children and young people.

The nature of "Mosquito" devices,<sup>499</sup> a product that has been explicitly marketed as a "teen deterrent" adds another dimension to the problem. Their sale and use in the UK is currently unregulated. It is worrying that there should be a device that is specifically designed and used to "repel" children and young people and in effect exclude them from public spaces. It is my view that the Scottish and UK Governments should explore their legal options and consider a ban on the sale of these devices, which are discriminatory on grounds of (young) age by their very nature and used in a way that infringes children and young people's rights to free association and assembly (Article 15 UNCRC).

The NGO Alternative Report for Scotland to the UN Committee asks for more to be done "to encourage tolerance of non-criminal behaviour of children".<sup>500</sup> Their concern, which I share, is that children and young people's freedoms and opportunities are unjustifiably limited by widespread discriminatory attitudes that manifest themselves in suspicion and hostility towards children and young people who are associating with each other in public spaces, often because they have nowhere else to go and meet their friends.

*Criminalisation of children*

I am concerned that anti-social behaviour measures have the potential to criminalise young people for behaviour that is not in and by itself criminal. While many of the behaviours that may lead to an ASBO being sought by police and other agencies are not criminal, the breach of an ASBO is; this anomaly has also been remarked upon by the UN Committee.<sup>501</sup> The problem is smaller in scale in Scotland due to the lower number of ASBOs granted; however, I remain opposed to measures that unnecessarily criminalise young people through the backdoor and by circumventing their rights.

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<sup>497</sup> Committee on the Rights of the Child, *Consideration of Reports Submitted by State Parties under Article 44 of the Convention, Concluding Observations, United Kingdom of Great Britain and Northern Ireland*, 3 October 2008, CRC/C/GBR/CO/4, para 24.

<sup>498</sup> HM Government, *Implementation of the Convention on the Rights of the Child: Response to the list of issues raised in connection with the consideration of the third and fourth periodic report of the United Kingdom of Great Britain and Northern Ireland*, CRC/C/GBR/4, paras 165–167.

<sup>499</sup> The Mosquito "Teen Deterrent" device emits a noise at a frequency range that, according to the manufacturer, most people over 25 cannot hear. This is a product description from the manufacturer's website: "The Mosquito™ Anti-Vandal System is the solution to the eternal problem of unwanted gatherings of youths and teenagers in shopping malls, around shops and anywhere else they are causing problems. The presence of these teenagers discourages genuine shoppers and customers from coming into your shop, affecting your turnover and profits. Anti social behaviour has become the biggest threat to private property over the last decade and there has been no effective deterrent until now." (<http://www.compoundsecurity.co.uk/mini-mosquito-products?gclid=CK3auPz41pgCFQ2ZQwodeAPNdw>)

<sup>500</sup> Scottish Alliance for Children's Rights, *The NGO Alternative Report (Scotland) to the United Nations Committee on the Rights of the Child* (2008), p10.

<sup>501</sup> See n2, para 79.

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### Minimum Age for Prosecution<sup>502</sup>

The minimum age for prosecution in Scotland, currently at eight, is very low and the UN Committee has repeatedly asked for this to be raised across the UK.<sup>503</sup> The UN Committee has stated that, “*a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable*”,<sup>504</sup> and recommends that it should be set at 14 to 16. The current, very low age is somewhat mitigated in Scotland by the fact that most offenders under 16 will be dealt with by the children’s hearing system, which is focused on welfare-based responses to children and young people who commit offences. Despite the preference for the children’s hearing system, there were upwards of 140 prosecutions of children under 16 in the adult courts in each year between 2004–05 and 2006–07.<sup>505</sup>

However, the welfare focus does not mean that there can be no criminal consequences for children and young people in the system. In particular, accepting an offence ground of referral to the children’s hearing is treated as a conviction for the purposes of the Rehabilitation of Offenders Act 1974. I am concerned that, as a result, despite the welfare focus of our juvenile justice system, some young people are given criminal convictions and a criminal identity by the system. This can lay the foundation for a life of criminality, taint young people’s life chances and bring about the obvious adverse consequences for their communities.

I am pleased that the Scottish Government has been actively considering raising the minimum age for prosecution in its forthcoming Criminal Justice and Licensing (Scotland) Bill, though the details and timescales are yet to be announced. I am advocating a minimum age for prosecution of at least 13, as this is a significant age in Scots criminal law. I am keen to emphasise that this is an issue of how our legal system responds to children and young people who commit crimes; it is not about children’s moral understanding of what is right and wrong.

### *Discrimination against children on the grounds of disability*

Since its inception, my office has received numerous enquiries alleging breaches of the rights of children with disabilities. I have carried out several significant pieces of work in this area and would like to highlight, in particular, the following:

- Moving and handling. I have heard from a number of children and young people with disabilities and their parents about difficulties with moving and handling. They attribute these difficulties to attempts to avert all risk and to protect the health and safety of the worker providing moving and handling assistance without having regard to the rights and needs of the young person. The children and young people describe feeling embarrassed, humiliated, undignified and excluded because of moving and handling difficulties. They say they are prevented from taking part fully in school and are unable to enjoy extra-curricular or other leisure activities. My office undertook a significant piece of research in this area and published the report *Handle With Care* in 2008. Given that health and safety legislation is a key issue in relation to moving and handling, this matter should be of concern to those at both UK and devolved levels.
- Communication aids. Ensuring children and young people are able to exercise their Article 12 rights continues to be a challenge and this is particularly true in the case of children with communication difficulties, including those with non-verbal communication. For example, I have heard of cases where a young person’s communication aid has been reclaimed by the local authority when they leave school, leaving the young person without their usual means of communication. This is a very rudimentary breach of the right to a voice. There is clearly a need to invest in communication aids and in training and support for families and professionals to enable them to competently use high and low tech communication aids.

### *Asylum seeking children*

I would ask the Committee to consider the recommendations that I and my colleagues across the UK made in relation to asylum in our joint submission to the UN Committee in June 2008.<sup>506</sup> The vast majority of our shared concerns are yet to be addressed by government, including the fact that detention of children is still used too frequently and not always as a last resort. However, I would also like to emphasise that the Scottish Government has made some progress that could be replicated across the UK, particularly by granting access to further and higher education to children seeking asylum who have attended Scottish schools for three years or more.

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<sup>502</sup> I prefer the term “minimum age for prosecution” over “age of criminal responsibility” because the latter term suggests that this debate is about children and young people’s moral capacity to distinguish right from wrong, while the former, more to the point, suggests that it is about the way our legal system deals with children and young people who commit crime.

<sup>503</sup> Committee on the Rights of the Child, *Consideration of Reports Submitted by State Parties under Article 44 of the Convention, Concluding Observations, United Kingdom of Great Britain and Northern Ireland*, 9 October 2002, CRC/C/15/Add.188, para 62; n2, para 78.

<sup>504</sup> Committee on the Rights of the Child, *General Comment No 10, Children’s Rights in Juvenile Justice* (2007), CRC/C/GC/10, para 16.

<sup>505</sup> See n3, para 176. As the UNCRC covers all children and young people under the age of 18, it is also worth noting that there were over 8,500 prosecutions in each year involving 16 and 17-year-olds.

<sup>506</sup> See n1, paras 152–170.

### *Children of prisoners*

In its 2008 Concluding Observations, the Committee on Rights of the Child expressed concern at the situation of children with one or both parents in prison. It recommended that the UK, “ensure support to children with one or both parents in prison, in particular to maintain contact with the parent(s) (unless this is contrary to their best interests) and prevent their stigmatisation and discrimination”.<sup>507</sup>

This recommendation echoes work recently done by my office in relation to the children of prisoners. It is thought that about 13,500 children in Scotland are affected by the imprisonment of a parent.<sup>508</sup> The increase in the number of people imprisoned not only means that more children are affected, but also contributes towards prison overcrowding which in itself restricts family contact and visits. While offenders give up their rights to liberty upon imprisonment, their children certainly do not give up their rights to know their parent and maintain contact with them.

With this in mind, in 2008, I published “*Not Seen. Not Heard. Not Guilty. The rights and status of the children of prisoners in Scotland*”, a report in which I argued that the children of prisoners are the invisible victims of crime and of our penal system.<sup>509</sup> Little regard is had to their rights when decisions are made regarding an offending parent, whether it be a sentencing decision or decisions about family contact while a parent is in prison. In the report, I examined law, policy and practice relevant to these children and made recommendations that aimed to promote respect for their rights. One such recommendation was that when courts take sentencing decisions regarding a parent, the rights and interests of children should be taken into account. This recommendation echoes a recent judgment of the Constitutional Court of South Africa in which the Court held that the best interests of the child should be taken into account when sentencing a primary caregiver of young children.<sup>510</sup>

It is arguable that imprisonment of a parent breaches the child’s right to respect for family life under Article 8 of the ECHR. Whilst it may be that this is a proportionate response to achieve a legitimate end in some cases, my view is that the impact on children who will be deprived of a significant carer should at least be taken into account at the point of sentence to ensure that there is a transparent and thoughtful decision about proportionality.

The recommendations in my report were directed at various organisations (including for example, the Scottish Government, the Scottish Prison Service and others) and I am currently following up on these to ascertain what progress has been made.

### *Other issues*

In addition to the issues raised above, I would like to briefly mention some other key issues covered in the Concluding Observations which I feel must be addressed to ensure effective implementation of children’s rights:

— *Incorporate the UNCRC into domestic law*

The incorporation of any international treaty can be a long and complex process, but I would urge the UK Government and devolved administrations to begin this process by exploring ways in which the provisions and principles of the UNCRC can be incorporated into domestic law.

— *Disseminate and raise awareness of the UNCRC*

To ensure respect for children’s rights, it is essential that children and adults alike know what those rights are. There should be a comprehensive awareness raising initiative which also encompasses training for all professionals working with and for children. This is a role for the Scottish Government and others, including my own office.

— *Ensure respect for the views of the child*

We must build on the good practice already evident in Scotland and around in the UK with regard to listening to children and young people and taking their views into account in decisions about their lives.

— *Prohibit all physical punishment of children*

The Committee on the Rights of the Child expressed regret at the UK’s continued failure to prohibit all forms of physical punishment against children. In addition to legal reform, the Committee has recommended that positive and non-violent forms of discipline be promoted and that support be provided to parents and professionals.

<sup>507</sup> See n2, para 45(d).

<sup>508</sup> Figure estimated by Families Outside ([www.familiesoutside.org.uk](http://www.familiesoutside.org.uk)). This is probably an under-estimate. More recently, it has been suggested there are 16,500 children of prisoners in Scotland.

<sup>509</sup> The report is available online at [www.sccyp.org.uk](http://www.sccyp.org.uk).

<sup>510</sup> *S v M* [2007] ZACC 18. Justice Albie Sachs, who gave the leading judgment in *S v M*, will be delivering a lecture on the rights of the children of prisoners in Edinburgh on 24 June 2009. For more information, contact the SCCYP office.

— *Carry out children's rights impact assessments*

This will assist in monitoring the implementation of children's rights and ensuring resources are allocated to maximise positive outcomes for children. Children's rights impact assessments may prove particularly useful in the current Scottish context to ensure that responsibility for implementation of the UNCRC is devolved along with devolution of powers to local authorities.<sup>511</sup>

Thank you again for the opportunity to submit written evidence. Should you require any further information, please do not hesitate to contact me.

February 2009

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**Memorandum submitted by the Scottish Refugee Council**

ABOUT SCOTTISH REFUGEE COUNCIL

Scottish Refugee Council is an independent charity which provides advice and information to asylum seekers and refugees in Scotland. We also campaign for the fair treatment of refugees and asylum seekers and to raise awareness of refugee issues.

ABOUT THE INQUIRY

The Joint Committee of Human Rights of the UK Parliament is undertaking a short inquiry into children's rights following the publication of the UN Committee on the Rights of the Child Concluding Observations as well as following up several of the Committee's own recent inquiries, including the inquiry report into the Treatment of Asylum Seekers (2007).

1. INTRODUCTION

1.1 Scottish Refugee Council warmly welcomes the Committee's inquiry and continuing scrutiny of the human rights and children's rights implications of UK Government asylum policy.

1.2 As a member of the Refugee Children's Consortium, Scottish Refugee Council shares fully the concerns raised in the Consortium's response. This short submission seeks to provide some additional evidence on the rights of asylum-seeking and refugee children in Scotland.

1.3 We would also urge the Committee to consider in its inquiry the NGO Alternative Report (Scotland) to the United Nations Committee on the Rights of the Child 2008.<sup>512</sup> This report was informed by consultation with a wide range of NGOs in Scotland. It highlights areas of concern and makes a number of recommendations for the Scottish and UK Governments. Some of the recommendations in the report have been progressed since its publication prior to the UN Committee's deliberations (including the removal of the UK's general reservation to the UN Convention on the Rights of the Child), however most remain relevant.

2. DEVELOPMENTS IN THE DEVOLVED COMPETENCES OF THE SCOTTISH GOVERNMENT

2.1 Scottish Refugee Council remains deeply concerned by many aspects of the operation of the UK asylum determination system and its impact on the rights of refugee children in Scotland. We do however recognise and welcome the steps that the current Scottish Government and the previous administration in Scotland have taken to ensure that refugee children are treated first and foremost as children.<sup>513, 514</sup>

2.2 We are pleased that the Scottish Government endeavours to develop policies within their devolved responsibilities to reflect this and support the principles of the United Nations Convention on the Rights of the Child (UNCRC) to refugee children:

Asylum seekers must be treated fairly and humanely, particularly when children are involved . . .  
The welfare and rights of all children in Scotland are paramount and must be treated as such. This is reflected in Scots law.<sup>515</sup> And;

[The Scottish Parliament] affirms its support for the principles of the UN Convention on the Rights of the Child (UNCRC) which states that governments should protect children from all forms of physical or mental violence; recognises that, while the Scottish Executive has no direct

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<sup>511</sup> My office has developed a children's rights impact assessment tool. For further information see SCCYP, *Children's Rights Impact Assessment: The SCCYP Model* (2006) available at [www.sccyp.org.uk](http://www.sccyp.org.uk).

<sup>512</sup> <http://www.sacr.org.uk/images/SACR%20NGO%20Summary%2008.pdf>

<sup>513</sup> Immigration and nationality are reserved matters under schedule 5 of the Scotland Act 1998 and reserved and devolved competences are further elaborated in the Concordat between the Home Office and the Scottish Executive. Many services and areas of policy which support and impact on asylum-seeking and refugee children living in Scotland are however not listed in this Concordat. These include the wholly devolved competences of education, interpreting and translation, policing, housing, health care, criminal justice, the provision of legal aid, social work and children's services and child protection.

<sup>514</sup> See appendix 1 and 2. See Sections 545–559 of The Scottish Government's Report on the Implementation of the UN Convention on the Rights of the Child in Scotland: <http://www.scotland.gov.uk/Resource/Doc/184924/0052026.pdf>

<sup>515</sup> See Appendix 1.

responsibility for the operation of the immigration and asylum system, it is responsible for the welfare of children, for schools, and for working with the UK Government to report on compliance with the UNCRC;<sup>516</sup>

2.3 The main practical manifestations of these statements within their devolved competences have been in the area of education, introducing changes to ensure that asylum-seeking and refugee children receive similar access and support to other children in Scotland and progressing their rights under Article 29 of the UNCRC.

2.3.1 In autumn 2006, the Scottish Executive changed educational regulations for asylum seekers, refugees and migrants. One of these changes was to extend Educational Maintenance Allowance (EMA) for those granted refugee status, Humanitarian Protection and Discretionary Leave. This allowed unaccompanied asylum-seeking children in Scotland, many of whom are initially granted Discretionary Leave, to access EMA like other children in Scotland, something Scottish Refugee Council had called for.<sup>517</sup>

2.3.2 In 2007 changes were made to education regulations which removed a three-year residency requirement for those granted humanitarian protection in Scotland to access funding for higher education.<sup>518</sup> In England and Wales, this is not the case. This provision went beyond those set out in the EU Directive on minimum standards for the qualification and status of refugees.<sup>519</sup>

2.3.3 The Scottish Government further amended regulations in 2008 to give asylum-seeking children who had spent at least three years in Scottish schools the same access as Scottish children to full-time further and higher education.<sup>520</sup>

2.4 We also welcome the approach the Scottish Government has taken to follow up on the Concluding Observations of the UN Committee by publishing an implementation plan. This plan is currently open for consultation.<sup>521</sup>

### 3. DEVELOPMENTS IN SCOTLAND IN RELATION TO RESERVED ISSUES

3.1 Scottish Refugee Council also welcomes statements made by the Scottish Government against UK Government policies which have a detrimental impact on asylum-seeking children in Scotland, such as their opposition to forced removals of families and the detention of children at Dungavel House Immigration Removal Centre and Section 9 of the 2004 Asylum and Immigration Act (Treatment of Claimants etc).<sup>522</sup> Several of these mirror the concluding observations of the UN Committee and the Joint Committee's own previous reports.

3.2 In addition concerns raised by the administrations in Scotland around the nature of forced removals, the detention of children and inadequate treatment of unaccompanied asylum-seeking children have led to several developments including the creation of the "lead professionals"; fast resolution of many families' cases in the case resolution programme; and the development of a family returns pilot:

3.2.1 The aim of the lead professionals is to ensure that the UK Border Agency has relevant information about the health, welfare and education of asylum seekers to inform its decisions about family removals in cases covered by the legacy review, including matters concerned with their timing and handling. No published data is so far available on the effectiveness of the role of the lead professional to ensure that children's rights are being respected by UKBA in the removal process.

3.2.2 The initial phase of the UK Border Agency's case resolution review dealing with families that arrived in the UK prior to July 2004 concluded in March 2008. Around 1000 families in Glasgow were given leave to remain. Since the start of the second phase in March 2008, a further 200 legacy families have been granted leave. Whilst we welcome the speed with which cases were concluded, allowing children and their families the ability to rebuild their lives in Scotland, the status granted to these families has meant that families have been unable to access the same entitlements to family reunion as those granted refugee status.

<sup>516</sup> Scottish Executive amendment to Parliamentary debate on asylum-seeking children 22 September 2005.

<sup>517</sup> *Ibid.*

<sup>518</sup> The Education (Fees and Awards) (Scotland) Regulations 2007 and guidance: <http://www.scotland.gov.uk/Publications/2007/06/28105931/1>

<sup>519</sup> Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. For children, the regulation change complies with Article 27 (1) states that 1. Member States shall grant full access to the education system to all minors granted refugee or subsidiary protection status, under the same conditions as nationals. However the regulation change goes beyond the minimum standard for adults as set out in Article 27 (2): Member States shall allow adults granted refugee or subsidiary protection status access to the general education system, further training or retraining, under the same conditions as third country nationals legally resident.

<sup>520</sup> The Education (Graduate Endowment, Student Fees and Support) (Scotland) Amendment Regulations 2007.

<sup>521</sup> <http://www.scotland.gov.uk/Publications/2009/01/27155153/0>

<sup>522</sup> See appendix 1 and the Scottish Government's consultation on the implementation of the UNCRC's concluding observations.



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#### 4. PROVISION OF QUALITY LEGAL REPRESENTATION

4.1 Scottish Refugee Council has raised concerns about the availability of quality legal representation for unaccompanied asylum-seeking children currently in Scotland. We are particularly concerned in light of the UK Border Agency's proposed plans to disperse unaccompanied asylum-seeking children to specialist local authorities around the UK including to local authorities in Scotland. We believe that a thorough assessment of the availability of quality, specialist legal representation should be carried out prior to any substantially increased number of children in Scotland.

#### 5. CONFUSION AMONGST SERVICE PROVIDERS OF THEIR DUTIES

5.1 It is acknowledged amongst service providers that they are confused about the interface between UK and Scottish legislation and whether duties emanate from Westminster or Holyrood. This is supported by research conducted by the Glasgow Centre for the Child and Society into the needs and experiences of unaccompanied asylum-seeking children in Scotland<sup>523</sup> which found that: "The ambiguity between some Scottish and UK legislation can make it difficult to advance children's rights . . ." The report recommended that to improve service providers understanding:

Clearer guidance is needed with regards to the remits and responsibilities of the Scottish and UK Parliaments. Service providers must be aware of the legislation, policies and procedures that apply to their work with unaccompanied asylum-seeking children in Scotland taking account of children's legislation and devolution.

5.2 Similarly, an HMIE joint inspection of services for children of asylum seekers in Glasgow in June 2007 found that:

Some managers and staff in the social work service were unsure whether children of asylum seekers and unaccompanied asylum-seeking children could be referred to the Children's Reporter in the same way as other children. When children were referred to the Children's Reporter, a range of appropriate actions were taken. Children's Reporters were not always clear about the complex relationship between Scottish and United Kingdom legislation for children of asylum seekers.<sup>524</sup>

*February 2009*

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### Memorandum submitted by the Standing Committee for Youth Justice (SCYJ)

#### 1. EXECUTIVE SUMMARY

1.1 The Standing Committee for Youth Justice (SCYJ) welcomes this opportunity to submit evidence to the Joint Committee's inquiry into children's rights. We are pleased to note that matters pertaining to children in trouble with the law feature prominently in the list of issues highlighted as being of particular interest to the Committee. This group of children's human rights are systematically denied by a youth justice system that is in urgent need of reform.

1.2 We believe that this reform must fully implement international standards of juvenile justice in order to address the following priority issues:

- Alarming increases in the use of custody for children over recent years which fly in the face of the principle of last resort.
- Serious concerns about the safeguarding of children in custody; high levels of self harming, incidence of suicide and the use of Government sanctioned painful restraint techniques.
- A youth justice system that is insufficiently distinct from that for adults and so does not focus adequately on children's particular characteristics and needs.
- The failure to decriminalise prostitution for children in order to guarantee that they are perceived and treated as victims rather than as offenders.
- The criminalisation of large numbers of the child population, due in large part to the very low age of criminal responsibility.<sup>525</sup>
- Responses to offending that fail to address children's welfare needs and hence tackle the root causes of their behaviour and re-offending.

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<sup>523</sup> This is a Good Place to Live and Think About the Future, the needs and experiences of unaccompanied asylum-seeking children in Scotland, March 2006, [http://www.scottishrefugeecouncil.org.uk/pub/UASC\\_report](http://www.scottishrefugeecouncil.org.uk/pub/UASC_report)

<sup>524</sup> <http://www.hmie.gov.uk/documents/services/glasgowasylumreport.pdf>

<sup>525</sup> "Each year around 100, 000 young people aged 10–17 enter the criminal justice system for the first time." H M Government (2008) Youth Crime Action Plan 2008 p.14

## 2. INTRODUCTION

2.1 The SCYJ believes that the current youth justice system is insufficiently distinct from that for adults and so does not focus adequately on children's particular characteristics, needs and interests. Legislation and policy for children who offend falls short of international human rights standards and is not congruent with that which deals with children and families more broadly, in respect of welfare, safeguarding, education and health.

2.2 In its concluding observations on the UK, published on 3 October 2008, the United Nations committee on the rights of the child (UNCRC) made a number of severe criticisms of the UK's failure to comply with the convention on the rights of the child (CRC) in its treatment of children in the criminal justice system.

2.3 The committee recommended that the UK should fully implement international standards of juvenile justice, in particular articles 37, 39 and 40 of the CRC, as well as the General Comment n° 10 on "Children's rights in Juvenile Justice", the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules"), the United Nations Guidelines for the Prevention of Juvenile Delinquency ("the Riyadh Guidelines") and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty ("the Havana Rules"). The Committee also made a series of specific recommendations, some of which are discussed below under the headings outlined by the JCHR in its call for evidence.

## 3. CHILDREN IN DETENTION

3.1 It is SCYJ's opinion that custody is not always used as a last resort or for the shortest time possible in contravention of article 40 of the CRC and this is borne out by the statistics. At any one time there are about 3,000 children held in juvenile custody in England and Wales, many of them for non-violent offences. Figures show that at 28 March 2008 of all those held at Young Offender Institutions (YOIs) 35% were for non-violent offences and 15% for breach. In Local Authority Secure Children's Homes (LASCHs) the figure show a similar picture (32% and 19% respectively) and in Secure Training Centres (STCs) too (28% and 16% respectively).<sup>526</sup> The average length of stay across the estate is 76 days.<sup>527</sup> Despite the Youth Justice Board's target of a 10% reduction in children entering custody between 2005 and 2008 (approved by the Home Office), the numbers of children entering custody have risen, and did not decrease over this period and the target has now been dropped.

3.2 In its concluding observations the UNCRC recommended that "*the State party develop a broad range of alternative measures to detention for children in conflict with the law and establish the principle that detention should be used as a measure of last resort and for the shortest period of time as a statutory principle.*"<sup>528</sup>

3.3 During the recent passage of the Criminal Justice and Immigration Act 2008 SCYJ lobbied for the introduction of a distinct custody threshold for children that must be met before any child is sentenced to custody, in order to ensure that children are only locked up as a last resort, and for reasons of public protection, save where mandatory custodial sentences apply.<sup>529</sup> We were disappointed that the Government did not introduce such a threshold in this legislation and urge them to do so at the earliest opportunity in order to implement the UNCRC's recommendation.

3.4 There is also significant evidence that spending time in custody is inflicting further damage on children who have often already experienced abuse or loss. One third of children in custody are officially classed as vulnerable.<sup>530</sup> The starkest evidence of this is the number of child deaths in custody since 1990, which has now reached 30. Furthermore reports from the Chief Inspector of Prisons have repeatedly raised serious concerns about the safety of children in custody. A report published in February 2006 highlighted the high incidence of children self-harming in prison (1,324 incidents in 2004–05—that is 25 incidents of children self-harming in prison every week),<sup>531</sup> leading the Chief Inspector to comment: "*Underlying these (issues) is the question of whether prison is the right or appropriate environment for many of the young people who end up there—and in growing numbers which siphon off the resources needed to provide appropriate mental health services, and other support mechanisms and interventions in the community.*"<sup>532</sup>

3.5 In July 2007 the Government called for a joint independent review of restraint of children in custody in response to strong opposition to new rules introduced in July 2007 which purported to allow children in secure training centres (STCs) to be restrained for good order and discipline. The report was published in December 2008 but the Government's response, published at the same time, failed to address the serious

<sup>526</sup> Peter Smallridge and Andrew Williamson. Independent Review of restraint in Juvenile secure settings. MoJ, DCSF 2008

<sup>527</sup> Ibid.

<sup>528</sup> Committee on the Rights of the Child, Forty-ninth session, Concluding observations: UK and Northern Ireland (CRC/C/GBR/CO/4) 20 October 2008

<sup>529</sup> SCYJ emphasises that we disagree with the use of mandatory custodial sentences for children but the timescale of the CJIA did not allow for a wider debate on this issue.

<sup>530</sup> Written answer to Parliamentary Question, 28 March 2007: Column 1653W

<sup>531</sup> Annual Report of HM Chief Inspector of Prisons for England and Wales 2004–05, page 56.

<sup>532</sup> Annual Report of HM Chief Inspector of Prisons for England and Wales 2005–06, page 44.

human rights breaches identified in 2008 by your committee<sup>533</sup> and highlighted again in the UNCRC's concluding observations.<sup>534</sup> The SCYJ endorses the recommendations made on this issue by the Children's Rights Alliance for England (CRAE) in its submission to this Inquiry.

#### 4. THE WITHDRAWAL OF THE UK RESERVATION ON CHILDREN IN CUSTODY WITH ADULTS TO THE UN CONVENTION ON THE RIGHTS OF THE CHILD

4.1 Despite the withdrawal of the UK's reservation to article 37 members of SCYJ have reported concerns that children are, on occasion, still being held in adult prison accommodation. We would suggest that the Committee question the Government on this point.

4.2 The SCYJ further believes that holding children in Prison Service accommodation is in direct contravention of article 40.3 of the CRC that requires detention facilities to be "*specifically applicable to children*". The prison service is an adult institution. It is designed for adults, who are 96% of its clientele. This is reflected in arrangements for management, staffing, training, and regime content. YOIs that hold children are managed by area managers with generic responsibility for all prisons. This creates the real risk that balancing the demands of adult prisons with those of children's custody will jeopardise a genuinely child centred approach. For example, recruitment of prison service operational staff is insufficiently specialised, so that staff may not have a particular interest in working in child custody as opposed to adult facilities. We recommend an urgent move away from prison settings for children.

#### 5. CHILD PROSTITUTION

5.1 In its concluding observations the UNCRC recommended that "*The State party should always consider, both in legislation and in practice, child victims of these criminal practices, including child prostitution, exclusively as victims in need of recovery and reintegration and not as offenders.*"<sup>535</sup>

5.2 Clause 15 of the Policing and Crime Bill currently before Parliament amends the offence of loitering or soliciting for the purposes of prostitution, as set out in s.1 of the Street Offences Act 1959 ("the 1959 Act"). The SCYJ regrets that, despite the Government's repeatedly stated intention to make clear that involving children in prostitution is a form of child abuse, the opportunity is not being taken through this clause to implement the CRC recommendation by abolishing the power to prosecute of a child over the age of ten for offences under s. 1 Street Offences Act 1959. During the passage of the Criminal Justice and Immigration Act 2008 the Minister, Vernon Coaker gave an assurance that the Government would give further consideration to this matter and we are therefore disappointed not to see the legislation amended in this Bill.<sup>536</sup>

5.3 The numbers of children aged under 18 who have been prosecuted under s.1 are extremely low—one prosecution and two cautions in 2005.<sup>537</sup> However even though the levels of prosecution are low the fact that the offence remains is potentially very damaging, not least because the young people on the street are not aware of that. What they will know, or be told, is that it continues to be illegal and therefore they are at risk of prosecution. That alone is likely to make a young person sceptical of working with the authorities. Even more worrying, however, is research that suggests that continuing to criminalise young people in this way actively assists the controlling influence of those who exploit young people through prostitution. It has been demonstrated that "pimps" of young prostitutes are able to exercise control by threatening to report them to the police. Domestic child abuse literature demonstrates that such threats can seem real and exercise a controlling influence over a child or young person and yet again this literature appears to be ignored.<sup>538</sup>

#### 6. CRIMINALISATION OF CHILDREN

6.1 One of the most notable features of the youth justice system in recent years has been the fall in the proportion of children diverted from court. Despite widespread agreement at the beginning of the 1990s, that avoiding prosecution was an effective method of dealing with youth offending, the rate of diversion<sup>539</sup> began to decline rapidly, falling between 1992 and 2002 from 73.6% to 53%.<sup>540</sup> The final warning scheme, introduced during 2000, limits the number of pre-court options to a maximum of two for any child, reinforcing the trend towards increased prosecution. SCYJ believes that such an approach runs counter to

<sup>533</sup> Parliamentary Joint Committee on Human Rights, Session 2007–08, Eleventh Report: Use of restraint in secure training centres, 7 March 2008 (HL 65/HC 378)

<sup>534</sup> Committee on the Rights of the Child, Forty-ninth session, Concluding observations: UK and Northern Ireland (CRC/C/GBR/CO/4) 20 October 2008

<sup>535</sup> Committee on the Rights of the Child (2008) Consideration of reports submitted by states parties under article 44 of the Convention. Concluding observations: United Kingdom of Great Britain and Northern Ireland . para. 74 <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

<sup>536</sup> Hansard, House of Commons Tuesday 27 November. Column 537ff

<sup>537</sup> Ibid.

<sup>538</sup> Gillespie. A. A., Web Journal of Current Legal Issues (2007) Diverting children involved in prostitution.

<sup>539</sup> The rate of diversion is the proportion of all children processed for offending who receive a caution or more recently a reprimand or final warning

<sup>540</sup> *Some fact about young people who offend—2002*, Nacro youth crime briefing, March 2004

research suggesting that prosecution is ineffective in terms of preventing reoffending, and that diversion also carries with it substantial cost benefits.<sup>541</sup> Bringing younger children into the court arena for less serious matters also increases the risk of a subsequent custodial outcome where a child continues to offend.

6.2 SCYJ considers that the age of criminal responsibility should be raised substantially, as recommended by the CRC.<sup>542</sup> Such a move would immediately divert large numbers of younger children from the criminal justice process into more effective, informal, responses to their behaviour.

6.3 Children's offending is typically but one symptom of multiple problems across the spectrum of their lives. The Government Social Exclusion Unit's 2002 report *Reducing Re-offending by Ex-Prisoners* illustrated graphically the wider social and welfare problems faced by children in trouble with the law. 60% had been "looked after", as a result of social and family problems, 35% with three or more placements, 25% of males and 40% of females had suffered violence at home, 87% had missed significant education, as a result of which over 25% had literacy and numeracy skills below age seven and 50% below age 11.<sup>543</sup> There is substantial evidence that a welfare-led approach which seeks to identify and meet these unmet needs is a much more effective means of preventing re-offending than a punitive one. Therefore it is of serious concern the Government's recent Youth Crime Action Plan (YCAP) states that its aims of "preventing offending and reducing re-offending by [children and] young people, building public confidence, supporting victims and making children and young people safer and ensuring that [children and] young people in the youth justice system achieve the five *Every Child Matters* outcomes ... can only be achieved through a 'triple track' approach of tough enforcement, non-negotiable support and challenge and prevention to tackle problems before they escalate".<sup>544</sup>

6.4 Article 40(4) of CRC requires that responses to offending behaviour be proportionate to young people's circumstances and to their offending.<sup>545</sup> Moreover, as the Beijing Rules make clear, interventions aimed at safeguarding the welfare of the child should not infringe upon the fundamental right of the young individual to receive a proportionate response.<sup>546</sup> In this context SCYJ has serious concerns about the "scaled approach" to youth justice interventions, a revised version of which has been published in February 2009 and which is soon to be implemented by the Youth Justice Board alongside the new Youth Rehabilitation Order (YRO) introduced by the Criminal Justice and Immigration Act 2008.<sup>547</sup> The basic premise of the scaled approach is that the intensity and duration of a youth justice intervention should be related to the assessed risk of re-offending as determined by the score derived from *Asset*, the standard assessment tool developed on behalf of YJB, which is completed for all young people who come to the attention of the youth offending teams (YOT). In this way the level of *compulsory* intervention should be determined by the risk of what the young person *might* do in future rather than the nature of the offence. The scaled approach—to the extent that it might allow more intensive responses than would otherwise be warranted by the seriousness of the offending—appears to be in tension with international obligations.

6.5 The SCYJ considers that the limitations of any process of risk prediction are likely to imply irreconcilable tensions with a children's rights agenda. *Asset*, it should be acknowledged, is a useful indicator of whether or not a young person is likely to reoffend: in an evaluation conducted on behalf of the YJB, the tool was shown to have a predictive validity of over 79%. Nonetheless, in almost one in three cases (30.6%), the assessment failed to make the correct prediction over a two year follow up period.<sup>548</sup> These false predictions were equally split between false negatives and false positives—so that nearly one in six young people who, on the basis of their *Asset* score, would be predicted to reoffend did not do so. The scaled approach would require higher levels of intervention in such cases, which could not be justified on the basis of a need to prevent offending or as a proportionate response to their behaviour. Such an outcome would represent a significant violation of those young people's rights.

## 7. ANTI-SOCIAL BEHAVIOUR AND CHILDREN'S RIGHTS

7.1 Although not noted as a matter of particular interest to the Committee we would also like to draw your attention to the recommendations made by the UNCRC in relation to Anti-Social Behaviour Orders (ASBOs). It recommended that the UK conduct an independent review on ASBOs with a view to abolishing their application to children. This is a recommendation that the SCYJ would wholeheartedly endorse.

February 2009

<sup>541</sup> Kemp, V, Sorsby, A, Liddle, M and Merrington, S (2002) *Assessing responses to youth offending in Northamptonshire*, Research briefing 2, Nacro

<sup>542</sup> UN committee on the rights of the child, 49th session, Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, 3 October 2008 (CRC/C/GBR/CO/4)

<sup>543</sup> Social Exclusion Unit (2002) *Reducing Re-offending by Ex-Prisoners* Annex D.

<sup>544</sup> DCSF (2008) Youth Crime Action Plan para. 26

<sup>545</sup> Article 40(4) of UNCRC

<sup>546</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), commentary to Rule 5.1

<sup>547</sup> Youth Justice Board (2009) *Youth Justice: the scaled approach*, YJB

<sup>548</sup> Baker, K, Jones, S, Merrington, S and Roberts, C (2005) *Further development of Asset*, YJB

## Memorandum submitted by the Adolescent and Children's Trust (TACT) & Children Law UK

### INTRODUCTION

1. The Adolescent and Children's Trust (TACT) and Children Law UK (CLUK) welcomes the opportunity to respond to the Joint Committee on Human Rights call for evidence into children's rights. TACT and CLUK merged in 2007 so for the sake of simplicity the organisation will be referred to as TACT throughout the response.

2. In this response we will focus specifically on two areas of particular relevance to children and young people in care. These are a) involvement in court processes and b) education. As well as the relevance of the United Nations Convention on the Rights of the Child (UNCRC), in broad human rights terms there is a particular interplay between these issues and Article 8 (the Right to Respect for Privacy and Family Life) and Article 2 of the First Protocol (the Right to an Education) of the European Convention on Human Rights as incorporated by the Human Rights Act 1998 (HRA).

### CHILDREN IN CARE AND COURT PROCEEDINGS

3. There will always be a potential conflict between the familial right to privacy and the state's positive obligation to ensure that children are safe from abuse. As well as Article 8 HRA, family rights (including the parents' qualified right to live with and bring up their own children, and for the children to live with their parents) are contained in UNCRC articles 7, 8 and 9. Children's rights to generally have their welfare promoted and in particular to not be abused by their parents, are set out in UNCRC articles 9 and 19.

4. The state's basic approach to resolving conflict is to allow intervention when children are suffering or likely to suffer "significant harm", and sometimes take the child into care. This threshold is set out in the Children Act 1989, sections 31 and 47. The proper operation of this threshold can prove difficult, and is frequently the subject of controversy. Public opinion varies greatly depending on circumstance. For example, after tragic events such as the deaths of Victoria Climbié and Baby P there is strong pressure on Local Authorities to increase the number of care applications. Over a period of time opinions tend to move in the opposite direction as concerns are expressed that too many children are being taken into care. The state will get it wrong on occasion. This is unfortunately inevitable when dealing with such complex and difficult decisions. The critical question is, what are the steps that may be taken to minimise the risks of getting it wrong, and to put things right when they do go wrong?

5. From the child's point of view, it is important that all measures are taken to ensure that his/her voice is heard as effectively as possible in all decision making arenas, particularly court proceedings, child protection conferences, and looked after children reviews. This "hearing of the child's voice" is explicitly referred to in UNCRC article 12, which requires that

*"States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child"*

and that

*"For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child either directly or through a representative or an appropriate body in a manner consistent with the procedural rules of national law."*

6. TACT believes that this means children who are looked after by the state should have a statutory right to advocacy services. We do not suggest this must be a legal advocate working in the court (although of course that is necessary in any court proceedings), but a trained person skilled and experienced in listening to children and either helping to empower them to express their views effectively, or expressing the child's view for them in any forum, but particularly looked after children reviews.

7. Section 16 of The Children and Young Persons Act 2008 confers a statutory right to "independent visitors" for certain categories of children to be prescribed in regulations. Independent visitors are to "advise and assist and befriend", but not to advocate. This measure, while doubtless desirable, does not go far enough. All looked after children need a statutory right to the services of a trained advocate to assist them in making their views heard effectively in all decisions relating to their care and plans for their future care.

### CRIMINAL PROCEEDINGS

8. UNCRC article 40.3.b requires that children in trouble with the law should have measures for dealing with them "without resorting to judicial proceedings". In other words, children should not be unnecessarily criminalised.

9. This requirement should particularly apply to children who are cared for by the state. However, there is significant evidence that children in care are often unnecessarily criminalised. They can be accelerated into and through the criminal justice system for behaviour that in other circumstances would be dealt with by the family. This is particularly true of children in residential care. There is considerable anecdotal evidence suggesting that children in residential care are more likely to be prosecuted for acts of minor criminality that would be disposed of differently if the child were not in local authority care. Criminal damage is a good

example of how such situations might arise. The offence is committed if a person intentionally or recklessly damages property belonging to another.<sup>549</sup> If a child or young person in a residential home damages property they may well be treated very differently than a child who damages property belonging to their parents. In the latter case punishment is unlikely to involve the exercise of any criminal sanction.

10. It is well known that there is a significant correlation between looked after children and children who offend. For example:

- About 40 per cent of children in custody have been in care
- Looked after children are more than three times as likely as other children to be cautioned for or convicted of an offence
- About 25 per cent of adult prisoners were in care as children

This does not mean that “care causes crime” The correlation is likely to be explained by underlying factors common both to looked after children, and children who offend. It is also important to remember that over 90 per cent of children in care will never have a criminal conviction. Acknowledging there is a connection between care and crime does not mean that the two are inextricably linked.

11. Looked after children will often carry with them an enormous baggage of disadvantage, including abusive experiences suffered prior to becoming looked after care. They are often vulnerable and may be emotionally scarred as a consequence of their experience. As a matter of principle therefore care should be viewed as a buffer against criminalisation, not an accelerant. By this we mean that particular caution should be exercised before involving children in care to the criminal process. The standard test for deciding whether a person should be prosecuted has two limbs. The first is that the Crown Prosecution Service believes there is a “reasonable prospect of conviction”. The second is that the prosecution must be in the public interest. We accept there will be many occasions where it is clearly in the public interest to prosecute a young person who is in care. However, we would also maintain that greater emphasis should be placed on public interest considerations before involving children in care in the criminal justice system.

12. We would also draw attention to the fact that, at 10 (England and Wales) and eight (Scotland) the age of criminal responsibility in the UK remains much lower than most other nations. This fact is regularly referred to by the United Nations Committee on the Rights of the Child although the Government shows little inclination to look at this issue.<sup>550</sup> We appreciate there is currently little political will for raising the age of criminal responsibility but are concerned that a failure to address this issue means that vulnerable children in care will continue to be excessively criminalised. We would add that the proliferation of legislation criminalising the breach of civil orders, typified by the Anti Social Behaviour Order, also serves to accelerate children in care into the criminal justice system.

13. TACT is conducting a project to reduce or eliminate the unnecessary criminalisation of looked after children. This objective will be achieved by

- analysing the size and nature of the problem
- publicising and lobbying to get the problem recognised
- identifying measures that will address the problem
- taking steps to influence practice, both by influencing those who directly provide care services, but also by seeking to influence policy and protocols in various key agencies

We are seeking to commission major research to help us to better understand the complex processes which contribute to unnecessary criminalisation and we will subsequently generate practical policy recommendations to address the issue. We are attaching an executive summary of this proposed research with this response.

#### CHILDREN IN CARE AND THE EDUCATION SYSTEM

14. Children in care perform poorly at school compared to their peers with a more conventional home-life. As well as achieving fewer GCSE’s and A Levels they are also far less likely to go on to further and higher education.

15. It is estimated that between one-third and half of all children have to change school if moving into foster care or between foster care placements. Where children do stay at the same school, they may have to travel some distance. This can mean using specially provided transport, which could mark them out as different from their classmates. They may find it difficult to adapt to a new curriculum. They might miss essential work or repeat lessons from other schools. For children already exposed to the often traumatic experiences of going into care this can make academic achievement difficult.

16. Children in care may also experience discrimination and stigma for “being different” and are more likely to be bullied. They will also face the challenge of getting to know new teachers, making new friends and facing questions from other children about why they are no longer with their own family.

<sup>549</sup> Section 1 Criminal Damage Act 1971.

<sup>550</sup> See for example paras 8.54–8.59 of the UK governments response 2007 to the UNCRC report at [http://www.everychildmatters.gov.uk/\\_files/0B51045676CEF239367221123B913E60.pdf](http://www.everychildmatters.gov.uk/_files/0B51045676CEF239367221123B913E60.pdf)

17. Last year TACT commissioned research to look at the views and aspirations of children in care. This research found that the children involved placed a premium on being “treated normally” and wanted to be able to do things that were commonplace for their peers. The children were asked a series of questions regarding their experience of school and asked to comment on their involvement. Most of the children were positive about their own perception of their attainment and attendance, but were less positive about the social side of school. For example, many children thought they did less well when it came to “being accepted” or “settling in”. We are attaching an executive summary of this report as an attachment to this submission.

18. In terms of access to education, high numbers of teenagers in foster care are excluded from school, either temporarily or permanently, or have attendance problems. Some of these children may never take part in mainstream schooling again. Over 70 per cent of children in care are there because they have been abused or neglected. There needs to be recognition from schools that a disproportionate number of young people in care are coping with serious emotional trauma. Schools should adopt strategies to promote welfare and support young people in care where they might otherwise use punishments, suspensions and exclusion.

19. All children should be encouraged to take part in school activities. Children in care would particularly benefit from involvement in extra curricular activities, which can build confidence and self esteem. However, it may be necessary to work with schools to ensure that activities are accessible to foster children and fees and subscriptions etc are waived for foster carers. Permissions are a particular barrier to the involvement of children in care in school activities. Schools, Social Workers and Foster Carers all have to be aware of who is the person who may give permission for a child to undertake an activity. Where Social Workers are the permission givers, they must have the capacity to respond quickly to such requests. This can prove difficult to obtain for logistical reasons or due to a (perhaps understandable) tendency to risk aversion. These problems could be addressed by creating a presumption that the foster carer is the principle permission giver rather than the social worker. This is both appropriate and sensible. If foster carers are considered responsible enough to place frequently vulnerable children in their care, then it does not seem unreasonable to extend that responsibility to decisions about school extra curricular activity. There have already been moves towards allowing carers to make decisions in some areas such as overnight visits. We would argue that this approach should be encouraged and extended so that social workers are not able to easily override decisions made by carers about the child’s activities. As mentioned earlier, TACT’s research concluded that children in care’s principal desire is to be treated like their peers. Allowing carers to make routine decisions about a child’s activities would go a long way towards achieving this.

20. We would go further and argue that the same principle should apply to orders made under Section 20 of the Children Act 1989. Under Section 20 orders, children can be “accommodated” with the consent of those with parental responsibility. The child can be removed at any time by those with parental responsibility. However, while they are being accommodated by a carer, there should be a presumption that the carer can make decisions relating to, for example, school extra curricular activities.

*February 2009*

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**Memorandum submitted by TreeHouse—The national charity for autism education**

**ABOUT TREEHOUSE**

TreeHouse is the national charity for autism education. Our vision is to transform through education the lives of children with autism and the lives of their families. Established in 1997 by a group of parents, TreeHouse runs a school for children and young people with autism and campaigns for better autism education nationally.

Through our direct educational provision and through our projects which support parents to campaign and participate we have been able to build extensive knowledge and expertise around best practice in the education of children with autism.

TreeHouse School has 67 pupils and we represent them and their families. Our Parent Support Project and Parent Participation Project work with many parents around the UK. Through networks the coverage of these groups reaches up to 1,000 parents.

**TACKLING DISCRIMINATION AGAINST CHILDREN WITH AUTISM**

At TreeHouse, we know that education can be the most effective intervention to improve outcomes for children and young people with autism. It is our core business to ensure all children with autism across the country can access the right education to unlock their potential. It is therefore imperative that children and young people with autism do not experience discrimination in schools, so that all children with autism can achieve the best possible outcomes.

This submission of evidence will look at:

- Indirect discrimination.
- Discrimination through exclusions.
- Discrimination through bullying.
- Discrimination through segregation.
- Discriminations in the school complaints process.
- Child poverty and autism.
- The youth justice system and autism.

### 1. *Indirect discrimination and education*

The *Lewisham v Malcolm* (2008) ruling has already led to changes in the guidance to schools on improving behaviour and attendance<sup>551</sup> so that in cases of exclusion of a child with autism considered to be behaving badly will be compared to a pupil who has behaved in the same way but who is not disabled. This is a significant weakening of the guidance and the protection for pupils with autism from exclusion because of their disability. It is incredibly important that this is dealt with.

We understand that it is likely that the Government will have to introduce indirect discrimination due to forthcoming European legislation. However, we are concerned that indirect discrimination will not be secure enough to strengthen the position of children with autism facing exclusion as a consequence of their disability.

Indirect discrimination is already a feature of other equality legislation, such as race and sex legislation. In practice it means that a disproportionate impact needs to be demonstrated mathematically. So, rather than just showing that some people within a protected group would be disadvantaged, you need to show that most people are disadvantaged. This will not necessarily protect more disabled people against discrimination.

In the case of exclusion from school there are often very unique sets of circumstances which may have led to the exclusion so it could prove difficult for families to prove indirect discrimination. Furthermore, indirect discrimination still relies on a like-for-like comparison between disabled people and others. Without removing this comparison requirement, the consequences of the *Malcolm* judgement will remain.

### 2. *Exclusions and autism*

The third report<sup>552</sup> by the TreeHouse Constructive Campaigning Parent Support Project looked at the disproportionate exclusion rate of children with autism from school. 43% of parents reported their child with autism had been officially excluded within the previous 12 months; only a quarter of these exclusions were one-off occurrences.

Exclusions almost invariably deprive children with autism of the education that is so vital to meeting their needs. Parents reported that exclusions led to their children displaying signs of extreme distress, anxiety and low self-esteem. In the majority of cases, the distress experienced by children with autism resulting from extremely difficult experiences in school has caused pervasive and long lasting damage. Sir Alan Steer stated that “School exclusion of any child should only take place if there is no reasonable alternative action available.”<sup>553</sup>

Illegal exclusions are a particular concern for parents; a concern shared in the Steer review. An illegal exclusion is when parents are asked to remove their child from school before the end of the school day without any formal procedure being followed. 55% of parents surveyed reported that their child with autism had experienced illegal exclusion over the years.

The main concerns of parents regarding illegal exclusions were:

- the frequency of cases of illegal exclusion;
- parents were not provided with sufficient information about how the schools were addressing illegal exclusion situations;
- parents were not informed about what reasonable adjustments were being made following these cases of illegal exclusions; and
- parents were not informed how schools recorded these illegal exclusions.

<sup>551</sup> Department for Children, Schools and Families (2008) “Improving behaviour and attendance: guidance on exclusion from schools and Pupil Referral Units”

<sup>552</sup> The TreeHouse “Exclusion Report” is available to download at [www.treehouse.org.uk](http://www.treehouse.org.uk)

<sup>553</sup> “Review of Pupil Behaviour”, Sir Alan Steer, February 2009  
<http://www.dcsf.gov.uk/behaviourandattendance/uploads/Review%20of%20Pupil%20Behaviour%20-%20Sir%20Alan%20Steer%20February%202009.pdf>



71% of parents said there were specific events, times of day or school year that were linked to occasions of illegal exclusion. Events that parents reported are linked with exclusion were:

- the run up to Christmas (74%);
- the beginning of a new term (68%);
- the end of term (64%);
- school sports day (58%);
- school trips (58%); and
- school inspections (26%).

Parents also reported that internal exclusion was a significant concern. Internal exclusion is the removal of a child from school activities, ranging from a particular subject class to a school performance.

Poor communication between schools and parents on internal exclusion left parents anxious and frustrated. As they were not routinely informed of instances of internal exclusion, parents believed that neither they nor the schools had full details of the circumstances leading up to the internal exclusion. If they were informed of an internal exclusion, parents found it difficult to establish if the reason for the exclusion was disciplinary or preventative for example to remove the child from the classroom to defuse an escalating situation.

Exclusions also have a far-reaching impact on parents of children with autism; 44% of parents who responded to the survey reported that their child's exclusion regularly required them to leave work and this has a detrimental effect on their employment; 85% of these parents have children who have been illegally excluded.

### 3. *Bullying and autism*

It is well known that children with autism, along with children with other disabilities, are more likely to be victims of bullying. A report by the National Autistic Society<sup>554</sup> found that 40% of children with autism have been bullied. The TreeHouse Constructive Campaigning Parent Support's "Emerging Issues" report<sup>555</sup> found bullying to be one of the most concerning issues for parents.

The impact of bullying on children with autism can be devastating. Bullying affects the ability of children with autism to participate in education and their peer groups. It can have serious repercussions for their emotional and physical well-being as well as their academic performance. Some children are severely traumatised by this experience and many may never recover. Parents often feel that schools do not take appropriate measures to prevent children with autism from being bullied.

Parents have told us about how their children's school experiences are overshadowed by bullying:

*"I ask him how his day has been at school and he gives me a run down of who's bullied him that day and what they said or did to him. It would be nice to hear of a friendship he's made, or feeling proud of some work he has done instead."*

Social interaction difficulties encountered by children on the autistic spectrum make them particularly vulnerable in educational settings. For instance a child may respond well during lessons but find that they struggle most during break times when their social communication needs are not supported. This may mean that children on the autistic spectrum become withdrawn or appear aloof and indifferent; they may also be insensitive to the feelings of others. This can lead to problems at break times and puts children at risk of becoming isolated and victims of bullying.

Many parents believe that schools' poor handling of bullying is a result of a general lack of understanding of school staff about autism. When school staff are well trained in autism, it makes a real difference to their propensity to respond appropriately to bullying situations and, indeed, prevent bullying in the first place.

### 4. *Segregation*

We believe that every child with autism should be able to access an inclusive education that meets each child's unique needs. At TreeHouse, we know that all educational settings for children with autism, mainstream or special schools, can facilitate an inclusive education. Successful inclusion depends on the ability of staff to understand each child's needs and work with the child and their family to ensure that they are able to participate with their peers, their family and in the wider community.

It is the long term vision of TreeHouse that all children with autism will be able to access a high quality, inclusive education that is appropriate to their needs and abilities, provided by a skilled workforce at a local school.

<sup>554</sup> National Autistic Society, "B is for Bullying", 2006  
<http://www.nas.org.uk/content/1/c6/01/18/57/bullying.pdf>

<sup>555</sup> "Emerging issues and emerging solutions", TreeHouse, 2007  
[http://www.treehouse.org.uk/\\_download/WNJUCKKD.pdf](http://www.treehouse.org.uk/_download/WNJUCKKD.pdf)

Our research on inclusive education,<sup>556</sup> which sought the views of parents of children with autism across the country, clearly demonstrated that inclusion was important to them and that inclusion can work and is happening. But there are still too many cases where inclusion is not working and could be improved.

Parents told us what an inclusive education means to them:

- “Providing children with an educational environment that meets their needs in a holistic way, not just academic”
- “Letting a child be themselves, while teaching them to cope in a wider world”
- “Education which is tailored to the needs and abilities of each child”
- “Working with mainstream peer group whilst still having special needs met individually”

These quotes give clear messages about how education providers can be working to ensure that children and young people with autism are not segregated.

Staff training is critical. If education providers do not fully understand autism and how it can affect each individual child it is unlikely that they will be able to enable children with autism, through understanding the social and emotional challenges that each child might face, to be valued and part of their peers and their community. In his report on pupil behaviour, Sir Alan Steer said “Whatever the cause of the individual behaviour problem, successful intervention requires intelligent, caring action on behalf of the school and the external support agencies and which relates to individual need.”

#### ERADICATING CHILD POVERTY FOR FAMILIES AFFECTED BY AUTISM

Difficulties experienced by children with autism in schools can have a massive effect on families and their capacity to work. Parents are frequently called on to fill gaps in provision due to exclusion. This can place stress on family life, with families of children with autism being much more likely to be lone parent families.

For these reasons families of children with autism are at high risk of poverty. The high risk of poverty could also affect the social mobility of siblings of children with autism.

TreeHouse produced a report<sup>557</sup> that looked at the extra difficulties faced by parents of disabled children who wish to work. The impact of disability on the poverty is clear:

- 3% of mothers of a disabled child being in full-time employment as compared to 22% of mothers of a non-disabled child.<sup>558</sup>
- 84% of mothers of disabled children do not work, as compared to 39% of mothers with a non-disabled child.<sup>559</sup>
- It costs, on average, three times as much to raise a child with a complex impairment than a non-disabled child.<sup>560</sup>
- Over a quarter of parents with a disabled child are lone parents.<sup>561</sup>

Families affected by autism are likely to spend more time at home due to the disproportionately high rate of exclusion in schools and difficulties accessing wider services. This can result in a greater consumption of fuel in the winter. Coupled with the higher incidence of poverty among families affected by autism, fuel poverty is a serious issue for families affected by autism.

TreeHouse believes the following changes would improve the financial situations of families affected by autism:

*Better autism training for the school workforce*—entire school staff to receive comprehensive training in meeting the needs of children with autism to prevent exclusions and bullying, and ensure each unique child’s needs are met.

*Greater flexibility in the workplace*—needs of parents with disabled children to be recognised by employers, opportunities for parents seeking employment to discuss flexible working at the outset, paid time for parents needing time for their child’s appointments, amendment to discrimination laws to provide protection against discrimination in work.

*Better access to services*—ensure traditionally deprived and hard-to-reach groups are well informed of available services, able to access services and aware of their rights as parents of disabled children.

*Greater entitlement to winter fuel allowance for families with children with autism.*

<sup>556</sup> “Improving inclusion: getting inclusive education right for children with autism”, written by Robbie de Santos and Sasha Daly, TreeHouse, September 2008  
[http://www.treehouse.org.uk/\\_download/KEVPFQOX.pdf](http://www.treehouse.org.uk/_download/KEVPFQOX.pdf)

<sup>557</sup> Scope, TreeHouse and Working Families (2007) “Making Work WORK for parents of disabled children”

<sup>558</sup> Child Poverty Review, (2004) HM Treasury

<sup>559</sup> Langerman, C. and Worrall, E. (2005) “Ordinary Lives—Disabled children and their families” London: New Philanthropy Capital

<sup>560</sup> Dobson, B. and Middleton, S. (1998) “Paying to care: the costs of childhood disability”

<sup>561</sup> Barnes, M. et al (2004) “Families and Children in Britain: Findings from the 2002 Families and Children Study (FACS)” Department for Work and Pensions, Research Report 206

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 AUTISM AND THE YOUTH JUSTICE SYSTEM

There is evidence that indicates that a disproportionate number of young people with autism are in the youth justice system. The clear relationship between the educational experiences of young people and their likelihood to offend is of great concern to us, in particular the worrying percentages of young offenders having a statement of SEN or previous permanent exclusions.

We know that autism affects one in 100 school-aged children<sup>562</sup> and that children with autism represent 14.6% of children with a statement of SEN.<sup>563</sup> Furthermore, pupils with statements of SEN are over three times more likely to be permanently excluded from school than the rest of the school population, and pupils with SEN (both with and without statements) are more likely to be excluded than those pupils with no SEN.<sup>564</sup>

Unfortunately more specific figures about the type of SEN that are represented in the youth justice system are not available, making it hard to ascertain the full picture. We believe that more detailed collection of statistics will help to better define the type of support that is required for each young person in the youth justice system.

*February 2009*

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**Memorandum submitted by the UK Coalition to Stop the Use of Child Soldiers**

The UK recently submitted its report under the Convention and the Optional Protocol to the UN Committee on the Rights of the Child. The committee sent the UK a “List of Issues” to which it asked the UK to respond. The UK sent a reply and was subsequently questioned by the UN Committee on the Rights of the Child in Geneva on 24 September 2008. The Concluding Observations were then issued by the UN Committee on the Rights of the Child on 3 October 2008 (*CRCIC/OPACICO/GBRII*).

These Concluding Observations include specific recommendations that the UK could undertake to improve compliance with the OPAC. The JCHR itself has made recommendations in the past concerning under age recruitment into the armed forces, and many of these concerns are also found in the Concluding Observations. The following information may assist JCHR in considering three of the most important recommendations found in the Concluding Observations.

Recommendation in paragraph 11 of the Concluding Observations: The UK’s “interpretive declaration” leaves open the possibility that UK children are exposed to the risk of taking direct part in hostilities. No other State party to the OPAC has made an interpretive declaration which allows this risk to remain. OPAC exists to protect all under-18s from involvement in armed conflict, even in the circumstances envisaged in the UK’s interpretive declaration.

Recommendation in paragraph 13: increasing the minimum recruitment age to 18. No other EU state recruits at 16, very few at 17. It does not seem that there has ever been a full feasibility study by the MoD on sustainably phasing out the recruitment of under-18s, therefore there is no evidence that this would be detrimental to staffing levels.

Recommendation in paragraph 19: the UN Committee welcomes the lifting (on 1 January 2008) of the rule which requires under-18 year old recruits to serve for a minimum period of up to two years longer than that for adult recruits (paragraph 18). The UK delegation did not correct the UN Committee on this point, that rule having been re-instated from 6 August 2008 (Army Terms of Service (Amendment etc.) Regulations 2008). The recommendation in paragraph 19, therefore, is based on incorrect information. The MoD has since admitted that the lifting was a mistake, but did not inform the UN committee. The UN committee’s recommendation in paragraph 19 would have been stronger if this had been so, and would no doubt apply to all under-18 year olds in the army. The Royal Navy (since 2000) and RAF (since 2001) do not have longer initial service periods for under-18s. The army may believe that forcible retention under law is the only way to ensure operationally productive time after training. This ignores the fact that not all deployments are banned under OPAC. Raising recruitment to 18 would avoid this perception of uneconomic return, and no discrepancy in the terms of service would be necessary.

*November 2008*

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<sup>562</sup> The Office of National Statistics recently reported a rate of autism of 1% in the population of school-age children.

<sup>563</sup> Department for Education and Skills, January 2007, National Statistic SFR 20/2007 Special Educational Needs in England

<sup>564</sup> Department for Education and Skills, January 2007, National Statistics SFR 21/2007 Permanent and fixed period exclusions from schools and exclusion appeals in England

### Memorandum submitted by the United Nation's Children's Fund (UK) (UNICEF)

On 20 November 2009, the Convention on the Rights of the Child (CRC) turns 20. A whole generation of children and young people has grown up under the provisions of the CRC. In many countries, rich as well as poor, the Convention has strengthened or even set in motion process of social change. All but two countries (USA and Somalia) have ratified the CRC, thus laying the foundation for a world where all children can enjoy their rights to survival, development, protection and participation. During the past 20 years, the push for children's rights has grown into a real child rights movement, leading in significant improvements in the lives of millions of children. Not all progress can be directly attributed to the CRC, but the Convention's guiding principles such as the principle of no-discrimination have led to a fundamental shift: It's no longer at the discretion of States to decide which children should be included in social programmes. It has become their obligation to reach out to all children. Child rights are for all children. The Convention sets out these rights in 54 articles and two Optional Protocols (Sale of Children & Children in Armed Conflict).

Article 45 of the Convention gives a special role to the United Nations Children's Fund (UNICEF) in implementation of the provisions of the Convention. The most important element of UNICEF's approach to the implementation of the Convention is the integration of the principles of the Convention into country programmes of cooperation around the world.

Implementing the CRC is first and foremost a government's obligation. So how does the UK government fare?

The UK Government periodic report on its implementation of the UN Convention on the Rights of the Child (CRC) was discussed in a public meeting of the UN Committee on the Rights of the Child in Geneva on 22 September 2008. After the discussion with the UK Government delegation, the Committee agreed, in a closed meeting held on 3 October, on written Concluding Observations which include suggestions and recommendations.

[www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf](http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf)

Also, on 23 September 2008 there was a meeting of the UN Committee and a discussion with the UK delegation about implementation of the Optional Protocol on Children in Armed Conflict.

The Concluding Observations contain the following aspects: introduction; positive aspects (including progress achieved); factors and difficulties impeding the implementation; principal subjects for concern; suggestions and recommendations addressed to the State party.

The UK delegation made an impressive performance on 22 and 23 September. More importantly, the Committee welcomed progress achieved and the serious commitment the UK Government attach to the UNCRC. On the other hand, the Concluding Observations identify a number of factors and difficulties in the implementation of the CRC and put forward 124 recommendations.

UNICEF UK would like to see that the pace in implementation of the Convention is accelerated and calls on the Joint Committee on Human Rights to play its role in making sure that the momentum is kept.

UNICEF UK perceives the Concluding Observations as an excellent platform for changes in legislation, policy and practice at UK and devolved nations level and will be working together with the UK Government to implement changes.

#### IMPLEMENTATION PRIORITIES AND FUTURE GOALS FROM THE UNICEF UK PERSPECTIVE

1. Incorporation of the CRC into UK law: Measures to bring UK legislation in line with the UNCRC and incorporation of the principles and provisions of the CRC into domestic legislation (paragraphs 10 and 11).
2. Dissemination: increased Government support to UNICEF'S Rights Respecting Schools Award' and inclusion of the CRC in the national curriculum (paragraphs 20 and 21).
3. Training on the CRC of all professional groups working for and with children, including civil servants (paragraph 21).
4. Respect for the views of the child in legislation as well as in practice, including children's meaningful participation in the public policy making process (paragraphs 32 and 33).
5. Asylum-seeking children and trafficking: non-discrimination, best interests of the child, appointment of guardians, child-friendly asylum procedure, safe return, compliance with international child protection standards (paragraphs 24, 26, 70, 71, and 75).
6. Breastfeeding: full implementation of the International Code of Marketing of Breast Milk Substitutes and further promotion of baby-friendly hospitals (paragraphs 58 and 59).
7. Sexual Health: The Committee recommended that the UK Government intensify its efforts to provide young people with appropriate sexual health services and sex and relationship education in school.

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**RECOMMENDATIONS**

1. That a national plan of action for implementation of the Concluding Observations is adopted this year. The UK is taking a so-called “four nations” approach in realisation of the CRC, but it is important that there is national co-ordination.
2. That a plan of action for implementation of the Optional Protocol to the CRC on Children in Armed Conflict is adopted this year.
3. That the Optional Protocol to the CRC on the Sale of Children, Child Pornography and Child Prostitution is ratified this year.

*February 2009*

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**Memorandum submitted by the UN Refugee Agency (UNHCR)**

The UN Refugee Agency (UNHCR) has been charged by the United Nations General Assembly with the responsibility for providing international protection to refugees and other persons within its mandate and for seeking permanent solutions to the problem of refugees by assisting governments and private organisations.

UNHCR welcomes the Joint Committee of Human Rights (JCHR) inquiry on children’s rights. UNHCR would like to take this opportunity to inform the Committee about research that it is currently conducting on the quality of decision making for children seeking asylum in the UK. It is anticipated that a confidential report will be submitted to the Minister for Borders and Immigration in April 2009. Following this, a summary of the report will be made public. UNHCR will be pleased to provide a briefing to the Joint Committee on the findings from its audit at this stage.

Since mid-2008, UNHCR has been undertaking an audit of the quality of interviews and decisions in children’s asylum claims. The audit is being conducted through the Quality Initiative (“QI”) Project—a joint project run since 2004 by UNHCR and the UK Government with the aim of evaluating and improving UNBA’s asylum determination process.

The QI project team is currently assessing the quality of asylum decision-making in children’s asylum claims and the extent to which child sensitive approaches are employed in evidence-gathering; interviewing and assessment of the claim. The audit covers asylum claims where the child is the principal applicant in the claim.

In line with previous audits conducted by the QI project, UNHCR will report directly to the Minister for Borders and Immigration on the findings from its children’s audit. UNHCR will comment in particular on legal reasoning in children’s asylum claims, use of country information, expert evidence, assessment of credibility, interviewing procedures and the application of other policies and procedures which may impact on the quality of the first-instance asylum decision.

Should the Committee require any further information on the above, please do not hesitate to contact me.

*February 2009*

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**Memorandum submitted by Voice**

Voice is a national charity committed to empowering children and young people in public care and campaigning for change to improve their lives. Voice provides community advocacy services on request to children and young people who are in need, looked after and who have left care and employs specialist advocates in asylum seeking children, mental health, disability and care leavers. Voice also provides visiting advocacy services to children’s homes, the vast majority of secure children’s homes in England, five psychiatric units and to young people sentenced to custody in one secure training centre and four young offender institutions.

Voice is a member of the Standing Committee for Youth Justice, the Children’s Rights Alliance for England and the Refugee Children’s Consortium. We fully endorse the evidence that has been submitted by them.

Our additional comments focus on restraint in secure settings and asylum seeking children.

**INDEPENDENT ADVOCACY FOR THE CHILD IN THE DEBRIEF FOLLOWING A RESTRAINT**

In addition to the comments on restraint made in the SCYJ and CRAE submissions we would ask the Joint Committee to urge the government to implement its recommendations about independent advocacy following restraint. In its response to joint independent review<sup>565</sup> into the use of restraint in secure juvenile settings, the government accepted the recommendation that if the young person wanted it an advocate

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<sup>565</sup> The Government’s Response to the Report by Peter Smallridge and Andrew Williamson of a Review of the Use of Restraint in Juvenile Secure Settings, December 2008.

should be present at the child's formal debrief and that establishments must notify an independent advocate of every restraint within 24 hours of the incident, which should then determine whether the young person wishes an advocate to be present at the debrief. In our experience, as acknowledged by the independent review, young people find it difficult to raise issues about restraint and it is critical that the establishment does in fact inform independent advocacy services so that they can then make contact with the young person.

#### GIVING ADVOCACY A STATUTORY FOOTING IN YOUNG OFFENDER INSTITUTIONS

Advocacy was introduced in YOIs by the Youth Justice Board in 2003 but it has no statutory footing to exist in young offender institutions and could in principle be withdrawn. Underpinning the service by a strong legal status would assist advocates and their managers in feeling more secure when challenging institutions on those most controversial and difficult issues such as the use of restraint. Currently, our understanding is that the Governor of a YOI could refuse advocates access to the prison. This possibility can have an impact on advocates and managers when raising difficult and challenging situations with the institution.

#### ASYLUM SEEKING CHILDREN

Issues arise from our practice that give cause for concern about the treatment of asylum seeking children by children's social care and the delays in implementing government policy.

##### *Late Decisions*

Despite the promises of the New Asylum Model (NAM) that decisions will be made within six months from the date of asylum application many decisions take far longer than this and the deadlines for separated children are not met. Young people complain that they have to wait a long time for a decision. As we have mentioned previously this causes additional anxiety for those young people who have just arrived in the country.

##### *Significant delays in decisions for applications to extend discretionary leave to remain (DLR)*

We have come across many care leavers over the age of 18 who have been waiting for as long as three years for a decision about their application for extension of leave. These young people are mainly on full time education or have completed their degree. Many have been issued with a letter stating that they will hear from the Home office by 2011.

##### *Leaving care status*

Many leaving care services are unclear about what support to provide for unaccompanied asylum seeking children who are 18 plus and who have not received a response to their application to extend their DLR. At times, young people are given wrong advice and the leaving care team closes their case. This is a very complex area of law and the government stated that they would issue clear guidance about this in spring 2008. This has not yet been issued.

#### Case Study

Helen came to the UK when she was 15 years old. She is now 21 and lives with two year old daughter in West London. Before her 21st birthday, she received a letter from the leaving care team stating that her case would be closed and she should go to National Asylum Support, despite her legal entitlement to receive support from them as a care leaver. Without the support from Voice and her solicitor, Helen says she could have been on the streets.

##### *DL for UASC granted until the age of 17½ only*

We are concerned about new government policy to grant UASC Discretionary Leave for three years or up until the age of 17½ because most separated children and young people are extremely vulnerable and are still minors. Having to deal with their asylum application is putting further pressure on their mental and emotional health. This is exacerbated for those young people for whom the local authority has provided services under section 17 CA1989 and not section 20 which gives looked after status and hence greater support (see below). The purpose of this change in policy is to make the asylum process easier for young people and in our experience is not working.

#### Case study

Ahmed arrived in this country having just turned 17 and was given only three months status. He has now turned 18 and is still waiting for a response from the Home Office. He was provided with services under section 17 and therefore does not qualify for careleaver status. He has been left to deal with a lot of these issues on his own. The promise of prompt decisions to make the process easier for young people has not been affective.

*UKBA (formerly NASS) support to former minors*

We are very concerned about the UKBA dispersal policy in relation to those young people aged 21 plus who have been care leavers but who no longer have status as a result of pending appeals to the Home Office or a fresh application having been made. In our experience, support from the local authority leaving care team ceases when the young person turns 21, because this depends on their immigration status. Some local authorities follow the government leaving care guidance and administer the UKBA package on their behalf whereas other young people are handed over to UKBA and are dispersed. Most of these young people have been settled for many years in London area and are mainly attending full time education. It would be in the interests of young people if the UKBA and local authorities work together and come to an agreement so that young people can remain at their current accommodation and for support to be administered by the leaving care team.

*Age dispute*

This is another area about which we remain very concerned. In our experience, UKBA staff are still making arbitrary decisions regarding the age of separated children. Often those young people claiming to be under the age of 18 are age disputed without appropriate assessment. According to the Refugee Council, some of these young people placed in hostels with adults. The government promised to set up a working party in 2008 to review best practice but to our knowledge this has not yet been convened.

*Implementation of the Dublin II Convention—return to third country*

This Convention requires the return to the European country in which an asylum application is first made. We are very concerned about how this is implemented in relation to young people and consider that a welfare assessment should be made before return. A recent case highlights the need for the Dublin II Convention to be reconsidered. A young man, who was placed in foster care and was doing very well at school, was sent back to Italy. On his return he was not given any support. He ended up sleeping rough under a bridge in Rome.

*Inadequate provision of local authority services to asylum seeking young people*

In our casework experience, there have been an increasing number of cases where children, mainly 16 and 17 year olds, are being supported under Section 17 of the Children Act 1989 and not section 20. The implication of this is that these children do not gain looked after status, and the corresponding local authorities duties to them, nor do they acquire care leaver status on turning 18.

This practice contravenes current Government guidance<sup>566</sup> which states there is a presumption that asylum seeking should be accommodated under section 20 unless the assessment reveals particular reasons why an alternative approach would be more appropriate. There have also been a number of High Court cases<sup>567</sup> that have considered this point and made clear that where the section 20 duty arises, local authorities cannot “finesse it away” by claiming to use a different power.

Local authorities tell us that young person is independent enough, that their needs are being met or that they have a poor level of engagement with the service. We are also told that young people are choosing Section 17 support over that of Section 20. The young people may have *some* level of independence in cooking, cleaning and self care, however, they do not receive any support with their emotional needs, advice and support regarding their education and any additional financial benefits eg clothing allowance, travel expenses.

It is very worrying that these vulnerable young people are denied services because of their poor level of engagement; this may arise because they suffer from poor mental health and emotional vulnerability. According to the Caerphilly judgment 2005<sup>568</sup> disengagement cannot be a reason for the local authorities to cease providing services. Moreover, the practice of local authorities asking children to select which level of support they require was ruled as unlawful by Mr Justice Holman in the Wandsworth case (see above).

*February 2009*

**Memorandum submitted by Wales United Nations Convention on the Rights of the Child Monitoring Group**

The Wales UNCRC Monitoring Group is a national alliance of agencies tasked with monitoring and promoting the United Nations Convention on the Rights of the Child in Wales.

The Wales UNCRC Monitoring Group consists of Action for Children, Aberystwyth University, Barnardos Cymru, Cardiff University, Children in Wales, Funky Dragon, Nacro Cymru, NCH, NSPCC Cymru, Save the Children Wales (Chair), Swansea University, Save the Children (Chair), Observers:

<sup>566</sup> LAC (2003)13, Guidance on Accommodating Children in Need and their Families.

<sup>567</sup> Hillingdon ruling 2003 (England and Wales High Court (Administrative Court) 2075) and H & others v London borough of Wandsworth and others 23 April 2007 (England and Wales High Court (Administrative Court) 1082).

<sup>568</sup> R J v Caerphilly County Borough Council (2005) Administrative court) 586).

Children’s Commissioner Office for Wales, Equality and Human Rights Commission, Welsh Assembly Government, Welsh Local Government Association, Children and Young People’s Partnership Support Unit.

This response gives brief consideration to and makes recommendations regarding the children’s rights themes outlined below:

- General measures of implementation.
- Child poverty.
- Asylum seeking children.
- Criminalisation of children and young people.
- Children with disabilities.
- Age discrimination.

## 1. GENERAL MEASURES OF IMPLEMENTATION

The UK Government must ensure that it takes forward the Committee on the Rights of the Child’s Concluding Observations 2008<sup>569</sup> and those which relate to the “General Measures of Implementation”. The “General Measures” relate to the articles of the UNCRC which set out action to be taken by States to ensure that the UNCRC is fully implemented.<sup>570</sup>

The Wales UNCRC Monitoring Group recommends the UK Government:

- Publishes a detailed UK Government Action Plan on the implementation of the UNCRC, which includes proposed action on all the UN Committee’s recommendations, including all previous recommendations.
- Establish key milestones towards achieving the UN Committee’s recommendations.
- Establish interim dates by which actions on these milestones will be achieved.
- Brings all legislation in to line with the UNCRC.
- Takes the opportunity of the upcoming British Bill of Rights to incorporate the principles and provisions of the UNCRC into domestic law.
- Commits itself to regular appraisals of budgets to determine the proportions spent on children.

## 2. CHILD POVERTY

### 2.1 *Child Poverty Bill*

We welcome the Government’s recent commitment to legislate to eradicate child poverty by 2020, which takes forward the UN Committee’s recommendation.<sup>571</sup> We believe that a solid legislative framework will shape and drive policy and direct resources to tackle child poverty and improve outcomes for children. The bill is also an opportunity to ensure a robust monitoring framework to hold Government to account so that the UK keeps on track for eradicating child poverty by 2020.

The Wales UNCRC Monitoring Group agrees with the End Child Poverty Network’s principles, stating that the legislation should include:

- Define “eradication of child poverty”. The Government currently measures children experiencing relative low income, before housing costs, in three ways:
  - (a) Children living in a household whose annual income is below 60% of the contemporary median equivalised household income.
  - (b) Children living in a household that is both materially deprived and whose annual income is below 70% of the contemporary median equivalised household income.
  - (c) Children living in a household whose annual income is below 60% of the equivalised median income level in 1998–99, held constant in real terms.

<sup>569</sup> UN Committee on the Rights of the Child (2008) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland

<sup>570</sup> The general measures of implementation relate to article 4, which sets out that State Parties must take “all appropriate legislative, administrative and other measures” needed for the implementation of the rights set out in the UNCRC.

<sup>571</sup> UN Committee on the Rights of the Child (2008) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, paragraph 65 (a).



The Government has indicated that the UK should be among the best in Europe on measure (a) and that measures (b) and (c) should approach zero; we agree. The relative low income target should be set at a precise numerical target of 5%<sup>572</sup> or below. This is to ensure that the UK sets its ambitions at achieving the lowest, sustainable rate possible. In addition, we wish to see the inclusion of a measure of persistent poverty which should approach zero.

- Include a statutory duty on the UK Government to work with the devolved administrations in Northern Ireland, Scotland and Wales. Any income targets would be UK wide as the tax and benefits system is not devolved. However, different elements of social policy, for example health and education, are devolved across the UK and achieving sustainable progress will require different tiers of Government working together.
- Statutory duty for publishing progress reports
 

An annual progress report, including data on the extent of child poverty and future priorities must be published annually and laid before Parliament.
- Clear process and timescales
 

It is crucial that all strategy documents relating to ending child poverty are comprehensive and prepared in consultation with the Devolved Administrations and delivery agencies. There must be a duty on Government to publish strategy documents every three years and lay them before Parliament. There should also be specified interim dates by which steps or key milestones towards the 2020 goal should be achieved.
- Link to Government spending decisions
 

The child poverty legislation must be linked to key Government spending decisions, including Comprehensive Spending Reviews, annual pre-budget reports and budgets and sufficient resources must be agreed by Parliament. Achieving constant, sustainable progress on raising family incomes and narrowing the gaps in other outcomes will require adequate resources at both national and local level, which could include bending existing funding streams. Such decisions need to be taken within existing Government processes for allocating and reviewing expenditure.
- Poverty-proofing' policies at both national and local levels
 

The Government must ensure there is a duty on all Whitehall departments and on local authorities to undertake and publish a poverty impact assessment of all policies, which is also replicated across the Devolved Administrations.
- Independent external scrutiny body
 

The Government must ensure that there is a clear mechanism for independent scrutiny and engagement with stakeholders, including children and families living in poverty.<sup>573</sup> Legislation must require the Government to have regard to the scrutiny body when setting or reviewing its 2020 strategy and producing annual progress reports.

## 2.2 Invest £3 Billion

Additionally the UK Government must help children in practice and urgently invest the £3 billion a year needed to lift children out of poverty.

The Wales UNCRC Monitoring Group recommends the UK Government:

- Ensure the Child Poverty Bill is underpinned by the principles developed by the End Child Poverty coalition (see above).
- Give priority to investing £3 billion a year to lift children out of poverty.

## 3. ASYLUM SEEKING CHILDREN

### 3.1 Detention

The detention of asylum seeker children for immigration purposes continues to be UK Government policy. Although there are no detention facilities in Wales, children are removed from Wales and detained elsewhere in the UK. Children are removed from familiar and supportive settings and detained with adults, with limited access to education, health services or legal support. The length of detention varies between seven and 268 days yet current safeguards are inadequate for ensuring that children in detention are protected from harm. Bail for Immigration Detainees (2008)<sup>574</sup> estimate that during 2005–06, over 40% of children at Yarlswood were detained. unnecessarily. We consider detention to be a serious breach of this vulnerable group of children's rights and now that the general reservation has been removed to the UNCRC we request that the UK Government puts the best interests of these children first and foremost, alike to citizen children.

<sup>572</sup> The Government has stated that the UK should be the "amongst the best in Europe". The lowest historically in Europe has been 5%.

<sup>573</sup> In line with article 12 of the UNCRC

<sup>574</sup> [www.biduk.org/](http://www.biduk.org/)

### 3.2 *Early Morning Removals*

There are long term concerns amongst professionals that children experience stress, fear and long-term trauma when their family is forcefully removed from their property. There is anecdotal evidence that children have been forced to travel separately from their family, are not given the appropriate breaks when they travel and that the amount of force used is not commensurate with the task of removal.<sup>575</sup>

### 3.3 *Returns*

We are concerned that separated children must only be returned to their country of origin or third country only if this is demonstrably in the child's best interests. Additionally UK BA must have regard to safeguarding issues for children who are on the child protection register when considering the return of children in families.<sup>576</sup>

### 3.4 *Guardianship*

The provision of social services support and care for the majority of separated children is through sections of legislation that do not confer parental responsibility. There are no mechanisms to ensure this disempowered and vulnerable group of children have their best interests promoted or have their wishes taken into account within the legal process.

The Wales UNCRC Monitoring Group recommends the UK Government:

- Immediately end the detention of asylum-seeking children.
- Put the best interest of the child first when undertaking the forceful removal of a family.
- Only return a child to their country of origin or third country if it can be demonstrated to be in their best interests.
- Secure a legal duty for every separated child to have a statutory guardian to provide support and advice on the child's best interests.

## 4. CRIMINALISATION OF CHILDREN AND YOUNG PEOPLE

### 4.1 *Age of criminal responsibility*

The UK Government has refused to raise the age of criminal responsibility, remaining at 10 years in England and Wales. This is despite the UN Committee on the Rights of the Child recommending that it be raised in their Concluding Observations 2002 and 2008 and more latterly indicating the age of criminal responsibility should be no less than 12 years of age.

### 4.2 *Detention*

Children continue to be detained on remand and sentenced in greater numbers, at lower ages and for less serious offences.<sup>577</sup> The use of prison custody has long been regarded as unsuitable for children and numerous organisations, including the UN Committee on the Rights of the Child have called for its abolition.

### 4.3 *Conditions in detention*

Existing concerns remain about the conditions in detention for young people as evidenced by the latest annual report (2007–08) from H M Chief Inspector of Prisons for England and Wales, which continue to cite problems. Self-harm and suicide as well as deaths following assault or staff restraint, continue to be a matter of concern. There is also continuing discrimination in the application of child welfare legislation in secure training centres. Despite a commitment from the UK Government to review the entire system governing pain restraint, we remain concerned about its use in custodial settings. Accepting that there may be circumstances where physical restraint is necessary to protect a child or young person from their actions or others, this should only be used as a measure of last resort and clearly defined within regulation.

### 4.4 *Secure estate outside of Wales*

Of particular concern to the monitoring group is that the majority of children and young people in Wales who lose their liberty are held in England.<sup>578</sup>

### 4.5 *Anti-social behaviour orders*

ASBOs are in tension with the UNCRC with regard to their punitive nature and the fact that a custodial sentence can ensue for (civil) breaches. There can also be difficulty understanding the prohibitions and there is increased likelihood of them being breached if they are not understood. This can be acute for those with learning difficulties or mental health problems. This indicates an infringement of rights that undermine the

<sup>575</sup> Save the children, 2008, Care and protection of asylum-seeker and trafficked children. Agenda for Action, published by Save the Children.

<sup>576</sup> Ibid

<sup>577</sup> Youth Justice Board Statistics [www.yjb.gov.uk/en-gb/practitioners/Monitoring performance/Annual Statistics/](http://www.yjb.gov.uk/en-gb/practitioners/Monitoring%20performance/Annual%20Statistics/)

<sup>578</sup> Croke & Crowley (eds) *Stop, look, listen: the road to realising children's rights in Wales*. Save the Children 2007 p. 64

best interest principle of the UNCRC. Additionally, the Anti-Social Behaviour Act 2003 has allowed for publicity of children who have been given ASBOs, breaching their right to privacy and the presumption towards media reporting continues.

The Wales UNCRC Monitoring Group recommends the UK Government:

- Review the juvenile justice system against the requirements of the UNCRC and European Human rights instruments.
- Incorporate the fundamental principle that custody should be used as a measure of last resort in sentencing guidelines, policy and practice. Additionally, when denial of liberty is essential and unavoidable young people should be held in establishments that fully meet their needs and respect for their rights.
- Commission independent research to identify what the age of criminal responsibility should be set at and how the needs of those who would fall below the new threshold could best be met.
- End the use of pain restraint or distraction techniques across the secure estate.
- Urgently review current legislation, policy and guidance in relation to Anti-Social Behaviour Orders as the growing body of evidence suggests that children and young people are more likely to be harmed than receive any benefits from their imposition.

## 5. CHILDREN WITH DISABILITIES

During the last three years the UK Government has allocated £430 million<sup>579</sup> to start to transform the services that disabled children and their families receive. This has included funding for short break and childcare provision for families with disabled children and support for disabled young people going through transition to adulthood. While this funding is welcomed it does not concentrate on the most important issue. This is to ensure that services for disabled children; young people and their families are viewed as part of the wider social inclusion agenda which in turn will ensure that disabled children have equal access to the everyday opportunities and activities that other children and their families take for granted. Additionally this funding is not being matched by funding for disabled children in the devolved administrations.

The UK Government has listened carefully and responded to the needs of parents/carers but has not actively sought to determine what disabled children and young people want themselves. This must change.

The Wales UNCRC Monitoring Group recommends the UK Government:

- Commission qualitative research to determine on what disabled children and young people themselves would spend any extra funding on and not just respond to the needs of their families/carers.
- Match funding for disabled children in the devolved administrations of the UK.
- Resource an awareness raising campaign on the rights and additional needs of disabled children, this should highlight.
- The inclusion of disabled people in society and the elimination of any discrimination they face.
- Highlight equality issues for disabled children.
- Highlight that disabled children need additional support to ensure that they are equal to other children/young people.

## 6. AGE DISCRIMINATION

### 6.1 Protection from age discrimination in goods, facilities, and services

The Wales UNCRC Monitoring Group is extremely concerned that under-18s are to be excluded from the protection from age discrimination in the provision of goods, facilities and services in the Equality Bill. The conclusion to exclude children and young people seems to be the result of a limited and flawed analysis of which groups are most vulnerable to age discrimination. The current white paper acknowledges that age discrimination is an issue for many older people but does not recognise that similar age discrimination is experienced by under-18s.

In research carried out by the Children's Rights Alliance for England (CRAE)<sup>580</sup> for the UK Government in 2007, under 18 year olds were asked across the UK, whether they had ever been treated unfairly because of their age, gender, disability, amount of money their family had, skin colour, religion or culture, the beliefs or behaviour of parents/carers, the child's own beliefs, language, sexual orientation or something else. Over 3,900 children and young people participated in the on-line survey in the UK. 43% reported that they had been treated unfairly because of their age.

<sup>579</sup> The UK Government's "Aiming High for Disabled Children: Better Support for Families" review (2007) announced a funding package of £340 million for 2008–11. £100 million of further investment was announced by the Secretary of State for Children, Schools and Families Ed Balls at an End Child Poverty campaign event on 10 December 2007. The Secretary of State confirmed that this included £90 million of additional capital funding for short break services, and an increased grant of £8.4 million for the Family Fund, to allow them to make grants to disabled young people aged 16 and 17.

<sup>580</sup> Wales UNCRC Monitoring Group is a supporter of the Young Equals Campaign hosted by CRAE.

There is much evidence of children and young people experiencing unfair treatment because of their age in the UK. For example:

- 16 and 17 year olds finding it difficult to access social services and mental health services, falling in the gap between children and adults’ provision.<sup>581</sup>
- 16 and 17 year olds receiving lower levels of certain benefits despite paying the same social security contributions.<sup>582</sup>
- Public places such as leisure centres and libraries and transport facilities being unfit for adults with babies and young children.
- Children and young people not being taken seriously when reporting a crime or calling for emergency services.<sup>583</sup>
- Children and young people being treated unfairly in public spaces eg in shops,<sup>584</sup> using public transport, or where mosquito devices<sup>585</sup> are in use.
- Children and young people experiencing difficulty in having their voices heard in the provision of goods facilities and services.<sup>586</sup>

Age discrimination faced by children and young people goes largely unnoticed and is often seen as legitimate. Signs on shop door ways stipulating “*No more than two children*”, bus drivers failing to stop for teenagers, young people being followed around department stores and restricted from gathering in public spaces, are common occurrences for many children and young people across the UK. Hotels advertising—no children allowed—no other group in our society could be overtly discriminated against in this way

To oppose the inclusion of children in protection against age discrimination is in itself discriminatory and contradicts the underlying values of equality and discrimination law. We respect the unique status of children and young people must be recognised and provided for, alongside measures to tackle negative age discrimination. As in the case for example of older people,<sup>587</sup> we would want to ensure that age-specific services are allowed to continue.

The UK Government argues that children have dedicated services and protection and so should be treated differently from the rest of the population but so do members of the older population and other groups in society—disabled people for example. Vulnerability and dependency are no justification for exclusion from protection from discrimination; indeed they strengthen the need for such protection.

We believe that legislation to prohibit age discrimination beyond the work place has the potential to transform the lives of children and young people as well as older people by helping to ensure that people are always treated with respect in our society whatever their age. In the absence of legislation that protects children and young people from negative age discrimination many current discriminatory practices are simply not questioned or addressed. Negative age discrimination against under-18s has no place in today’s society and we fear that it will continue to be tolerated unless the UK Government takes action.

## 6.2 *Single integrated equality duty*

Additionally the Wales UNCRC Monitoring Group is very concerned that the single integrated equality duty has not been extended to children’s services and education. Positive duties should be placed on all public authorities to:

- promote the human dignity and equal worth of every individual;
- reduce inequalities among children;
- raise awareness of human rights;
- support children and young people’s active participation in society; and
- promote positive images of children and young people.

A commitment to equality should be a unifying feature of all public services. It is now widely accepted that inequalities are formed and become entrenched in childhood—children’s services and education have an established role in challenging inequalities. Children like all groups in society want professionals to respect them and genuinely listen to their views and perspectives. Children’s services and education should not be excluded from a broader progressive move to embed human rights values into public services. Additionally children using children’s services tend to be the most vulnerable and discriminated of all the groups, yet there is a lack of knowledge and capacity to challenge inequality among the children’s workforce.

<sup>581</sup> Croke & Crowley (eds) *Stop, Look, Listen: the road to realising children’s rights in Wales*. Save the Children 2007.

<sup>582</sup> UK Children’s Commissioners report to the UN Committee on the Rights of the Child.

<sup>583</sup> CRAE (2007) We are all equal and that’s the truth. Children and young people talk about discrimination and equality.

<sup>584</sup> Save the Children (2006) Children and young people in Scotland talk about discrimination.

<sup>585</sup> UK Children’s Commissioners Report to the UN Committee on the Rights of the Child

<sup>586</sup> For example children think that when their complaints are being investigated their views are not taken seriously as adults and were not always weighed equally with evidence from adults Children’s Rights Director (2007) Policy by children: A children’s views report. Additionally, The UK Government White paper refers to a doctor failing to investigate a health complaint by an older person what about this example’s equal relevance to young people?

<sup>587</sup> The White paper refers to age specific services for older people such as over 60s, flu vaccinations, actuarially justified age based treatment eg financial services.

An exclusion from the equality duty may disengage the very professionals who could assist children in challenging unlawful discrimination. The professional status of children's workforce (including teachers) will be undermined by being excluded from this aspect of equality law.

### 6.3 Equal protection

In its Concluding Observations in 2008 the UN Committee on the Rights of the Child yet again highlighted its position that the UK Government's position on corporal punishment was at odds with the UNCRC. The Committee urged them to "*prohibit as a matter of priority all corporal punishment in the family including through the repeal of all legal defences*".<sup>588</sup> The removal of the "reasonable punishment" defence in s.58 of the Children Act 2004 has been something which has received widespread support from both the National Assembly for Wales and the Welsh Assembly Government, who have voted for equal protection for children and supported the Children Are Unbeatable/S'Dim Curo Plant Alliance in Wales. Law reform is necessary at Westminster to bring the UK into line with the UNCRC. We do not believe that it is equitable that children and young people are the only section of society that can be legally hit without sanction.

The Wales UNCRC Monitoring Group recommends the UK Government should:

- Extend protection from age discrimination in the provision of goods, facilities and services to include under-18s.
- Extend the single integrated equality duty to cover children's services and education.
- Remove the defence of "reasonable punishment", as outlined in s.58 of the Children Act 2004, as a matter of priority.

February 2009

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## Memorandum submitted by the Young Equals Coalition

### 1. EXECUTIVE SUMMARY

1.1 The Young Equals coalition welcomes this opportunity to contribute to the JCHR's inquiry into Children's Rights.

1.2 The Young Equals coalition has collated extensive evidence demonstrating that age discrimination affects children as well as adults, much of which comes from official published sources, including statutory inspectorates and regulatory bodies.

1.3 We fear that the forthcoming Equality Bill will fail to tackle age discrimination against children and young people. Indeed Young Equals believes that these proposals will not only be come to be a opportunity to offer children protection against less favourable treatment on grounds of age and reduce the inequalities that currently impact on them but may also further entrench negative view of children and young people in wider society.

1.4 The Young Equals coalition urges the JCHR to review the Government's proposals for further equality legislation in the context of the UK's international obligations including as a State Party to the UN Convention on the Rights of the Child and the recent concluding observations of the UN Committee on the Rights of the Child on the UK published in October 2008.<sup>589</sup>

### 2. INTRODUCTION

2.1 Young Equals is a group of charities and children and young people who are campaigning to stop children being treated less favourably on grounds of age. We are seeking legal protection for children and young people from unfair age discrimination in the provision of goods, services and facilities to be enshrined in national and European Union law and for (students in) education and (children using) children's services to be included in the integrated equality duty.

2.2 Our submission is confined to the issue of age discrimination, highlighted by the Committee as a matter of particular interest. We warmly welcome the Committee's concern, as we believe that protection from discrimination is fundamental to human rights. There is not a single human rights treaty that has a minimum age requirement for protection from discrimination in the exercise of human rights.

2.3 The UN Committee on the Rights of the Children recently conducted an examination of the UK's record on children's rights. In its concluding observations, published in October 2008, it drew particular attention to this issue recommending "*that the State party ensure full protection against discrimination on any grounds, including by: a) taking urgent measures to address the intolerance and inappropriate characterization of children, especially adolescents, within the society, including the media...*"

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<sup>588</sup> UN Committee on the Rights of the Child (2008) Concluding Observations on the United Kingdom of Great Britain and Northern Ireland para. 42 (a).

<sup>589</sup> Committee on the Rights of the Child, 49th Session, unedited concluding observations, 3 October 2008 <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

2.4 Article 2(1) of the International Covenant on Civil and Political Rights states “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind,<sup>590</sup> such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” This is also reflected in Article 2 of the Universal Declaration of Human Rights and Protocol 12 of the European Convention on Human Rights. Children as well as adults are protected by this non-discrimination provision. In line with its international obligations the UK Government must apply this standard to its proposals for further equality legislation which are due to be introduced in the current parliamentary session (discussed below).

### 3. EVIDENCE OF AGE DISCRIMINATION

3.1 Young Equals has collated extensive evidence demonstrating that age discrimination affects children as well as adults. In research carried out by CRAE and others on behalf of the UK government in 2007, under 18 year-olds were asked to state whether they had ever been treated unfairly because of their age, gender, disability, amount of money their family had, skin colour, religion or culture, the beliefs or behaviour of parents/carers, the child’s own beliefs, language, sexual orientation or something else. Over 3,900 children and young people participated in the online survey in the UK. Forty three per cent reported that they had been treated unfairly because of their age. Three in 10 (29%) of the under 11s felt that they had experienced age discrimination and, nearly two-thirds of older teenagers (64 per cent) reported this. Unfair treatment on the grounds of age was by far the single biggest example of discrimination.<sup>591</sup>

3.2 Similarly, Save the Children UK research with 50 children and young people, aged between nine and 19 in Scotland, found that a large majority thought that they are treated unfairly because of their age. Only 6% of those consulted did not think this was so.<sup>592</sup>

3.3 Furthermore there is much evidence of children and young people experiencing unfair treatment because of their age in the UK. For example:

- 16 and 17 year-olds finding it difficult to access social services and mental health services, falling in the gap between children’s and adults’ provision.<sup>593,594</sup>
- Children and young people not being taken seriously when reporting a crime or calling for emergency services.<sup>595,596</sup>
- Children and young people being treated unfairly in public spaces, eg in shops, using public transport, or where mosquito devices are in use.<sup>597,598</sup>
- Public places such as leisure centres and libraries and transport facilities being unfit for adults with babies and young children.<sup>599,600</sup>

3.4 Age discrimination faced by children and young people goes largely unnoticed and is often seen as legitimate. Signs on shop doorways stipulating “No more than two children”, bus drivers failing to stop for teenagers, young people being followed around department stores and restricted from gathering in public spaces, are common occurrences for many children and young people across the UK. Commenting on the often-invisible nature of age discrimination, one young man noted:

*“If the Prime Minister lived my life for a week, he would find that he is constantly victimized just for being a young person. He would find that instead of walking in to a shopping centre, proud to be a world leader, he would instead be frowned upon by the world as a trouble maker and potential shop lifter. He would find that instead of being able to go where he wants, when he wants, that he is restricted by signs saying ‘no more than one child at any time’. At this point he’d think to himself, if that sign said ‘no more than one gay at any time’ or ‘no more than one old person at any time’, that it would be against the law.” (Male, 17, Lincolnshire)*

3.5 The Young Equals coalition would be very pleased to provide members of the Committee with more extensive evidence of age discrimination against young people, on request.

<sup>590</sup> Emphasis added.

<sup>591</sup> Willow, C., Franklin, A. and Shaw, C. (2007) Meeting the obligations of the Convention on the Rights of the Child in England. Children and young people’s messages to Government. DCSF.

<sup>592</sup> Save the Children (2006) Children and young people in Scotland talk about discrimination.

<sup>593</sup> Office of the Children’s Commissioner (January 2007) Pushed into the shadows. Young people’s experience of adult mental health facilities.

<sup>594</sup> Office of the Children’s Commissioner (October 2008) Out of the shadows? A review of the responses to recommendations made in Pushed into the Shadows.

<sup>595</sup> CRAE (2007) We are all equal and that’s the truth. Children and young people talk about discrimination and equality.

<sup>596</sup> Inglis, G and Shepherd, S (March 2008) Independent Police Complaints Commission Confidence in the police complaints system: a second survey of the general population interim report, BMRB.

<sup>597</sup> CRAE (2008) Get ready for Geneva submission to the UN Committee on the Rights of the Child.

<sup>598</sup> Mosquito devices are electronic devices being used across England to stop teenagers from congregating in public places: it works by emitting a painful high-pitched noise only heard by young people.

<sup>599</sup> House of Commons Transport Committee (October 2006) Bus Services across the UK, Eleventh Report of session 2006–07.

<sup>600</sup> County Council of The City and County of Cardiff (2006) Family Friendly Cardiff, A Report of the Children and Young People Scrutiny Committee.

#### 4. THE EQUALITY BILL

4.1 In *A Framework for a Fairer Future* the Government set out its intention to legislate to protect against age discrimination in the provision of goods, facilities and services. The proposed minimum age limit for this protection is 18 years. In our view the exclusion of children is in itself discriminatory and must be challenged. If it is not, the new legislation will potentially undermine community cohesion, sending as it does a strong signal to children that they are not part of mainstream society. One young person taking part in an online debate organised by CRAE, remarked:

*“I think young people should definitely be covered—what [is it] about them being under 18 [that] makes them any less of a person than those people over 18? We all deserve to be treated equally... You can't make a law outlawing discrimination apart from certain types!”*

4.2 The Government has consistently failed to acknowledge age discrimination as an issue that affects children. In a statement to Parliament on 26 June 2008 the Equalities Minister, Harriet Harman MP stated; *“The provisions will not cover people under 18. It is right to treat children and young people differently, for example through age limits on alcohol consumption, and there is little evidence of harmful age discrimination against young people. Harmful age discrimination is basically against older people.”*<sup>601</sup> This view was confirmed in the Government's response to the consultation *“A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain”* which maintained *“We have considered the arguments which were put forward for prohibiting age discrimination against children as well as adults. However, we continue to believe that age discrimination legislation is not an appropriate way to ensure that children's needs are met.”*<sup>602</sup>

4.3 By setting the minimum age for protection at 18 the Government is implicitly recognising that adults can face discrimination at any age, not only by virtue of being older but also *younger* than others, and that the law should reflect this. In light of this acceptance it is in our view an untenable position to hold that children do not merit equal protection. The Government has said that age discrimination legislation is complicated but is prepared to spend time getting it right for Britain's 55.5 million over 18s. Surely it would not be too complex for the Government to ensure that the 13 million under 18s in Britain are given the same protection.

4.4 The unique status of children and young people must of course, be recognised and provided for, alongside measures to tackle negative age discrimination. The preamble to the UNCRC reaffirms the principle, first set down in its predecessor, the Declaration of the Rights of the Child, that *“the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”* This concept is well established in the UK and is clearly reflected in the wide range of child-specific services currently offered by both the public and private sectors in the UK. We see absolutely no contradiction between this and our ambition to prohibit negative age discrimination against under 18s. As will be the case for older people, genuine service requirements would allow a service provider or shop or hotel, for example, to seek to justify different treatment on the basis of demonstrable need. Exemptions should be kept to an absolute minimum.

4.5 Several European countries have taken steps to enshrine legal protection from unfair age discrimination for children in the provision of goods, facilities and services in national and local laws. For example, both Belgium and Finland have specific measures in their national constitutions relating to discrimination on the grounds of age. Additionally children and young people have been protected from age discrimination in the provision of goods, facilities and services in Australia since 2004 (Age Discrimination Act 2004). The Government has expressed concerns over litigation, but these are unfounded. Ensuring legal protection for children from less favourable treatment has not resulted in excessive litigation in Australia in the four years since the passing of the Age Discrimination Act. Age discrimination legislation may not yet be the norm, but it is clear that many countries are starting to recognise that children do experience discrimination on the grounds of age, and that legislation is an effective and justified means of remedying this situation.

4.6 *A Framework for a Fairer Future* also signals the Government's intent to introduce an integrated equality duty (covering race, sex, disability, sexual orientation, religion or belief and age) on all public authorities. It is currently the Government's position that schools and other children's services analogous to schools (eg a children's home) should be exempt from this duty in respect of age discrimination. The reasons given for this exemption are set out in the Government's response to the consultation *“A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain”*; *“However, despite the arguments put forward in favour of including children's services in the age duty, we do not consider that this would be appropriate. Of course, we do not condone the abuse, bullying or maltreatment of children. However, the use of discrimination law, and particularly an age equality duty, does not seem an appropriate mechanism to combat poor treatment of children in children's services; and could become impractical and even counter-productive. ... An age duty which in effect required public authorities to distinguish between the needs of and services delivered to nine-year-olds as distinct from 10-year-olds would be unworkable.”*<sup>603</sup>

<sup>601</sup> Hansard: Volume No. 478 Part No. 119 26 Jun 2008 : Column 506.

<sup>602</sup> The Equality Bill—Government response to the Consultation July 2008 (para 3.3).

<sup>603</sup> The Equality Bill—Government response to the Consultation July 2008 (para 2.62).

4.7 Young Equals believes that a commitment to equality should be a unifying feature of all public services *without* exception. The laudable ambition for the public sector duty is that it should be a vehicle to promote the human dignity and equal worth of every individual in our society. While respecting their entitlement to special protection by virtue of their age, children must not be excluded from this aspiration. As noted by Trevor Philips in the ECHR's response to *A Framework for Fairness*, legislation is not the only remedy for inequality but it does sets the tone for the broader cultural change that we aspire to and as such must be comprehensive: "*Fairness is a 21st century value and it is about everyone. It is a value we want to uphold and share. ... This is as much about changing the culture as changing the law. We also want to build an enduring consensus for fairness that unites all sections of society*".<sup>604</sup>

4.8 Children also experience the effects of negative attitudes towards them. *The Good Childhood Inquiry*, set up by The Children's Society to open an inclusive debate about the nature of modern childhood received evidence from children concerned about the discriminatory attitudes that some adults display towards them. Links were made between these individual attitudes, and a perception of general societal attitudes towards young people and of stereotyping, as the quote below illustrates:

*"Bullying and scared of crime which is exaggerated by media who overestimate the figures and levels of crime. Also young people in general are blamed for Britain's 'rising crime' (according to media) this makes people scared and frightened of young people."*

4.9 Children's services are uniquely placed to lead the public sector's drive towards promoting more positive attitudes towards children. Children want the professionals they meet to respect them and genuinely listen to their views and perspectives. At their best, children's services and educational establishments already place great emphasis on the child's human dignity and equal worth but in too many instances children continue to experience services as paternalistic and not focused on the individual needs, rights and perspectives of children. It is our view that being excluded from this aspect of equality law will undermine the professional status of the children's workforce (including teachers). A broad Equality Duty already exists in relation to young children (under-5s) in the Childcare Act 2006.

4.10 Northern Ireland has operated a broad equality duty on all its public authorities for 10 years and children's services are included in this, without any undue difficulty.<sup>605</sup> In Europe, education providers in Sweden have had a broad equality duty since 2006, which also includes taking active measures to prevent harassment and other degrading treatment towards school students.<sup>606</sup>

4.11 There is currently a lack of safe and comfortable seating for infants and young children and adequate space for prams on public transport. Adults with young children often experience significant problems getting on and off public transport and feel that they are frequently treated less favourably than other adults. Many adults with young children also experience difficulties when trying to access and use public buildings such as local authority leisure centre and town halls.<sup>607,608</sup> The lack of family friendly changing facilities and toilets is just one example of where families with infants are discriminated against.<sup>609</sup>

4.12 The Equality Bill offers an excellent opportunity to place a positive duty on public transport providers to make reasonable adjustments to ensure the safety and comfort of very young passengers. We would also like a similar duty to be placed on public buildings to make reasonable adjustments to ensure access to families with babies and young children. We suggest that these provisions apply to under 5s only.

February 2009

### Memorandum submitted by Young Gypsies and Travellers

COMMITTEE ON THE RIGHTS OF THE CHILD 49TH SESSION

Consideration of Reports submitted by States Parties under article 44 of the Convention.

Response to "Concluding Observations" United Kingdom of Great Britain and N Ireland by young Gypsies and Travellers, co-ordinated by UK Youth Parliament, as part of Young Researcher Network 2008. A group of nine young people, five female and four males, aged 14 to 19, being three Irish Travellers [sited in Liverpool], two Irish Travellers [sited in London], two English Gypsies [Local Authority housing in Dorset], one Roma Gypsy on private land and one English Gypsy, roadside.

Numbers relate to Unedited Version (03.10.08)

<sup>604</sup> EHRC (July 2008) Fairness A new contract with the public.

<sup>605</sup> Section 75 of the Northern Ireland Act 1998.

<sup>606</sup> The Act Prohibiting Discrimination and Other Degrading Treatment of Children and Pupils (2006:67) now enshrined in the Discrimination Act (2008:567) and the Education Act 1985:1100.

<sup>607</sup> Mother and baby/Transport 2000 (206) Public Transport Survey 2006.

<sup>608</sup> House of Commons Transport Committee (October 2006) Bus Services across the UK, Eleventh Report of session 2006-07.

<sup>609</sup> County Council of The City and County of Cardiff (2006) Family Friendly Cardiff, A Report of the Children and Young People Scrutiny Committee.



## RESPONSE

20. The group would like to point out that the majority of young Gypsies and Travellers are not in school beyond year 9. In fact, the majority of the group left school at the end of primary or year 7. Only two of the group were in school.

24. Their research on the changes in the last two generations concluded that whilst general and economic conditions had improved, with less reliance on begging, many things had remained the same and that media portrayal, public image and discrimination had got worse.

25. The group strongly support the recommendations:

(b) one of the recommendations of their research was that “Young Gypsies and Travellers should be used in the wider school community to explain about the differences in cultures”.

(c) the group were sceptical/cynical about the use of the second word “all”.

26/27. As a specific ethnic group, they felt very little was done in their “Best Interests”.

33. With one of the group being an MYP [Member of Youth Parliament] and two others being regularly involved, the group endorsed the concept of participation and especially applauded the work of UK Youth Parliament. Also, members of the group had been involved with 11Million and the NYA [National Youth Agency].

[reference magazine “Do you have anything to say? Who will listen to you?”—young Gypsies and Travellers making a difference—UK Youth Parliament—Dec 2008]

64. The group felt that the majority of the “travelling” community, in housing, sited, on private land, roadside and illegal fell into this category.

[Whilst generalising the travelling community, the group did not specify “New Age” Travellers, whom agencies working with them would regard as the most impoverished group in society—Mike Hurley, UKYP, Gypsy and Traveller Participation Officer]

65. (d) Whilst fully agreeing with the statement, young Gypsies and Travellers are very concerned with the need for short term transit sites to preserve the culture of “travelling”.

66. (c) Bullying is the most often quoted reason for non attendance at school, heavily linked to media image and negative reporting, especially at times of evictions. There were many instances of disproportionate punishment when the “victims” retaliated.

[reference Blue Jones, MYP 2007, in UKYP DVD “The Roads We Roam”]

68. From the immediate experience of the group, most legal sites have little or no play facilities, being mostly concrete environments, whilst illegal roadside may have more space and greater play opportunities.

[reference photographs include in research presentation]

78. (c) The group did not fully understand this, but did feel that a disproportionate number of young male Gypsies and Travellers were within the Criminal Justice system.

February 2009

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### Memorandum submitted by the Young Researcher Network

#### 1. ABOUT THE YOUNG RESEARCHER NETWORK

1.1 The National Youth Agency’s Young Researcher Network is a network of 16 partner organisations including the National Children’s Bureau (NCB) that support and encourage young people’s active participation in youth led research to facilitate their voice by influencing policy and practice.

#### 2. UN COMMITTEE ON THE RIGHTS OF THE CHILD RECOMMENDATION

2.1 In its most recent set of Concluding Observations, the UN Committee on the Rights of the Child noted its concerns about ways in which the UK may be failing to ensure children’s rights to non-discrimination. For the first time, the Committee recommended that the State party ensure full protection against discrimination on any grounds, including by:

“taking urgent measures to address the intolerance and inappropriate characterisation of children, especially adolescents, within the society, including the media” (para 25(a))<sup>610</sup>

2.2 Members of the Young Researcher Network undertook a survey of their peers to find out how young people actually feel about the way they are being portrayed by the British media.<sup>611</sup>

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<sup>610</sup> United Nations Committee on the Rights of the Child (Oct 2008) Consideration of reports submitted by States parties under Article 44 of the Convention. Concluding observations of the Committee on the Rights of the child: United Kingdom of Great Britain and Northern Ireland.

<sup>611</sup> Clark, C, Ghosh, A, Green, E, Shariff, N and others (2008) Media portrayal of young people: impact and influences. London: NCB.

### 3. ABOUT THE RESEARCH

3.1 This research was led and carried out by a core group of four young researchers aged 15–18, supported by NCB’s Research Department and NYA’s Young Researcher Network. The young researchers are all members of Young NCB and they received help with their planning and dissemination strategy from a group of seven other Young NCB members.

3.2 The young researchers were concerned about the negative portrayal of young people in the British media, and how this impacts on young people’s lives. Their research explored these issues through a combination of qualitative and quantitative research methods including: focus groups with young people; telephone interviews with journalists; and an online survey of young people. They also monitored media coverage of young people for a two week period; they focused on stories that appeared on national television and in some national and local newspapers.

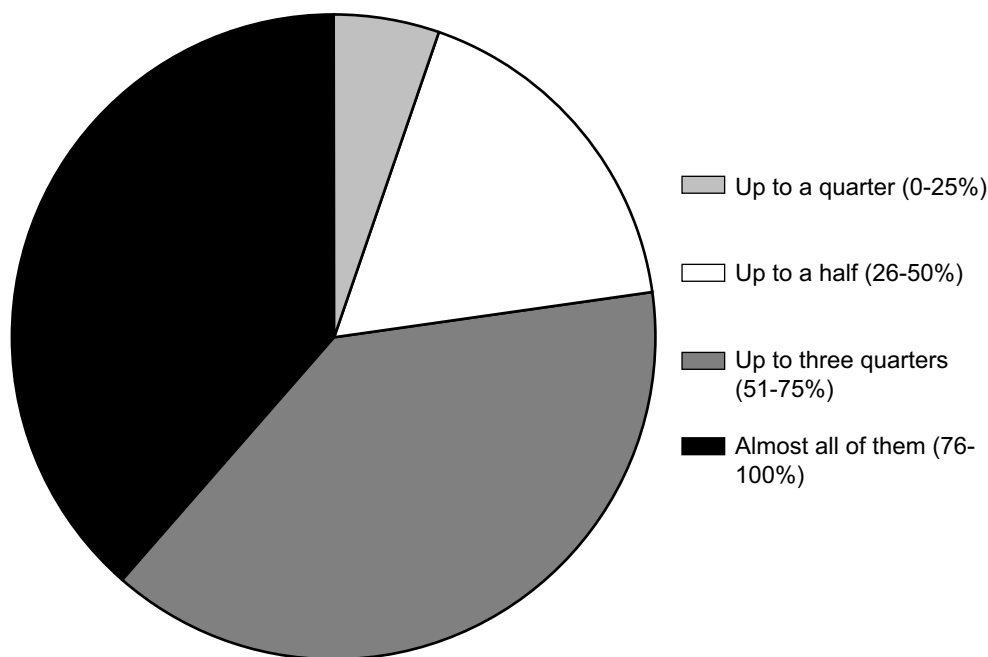
### 4. ANALYSIS AND FINDINGS

4.1 To analyse the information that they gathered, they developed codes and used these to extract themes from the data. These are the key themes that were identified.

#### 4.2 *Media content*

4.2.1 The evidence gathered from the research indicates that the media produces both positive and negative stories about young people. There was a difference between local/regional and national media, in that the local/regional media tended to cover more positive stories about young people. Overall though, the media as a whole tends to report more negative stories. The data displayed in Table 1 below is taken from the young people’s survey and shows what percentage of stories they felt were negative.

**Table 1**  
OUT OF ALL THE STORIES ON YOUNG PEOPLE THAT THE MEDIA COVERS, WHAT PERCENTAGE OF THESE ARE NEGATIVE?



4.2.2 The data also showed that young people feel that media stories are not representative, as they tend to focus on minorities of the youth population: either violent young people engaged in criminal activity, or extremely gifted and talented young people, ie young athletes or high academic achievers.

#### 4.3 *Barriers experienced by journalists*

4.3.1 The research found that journalists do not feel that all young people are bad. They felt that frequent negative reporting by the media is likely to make young people feel negative about themselves, alienated and angry. However, the journalists they interviewed talked about the pressures that they face to cover negative stories, that often portray young people in a bad light. The media needs to sell itself to the public, and it feels that this is the type of news that the public wants to hear about. As some of the journalists who were interviewed explained:

“If it’s bad news its news worthy”

“Bad news sells”

#### 4.4 *Young people's perceptions of "self"*

4.4.1 The young people who took part in the research felt that the way in which the media portrays them and their peers, can have an impact on the way they see themselves.

Some of the young people felt that negative images and stories can cause stereotyping, as older people feel that all young people are part of gangs and are badly behaved. Some felt that these negative stereotypes were impacting on their daily lives: affecting how they dressed or where they could go with their friends. They often felt that older people were intimidated by them, and would cross over the street to avoid walking past them. Many of these young people felt that the media and the general public were "tarring them with the same brush".

4.4.2 Evidence from the research also indicated that some young people feel that negative reporting in the media can impact on their self-welfare. After reading or seeing negative coverage, they often felt intimidated and scared of young people they didn't know. Some respondents described how they had been harassed by the police despite doing nothing wrong, and felt that negative media coverage had led the police to suspect them.

4.4.3 Other young people the young researchers spoke to were angry about the media's obsession with young people who misbehaved. They felt that behaving badly was often the only way to get any attention.

4.5 The young people who took part in the research recognised the important role the media has in informing people of what is going on, and that the public should be informed when bad things happen. However, they were critical of sensational reporting and felt that there should be some more positive news stories about young people to create a balance.

### 5. KEY POINTS TO CONSIDER

5.1 The Young Researcher Network believes that:

- there should be a balance of negative and positive stories;
- young people should be given a voice to put across their views on this issue;
- negative, sensational reporting can have a negative affect on young people's lives; and
- negative stories have the potential to be used for education and greater understanding of the problems that some young people face.

February 2009

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## Memorandum submitted by the Youth Justice Board for England and Wales

### INTRODUCTION

1. The Youth Justice Board for England and Wales (YJB) welcomes the Committee's inquiry. This submission provides background information on the issues in the terms of reference and the concluding observations of the UN Committee on the Rights of the Child of most relevance to the specific functions of the YJB. We would be pleased to provide any further information that would be of assistance to the Committee.

### BACKGROUND ON THE ROLE OF THE YJB

2. The YJB is a Non-Departmental Public Body established by the Crime and Disorder Act 1998. Its role is to oversee and support performance in the youth justice system. Since April 2000 the YJB has had responsibility for making arrangements for the provision of secure accommodation for children and young people sentenced or remanded by the courts. YJB maintains oversight of contracts and service level agreements for secure accommodation services. While the YJB has a key role in overseeing the youth justice system it does not directly manage youth justice services including Youth offending teams (YOTs) which are locally-managed partnerships that deliver the majority of youth justice services in the community.

### CHILDREN IN CUSTODY

3. In fulfilling its commissioning role, the YJB is committed to ensuring the safe and effective use of custody. The YJB set out its approach to developing custodial provision in its last *Strategy for the Secure Estate for Children and Young People* published in 2005. This included a clear statement of the principles to which we are working (set out in Annex A) and a clear commitment to the rights of children held in custody:

**"The rights of children and young people held in custody should be respected and upheld.** The YJB believes that it is important for the rights of children and young peoples to be recognised and upheld, particularly when they are in custody. In particular, the Human Rights Act and the United Nations Convention on the Rights of the Child should underpin work with children and young people in custody."

4. The YJB welcomes the fact that the *Youth Crime Action Plan* published in July last year set out the government's commitment to key principles around the use of custody. These echo to a large extent the principles that have been set out by the YJB in its strategy.

5. The YJB aims to ensure a secure, healthy, safe and supportive place for children and young people is provided however short or long their period in custody might be. The YJB believes that this is best delivered through a separate estate with a dedicated workforce where staff have the ability to engage with children and young people in a constructive way and respond positively to young people including when they demonstrate challenging behaviours. We are committed to seeking a child focused regime and that entitlements to services are realised.

6. Annex B sets out some of the key developments since April 2000 that have helped to deliver a more child focused system, including the development of new facilities, investment in services and improvements to safeguarding arrangements.

7. The progress made in developing discrete facilities for children and young people separate from adults has helped to enable the government to remove the reservation to the UNCRC article 37(c) as announced in September 2008. We recognise that this means ensuring there continues to be sufficient places commissioned for this age range. We also recognise that the UNCRC article should not be interpreted to mean that when children turn 18 they should automatically be transferred to adult establishments.

8. Despite the progress that has been made we recognise there is still a lot do to improve custodial provision. The YJB is currently in the process of revising its strategy and setting out the priorities for the next three years that will be subject to consultation. A key focus for the YJB for the next period is further work to ensure there are discrete and dedicated facilities and workforce arrangements. Alongside this we will be working to improve approaches to resettlement from custody, as outlined in the *Youth Crime Action Plan*, including through facilitating closer work between secure establishments and local authorities. We will also be supporting the government's plans to transfer responsibility for education provision in youth custody to local authorities, which is subject to the passage of legislation in the Apprenticeships, Skills, Children and Learning Bill 2009. We particularly support giving children in custody clear legal entitlements to education and training in custody. Finally, we will be taking forward the work on safeguarding and behaviour management in custody set out below.

#### *Safeguarding and behaviour management*

9. The YJB recognises that child safety and safeguarding is not only vital in its own right but is paramount to the success of any period in custody in terms of addressing offending behaviour and working constructively with young people.

10. It is important that there is a rounded approach to the safety of children in custody that deals with all aspects of their vulnerability. This includes first night and induction procedures, anti-bullying, child protection and substance misuse arrangements.

11. The YJB's three year child protection and safeguarding programme invested £10.5 million over the three years 2005 to 2008 across six initiatives and led a number of improvements in safeguarding arrangements in YOIs. In 2007, the YJB commissioned the National Children's Bureau to work in conjunction with the YJB and the secure estate to assess the impact of the safeguarding programme and to help us to develop a programme for the next phase of work. The review<sup>612</sup> highlighted a number of important aspects of effective safeguarding that set a framework for our future work. These include:

- young people feel safer where they are in smaller units with adequate staff levels; the ethos of the staff and the relationships they form with young people are child centred rather than disciplinarian; and the quality of the built environment is good;
- in an effective safeguarding framework staff are given clear direction about expectations, roles and responsibilities; there is sufficient capacity to fulfil responsibilities; and there are transparent lines of accountability;
- national and local government agencies have to set effective policies and procedures; ensure there are adequate structures and resources; and ensure the effective use of information;
- establishments must have a safeguarding ethos; this means being in a position to take an overview of their policy and practice, to identify their strengths and weaknesses and to develop plans to improve; and
- there must be sustained engagement of statutory services; in particular local health and Child and Adolescent Mental Health Services (CAMHS) and Children's services; Local Children's Safeguarding Boards (LSCB) have an important role to play in making this happen.

<sup>612</sup> A Review of Safeguarding in the Secure Estate, 2008 (YJB, NCB 2008).

12. Based on this review, the YJB's work with its partners on safeguarding going forward will focus on these six areas:

- setting clear safeguarding principles based on a “child first, offender second” approach to safeguarding;
- developing clear expectations for leadership, staff practices, information and case management, young people's participation and partnership working;
- strengthening and co-ordinating our approach to performance monitoring;
- developing opportunities for secure establishments to access information and share good practice about safeguarding;
- further improving the built environment; and
- conducting reviews of policy and practice relating to key issues, including complaints processes.

13. In addition YJB is committed to regular surveys of young people in YOIs through the HM Inspectorate of Prisons in order to understand the views of children and young people and we will look to extend these surveys to young people in STCs and SCHs. There are also on-going independent advocacy services that provide children and young people in custody with an independent voice.

14. The YJB is committed to supporting continuous improvement in the arrangements for behaviour management in the secure estate, including the oversight and minimisation of the use of restraint. The YJB welcomed the Independent Review of Restraint and we are committed to acting on the recommendations of the review addressed to the YJB set out in the government response. We will also support the work of other partners in taking forward actions in their areas of responsibility and expertise as set out in the response.

15. As part of this work the YJB will:

- update our code of practice which sets out guidance on systems and processes for managing behaviour and ensure that it is embedded in the day to day working practices of establishments;
- support and enable establishments to learn from incidents of restraint and to use these lessons to minimise the incidence of restraint;
- take forward findings from reviews into the use of restorative justice and the pilot of Therapeutic Crisis Intervention in Hassockfield STC to help NOMS in developing a holistic approach to behaviour management as part of the implementation of the Independent Review of Restraint;
- act on recommendations coming out of review of existing practices for separation and full searches due in Spring 2009; and
- invest in staff training in the use of behaviour management techniques through our workforce development programme

16. As part of the review, we welcome the proposal for the development of a new accreditation system for restraint methods and will be working to support government partners leading on this. In the interim, while this is in development, we will continue to work to support the safety and effectiveness of the current system through our contract and monitoring role. For STCs this work includes funding NOMS to quality assure PCC training and trainers and by operating the exception reporting system to identify and act upon warning signs occurring during restraint.

#### REDUCING THE DEMAND FOR CUSTODY AND CUSTODY AS A LAST RESORT

17. The YJB fully supports the principle of custody as a last resort for children and young people. Working within the sentencing framework set by government and Parliament, YJB has been involved in a range of work to help minimise the use of custody. This work has included investment in the development of alternatives to custody, notably the Intensive Supervision and Surveillance Programme and working to improve YOT practice to increase the confidence of the courts in community disposals. While the use of custody for under 18s is significantly higher than 10–15 years ago, over the last ten years the numbers have been broadly stable and have not mirrored the sharper rises witnessed in the adult sector. As a proportion of all disposals custody has slightly declined in more recent years. While that is the case we are clear that further work is needed.

18. The YJB is continuing to develop this work and supporting the implementation of proposals set out in the Youth Crime Action Plan including the piloting of Intensive Fostering as an additional alternative to custody, work to improve resettlement arrangements to reduce the likelihood of children and young people returning to custody and proposals for local reviews to learn lessons when children are sentenced to custody for the first time.

19. The YJB supports measures that are designed to increase local performance and financial incentives around the use of custody, aimed at promoting greater local focus on early intervention and investment in alternatives to custody. YJB successfully advocated for a performance indicator on the proportionate use of custody to be included in the new performance framework for local government and its partners. Building on this, the *Youth Crime Action Plan* set out proposals to further incentivise local areas including a proposal for the full costs of Court Ordered Secure Remands to be charged locally. While the YJB believes it is

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important to keep a national commissioning system to ensure continuing improvements in the estate are driven forward, YJB supports in principle the idea that more of the costs of custody could be devolved to local areas. We are currently investigating the models that could be used to devolve costs and ensure there are clear financial incentives at the local level to promote investment in earlier intervention and alternatives to custody.

20. Alongside this YJB will continue to work to improve local practice including looking at patterns of sentencing and the use of custody across different local authorities and use our Youth Justice Planning Framework to challenge and support the contribution of YOTs to reducing the use of custody.

#### PREVENTION, DIVERSION AND THE CRIMINALISATION OF CHILDREN

21. Working within the framework set by government, the YJB has supported approaches to youth crime that aim to prevent and divert children and young people from entry into the criminal justice system. As part of this approach YJB developed targets for reducing the number of “first time entrants” into the youth justice system. Following a period when there had been increases in numbers, between 2005–08 there was a 10% reduction in first time entrants recorded by YOTs, exceeding the YJB target. The YJB is confident that the figures represent a genuine reduction in the number of children and young people entering the criminal justice system. The YJB strongly supports the Government’s ambition announced in the Youth Crime Action Plan to reduce the number of first time entrants by 20% by 2020.

22. Over the last 10 years YJB has been involved in a range of work to contribute to reducing the number of children brought into the system. We have developed a range of evidence based targeted prevention programmes including Youth Inclusion Programmes, Youth Inclusion and Support Panels (YISPs) and Safer Schools Partnerships. A key objective of all these approaches is to work constructively with children and young people at high risk of being brought into contact with the system before problems escalate. YISPs provide a model for multi-agency planning and intervention with children at risk looking across the range of factors in their lives that have helped put them at risk. The objectives of the programmes are not only to reduce offending but also to help engage and re-engage children and young people in mainstream services that they are entitled to and that are essential for positive outcomes.

23. Alongside the development of targeted prevention programmes YJB has also supported the development of new pre-court disposals seeking to intervene constructively with children and young people without the need for the involvement of the courts. YJB has supported ACPO and government departments in the development of the Youth Restorative Disposal (YRD) currently being piloted to provide a restorative and more immediate response to low level offending by children. We have also supported the proposal to introduce conditional cautioning for children and young people, adding another pre-court tier to the system and which may help avoid unnecessary or inappropriate court appearances. Alongside this YJB has advocated a tiered approach to responding to anti-social behaviour by children and young people and has been involved in developing guidance on the role of YOTs in responding to anti-social behaviour.

24. The YJB supports an increased role for children’s services within the youth justice system. A key strength of YOTs is that they bridge both criminal justice and children’s service sectors seeking a balanced approach to the prevention of offending and reoffending. We welcome the government’s proposals set out in the *Youth Crime Action Plan* for increased early intervention and for children’s services to better support the youth justice system to address the broad range of needs associated with offending and that hinder positive outcomes for children. The YJB is clear that it is vital that children and young people in the youth justice system receive the services that they are entitled to on the same basis as any other child.

*February 2009*

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