



Children's
Rights Alliance
for England

STATE OF CHILDREN'S RIGHTS IN ENGLAND

Review of Government
action on United Nations'
recommendations for
strengthening children's
rights in the UK

2013

The Children's Rights Alliance for England (CRAE) protects the human rights of children by lobbying government and others who hold power, by bringing or supporting test cases and by using regional and international human rights mechanisms. We provide free legal information, raise awareness of children's human rights, and undertake research about children's access to their rights. We mobilise others, including children and young people, to take action to promote and protect children's human rights.

CRAE has produced an annual *State of Children's Rights in England* report since 2003. This report is the eleventh in the series. It summarises children's rights developments from December 2012 to November 2013.

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OVERVIEW

In seeking membership of the UN's Human Rights Council this year, the UK Government asserted that it is '*committed to a strong, effective international human rights system.*' It also claimed to be '*a passionate, committed and effective defender of human rights.*'¹

Such explicit commitment is very welcome. But over the last year, the Government has often given the impression it has no such commitment when the international and European human rights systems impact on the UK.

The UK's human rights record has been scrutinised this year by two UN Treaty Bodies: the Committee against Torture and the Committee on the Elimination of Discrimination against Women. Both condemned the UK for consistently failing to address many previously identified violations of human rights – among them rights specific to children, including the unlawful use of restraint on children in detention, the low age of criminal responsibility and the persisting legality of corporal punishment.

Next year, children's rights move to centre stage. The Government must report to the Committee on the Rights of the Child on how it has implemented the UN Convention on the Rights of the Child (UNCRC). The Government's draft report has just (October 2013) been published for consultation, and while it provides descriptions of policy changes affecting children, it contains almost no analysis of the impact these changes have had on children themselves.

Had this information been provided, the picture would be bleak. Our 2013 report shows that economic pressures have been used to justify not only a serious erosion of children's economic and social rights, such as health, food and the right to play, but also fundamental changes to our justice system. Huge cuts to legal aid and restrictions on judicial review seriously undermine children's ability to challenge rights violations across the board.

Children and their representatives must be able to seek the courts' protection when, for example they are hungry or homeless, denied education or contact with their family or are unlawfully assaulted, mistreated or neglected. As Lord Neuberger has said '*rights are valueless if they cannot be realised, and such realisation inevitably carries with it access to the courts.*' But ensuring effective access to the courts is also a preventive measure, making it less likely that children's rights will be breached in the first place.

Using the courts to enforce children's rights should be a measure of last resort. The effective protection and implementation of children's rights relies in the first instance on key public services – social care, education, health – being accountable within the administrative system. But our report finds that this form of accountability has also been weakened by recent changes, for example in the schools system and health service. It has become increasingly difficult to identify which body is responsible for a children's rights violation, what measures are available to hold them accountable – and even to obtain the data on how children are being treated.

Summarised below are a few welcome improvements to children's rights and the most serious violations that are described in detail in the report. But perhaps the most urgent question for CRAE and other advocates of children's human rights is how can children secure their right to challenge and gain effective remedies for these violations?

General Measures of Implementation

The Government's very welcome 2010 commitment to have regard to children's rights when developing law and policy affecting children does not appear to have occurred in practice.

The role of the Children's Commissioner has been reformed with significant improvements in relation to children's rights. There are still concerns about the Commissioner's independence.

General Principles

There is huge inequality in children's enjoyment of the right to life. The figures still show that infant mortality varies significantly according to socio-economic group; for example babies with fathers employed as shelf stackers or care assistants ("semi-routine occupations") were almost twice as likely to die as those born to professionals.

Civil Rights and Freedoms

While the focus has been on the effects of austerity on children, children have also suffered incursions into their civil rights. For example:

- The new system for regulating anti-social behaviour will allow children as young as 10 to be issued with IPNAs (the new ASBOs) for conduct '*capable of causing nuisance and annoyance*'. From 14, they can be imprisoned for breach. Children who live in social housing will be evicted if they, or a member of their family, breach an order; and
- Tasers were used on children 323 times in 2011 compared with 135 times in 2009.

Family Life and Alternative Care

Families have been placed under increasing pressure as a result of welfare reform and tax changes combined with the rising cost of living and stagnating wages. At the same time, children are failing to receive essential state support because of cuts to services.

Scandals this year exposed the scale of child abuse and exploitation, the fact that children are not listened to and taken seriously, and not well-served by the justice system. These have prompted initiatives to ensure that effective measures are taken when children report abuse, and to improve court processes so that children are not further abused by the judicial and safeguarding systems.

This Government has concentrated significant effort on facilitating adoption for looked after children, raising fears that other successful options for the long-term care of such children – such as kinship care and long-term foster placements – will be neglected.

Although successive Governments including the present one, have increased support for children in the care system, outcomes for looked after children remain dispiritingly poor. For example,

- 34% of 19 year-old care-leavers were not in education, employment or training (NEET), compared to the national average for 18 year-olds of 14%.
- 86% of children in care think it is important to keep siblings together, but 63% of children in the care system, whose siblings are also in care are separated from them.

Children with one or both parents in prison are three times as likely to suffer from mental health problems as other children and 44% say they need help dealing with their feelings.

Basic Health and Welfare

Health and welfare is dominated by the rising level of child poverty. Cuts to welfare support and tax credits combined with rising prices and low wages have led to both children living in working families and to families out of work experiencing severe deprivation, despite the Government's aim of 'making work pay'.

The impact of legislative changes intended to tackle health inequalities is yet to be seen, but there is widespread concern that the marketisation and lack of accountability within the health service will have a detrimental effect on children's health and widen inequality in access and outcomes. Services which are essential to safeguarding children's health are already being scaled back.

The report documents that:

- 300,000 more children are now living in absolute low income (an increase of two per cent from last year);
- Four out of five teachers report that some of their children are arriving at school hungry;
- Poor children are now four times more likely to be unhealthy than richer children;
- Children in the poorest households are three times more likely to have a mental illness than children in the best off households; and
- 27% of births in England take place in baby-friendly hospitals, compared with 81% in Scotland, 67% in Wales and 58% in Northern Ireland.

Education, Leisure and Cultural Activities

Inequality in education in terms of access, exclusions, outcomes, and quality of experience remains at staggering levels:

- Only 66% of poor children, 43% of children with SEN, 76% of BME children and 50% of looked after children achieved the expected level in English and mathematics at Key Stage 2, compared to the national average of 79%.
- Only 36.3% of poor pupils, 22.4% of pupils with SEN and 15% of looked after children achieved 5+ A*-C at GCSE or equivalent including English and mathematics, compared to the national average of 58.8%.
- Pupils with SEN (but no statement) are eleven times more likely to receive a permanent exclusion than pupils with no SEN. Poor children are four times more likely to receive a permanent exclusion than other pupils.
- 22.4% of children are bullied daily, with disabled children and children from sexual minorities most at risk of bullying.

Inequality has been reducing for some groups, yet serious concern has been expressed that recently gained benefits may be lost with the diversification of the educational landscape.

Special Measures of Protection

Children who are particularly vulnerable to abuse have seen the most serious attacks on their rights.

Migrant and asylum seeking children are disadvantaged in all areas. The Immigration Bill undermines their right to family life, health, housing, and to be protected from harm and to have their best interests taken into account. Failure to increase the rate of asylum support, already inadequate to meet children's basic needs, will leave them in worsening destitution. Discriminatory proposals in relation to legal aid will leave them unable to challenge most breaches of their rights.

One of the most positive findings in the report is that far fewer children are in custody than this time last year. However, inequality in the system is increasing and children continue to suffer serious abuses of their rights in detention. For example:

- The proportion of incarcerated children who are from black and minority ethnic communities has grown from 36% of children last year to 38% this year.
- Self-harm by children in the secure estate rose by 21%; and
- Restraint of children in custody rose by 17%, with numbers of children hospitalised as a result also increasing.

Disabled children have seen their right to an inclusive education undermined by the provisions in the Children and Families Bill, and have been disproportionately affected by changes to welfare, tax and service provision.

SUMMARY OF PROGRESS

- ▲ Significant progress made in relation to 30 recommendations.
- ▼ Significant deterioration in relation to 46 recommendations.
- No significant change in relation to 42 recommendations.

INTRODUCTION

The UN Committee on the Rights of the Child is the highest authority on the Convention on the Rights of the Child. In October 2008, it issued 118 recommendations in relation to the improvement of children's rights in England.

The Committee issued its conclusions after considering evidence and analysis from the Government, the UK's four Children's Commissioners and the Equality and Human Rights Commission (EHRC), as well as non-governmental organisations (NGOs) and children and young people. It held separate sessions with Government officials, NGOs and children and young people, and the Committee's Country Rapporteur met a variety of children's rights experts (including under 18 year-olds) in England ahead of the formal proceedings in Geneva.

This report summarises key developments in England – positive as well as negative – in relation to the UN's recommendations for improving children's human rights in the 12 months to November 2013. In preparing this report, CRAE examined the most significant developments in law and policy over the past 12 months; we analysed official data relating to children's well-being; scrutinised information made available through our own and others' Freedom of Information (FOI) requests and parliamentary questions; and read relevant research and consultation documents reporting children's own views and testimony.

Over 60 NGOs, academics and professionals contributed to this report, by attending our evidence-gathering event in July 2013, by submitting written evidence and by commenting on drafts of this report. We are enormously grateful for their input. This report does not necessarily reflect the views of our member organisations.

We have shortened each of the Committee's 2008 concluding observations, and sometimes paraphrased them; we have not included those observations specifically relating to Scotland, Northern Ireland or Wales. The order of the recommendations in this report does not always follow the order in which they appear in the UN Committee's concluding observations, as we have tried to group them to make easier reading. As well as providing a written summary of the most important developments – good and bad – over the past year, we have indicated our assessment of progress using the following symbols:

- ▲ This indicates significant improvement in law or policy in the past year
- ▼ This indicates significant deterioration in law or policy in the past year
- This indicates no significant change in law or policy in the past year

Throughout this report we use the term children to refer to children and young people under the age of 18.

All documents relating to the UK's examination by the Committee on the Rights of the Child can be accessed on CRAE's website at www.crae.org.uk or on the website of the UN High Commissioner for Human Rights at www.ohchr.org/english/bodies/UNCRC/index.htm

Article 4 of the Convention on the Rights of the Child requires states to 'undertake all appropriate legislative, administrative, and other measures for the implementation of the rights' in the Convention. In relation to children's economic, social and cultural rights, states are legally bound as a party to the Convention to use the 'maximum extent of their available resources'.



GENERAL MEASURES OF IMPLEMENTATION

ARTICLES 4, 42 AND 44.6

Governments should have structures and systems in place to ensure children's rights are respected and realised throughout all their work, including spending decisions. Work to realise children's rights should be coordinated across the whole of government, and not just limited to departments with an obvious impact on children (such as education). Training on children's rights should be provided for all those working with and for children. There is an expectation on government to ensure that the rights under the Convention are widely known by both adults and children. The Committee has said:

Ensuring that all domestic legislation is fully compatible with the Convention and that the Convention's principles and provisions can be directly applied and appropriately enforced is fundamental.

[T]he Committee remains concerned that the principles of the Convention are not duly taken into account in all pieces of legislation.

1 Take measures to bring all legislation in line with the Convention on the Rights of the Child, in part by taking the opportunity of the development of a British Bill of Rights to incorporate its principles and provisions

The UNCRC has still not been incorporated into domestic law, meaning children are unable to enforce their rights in the courts. Other routes through which children might access justice have been undermined this year. The Government's commitment to have regard to children's rights in developing policy has proved a poor substitute for incorporation of the Convention, as illustrated by legislative proposals developed this year which indicate children's rights have been disregarded.

The UNCRC is not part of UK law. In 2013, the UK Government reaffirmed its general position on incorporation of international human rights treaties when it submitted its periodic reports to the UN Committee on the Elimination of Discrimination against Women (CEDAW) and the UN Committee against Torture (CAT):

International treaties ratified by the United Kingdom are not usually directly incorporated into UK law. In general, the UK complies with its international obligations by enacting or amending domestic legislation to ensure compatibility with its treaty obligations. The Government normally takes such measures as are necessary, following normal parliamentary procedures, before it becomes a party to the treaty. The United Kingdom will not ratify a treaty unless the Government is satisfied that domestic law and practice enable it to comply.²

The failure to incorporate the UNCRC into a domestic Bill of Rights means that children's rights are not justiciable as such in the domestic courts. Nor can children complain to the UN Committee on the Rights of the Child in relation to a breach of their rights. The Third Optional Protocol to the UNCRC would allow children to take a case to the UN Committee on the Rights of the Child when they think their rights have been violated, but the UK has not signed the Protocol. The UK Government's position remains that it

... is considering the merits of the new Optional Protocol for the whole of the UK, taking account of the views of the Devolved Administrations and in light of how it will be applied in practice. The Government will consider signing the Optional Protocol when it has fully evaluated its merits for the UK.³

One mechanism which does currently exist to provide children with a legal remedy for a breach of their rights, judicial review, is set to be curtailed. Despite acknowledging that 'most of the responses' to the consultation were 'opposed to reform',⁴ the Government decided to go ahead with some of its judicial review proposals published in December last year.⁵ This year, the Ministry of Justice consulted on further restrictions on judicial review,⁶ which will have a significant negative impact on access to justice for children – see the box at page 14 for further information. Referring to these proposals, Lord Neuberger, President of the Supreme Court, warned:

[O]ne must be very careful about any proposals whose aim is to cut down the right to JR. The courts have no more important function than that of protecting citizens from the abuses and excesses of the executive – central government, local government, or other public bodies...⁷

The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 came into force in April 2013. As well as making huge areas of legal work affecting children ineligible for legal aid, the number of voluntary sector advice agencies undertaking legal aid work is set to fall from 270 to a few dozen as a result of the changes, making it harder for children to access advice and representation.⁸ In April 2013, the Government announced a further round of legal aid cuts.⁹ In July 2013, the Joint Committee on Human Rights (JCHR) launched an inquiry into the implications for access to justice of the proposed changes, and urged the Government to await its findings before proceeding on the basis the proposals: 'raise some human rights issues of fundamental significance for the right of access to justice and the rule of law'.¹⁰ However, the Ministry of Justice has already published its response to the consultation, and carried out a further *Next Steps*, consultation which ended on 1 November

2 Government of the United Kingdom (24 November 2011) *Common Core Document forming part of the Reports of States Parties United Kingdom of Great Britain and Northern Ireland* [HRI/CORE/GBR/2011]

3 Government of the United Kingdom (2012) *UK's Formal Response to the UPR Recommendations*

4 Ministry of Justice (April 2013) *Reform of Judicial Review: the Government Response*

5 Ministry of Justice (December 2012) *Judicial Review: Proposals for Reform*

6 Ministry of Justice (September 2013) *Judicial Review: Proposals for Further Reform*

7 Lord Neuberger, *Justice in the Age of Austerity*, Justice – Tom Sargant Memorial Lecture 2013, held at Freshfields Bruckhaus Deringer LLP, London, on 15 October 2013

8 JustRights (2013) *The Effect of LASPO Act 2012 on Children and Young People*

9 Ministry of Justice (April 2013) *Transforming Legal Aid: Delivering a more Credible and Efficient System*

10 Letter from the Joint Committee on Human Rights to the Lord Chancellor and Secretary of State for Justice, dated 15 July 2013

2013.¹¹ Whilst the response confirms the Government will now not proceed with several of its original plans, and makes some concessions, there are still several proposals that will have serious implications for children's access to justice. See the box at page 15 for further information. Commenting on recent developments, Lord Neuberger said:

Cutting the cost of legal aid deprives the very people who most need the protection of the courts of the ability to get legal advice and representation. That is true whether one reduces the types of claim which qualify for legal aid or increases the stringency of the requirements of eligibility for legal aid. The recent changes have done both. If a person with a potential claim cannot get legal aid, there are two possible consequences. The first is that the claim is dropped: that is a rank denial of justice and a blot on the rule of law. The second is that the claim is pursued, in which case it will be pursued inefficiently.¹²

In December 2010, then-Children and Families Minister, Sarah Teather, made '...a clear commitment that the Government will give due consideration to the UNCRC Articles when making new policy and legislation.'¹³ The commitment is reflected in the updated Cabinet Office guide to making legislation published in July 2013:

The Government has also made a commitment to give due consideration to the articles of the UN Convention on the Rights of the Child (UNCRC) when making new policy and legislation... It would be helpful to Parliament and the Joint Committee on Human Rights (JCHR) if explanatory notes included a summary of the anticipated effects of legislation on children and on the compatibility of draft legislation with the UNCRC.¹⁴

The Children and Families Bill, which will reform the Children's Commissioner's role, will give the Children's Commissioner an explicit power 'to consider the potential effect on the rights of children of government policy proposals and government proposals for legislation.'¹⁵ In carrying out its legislative scrutiny of the Bill, the JCHR stated:

We also look to the Government to reassure Parliament that it will continue to conduct its own assessments of the impact of laws and policies on children's rights, in accordance with its undertaking to Parliament on 10 December 2010, and will not leave it to the Office of the Children's Commissioner to do so...¹⁶

However, there is some doubt as to whether the Government routinely complies with this commitment. In its legislative scrutiny of the Anti-social Behaviour, Crime and Policing Bill, the JCHR said:

The Government undertook on 10 December 2010 to have due regard to the UN Convention on the Rights of the Child when developing law and policy... Our experience of scrutinising the current Bill, which has very significant implications for children's rights, does not encourage us to believe that the mechanisms for ensuring that such a systematic analysis is carried out are yet embedded across Whitehall.¹⁷

Nor has there been any systematic effort to harmonise existing legislation with the UNCRC. In early 2010, the then-Department for Children, Schools and Families (now the Department for Education) published *How legislation underpins implementation in England*. Although it was promised to be a living document, there has not been any follow-up to this welcome exercise.

2

Ensure effective co-ordination of the implementation of the UNCRC throughout the UK, including in local areas where authorities hold significant powers to determine priorities and budget allocation

There has been no breakthrough in this area. The Government has yet to publish any strategic document specifically devoted to implementation of the UNCRC.

The Department for Education is the lead department on children's rights. The restructure of the Department for Education was completed in May this year. Implementation of the UNCRC is now the responsibility of

11 Ministry of Justice (September 2013) *Transforming Legal Aid: Next Steps*

12 Lord Neuberger, *Justice in the Age of Austerity*, Justice – Tom Sargant Memorial Lecture 2013, held at Freshfields Bruckhaus Deringer LLP, London, on 15 October 2013

13 Department for Education (2010) *Publication of the Independent Review of the Children's Commissioner, Written Ministerial Statement*

14 Cabinet Office (July 2013) *Guide to Making Legislation*

15 Children and Families Bill (HL Bill 32) s. 79, amending s. 2(3)d of the Children Act 2004

16 Joint Committee on Human Rights (June 2013) *Legislative Scrutiny: Children and Families Bill; Energy Bill; Third Report of Session 2013–2014*

17 Joint Committee on Human Rights (October 2013) *Fourth Report, Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill*

the Children's Rights and Safeguarding Team. At ministerial level, Edward Timpson MP, who was appointed Parliamentary Under Secretary of State for Children and Families in September 2012, retains responsibility for its implementation. Tellingly, the UNCRC and child rights are not named on the list of his responsibilities.¹⁸ Implementation of the UNCRC does not feature in the 2012–15 Business Plan of the Department for Education.¹⁹

The Department for Education started work on its Fifth Periodic Report to the UN Committee on the Rights of the Child this year, which is due to be submitted to the Committee in January 2014. The Department has been liaising with other government departments and devolved administrations in drawing up the report, but there is no evidence that it has taken this opportunity to promote the implementation of the UNCRC.

3 **Establish a single high-profile mechanism to co-ordinate and evaluate the implementation of the UNCRC (in addition to well-resourced and functioning coordinating bodies in each jurisdiction)**

As State Party, the Government is responsible for the overall coordination of implementation of the UNCRC.

In June 2009 the first meeting of ministers responsible for children's rights in England, Northern Ireland, Scotland and Wales took place. There has not been a similar ministerial meeting in 2012 or 2013. Civil servants from England, Wales, Northern Ireland and Scotland should meet on a quarterly basis to discuss work on children's rights and the UNCRC in each jurisdiction.

4 **Adopt comprehensive rights-based action plans to implement the UNCRC in all parts of the UK, in co-operation with public and private organisations involved in promoting and protecting children's rights**

The Government has not, to date, adopted a comprehensive action plan to implement the UNCRC in England.

5 **Ensure adequate budget allocation and evaluation mechanisms for delivering action plans, in order to regularly assess progress and identify gaps in implementing the UNCRC**

The Government has not published any action plans for implementing the UNCRC in England or across the UK, and by implication no budget has been allocated to this task.

HM Treasury's guide, *The Green Book*, states that a range of international conventions should inform the development of policy. It specifies what it calls '*the more important conventions*', but does not include the UNCRC in that list.²⁰

6 **Implementation of action plans should pay special attention to children belonging to the most vulnerable groups**

The Government has not published a UNCRC implementation action plan, which pays particular attention to vulnerable groups of children.

¹⁸ See: Parliamentary Under Secretary of State for Children and Families, Edward Timpson MP at <https://www.education.gov.uk/aboutdfe/departmentalinformation/ministerialteam/timpson>

¹⁹ Department for Education (May 2012) *Business Plan 2012–2015*

²⁰ HM Treasury (2003) *The Green Book: Appraisal and Evaluation in Central Government*

7 Allocate the maximum extent of available resources for the implementation of the UNCRC, with a particular focus on eradicating poverty and reducing inequality

The Government has maintained the goal of ending child poverty in the UK by 2020. However, it is taking a different approach to doing so. In its view, the focus on income over recent decades has ignored the root causes of poverty, and in doing so has allowed social problems to deepen and become entrenched. The Government's approach to reducing poverty is to focus on 'giving individuals and families facing multiple disadvantages the support and tools they need to turn their lives around'.²¹ It also proposes to measure child poverty differently. A public consultation, which set out the Government's case for a better measure, closed in February 2013. The consultation proposed eight dimensions (income and material deprivation, worklessness, unmanageable debt, poor housing, parental skills, access to quality education, family stability and parental health) and was strongly criticised.²² See Concluding Observation 75 for more information. A concrete proposal for a new measure is expected in late 2013.

The Social Mobility & Child Poverty Commission, in its October 2013 State of the Nation report, is 'sceptical that economic, welfare and childcare reforms will be enough, on their own, to allow the Government to hit its child poverty target by 2020'.²³ It predicts that the goal of ending child poverty by 2020 will be missed, with as many as two million children likely to be living in relative poverty at that time. It concludes that the scale and depth of activity to tackle child poverty and promote social mobility are not enough to combat the negative impact of the economic and fiscal climate. It identifies three fundamental changes which must be addressed:

- Disadvantage and insecurity now affects not just the poorest, but also those on average-incomes;
- Low wages mean that 'working parents simply do not earn enough to escape poverty'. It finds that '[a] comprehensive approach to tackling in-work poverty is the missing piece of the Government's policy jigsaw'; and
- An ageing population means that austerity is here to stay and difficult choices will need to be made about where to spend public money: 'We do not believe that favouring pensioners over their children and grandchildren will be a sustainable position over the long-term if a meaningful dent is to be made in the UK's high levels of child poverty and low levels of social mobility'. The Government will also need to find ways of encouraging employers to bridge the gap between the earnings and prices.

The number of children in the UK living in poverty is expected to rise by around 700,000, from 2.3 to 3 million, between 2010–11 and 2015

A report published by the Office of the Children's Commissioner (OCC) in June 2013 also finds that the Government's economic policies are likely to have a negative impact on child poverty.²⁴ Its analysis indicates that the number of children in the UK living in poverty (below 60% of median income Before Housing Costs) is expected to rise by around 700,000, from 2.3 to 3 million, between 2010–11 and 2015; the number of children living in households below 50% of median income Before Housing Costs is expected to rise by 300,000 to 1.5 million children during the same period; and the number of children living below a 'minimum income standard' is expected to rise by 400,000 to 6.8 million children (around 52% of all children).

8 Children's rights impact assessments should be regularly conducted to evaluate whether budget allocations are proportionate to the implementation of legislation and policy

The Government has not published children's rights impact assessments of its budget allocations. In 2013, the OCC published a *Child Rights Impact Assessment of Budget Decisions*.²⁵ It found that families with children have lost

21 Department for Work and Pensions (March 2012) *Social Justice: Transforming Lives*

22 HM Government (November 2012) *Measuring Child Poverty: a Consultation on Better Measures of Child Poverty*

23 Social Mobility & Child Poverty Commission (October 2013) *State of the Nation 2013: Social Mobility and Child Poverty in Great Britain*

24 Office of the Children's Commissioner (June 2013) *A Child Rights Impact Assessment of Budget Decisions: including the 2013 Budget, and the Cumulative Impact of Tax-Benefit Reforms and Reductions in Spending on Public Services 2010–2015*

25 Office of the Children's Commissioner (June 2013) *A Child Rights Impact Assessment of Budget Decisions: including the 2013 Budget, and the Cumulative Impact of Tax-Benefit Reforms and Reductions in Spending on Public Services 2010–2015*

more than those without children as a result of cuts to benefits and tax credits and increases in personal tax; the reforms are 'strongly regressive', with low-income families with children losing more as a percentage of net-income than high-income families. It concluded that:

Overall, the evidence in this report suggests that the best interests of children are not being treated as a primary consideration (Article 3) in the design of fiscal measures relating to welfare benefits, tax credits and taxes.

An analysis of the impact of spending cuts on services such as schools, health, and transport shows that while families with children account for 32% of working age families they will bear 63% of the cuts. The report concludes that the cumulative impact of the measures analysed 'place the Government at risk of not meeting its obligations to children and young people'.

9 Ensure all four Children's Commissioners are independent and comply with the UN Paris Principles

In February 2013, the Children and Families Bill was introduced in the House of Commons with proposals to reform the OCC for England.²⁶

The proposals, which will give the Children's Commissioner a rights-based mandate, and repeal provisions which allow the Secretary of State to direct the work of the Commissioner, have been broadly welcomed as independence-enhancing.²⁷ In its scrutiny of the Bill, the JCHR described the reforms to the OCC as 'significant human rights enhancing measures', finding that:

[T]he Bill goes a long way towards addressing the perception that the Children's Commissioner is not sufficiently independent from Government to satisfy the requirements contained in the international standards, including the UN Convention on the Rights of the Child and the Paris Principles.²⁸

However, there remain concerns that the legislation does not go far enough to guarantee the independence of the OCC. The relevant Secretary of State will retain the power to appoint and dismiss the Children's Commissioner and set its budget.

The JCHR recommended that all the changes to the Framework Agreement between the Equality and Human Rights Commission (EHRC) and the Department for Culture, Media and Sports, in order to safeguard the EHRC's accreditation as an "A" status national human rights institution, should also be made to the Framework Agreement between the OCC and the Department for Education.

10 Ensure the Children's Commissioner is mandated, among other things, to receive and investigate complaints from children, and has the necessary human and financial resources to carry out the mandate in a co-ordinated manner to safeguard the rights of all children in the UK

The legislation that will lead to a reformed OCC specifies that the Children's Commissioner 'may not conduct an investigation of the case of an individual child in the discharge of the primary function'.²⁹ The legislation gives the Children's Commissioner the power to 'consider or research the availability and effectiveness' of complaints and advocacy services for children.³⁰

The Explanatory Notes to the Bill state that the Government's intention is for the Commissioner to concentrate on strategic issues that affect a number of children, rather than provide an ombudsman service for individual children.³¹ They also explain that the Children's Commissioner should not carry out investigations which are properly for other bodies, such as criminal justice bodies. The Commissioner will, however, be able to provide advice and assistance to certain vulnerable children.

26 HC, 4 Feb 2013, c. 48

27 Alliance for Reform of the Children's Commissioner (July 2013) *Briefing for Children and Families Bill, House of Lords, Second Reading*

28 Joint Committee on Human Rights (June 2013) *Legislative Scrutiny: Children and Families Bill; Energy Bill*

29 Children and Families Bill (HL Bill 32) s. 79, amending s. 2(5) of the Children Act 2004

30 Children and Families Bill (HL Bill 32) s. 79, amending s. 2(3)(f)–(g) of the Children Act 2004

31 Explanatory Notes to the Children and Families Bill as brought from the House of Commons on 12 June 2013 (HL Bill 32)

11 Strengthen efforts to ensure that the UNCRC is widely known and understood by adults and children, in part by including the UNCRC in the statutory national curriculum

Citizenship education is not compulsory in primary education, but remains a compulsory national curriculum subject at Key Stages 3 and 4. New statutory programmes of study published in September 2013 will come into effect from September 2014.³² Although the programmes of study for both Key Stages 3 and 4 cover broad citizenship issues, it is only under Key Stage 4 that education in 'human rights and international law' is mentioned.³³ The programmes of study which were in place prior to September 2013 required teaching in relation to rights at both Key Stages 3 and 4, and contained some detail as to the content to be covered and skills to be attained by students.

12 Ensure the principles and values of the UNCRC are integrated into the structure and practice of all schools

There is no overall strategy to do this in England.

13 Ensure adequate and systematic training of all professionals working with children, especially law enforcement officials, immigration officials, the media, teachers, health personnel, social workers, and childcare workers

Although some work has taken place to train officials working on policy development within government departments, there is no overall strategy in place for disseminating or raising awareness of the UNCRC more broadly amongst professionals working with or for children. In response to a parliamentary question on this subject, the Government said:

The Department for Education does not hold information about the proportion of teachers who have received training on the UN convention on the rights of the child (UNCRC)... The Department has taken a number of steps to raise awareness of the UNCRC among its officials, including several detailed training sessions for those involved in developing new policy or legislation. We do not keep a record of the proportion of staff involved in this ongoing work.³⁴

14 Encourage the active and systematic involvement of NGOs, youth-led organisations and others in the promotion and implementation of children's rights, including in the development of policy

The Government's draft periodic report to the UN Committee on the Rights of the Child describes a number of consultations carried out with children in the development of policy and practice.³⁵ In addition, it describes the Government's support for a number of mechanisms through which young people have the opportunity to express their views and influence decision-making, such as the Youth Parliament and National Scrutiny Group.

There are also mechanisms for NGOs to engage with the Government in relation to the implementation of children's rights. The Parliamentary Under Secretary of State for Education (Children and Families) met with a stakeholder group of NGOs to discuss the implementation of children's rights in January 2013 and November 2013.

³² Department for Education (September 2013) *Statutory Guidance: National Curriculum in England: Citizenship Programmes of Study for Key stages 3 and 4*


³³ Department for Education (September 2013) *Statutory Guidance: National Curriculum in England: Citizenship Programmes of Study for Key stages 3 and 4*

³⁴ HC, 16 October 2013, c. 753W

³⁵ HM Government (October 2013) *Draft Periodic Report to the UN Committee on the Rights of the Child: United Kingdom*

However, as reported in the last edition of *State of Children's Rights in England*, the formal opportunity for civil society to contribute to policy development through public consultations has been curtailed. The previous expectation that public consultations would be open for three months was dropped,³⁶ and the new approach to consultation has had an impact on policies concerning children. For example, in July 2013, a one-month consultation was launched by the Department for Education on proposals to amend the national curriculum.³⁷ This made it difficult for NGOs to respond.


15 Engage NGOs and youth-led organisations in the follow up to the UN's concluding observations and the preparation of the next periodic report



The Government is due to submit its next periodic report to the UN Committee on the Rights of the Child in January 2014. The Department for Education launched the process of drawing up the report in January 2013, and this has been fairly inclusive. A UNCRC Reference Group, including a group of NGOs, was set up to advise on the process. The Government published its draft report for consultation in October 2013.³⁸ In response to a parliamentary question about the place of children's views in the report the Children's Minister, said:

I expect the report to include details of various consultations that have taken place with children and young people on a wide range of policy proposals and issues. Some were organized for us by the British Youth Council, to which the Department has allocated £666,000 for 2013–15 in support of youth voice. Other consultations were conducted by or on behalf of individual Government Departments.³⁹

16 Address those recommendations made by the UN Committee in 1995 and 2002 that have not yet – or not sufficiently – been implemented



There has been no far-reaching effort to address the recommendations made by the UN Committee in 1995 and 2002. Notably, the issue of incorporation of the UNCRC, a subject raised in every set of concluding observations issued by the UN Committee in respect of the UK, has not progressed.

36 Cabinet Office and Prime Minister's Office (19 November 2012) *Prime Minister's Speech to CBI*

37 Department for Education (July 2013) *National Curriculum Review: New Programmes of Study and Attainment Targets from September 2014*

38 HM Government (October 2013) *Draft Periodic Report to the UN Committee on the Rights of the Child: United Kingdom*

39 HC, 27 June 2013, c. 358W

Access to Justice: Judicial Review Reforms

Reform	Status	Comments/Concerns
Removal of the right to renew a judicial review application orally if permission for JR is turned down on the papers and assessed by the judge as 'totally without merit'	Came into effect on 1st July 2013	<p>Likely to represent a significant restriction on access to justice given the number of cases in which claimants who initially fail go on to succeed at the oral renewal stage;⁴⁰ research shows over twice as many oral claims are granted permission as paper claims.⁴¹</p> <p>Raises equality issues both in terms of its disproportionate impact on children gaining access to justice (both as a whole and disabled children and those from BME groups) and in terms of discrimination cases being heard. In terms of responses to the Government's consultation:</p> <p><i>Some respondents argued that the proposal would raise equality issues. They pointed out that immigration and asylum cases represented the majority of Judicial Review claims, and that the proposal would therefore necessarily have a greater impact on those from Black, Asian and Minority Ethnic groups. Some of these cases affected children seeking a review of a decision on an age assessment. Others suggested that other vulnerable groups, and specifically children, might potentially be affected. They pointed out that many children bringing claims against local authorities for failing to provide adequate education provision were disabled.</i>⁴²</p>
Applying for judicial review to cost £235 instead of £60 and a new fee (of £215) to apply to oral renewals.	<p>The oral hearing fee came into effect on 7 October 2013.</p> <p>The Government is still considering whether to increase the initial application fee.</p>	<p>The potential impact on children's access to justice as a result of this proposal was raised by respondents to the consultation:</p> <p><i>In particular, there was a concern about the impact it would have on self-represented litigants and other vulnerable claimants, for example, disabled people and children. They argued that it could further increase the disparity in resources between claimants and the public authorities whose actions and decisions they were seeking to challenge</i>⁴³</p> <p>Coram Children's Legal Centre considers that children and young people subject to immigration control will be particularly negatively affected by these reforms.⁴⁴</p> <p>Baroness Howe has expressed her concern at the 'devastating impact' on children that will result from limiting the circumstances in which JR can be brought⁴⁵ and commented on how:</p> <p><i>The power imbalance inherent in the relationship between the individual and the state, and between a child or a young person and the state in particular, necessitates mechanisms for challenging decisions and unfair treatment by state authorities that, if left unchallenged, can often have devastating consequences for the young person well into their adult lives.</i>⁴⁶</p>
Restricting 'standing' – i.e. who can bring a JR claim – and interventions by NGOs. Currently a person or group must have a sufficient interest in the matter to which the application relates in order to bring a case.	Consultation proposal – consultation ended 1 November	<p>This would effectively prevent NGOs and pressure groups from bringing claims on behalf of children or on issues affecting children.</p> <p>As the British Institute of Human Rights points out:</p> <p><i>Civil society groups need to take action when individuals are not able to. This could include challenging unlawful policies before they adversely harm an individual rather than waiting until after the act or where an unlawful policy removes a person from the UK so they cannot challenge it (e.g. R(Medical Justice) v Secretary of State for the Home Department [2011])</i></p> <p>These proposed reforms, taken together with recent reforms to legal aid will 'seriously weaken the ability of people in the UK and the civil society groups (NGOs, charities, faith groups etc.) that help them to hold the Government to account for unlawful action'</p>

40 Elliott, M. 1 Crown Office Row barristers chambers (23 April 2013) *Government Pressing Ahead with (most of) Its Proposals to Restrict Access to Judicial Review*

41 Public Law Project (January 2013) *Briefing on Response to Consultation Judicial Review: Proposals for Reform*

42 Ministry of Justice (April 2013) *Reform of Judicial Review: the Government Response*

43 Ministry of Justice (April 2013) *Reform of Judicial Review: the Government Response*

44 Coram Children's Legal Centre (January 2013) *Ministry of Justice Consultation Judicial Review: Proposals for Reform, Consultation Response*

45 HL, 11 July 2013, c. 475

46 HL, 11 July 2013, c. 475

Reform	Status	Comments/Concerns
Further financial disincentives such as allowing the full costs of permission hearings to be recoverable from unsuccessful claimants and allowing wasted costs orders to be used in a wider range of circumstances. Government originally proposed there would be no legal aid for proceedings seeking permission to bring a judicial review, but the new proposal, following much opposition, is that a discretionary payment could be awarded by the Legal Aid Agency.	Consultation proposal – consultation ended 1 November	Acts as a disincentive to people wishing to bring a claim to assert their rights. The British Institute of Human Rights says that restricting the use of protective costs orders will have 'a chilling effect' and deter groups from bringing cases in the wider public interest. Further, the financial risk and uncertainty is likely either to deter lawyers from taking on such cases, leaving people without legal advice or representation, or people may bring judicial review without lawyers or advice, resulting in important cases being unsuccessful due to inadequate preparation.

Access to Justice: Legal Aid Reform

Treatment in prison – the Government has decided to proceed with ending legal aid for all cases concerning the treatment of children in prison except parole reviews and prison disciplinary hearings that qualify for representation. In doing so, the Government says it considers complaints systems and the existence of (some) advocacy services to negate the need for legal representation.	It is intended that these changes will be introduced by way of amendments to secondary legislation and contract amendments in late 2013.	Many consider the complaints system to be inadequate, ⁴⁷ and in any event a complaints system is no substitute for access to the court. This will affect children in prison, and children whose parents are in prison. The Chief Executive of The Howard League for Penal Reform has warned the proposals 'will give a blanket of secrecy to child abuse.' ⁴⁸ The Family Bar Association has raised concern that a mother refused a place on a mother and baby unit would be ineligible for assistance in challenging this decision, resulting in the child being separated and potentially adopted. ⁴⁹
The Residence Test for non-criminal legal aid eligibility. Only those living lawfully in the UK and who have done so for at least a year, now or at any time in the past, will qualify for legal aid.	It is intended that this reform will be introduced, subject to Parliamentary approval, via secondary legislation, to take effect in early 2014.	Whilst the Government has made some concessions relating to children, including exempting from the residence test babies under 12 months of age and cases relating to the protection of children, victims of trafficking, victims of domestic violence and forced marriage, significant concerns remain about the discriminatory impact of these proposals, and the gaps in protection. The Refugee Children's Consortium has said that children will be unable to challenge an unlawful failure to provide them with support, an unlawful age assessment (which could lead to their detention) or a failure to recognise a trafficking victim as such. ⁵⁰ Parents in immigration detention would not be able to access legal aid to apply for release on bail or to challenge the legality of their detention, with a devastating impact on their children.

47 See for example: HM Chief Inspector of Prisons (June 2013) *Submission to Ministry of Justice: Transforming Legal Aid – Delivering a More Credible and Efficient System*; OCC (June 2013) *OCC Response to MoJ Consultation: Transforming Legal Aid: Delivering a More Credible and Efficient System*

48 Crook, F. 'A disastrous few days for children in prison', *Frances Crook's Blog*

49 Family Bar Association (June 2013) *Response to the Ministry of Justice Consultation Paper CP14/2013 Transforming Legal Aid Consultation*

50 Refugee Children's Consortium (June 2013) *Response to Transforming Legal Aid Consultation*

2

GENERAL PRINCIPLES

ARTICLES 2, 3, 6 AND 12

Children's best interests should be a primary consideration in all decisions affecting them, and their views should be taken into account. Their right to live and develop should be protected. Children should not be discriminated against in the enjoyment of their rights. The Committee has expressed concern:

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.

17 Take urgent measures to address the intolerance and inappropriate characterisation of children, especially adolescents, within society, including the media

No action has been taken by the Government to address the intolerance and inappropriate characterisation of children in society and the media.

As in its previous manifesto, the *UK Youth Parliament Manifesto 2013*, created by locally elected young people to inform and influence local and national decision-makers, lists the fair representation of children in the media as an issue that must be tackled.⁵¹ It states:

*We believe we need to tackle the unfairly negative portrayal of young people within our society. This is evident through the use of stereotypes in the media that label young people as jobs or thugs, and also the use of the mosquito device in communities to move young people away from public places. We think a young people's press service should be established to combat negative reporting and that the Press Complaints Commission should recognise ageism against young people as discrimination.*⁵²

Talking about the role of the UK Youth Parliament earlier this year, Edward Timpson MP, Parliamentary Under Secretary of State for Children and Families, said:

*The UK Youth Parliament is a valuable and effective forum that campaigned on issues that affect young people and the rest of society. The passion and quality of debate when I attended the House of Commons in November was unquestionable – it shows why we need to listen to you, and why the media stereotyping of young people is unfair and based on the actions of a small minority.*⁵³

Positive for Youth sets out the Government's vision of how young people (aged 13 to 19) should be supported by their families, their local communities, and the State to realise their potential.⁵⁴ The Government's own report, detailing progress made on *Positive for Youth* over the past 18 months, concludes that one of the challenges for those responsible for designing and delivering services, at national and local level, is 'to continue to...speak up when they see unfair or unbalanced media reporting.'⁵⁵

We need to tackle the unfairly negative portrayal of young people as jobs or thugs

Yet the Government's progress report does not indicate the extent to which people currently do speak up for children, nor does it refer to any steps being taken by the Government to address the intolerance and inappropriate characterisation of children in society and the media. With regards to challenging negative stereotypes of children, specific reference is only made to *Truth about Youth*,⁵⁶ a scheme funded by The Co-operative Foundation which has been running since 2009 – pre-dating *Positive for Youth*.

At the end of last year, following a recommendation in Lord Justice Leveson's report,⁵⁷ a review of the Editors' Code of Practice was launched. Clause 12 of the Code relates to discrimination, and provides that the press must avoid making prejudicial and pejorative reference to certain personal characteristics, such as race and disability. It does not currently include "age". In response to the review, CRAE called for "age" to become a protected ground of discrimination in the Code:

*...in order to bring an end to inappropriate negative reporting in relation to young people, which is itself a breach of children's rights, but also feeds into negative attitudes towards children which lie behind a whole range of rights-abuses...*⁵⁸

The Youth Media Agency's (YMA) submission, supported by 105 other organisations, states that: '*Children and young people deserve the right to fair representation and accessible redress; including age as a classification will make a tangible contribution towards this*'.⁵⁹ The consultation on the Editors' Code of Practice closed in April 2013; no response has yet been issued.

51 *The UK Youth Parliament Manifesto 2013*

52 *The UK Youth Parliament Manifesto 2013*

53 UK Youth Parliament (28 July 2013) *The Annual Sitting Times*

54 See: <https://www.gov.uk/government/collections/positive-for-youth>

55 HM Government (July 2013) *Positive for Youth – Progress since December 2011*

56 See: <http://www.co-operative.coop/join-the-revolution/our-plan/inspiring-young-people/truth-about-youth/>

57 The Right Honourable Lord Justice Leveson (November 2012) *An Inquiry into the Culture, Practices and Ethics of the Press, Report, Volume IV, Part L*

58 CRAE (April 2013) *Editors' Code Committee Consultation on the Code of Practice: Response from the Children's Rights Alliance for England*

59 See: <http://www.youthmediaagency.org.uk/ageinthecode-2/>

In November 2012, the Leveson report called for an independent self-regulatory body to be established to oversee the press. Leveson recommended that any new regulatory board should have the power to hear complaints, whoever they come from, including from representative groups and third parties.⁶⁰ However, the final draft cross-party Charter, agreed in October 2013, makes a number of concessions on this point: that the Board has the discretion not to look into complaints if they feel that the complaint is *'without justification, is an attempt to argue a point of opinion rather than a standards code breach, or is simply an attempt to lobby'*.⁶¹ Further, in the case of representative groups affected by the alleged breach, it adds a requirement for there to be *'a public interest'* in the Board considering the complaint. As Edward Vaizey MP explained, in the context of media sexism and Leveson's recommendation regarding third-party complaints:

*The Government have considered the recommendation, and it is now reflected in the cross-party charter that we published in March. However we considered it appropriate to apply a threshold to the consideration of group complaints by the regulator, to ensure that the future regulator was not inundated with complaints whose motive was to forward the campaigning agenda of a group or organisation, and to make sure that complaints did not impact on the freedom of the press to express an opinion, which is a very important principle.*⁶²

An alternative charter proposed by the newspaper industry moves even further away from the Leveson proposals.⁶³ It raises the bar even higher for complaints by representative groups, requiring, not only an *'alleged breach of the code'*, but a *'significant'* one, and not only *'a public interest'*, but a *'substantial'* public interest. However, the Royal Charter was signed in October 2013.

The final report of the Riots, Communities and Victims Panel commented on the negative stereotypes of children in the media and the need for campaigns to promote positive perceptions of children.⁶⁴ In its response, the Government praised the Panel's report *'for providing a sound analysis of the entrenched social problems which are causing many barriers to some sections of society'*.⁶⁵ It highlights the policies and work being done to address the social issues raised in the Panel's report, including support for children. No reference is made, however, to the issue of negative stereotyping of children in the media, nor are any measures proposed to address this issue.

18 Strengthen anti-discrimination activities, including awareness-raising, and take affirmative action where necessary to benefit vulnerable groups, including Roma and Irish traveller children: migrant, asylum-seeking and refugee children: LGBT children; and children belonging to minority groups

Equality legislation and structures to promote equality and anti-discrimination have continued to come under threat this year.

The public sector equality duty, introduced by the Equality Act 2010, requires public authorities in all their functions to have due regard to the need to eliminate discrimination and harassment, advance equality of opportunity and foster good relations.⁶⁶ For the purposes of the public sector equality duty, the protected characteristics include age. This means equality of opportunity and good relations should be promoted between different age groups – including children. This provision is particularly important for children, because they are not protected against age discrimination by other parts of the Act.

In 2012, the Government announced a review of the public sector equality duty. The review was widely regarded as problematic on the basis that it was happening too soon after the entry into force of the duty.⁶⁷ The importance of the duty, however, was widely acknowledged, with the Equality and Diversity Forum stating: *'The Equality Duty is neither a luxury, nor red tape. It is a practical tool for modern government and one that is particularly useful during times of austerity...'*⁶⁸ In its submission to the review, the Office of the Children's Commissioner (OCC) highlighted the important role of the duty for children, and called on the Government not to withdraw support before the potential benefits of the duty can be assessed. The OCC expressed its regret that the Government had prevented the Equality and Human Rights Commission (EHRC) from publishing a

60 The Right Honourable Lord Justice Leveson (November 2012) *An Inquiry into the Culture, Practices and Ethics of the Press, Report, Volume IV, Part L*

61 Department for Culture, Media and Sport (October 2013) *Final Draft Royal Charter on Self-Regulation of the Press*

62 HC, 12 June 2013, c. 100WH

63 HL, 11 July 2013, c. 395

64 Independent Riots Communities and Victims Panel (2012) *After the Riots – the Final Report of the Riots, Communities and Victims Panel*

65 Department for Communities and Local Government (July 2013) *Government Response to the Riots, Communities and Victims Panel's Final Report*

66 Equality Act 2010, s. 149

67 See for example: Equality and Diversity Forum (March 2013) *Equality and Diversity Forum Submission to the Government's Equality Duty Review*; Age UK (April 2013) *Age UK Submission to the Review of the Public Sector Equality Duty*

68 Equality and Diversity Forum (March 2013) *Equality and Diversity Forum Submission to the Government's Equality Duty Review*

statutory code of practice on the duty; in the OCC's view, statutory guidance would lead to 'the single biggest improvement' in implementation.⁶⁹

In September 2013, the independent Steering Group's report on the public sector equality duty review, and the Government's response to it, were published. The Steering Group's report did not recommend scrapping the duty.⁷⁰ However, it noted that, whilst it is too early to make a final judgement about its impact, the duty is not yet operating as intended; there were very few concrete examples of where it has led to improved outcomes, and there were significant challenges in terms of implementation. The report made various recommendations for the EHRC, for contractors, for public bodies, and for the Government. In a ministerial statement by the Minister for Women and Equalities, the Government stated that it would like to see the review's recommendations implemented fully by all relevant parties, and that they would accept the recommendation to consider what means, other than judicial review, there may be to enforce the duty.⁷¹

Public authorities are required under the duty to publish, at least every four years, one or more objectives it thinks it needs to achieve to further any of the aims in the duty. The EHRC's assessment of how authorities are complying found:

- An estimated 24.7% of public authorities had published equality objectives; excluding schools from the results, the results increase considerably to 81.7%;
- More than 90% of NHS service providers, NHS service commissioners, police forces and national organisations had published equality objectives;
- Over 80% of local government, probation trusts and universities published objectives;
- Sixty per cent of Government departments had published objectives; and
- Just one in five primary schools (21.3%) and secondary schools (23.2%) published objectives.⁷²

The EHRC's report notes that public authorities have continued to make progress since the end of the EHRC's assessment period (December 2012); by May 2013, 91.7% of authorities assessed (excluding schools) had published objectives. Further, there was an increase in schools publishing objectives, with 29.2% of the sampled primary schools, and 32.1% of the sampled secondary schools, having published objectives.

A key finding was that many publishing authorities had objectives that included the newer protected characteristics (age, religion or belief, sexual orientation, gender reassignment and pregnancy and maternity). Of the newer characteristics, religion or belief was the most common, with 27.9% having at least one objective on this characteristic. The next most common characteristics were gender reassignment (20.2%), sexual orientation (19.7%) and age (16.9%).

Having previously opposed caste discrimination being added to the Equality Act 2010, the Government has changed its position. Changes brought in via the Enterprise and Regulatory Reform Act 2013 mean that caste will be treated in future as an aspect of 'race'⁷³ following further consultation.⁷⁴

The Enterprise and Regulatory Reform Act 2013⁷⁵ also made changes (with effect from June 2013) which affect the remit of the EHRC:

- It repeals the EHRC's duty to promote good relations between and within groups (sharing a protected characteristic), as well as the powers associated with that duty. The EHRC does, however, still have its own obligation to give due regard to good relations, as a public authority, under the public sector equality duty;
- It reduces the frequency with which the EHRC is required to publish a report on progress (on equalities) from every three years to every five. Its first five year review is due to be produced by the end of 2015; and
- It repeals the EHRC's conciliation power for non-workplace disputes – which has, according to the EHRC itself, been 'crucial' in ensuring people are able to access equality and human rights law protection.⁷⁶

Following opposition⁷⁷ and advice from the EHRC that the case had not been made for repeal,⁷⁸ the Government agreed not to repeal the EHRC's general duty. This places a general duty on the EHRC to encourage and support

69 Office of the Children's Commissioner (April 2013) *Office of the Children's Commissioner's Response to the Government's Equality Duty Review*

70 Government Equalities Office (6 September 2013) *Review of the Public Sector Equality Duty: Report of the Independent Steering Group, Executive Summary*

71 Department for Culture, Media & Sport (6 September 2013) *Ministerial Written Statement: Public Sector Equality Duty Review*

72 Equality and Human Rights Commission (2013) *Assessment of the Publication of Equality Objectives by English Public Authorities*

73 Enterprise and Regulatory Reform Act 2013, s. 97

74 Government Equalities Office (July 2013) *Caste Legislation Introduction – Programme and Timetable*

75 Enterprise and Regulatory Reform Act 2013, s. 64

76 Equality and Human Rights Commission (Jan 2013) *Enterprise and Regulatory Reform Bill 2012–13, Clause 56: Amendments to the EHRC's Remit, House of Lords, Committee Stage, Equality and Human Rights Impact Statement*

77 See for example: British Institute of Human Rights (16 April 2013) *House of Commons Briefing: Enterprise and Regulatory Reform Bill for Ping Pong*

78 Equality and Human Rights Commission (April 2013) *Enterprise and Regulatory Reform Bill 2012–13, Clause 64, Final Stages*

the development of a society in which there is respect for human rights, mutual respect between groups, and every individual has an equal opportunity to participate.⁷⁹

The Government believes these changes will help the EHRC 'focus on its core functions as a national expert on equality and human rights issues and as a strategic enforcer of the law'.⁸⁰ However, the Chair of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights believes that 'taken as a whole the package of proposals clearly constitutes a diminution of the EHRC's role and responsibilities'; of particular concern are the threat of 'more substantial reforms' and deep cuts to the EHRC's budget.⁸¹ The Association of Teachers and Lecturers' equalities officer, Dr Wanda Wyporska, comments:

All these changes paint a bleak picture for equalities. We're seeing the EHRC weakened, the equality duty weakened, together with the end of EIAs [(equality impact assessments)]. As for 'smart people in Whitehall', does David Cameron realise that women, black, Asian and minority ethnic people are not well-represented among the higher echelons of the Civil Service? Once again we have people making decisions for our communities, instead of actively involving us.⁸²

Further, referring to the fact the 2010 Spending Review cuts the EHRC's budget by more than 60% by 2014–15, she said:

Many countries previously looked to the UK's EHRC as a leading example of a well-resourced institution, independent of the government. Now we are at risk of the EHRC losing its UN 'A' status,⁸³ through lack of resources and the possibility of it being accountable to the government, rather than Parliament. This will compromise all our hard-fought-for equalities rights.

This view was not shared by the Chair of the EHRC, Baroness O'Neill, who stated that the agreed budget: 'will allow us to continue as an effective organisation in all our roles'.⁸⁴

We're seeing the EHRC weakened, the equality duty weakened, together with the end of EIAs ... Once again we have people making decisions for our communities, instead of actively involving us

In June 2013, the Treasury published an assessment of the impact of the Spending Round 2013 on equalities.⁸⁵ The report states that the Treasury has taken care to ensure: 'that it fulfils its responsibilities under the Equality Act 2010; including the need to recognise its impact on nine protected groups. ...'. It concludes that the Spending Round is most likely to impact on gender, age, race and disability, and limits its analysis to these groups. A child rights impact assessment of budget decisions and changes to the tax and welfare system between 2010–15 by the Office of the Children's Commissioner concluded that: 'families with children have lost more as a result of the economic policies modelled than those without children, and some of the most vulnerable groups have lost the most'.⁸⁶ The assessment of the likely impact of tax, tax credit, and welfare benefit reforms between 2010–15 analysed the impact of reforms on families with and without children, families with different levels of income, those from different ethnic backgrounds and families where there are disabled children. The impact assessment found:

- Couples with children experienced the greatest losses in cash terms;
- Low-income families lost a greater proportion of income than high income families;
- Families with more children were likely to experience greater losses;
- Families with white parents and those with Asian parents were likely to lose most as a result of the reforms; and
- Families with disabled children suffered bigger than average losses. Children with disabled parents were also likely to experience greater than average losses.

79 Equality Act 2006, s. 3

80 Department for Business Innovation and Skills (June 2013) *Enterprise and Regulatory Reform Act 2013: Policy Paper*

81 Letter from the ICC Chair, Dr Mousa Borayzat, to the Home Secretary, Rt Hon Theresa May MP, dated 16 July 2012

82 Association of Teachers and Lecturers (May 2013) *Equalities under attack*

83 The Equality and Human Rights Commission's "A status" is being questioned – see the correspondence between the Rt Hon Theresa May MP and the ICC and UN High Commissioner for Human Rights, appended to Equality and Human Rights Commission (October 2012) *Enterprise and Regulatory Reform Bill 2012–13, Report Stage and Third Reading Briefing, House of Commons*

84 Department for Culture, Media and Sport (January 2013) *Equality and Human Rights Commission: New Board and Budget Mark a New Era*

85 HM Treasury (June 2013) *Impact on Equalities: Analysis to Accompany Spending Round 2013*

86 Office of the Children's Commissioner (June 2013) *A Child Rights Impact Assessment of Budget Decisions: Including the 2013 Budget, and the Cumulative Impact of Tax-Benefit Reforms and Reductions in Spending on Public Services 2010–2015*

19 Take all necessary measures to ensure that cases of discrimination against children are addressed effectively, including with disciplinary, administrative and penal sanctions

The Children and Families Bill will, if passed in its current form, introduce pilot schemes giving children in test areas the right to appeal to the First-tier Tribunal in relation to decisions about Education, Health and Care assessments and plans (as set out in Clause 51 of the Bill), and to make a claim to the Tribunal under Schedule 17 to the Equality Act 2010. The legislation would also give a power to the Secretary of State to enable all children to make these claims; this power would be used after the pilots have taken place.⁸⁷

The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 came into force in April 2013. However, cases relating to discrimination under the Equality Act 2010, and cases relating to special educational needs, will still qualify for legal aid.

20 Take all appropriate measures to ensure that the principle of the best interests of the child is adequately integrated into all legislation and policy affecting children, including in criminal justice and immigration matters

The primacy of the child's best interests has been undermined in legislation this year.

One of the stated aims of the proposed reforms to the family justice system being brought about through the Children and Families Bill is to ensure that, '*children's best interests are at the heart of decision making*'⁸⁸ In 2011, the Family Justice Review considered whether there should be a presumption of shared parenting in England and Wales after parents split up. Although the Review concluded that there should not be, the Bill now provides that the court must presume it will further a child's welfare for both parents to be involved in his or her life, unless the contrary is shown, and as long as it does not put the child at risk of suffering any harm.⁸⁹ The explanatory notes to the Bill suggest that, even where a parent can be involved without posing a risk of harm to the child, the presumption will be rebutted if the court believes the parent's involvement is not consistent with the child's welfare.⁹⁰ However, concerns have been expressed about whether this presumption will undermine the paramountcy of the child's welfare in decision-making. Whilst welcoming the idea that children are able to maintain strong, supportive relationships with both parents, where it will be beneficial for them, the Children's Commissioner believes that the parental involvement presumption: '*risks undermining the principle that courts must make decisions that are in the best interests of the individual child.*'⁹¹ In particular, she notes that: '*if the provisions are widely (mis)interpreted as a presumption of equally 'shared time', there is a risk of greater conflict and litigation focused on parents' wishes rather than the child's needs and interests.*'

The Immigration Bill seeks to limit the circumstances in which someone can successfully appeal their removal or deportation on the basis of the right to private and family life. It sets out the matters to which a court must have regard in determining whether an interference with a person's right to respect for private and family life is justified. In doing so, it seeks to subordinate the best interests of the child, to immigration concerns. The Bill also contains provisions which will undermine the rights of children to healthcare and housing, meaning that the legislation as a whole flies in the face of the best interests of children.

21 Use all available resources to protect the child's right to life, including by reviewing the effectiveness of preventative measures

The infant mortality rate continues to fall. In 2011, there were 4.2 infant deaths per 1,000 live births – the lowest ever recorded in England and Wales – compared with 4.3 deaths per 1,000 live births in 2010.⁹² The most recent

87 Children and Families Bill cc. 54 and 55

88 Department for Education (2013) *Children and Families Bill Factsheet*

89 Children and Families Bill, c. 11

90 Children and Families Bill, Explanatory Notes

91 Office of the Children's Commissioner (27 February 2013) *A Child Rights Impact Assessment of Parts 1–3 of the Children and Families Bill*, p. 35

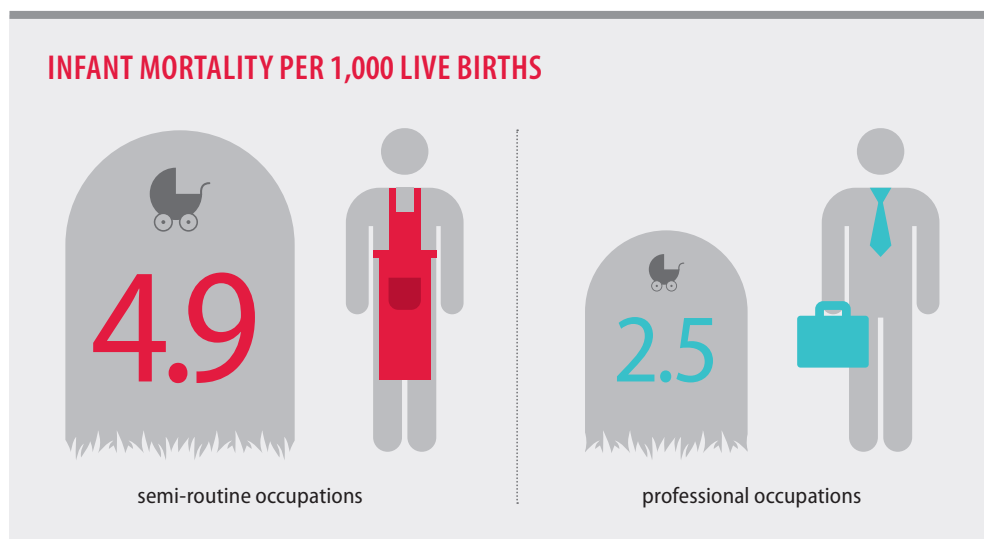
92 Office for National Statistics (Feb 2013) *Childhood, Infant and Perinatal Mortality in England and Wales, 2011*

ONS figures show that infant mortality still varies significantly according to socio-economic group, with rates being highest for babies with fathers employed in semi-routine occupations (for example, shop assistants or care assistants) at 4.9 deaths per 1,000 live births, and lowest for those employed in the managerial and professional occupations which had 2.8 and 2.5 deaths per 1,000 live births respectively.⁹³ The ONS suggests this may be caused by a link between deprivation, poor maternal health, and low birth weight. There continues to be considerable differences in life expectancy according to geography, characterised by a north-south divide. A boy born in East Dorset has an average life expectancy of 83.0 years. A boy born in Blackpool can expect to live 73.8 years.⁹⁴ A girl born in East Devon has an average life expectancy at birth of 86.4 years. A girl born in Manchester has an average life expectancy of 79.3 years.⁹⁵

A review of health services for children across 15 countries in the EU has found that the UK has the highest number of excess child deaths a year, with more than 2,000 families losing a child each year, arguably avoidably.⁹⁶ It highlights that over five more children die each day in the UK compared with Sweden – referred to as a '*national scandal*' by the researchers. The report also found that the UK has the highest prevalence of asthma out of eight European countries, as well as one of the highest child death rates from pneumonia – twice as high as Sweden's and three times those of France and Austria, even though the condition can be treated with antibiotics. The report criticises the UK's health system, saying it has not adapted to meet children's needs. This view was shared by Hilary Cass, the president of the Royal College of Paediatrics and Child Health, who in the light of World Health Organisation (WHO) research commented that five children a day are dying unnecessarily in Britain because child health is, '*in crisis*':

*...some of the crisis is about better training for all the workforce. Some is about increasing pressure on the system and some is due to the system of primary and secondary care, with children falling between the two.*⁹⁷

Local Safeguarding Children Boards (LSCBs) are under a statutory duty to review the deaths of children who are normally resident in their area. Official statistics show that there were 3,857 child death reviews in the year ending 31 March 2013.⁹⁸ This is a 4% decrease in the number of reviews carried out in the previous year. Of those reviews, there were 806 'modifiable' deaths (21% of the total) – a slight increase on the previous year when there were 784 'modifiable' deaths (20% of the total). A modifiable death is the official term given to a death where nationally or locally achievable interventions could reduce the risk of future child deaths. Children between 28 days and one year and older children aged 15–17 years were more likely to have modifiable factors identified in their deaths, with nearly three in every ten deaths in these age groups having modifiable factors identified. The proportion of modifiable deaths varied slightly across ethnicities, but was generally similar across all ethnicities, with the proportion of modifiable deaths being higher in white or mixed race children (23%) and black/black British children (22%) than for 'Asian' (15%), 'unknown' (16%) or 'other' (17%). Deaths due to '*deliberately inflicted injury, abuse or neglect*' represented 1% of the deaths reviewed during the year. However, these deaths had the highest proportion of modifiable factors at 65%.



93 Office for National Statistics (Feb 2013) *Infant Mortality Rate in England and Wales Hits Record Low, Part of Childhood, Infant and Perinatal Mortality in England and Wales, 2011*

94 Office for National Statistics (July 2013) *Life expectancy at Birth and at Age 65 for Local Areas in England and Wales, 2009–11*

95 Office for National Statistics (July 2013) *Life Expectancy at Birth and at Age 65 for Local Areas in England and Wales, 2009–11*

96 Wolfe, I., Thompson, M., Gill, P., et al. (27 March 2013) *Health Services for Children in Western Europe*, *The Lancet*, cited by Laurance, J. (27 March 2013) *Untrained GPs Blamed for 2,000 Child Deaths*, *The Independent*

97 Roberts, Y. (13 July 2013) *It's Time to Say: We're not Getting it Right on Children's Health*, *The Observer*

98 Department for Education (July 2013) *Child Death Reviews: Year ending 31 March 2013*

The high profile Serious Case Review (SCR) carried out this year into the death of four year-old Daniel Pelka found that he had been starved and beaten for months before he died. Whilst the review found that none of the agencies involved could have predicted Daniel's death, it did find: the agencies were too willing to accept excuses made by Daniel's 'controlling' mother; there was no record of any conversation with Daniel about his home life, his experiences outside school, or of his relationships; and that 'too many opportunities were missed for more urgent and purposeful interventions'⁹⁹

An examination of neglect in SCRs by the NSPCC shows that there has been a gradual decrease over time in the number of SCRs for children with a child protection plan for neglect, from 12% during 2005–07 to 6% during 2009–11.¹⁰⁰ The report says that, whilst these results should not be over-interpreted given the small numbers involved, it could suggest that children with a child protection plan for neglect might be being better protected, that there have been practice improvements, and that, most recently, child protection plans for neglect have been used more successfully.

In order to increase transparency and accountability, as of June 2010, local authorities have been under an obligation to publish any SCRs initiated. According to the Children's Minister, Edward Timpson, some local authorities have responded positively, and the benefits of publication have begun to be felt on the ground.¹⁰¹ However, whilst noting an increasing trend to publish, he commented on the still 'disappointingly low' number of SCRs being published, with only half of those completed since June 2010 having been published. In order to 'see these numbers rise significantly',¹⁰² the Government has established a national panel of independent experts to give LSCBs access to advice to help them make the right decisions about conducting and publishing SCRs. Effective since July 2013, the panel's remit is to:

- Bring rigorous independent scrutiny to the system;
- Help LSCBs apply the criteria for initiating SCRs when a child dies or is seriously harmed and there are signs of abuse and neglect; and
- Advise – and where appropriate challenge – LSCBs when they decide not to initiate a SCR, or intend not to publish a report.¹⁰³

The panel's role is advisory, and it cannot take enforcement action. However, statutory guidance makes it clear that LSCBs should 'have regard to the panel's advice'.¹⁰⁴

22 Introduce automatic, independent and public reviews of any unexpected death or serious injury involving children – whether in care or custody

There have been 33 deaths of children in custody since 1990.¹⁰⁵ There have not been any deaths of children in custody (Secure Children's Homes (SCHs), Young Offender Institutions (YOIs) and Secure Training Centres (STCs)) in 2013. This compares with two deaths in 2012 – Jake Hardy (aged 17) and Alex Kelly (aged 15).¹⁰⁶ Ryan Clark (aged 17) died at Wetherby in 2011. His inquest began in October 2013 – two and a half years after his death.

Earlier this year, the Prisons and Probation Ombudsman (PPO) concluded his investigation into the deaths of three boys. Following a request from the Minister for Prisons and Rehabilitation, Jeremy Wright MP, the PPO has produced a bulletin setting out the lessons to be learned from these deaths.¹⁰⁷ The bulletin states that many of the issues raised by the three deaths are not unique and that the lessons to be learned include:

- Busy YOIs struggle to give the individual attention necessary to care for the most vulnerable. Allocation to an STC, or specialist unit within YOIs, needs to be considered and pursued;
- There are problems sharing information, and a lack of shared understanding of vulnerability, which can hinder co-ordinated care of the children across agencies;
- Assessments of vulnerability and risk of self-harm do not adequately weigh static risk factors against presentation, or fully take into account the complex ways children can show emotional distress;

99 Holt, A. (17 Sept 2013) 'Daniel Pelka: Serious Case Review finds 'missed opportunities'' *BBC News*

100 Brandon, M., Bailey, S., Belderson, P., and Larsson, B. (Jan 2013) *Neglect and Serious Case Reviews*, University of East Anglia/NSPCC

101 Department for Education (18 April 2013) Speech: *Edward Timpson Speaks to the NSPCC Conference: 'How Safe are Our Children?'*

102 Department for Education (18 April 2013) Speech: *Edward Timpson Speaks to the NSPCC Conference: 'How Safe are Our Children?'*

103 Department for Education (6 June 2013) *Serious Case Review Panel Established*

104 Department for Education (March 2013) *Working Together to Safeguard Children*

105 See Inquest: http://inquest.gn.apc.org/pdf/Deaths_of_Children_in_Penal_Custody_1990-date.pdf

106 See Inquest: http://inquest.gn.apc.org/pdf/Deaths_of_Children_in_Penal_Custody_1990-date.pdf

107 Prisons and Probation Ombudsman (March 2013) *Learning Lessons Bulletin: Fatal Incidents Investigations, Issue 3*

- Assessment, Care in Custody and Teamwork processes are insufficiently child-centred, and the involvement of senior managers, families and outside agencies in care planning is too limited;
- Managing risk, treating mental health, and the wider operation of YOI processes, especially disciplinary procedures, need to be better integrated to ensure children are treated holistically and consistently;
- YOIs need to ensure a more robust response to bullying and that reports of bullying are acted upon;
- Personal officers are an important point of contact and support. They should be assigned quickly on reception and regular contact with the child fully documented;
- Sources of external support can be very important. Enhanced access to this support at times of crisis, and for those at particular risk of self-harm, should be facilitated wherever possible.

Deborah Coles, co-director of INQUEST, welcomed the bulletin but commented that the issues raised are 'a depressingly familiar' characteristic of previous deaths, where deaths continue, 'despite promises of change'.¹⁰⁸

In March 2013, the Justice Committee published a report following its inquiry into youth justice.¹⁰⁹ In relation to deaths of children in custody, the Committee supported the call for an independent review to examine the systemic and policy issues underlying these deaths and bringing together learning made by INQUEST and the Prison Reform Trust in their *Fatally Flawed* report:¹¹⁰

It is unacceptable that vulnerable young people continue to die in the custody of the state. We agree with INQUEST and the Prison Reform Trust that it is imperative to draw together and act upon the learning from these deaths gathered through coroners' Rule 43 recommendations and juries' narrative verdicts, to ensure that such deaths do not happen again. This may require an independent inquiry into the deaths of young offenders and young adults in custody, as the Ministry of Justice is now considering. We will revisit this matter once the Minister has announced the outcome of this consideration.

The Government's response, published in May 2013, rejected the Committee's recommendation, considering that a number of measures, including a working group, had been set up to address the issue of deaths in custody.¹¹¹ The Government has since indicated that it is considering whether a thematic review into child deaths is appropriate.

23

Treat Taser guns and AEPs (Attenuating Energy Projectiles) as weapons subject to applicable rules and restrictions

There have still been no specific rules or restrictions issued to police forces in relation to the use of Taser guns on or around children, and their use on children has increased.

Figures published by the Home Office in September 2013 reveal that the total police use of Tasers has increased year on year from 3,128 in 2009 to 7,877 in 2011.¹¹² Although this data is not disaggregated by age, figures given in response to a parliamentary question, and which are said not to be comparable to those published by the Home Office, nevertheless show a huge increase in the use of Tasers against children.¹¹³ In 2011 Tasers were used on children 323 times compared with 135 times in 2009. In 2008, the year the UK was last examined by the UN Committee on the Rights of the Child, Tasers were used against children 71 times. Simon Chesterman, the Association of Chief Police Officers' (ACPO) lead on armed police, said the rise in use corresponded to the increase in weapons being rolled out across the country, and did not mean Tasers were being used more often.¹¹⁴

Concerns have been expressed by the Independent Police Complaints Commission (IPCC), who recently reviewed Taser use. The IPCC's deputy chair, Deborah Glass, said:

From the review we have carried out of Taser complaints and our own investigations we do have concerns about some of the ways and circumstances in which the Taser is used...¹¹⁵

The IPCC's review findings will be published once Taser statistics for 2012 have been published (March 2014). In the meantime, the IPCC is independently investigating 12 cases and supervising police investigations into a further seven cases of Taser use.¹¹⁶

108 INQUEST (6 March 2013) *Inquest Response to the Prison And Probation Ombudsman's 'Learning The Lessons' Bulletin on Child Deaths in Custody*

109 Justice Committee (March 2013) *Seventh Report of Session 2012–13: Youth Justice*

110 Prison Reform Trust and INQUEST (October 2012) *Fatally Flawed: Has the State Learned Lessons from the Deaths of Children and Young People In Custody?*

111 Ministry of Justice (May 2013) *Government Response to the Justice Committee's Seventh Report of Session 2012–13: Youth Justice*

112 Home Office (September 2013) *Police Use of Taser Statistics, England and Wales, 2009–2011*

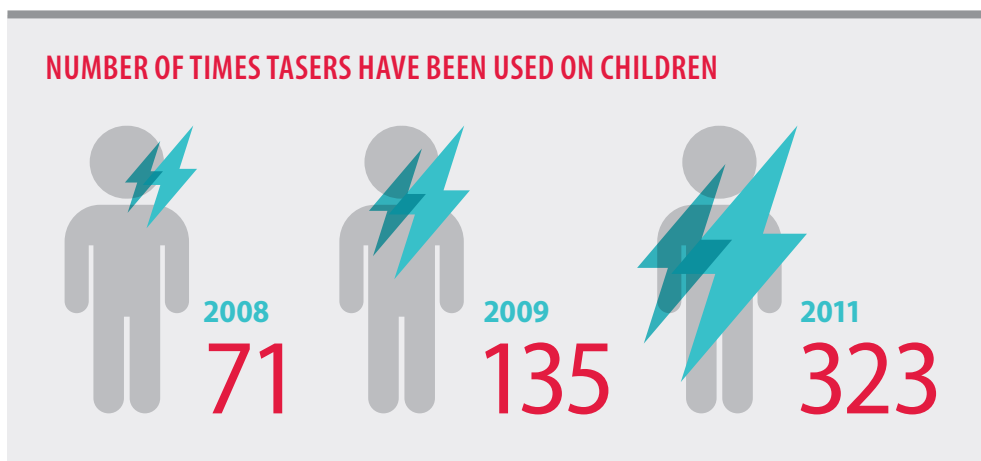
113 HC, 22 October 2013, c. 94W

114 Association of Chief Police Officers Media Centre (10 September 2013) *ACPO Response to Release on Home Office Statistics on Use of Taser*

115 IPCC (10 September 2013) *Deputy Chair Deborah Glass Comments on the Publication of Police Taser Use Data*

116 IPCC (10 September 2013) *Deputy Chair Deborah Glass Comments on the Publication of Police Taser Use Data*

The IPCC's worries were shared by the UN Committee against Torture. In May 2013, the Committee expressed deep concern at the use of Tasers on children and recommended that the law be changed to expressly prohibit their use on children.



24 End the use of all harmful devices on children

Prison, police and immigration staff, continue to be permitted to use ratchet handcuffs on children.

Despite a huge decrease in the number of children in the secure estate, the number of times they are restrained using handcuffs is on the rise. In YOIs, the number of times children were restrained using handcuffs rose from 419 in 2011–12 to 486 in 2012–13 – an increase of 16%.¹¹⁷ In STCs, handcuffs were used 23 times during restraint in 2012–13. This compares to twice in 2011–12. All instances of handcuffs being used in an STC since 2008–09 occurred in Hassockfield.

Handcuffs can also be used when children are escorted to and from custody. In YOIs, data is not collected on the use of handcuffs during escorts. In SCHs and STCs, the proportion of escorts in which handcuffs are used rose from 17% in 2011–12 to 20% in 2012–13.¹¹⁸ Chains can also be used on children, but data on their use is not recorded.

25 Through legislation and in practice, promote, facilitate and implement the principle of respect for the views of the child – in the family, in schools, in the community, and in institutions

In January 2013, the House of Lords Secondary Legislation Scrutiny Select Committee criticised the Government's new approach to consulting on government policy, announced in July 2012. The most significant change under the *Consultation Principles* was that government departments would have flexibility in deciding the length of consultation periods, rather than being required to apply the standard 12-week timeframe.¹¹⁹ The Select Committee noted that government departments had always been able to reduce the 12-week consultation period if there were good reasons for doing so, and said that this fact should be highlighted in the public debate. It was especially concerned that although the new *Consultation Principles* would allow the Government to make legislation more speedily, 'there is a risk that the resulting statute will be less robust because rushed consultation processes make it too difficult for external critique at the right time'.¹²⁰ The Committee also expressed concerns about the Government's "digital by default" approach to consultation and said that this may exclude many vulnerable and hard to reach groups, and limit their ability to respond. The Committee called on the Government to 'demonstrate more clearly that the commitment to wider engagement with vulnerable and hard-to-reach groups is being delivered in practice' and 'to reinforce the commitment to wider engagement in any revision of the Principles'.

117 HL, 30 October 2013, c.278W

118 HL, 30 October 2013, c.278W

119 Cabinet Office (July 2012) *Consultation Principles*

120 House of Lords Secondary Legislation Scrutiny Committee (January 2013) *The Government's New Approach to Consultation – 'Work in Progress'*

Health

A report for the Children's Commissioner, published in March 2013, concluded that health bodies are failing to listen to children when making strategic decisions.¹²¹ The research revealed that children tend to be consulted on their individual health needs and at only very specific stages of strategic decision-making cycles, rather than being meaningfully engaged throughout the entire process. Only 28% of 102 local health plans reviewed said that children had been involved in their development, delivery, or evaluation. Even when children were consulted, they were often asked to give views on decisions that had already been taken. The Children's Commissioner has said that the new health service structure, which started on 1 April 2013, provides 'a real opportunity to embed, strengthen and promote the participation of children and young people in decision-making throughout the health system.'

In February 2013, the Government published a pledge to improve health outcomes for children and young people. The first commitment in the pledge states: 'Children, young people and their families would be at the heart of decision-making, with the health outcomes that matter most to them taking priority.'¹²² The NHS Business Plan for 2013–14 to 2015–16 makes direct feedback from patients a key priority: 'The friends and family test will ensure patients' and their families' voices are heard and used to help us to deliver better services and guarantee no community is left behind or disadvantaged.'¹²³ While the current implementation guidance on the Friends and Family Test states that the guidance (and therefore the test) does not apply to patients under 16 years of age,¹²⁴ NHS England is currently trialling the test with children as part of its anticipated roll out for use with children in all areas in 2014–15.¹²⁵

'Ensuring that people have a positive experience of care' is one of five key elements of the NHS outcomes framework 2013–14. Within this, 'Improving children and young people's experience of healthcare' is highlighted as an area for improvement. An indicator for this outcome is currently under development.¹²⁶

In February 2013, the Government published a *System wide response to the Children and Young People's Health Outcomes Forum*.¹²⁷ Sections two and three of the document include measures relating to children's experiences of the healthcare system and their involvement in decision-making. These include:

- Work being undertaken by the Care Quality Commission, including consulting children on its strategic direction and a programme of work on involving children in inspection activity;
- The production of an accessible version of the NHS constitution; and
- From April 2013, local Healthwatch organisations will be established, and will ensure 'the views and experiences of all local people, including children and young people, have influence both through involving them in monitoring services, making reports and recommendations based on what they say is important, and through their statutory seat on health and wellbeing board.'

The document states that the system will ensure that '[t]he active and systematic involvement and participation of children, young people and their families is built into this work and the mechanisms being put in place to build momentum, in line with the observations of the UN Committee on the Rights of the Child on compliance of UK healthcare with the UN Convention on the Rights of the Child.'¹²⁸ The report also states that the health system will seek to strengthen patient experience measures. By 2013–14, the Department of Health and NHS Commissioning Board 'should incorporate the views of children and young people into existing national patient surveys in all care settings.'

NHS England has committed to developing resources to support NHS commissioners to increase their engagement with children and to establishing a Children and Young People's Forum for NHS England.¹²⁹ It has published guidance designed to support health services commissioners to improve individual and public participation, which includes a clear statement that children have the right to be involved in decision-making.¹³⁰

In March 2013, the Department of Health published a revised NHS Constitution.¹³¹ Although the Constitution does not specifically refer to children, a revised Handbook (published at the same time) does address how the NHS should function in order to ensure that the Constitution applies effectively to children.¹³² Relevant sections of the Handbook in relation to the views of the child are shown in Box 1.

The Children's Commissioner published a report on child friendly complaints processes in health services and a set of principles that should underpin them.¹³³ Following a roundtable event, organisations made pledges

121 National Children's Bureau (March 2013) *We Would Like to Make a Change: Children and Young People's Participation in Strategic Health Decision-Making*, Office for the Children's Commissioner

122 Department of Health (February 2013) *Better Health Outcomes for Children and Young People; Our Pledge*

123 NHS England (2013) *Putting Patients First: The NHS Business Plan for 2013/14- 2015/16*

124 Department of Health (October 2012) *The NHS Friends and Family Test. Implementation Guidance*

125 Announced at the NHS England AGM, September 2013

126 Department of Health (November 2012) *The NHS Outcomes Framework 2013/14*

127 Department of Health (February 2013) *Improving Children and Young People's Health Outcomes: a System Wide Response*

128 Department of Health (February 2013) *Improving Children and Young People's Health Outcomes: a System Wide Response*

129 NHS England (September 2013) *Transforming Participation in Health and Care*

130 NHS England (September 2013) *Transforming Participation in Health and Care*

131 Department of Health (March 2013) *The NHS Constitution for England*

132 Department of Health (March 2013) *The Handbook to the NHS Constitution*

133 Office of the Children's Commissioner (September 2013) *Common Principles for a Child Friendly Complaints Process*

to improve access to, and use of, complaints processes for children. For example, the Department of Health *'expect to be able to amend the NHS written complaints policy from 2014 to include age ...'*¹³⁴

The Chief Medical Officer's annual report on children's health notes that progress has been made in involving children in healthcare decisions, but urges further action.¹³⁵ It calls for children to be involved in all relevant NHS patient feedback surveys, notes the lack of involvement of particular groups in decision-making (such as very young children and asylum seekers) and the under-representation of children's views on certain issues such as setting the agenda, commissioning, delivery and evaluation. The report highlights the need to evaluate and monitor outcomes of children's involvement in decision-making, to ensure that participation mechanisms are not tokenistic. The report summarises children's views and recommendations into a *Children and Young People's Manifesto for Health and Wellbeing*:

To improve their health and wellbeing, children and young people want:

- *to be informed and have a say in decisions about their care;*
- *to have personalised, child-friendly care from people they know and trust and who treat them with respect;*
- *to have access to age-appropriate services where and when they need them;*
- *to be supported through the transition to adult health and social care services;*
- *to understand their rights and responsibilities;*
- *for schools to play a greater role in health and wellbeing.*

BOX 1: CHILDREN'S RIGHTS UNDER THE NHS CONSTITUTION

You have the right to accept or refuse treatment that is offered to you, and not to be given any physical examination or treatment unless you have given valid consent. If you do not have the capacity to do so, consent must be obtained from a person legally able to act on your behalf, or the treatment must be in your best interests.

The NHS commits to offer you easily accessible, reliable and relevant information in a form you can understand, and support to use it. This will enable you to participate fully in your own healthcare decisions and to support you in making choices. This will include information on the range and quality of clinical services where there is robust and accurate information available.

You have the right to be involved in discussions and decisions about your health and care, including your end of life care, and to be given information to enable you to do this. Where appropriate this right includes your family and carers.

Where a range of potentially suitable treatments or forms of healthcare is available, an adult, competent person has the right to receive the information they need in order to decide their preference. NHS staff will involve you in discussions to decide, with you, on the right choice for you. If you wish, this can include your family and carers.

Disabled children and young people

Research carried out by the VIPER project,¹³⁶ exploring disabled children's participation in decision-making, suggests that, while some progress has been made in their participation locally, it is still not embedded in strategic, service level or individual decision-making.¹³⁷ Key findings included:

- Any participation is usually in making decisions about their own lives and not strategic level decisions about services;
- Any participation in decisions about services is usually to give their views on services they use, rather than in their design and commissioning;
- Examples of disabled children being involved in national policy were very limited;
- There was a sense of services *'letting people down'*; only one in three organisations or services who replied to the survey confirmed the main reason for involving disabled children was to influence decisions;
- Disabled children in care, disabled children from Black and Minority Ethnic groups and those with more significant access needs were less likely to participate;
- Disabled children were unlikely to be involved in decisions about services such as health or education and even less likely to be involved in decisions about transport or the local environment; and

134 Office of the Children's Commissioner (March 2013) *We Would Like to Make a Change: Children and Young People's Participation in Strategic Health Decision-Making*

135 Chief Medical Officer (October 2013) *Our Children Deserve Better*

136 VIPER is a research project looking at disabled children's participation in decision-making. Funded by the Big Lottery Fund, the project is delivered by a partnership including the Alliance for Inclusive Education, The Children's Society, the Council for Disabled Children and the National Children's Bureau Research Centre. A group of 16 young disabled people acted as joint researchers on the project.

137 VIPER (Feb 2013) *Hear Us Out!*

- Some felt that sometimes they were asked for their opinion after the decisions had already been made, or were not given enough notice to be properly involved.

The Children and Families Bill contains several provisions relating to children and young people's involvement in decision-making in relation to their special educational needs. Since the publication of the draft clauses in 2012, a new "general principles" clause has been introduced (Clause 19) which should encourage the involvement of children and young people with SEN in decision-making. However there are several specific clauses which exclude younger children, by providing for the involvement of only parents and young people over the age of 16 in decision-making.¹³⁸

The new "general principles" clause should encourage the involvement of children and young people with SEN in decision-making

In October 2013, the Government published its impact evaluation of the SEND Pathfinder Programme. One of the expectations of the programme was that it should have '[c]hildren and young people at the heart of the system'. The evaluation highlights the increased involvement of families in the new approach, but notes with concern low levels of children and young people's involvement in strategic and individual decisions. It finds that:

*There have been some pockets of activity to involve young people in developing the pathfinder approach and individual EHC Plans ... we would expect more balance between the inputs of parents and children and young people moving forward... Only a third (34%) of pathfinder and of comparison group families said that their child had had a say over the support and services he or she receives, with no significant impact on the pathfinder.*¹³⁹

This evaluation also highlighted a failure to involve children in decision-making at a strategic level:

*[T]his lack of engagement may result in the new processes being more parent carer focused, as opposed to child and young person. This could cause issues where young people and their parents have differing views about their needs or outcomes.*¹⁴⁰

See also Concluding Observation 19.

Political Participation

There has been no Government commitment to lowering the voting age. There have, however, been signs of growing political commitment to doing so. On 24 January 2013, MPs voted in favour of a motion to lower the voting age in the UK to 16. Almost 200 MPs participated in the debate, introduced by backbencher Stephen Williams MP. The motion was passed by 119 votes to 46. At the Labour party conference in September 2013, the Labour leader announced that 16 and 17 year-olds would be given the vote at General Elections under a Labour Government.¹⁴¹ A Private Members Bill on lowering the voting age, sponsored by Lord Tyler, was read for the second time on 25 October 2013. In the meantime, the Cabinet Office has published a guide intended to increase the number of children registered to vote and to encourage them to become active citizens.¹⁴²

Children's Commissioner

The Children and Families Bill seeks to strengthen the Children's Commissioner role and give it a rights-based mandate. Following pre-legislative scrutiny of draft clauses, the Bill, as introduced, provided for the involvement of children in the appointment of the Children's Commissioner. During Committee stage in the Commons, Labour MP, Steve Reed, tabled several amendments aimed at strengthening the involvement of children in the Commissioner's work. He argued that the duty on the Commissioner to consult children would be more meaningful if accompanied by 'a corresponding duty to have regard to their views and to report on how that is being achieved'. The amendments were withdrawn, but at the time of writing similar amendments had been tabled for consideration in the House of Lords.

For information in relation to children's participation in education see Concluding Observation 86 and for information in relation to the participation of children in the criminal justice system and care system Concluding Observation 45.

¹³⁸ See Children and Families Bill, cc. 32, 36, 38 and 44.

¹³⁹ Department for Education (October 2013) *Impact Evaluation of the SEND Pathfinder Programme*

¹⁴⁰ Department for Education (June 2013) *Evaluation of the SEND Pathfinder Programme Process and Implementation Research Report*

¹⁴¹ LabourList (24 September 2013) *Transcript: Ed Miliband's 2013 Conference Speech*

¹⁴² Cabinet Office (October 2013) *Rock Enrol: Engaging Young People in Democracy*

Promote, facilitate and implement the principle of respect for the views of the child in administrative and judicial proceedings

Family Justice

The Children and Families Bill proposes that (unless within limited exemptions) every person who wishes to apply for a court order of a certain type in private law family proceedings must first attend a family mediation information and assessment meeting (a "MIAM") to find out about and consider mediation. In this regard, the JCHR made it clear in its pre-legislative scrutiny that:

We recommend that the Government look again at the MIAM process with recognised mediation organisations to produce guidance on how the child's voice can be heard within the MIAM, with such guidance being applicable to all mediators undertaking MIAMs (not just those that are members of recognised mediation organisations).¹⁴³

The JCHR considers that the clauses in the Children and Families Bill relating to placement with prospective adopters, post-separation parenting, and control of expert evidence and assessments comply with Article 12 of the UNCRC because, in making those decisions, the court must apply the "welfare checklist" in the Children Act 1989;¹⁴⁴ this requires particular regard to be given to the ascertainable wishes and feelings of the child.¹⁴⁵

Ofsted carried out a review of how well independent reviewing officers (IROs) are carrying out their responsibilities in 10 local authorities.¹⁴⁶ It found that IROs did not always work closely enough with Children and Family Court Advisory and Support Service (Cafcass) workers, who make sure that children's views are heard by judges making decisions about whether children should live with their families. The report does make some positive remarks, noting there were signs of improving liaison with Cafcass in several authorities. See Concluding Observation 45 for more information.

Safeguarding and protection

Following consultation, the Department for Education has published the revised statutory guidance *Working Together to Safeguard Children*.¹⁴⁷ The guidance sets out how organisations and individuals should work together to safeguard and promote the welfare of children, and how practitioners should conduct the assessment of children. The Government's decision to revise the guidance followed the Munro Review, which concluded that: *'the child protection system has become too focused on compliance and procedures and has lost its focus on the needs and experience of children themselves'*.

The 2010 version of the *Working Together* guidance included a section on *The Child in Focus*. This emphasised the importance of placing the child and his or her perspectives and experiences at the centre of safeguarding work. It included a list of actions that would help to keep the child in focus during these processes including: obtaining information from the child about his or her situation and needs; involving the child in key decision-making; and inviting children to make recommendations about the services and assistance they need and/or are available to them. *The Child in Focus* section does not feature in the revised guidance. The new guidance does contain a set of key principles which include: *'children want to be respected, their views heard... Anyone working with children should see and speak to the child; listen to what they have to say; take their views seriously...'* The document also includes a short section on *Focusing on the Needs and Views of the Child*, which says that all assessments should be child-centred and must be informed by the views of the child, as well as those of the family. The revised guidance came into effect on 15 April 2013.

Cases in which children's voices have not been listened to have received significant attention this year. A report from the National Children's Bureau (NCB) draws on recent high-profile cases in Rochdale and Edlington, in which authorities did not follow appropriate safeguarding procedures.¹⁴⁸ On 17 September 2013, Coventry Safeguarding Children Board published the SCR report into the death of Daniel Pelka.¹⁴⁹ The report, on several occasions, highlights the failure of different services to have *'direct communication'* with Daniel, stating in its summary of findings:

Of particular note was that without English as his first language and because of his lack of confidence Daniel's voice was not heard throughout this case... [O]verall there is no record of any conversation held with him by any professional about his home life, his experiences outside of school, his wishes and feelings and of

143 Joint Committee on Human Rights (June 2013) *Legislative Scrutiny: Children and Families Bill; Energy Bill*

144 Children Act 1989, s. 1(3)(a)

145 Joint Committee on Human Rights (June 2013) *Legislative Scrutiny: Children and Families Bill; Energy Bill*

146 Ofsted (June 2013) *Independent reviewing officers: Taking up the Challenge?*

147 HM Government (March 2013) *Working Together to Safeguard Children: A Guide to Inter-Agency Working to Safeguard and Promote the Welfare of Children*

148 National Children's Bureau (May 2013) *Time to Listen: Independent Advocacy within the Child Protection Process*

149 Coventry Local Safeguarding Children's Board (September 2013) *Final Overview Report of Serious Case Review re Daniel Pelka*

his relationships with his siblings, mother and her male partners. In this way despite Daniel being the focus of concern for all of the practitioners, in reality he was rarely the focus of their interventions.

The report states that the lessons learned from this SCR must be circulated to relevant staff working with children in Coventry, and a process identified to ensure these lessons have been learned and are integrated, as far as possible, into safeguarding practice. One of those lessons stated to have been learned is that:

No assessment of risks within a family or to a particular child can ever be effective without direct engagement of that child as an integral part of the professional interventions, and in working hard to gain an understanding of their experiences, wishes and feelings. There must be a child focus to all interventions.

The need to involve the child concerned is reiterated by the Children's Commissioner, speaking about the SCR in this case: *'It is absolutely imperative that professionals listen to and act on what children tell them and where they cannot speak, the signs they display.'*¹⁵⁰

At present, there is no statutory right to advocacy in the child protection process; local authorities must make their own judgements on how and when to provide this service.

See also Concluding Observations 86 and 45 on participation rights in education and family life.

27 Support forums for children's participation

The Government published a progress report on *Positive for Youth*, outlining and evaluating the major changes and developments since its launch.¹⁵¹ It reports a significant growth in youth engagement, stating that there are more young people taking part in youth councils and youth cabinets, as well as sitting on management committees. Young people have reportedly become more involved in the overall development and assessment of policies. The British Youth Council (BYC) reported that up to 19,800 young people, mostly aged between 11 and 17, now represent their peers on local councils.¹⁵² The report states that over the past year there have been important changes in the ways that young people have been able to influence government policy. Around 250,000 young people from the UK Youth Parliament voted to select the topics to be debated in the annual House of Commons sitting in November 2012. The Youth Select Committee and the National Scrutiny Group have also been active in voicing their opinions on certain pieces of government policy, such as issues surrounding Key Stage 4 exams. The Government has committed to funding these three groups, which are supported by BYC, for a further two years.

The Youth Select Committee held an inquiry on *Education for Life* in 2013, focusing on the role of the education system and the national curriculum in equipping young people with the skills for later life. The inquiry explored the support currently available in schools to develop young people's 'life skills', such as personal finance, political education and cultural awareness. The 11 committee members are aged 15–18, with two Members of Youth Parliament, two youth councillors, the Young Mayor of Bristol, one elected representative from each of the devolved nations and three reserved seats for minority groups. The initiative is part of the Youth Voice partnership (funded by the Government and run by BYC).

A BYC trustee criticised the Government for a failure to support young people's participation in international youth debates. Francesa Danmole attended a Commonwealth Youth Ministers Meeting in Papua New Guinea. Delegates from over 30 Commonwealth nations attended the meeting at which the Commonwealth Youth Council was launched and a proposal adopted to reserve special seats in parliaments and other governance structures for young people. The BYC trustee was unimpressed with the UK Government's lack of commitment to this event:

Unlike other countries, the UK Government would not fund my attendance and we had to rely on the British Council for support. The seeming lack of support to engage young people in the Commonwealth is a shame when the British Government celebrates its efforts to develop young people across the Commonwealth.

In June 2013, the Government announced that homeless charity St Basils will receive £210,000 funding to set up a Homeless Young People's Parliament. Participants of the Homeless Young People's Parliament will give a presentation of the challenges faced by homeless young people to Ministers as part of the Ministerial Working Group on Homelessness later this year.¹⁵³

150 Children's Commissioner (16 September 2013) *Children's Commissioner's Statement on the Serious Case Review into the Death of Daniel Pelka*

151 Cabinet Office and Department for Education (July 2013) *Positive for Youth: Progress since December 2011*

152 HM Government (July 2013) *Positive for Youth: Progress since December 2011*

153 St Basils (May 2013) *Historic Chance for Homeless Young People to Influence Government as Funding Given to St Basils to Develop*

3

CIVIL RIGHTS AND FREEDOMS

ARTICLES 7, 8, 13–17 AND 37

Children have a right to freedom of association and to express themselves. Children should not be subject to any punishment that is cruel, inhuman or degrading. Their privacy should be protected. The Committee has said:

A respectful, supportive child-rearing environment free from violence supports the realization of children's individual personalities and fosters the development of social, responsible and actively contributing citizens in the local community and larger society.

No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.

28 Continue to collaborate with civil society to increase opportunities for children's meaningful participation, including in the media

There has been no progress in relation to this recommendation.

29 Reconsider ASBOs as they may violate children's rights

Under the Anti-social Behaviour, Crime and Policing Bill,¹⁵⁴ Injunctions to Prevent Nuisance and Disorder (IPNA) and Criminal Behaviour Orders (CBO) are two of the orders which will replace the Anti-Social Behaviour Order (ASBO) and other civil orders. Under the new system:

- The wider definition of anti-social behaviour applicable to IPNAs (conduct '*capable of causing nuisance and annoyance*', compared with conduct '*causing (or likely to cause) harassment, alarm or distress*') will inhibit normal childhood behaviour, such as play.
- Applicants for an IPNA will need to satisfy the civil standard of proof ('*on the balance of probabilities*') rather than, as currently, the criminal standard ('*beyond reasonable doubt*'); the standard of proof for CBOs is not made explicit in the Bill, but the Explanatory Notes state that as the order would be made on conviction, the standard of proof would be '*beyond reasonable doubt*', and the Government has confirmed this is its intention.¹⁵⁵
- In order to grant an IPNA the court must be satisfied that it is '*just and convenient*' to grant the order to prevent anti-social behaviour, rather than, as with ASBOs, '*necessary*';
- The automatic reporting restrictions, which normally apply in legal proceedings involving children, will not apply in proceedings concerning application for an IPNA or a CBO or breach of a CBO;
- While breach of an order will not be a criminal offence, as is currently the case with an ASBO, it will be contempt of court, with a maximum penalty of 3 months detention for 14 to 17 year-olds;
- There will be mandatory eviction of social housing tenants who breach an order, meaning that children can be rendered homeless as a result of behaviour capable of causing '*annoyance*' or as a consequence of others' actions. Latest Government figures show that nearly seven in 10 children breach their ASBOs.¹⁵⁶

The Bill has received strong criticism from civil society organisations,¹⁵⁷ and Justice has commented that in their view '*all of the proposed powers are likely to be used disproportionately against children and young people and particular care is needed to avoid locking children into the criminal justice system as a result*'.¹⁵⁸ Thirty-eight per cent of Anti-Social Behaviour Orders have been issued to 10–17 year-olds, despite them comprising only around 13% of the population.¹⁵⁹

30 Reconsider other anti-social behaviour measures, such as the mosquito device, as they may violate children's rights to freedom of movement and peaceful assembly

There has been no review of, or change in, the Government's policy concerning mosquito devices. It does not plan to introduce any controls.¹⁶⁰

The Anti-social Behaviour, Crime and Policing Bill takes forward the Government's proposal for a new dispersal power allowing police officers to direct anybody over 10, who has committed, or is likely to commit, anti-social behaviour, to leave a specified area and not return for up to 48 hours. Failure to comply with the

154 The substance of the Bill in relation to anti-social behaviour was previously included in the Anti-Social Behaviour Bill but remains the same

155 Joint Committee on Human Rights (October 2013) *Fourth Report, Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill* refers to a letter from Damian Green and Jeremy Brown to the Chair of the JCHR, dated 16 July 2013

156 Ministry of Justice (2012) *Anti-Social Behaviour Order Statistics – England and Wales 2011*

157 See, for example, Liberty (February 2013) *Liberty's briefing on the Draft Anti-Social Behaviour Bill* and SCYJ (July 2013) *Anti-social Behaviour, Crime and Policing Bill, Written evidence to the Public Bill Committee*

158 JUSTICE's written evidence to the Public Bill Committee (July 2013) *Anti-social Behaviour, Crime and Policing Bill, Written Evidence*

159 Ministry of Justice (2012) *Anti-Social Behaviour Order Statistics – England and Wales 2011*

160 HC, 20 December 2012, c. 875W

direction would be a criminal offence, punishable with detention of up to three months.¹⁶¹ If the police officer believes the person is under 16, he can take him or her home or to a place of safety.

See Concluding Observation 23 for information in relation to Tasers.

31 Ensure children are protected against unlawful or arbitrary interference with their privacy in legislation and practice

Provisions in the Protection of Freedoms Act 2012, which contain important protections for children's privacy, came into force this year. These mean that schools may only process a child's biometric data if they have the consent of one of the child's parents and must refrain from doing so if the child or a parent objects.¹⁶² The Act also reformed DNA and fingerprint retention. All DNA samples must be destroyed within six months of being taken, except in exceptional circumstances. The retention periods for fingerprints and a child's DNA profile vary, according to whether or not the child is convicted and the nature of the offence involved. A qualifying offence for these purposes is a serious violent or sexual offence, terrorism offence, or burglary.

On Conviction

Under 18 – Qualifying offence	Indefinite
Under 18 – Minor offence	First conviction: 5 years (plus length of any custodial sentence), or indefinite if the custodial sentence is 5 years or more. Second conviction: indefinite

No Conviction

Qualifying offence – arrested and charged	3 years, plus possible 2 year extension by court
Qualifying offence – arrested not charged	Possible 3 years on application to Biometrics Commissioner (or indefinite retention if hold a previous conviction for a recordable offence), plus 2 year extension possible
Minor offence – Penalty Notice for Disorder	2 years
Minor offence – arrested or charged	None – but speculatively searched

Home Office statistics show that 20% of the DNA samples currently in police possession were taken from people who were children at the time.¹⁶³ Similarly, freedom of information requests by the Howard League for Penal Reform reveal police officers took DNA swabs from almost 54,000 children in 2011, including swabs from at least 368 10 year-olds and 1,030 11 year-olds.¹⁶⁴ These figures mean that a child's DNA was taken every 10 minutes. Frances Crook, chief executive of the Howard League, has commented:

Children who get into trouble with the police are usually just up to mischief. Treating so many like hardened criminals by taking their DNA seems excessive.

We welcome the government's decision to stop storing innocent people's DNA indefinitely, but it remains unclear how this will affect the number of children having their DNA taken needlessly.¹⁶⁵

The Protection of Freedoms Act 2012 also requires the Home Secretary to issue a Code of Practice governing the use of CCTV, which came into force in August 2013.¹⁶⁶ The impact of the Code is, however, in doubt. Relevant authorities are required to 'have regard to' the Code when operating, using and processing data derived from camera systems in public places in England.¹⁶⁷ The Code sets out 12 guiding principles which systems operators should follow, including the need to consider the effect of the system on individuals and their privacy, with regular reviews to ensure its use remains justified.¹⁶⁸ However, the Surveillance Camera Commissioner has no

161 The Anti-social Behaviour, Crime and Policing Bill (HL Bill 52), s. 37

162 Protection of Freedoms Act 2012, ss. 26 and 27

163 Home Office (April 2013) *National DNA Database Statistics*

164 Howard League for Penal Reform (20 May 2013) *Police Take DNA Samples from Children Every 10 Minutes*

165 Howard League for Penal Reform (20 May 2013) *Police Take DNA Samples from Children Every 10 Minutes*

166 Protection of Freedoms Act 2012, s. 29

167 Home Office (June 2013) *Surveillance Camera Code of Practice*

168 Home Office (June 2013) *Surveillance Camera Code of Practice*

enforcement or inspection powers, and several key public bodies are not subject to its provisions.¹⁶⁹ Further, with figures showing privately-owned CCTV systems outnumber those operated by police and local authorities by as many as 70 to 1, '[t]he government's current regulation, whilst welcome, will initially cover only a tiny proportion of CCTV systems and these are already the most professionally run and tightly controlled schemes'.¹⁷⁰

A study by The British Security Industry Authority, estimates there are up to 5.9 million CCTV cameras in the country, including 750,000 in 'sensitive locations' such as schools, hospitals and care homes.¹⁷¹ It estimates there are between 291,000 and 373,000 cameras in public sector schools, and a further 30,000 to 50,000 in independent schools. Surgeries and health centres have an estimated 80,000 to 159,000.

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The Communications Data Bill – dubbed the “snoopers’ charter” by free speech and privacy groups – was shelved in May 2013, following a lack of Liberal Democrat support in Parliament. The Bill would have given government agencies access to data about online communications and telephone calls. It would have given the police and security services access, without a warrant, to details of all British online communications – such as the time and duration of communications, details of the parties involved, and the location of the device used. It would also have given access to every British citizen’s web browsing history, and details of messages sent on social media and skype, although access to the actual content of conversations and messages would still have needed a warrant from the Home Secretary.

However, in June 2013, revelations dubbed “the Snowden leaks” revealed that Government Communications Headquarters (GCHQ) has access to the transatlantic cables that carry the world’s communications, and is intercepting and processing billions of communications every day. This includes the recording of phone calls, the content of email messages, entries on social media sites, and the history of an internet user’s access to websites.

Both Facebook¹⁷² and Yahoo!¹⁷³ published their first transparency reports this year, detailing the number of government data requests they received from different countries during the first six months of 2013. Britain requested data from Facebook 1,975 times (covering 2,337 users). Facebook declined to provide any data in 32% of cases. Similarly, Yahoo! received 1,709 data requests (covering 2,832 accounts) and rejected 27% of the requests they received. Both reports make it clear that this may involve disclosing content.

The largest ever study of young people’s attitudes toward online rights and responsibilities¹⁷⁴ reveals that there is high take up of online privacy tools; 58% of primary school age children, and 74% of secondary age children, using social networks said they changed their privacy settings from the default settings.¹⁷⁵ Many, however, could benefit from improved knowledge, with almost half (42%) of primary age social network users and almost one in ten (9%) secondary age social network users saying that they were not sure if they had changed the settings or did not know how to.

32 Introduce stronger regulations for data protection in relation to children

The European Commission is proposing a new legislative framework¹⁷⁶ for data protection to replace the Data Protection Directive, implemented in UK law by the Data Protection Act 1998. It is designed to account for changes in technology over the last 20 years. The EU Regulation would be directly applicable and, therefore, would not be dependent on national legislation to bring it into force in England. Among the key changes that the Regulation would introduce are the following:

169 Protection of Freedoms Act 2012, s. 33

170 British Security Industry Association (12 July 2013) *Just 1 in 70 CCTV Cameras are State-owned, BSIA Survey Reveals*

171 Barrett, D. (10 July 2013) *One Surveillance Camera for every 11 People in Britain, says CCTV Survey, The Telegraph*

172 See: https://www.facebook.com/about/government_requests

173 See: <http://info.yahoo.com/transparency-report/uk/>

174 Over 24,000 young people aged 7–19 were surveyed

175 UK Safer Internet Centre (5 February 2013) *Have Your Say: Young People's Perspectives about their Online Rights and Responsibilities*

176 Proposal for a Regulation on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of such Data (General Data Protection Regulation)

- A new definition of consent, requiring explicit consent to be given 'in the context of a written declaration', so as to eliminate any confusion as to whether consent has or has not been given, and whether it can be implied;
- A wider updated definition of personal data which now explicitly mentions location data, biometric data and genetic data; personal data will include all data that can identify an individual;
- A right for people to be "forgotten", entitling data subjects to require the data controllers to erase all personal data relating to them, and to refrain from further dissemination of that data. This right is particularly relevant when the data subject has given their consent as a child, not being fully aware of the risks involved. There are, however, significant exceptions to this right; and
- Enhanced sanctions and a new principle of accountability.

There are also greater levels of protection for children. Specific provisions relate to processing children's personal data, with the draft noting children deserve specific protection of their personal data, as they may be less aware of risks, consequences, safeguards and their rights in relation to such matters. Where processing is addressed specifically to a child, it should be in clear and plain language so that the child can easily understand.

Negotiations between the European Council, the European Commission and the European Parliament are ongoing. Assuming that these are concluded satisfactorily, the Regulation is expected to be adopted in 2014, with implementation two years later, in 2016.¹⁷⁷

The 2010 version of the statutory guidance *Working Together to Safeguard Children* makes several references to data protection law, reminding practitioners that data-sharing engages human rights and so must be justified.¹⁷⁸ These references do not appear in the new version.¹⁷⁹ Instead, it emphasises information sharing, both to protect children and to promote their welfare stating: '*Fears about sharing information cannot be allowed to stand in the way of the need to promote the welfare and protect the safety of children.*'

33

In co-operation with the media, intensify efforts to respect the privacy of children in the media, especially by avoiding messages publicly exposing them to shame

In November last year, the Leveson report called for an independent self-regulatory body to be established to oversee the press. The three parties agreed, in March 2013, to introduce a body by royal charter (i.e. without the need for statutory regulation); the Royal Charter was approved by the Queen in October 2013.¹⁸⁰ The Crime and Courts Act 2013 and the Enterprise and Regulatory Reform Act 2013 introduced incentives for newspapers to participate and a "no change" provision that protects the Charter from future political interference. The Royal Charter gives the regulatory body powers to demand prominent corrections and apologies from UK news publishers, and impose fines of £1 million. A free arbitration service for victims and a fast complaints system will also be set up to ensure all individuals can afford to pursue action against publishers. See also Concluding Observation 17.

The Anti-social Behaviour, Crime and Policing Bill fails to address those aspects of the current system which undermine children's privacy rights. As currently, there will be no automatic restrictions on reporting legal proceedings for civil injunction and criminal behaviour orders, or their breach. The JCHR is concerned about the potential impact of reporting on children's privacy rights and its compatibility with the UNCRC. It has, therefore, recommended that the Bill be amended to include an express requirement on the courts '*to take into account the best interests of the child as a primary consideration*' when determining reporting of a child's case.¹⁸¹

The Crown Prosecution Service (CPS), following consultation in late 2012, has revised its guidance regarding reporting restrictions in cases involving children and young people as victims, witnesses and defendants.¹⁸² The guidance includes a section on reporting in relation to ASBOs. CRAE, in response to the consultation, highlighted that the best interests of the child should always be a primary consideration, and raised their concern that the guidance seems to start from the premise that reporting in the case of ASBOs is positive and should always be allowed.

177 Ward, P. (20 June 2013) *The Draft EU Data Protection Framework, Standard Note: SN/HA/6669, House of Commons: Home Affairs*

178 HM Government (March 2010) *Working Together to Safeguard Children: a Guide to Inter-agency Working to Safeguard and Promote the Welfare of Children*

179 HM Government (March 2013) *Working Together to Safeguard Children: a Guide to Inter-agency Working to Safeguard and Promote the Welfare of Children*

180 Royal Charter on Self-regulation of the Press

181 Joint Committee on Human Rights (October 2013) *Fourth Report, Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill*

182 Crown Prosecution Service (December 2012) *Legal Guidance: Reporting Restrictions – Children and Young People as Victims, Witnesses and Defendants*

34 Regulate children's participation in TV programmes, notably reality shows

The Government has published its response to last year's consultation on proposed changes to child performance legislation.¹⁸³ As noted in last year's *State of Children's Rights in England*, the consultation did not include any proposal to address the UN Committee's concerns that children's involvement in reality shows could infringe their privacy rights; rather, it started from the premise that existing regulations are too prescriptive. Overall, the responses to the consultation were very mixed; most people felt some change to the system is needed, but views differ as to the direction those changes should take. The Government has therefore said that a number of issues need further consideration, which is why the proposals were not taken forward in the Children and Families Bill.¹⁸⁴

Ofcom's regulatory framework includes specific provisions for the protection of children who participate in television and radio programming through their Broadcasting Code (rules 1.28 and 1.29).¹⁸⁵ Rule 1.28 requires:

Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis.

Ofcom has found breaches of this rule in 2013. For example, a CBBC programme was found to breach its duty of care when a girl was shown retching on TV after taking part in an eating contest.¹⁸⁶ Ofcom concluded that there was an over reliance on the opinion of staff and parental consent, and a failure to independently assess the appropriateness of her taking part, meaning that insufficient steps had been taken to protect her welfare and dignity.

35 Ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child and others

The circumstances in which the use of restraint on children is lawful are not restricted to restraint in order to prevent harm to the child and others.

According to the annual Youth Justice Statistics published by the Ministry of Justice, there has been a rise in the use of restraint for the second successive year.¹⁸⁷ In total, 8,419 restraint incidents were recorded in 2011–12 across SCHs, STCs and YOIs, an increase of 17% on 2010–11. Two hundred and fifty four restraints involved injury to children, 7% of which were serious injuries. The number of restraints in YOIs which required hospital treatment rose from 10 in 2010–11 to 17 in 2011–12.¹⁸⁸ The number of incidents of physical restraint (per 100 children in custody in the year) was higher for the younger age group (10–14) and girls. The Justice Committee has said:

It is a matter of serious concern to us that, despite the fact that the use of force in restraining young offenders has now been definitively linked to the death of at least one young person in custody, the use of restraint rose considerably across the secure estate last year.¹⁸⁹

A new system of restraint for use in under-18 YOIs and STCs – *Minimising and Managing Physical Restraint* (MMPR) – went live on 4 March 2013 at Rainsbrook STC, and is to be rolled out more widely over the next two years.¹⁹⁰ HM Chief Inspector of Prisons has welcomed the emphasis in the new restraint policy on de-escalation, and has reported evidence that de-escalation is being used more frequently. He said, however, that it is 'very clear that far more of these situations can be de-escalated than currently is the case'.¹⁹¹ The Justice Committee has welcomed the fact the new policy limits the use of force against children in the secure estate, but considers that 'a more fundamental cultural shift' is needed.¹⁹²

Earlier this year, the UN Committee against Torture, in considering the UK Government's periodic report on its compliance with the UN Convention against Torture observed:

183 Department for Education (February 2013) *Consultation on Proposed Changes to Child Performance Legislation: Government Response*

184 Letter from Edward Timpson MP to Tim Loughton MP, dated February 2013

185 Ofcom (March 2013) *The Ofcom Broadcasting Code*

186 Ofcom Broadcast Bulletin (8 April 2013) *Issue 227, Standards cases, In Breach, Dick and Dom's Hoopla! CBBC, 9 November 2012, 18:00*

187 Youth Justice Board and Ministry of Justice (January 2013) *Youth Justice Statistics 2011/12 England and Wales*

188 HL, 22 July 2013, c. 176W

189 House of Commons Justice Committee (March 2013) *Youth Justice Seventh Report of Session 2012–13*

190 See: <http://www.justice.gov.uk/youth-justice/custody/behaviour-management/behaviour-management-and-restraint-update>

191 Nick Hardwick, HM Chief Inspector of Prisons in evidence to the House of Commons Justice Committee (March 2013) *Youth Justice, Seventh Report of Session 2012–13, Volume I: Report, together with Formal Minutes, Oral and Written Evidence*

192 Justice Committee (March 2013) *Youth Justice, Seventh Report of Session 2012–13, Volume I: Report, together with Formal Minutes, Oral and Written Evidence*

The Committee is concerned that the State party is still using techniques of restraint that aim to inflict deliberate pain on children in Young Offender Institutions¹⁹³

The Youth Justice Board (YJB) has commissioned research to review the use of head-hold restraint techniques and explore physical restraint systems which do not permit pain induction.¹⁹⁴ This involves a review of national and international literature to identify the range of non-pain restraint techniques used in different settings, and in-depth telephone interviews with commissioners, practitioners and other experts.¹⁹⁵ The study was due to commence in October 2013 for completion in July 2014.

The annual report of the Prison and Probation Ombudsman for 2012–13 includes details about serious complaints investigated by the PPO, 'including some worrying cases involving juveniles and young offenders'.¹⁹⁶ The report notes that the most frequent subject of these complaints is staff use of restraint. The PPO's investigations explore whether the use of force was justified, and recommend disciplinary action where necessary. The report highlights the case of a young male who complained that his wrist was broken whilst force was being used on him when he was 16:

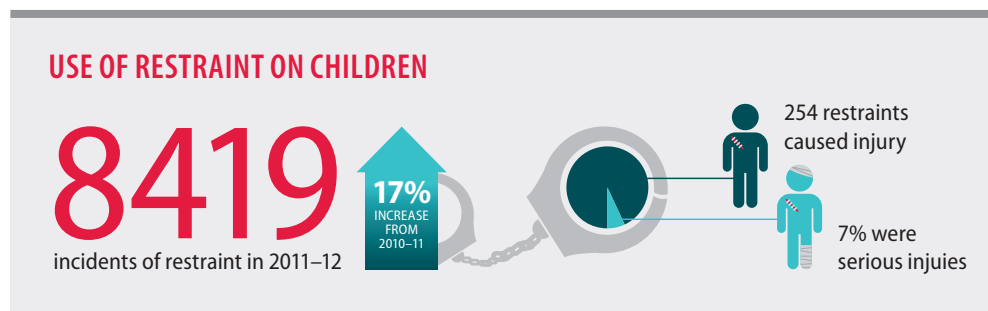
BOX 2: RESTRAINT CASE EXAMINED BY PPO

Mr D complained that his wrist was broken in the course of a use of force incident when he was 16 years old. The two officers involved said that Mr D refused an order to go into his room and stood in the doorway being verbally abusive and threatening them with a broom. They said that force was only used after they tried to persuade Mr D to release the broom for 'a good few minutes'. When one of the officers tried to push Mr D into the room, the pair overbalanced and Mr D (who is slightly built and weighed just over 8 stone) fell to the floor with the officer (who is about 6 foot 5 inches tall and weighed about 19 stone) on top of him. Mr D's wrists were then put in back hammers while he was lying face down before being placed in his room. The prison told us that Mr D's wrist had been weakened by a childhood accident and had been injured in the gym a couple of days earlier.

The PPO investigation found:

- CCTV evidence did not support the officers' account that genuine de-escalation had been attempted;
- The use of force was not justified, and was unwise given the difference in weight between the two individuals;
- Other staff should have been called to place the young male in his room in a controlled way; and
- The young male was seriously injured as a result of the use of force.

The investigation concluded 'the use of force was not reasonable, necessary or proportionate and recommended that a disciplinary investigation be initiated. We were also critical of the prison's internal investigation which we considered insufficiently robust...'.¹⁹⁷



Three hundred children were detained under section 136 of the Mental Health Act in 2012, although this figure is thought by Anne McDonald, Deputy Director of Mental Health and Disability at the Department of Health, to be an underestimate.¹⁹⁸ With regards the use of force by police officers to physically restrain mental health patients, the Department of Health has funded pilot schemes that will see mental health nursing staff

¹⁹³ Committee Against Torture (May 2013) *Concluding Observations on the Fifth Periodic Report of the United Kingdom, adopted by the Committee at its Fiftieth Session* (6–31 May 2013)

¹⁹⁴ Youth Justice Board (2013) *YJB Corporate Plan 2013–16 and Business Plan 2013–14*

¹⁹⁵ Children and Young People Now (August 2013) *Tenders: New Open Competition Invitation to Tender: Review of International Evidence on Non-Pain Inducing Methods of Restraint*

¹⁹⁶ Prisons and Probation Ombudsman (September 2013) *Prisons and Probation Ombudsman Annual Report 2012–2013*

¹⁹⁷ Prisons and Probation Ombudsman (September 2013) *Prisons and Probation Ombudsman Annual Report 2012–2013*

¹⁹⁸ House of Commons Health Committee (August 2013) *Post-legislative Scrutiny of the Mental Health Act 2007, First Report*

accompanying officers to incidents likely to lead to detention under section 136 of the Mental Health Act, with the aim of delivering better outcomes for vulnerable people in such circumstances.¹⁹⁹

Data secured by Mind under the Freedom of Information Act, from England's mental health trusts, reveals there were 39,883 incidents of patients being physically restrained in England in 2011–12, with at least 3,439 patients restrained in a face down position.²⁰⁰ The Department of Health has commissioned the Royal College of Nursing to work with a multi-disciplinary professional group and experienced experts to develop guidance on best practice so that physical restraint is only ever used as a last resort where mental health patients are concerned.²⁰¹

In the context of immigration, judicial review proceedings were issued against the Home Secretary by four asylum-seekers in January 2013 (a pregnant woman and three children), arguing that the UK Border Agency's lack of a policy regarding the use of force against children and pregnant women was unlawful and placed these two vulnerable groups at unacceptable risk of unlawful use of force.²⁰² Maggie Atkinson, the Children's Commissioner for England, said in this context:

*The use of force against a child by any agent of the state must always be subject to clear and appropriate limitations. Such limitations are prescribed in every institutional setting with the exception of immigration detention.*²⁰³

In response to the challenge, the UK Border Agency (UKBA) accepted the need for such a policy, and reinstated its previous policy regarding the use of force against these groups. The policy states:

Force should only ever be used on a pregnant woman to prevent her from harming herself, any member of her family or any member of staff. Any force used must be appropriate, justified and proportionate.

The control and restraint of children and young people must be limited to circumstances where it is necessary for an officer to use physical intervention to prevent harm to the child or any individual present whilst ensuring they comply with a requirement to leave the UK.

Physical intervention must not be used simply to enforce the removal of children where there is no threat of violence. In the vast majority of cases there will not be a need for officers to exercise physical control or restraint of minors...

In cases where there is active physical resistance, and physical intervention is deemed absolutely necessary to prevent harm, Officers and authorised contractors must ensure that any action is age appropriate, limited to the minimum level of force required in that particular circumstance, justifiable and proportionate.

The claimant's solicitors in the judicial review, Bhatt Murphy, however, consider that the Government's subsequent response, in March 2013, to the Home Affairs Select Committee's report regarding UKBA's work,²⁰⁴ is at odds with this policy statement, and that it intends to continue to authorise the use of force against these two groups in circumstances other than where there is a risk of harm.²⁰⁵ They have therefore asked the Home Secretary to write to the Committee correcting her response and to make a statement to Parliament 'setting out unequivocally and without reservation the current policy position and making clear that the position as stated in this report is inaccurate'.²⁰⁶ In response to a parliamentary question as to whether the Government would order the UK Border Agency, and its contractors, not to use force when deporting pregnant women and children, the Parliamentary Under-Secretary of State at the Home Office, Lord Taylor of Holbeach, suggested that the practice may be reinstated following consultation, saying:

*The recommendation in the report by HM Inspectorate of Prisons on Cedars pre-departure accommodation that force should never be used to effect the removal of pregnant women and children was rejected by the UK Border Agency. However, the UK Border Agency has taken the decision to adopt a policy not to use force solely to effect removal in such cases until a consultation on its use has taken place.*²⁰⁷

36 Abolish all methods of physical restraint for disciplinary purposes

The new MMPR system of restraint for use in the secure estate (see also Concluding Observation 35) is clear that restraint must not be used as punishment: '*restrictive physical interventions must not be used as a punishment, or merely to secure compliance with staff instructions.*'²⁰⁸

199 HC, 17 Jun 2013, c. 479W

200 Mind (18 May 2013) *Mind Calls for End to Life-threatening Face Down Restraint in Mental Health Hospitals*

201 HL, 29 August 2013, c. 358W

202 *R (on the application of Yiyu Chen and Others) v Secretary of State for the Home Department* (CO/1119/2013)

203 Taylor, D. (22 February 2013) 'UKBA Backs Down over Use of Force on Children and Pregnant Women', *The Guardian*

204 Home Affairs Select Committee (November 2012) *Eighth Report of Session 2012–2013*

205 Letter from Bhatt Murphy to Mr Keith Vaz MP, Chairman of the Home Affairs Select Committee, dated 27 March 2013

206 Letter from Bhatt Murphy to Mr Keith Vaz MP, Chairman of the Home Affairs Select Committee, dated 27 March 2013

207 HC, 2 April 2013, c. WA313

208 Youth Justice Board (2012) *Managing the Behaviour of Children and Young People in the Secure Estate Code of Practice*

37 Prohibit as a matter of priority all physical punishment in the family, including through the repeal of the legal defence

There has been no progress in relation to this recommendation. Parents and those in *loco parentis* are still able to raise 'reasonable punishment' as a defence to a charge of common assault against children.²⁰⁹

Earlier this year, the UN Committee against Torture highlighted its concern that some forms of corporal punishment are still legally permissible in the home for parents and those in *loco parentis*, and recommended that corporal punishment of children is banned in all settings, all legal defences repealed, and alternative non-violent forms of discipline promoted through public campaigns.²¹⁰ The Committee for the Elimination of Discrimination against Women also called for physical punishment to be banned.²¹¹

The UN Committee against Torture highlighted its concern that some forms of corporal punishment are still legally permissible in the home for parents

Children Are Unbeatable! has criticised the biennial report on serious case reviews in England²¹² for failing to address the part played by physical punishment in serious child assaults and child deaths.²¹³ They observe that this is also the case 'in more or less every other official UK document, review or inquiry into child protection'.

38 Ensure that physical punishment is explicitly prohibited in schools and all other institutions and forms of alternative care

The updated guidance on the use of force for school leaders and school staff in all academies, free schools, independent schools and all types of maintained schools in England, continues to make it clear that the use of force as a punishment is always unlawful.²¹⁴ However, a legal loophole means that the prohibition only applies to full-time education providers. As a result, the defence of reasonable punishment is still available for those working in part-time²¹⁵ educational and learning settings, such as supplementary schools and in private tutoring, in leisure facilities, and in evening and weekend faith schools. An amendment was proposed to the Children and Families Bill in both the Commons,²¹⁶ and the Lords,²¹⁷ which would ban the use of corporal punishment in part-time independent educational institutions. The amendment was withdrawn in both cases.

39 Actively promote positive and non-violent forms of discipline, and respect for children's equal right to dignity and physical integrity, with a view to raising public awareness of children's right to protection from all physical punishment

See Concluding Observation 40 in relation to this recommendation.

The promotion of positive non-violent forms of discipline in all settings was a recommendation of the UN Committee against Torture in its examination of the UK's compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²¹⁸

209 The Children Act 2004, s. 58

210 Committee Against Torture (May 2013) *Concluding Observations on the Fifth Periodic Report of the United Kingdom, adopted by the Committee at its Fiftieth Session* (6–31 May 2013)

211 Committee for the Elimination of Discrimination against Women (July 2013) *Concluding Observations on the Seventh Periodic Report of the United Kingdom*

212 Department for Education (July 2013) *New Learning from Serious Case Reviews: a Two Year Report for 2009–2011*

213 Children Are Unbeatable! (January 2013) *Newsletter England, Issue No. 9*

214 Department for Education (July 2013) *Use of Reasonable Force: Advice for Head Teachers, Staff and Governing Bodies*

215 Part time in this context means those providing under 12.5 hours of education a week

216 HC, 11 June 2013, c. 250

217 Children and Families Bill, HL, 26 July 2013, *Amendments to be moved in Grand Committee*

218 Committee Against Torture (May 2013) *Concluding Observations on the Fifth Periodic Report of the United Kingdom, adopted by the Committee at its Fiftieth Session* (6–31 May 2013)

40 Provide parental education and professional training in positive child-rearing

The Department for Education has published its interim evaluation of CANparent,²¹⁹ a trial of how to establish a new market in parenting classes for all parents. The idea behind the scheme is that parenting support should not stop at birth, but should be available through to a child starting school. Under the scheme, mothers and fathers with children aged five and under receive vouchers with a monetary value of £100 to spend on parenting advice delivered by an approved list of local providers. Only 2% of parents of under-fives in the trial areas had taken part in the parenting classes in the six months trial period, but the report notes that this is, perhaps, to be expected given that CANparent was still very much in its launch phase at the time of interviewing. Those attending classes reflected the population of the three areas in terms of family status, parent education, and ethnicity. Attitudes towards parenting classes were largely positive, with a lack of knowledge about the positive outcomes from parenting programmes and time constraints being the main reasons for people not participating. Potential willingness to pay for classes was strongly linked to household income. Of the 152 parents who responded to the CANparent satisfaction survey, 85% said they were satisfied with a CANparent class, and 86% said they would recommend the class to others.²²⁰ A one year evaluation will be carried out later this year to inform further improvements for the trial's second year.

Only 2% of parents of under-fives in the trial areas had taken part in the parenting classes in the six months trial period

The National Offender Management Service (NOMS) is working with the Department for Business, Innovation and Skills to improve the commissioning of parenting and relationship skills programmes for offenders – through better targeting of offender and family need, and partnership approaches.²²¹

41 Take all necessary measures to implement the recommendations contained in the report of the UN Study on Violence Against Children

There is still no overall strategy to implement the recommendations contained in the report of the UN Study on Violence against Children.

42 Use the recommendations from the UN Study on Violence Against Children as a tool to ensure (with civil society and children) that every child is protected from all physical, sexual and mental violence

The Government has not set out a comprehensive plan for ending all violence against all children.

There have been a number of positive developments in relation to violence against children, as highlighted in relation to other Concluding Observations. See, for example, 52.

In March 2013, the Government published a further refreshed version of its Ending violence against Women and Girls Action Plan.²²² It does not refer to the UN Study on Violence against Children. The Home Secretary notes that progress is being made, but that events last year – the exposure of historic abuse cases and girls groomed and exploited by organised groups – make it clear that *'there is still much to do'*.²²³

219 Department for Education (March 2013) *CANparent Trial Evaluation: First Interim Report*

220 See: <http://www.canparent.org.uk/>

221 HL, 29 August 2013, c. 377W

222 Home Office (March 2013) *A Call to End Violence against Women and Girls: Action Plan 2013*

223 Home Office (March 2013) *A Call to End Violence against Women and Girls: Action Plan 2013, Ministerial Foreword by the Home Secretary*

4

FAMILY AND ALTERNATIVE CARE

ARTICLES 5, 18.1, 18.2, 9, 10,
27.4, 20, 21, 11, 19, 39 AND 25

Children should not be separated from their parents, and parents should be assisted with their parenting responsibilities. Where it is necessary for children to be cared for outside of the family, they should be well cared for. Children should be protected from physical or mental violence, neglect, maltreatment and exploitation and victims of abuse should be supported.

States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

43

Render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities

Research has found that many parents and legal guardians are struggling to perform their child-rearing responsibilities because of flat-lining wages, changes to benefits and taxes, and increasing childcare costs. A recent report by Child Poverty Action Group (CPAG)²²⁴ found:

- The minimum costs needed for a decent childhood have risen 4% in the last year; this compares with rises of just 1.8% for the minimum wage, 1.5% for average earnings, 1% for tax credits, and 0% for child benefit;
- The value of both child benefit and child tax credit relative to the costs of raising a child decreased from 2012 to 2013. Many low-income families also saw cuts in housing support with the introduction of changes such as the “bedroom tax” and benefit cap;
- At the same time, working families had to contend with rapidly increasing childcare costs which increased at 5.9% from 2012 to 2013; and
- The adequacy of out of work benefits is declining with them falling far short of what is needed for a minimum acceptable standard of living. Couple families received only 58% of the income required to cover minimum costs, while lone parents got 61%.

The OCC highlighted the overall impact of tax, benefit and tax credit changes implemented (or scheduled to be implemented) between May 2010 and April 2015 on families with children.²²⁵ While families with children make up around 32% of working age families in England, they will bear 51% of the costs of benefit and tax credit cuts and increases in personal tax undertaken between 2010 and 2015. The reforms are shown to be ‘strongly regressive’; low-income families with children, single parents and those with disabled children are particularly hard hit.

Couple families received only 58% of the income required to cover minimum costs, while lone parents got 61%

Since April 2013 Crisis Loans and Community Care Grants have been replaced by local authority administered welfare assistance schemes, providing emergency and community support for those in need. Crucially, the transferred funding is not ring-fenced and local authorities are ‘not expected to replicate the previous community care grant and crisis loan schemes’.²²⁶ A report by The Children’s Society highlights a number of key areas of concern.²²⁷ Not only is localisation likely to have major consequences for access to interest free credit in emergencies, but some of the qualifying criteria for accessing local support will create barriers to access for those who need support. In particular, it notes that some local welfare assistance schemes:

- Prevent low-income working families from making a claim, even when they are living in poverty;
- Restrict eligibility for those able to access other sources of consumer credit;
- Restrict access for those deemed able to rely on borrowing and support from friends or family; and
- Have lengthy residency periods (up to a year) before someone can make a claim.

Practical support for the most vulnerable families is also dropping away. A report by Policy Exchange, *Centres of Excellence?*, has found that 67% of the UK population still live within one mile of a Children’s Centre (formerly known as Sure Start Children’s Centres), but that 14% of centres are still based in the richest 30% of the country. Only 5% of the most deprived children live in these areas.²²⁸ It also highlights that, although only about 1% of centres had actually closed by April 2013, since 2010, funding for these centres has been cut by up to 28%, with centres in the poorest parts of the country having had their budgets cut at the same rate as those in wealthier areas.

The Early Intervention Foundation was launched in April 2013. It is funded by the Government, following recommendations from two independent reports to the Prime Minister.²²⁹ It is intended to build the evidence-base on what works and is best value for money, and to translate this into practical advice for commissioners, funders and service providers. In a report on the future of early intervention, Action for Children

224 Hirsch, D. (Aug 2013) *The Cost of a Child in 2013*, CPAG

225 Office of the Children’s Commissioner (June 2013) *A Child Rights Impact Assessment of Budget Decisions: Including the 2013 Budget, and the Cumulative Impact of Tax-Benefit Reforms and Reductions in Spending on Public Services 2010 – 2015*

226 Letter from Department for Work and Pensions to Chief Executives of Local Authorities, dated 6 August 2012

227 Royston, S. and Rodrigues, L. (July 2013) *Nowhere to turn? Changes to Emergency Support*, The Children’s Society

228 Waldegrave, H. (September 2013) *Centres of Excellence? The role of Children’s Centres in Early Intervention*

229 Allen, G. MP (July 2011) *Early Intervention: Smart Investment, Massive Savings, The Second Independent Report to Her Majesty’s Government*; and (January 2011) *Early Intervention: The Next Steps. An independent Report to Her Majesty’s Government*

has welcomed the Foundation as a sign that the agenda to enable local authorities to move towards early intervention *'remains alive'*.²³⁰ However, the report also highlights how the lack of long-term funding is a major barrier to effective early intervention. In particular, it shows local authorities are subject to changes in policy and funding arrangements, which prevent them from strategic and long-term planning. They are instead restricted to meeting day-to-day needs because they have little or no idea of their future budgets.

Figures published by the Early Action Task Force and Neil Reeder, Director of Head and Heart Economics and researcher at the London School of Economics, show that, over the last three financial years, local authority spending on prevention has dropped from £18.8 billion in 2009–10 to £17.1 billion in 2011–12, a fall in cash terms of some 9.2%.²³¹ As Neil Reeder points out, however, if one allows for CPI inflation of 3.5% in 2011–12, the effects are steeper still.

The Department for Education has since published a summary of the planned expenditure by all 152 Local Authorities on a range of services relating to schools, education, children and young people's services for the financial year 2013–14.²³² It shows that (gross) spending on 'Total Services for Young People' is planned to drop from £8.6 billion in 2012–13 to £8.4 billion in 2013–14. However, there have been a number of changes in the categories included within children's and young people's services, affecting direct comparisons between years for some data. Unlike in previous years, there is no separate category of 'Youth work'.

Although every birth has to be registered in the sub-district in which a child is born, the legislation does not specify where the registration has to take place, so local authorities use a range of places, such as town halls, hospitals and libraries, in addition to the local registry office. A report earlier this year by the All Party Parliamentary Sure Start Group, highlights the benefits of registering births in children's centres, including the engagement of parents, especially "hard to reach" parents.²³³ An amendment was proposed to the Children and Families Bill seeking to commission an independent study and pilot scheme to trial the registration of births at children's centres.²³⁴ The Government, whilst recognising this might be an effective way of making parents aware of available services, considers the choice of approach *'is best left to local discretion'*.²³⁵ However, recognising the need to *'raise awareness of the existing opportunity for local authorities to use children's centres in that way, the resulting benefits that may accrue, and what some of the barriers and obstacles to overcome would be'*, the Government confirmed it is *'happy to consider further how that can be best achieved'*.

The Children and Families Bill provides greater flexibility for new parents, by replacing the current maternity and additional paternity leave and pay regime with new rights to shared parental leave and statutory shared parental pay. Under the new system, from 2015, an employed mother will still be eligible for 52 weeks of maternity leave and 39 weeks of statutory maternity pay or maternity allowance, but she will be able to choose to end her leave and pay early (after the initial two week compulsory maternity leave period) and share the remaining leave and pay with her spouse or partner. Statutory parental pay will have the same qualifying requirements that apply to statutory maternity and paternity pay. Adopters will be entitled to use the new system of shared parental pay and leave. The JCHR welcomes the progress towards implementing Article 18(1) of the UNCRC to take steps to ensure recognition of the principle of the "common responsibility to parenting"; but it also expresses disappointment that the Bill does not make the more ambitious provision for shared parental leave that was foreshadowed in the modern workplaces consultation.²³⁶

The Government announced financial support with childcare costs through Universal Credit and Tax-Free Childcare in the 2013 budget. Parents in receipt of Working Tax Credit can already claim 70% of their childcare costs, up to certain limits. From April 2016, this is to be increased to 85%, if both parents in a couple, or a lone parent, earn enough to reach the minimum tax threshold. This support will apply regardless of the number of hours parents work (compared to the current 16 hour requirement).²³⁷ However, some have observed that over 900,000 lower-income working families with children, disproportionately single parents, will not benefit from the additional support; they will not earn above the £10,000 income tax threshold for 2016 – a prerequisite before this level of support is available.²³⁸ For those not on Universal Credit, the Government has consulted on plans for Tax-Free Childcare, which will replace the current employer-supported childcare voucher scheme. Under this scheme, the Government will provide 20% of working families' childcare costs, subject to an annual limit of £1,200 for each child.²³⁹ Both parents (or a lone parent) will, however, have to be in paid work, but earning less than £150,000 per year. Analysis published by the Children's Commissioner found that *'changes*

230 Action for Children (2013) *Early Intervention: Where Now For Local Authorities?*

231 Reeder, N. (2013) *Working Paper: Government Ambitions for a Preventative Agenda: fact or 'futurewash'?*

232 Department for Education (September 2013) *Planned Expenditure on Schools, Education, Children and Young People's Services by Local Authorities: Financial Year 2013 to 2014*

233 All Party Parliamentary Sure Start Group (2013) *Best Practice for a Sure Start: The Way Forward for Children's Centres*

234 Children and Families Bill, new c. 56

235 HC, 25 April 2013, c. 770

236 Joint Committee on Human Rights (June 2013) *Legislative Scrutiny Children and Families Bill*

237 Family and Childcare Trust (5 August 2013) *Losers as well as Winners in Treasury Childcare Consultation*

238 For example, Resolution Foundation in the Guardian (24 August 2013) *Childcare Plans may Cut Income to Poorest Families – Thinktank*; and Family and Childcare Trust (5 August 2013) *Losers as well as Winners in Treasury Childcare Consultation*

239 HM Treasury and Customs & Revenue (August 2013) *Tax-Free Childcare: Consultation on Design and Operation*

to subsidies for childcare through the tax credit and benefits system have been regressive and have had a significant negative impact on the lowest earning families.²⁴⁰

The Children and Families Bill has been criticised for not doing enough to support family and friends care arrangements. See Concluding Observation 51.

44 Avoid children being taken into care as a result of parental low income

According to Government statistics, there were 68,110 looked-after children at 31 March 2013, an increase of 2% on the year before and an increase of 12% compared to 31 March 2009.²⁴¹ 95,170 children were looked after in England at any time during the year ending March 2013, and of these, local authorities recorded "low income" as being the most applicable category of need for 170 children. This figure is down from 220 in the year ending March 2012.²⁴² Whilst only a small number of children started to be looked after due to low income it may be that other categories of need may be attributed to or exacerbated by parental low income.

Category of need of children who started to be looked after during the year ending March 2013²⁴³

Total looked after during the year	95,170
Abuse or neglect	57,630
Child's disability	3,040
Parents illness or disability	3,610
Family in acute stress	8,870
Family dysfunction	14,530
Socially unacceptable behaviour	2,100
Low income	170
Absent parenting	5,230

45 Take into account the views of children in all measures, and provide them with child-accessible complaint mechanisms

Looked after children

Findings from a Care Inquiry by eight leading children's charities²⁴⁴ showed that too often children and young people in contact with the care system 'were neither listened to nor involved in decisions about their lives.'²⁴⁵ Children and young people were consulted as part of the Care Inquiry:

I've been in care since I was six and one of the things that really bugged me and annoyed me about social workers is that they think they know how you feel and they say "I know what you're going through" but they don't know what you're feeling. I think that everyone needs to listen properly to children and not make assumptions.

I've been moved around eight times now and each time I had just got settled in. Stop moving me, and think about how I feel.

The Care Inquiry report states that social workers and carers should speak to children about their culture and identity in order to understand their views so that social workers can take this into account when finding them a home. Additionally, local authorities should be required to consider the suitability of the match between the social worker and the child when assigning a social worker to a child in care, giving serious regard to a request made by the child for a different social worker. Children should also be provided with information about the

240 Office of the Children's Commissioner (June 2013) *A Child Rights Impact Assessment of Budget Decisions: including the 2013 Budget, and the cumulative impact of tax-benefit reforms and reductions in spending on public services 2010 – 2015*

241 Department for Education (September 2013) *Children Looked After in England (Including Adoption and Care Leavers) Year Ending 31 March 2013*

242 Department for Education (December 2012) *Children Looked After in England (Including Adoption and Care Leavers) Year Ending 31 March 2012*

243 Department for Education (September 2013) *Children Looked After in England (Including Adoption and Care Leavers) Year Ending 31 March 2013*

244 Adoption UK, the British Association for Adoption and Fostering, Family Rights Group, the Fostering Network, Research in Practice, Tact, The Together Trust and The Who Cares? Trust

245 The Care Inquiry (April 2013) *The Care Inquiry: Making Not Breaking, Building Relationships for Our Most Vulnerable Children*

family and home before any new placement. Children's views should always be taken into account when decisions are being made about where they are going to live and with whom.

In June 2013, Ofsted carried out a review of how well independent reviewing officers (IROs) in 10 local authorities are carrying out their responsibilities.²⁴⁶ Inspectors did report some good work by IROs to involve children in their plans and reviews, and to make their wishes and feelings known. However, the key findings of the report were almost exclusively negative, highlighting that IROs are responsible for too many children in care and too many additional duties, leaving them insufficient time to speak to children and listen to their views. Most children took part in their reviews, but not all were helped to be involved as well as they could have been. In over a quarter of the reviewed cases, children were not consistently involved in their care planning, even though this is central to the IRO role and duties. Children were not consistently told by their IROs about their right to complain, despite this being a legal duty. A survey of 295 IROs, as well as 65 IRO managers and 60 Directors of Children's Services, found that heavy caseloads, and having to fulfil non-IRO duties, is preventing IROs from carrying out core functions effectively.²⁴⁷ Between a fifth and a quarter of IROs said they were not (always or often) able to consult with children to prepare for reviews and only a third (32%) consulted with children between reviews.

In over a quarter of the reviewed cases, children were not consistently involved in their care planning, even though this is central to the IRO role and duties

As part of their work on post and pre-legislative scrutiny, the Select Committee on Adoption Legislation spoke with children in care and children who had been adopted. They *were left with the strong impression that children who had experience of care and adoption proceedings did not always feel that their views had been heard.*²⁴⁸ Many in the group of adopted children said they had not been given a chance to have their say when they were adopted. Some felt that professionals presumed that some children were too young to comment or understand, and therefore failed to ask them their views.

In June 2013, Edward Timpson wrote to all Lead Members and Directors of Children's Services, to emphasise the vital importance of good corporate parenting and the unique relationship children in care have with the state. He urged local authorities to engage more effectively with their Children in Care Councils in order to understand directly from young people themselves what does and does not work. He further encouraged local authorities to ensure that all looked after children know where to access support and advocacy.

*At the heart of the care system should be the voice of the child. Listening and talking to children is crucial to their development. It helps them learn thinking skills and improves self-esteem and confidence. Children in care know better than anyone else what works well, what is less successful, and what needs to change. They need to be able to challenge and influence strategic planning and day to day decisions. . .*²⁴⁹

The Office of the Children's Rights Director (OCCRD) gathered children's views on a range of issues this year, including: what can keep a child from getting into trouble with the law,²⁵⁰ the plans to require Ofsted to make available the names and addresses of children's homes to the police and the Children's Commissioner,²⁵¹ and adoption and permanent placement.²⁵² The OCCRD is to close down as an independent body in 2014, and the work of the OCCRD is to be carried out by the OCC instead.²⁵³ In practice, it is not envisaged that this will involve providing a full casework function. The advice and assistance role will normally involve directing the individual to an existing complaints process, or making representations on their behalf to the relevant organisation, with a view to resolving the matter informally.²⁵⁴

A recent report by the Centre for Social Justice (CSJ) recommends amendments to the Children and Families Bill 2013 to promote improved participation rights for looked after children.²⁵⁵ Provisions in the Children Act 1989 which give courts the power to stop parents taking actions that are against the wishes and welfare of their children do not apply to looked after children, meaning that they do not have the same rights to object to deci-

246 Ofsted (June 2013) *Independent Reviewing Officers: Taking Up the Challenge?*

247 Jelacic, H., Hart, D., Fauth, R., Gill, C. and Shaw, C. (August 2013) *The Role of Independent Reviewing Officers (IROs) in England: Findings from a National Survey*

248 Select Committee on Adoption Legislation (February 2013) *Adoption: Post-Legislative Scrutiny, Second Report*

249 Letter from Edward Timpson to Lead Members and Directors of Children's Services, dated 5 June 2013

250 Office of the Children's Rights Director (May 2013) *Keeping out of trouble: Children's Views Reported by the Children's Rights Director for England*

251 Office of the Children's Rights Director (January 2013) *Sharing children's Homes Addresses: Children's Views Reported by the Children's Rights Director for England*

252 Office of the Children's Rights Director (January 2013) *Improving Adoption and Permanent Placements: Children's Views Reported by the Children's Rights Director for England*

253 Children and Families Bill (HL Bill 32), new s. 2D of the Children Act 2004 as inserted by c. 80

254 Children and Families Bill (HL Bill 32), Explanatory Notes as brought from the House of Commons on 12th June 2013

255 Centre for Social Justice (October 2013) *'I Never Left Care, Care Left Me': Ensuring Good Corporate Parenting Into Adulthood*

sions such as unwanted placement moves and separation from siblings. This 'gross inequality', denying children in care their right to be heard should, according to CSJ, be removed. As such, it proposes that the exclusion in the Children Act is scrapped. CSJ's report also notes that there are numerous problems with the complaints procedure to local authorities, including, in relation to accessibility, the fact that it is lengthy and complex, and may no longer be relevant by the time a decision is made. It refers to a survey by the Children's Rights Director, in which a third of looked after young people surveyed said making a complaint made no difference to their situation, and over a fifth said it made it much worse. The CSJ suggests that applying for a section 8 order could replace the final stage of local authority complaints procedures.

There are numerous problems with the complaints procedure to local authorities, including, in relation to accessibility, the fact that it is lengthy and complex, and may no longer be relevant by the time a decision is made

The Children and Families Bill gives the Children's Commissioner the power to consider, or research, the availability and effectiveness of complaints services and advocacy services for children.²⁵⁶ The Bill also requires the Children's Commissioner to take reasonable steps to involve children in the discharge of the Commissioner's work; this includes consulting with them and having particular regard to children who are living away from home or receiving social care, and other children who do not have adequate means of making their views known.²⁵⁷

Children's participation is an important element of Ofsted's new single framework for inspection of local authority children's services.²⁵⁸ Under that framework, one of the criterion for judging a local authority to be good is that children 'are listened to, practice is focused on their needs and experiences and influenced by their wishes and feelings or, where they cannot represent their view themselves, those advocated on their behalf'. Ofsted will meet with children and young people as part of their inspection.

Youth justice system and the secure estate

The OCC's work on complaints systems indicates that children within the youth justice system often distrust complaints processes and the desire and ability of staff to deal with their complaint.²⁵⁹ Based on these findings, and consultation with other agencies, the OCC developed *Common Principles for a Child Friendly Complaint Process* so that children can make complaints in a positive and safe way. It has also updated its own complaint process for children.

Until recently, children in STCs were only able to make complaints to an internal complaints system. This differed from children in YOIs who are able to have their complaints reviewed by the PPO – an independent body. Since September, however, the remit of the PPO has been extended to cover complaints made by children in STCs.²⁶⁰ This follows an open letter to Chris Grayling by the Howard League for Penal Reform, which called on the Government to take action to introduce an independent complaints system in STCs, or face judicial review.²⁶¹

The National Council for Voluntary Youth Services (NCVYS) has published the first examples of how Police and Crime Commissioners (PCCs) are engaging with children. NCVYS aims to share a variety of models of engagement from across the country so that other PCCs can get ideas on different ways of engaging children, consider replicating the model in their own area and get ideas about what works well. There is currently information from two areas across England online:

- Avon and Somerset: This model aims to engage children from Black and minority ethnic communities and connect them with the PCC through focus groups and through a round table discussion with key agencies and the PCC; and
- The PCC in Kent has established a "Youth Commissioner" post. The post-holder will engage with young people from all backgrounds and report back to the PCC on their needs and views. It is hoped that this will help to ensure that the issues facing young people are accurately reflected in the PCC's plans.

256 Children and Families Bill (HL Bill 32), new s.2(3)(f) of the Children Act 2004 as inserted by c. 79

257 Children and Families Bill (HL Bill 32), new s. 2B of the Children Act 2004 as inserted by c. 79

258 Ofsted (October 2013) *Framework and Evaluation Schedule for the Inspection of Services for Children In Need of Help and Protection, Children Looked After and Care Leavers*

259 OCC (Feb 2013) *Response to the Mayor's Office of Policing and Crime Police and Crime Plan 2013–2017*

260 Prisons and Probation Ombudsman (September 2013) *Prisons and Probation Ombudsman Terms of Reference*

261 Letter from the Howard League for Penal Reform to Chris Grayling, dated 21 August 2013

Monitor the status of children placed in kinship homes, foster care, pre-adoptive homes and other care institutions, including through regular visitations

An Ofsted report is calling for local authorities to make sure IROs have the necessary skills, training, knowledge and time to undertake all elements of their role effectively, having concluded there is *'considerable scope for improvement'*.²⁶² The report (based on 111 cases across 10 local authorities) found that IROs are not making enough positive impact on the quality of care planning and outcomes for looked-after children. IROs were given enhanced responsibilities in 2011 but Ofsted has found them to be too slow in taking on these responsibilities. Other areas of concern included:

- The overall level of challenge to local authorities on behalf of children in care *'was not strong enough'*;
- The effectiveness of IRO oversight of individual looked-after children's care plans was not consistently good enough;
- Excessive workloads for IROs in most authorities visited had an adverse impact on their ability to carry out their role effectively, particularly in ensuring that children's voices influence planning for their future care (see Concluding Observation 45);
- In nearly all authorities, review recommendations and the subsequent monitoring of progress by IROs, were not consistently rigorous, leading to poor planning for children's futures and unnecessary delay in some children's cases; and
- IROs did not speak often enough to local councillors to discuss what might need to change for looked-after children, nor was the quality of IRO annual reports, where they existed, consistently good.

The report does make some positive remarks, including:

- Social workers usually kept IROs up to date about what was happening to children; and
- Most children that inspectors spoke to were happy with what the IRO was doing to help them.

The Select Committee on Adoption Legislation heard the views of children in care and adopted children on the relevance and effectiveness of IROs.²⁶³ In one group, only four out of 15 children felt that their IRO had been helpful. Those who spoke positively said that IROs explained the care plan and helped to ensure that the child's voice was heard. Five of the children, however, did not know who or what an IRO was. Many of those with negative views criticised the lack of contact that they had had with their IRO. The Select Committee expressed concern that excessive workloads currently prevent IROs from carrying out their statutory duties to promote the best interests of the child, and recommended the number of cases handled by IROs should be monitored more robustly by IRO managers, and action taken, where appropriate, to reduce workloads.²⁶⁴ The Select Committee also recommended, in light of widespread concerns in the evidence regarding the independence of IROs, that the Government should implement Section 11 of the Children and Young Persons Act 2008 which would establish an IRO service which is independent of the local authority.

Under proposals in clause 15 of the Children and Families Bill, it is anticipated that court scrutiny of care plans will be reduced. A child's solicitor or guardian will, in court, be restricted to exploring the category of placement planned for a child, rather than other aspects of the plan. This means that a greater degree of scrutiny of care planning will fall upon the IRO service, further adding to the workload of those working in the service.²⁶⁵

Under the Children and Families Bill, the Children's Commissioner is given the power to enter premises (other than a private dwelling) to conduct interviews with children, or observe the standard of care being given to them.²⁶⁶ This includes the ability to interview a child in private, if the child consents, as well as anyone working and present on the premises.

In July 2012, Ofsted completed a 3-year cycle of safeguarding and looked after children inspections, and the outcome was that only four out of ten local authorities were judged good or better for safeguarding.²⁶⁷ Since that time, Ofsted has revisited 50 of the weakest places and re-evaluated their arrangements to protect children. With regards those revisited in relation to child protection, a third of previously adequate authorities were

262 Ofsted (June 2013) *Independent reviewing officers: taking up the challenge?*

263 Select Committee on Adoption Legislation (March 2013) *Second Report of Session 2012–13 Adoption: Post-Legislative Scrutiny Report*

264 Select Committee on Adoption Legislation (March 2013) *Second Report of Session 2012–13 Adoption: Post-Legislative Scrutiny Report*

265 Select Committee on Adoption Legislation (March 2013) *Second Report of Session 2012–13 Adoption: Post-Legislative Scrutiny Report*

266 Children and Families Bill (HL Bill 32), new s. 2D as inserted by c. 81

267 Ofsted (2013) *Annual Report 2012–13: Social Care*

newly judged inadequate, although slightly more local authorities had improved (14) than had declined (13).²⁶⁸ Ofsted comments:

In those places judged inadequate for child protection, our inspections found evidence that children and young people continued to be harmed or were at risk of harm in their families, despite known concerns and in some cases where they had been identified as children in need or in need of protection.

A 'persistent absence of stable leadership' was identified as a common feature of most local authorities judged to be inadequate, resulting in an uncoordinated approach to planning and delivering services, as well as a lack of understanding about what constitutes good practice.

In September 2013, Ofsted published a single framework for inspecting child protection, services for looked-after children and care leavers, and local authority fostering and adoption services.²⁶⁹ It uses a standard four-point scale: outstanding, good, requires improvement and inadequate. "Good" is the new minimum and "requires improvement" replaces "adequate". The key test is the extent to which children's experiences are prioritised and the effectiveness of the help, protection and care that they receive. The framework makes it explicit that a judgement of "inadequate" in any of the key judgement areas will lead to a judgement of "inadequate" for overall effectiveness. For the first time, Ofsted will also make discrete, graded judgements on the 'experiences and progress for care leavers' and adoption. The President of the Association of Directors of Children's Services, however, 'fundamentally disagree[s]' with the use of graded judgements and has called for narrative judgements at the end of inspections, stating:

There are so many factors that influence the journey of the child and these will change over time. To try and sum all that up and make a judgement about the entire system with just one word is ludicrous.²⁷⁰

Two other frameworks have also been published for inspecting voluntary adoption agencies and independent fostering services.²⁷¹ Both took immediate effect in September 2013.

A multi-agency approach, that evaluates and judges the contribution of health, police, probation and prison services in the help, care and protection of children, had also been set for launch in June 2013. However, this has been deferred due to concerns from the sector over how the various agencies involved would be held to account. Ofsted plans to consult widely next year on the development of a multi-agency inspection regime which is set to be introduced in April 2015.

The police forces recorded over 28,000 missing incidents, with some children running away dozens of times. One vanished on 67 occasions

The problem of children going missing from care remains significant, but official figures do not indicate the scale of the problem. According to Department for Education statistics, the number of children missing from their agreed placement for 24 hours or more at 31 March 2013 was 140 and the number of children missing from their agreed placement at any point during the year ending 31 March 2013 was 2,360.²⁷² Figures released by the NSPCC present a very different picture, revealing nearly 7,885 children missing from care in England and Wales in 2012, 2,959 of whom went missing from care more than once.²⁷³ The police forces recorded over 28,000 missing incidents, with some children running away dozens of times. One vanished on 67 occasions. The figure is thought to be an under-estimate, as it is believed that only half of cases are reported to the police. Furthermore, only 29 of the 43 police forces responded to the NSPCC's Freedom of Information request. The Ofsted report *Missing Children* highlights that there is little or no reliable data on missing children, including numbers, characteristics and trends.²⁷⁴

Research by The Children's Society analysed return provision for young runaways across the 152 local authorities in England.²⁷⁵ It found:

- Of 134 local authorities who responded to the FOI only 25% in 2011–12 and 29% in April to December 2012 offered return interviews to all children missing from home. In comparison, 49% in 2011–12 and 49% in 2012 offered such interviews to all children missing from care;

268 Ofsted (2013) *Annual Report 2012–13: Social Care*

269 Ofsted (October 2013) *Framework and Evaluation Schedule for the Inspection of Services for Children in Need of Help and Protection, Children Looked After and Care Leavers (Single Inspection Framework)*

270 Community Care (5 July 2013) *One Word Ofsted Judgements 'Ludicrous', Says Top Children's Director*

271 Ofsted (September 2013) *Adoption: Inspections Of Voluntary Adoption Agencies: the Framework and Evaluation Schedule and Grade Descriptors*; and Ofsted (September 2013) *Fostering: Inspections of Independent Fostering Agencies: the Framework and Evaluation Schedule and Grade Descriptors*

272 Department for Education (September 2013) *Children Looked After in England (Including Adoption and Care Leavers) Year Ending 31 March 2013*

273 NSPCC (24 April 2013) *Thousands of Children Repeatedly Go Missing from Care*

274 Ofsted (February 2013) *Missing Children*

275 The Children's Society (2013) *Here to Listen? Return Interviews Provision for Young Runaways*

- Despite recommendations in statutory guidance that return interviews be carried out by independent providers, only 27 local authorities in 2011–12 and 29 in April to December 2012 did so; and
- Return interviews do not always include an assessment of need. Fifty local authorities do include such an assessment in the return interview.

An Ofsted report exploring the effectiveness of safeguarding arrangements for children who are at risk of going missing or running away from home or care notes inconsistency and gaps in practice meant practitioners did not always fully understand these children's needs.²⁷⁶ Concerns included:

- A strategic approach to addressing the needs of missing children was not well developed. In nearly all authorities visited there was not a full understanding, at a senior level, of the reasons why children go missing;
- In the cases seen, risk assessments and risk management plans were rarely evident. Those that were in place were often insufficiently specific or up-to-date;
- Staff awareness and understanding of procedures and protocols were variable;
- Placement instability was a feature of at least a third of the 30 tracked cases where the children were looked after; and
- Information-sharing between professionals and placement providers based outside the local authority area was of variable quality.

Children continue to be placed in unsuitable accommodation. Despite statutory guidance saying that children should not be placed in bed and breakfast accommodation 'even on an emergency accommodation basis', responses to Freedom of Information requests found that:

- 19 out of 208 councils said that they had placed 16 and 17 year-olds in a bed and breakfast overnight;
- 871 children aged 16–17 were placed in bed and breakfasts in 2013.²⁷⁷

The Government has taken a number of steps to prevent children going missing from care, many of which reflect the recommendations set out by last year's parliamentary inquiry into children who go missing from care. The Government has started to pilot a scheme to record details of every child missing from care even for an hour (it used to be 24), with the intention this will be rolled out nationally from April 2014. Having earlier this year changed the rules so for the first time police know where children's homes are located, it has also published a map showing their location.²⁷⁸ From September 2013, Ofsted has started inspecting local authorities' performance on how they are reducing the number of children who go missing from care. The Government has consulted on revised statutory guidance on children missing from care.²⁷⁹ It has also consulted on new rules so children's homes work much more closely with police and local authorities to prevent children going missing,²⁸⁰ and strengthening the rules so local authorities take decisive action where children are at risk of going missing – especially when they are placed away from home.²⁸¹

47

Assess why so many children with disabilities remain in long-term institutional care, and review their care and treatment in these settings

There has been no assessment of why so many disabled children remain in long-term institutional care. In the aftermath of the Winterbourne View Hospital abuse scandal, the Government has set out a programme of action aimed at protecting children, young people and adults with learning disabilities or autism and mental health conditions or challenging behaviour. The programme of action includes an emphasis on community-based support rather than hospitalisation. Specific actions relating to children include the development of new quality standards on child maltreatment by the National Institute for Health and Care Excellence

276 Ofsted (February 2013) *Missing Children*

277 Reed, J. (29 August 2012) 'Councils Housing Homeless Teenagers in B&Bs', *BBC News*

278 Department for Education (May 2013) *Children's Homes: England*

279 Department for Education (June 2013) *Statutory Guidance on Children who Run Away or Go Missing From Home or Care*

280 Department for Education (June 2013) *Reforming Children's Homes Care: Consultation on Changes to the Children's Homes Regulations 2001 (as amended) and The Care Standards Act 2000 (Registration) (England) Regulations 2010*

281 Department for Education (June 2013) *Improving Safeguarding for Looked After Children: Consultation on Changes to the Care Planning, Placement and Case Review (England) Regulations 2010*

(NICE).²⁸² The programme is supported by a concordat, signed by more than 50 organisations in the public and voluntary sectors, setting out what changes they will deliver and by when. A progress report is expected in December 2013.

The Local Government Association (LGA) and NHS England established a Winterbourne View Joint Improvement Programme to provide leadership and support for local services in implementing the programme of action. In October 2013, a progress report was published showing the results from a questionnaire to all 152 health and wellbeing board areas. Despite transition from children's to adult services being a priority area, the survey found that although:

*[t]here are a few very fine examples of work to improve the transition of young people to adulthood ... there are very few examples ... of places where the needs of children are seen within the context of their longer term care into adolescence and adult opportunities.*²⁸³

The Department of Health conducted a call for evidence in June 2013 to gather examples of good service provision for children and young people with learning disabilities or autism, mental health conditions or challenging behaviour.²⁸⁴ At the time of writing, the results have not yet been published. The Department has also funded the Council for Disabled Children and the Challenging Behaviour Foundation to examine best practice examples in service provision, although the scope of the research does not include residential education settings.

48

Provide training and education programmes to prepare children in care and institutional care for adult life

The outcomes for care leavers are significantly poorer than for other young people. Care leavers are still far more likely than their peers not to be in education, employment or training (NEET), and far less likely to achieve qualifications, enter higher education, or gain employment.²⁸⁵ 6,930 children have turned 19 this year, who were looked after when 16. Of this cohort: 34% are not in education, employment or training, an improvement on last year (36%). However, this remains more than double the proportion of other children who are NEET. It is not possible to make a direct comparison, but Government statistics show that between April and June 2013 14.4% of all 18 year olds were NEET.²⁸⁶

Young people's transitions from care to adulthood have been described as '*accelerated and compressed*' and experts have said that for many leaving care can be '*instant adulthood*'.²⁸⁷ Thirty seven per cent of care leavers in 2011–12 were only 16 or 17 years-old at the time they ceased to be looked after.²⁸⁸ Currently only one in 20 foster children stays with their foster carers beyond their 18th birthday, whilst 24 is the average age for leaving home amongst the general population.²⁸⁹ The average age of leaving home for the general population is on the rise; a recent ONS report highlighted one in three men and one in six women, aged 20 to 34, still lived with their parents.²⁹⁰ The Care Leavers Coalition²⁹¹ was established this year, arguing that support offered to care leavers should be based on need rather than age. It has been lobbying for three specific changes in the Children and Families Bill:

- The cut off age for support to be raised from 21 to 25 for all care leavers;
- Allow children in foster care to remain with their foster carers until they are at least 21 if they wish; and
- Virtual school head teachers to champion the educational attainment of looked-after children in each local authority up to the age of 25.²⁹²

These changes are supported by the Centre for Social Justice following its research about outcomes of care leavers.²⁹³

282 Department of Health (December 2012) *Transforming Care: a National Response to Winterbourne View Hospital*

283 Local Government Association & NHS England (September 2013) *Winterbourne View Joint Improvement Programme, Stocktake of Progress Report*

284 Local Government Association & NHS England (June 2013) *Core Specification – Call for Evidence – 'What does good look like?' for Children and Young People with Learning Disabilities or Autism, with Mental Health Conditions or with Behaviour that Displays as Challenging*

285 NCAS (13 June 2013) *Voices of Care Leavers – Inspiring Stories to Encourage Educational Engagement*

286 Department of Education (2013) *NEET Statistics Quarterly Brief April to June 2013*

287 Rees Centre Seminar, presentation by Mike Stein, Research Professor, *Young People's Transitions from Care to Adulthood: Research, Policy and Practice*, given on April 2013

288 The Care Leavers' Coalition (May 2013) *Still Our Children Case for Reforming the Leaving Care System in England Briefing for House of Commons Report Stage of the Children and Families Bill*

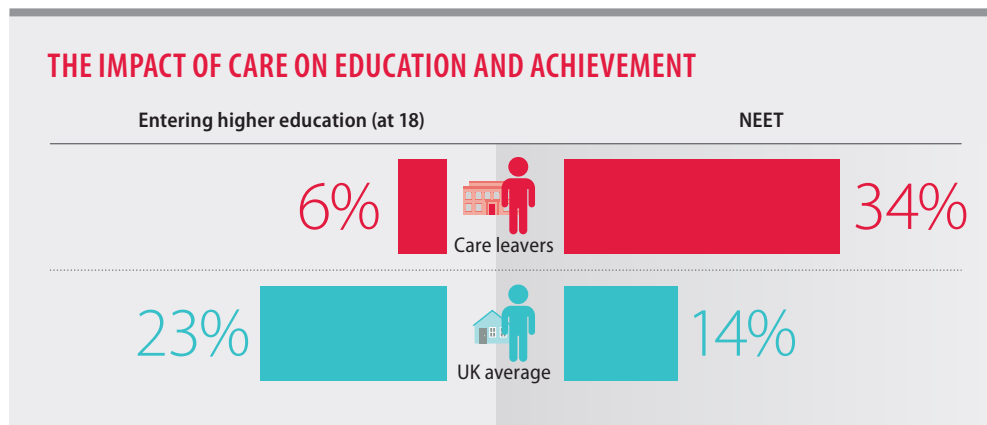
289 Department for Education (September 2013) *Children Looked After in England (Including Adoption and Care Leavers) Year Ending 31 March 2013*

290 The Care Leavers' Coalition (May 2013) *Still Our Children Case for Reforming the Leaving Care System in England Briefing for House of Commons Report Stage of the Children and Families Bill*

291 The Care Leavers Coalition comprises seven organisations: Barnardo's, The Care Leavers Association, Catch22, the Fostering Network, TACT, Voice, and The Who Cares? Trust

292 The Care Leavers' Coalition (May 2013) *Still Our Children Case For Reforming the Leaving Care System in England Briefing for House of Commons Report Stage of the Children and Families Bill*

293 Centre for Social Justice (October 2013) *1 Never Left Care, Care Left Me: Ensuring Good Corporate Parenting into Adulthood*



In its response to the Education Committee's report *Children First*, the Government confirms that it is 'committed to improving outcomes' for care leavers, a key aim being to maximise the incentives to care leavers to attend further and higher education courses.²⁹⁴ In support, it refers to measures introduced previously such as the duty on local authorities, since April 2011, to provide care leavers with a Personal Adviser, and financial assistance schemes such as the Further Education Bursary and Higher Education Bursary. It does not refer to any proposed new schemes, other than the fact that outcomes for care leavers, more generally, will be a key focus in the integrated looked after children inspections due to start in November.²⁹⁵ The Youth Contract, which aims to offer targeted support to disengaged 16–17 year olds to participate in education, an apprenticeship or a job with training was extended to include 16 and 17 year-olds who are NEET and who are in care, or are care leavers. In October 2013, the Government published a cross-government strategy to support care-leavers, which sets out the range of support available to them.²⁹⁶

As of 17 October 2013, the Care Leavers' Charter, produced by the Department for Education last year, but setting out principles and promises developed by young people, had been signed by 120 of the 152 English local authorities.²⁹⁷ The Care Leavers Coalition has described the Charter as a 'helpful statement of aspiration', but has pointed out that it is not enforceable and does not provide a remedy to care leavers who do not receive their entitlements.²⁹⁸

From November 2013, Ofsted's inspection framework will include a separate graded judgement on the experiences and progress of care leavers. Ofsted will in future consider whether the local authority is acting as a reasonable parent in supporting care leavers' transition into adulthood and providing practical, emotional and financial support until they are at least 21 and, where necessary, until they are 25, as well as care leavers' skills and confidence.²⁹⁹ The Catch22 National Care Advisory Service's (Catch22 NCAS) response includes feedback from both the Young People's Benchmarking Forum and the National Leaving Care Benchmarking Forum. Comments included: 'What's the point in caring for young people if you are then setting them up to fail with a bad leaving care service?' and 'If the leaving care service is graded unsatisfactory then the whole authority should be graded as such because if a local authority fails its care leavers then they will not be prepared for adult life and that is just as damaging as failing the looked after children.'³⁰⁰ In this regard, both young people and professionals felt that more emphasis needed to be placed on employability and education of care leavers.

49 Facilitate the initiation of contact proceedings for all children separated from parents and siblings, including those in long-term residential care

Nobody talked to me about going into care and moving away. I was very sad because I love my family so much and I didn't get to see them very often. My old social worker was very good. She got me moved down closer to my family.

294 House of Commons Education Committee (February 2013) *Children First: the Child Protection System In England: Responses from the Government and Ofsted to the Committee's Fourth Report of Session 2012–13*

295 See also Concluding Observation 46

296 HM Government (October 2013) *Care Leaver Strategy: A Cross-departmental Strategy for Young People Leaving Care*

297 See: <http://www.education.gov.uk/childrenandyoungpeople/families/childrenincare/a00216209/care-leavers-data-pack>

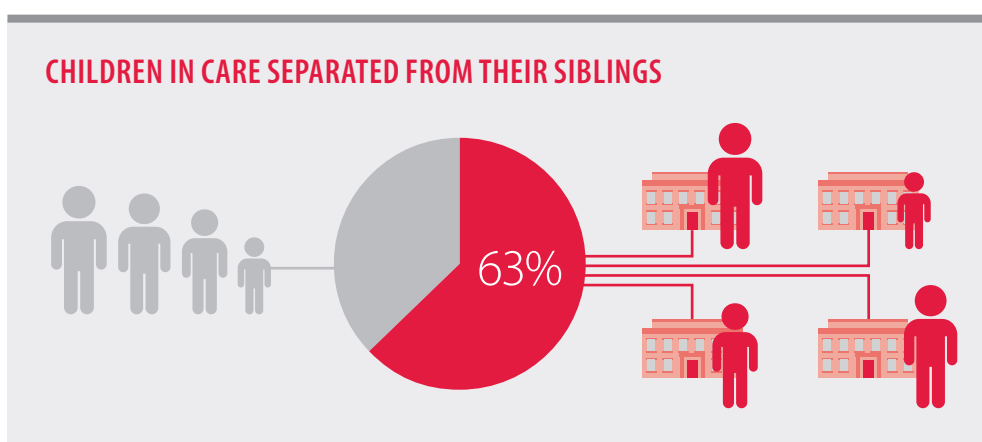
298 The Care Leavers' Coalition (May 2013) *Still Our Children Case for Reforming the Leaving Care System in England Briefing for House of Commons Report Stage of the Children and Families Bill*

299 Ofsted (June 2013) Consultation: *Inspection of Services for Children in Need of Help and Protection, Children Looked After and Care Leavers*

300 Young Person's Benchmarking Forum quoted in Catch22 NCAS National Leaving Care Benchmarking Forum (July 2013) *Response to Ofsted's Consultation: Inspection of Services for Children in Need of Help and Protection, Children Looked After and Care Leavers*

Social services split up my family because my parents couldn't look after us all properly, which was fair enough, but they didn't have to punish us by splitting up a close relationship between me and my brothers and sisters by separating us all.³⁰¹

Accounts given by children, during research by the Children's Rights Director, confirm the importance of parental and sibling contact for children. Children said: 'Before you go into care that's all you've got and you comfort each other when things are bad. You can support each other because you're going through the same things and you understand'.³⁰² Lack of contact, or infrequent contact, was a source of frustration for many children: 'My sisters are being adopted and I don't have contact with them. They don't have their Mum and Dad and now they don't have me or my brother'.³⁰³ Research has found that 86% of children in care think it is important to keep siblings together.³⁰⁴ Currently 63% of children in the care system whose siblings are also in care are separated from them.³⁰⁵ Children told the Children's Rights Director that the extent of contact with birth parents should depend on a number of things, such as the parents' behaviour and the reasons why the children had been removed from them, and raised particular concern about parents who had been violent in the past.³⁰⁶ They said that contact might be particularly important for older children who had had a relationship with their birth parents, but also that contact could be important 'because we have something important in common'. They stressed that it was important to explain why contact decisions had been made, because the information could help the child understand what was happening.



A number of measures relevant to contact are proposed by the Children and Families Bill. Currently local authorities must allow a child in care reasonable contact with their parents or guardians, and certain other specified persons.³⁰⁷ They are also required to try to promote contact between looked after children and certain persons, including the child's parents and other relatives of the child, like grandparents and siblings.³⁰⁸ Under the Bill, there would remain a duty on local authorities to allow the child reasonable contact, but the Bill makes clear that this is subject to the local authority's duty to safeguard and promote the welfare of the child, and makes provisions allowing the Secretary of State to specify the matters that a local authority should take into account when determining whether contact is consistent with the child's welfare.³⁰⁹ The provisions would also disapply the current duty on local authorities to 'endeavour to promote contact' with the birth family and others in those cases where a local authority has been authorised to refuse contact, or is doing so on a temporary basis. The Bill also proposes changes in the law of contact for children post adoption.³¹⁰ It sets out the factors that the court must consider when deciding whether to grant permission, including the possible harm that might be caused to the child by the proposed application, the applicant's connection to the child, and any representations that are made to them by the child, the person who has applied for the adoption order or the child's adoptive parents. The Bill also amends existing legislation to create a more demanding "permission filter", raising the bar for any birth parent to make an application for a contact order.

The Select Committee on Adoption Legislation noted that practice in relation to post-adoption contact with birth family members varies considerably.³¹¹ The Committee's view was that adoptive parents should be

301 Adoption UK, the British Association for Adoption and Fostering, Family Rights Group, the Fostering Network, Research in Practice, Tact, The Together Trust and The Who Cares? Trust (2013) *The Care Inquiry: Making not Breaking, Building Relationships for Our Most Vulnerable Children*

302 The Children's Rights Director for England (January 2013) *Improving Adoption and Permanent Placements*

303 Select Committee on Adoption Legislation (March 2013) *Second Report of Session 2012–13, Adoption: Post-Legislative Scrutiny Report*

304 Children and Families Bill, Public Bill Committee, 14 March 2013, c. 244

305 Children and Families Bill, Public Bill Committee, 14 March 2013, c. 244

306 The Children's Rights Director for England (January 2013) *Improving Adoption and Permanent Placements*

307 Children Act 1989, s. 34(1)

308 Children Act 1989, Sched. 2, para 15

309 Children and Families Bill (HL Bill 32), new s. 34 of the Children Act 1989, inserted by c. 7

310 Children and Families Bill (HL Bill 32), new ss. 51A and 51B of the Adoption and Children Act 2002, inserted by c. 8

311 Select Committee on Adoption Legislation (March 2013) *Second Report of Session 2012–13 Adoption: Post-Legislative Scrutiny Report*

supported and encouraged by the courts and adoption agencies to maintain contact arrangements with siblings, when the child desires it, and provided it is in the child's best interests. It also noted that it would be 'highly regrettable' if the new provisions on contact in clause 8 of the Children and Families Bill presented additional barriers to achieving sibling contact.³¹² The Children's Commissioner's view is that current legislation on contact for children in state care and children post-adoption is in line with requirements of the UNCRC and allows consideration of the right contact arrangements for each child. The OCC is 'not convinced the changes would significantly advance children's interests'.³¹³ Instead the focus should be on sound assessment practice focused on children's best interests and taking full account of children's views, feelings and wishes about contact.

An amendment was tabled to the Children and Families Bill which would add siblings to the list of people with whom a local authority is required to allow a child in their care reasonable contact, where that contact is consistent with safeguarding and promoting the child's welfare. The Minister for Children and Families has expressed sympathy with the intention to promote the importance of contact between a child in care and their siblings but stated that existing legislation already provides for sibling contact in any event.³¹⁴

Although the Family Justice Review concluded that there should not be a presumption of shared parenting following separation in England and Wales, the Bill contains a diluted presumption which states that the court must presume it will further a child's welfare for both parents to be involved in his or her life, unless the contrary is shown, and as long as it does not put the child at risk of suffering any harm.³¹⁵ See Concluding Observation 20 for more information. The Bill also introduces a new "child arrangements order", replacing residence and contact orders. Whilst the name of the order in question will change, the rights that flow from the order will remain. The policy objective is to move away from terminology that implies that there is a winner or loser in disputes concerning children,³¹⁶ but make little difference in substance in terms of facilitating or preventing contact.

Children's Minister Edward Timpson has expressed disappointment that a third of councils in England have not yet drafted clear policies on supporting kinship carers.³¹⁷ He wrote to Directors of Children Services and Lead Councillors in July, and to support the councils that have not developed a policy, the Department for Education is organising two training days in the autumn, looking at case law and primary legislation related to family and friends carers. The Minister hopes that by spring 2014 all local authorities will have family and friend carer policies in place that are well promoted locally.

50

Ensure support to children with one or both parents in prison, in particular to maintain contact with the parent (unless contrary to the child's best interests) and prevent stigmatisation and discrimination

Research has again confirmed the negative impact that a parent's imprisonment can have on a child, but changes to the prison system of incentives and legal aid are likely to undermine contact.

Estimates are that, in any given year, approximately 200,000 children are affected by a parent being in or going to prison.³¹⁸ Approximately 160,000 children currently have one or both parents in prison.

A report studying the characteristics, vulnerabilities and resilience of children with a parent in prison in four European countries³¹⁹ shows that most of the 67 children interviewed from the UK had some form of contact with their imprisoned parent or carer; 92.2% were accessing their parent or carer through prison visits, 95.3% of children were in telephone contact with their imprisoned parent or carer, 87.5% were communicating with their imprisoned parent via letter, and 25% had contact with their imprisoned parent during their temporary release from prison.³²⁰ For most of the children involved: regular contact with their imprisoned parent was crucial for their well-being and resilience; family days were appreciated where available; restrictions on physical contact during visits seen as unhelpful, particularly by younger children; opportunities to engage in meaningful activities with the imprisoned parent limited; and telephone contact

312 Select Committee on Adoption Legislation (March 2013) *Second Report of Session 2012–13 Adoption: Post-Legislative Scrutiny Report*

313 Office of the Children's Commissioner (February 2013) *A Child Rights Impact Assessment of Parts 1–3 of the Children and Families Bill (HC Bill 131)*

314 Children and Families Bill, Public Bill Committee, 14 March 2013, c. 245

315 Children and Families Bill (HL Bill 32), new s. 2A of the Children Act 1989 inserted by c. 11

316 Children and Families Bill (HL Bill 32) Explanatory Notes as brought from the House of Commons on 12th June 2013

317 Letter from Edward Timpson to Directors of Children's Services and Lead Members for Children's Services, dated 10 July 2013

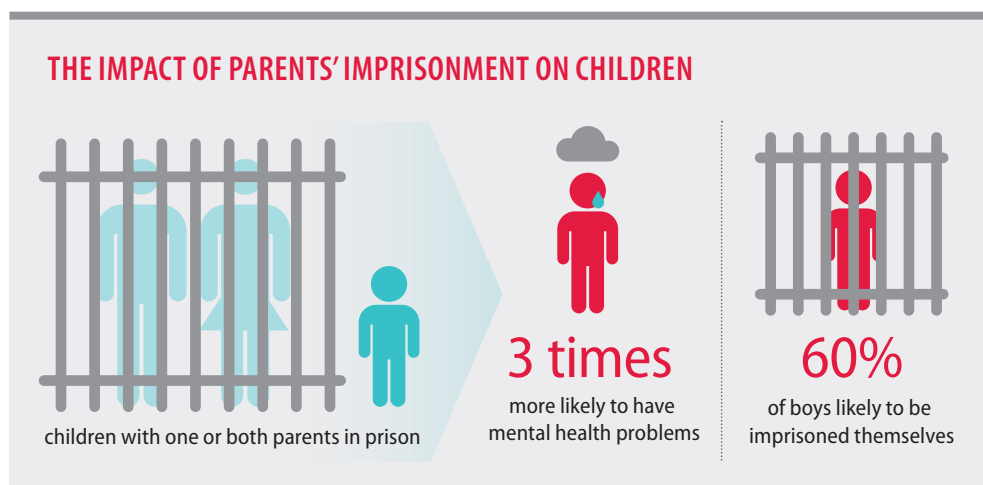
318 HC, 12 July 2013, c. 743

319 Children of Prisoners: Interventions and Mitigations to Strengthen Mental Health (COPING) is a large scale EU-funded research project investigating the experiences of children and young people aged between 7 and 17 years and who have a parent in prison. It explores how children cope with the experience of their parent's imprisonment and the protective factors and support schemes which may enable children to be more resilient.

320 Jones, A. D. et al (July 2013) *COPING: Children of Prisoners, Interventions and Mitigations to Strengthen Mental Health*, University of Huddersfield

a positive experience for nearly all children, with restrictions on the timing of telephone calls often described as frustrating. The Children and Families Bill makes provision for contact arrangements for children in care. Action for Prisoners' Families, however, is concerned that this section of the Bill fails to address the situation of prisoners' families who live with family and friends carers, where contact between parents and the carer(s) may be strained.³²¹

The European report highlights the adverse impact which parental imprisonment has on children's lives.³²² For example, school attendance is adversely affected for a number of children, mainly boys, and children's behaviour at school often deteriorates. Children in the UK were more likely than children in other countries to report bullying linked to their parent's imprisonment. The report identified the wide reporting of court trials and sentences as a reason behind the high incidence of bullying. UK families were mainly pleased with positive responses from schools alerted to bullying, although the report notes the potential for schools to contribute to reducing stigma and bullying for children of prisoners. Children with one or both parents in prison are three times as likely to suffer from mental health problems as other children and more than 60% of young boys with a parent in prison are likely to go on to offend and be imprisoned as a result.³²³ The European report highlights a significant number of UK children needed to access counselling or other kinds of support outside the family. In terms of the UK children's own views of help, 27% said the family needed financial support, 19% said other kinds of help for the home was a significant need, and 44% said needing help with feelings was needed.³²⁴ Mixed feedback was given to statutory services, with examples of very good practice combined with some scepticism about interventions by social services.



Significant reforms to toughen up the Incentives and Earned Privileges (IEP) scheme in male adult prisons came into effect on 1 November 2013. The scheme includes a new entry level for all prisoners in the first two weeks of sentence, where privileges, including contact with family and access to private cash, will be restricted. Action for Prisoners' Families is concerned that the changes appear to regard prisoners' contact and communication with families, whether by phone or visits, as a privilege for the prisoner to be earned, rather than a right and integral to the wellbeing of children and families.

The Government's legal aid proposals³²⁵ have also been criticised for their potential impact on contact between mothers in prison and their babies. The Family Bar Association, in its response to the consultation, is 'particularly concerned' about the proposal's effects on women prisoners and their babies.³²⁶ It states that, under the proposals, a mother refused a place on a mother and baby unit would be ineligible for assistance in attempting to challenge this decision, with the direct result of the child being separated from its parent and potentially being adopted away from her care.

Barnardo's, together with PACT and other charities, is looking to make amendments to the current Anti-social Behaviour, Crime and Policing Bill, so that information about prisoners' families would be included as part of court assessments at the point of sentencing. In their view, children of prisoners are not systematically identified meaning their needs are not taken into account and met when their parents are sentenced.

321 Action For Prisoners' Families (April 2013) *Action For Prisoners' Families Written Evidence for the Children and Families Bill*

322 Children of Prisoners: Interventions and Mitigations to Strengthen Mental Health (COPING) is a large scale EU-funded research project investigating the experiences of children and young people aged between 7 and 17 years and who have a parent in prison. It explores how children cope with the experience of their parent's imprisonment and the protective factors and support schemes which may enable children to be more resilient

323 Jones, D., A., (2013) *Children of Prisoners Interventions and Mitigations to Strengthen Mental Health*

324 Children of Prisoners: Interventions and Mitigations to Strengthen Mental Health (COPING) is a large scale EU-funded research project investigating the experiences of children and young people aged between 7 and 17 years and who have a parent in prison. It explores how children cope with the experience of their parent's imprisonment and the protective factors and support schemes which may enable children to be more resilient

325 Ministry of Justice (April 2013) *Transforming Legal Aid Consultation: Delivering a More Credible and Efficient System*

326 Family Bar Association (June 2013) *Response to the Ministry of Justice Consultation Paper CP14/2013 Transforming Legal Aid Consultation*

In 2013, Barnardo's and Partners of Prisoners and Families Support Group, funded by the Department for Education, have joined together to develop i-HOP – an information and advice service for all professionals working with children and families of offenders.³²⁷

51 Take into account the Committee's recommendations issued at the Day of General Discussion on children without parental care (16 September 2005)

The UN Committee recommended, in its last set of Concluding Observations, that there should be various alternative care measures, that in placement decisions priority should be given to a family-type alternative care, and that appropriate measures should be introduced to support the role of the grandparents in child-rearing.

There have been recent calls for a more wide-ranging review of care and permanency options, rather than singling out adoption for reform. Action for Children, for example, in its evidence to the Select Committee on Adoption Legislation, called for 'a system which has at its heart a drive to find the right placement for each individual child, rather than creating a false hierarchy of care—where adoption is interpreted as being the preferred care option.'³²⁸ Evidence was also presented to the Committee of the benefits of these alternatives, with the Committee satisfied for example that, 'the benefits of kinship care are demonstrated by the outcomes.'³²⁹ The Committee concluded that adoption is only one solution for alternative care, that long-term fostering, kinship care and special guardianship play a significant role in meeting the needs of children without parental care, and that these options 'merit equal attention and appropriate investment, both by Government and by agencies working at the national and local level.'

This approach is supported by the findings of the Care Inquiry:

Our main conclusion – from all that we heard and learnt – is that 'permanence' for children means 'security, stability, love and a strong sense of identity and belonging'. This is not connected to legal status, and one route to permanence is not necessarily better than any other: each option is the right one for some children and young people. Adoption, although right for some children, will only ever provide permanence for a small number of children in care.³³⁰

With this in mind, the Inquiry recommended recognising the use of foster care as a long term placement and support for kinship care.

In relation to kinship care, 2013 has seen several studies of the child's perspective of living in informal kinship care and the views of their carers. A report, published in April 2013 by Buttle UK and the University of Bristol,³³¹ shows that most children in kinship care do well, with a strong attachment to their carers and confident in the knowledge they have a family for life, and could stay with kin as long as they wanted – something that is more rarely experienced by children in non-kin foster care. Most were achieving good levels of academic attainment. As the Chief Executive of Buttle commented: 'It is a particularly striking, and important, finding that in the main these children are faring significantly better than those placed within the formal care system.'³³² The Adoption Select Committee was 'persuaded of the benefits of friends and family care as alternatives to local authority foster care, where a suitable carer is available.'³³³ It recommended that it should become normal practice, where possible, for local authorities to arrange a family group conference with family members and friends before a child becomes looked after, or as soon as possible after entry into care, to enable alternative carers to be identified before any decision about the child's future has been made.

From the carers' perspective, the Buttle UK and the University of Bristol study found that many informal kinship carers lived in 'grinding poverty', often as a consequence of caring for the children; many had given up good jobs to take the children or had only their pensions to live on. In addition, more than 70% of the carers had a longstanding health condition or disability, over a third (37%) of the carers' lives were restricted by pain and as many as two-thirds of the carers were clinically depressed, although only a small proportion (27%) had been diagnosed as such. Most carers (71%) had contacted Children's Services to ask for help. However, carers had rarely received the assistance they sought, and were occasionally told that if they could not manage alone, the

327 See: <http://www.i-hop.org.uk/>

328 Select Committee on Adoption Legislation (March 2013) *Second Report of Session 2012–13 Adoption: Post-Legislative Scrutiny Report*

329 Select Committee on Adoption Legislation (March 2013) *Second Report of Session 2012–13 Adoption: Post-Legislative Scrutiny Report*

330 The Care Inquiry (30 April 2013) *Making Not Breaking: Building Relationships for our most Vulnerable Children. Findings and Recommendations of the Care Inquiry*

331 Selwyn, J. Farmer, E. Meakings, S. and Vaisey, P. (April 2013) *The Poor Relations? Children and Informal Carers Speak Out*, Buttle UK In Partnership With The University Of Bristol

332 Community Care (29 April 2013) *Kinship Carers Routinely Turned Away by Social Workers when they Ask for Help*

333 Select Committee On Adoption Legislation (March 2013) *Second Report of Session 2012–13 Adoption: Post-Legislative Scrutiny Report*

children would have to be fostered or adopted. On the few occasions when support was provided, it was usually only short-term and did not go far enough. As many as 90% of carers said that they needed more support.

These findings are supported by a three-year study of kinship carers by the Family Rights Group.³³⁴ The report noted that support is very much dependent on legal status, with a minority of professionals believing local authorities are achieving the needs-led approach to support set out in statutory guidance. The report concludes that carers often lack the information and independent advice needed to make informed decisions and access support, and the potential safety net the court provides for both carers and children is not only variable in its operation, but risks being further weakened by changes to legal aid and care proceedings. The report does note, however, that although the research findings generally present a gloomy picture, some local authorities do seem to be providing an above average level of service, and there is evidence that others are looking to improve the support they provide to kinship care arrangements. Current financial constraints are, however, a concern.

A survey by Grandparents Plus of kinship care by grandparents further highlights their financial needs and failings in respect of practical or emotional support.³³⁵ It showed only 8% of grandparents had received counselling or help with parenting, and just one in twenty have had access to respite care. Four in ten (41%) say their main source of income is their own or their partner's job, three in ten (28%) are dependent on welfare benefits, and a quarter (23%) rely on a pension for their main source of income. A landmark case by the Court of Appeal has ruled that relatives looking after family members full time should be entitled to the same benefits and support as unrelated foster carers.³³⁶

Only 8% of grandparents had received counselling or help with parenting, and just one in twenty have had access to respite care

The Select Committee on Adoption Legislation has also noted a lack of help for kinship carers and special guardians. In its report, the Committee refers to the fact special guardians and kinship carers receive little of the training and preparation that is given to prospective adopters; they also receive few of the benefits and financial support arrangements that foster carers receive.³³⁷ It also referred to the evidence presented to it of such carers struggling to meet the needs of the children in their care, with many kinship carers, for example, having to give up work in order to care for children, because, unlike adopters, they are not entitled to paid leave when a child comes to live with them. Public spending cuts are also noted by the Care Inquiry to have resulted in reduced family support services and a negative impact on the support available to kinship carers, adoptive parents and special guardians.³³⁸

The Kinship Care Alliance notes that over a year after the deadline set in statutory guidance, more than 30% of English local authorities have yet to publish the requisite family and friends care policy, setting out local support available to family and friends carers.³³⁹ The Alliance also notes that the guidance did not change the fact that, legally, local authorities are not required to support the 94% of children in family and friends care who are not looked after. The Association of Directors of Children's Services has recognised the need for greater use of, and support for, kinship care placements, at least in relation to adolescents. Their position statement on their collective aspirations for the care system states that it will be issuing the following recommendation to Directors of Children's Services:

Greater use of and support for kinship care placements which bridge the binary divide between a young person being in care or not in care. Support (financial and training) is critical to this process if perverse incentives whereby the wider family seek a legal/court order are to be avoided.³⁴⁰

Concern had been expressed that the Children and Families Bill, which promotes fostering for adoption, would work against the child being cared for within their family.³⁴¹ Lord Nash has since put forward an amendment, 'to put beyond doubt that before a local authority considers a fostering for adoption placement, it must have explored placement with relatives and decided that it is not the most appropriate placement for the child'.³⁴² It has also been said that the Bill does not go far enough to support kinship care. The Family Rights Group and The College of Social Work note the inadequate and outdated support systems for kinship carers, resulting in many place-

334 Hunt, J. and Waterhouse, S. (April 2013) *It's Just Not Fair! Support, Need and Legal Status in Family and Friends Care*

335 Grandparents Plus (June 2013) *Forgotten Children: Children Growing Up in Kinship Care*

336 *X, R (On The Application Of) v London Borough Of Tower Hamlets* [2013] EWHC 480 (Admin)

337 Select Committee on Adoption Legislation (March 2013) *Second Report of Session 2012–13 Adoption: Post-Legislative Scrutiny Report*

338 The Care Inquiry (30 April 2013) *Making Not Breaking: Building Relationships for Our Most Vulnerable Children. Findings and Recommendations of the Care Inquiry*

339 Kinship Care Alliance (April 2013) *Children and Families Bill Session 2012–13, Memorandum Submitted by the Kinship Care Alliance*

340 Association of Directors of Children's Services (April 2013) *Position Statement: What is Care For: Alternative Models of Care for Adolescents*

341 Kinship Care Alliance (April 2013) *Children and Families Bill Session 2012–13, Memorandum submitted by the Kinship Care Alliance*

342 HL, 9 Oct 2013 c. GC2

ments being put under huge strain and some even breaking down in the face of the huge financial burdens taken on.³⁴³ Amendments to the Bill have, therefore, been suggested to include:

- Introducing a new duty to work with families before proceedings start to avoid the need for children to be removed into the care system and raised by unrelated carers;
- Providing equality of support in terms of personal budgets, access to information about support, and in terms of employment protection for special guardians, many of whom are kinship carers and adopters; and
- Introducing a national financial allowance to support children in family and friends care, who would otherwise be in the care system.³⁴⁴

52

Strengthen efforts to ensure that children are adopted as speedily as possible, in line with their best interests and taking into account factors such as cultural background

Official statistics show no change between 2010 and 2013 in the speed at which children entering care are assessed as requiring adoption, adoptive parents found, and the adoption secured. The total average time between entry into care and adoption is two years and seven months for 2013.³⁴⁵ The number of adoptions is, however, at its highest, with 3,980 looked after children adopted during the year ending 31 March 2013, an increase of 15% on the previous year and an increase of 20% from 2009.³⁴⁶

A number of measures have been taken with a view to speeding up care and adoption proceedings. The Children and Families Bill: makes provision for limiting the use of expert evidence by introducing an additional test; introduces a 26 week time limit in care proceedings; and limits judicial scrutiny of care plans. The legal changes the Government set out in its response to the consultation on *Adoption and fostering: tackling delay*³⁴⁷ came into force on 1 July and include a clearer and quicker two-stage approval process, a fast-track procedure for approved foster carers and previous adopters who wish to adopt, placing an obligation on adoption agencies to refer prospective adopters to the Adoption Register, enabling children to be placed sooner with the families that are likely to adopt them and a new power for ministers to drive an increase in adopter recruitment by requiring outsourcing, if necessary.

Responses to the new provisions and systems have been mixed. The Select Committee on Adoption Legislation welcomed the Government's plans to reduce the time taken by care proceedings, but highlights the need to address the quality of pre-proceedings work and assessments by social workers, in order to ensure the new time limit can be met.³⁴⁸ The Select Committee also noted a number of other sources of delay in adoption. The two-stage adoption process has been welcomed by the president of the Association of Directors of Children's Services, with pilots having shown the process to be quicker,³⁴⁹ but the Director of Strategy at Barnardo's has warned that the measures announced would fail to deliver results if the Government goes ahead with its proposals to outsource local authorities' adoption recruitment and approval services.³⁵⁰

The OCRD has published a report presenting the views of looked after children.³⁵¹ Over 74% of children were positive about the proposal to speed up the approval process for parents who have previously adopted or fostered a child. Seventy four percent of the 429 adopted children who shared their views on "fostering for adoption" supported the idea. The top three things that were identified as being positive about the proposal were:

- Children will get to know their new family sooner;
- Fewer moves from one family to another;
- It would save time in getting adopted.

Two major issues were identified with the proposal. Some children said that if the adoption does not go ahead, the child would be moved again. This would result in the child being more upset as they had been moved

343 The College of Social Work and Family Rights Group (2013) *Children and Families Bill: Joint Briefing on Clauses 1 & 14*

344 See: <http://www.frg.org.uk/the-children-and-families-bill-2013>

345 Department for Education (September 2013) *Children Looked After in England (Including Adoption and Care Leavers) Year Ending 31 March 2013*

346 Department For Education (September 2013) *Children Looked After In England (Including Adoption and Care Leavers) Year Ending 31 March 2013*

347 Department for Education (May 2013) *Adoption and Fostering: Tackling Delay Government Response*

348 Select Committee on Adoption Legislation (March 2013) *Adoption: Post-Legislative Scrutiny Report*

349 Children & Young People Now (3 May 2013) *Government Confirms Changes to Adoption Process*

350 Children & Young People Now (3 May 2013) *Government Confirms Changes to Adoption Process*

351 Office of the Children's Rights Director (2013) *Changing Adoption – Adopted Children's Views'*

away from the parents they thought they would be with permanently. The children also thought that it was still important for a child and carers to get to know each other first before agreeing a permanent placement.

The Children and Families Bill includes a provision for removal of the express statutory requirement that adoption agencies must give 'due consideration' to a child's ethnicity when placing them for adoption. The intention is that the search for a perfect or partial ethnic match does not become a barrier to finding a child a parent. Both the Select Committee on Adoption Legislation and the OCC concluded that legislative change is unnecessary.³⁵² Moreover, the OCC points to the risk that the change will lead to some children being placed with families who cannot meet their linguistic, cultural and identity needs.

Children affected by adoption and foster care expressed their view to the Children's Rights Director that 'speed isn't everything'.³⁵³ Overall the group felt that adoption should happen at a pace that is right for the individual child.

53 Establish mechanisms for monitoring the extent of violence, sexual abuse, neglect, maltreatment or exploitation, in the family, in schools and in institutional and other care

There is no central monitoring of the extent to which children in England are subject to violence, sexual abuse, neglect, maltreatment or exploitation in different settings. Data continues to be dispersed across child protection statistics, serious crime review publications, criminal statistics, and the British Crime Survey.

The NSPCC states that we do not know exactly how many children in the UK have been abused, that the UK does not publish statistics on the number of substantiated child abuse cases recorded every year, and that child protection plans and child protection registrations are not a measure of the incidence of maltreatment.³⁵⁴ It goes on to state that research indicates abuse and neglect are both under-reported and under-recorded. Department for Education child abuse and neglect statistics show that there were 52,700 children on child protection registers or the subject of child protection plans in the UK as at 31 March 2013.³⁵⁵ Furthermore, as at July 2013, approximately 50,500 children in the UK were known to be at risk of abuse. The Child Exploitation and Online Protection Centre (CEOP) has suggested that, perhaps more than any other area of criminality, most areas of child sexual exploitation and abuse suffer from chronic under-reporting by victims and often inconsistent recording in the criminal justice process. As a result, accurately identifying the size of the UK offending and victim populations is difficult.³⁵⁶ The NSPCC has reported that The Association of Chief Police Officers (ACPO) plans to improve data recording and collection in the police force.

In relation to trafficking specifically, there is no comprehensive and systematic collection of data on victims and perpetrators of child trafficking. Latest statistics published by the UK Human Trafficking Centre found that of potential victims of human trafficking identified in 2012, 549 (24%) were children.³⁵⁷ These figures are widely considered not to represent the true scale of the problem. This is often attributed to the lack of a single statutory body with responsibility for collecting and analysing data, and application of inconsistent definitions and understanding of trafficking by different organisations.³⁵⁸

Figures cited by the NSPCC highlight that two-thirds of the contact sexual abuse experienced by 0–17 year-olds is committed by peers, and that in 82.7% of cases nobody knew about these offences.³⁵⁹ Further, a report by the Muslim Women's Network UK into the sexual abuse and exploitation of Asian women recommends that data collection is improved.³⁶⁰ The Ministry of Justice, the Home Office, and the Office for National Statistics announced in September 2012 that they would publish a joint statistical bulletin on sexual offending. However, as the bulletin itself acknowledges: 'Providing such an overview presents a number of challenges, not least that the available information comes from different sources that do not necessarily cover the same period, the same people (victims or offenders) or the same offences.' As a result, as highlighted by Lord Desai, the release in January³⁶¹ 'relates mainly to adult women, aged 16 to 59, and therefore avoids the important question of children'.³⁶²

352 Select Committee on Adoption (December 2013) *Adoption: Pre-Legislative Scrutiny Report*; OCC (February 2013) *A Child Rights Impact Assessment of Parts 1–3 Of The Children and Families Bill*

353 Children's Rights Director for England (January 2013) *Improving Adoption and Permanent Placements*

354 NSPCC (July 2013) *Incidence and Prevalence Child Abuse and Neglect*

355 Department for Education (October 2013) *Characteristics of Children in Need in England, 2012–13 Statistical First Release*

356 Child Exploitation and Online Protection Centre (June 2013) *Threat Assessment of Child Sexual Exploitation and Abuse*

357 UK Human Trafficking Centre (August 2013) *A Strategic Assessment on the Nature and Scale of Human Trafficking in 2012*

358 Rigby R., Malloch M. And Hamilton Smith, N. (2012) *A Report on Child Trafficking and Care Provision: Towards Better Survivor Care*

359 Radford, L. Et Al (2011) *Child Abuse and Neglect in the UK Today*, cited by the NSPCC (July 2013) *Harmful Sexual Behaviour NSPCC Research Briefing*

360 Muslim Women's Network UK (September 2013) *Unheard Voices: The Sexual Exploitation of Asian Girls and Young Women*

361 Ministry of Justice, Home Office, and Office for National Statistics (January 2013) *An Overview of Sexual Offending in England and Wales*

362 HL, 12 February 2013, c. 632

A report by Action for Children concludes that its review of the state of children's neglect 'adds weight to the view that new models or methods for recording prevalence are required'.³⁶³ The findings highlight that, while there is some piecemeal and localised data collection, there are still inadequate systems for collecting accurate figures, specifically in relation to child neglect, and this may be linked with the issue of how neglect is defined. In general, the information is not cross-referenced and collated to give an accurate local picture of the numbers of children at risk of, or experiencing, neglect.

Action for Children, supported by an independent advisory group of experts, has drafted and tested an alternative framework for the criminal law on child neglect.³⁶⁴ The current criminal offence of child neglect is set out in section 1 of the Children and Young Persons Act 1933. In their view, a view supported by police and social workers, the current law explicitly fails to recognise the full range of harm done to neglected children, and creates problems of practice and interpretation for legal professionals. The advisory group is proposing that the existing legislation is repealed and replaced by a clear and workable alternative which covers the full range of harm done to neglected children, specifically including non-physical harm. In response to an amendment tabled to the Crime and Courts Bill to create the new alternative offence the Minister, Damian Green, said that the existing section 1 offence already covers a wide range of behaviour. He noted that the Crown Prosecution Service (CPS) guidance explicitly refers to psychological harm.

With regards issues surrounding data transparency, collection and sharing, there have been a couple of changes to ensure a clearer, more consistent picture on crime. The Office for National Statistics announced that violent crime is being renamed "violence and sexual offences" in the hope that this will make it clearer where sexual offences are categorised. This new classification has been adopted by the new data hub – data.police.uk – which was launched on 1 July 2013. It is an extension of the original website, making Home Office data (transferred directly from each police force's own records system) more transparent. The website allows users to access information about crimes within the UK dating back to December 2010.

54

Ensure that professionals working with children receive training on their obligation to report and take appropriate action in suspected cases of domestic violence affecting children

Domestic violence may impact on children in two ways: they may experience it directly or they may be affected by witnessing others being abused.

The Government's commitment to ending violence against women and girls is detailed in its updated action plan *A Call to End Violence Against Women and Girls*.³⁶⁵ Under that plan, the Government has set out three training related actions (ongoing to 2015):

- Develop training for health visitors, to provide support to families when they suspect violence against women or children may be a factor;
- Produce a universal academic module (six days duration) for frontline professionals including nurses, teachers and social workers on violence against women and girls; and
- Support the Independent Sexual Violence Advisors (ISVA) network in increasing effectiveness and building capacity.

The Plan also includes the development of guidance and learning programmes for the police on sexual and domestic violence and the College of Policing is developing three levels of training. The Home Secretary has announced that all 4,000-plus officers in the new National Crime Agency formed in October 2013 are to be given special training in how to spot the signs of child abuse.³⁶⁶

The Department for Education is funding a new 2-year programme, led by the national domestic abuse charity CAADA, intended to improve support for teenagers aged 13 to 17 experiencing a wide range of violence and abuse, including domestic abuse.³⁶⁷ Launched in May, it aims to support local safeguarding teams to provide an improved response to vulnerable young people, in light of the recent change to the definition of domestic abuse to include younger victims.

The Government issued guidance in June 2013 to help health professionals to recognise factors that may indicate domestic violence and abuse; it also describes steps to ensure appropriate support and referral, where

363 Action for Children (January 2013) *The state of Child Neglect in the UK*

364 Action For Children (February 2013) *The Criminal Law and Child Neglect: An Independent Analysis and Proposal for Reform*

365 HM Government (March 2013) *A Call to End Violence Against Women and Girls Action Plan 2013*

366 Fagge, N. (18 Aug 2013) 'Thousands of Police Officers to Get Special Training in Child Protection Following Series of Cases', *Daily Mail*

367 Coordinated Action Against Domestic Abuse (16 May 2013) *Teenage Victims of Abuse to be Offered Improved Support*

necessary.³⁶⁸ It acknowledges that midwives, health visitors and school nurses are often one of the first to become aware of domestic violence and abuse issues within families.

The National Institute for Health and Care Excellence is however calling for training of those working within health and care services. It has recently consulted on draft guidance on how social care, health services, and those they work with, can identify, prevent and reduce domestic violence and abuse.³⁶⁹ The draft recommends training for GPs and practice staff in how to monitor disclosures of domestic violence and abuse and make appropriate referrals to specialist agencies. It also calls for NHS providers to introduce a strategy to overcome any barriers people may face when trying to get help for domestic violence and abuse. The guidance is expected to be published in February 2014.

55

Strengthen support for victims of violence, abuse, neglect and maltreatment in order to ensure they are not victimised during legal proceedings

While various measures have been taken to support victims of violence and abuse, the NSPCC continues to regret the lack of a consistent national approach to supporting the most vulnerable young victims of child sexual exploitation throughout the process, from point of disclosure through to court.³⁷⁰

The recent case of a teenage victim who gave evidence in a high-profile child street grooming case, and who was left so distraught by her experiences during the trial that she has said she was unwilling to take part in any future trials, has highlighted the significant work which remains to be done in this area.³⁷¹ Calling for an overhaul of the criminal justice system, the Deputy Director of Barnardo's has said: *'It is essential that we take steps to manage the impact of the invasiveness of court proceedings on vulnerable young people'*.

Over 23,000 child sex abuse offences were recorded over the last year within England and Wales; yet less than 25% were prosecuted.³⁷² The NSPCC is calling for the introduction of better access to a registered intermediary who can explain court proceedings to children who are giving evidence in a sex abuse case. Intermediary services have been available to 43 Police and Crown Prosecution service areas since 2008, but they are not being used effectively. NSPCC research reveals that children who are involved in these trials demonstrated symptoms of stress leading up to the trial, and many were unable to understand the questions asked in court.³⁷³

I am feeling so nervous about giving evidence in court. They are making me explain exactly what happened but I'm not sure I can cope with things like that just yet. Sometimes I wish I had never said anything. I feel like I have lost everything now and can't cope anymore. (Child interviewed for NSPCC report)

Several new measures have been announced, or implemented, over the course of the year to combat previous failings and to ensure victims get the support they need. The Government announced pilots under section 28 of the Youth Justice and Criminal Evidence Act 1999; this allows for recorded pre-trial cross-examination of vulnerable and intimidated witnesses in cases where there may be a delay in the holding of the trial, or where the nature of the case is such that the witness could be cross-examined in advance of trial.³⁷⁴ The OCC strongly supports the implementation of section 28 to ensure the protection of vulnerable witnesses, and urges the rapid implementation of these measures in full.³⁷⁵

New CPS guidelines on prosecuting cases of child sexual abuse have been published.³⁷⁶ The guidelines deal with the support that victims can expect, and make clear issues such as whether they can have counselling, whether they can know about other allegations, and what support they might have at trial. Central to the guidelines are:

- Focusing on the credibility of the overall allegation of abuse, rather than the credibility of the victim;
- Ensuring victims get a very high level of support;
- Challenging myths and stereotypes raised in court about the behaviour of the victim; and
- Assisting the courts to ensure effective timetabling and case progression.

368 Department of Health (June 2013) *Health Visiting and School Nursing Programmes: Supporting Implementation of the New Service Model No 5: Domestic Violence and Abuse, Professional Guidance*

369 National Institute for Care and Excellence (August 2013) *Domestic Violence and Abuse: How Social Care, Health Services and those they Work with Can Identify, Prevent and Reduce Domestic Violence and Abuse*

370 House Of Commons Home Affairs Committee (June 2013) *Child Sexual Exploitation and the Response to Localised Grooming*

371 Burke, T. (18 August 2013) 'Barnardo's Calls for Legal Overhaul as Grooming Victim Says she will not Give Further Evidence', *The Guardian*

372 NSPCC (2013) *Statistics on Child Sexual Abuse*

373 NSPCC (7 October 2013) *Courts Unjust to Child Sexual Abuse Witnesses*

374 Ministry Of Justice (11 June 2013) *Written Ministerial Statement: Pre-Trial Cross-Examination Testing*

375 Office of the Children's Commissioner (May 2013) *Response to the Ministry of Justice Consultation Improving the Code of Practice for Victims of Crime*

376 Crown Prosecution Service (October 2013) *Guidelines on Prosecuting Cases of Child Sexual Abuse*

The Ministry of Justice is reviewing the Code of Practice for Victims of Crime in order to provide clarity for victims in understanding their entitlements, and to meet obligations arising out of the EU Victims' Directive, which comes into effect in November 2015. Importantly, the Code extends enhanced victim services to all victims of crime who are under 18 years-old at the time of the offence (as opposed to the previous 17), including special measures for giving evidence at court.³⁷⁷ This extension has been warmly welcomed by the OCC as consistent with the UNCRC.³⁷⁸

Following the judgment in *R v Killick* in which the court stated '*as a decision not to prosecute is in reality a final decision for a victim, there must be a right to seek a review of such a decision*' and that a victim should not have to seek recourse to judicial review,³⁷⁹ the CPS launched the Victims' Right to Review initiative in June 2013. Described by the Director of Public Prosecutions, Keir Starmer QC, as '*one of the most significant victim initiatives ever launched by the CPS*',³⁸⁰ the new scheme makes it easier for all victims to seek a review of a CPS decision not to prosecute or to stop a prosecution. The CPS is also planning to review its wider communications with victims to make them more responsive and appropriate.³⁸¹

A 'core group' of specially trained judges is to be introduced for cases involving 'significantly vulnerable' witnesses or serious sex cases likely to last more than 10 days

Following a meeting of the All Party Parliamentary Group for Victims and Witnesses of Crime, the Bar Council has also announced the introduction of a '*required training programme*' for all advocates dealing with vulnerable witnesses. Currently, only prosecutors and judges must undergo training before questioning victims of crimes such as rape, child abuse and human trafficking.

Founded in order to change criminal justice practitioners' approaches to vulnerable witnesses, the Advocate's Gateway website was launched in April 2013 by the Attorney General. It is designed to provide practical, evidence-based guidance for criminal justice practitioners on vulnerable witnesses and defendants.

The Lord Chief Justice also announced in August 2013, following concerns over the way some victims are treated in court, that a '*core group*' of specially trained judges is to be introduced for cases involving '*significantly vulnerable*' witnesses or serious sex cases likely to last more than 10 days.³⁸²

The House of Commons Home Affairs Select Committee report on child sexual exploitation and the response to localised grooming notes:

*We are pleased to see that the Government and the Crown Prosecution Service are supportive of the use of special measures in child sexual exploitation trials. The work of the CPS and the advocates' gateway toolkits are both steps in the right direction. However, the description provided to us of the failure of special measures to be implemented correctly is a cause for concern... If the issue proves to be recurring throughout the court system we recommend that each court have a named individual with the responsibility for ensuring that special measures are being implemented appropriately whether that requires training for staff or investment in technical equipment.*³⁸³

The Home Affairs Select Committee, in light of evidence from various organisations, including The National Working Group and Victim Support, also recommended that all victims of child sexual exploitation be offered the services of an ISVA prior to their Achieving Best Evidence interview.³⁸⁴ The ISVA should be trained in court processes and, wherever possible, the victim should be supported by the same individual throughout the process. The Home Office has committed £1.72 million per year to part-fund 87 ISVA posts on a stable basis from 2011–12 to 2014–15, an increase from 44 in 2010–11.³⁸⁵ An article by a sexual violence charity suggests, however, that there is a shortage of ISVAs, with it not always being clear how a victim can access the support of an ISVA.³⁸⁶ Further it notes that those that do exist are not securely funded and their future is uncertain. This is supported by the fact ISVA provision is noted by the Police and Crime Committee to be patchy across London and to have been affected by funding cuts.³⁸⁷

The Select Committee has also recommended that the new national policy and guidance being drawn up by the College of Policing for the police and the CPS include a checklist of support services which a victim of

377 Ministry of Justice (March 2013) *Improving The Code of Practice for Victims of Crime Consultation Paper*

378 Office of the Children's Commissioner (May 2013) *Response to the Ministry of Justice Consultation Improving The Code of Practice for Victims Of Crime*

379 *R v Christopher Killick* [2011] EWCA Crim 1608

380 Crown Prosecution Service (4 June 2013) *DPP Enshrines Victims' Right to Review of Prosecution Decisions*

381 Crown Prosecution Service (June 2013) *Crown Prosecution Service Annual Report and Accounts 2012–13*

382 New Law Journal (13 August 2013) *Lord Chief Justice Confirms Plans for Specialist Judges*

383 House of Commons Home Affairs Committee (June 2013) *Child Sexual Exploitation and the Response to Localised Grooming*

384 House of Commons Home Affairs Committee (June 2013) *Child Sexual Exploitation and the Response to Localised Grooming*

385 Ministry of Justice (22 February 2013) *£4 Million to Help Rape Victims Rebuild their Lives*

386 Limeculture (28 February 2013) *ISVAs: Raising the Standards of Support for Victims of Sexual Violence*

387 Police and Crime Committee and London Assembly (January 2013) *Duty of Care: Improving Support for Victims of Crime*

child sexual exploitation ought to be offered following a decision to prosecute; this checklist ought to include, at the very least, pre-trial therapy, a pre-court familiarisation visit, and a chance to meet the prosecuting barrister.³⁸⁸ The drafts which have been consulted on simply list the range of services available to assist child victims, stating in the case of sexual exploitation that these include registered intermediaries, pre-trial therapy and counselling, supporting victims and protection at court.³⁸⁹

See also Concluding Observation 112.

56

Provide access for child victims of abuse to adequate services for recovery, counselling and other forms of reintegration

The continuing “Savile effect” has seen a huge jump in the number of serious sexual abuse incidents reported to the NSPCC. Calls to the charity’s 24-hour freephone almost doubled in June and July – with nearly 600 cases being referred to police and social services, compared to 323 reports during the same period last year.³⁹⁰

Whether all children receive the support they need following reporting is, however, questionable, according to the Deputy Children’s Commissioner. She told the Home Affairs Select Committee that psychological support services are variable around the country, and that she does not believe that all victims were getting the support they required. This belief is supported by the NSPCC, who estimated a possible shortfall of up to 88,000 places for therapeutic support.³⁹¹

Sexual assault referral centres (SARCs) aim to promote recovery and health following a rape or sexual assault, whether or not the victim wishes to report it to the police; this includes referral for psychological support, such as pre-court counselling. Data from individual SARCs suggests that between 22% and 50% of clients seen are children.³⁹² As at June 2013, there were 33 SARCs across the 39 police forces in England,³⁹³ the same number as in November last year.³⁹⁴

The Comparing Sexual Assault Interventions (COSAI) project, which was established with the aim of improving the effectiveness, appropriateness, and humanity of sexual assault services across Europe, has examined different models of intervention for female victims of sexual assault (aged 16 and over). Compared with many European countries, the UK is noted to have made good progress in supporting victims of sexual assault.³⁹⁵ It does nevertheless make a number of recommendations, including:

- Giving particular attention to engaging with certain population groups, including young people and ensuring they receive specialist aftercare services, such as specialist ISVAs;
- Giving particular consideration to the needs of 16–18 year olds who can require different care pathways to adult victims;
- Considering the development of a national database of agencies and services that can assist sexual assault victims, which would be managed, updated and shared by a central government agency;
- Addressing the wide geographical variation in sexual assault service provision, to ensure all victims receive consistently high quality care and support;
- Developing appropriate national guidelines and standards that: apply to all aspects of service provision; are based on evidence; and are monitored and evaluated by one regulating body; and
- Assigning every victim an ISVA to provide support and advice.

388 House of Commons Home Affairs Committee (June 2013) *Child Sexual Exploitation and the Response to Localised Grooming*

389 College of Policing (June 2013) *Public Consultation Draft: Guidance on Child Sexual Exploitation*

390 NSPCC (2 September 2013) *Sexual Abuse Calls Increase to NSPCC Helpline*

391 House of Commons Home Affairs Committee (June 2013) *Child Sexual Exploitation and the Response to Localised Grooming*

392 NHS England (June 2013) *Securing Excellence in Commissioning Sexual Assault Services for People who Experience Sexual Violence*

393 NHS England (June 2013) *Securing Excellence in Commissioning Sexual Assault Services for People who Experience Sexual Violence*

394 Department of Health (November 2012) See: <https://www.gov.uk/government/publications/international-sexual-violence-services-review-published>

395 Centre for Public Health (April 2013) *UK Guidance on Sexual Assault Interventions: Recommendations to Improve the Standards of Policy and Practice in the UK*

5

BASIC HEALTH AND WELFARE

ARTICLES 6.2, 23, 24, 26,
18.3, 27.1, 27.2 AND 27.3

Governments must ensure that every child has a standard of living adequate to their physical, mental, spiritual, moral and social development. Whilst recognising the responsibilities that parents have for this, governments must ensure that they provide assistance to families to ensure that children's essential needs are met (in particular nutrition, clothing and housing). The Committee has said:

The Committee interprets children's right to health as defined in article 24 as an inclusive right, extending not only to timely and appropriate prevention, health promotion, curative, rehabilitative and palliative services, but also to a right to grow and develop to their full potential and live in conditions that enable them to attain the highest standard of health through the implementation of programmes that address the underlying determinants of health.

57 Develop a comprehensive national strategy for the inclusion of disabled children in society

In 2013, several updates to *Fulfilling Potential* (a government strategy to enable disabled people to realise their potential)³⁹⁶ were published:

- *Building Understanding*: analysing current evidence on disability in the UK;³⁹⁷
- *Making It Happen*: outlining indicators and outcomes for measuring progress in disabled people's opportunities;³⁹⁸ and
- *Making It Happen Action Plan*: capturing current disability strategy.³⁹⁹

Whilst *Fulfilling Potential* and the accompanying action plan refer to several activities either underway or planned in relation to children, it does not set out a comprehensive plan for the inclusion of disabled children in society.

The UK Disabled People's Manifesto, developed by disabled people and their organisations, sets out their 'shared vision for an inclusive and equal society free from economic, social and cultural barriers.'⁴⁰⁰ John MacDonnell MP sponsored an Early Day Motion in support of the Manifesto:

That this House warmly welcomes the launch of the UK Disabled People's Manifesto, Reclaiming our Futures, developed by disabled people and their organisations across the UK, which sets out the shared vision of disabled people for an inclusive and equal society free from economic, social and cultural barriers; and urges all political parties represented in this House to engage in a constructive dialogue with the disabled people's organisations promoting the manifesto with the aim of achieving its objectives.⁴⁰¹

It currently has 30 signatories.

The Government's stated aim (to 'make a reality of the expectations of the UN Convention on the Rights of Disabled People'), as outlined in its action plan, is undermined by a programme of welfare reforms and budget cuts. The cuts have been found to have a disproportionate detrimental impact on disabled children. A child rights impact assessment by the OCC of budget decisions and changes to the tax and welfare system between 2010–15 concluded that families with disabled children suffered bigger than average losses in terms of family income, and children with disabled parents were also likely to experience greater than average losses.⁴⁰² Further research published by the Children's Commissioner found some families cannot afford the basic necessities to which a disabled child is entitled in order to live a dignified life.⁴⁰³

The Children and Families Bill⁴⁰⁴ outlines major reforms in special educational needs (SEN) assessment and services; proposing a single education, health and care plan (EHC Plan) for children and young people from birth to 25 years to replace the current statements system. The broad thrust of the plans – a single assessment and plan to meet a child's education, health and care needs – have been welcomed, but serious concerns have been raised that the reforms undermine disabled children's rights by making the education system even less inclusive than currently, by excluding large groups of disabled children from the system and by setting up weak and complex accountability mechanisms.

In relation to education, the Disabled People's Manifesto calls for a fully inclusive education system: 'All disabled learners must have the legal right to attend courses in all education settings within a fully inclusive education system that meets their individual needs'. According to the Alliance for Inclusive Education (ALLFIE), the right of children with SEN to be admitted to a mainstream nursery or school will be weakened by the provisions in the Children and Families Bill.⁴⁰⁵ The Joint Committee on Human Rights has also called for children's right to inclusion to be better reflected in the Bill's provisions.⁴⁰⁶ The "presumption of inclusion" (according to which children with SEN have the right to attend a mainstream institution unless it would damage the efficient education of others) will no longer apply to nurseries, undermining the inclusion rights of younger children. Changes

396 Department for Work and Pensions (December 2011) *Fulfilling Potential – a Discussion Document*

397 Department for Work and Pensions (February 2013) *Fulfilling Potential-Building a Deeper Understanding of Disability in the UK today*

398 Department for Work and Pensions (July 2013) *Fulfilling Potential Making It Happen*

399 Department for Work and Pensions (July 2013) *Fulfilling Potential Making It Happen: Action Plan*

400 Inclusion London (August 2013) *UK Disabled People's Manifesto: Reclaiming Our Futures*

401 Early Day Motion 483, *UK Disabled People's Manifesto*, tabled 4 September 2013

402 Office of the Children's Commissioner (June 2013) *A Child Rights Impact Assessment of Budget Decisions: including the 2013 Budget, and the Cumulative Impact of Tax-benefit Reforms and Reductions in Spending on Public Services 2010–2015*

403 Office of the Children's Commissioner (October 2013) *"We want to help people see things our way": A Rights-based Analysis of Disabled Children's Experience Living with Low Income*

404 Children and Families Bill (HL Bill 32)

405 Alliance for Inclusive Education (July 2013) *Children and Families Bill Second Reading Debate Briefing, House of Lords*

406 Joint Committee on Human Rights (June 2013) *Legislative Scrutiny: Children and Families Bill; Energy Bill; Third Report of Session 2013–2014*

will also affect children with SEN but without a statement. Currently, they must be educated in a mainstream school. Under the Bill, the same children will have a right to a mainstream education unless admitted to a Special Academy – and Special Academies will be able to admit children outside of the SEN legal framework. According to the Special Educational Consortium and Every Disabled Child Matters Campaign, *'this creates a risk that children and young people will be inappropriately placed in special schools and undermines the principle that mainstream settings must be inclusive for all children and young people'*.⁴⁰⁷ The revised Code of Practice on the Bill also fails to reflect the children's right to inclusivity, leading to concerns that institutions will increasingly rely on provisions which allow them to turn down children with SEN on the basis of the "efficient education of other pupils".

The Bill does not go far enough in tackling some of the most entrenched and severe problems affecting a child's right to an inclusive education, such as discriminatory exclusions. The British Medical Association (BMA) has expressed concerns that the *'disproportionate exclusion of pupils with SEN is likely to be unaffected by the Children and Families Bill'*.⁴⁰⁸ Research and surveys undertaken by Contact a Family from 2012–13 indicate that unlawful exclusions of children with SEN remain commonplace.⁴⁰⁹ Though the SEN Green paper proposed that schools should be required to perform multi-agency assessments prior to exclusion, this proposal was not adopted in the Bill.

Large groups of disabled children and children with SEN are excluded from the new system. The reforms only affect disabled children who have SEN. This means that the 25% of disabled children with no SEN will be excluded from the positive aspects of the reforms, such as a single education, health and care plan to address the full range of a child's support needs. The Children and Families Bill expressly excludes children and young people in custody from reforms to the SEN system.⁴¹⁰ The OCC has commented that:

*The exclusion of children in detention from the Bill's provisions on special educational needs is in breach of the UNCRC and represents a missed opportunity to promote the rights and rehabilitation of some of the most vulnerable children and young people in England.*⁴¹¹

The accountability mechanisms in the Bill are not strong enough. There are concerns that the duty on local authorities to publish their "local offer" of services for children and young people with SEN is 'too weak'; as drafted, children and their families will not have the ability to hold local authorities to account if they fail to provide the services set out in their local offers.⁴¹² While the Government has amended the Bill to impose a duty on Clinical Commissioning Groups (CCG) requiring them to comply with and deliver the services specified in a child's EHC plan,⁴¹³ there is no similar provision in respect of social care providers. The system for appealing against decisions made in relation to EHC plans is too complex. There is no single point of appeal regarding the content of EHC plans. This will result in children and families having to *'navigate a vastly complex complaints system across three agencies'* in order to enforce their rights.⁴¹⁴

See also Concluding Observation 79.

58 Develop early identification programmes for disabled children

The Children and Families Bill sets out reforms to the system for identifying, assessing and making provision for children with SEN. The Department for Education has emphasised that *'early identification of needs so that professionals can intervene early with the most appropriate support for a child and their family'* is a key principle underpinning the new SEN system.⁴¹⁵ However, there are concerns as to whether the reforms are *'conducive to ensuring early and effective identification'*.⁴¹⁶ The only triggers for identification are education-focused, posing a real risk that children with social care or health needs will not be identified until such time as their educational needs are identified.⁴¹⁷ Essentially, the fact that entitlement to an EHC Plan is *'firmly attached to education'* means *'the promised 0–25 system in effect appears to be focused on the 2–18 age range'*.⁴¹⁸

407 Every Disabled Child Matters & Special Education Consortium (July 2013) *The Children and Families Bill – House of Lords Second Reading*

408 British Medical Association Board of Science (May 2013) *Growing Up in The UK: Ensuring a Healthy Future for Our Children*

409 Contact A Family (February 2013) *Falling through the Net: Illegal Exclusions, the Experiences of Families with Disabled Children in England and Wales*

410 Children and Families Bill (HL Bill 32), c. 70

411 Children's Commissioner (February 2013) *A Child Rights Impact Assessment of Parts 1–3 of the Children and Families Bill (HC Bill 131)*

412 Every Disabled Child Matters and Special Educational Consortium (July 2013) *The Children and Families Bill – House of Lords Second Reading, A briefing from the Every Disabled Child Matters and the Special Educational Consortium*

413 Department for Education (March 2013) *Children and Young people with SEN to Benefit from New Legal Health Duty*

414 Every Disabled Child Matters and Special Educational Consortium (July 2013) *The Children and Families Bill – House of Lords Second Reading, A briefing from the Every Disabled Child Matters and the Special Educational Consortium*

415 Department for Education (March 2013) *Children and Families Bill, Memorandum (CF 51)*

416 Mencap (March 2013) *Children and Families Bill, Memorandum (CF 34)*

417 Mencap (October 2012) *Written Evidence to the Education Committee, Pre-legislative Scrutiny: Special Educational Needs*

418 Sense (October 2012) *Written Evidence to the Education Committee, Pre-legislative Scrutiny: Special Educational Needs*

Cuts to the Early Intervention Grant (EIG) continue to cause concern. The EIG was created in 2010, bringing together a number of strands of funding, including funding for Sure Start children's centres and short breaks for disabled children. In January 2013, it was announced that the £150 million top slice of the Grant was to fund the Adoption Reform Grant.⁴¹⁹ This has received criticism:

*[A]doption has a place in the system and may need reform. However it is nonsensical for the government to shift spending away from the Early Intervention Grant to speed up adoption services, early intervention saves money and has a proven track record of effectively nipping family problems in the bud and its purpose is to prevent family breakdown.*⁴²⁰

According to The Children's Society, '[t]he total value of the Early Intervention Grant when it was introduced was around £3 billion in today's prices. By 2015 however, the value of the grant will have been nearly halved to around £1.5 billion.'⁴²¹

59 Undertake awareness-raising campaigns on the rights and special needs of disabled children, encouraging their inclusion in society and preventing discrimination and institutionalisation

There has been no awareness-raising campaign focused specifically on the rights and special needs of disabled children.

Numerous disability awareness-raising campaigns are outlined in the *Making it Happen Action Plan*, though not specifically intended to benefit disabled children. One such example is *The Time to Change* campaign that aims to tackle stigma and discrimination around mental health, with Government and Comic Relief funding of up to £20 million over the next four years.⁴²²

A *Joint Review of Disability Hate Crime*⁴²³ raised concerns about 'how the criminal justice system has dealt with disability hate crimes in recent years', and about under-reporting. Figures showing that 1,937 disability hate crimes were recorded by police in England and Wales in 2011⁴²⁴ are unlikely to represent the actual number committed. The review found:

- Many police forces do not have a system of support in place to help disabled victims through the criminal justice process;
- Prosecutors were often not clear in identifying and analysing disabled hate crime offences, and sometimes failed to obtain enough evidence from the police; and
- Disabled victims of crime lack the confidence to approach the police.

The review found there to be 'a lack of clarity and understanding as to what constitutes a disability hate crime and confusion between definitions and the statutory sentencing provision contained within Criminal Justice Act 2003'.⁴²⁵ The report's findings lead to the conclusion that 'in many ways disability hate crime is the hate crime that has been overlooked'.⁴²⁶

See also Concluding Observation 82.

60 Provide training for professionals working with disabled children

The British Medical Association has expressed concerns that certain professionals working with disabled children may lack training and support from specialist services. It states that, 'the responsibility for early identification and initial management of difficulties falls to professionals at the primary level,' for example, nursery staff. It also finds the lack of child development in the curriculum of teacher training courses to be 'surprising', and suggests that 'there is a strong argument for a review of child development content in the curriculums of all professionals

419 Department for Education (January 2013) *Last Chance for Local authorities to Attract More Adopters*

420 See for example: <http://www.family-action.org.uk/uploads/documents/EIG%20Adoption%20Announcement%20-%2020130124105414.pdf>

421 The Children's Society (2013) *Breaking Barriers: How to Help Children's Centres Reach Disadvantaged Families*

422 Department for Work and Pensions (July 2013) *Fulfilling Potential Making It Happen: Action Plan*

423 Criminal Justice Joint Inspection (March 2013) *Living in a Different World: Joint Review of Disability Hate Crime*

424 See http://www.report-it.org.uk/files/final_acpo_hate_crime_data_2011_%28revised_oct_2011%29_1.pdf

425 Criminal Justice Act 2003, s. 146

426 Her Majesty's Crown Prosecution Service Inspectorate (March 2013): *Living in a Different World; a Joint Review of Disability Hate Crime*

working with children, given the *'advantages of early identification and intervention in childhood disability'*.⁴²⁷

The Nutbrown Review made a number of recommendations relating to the training and qualifications of early years childcare professionals.⁴²⁸ It recommended improved content for level 3 qualifications, including child development and SEN and disabilities. This has been accepted by the Government, and the Teaching Agency will consult on a revised set of 'full and relevant' criteria to ensure qualifications promote the right content; the timescale for compliance with the new criteria will, however, be September 2014 rather than September 2013 as recommended by the Review.⁴²⁹

Since September 2009, all new Special Educational Needs Co-ordinators (SENCOs) in mainstream schools have been required to gain the masters level National Award for Special Educational Needs Co-ordination within three years of taking up their posts. The Department for Education provided funding for 514 places for 2013–14,⁴³⁰ but have confirmed that this is the final year of funding.⁴³¹

The Department has funded a number of organisations to provide training to professionals working with disabled children. The Autism Education Trust, for example, received funding *'to develop a competency framework for professionals working with children with autism in educational settings; providing a nationally recognised accreditation scheme; accredited training, qualifications and resources'*.⁴³² The Early Support Trust, within the National Children's Bureau, is developing training for key workers, who provide frontline support to disabled children and their families.⁴³³ Furthermore, the Voluntary, Community and Social Enterprise Sector National Prospectus Grants Programme 2013–15 will support 20 organisations in *'promoting excellence in early education and childcare'*, and to *'developing and reforming services that support children with SEN, disabilities and other health needs'*.⁴³⁴

61 Take all necessary measures to ensure that protective legislation, programmes and services for disabled children are effectively implemented

Early intervention funds are increasingly under pressure due to: a new obligation on local authorities to provide free education to disadvantaged two year olds; the reduced value of the EIG through cuts; incorporation of the EIG into the Business Rates Retention Scheme; and the top slicing of £150 million to fund the Adoption Reform Grant. Accordingly, the Local Government Association has expressed concerns that: *'Local authorities will be less able to provide support for children and families affected by disabilities...'*⁴³⁵

Short breaks services may suffer due to pressures on the EIG. In a recent study eight out of ten family carers said they do not have enough short breaks, three out of ten have never had a short break and four out of ten felt their short breaks services got worse in the past three years.⁴³⁶ Despite recent government investment of over £1.2 billion in short breaks for carers, three out of ten councils closed short breaks services for adults and children in the last three years, and over half have cut spending on short breaks for children with a learning disability in the last two years.

Since September 2012 schools have been required to provide auxiliary aids/services to pupils. However, as Minister Lord Nash commented: *'simply giving schools additional legal duties would not tackle the root cause of poor practice'*.⁴³⁷ In February, the Department for Education produced non-statutory advice intended to help schools understand how the Equality Act affects them and how to fulfil their duties under the Act.⁴³⁸ A review of the effectiveness of the Public Sector Equality Duty (PSED) was published in September 2013. If properly implemented, the duty has the potential to have a significant impact on the lives of disabled children. This threat to the future of the PSED is, therefore, of significant concern. See Concluding Observation 18 for further information on the Public Sector Equality Duty and equality law.

427 British Medical Association Board of Science (May 2013) *Growing Up in The UK: Ensuring a Healthy Future for Our Children*

428 Department for Education, Nutbrown Review (June 2012) *Foundations for Quality: the Independent Review of Early Education and Childcare Qualifications – Final report*

429 Department for Education (January 2013) *More Great Childcare Raising Quality and Giving Parents More Choice*

430 Department for Education (August 2013) *More Support for Special Education Needs Teachers*

431 Department for Education (July 2013) *The National Award for Special Educational Needs Co-ordination*

432 Department for Education *Improving Outcomes for Children, Young People, and Families: DfE Grant Funded Projects 2011–13*

433 See: <http://www.ncb.org.uk/early-support/about-early-support>

434 Department for Education (May 2013) *Voluntary, Community and Social Enterprise Sector (VCES) Grants Programmes*

435 Local Government Association (January 2013) *House of Lords Debate on the Local Government Finance Settlement*

436 Mencap (February 2013) *Short Breaks Support is Failing Family Carers: Reviewing Progress 10 Years on from Mencap's First Breaking Point Report*

437 HL, 2 July 2013, c. 1199

438 Department for Education (February 2013) *Equality Act 2010, Advice for School Leaders, School Staff, Governing Bodies and Local Authorities*

62

Ratify the International Convention on the Rights of Persons with Disabilities and its Optional Protocol

This has been done. The UK ratified the UNCRPD and its Optional Protocol on 8 June 2009. However, on ratifying the UNCRPD, the UK Government expressed four reservations, of which three are still in place, and one interpretative declaration. A reservation means that a Government is not bound by a particular part of an Article in a Convention. An interpretative declaration means that the Government will agree to be bound by a measure, but in light of its own interpretation of that Article. UK Government Reservations to the UNCRPD:

- In relation to Article 24 2(a) and (b), (inclusive education): *'The United Kingdom reserves the right for disabled children to be educated outside their local community where more appropriate education provision is available elsewhere. Nevertheless, parents of disabled children have the same opportunity as other parents to state a preference for the school at which they wish their child to be educated';*
- A reservation on the right for regular review where a person exercises substituted decision-making rights in relation to social security claims and payments;
- A reservation to permit discrimination against disabled people in admission into or service in the UK Armed Forces.

The UK Government's interpretive declaration also relates to Article 24 2(a) and (b), of the UNCRPD (inclusive education):

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. The General Education System in the United Kingdom includes mainstream, and special schools, which the UK Government understands is allowed under the Convention.

63

Address inequalities in access to health services through a co-ordinated approach across all government departments

Professor Sir Al Aynsley-Green, the former Children's Commissioner, has commented, *'[In] 2013 we are currently experiencing the most challenging era for children, young people and their health for the last 30 years.'*⁴³⁹

A report by the British Medical Association tends to support this, noting the current financial climate increases both the urgency of tackling inequalities and the challenge of securing the necessary resources.⁴⁴⁰ It considers intervention programmes hold the key, but says that despite some early intervention initiatives and some limited funding for interagency work, young children generally face more challenges and less support than before; this is due to recessionary cuts and a lack of any political resolve to fund a comprehensive ongoing early intervention programme. It also notes the future difficulty in providing *'coherent interagency networks of services'* due to drastic changes to the commissioning of children's services and increased emphasis on competition between providers. The impact will fall disproportionately on the most disadvantaged children and families. Professor Averil Mansfield, chair of the BMA's Board of Science, has said that children *'should not pay the price for the economic downturn.'*

From April 2013, the changes enacted by the Health and Social Care Act 2012 have seen the creation of new local and national bodies within the health system – such as health and wellbeing boards, clinical commissioning groups and the NHS Commissioning Board. The aim of health and wellbeing boards is to improve integrated working between local health care, social care, public health and other public service practitioners so that patients and service users experience more joined-up care, particularly in the transition between health and social care. The boards are also responsible for leading locally on reducing health inequalities.⁴⁴¹ Similarly, Clinical Commissioning Groups and NHS England must work to reduce inequalities in both access to health services and the outcomes achieved.⁴⁴²

It is too soon to assess the Act's impact, but concerns have been raised. The BMA Board of Science, for example, states: *'health policy analysis suggests that the emphasis on competition rather than collaboration may impair efforts to integrate services and reduce equity of access to care.'*⁴⁴³ Concerns have also been raised by the

439 Trigg, N. (16 May 2013) Children 'failed on grand scale', *BBC News*

440 British Medical Association Board of Science (May 2013) *Growing up in the UK: Ensuring a Healthy Future for Our Children*,

441 Health and Social Care Act 2012

442 National Health Service Act 2006 (as amended), ss. 13G and 14T

443 British Medical Association Board of Science (May 2013) *Growing Up in The UK Ensuring A Healthy Future for Our Children*

Communities and Local Government Committee as to accountability, and the fact that there seems to be 'real confusion' over how, and for what, health and wellbeing boards are to be held accountable.⁴⁴⁴ Experts have warned that changes brought in as part of NHS reforms to the funding allocation across England's clinical commissioning groups (CCGs) could exacerbate existing health inequalities.⁴⁴⁵ A proposed NHS funding formula, under consideration by NHS England, would see the removal of the current deprivation measure, placing greater emphasis on age-related resource allocation. There is a risk that resources would consequently be focused on areas where life expectancy is already high (such as in the South East of England), and away from areas where life expectancy is lowest (in parts of the North of England).

Disadvantaged children face particular barriers in accessing health services on an equal basis with others. The Immigration Bill is set to put in place discriminatory barriers to accessing health services. It would introduce a new "health charge" for temporary non-EEA migrants living in the UK – those who require leave to enter or remain and do not have it and those who have limited leave to enter or remain.⁴⁴⁶ When the Government consulted on earlier proposals,⁴⁴⁷ the Refugee Children's Consortium voiced serious concerns stating that they 'strongly believe that immigration status should never be a barrier to good health for any child'.⁴⁴⁸ They recommended that:

All children, young people and families should be able to access free primary and secondary health care regardless of their immigration status. We believe that irregular migrant children and young people should be recognised as a particularly vulnerable group, already at risk of destitution, exploitation and social exclusion, and that their rights should not be breached for the purpose of immigration control.

In a very welcome move, in June 2013, the Royal Colleges published new joint *Healthcare Standards for Children and Young People in Secure Settings*.⁴⁴⁹ These recognise that, '[y]oung people in secure settings have significantly greater physical, mental and emotional health needs than their peers in the non-secure community'. They refer to the requirements of the UNCRC and call on professionals to see a child's time in custody as a 'window of opportunity' to intervene. They emphasise that a child should be involved in decisions about his or her healthcare, the importance of professionals working together and of promoting continuity of care when a child leaves custody.

In February 2013, the Government announced a national pledge,⁴⁵⁰ to which Local Authorities and health and wellbeing boards have been urged to sign up to overcome 'unacceptable variation in quality of care across the country'.⁴⁵¹ The Government is also pledging new survey/data on children's health. The Children and Young People's Health Outcomes Forum recommended analysis of data demonstrating links between health inequality and other disadvantages. The Department of Health's response said it will explore the potential to present existing data to highlight the outcomes of vulnerable groups. Data could support the development of the child poverty needs assessment.⁴⁵²

64

Better co-ordinate health policies with those aiming to reduce income inequality and poverty

Inequalities in health outcomes continue to widen. Poor children are now four times more likely to be unhealthy than richer children, after the "health gap" increased seven fold in a decade.⁴⁵³ Research by University College London's Institute of Child Health and Imperial College NHS Trust, London, investigated inequality trends in health between 1999 and 2009 among English children, adolescents and young adults, aged from birth up to 24 years old.⁴⁵⁴ Whereas inequality between children from different socio-economic groups decreased in terms of infant mortality, inequality in general health, long-standing illness, smoking and obesity among children either stayed the same or increased.⁴⁵⁵ The authors 'expected increases in child poverty may exacerbate the challenge of reducing child health inequalities in the future and we call for a concerted policy response'.

444 Communities and Local Government Committee (March 2013) *The Role of Local Authorities in Health*

445 See for example: The King's Fund (19 August 2013) *On the Money? NHS gets Serious about Allocations*

446 Immigration Bill, cc. 33 and 34

447 Home Office (July 2013) *Controlling Immigration – Regulating Migrant Access to Health Services in the UK*

448 The Refugee Children's Consortium (August 2013) *Response to 'Sustaining Services, Ensuring Fairness: A Consultation on Migrant Access and their Financial Contribution to NHS Provision in England'*

449 Royal College of Paediatrics and Child Health, Royal College of General Practitioners, Royal College of Nursing, Royal College of Psychiatrists, Faculty of Forensic and Legal Medicine, Faculty of Public Health (June 2013) *Healthcare Standards for Children and Young People in Secure Settings*

450 Department of Health (19 May 2013) *New National Pledge to Improve Children's Health and Reduce Child Deaths*

451 Children & Young People Now (12 August 2013) *Minister Urges Action to Improve Child Health Outcomes*

452 Department of Health (February 2013) *Improving Children and Young People's Health Outcomes: a System Wide Response*

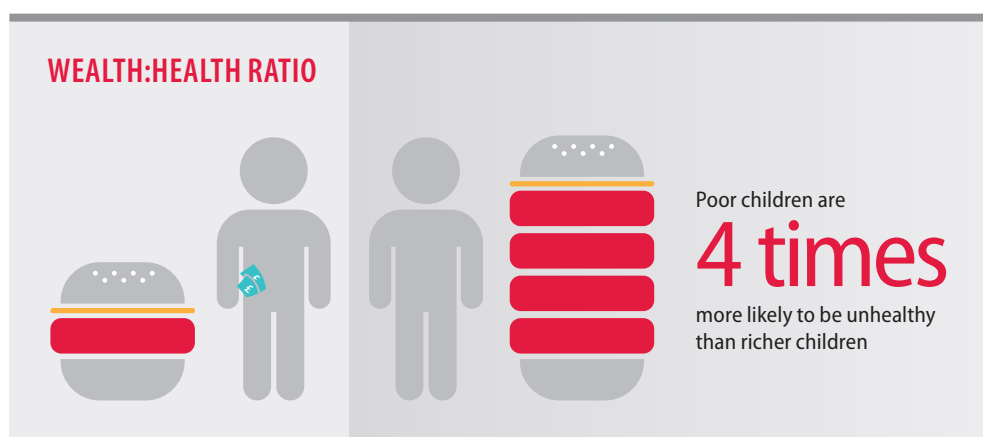
453 University College London (30 May 2013) *Growing Inequality in Children's Health*

454 Hargreaves, D. S., Marbini, A. D., Viner, R. M. (April 2013) *Inequality Trends in Health and Future Health Risk Among English Children and Young People, 1999–2009*

455 Hargreaves, D. S., Marbini, A. D., Viner, R. M. (April 2013) *Inequality Trends in Health and Future Health Risk Among English Children and Young People, 1999–2009*

Official statistics show that a child from a disadvantaged background is far less likely to achieve a good level of development than a child from a more privileged home.⁴⁵⁶ In 2011–12 48% of children eligible for free school meals achieved a good level of development at age four compared with 67% of other children at the same age. A report by the BMA finds that poverty is associated with a higher risk of both physical and mental illness across the lifespan, and that children in the poorest households are three times more likely to have a mental illness than children in the best off households.⁴⁵⁷ Church Action on Poverty and Oxfam reported poor children suffering from lower nutritional intake, bad dietary patterns, hunger, low fruit and vegetable consumption and stressed that people forced to live on an inadequate diet have a significantly increased risk of stress, ill health, poor educational attainment, and shortened life expectancy.⁴⁵⁸

The BMA report states it is short-sighted of ministers to slash funding for many health intervention projects that are addressing the 'causes of social breakdown' and to be paying for the consequence instead.⁴⁵⁹ It also says government policies are 'unlikely to be described by health policy analysts as family friendly'. Reference is made to cuts to child benefit, closure of Sure Start centres and regressive tax policies that differentially affect women and children. The report suggests that the Welfare Reform Act and Health and Social Care Act will arguably have 'profoundly deleterious effects' on the most vulnerable patients. It concludes that it is unlikely, given current policy and the economic situation, that child wellbeing will improve over the next few years.



The BMA highlights a lack of coordination in addressing health inequalities. The report stresses that a multidimensional policy response across government departments is essential to tackling the complex social and economic determinants of ill-health. It recommends that whether or not they are directly concerned with the needs of children, all government policies and programmes should consider their effect on children. It identifies a need for financial and organisational coordination, supportive local and national policy, and adequate resources invested for a sufficient period to allow improvement, especially in light of the greater emphasis now placed on provision of services by a range of voluntary and statutory providers competing for funding.

The Health and Social Care Act 2012 came into force in April. It introduces a new framework for the NHS, with a new role for local authorities in the co-ordination, commissioning and oversight of health and social care, public health and health improvement. It has yet to be seen whether the Act helps or hinders integration between services and equality of access to care.⁴⁶⁰ The Act does recognise that services that are not necessarily part of the health system – 'health-related services'⁴⁶¹ such as schools, Children's Centres and youth services – have an important role to play in improving the health and wellbeing of individuals and the need for integrated working. However, the local Health and Wellbeing Boards established under the Act are only under a duty to encourage integration in relation to health and social care; they have a discretion whether to encourage integration across these and health-related services.⁴⁶² This was a concern to many organisations commenting on the Bill.⁴⁶³ Also of concern was the way the legislation promotes competition among providers, rather than collaboration,⁴⁶⁴ and this, in the BMA's view, points to integration and equality being hindered.⁴⁶⁵

Partners in the National Collaboration for Integrated Care and Support have signed up to a series of commitments on helping local areas integrate health, care and support services.⁴⁶⁶ In the short term, they are look-

456 Office for National Statistics (February 2013) *Childhood, Infant and Perinatal Mortality in England and Wales 2011*

457 British Medical Association Board of Science (May 2013) *Growing up in the UK: Ensuring a Healthy Future for our Children*

458 Cooper, N. and Dumpleton, S. (May 2013) *Walking the Breadline the Scandal of Food poverty in 21st Century Britain, Church Action on Poverty and Oxfam*

459 British Medical Association Board of Science (May 2013) *Growing up in the UK: Ensuring a Healthy Future for our Children*

460 Samuel, M. (4 April 2013) *What Social Workers Need to Know About the New NHS, Community Care*

461 The Health and Social Care Act 2012, s. 195(6)

462 The Health and Social Care Act 2012, ss. 195(1) and 195(3)

463 See for example: National Children's Bureau (October 2011) *Health and Social Care Bill: NCB Briefing for Second Reading in the House of Lords*

464 Samuel, M. (4 April 2013) *What Social Workers Need to Know About the New NHS, Community Care*

465 British Medical Association Board of Science (May 2013) *Growing up in the UK: Ensuring a Healthy Future for our Children*

466 Department of Health (May 2013) *Integrated Care and Support: Our Shared Commitment*

ing for all localities in England to have adopted models for integrated care and support within the next two years, with the long term measure of success being for integrated care and support to become the norm within five years. For the time being, however, the Social Mobility and Poverty Commission 'remain to be convinced' that different policies are coordinated:

...the UK Government should broaden and clarify its approach to life chances, including defining clearer goals, supported by a definition of success, and an ambitious timeline for reaching milestones. Having different life chances objectives split between the social justice, child poverty, social mobility and public health strategies may be justifiable, but only if they are all pulling in the same direction. Again we remain to be convinced that this is presently the case.⁴⁶⁷



65

Provide additional resources and support for children with mental health difficulties, including a focus on children deprived of parental care, children affected by conflict, those living in poverty and those in conflict with the law

A recent report by the Association for Young People's Health, which sets out key data on adolescence, reveals that around 13% of boys and 10% of girls aged 11 to 15 have mental health problems.⁴⁶⁸ Those most frequent in the teenage years include anxiety and depression, eating disorders, conduct disorder, attention deficit and hyperactivity disorder, and self-harm. It also highlights that suicide rates for young men have fallen since 2001, but that there has been little change for young women. Findings from a YouGov poll in July (undertaken as part of a report for MindFull) showed: one in five children show symptoms of depression; almost a third (32%) have thought about or attempted suicide before they were 16; and 29% say that they have self-harmed because they felt down.⁴⁶⁹

Further data is needed in relation to the mental health of children. The National Children's Bureau and the Council for Disabled Children said that NHS England should consider making this a priority area, as the majority of the indicators that relate to improving mental health services and outcomes currently only apply to patients and the public who are over either 16 or 18. The Chief Medical Officer has suggested that the British Children and Adolescent Mental Health Survey should be repeated, to provide more up to date information and help the planning of health care services.⁴⁷⁰ Responding to the recommendations of the Children and Young People's Health Outcomes Forum, relating to the monitoring and measuring of children's mental health outcomes, the Department of Health has stated that it will explore finding new, or extending existing, data sources and measures about the prevalence of mental health problems in children.⁴⁷¹

A better response is also needed. The National Children's Bureau and the Council for Disabled Children have said that access to information about mental health services, support in accessing these services and "parity of

⁴⁶⁷ Social Mobility and Poverty Commission (2013) *State of the Nation 2013: Social Mobility and Poverty in Great Britain*

⁴⁶⁸ Association for Young People's Health (2013) *Key Data on Adolescence 2013*

⁴⁶⁹ MindFull (July 2013) "Alone with my thoughts" *Recommendations for a New Approach to Young People's Mental Health Support Including the Results of a YouGov poll of 2,000 Young People in the UK*

⁴⁷⁰ Department of Health (October 2013) *Chief Medical Officer's Annual Report 2012: Our Children Deserve Better: Prevention Pays*

⁴⁷¹ Department of Health (February 2013) *Improving Children and Young People's Health Outcomes: a System Wide Response*

esteem" between adults and children's mental health, need 'significant improvement'.⁴⁷² The annual report of the Chief Medical Officer recommends that common intervention strategies should be used – to improve mental health, prevent or reduce substance misuse, and focus on common risk factors.⁴⁷³ In addition, improvements should be made for age appropriate facilities, with age appropriate facilities being available for adolescents across a range of physical and mental health services.

In response to a question about local authority expenditure on children and adolescent mental health services, Norman Lamb, Minister of State for Care and Support, indicated that the provision of Child and Adolescent Mental Health Services is included both in the overall financial allocations to the National Health Service and in individual allocations to local authorities provided through the Local Government Revenue Support Grant. The grants have been maintained and will rise with inflation over the spending period (in 2012–13 it was £784.43 million).⁴⁷⁴ Individual elements of funding are not, however, ring-fenced,⁴⁷⁵ and feedback from local authorities indicates that budget cuts have had a detrimental impact upon support services for children with mental health difficulties. A Freedom of Information request by YoungMinds found 34 local authorities (out of the 51 who responded) said that their budgets for Child and Adolescent Mental Health Services (CAMHS) were cut between 2010 and 2013, with one council reporting a 76% reduction in its CAMHS budget during that period.⁴⁷⁶

The Government announced, in March 2013, a number of measures intended to provide additional support for children with mental health issues: health services would be specified as a priority of NHS England and mental health would be specified as a priority for Public Health England; changing how the Government tracks success in mental health services; checking health visiting and school nursing services have the right training to help children with mental health problems; and developing of a new online service for professionals working with children to provide guidance on child mental health.⁴⁷⁷

Disadvantaged groups continue to have greater need for mental health interventions. The Care Inquiry report points out that the majority of looked after children and those returning from care have high levels of need requiring long-term support. They recommend access to services including counselling, family therapy, mediation, advocacy, and mental health services – responsive to the circumstances of the individual child and which are available beyond childhood and into adulthood.⁴⁷⁸ A survey in early 2013 of the 2,000 members of the Grandparents Plus Support Network for kinship carers, shows that one in five children have received support from CAMHS.⁴⁷⁹

The new *Healthcare Standards for Children and Young People in Secure Settings* recognise that 'the prevalence of mental health disorders is over three times greater in young people in secure settings compared to the general population'.⁴⁸⁰ They put in place standards requiring '[y]oung people at risk of self-harm or suicide are provided with individual care and support'. Current practice falls below these standards. The SCR following the death in custody of Alex Kelly [Child F] was published in August 2013.⁴⁸¹ The review found that Alex had been sexually abused as a child and taken into care. It identified a number of 'shortcomings in the services provided before he went into Cookham Wood.' Problems identified included a loss of continuity in the key professionals working with him, and lack of clear record keeping, with files lacking 'chronologies and summaries'. The large number of agencies involved with Alex Kelly, and high turn over of professionals was considered to have caused delays to him receiving appropriate help, in particular delaying a full statutory assessment of his special educational needs. The SCR revealed that the supervision of the social worker responsible for him was inadequate, with records showing 'only two supervision discussions about Child F in 11 months'. The most 'significant weakness' was identified as being the relationship between the health service, mental health service and prison officers at Cookham Wood YOI. The review concluded that, had mental health professionals been aware of, and taken proper account of his behaviour noted by staff in custody, it is likely that his risk of suicide and self-harm would have been regarded as higher, and therefore his treatment and care changed accordingly.

The review made 47 recommendations aimed at a range of agencies, including the local authority, Youth Justice Board (YJB) and Cookham Wood YOI. These included:

- The local authority must ensure that the IRO services fulfil their responsibilities and demonstrate 'a positive impact on the lives of looked after children';

472 National Children's Bureau and Council for Disabled Children (January 2013) *Response to a Consultation on Strengthening the NHS Constitution*

473 Department of Health (October 2013) *Chief Medical Officer's Annual Report 2012: Our Children Deserve Better: Prevention Pays*

474 HC, 26 March 2013, c. 1089W

475 HC, 26 March 2013, c. 1089W

476 Young Minds (March 2013) *YM Survey: Two Thirds of Councils Cut CAMHS Services*

477 Department of Health (25 March 2013) *Making Mental Health Services More Effective and Accessible*

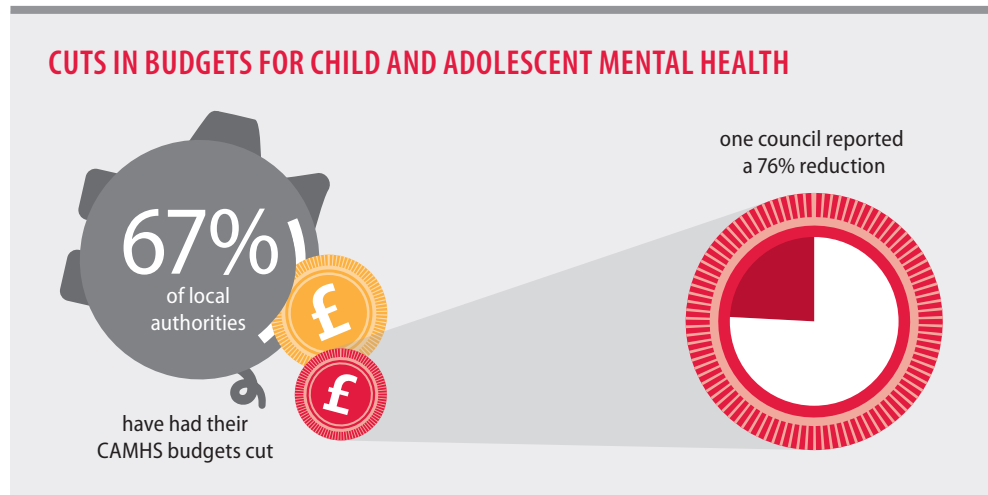
478 The Care Inquiry (April 2013) *Making not Breaking: Building Relationships for our Most Vulnerable Children*

479 Grandparents Plus (May 2013) *Forgotten Children: Children Growing up in Kinship Care*

480 Royal College of Paediatrics and Child Health, Royal College of General Practitioners, Royal College of Nursing, Royal College of Psychiatrists, Faculty of Forensic and Legal Medicine, Faculty of Public Health (June 2013) *Healthcare Standards for Children and Young People in Secure Settings*

481 Tower Hamlets Safeguarding Children Board (August 2013) *Serious Case Review Executive Summary, Services Provided for Child F June 2004 – January 2012*

- (Medway) Youth Offending Team must develop a more creative approach to meeting the mental health needs of young people;
- There must be a more proactive and 'child centred' approach to information sharing that enables health staff to share information more readily within the YOI;
- The YJB must ensure that arrangements are put into place for full psychosocial assessments after incidents of serious or repeated self-harm in a secure establishment;
- The YJB should commission a review of current provision and training in the youth justice system for professionals working with children who have been sexually abused.



Section 136 of the Mental Health Act 1983 gives police officers the power to remove – from a public place to a place of safety – a person who they believe to be suffering from mental disorder. Detention for a maximum of 72 hours is permitted.⁴⁸² Evidence to the House of Commons Health Committee earlier this year revealed that at least 300 children were detained under this power last year.⁴⁸³ The Committee recommended that the Department of Health review this practice as a matter of urgency.⁴⁸⁴ The Government has confirmed that the Department of Health: will lead a review of the operation of section 136; will publish a multi-agency concordat setting out what should happen when people in mental health crisis need support; and is funding nine police forces in England to pilot services where mental health professionals advise police officers making decisions about people who might require detention under section 136.⁴⁸⁵

See also Concluding Observation 71.

66

Fully implement the International Code of Marketing of Breastmilk Substitutes

The International Code of Marketing of Breastmilk Substitutes (the Code) has not been fully implemented.

A 2013 report coordinated by Baby Milk Action on behalf of The Baby Feeding Law Group outlines ways in which companies violate the Code.⁴⁸⁶ The report highlights failures in regulating marketing in the UK, and demonstrates that the limited marketing restrictions that are in place are not working. It also presents examples of companies using idealising claims, as prohibited by the Code, and examples of companies branding their products in a manner that is inconsistent with the Code and restrictions in the UK. The report provides evidence of widespread advertising of formula in the UK – in violation of the International Code – in addition to evidence of cross promotion, which is also prohibited. Furthermore, the report demonstrates that retailers have been found to be promoting infant formula with price reductions, despite this being prohibited by UK measures. According to the findings of the report, in disregard of UK measures and the Code, companies continue to target health care professionals with promotional material containing idealising health and nutritional claims.

482 Mental Health Act (1983), s. 136

483 House of Commons Health Committee (July 2013) *Post-legislative Scrutiny of the Mental Health Act 2007 First Response of Session 2013–14 (HC 584 Incorporating HC 997–i–ii, Session 2012–13)*

484 House of Commons Health Committee (July 2013) *Post-legislative Scrutiny of the Mental Health Act 2007 First Response of Session 2013–14 (HC 584 Incorporating HC 997–i–ii, Session 2012–13)*

485 Department of Health (October 2013) *Post-legislative Scrutiny of the Mental Health Act 2007: Response to the Report of the Health Committee of the House of Commons*

486 The Baby Law Feeding Group (June 2013) *UK Code Violations 23: Look What They're Doing!*

Baby Milk Action point out that LACORS,⁴⁸⁷ citing cutbacks, scrapped the working group of enforcement officers responsible for regulating baby food companies. The Citizens Advice Bureau (CAB) now handles complaints; however, despite forwarding numerous complaints to Trading Standards, responses from enforcement officers are received infrequently.

The European Parliament has passed new regulations on labelling requirements for infant and follow-on formula, requiring idealising images and text to be removed from follow-on formula by 2016.⁴⁸⁸ The new regulations mean that whilst imagery to identify the type of formula, and images demonstrating preparation of the formula will be permitted, labelling of follow-on formula cannot depict 'pictures...or text which may idealise the use of such formula' in order 'not to discourage breastfeeding'.⁴⁸⁹

67 Encourage the inclusion of breastfeeding in nursery training

In the fourth quarter of 2012–13, the breastfeeding initiation rate was 73.9%, the same as the annual percentage for both 2011–12 and 2010–11, and slightly higher than 2009–10 rates (72.7%). The prevalence of breastfeeding at 6–8 weeks was 46.6% in the fourth quarter of 2012–13, slightly less than the figure of 46.9% in the fourth quarter of 2011–12.⁴⁹⁰

Department of Health statistics also show that breastfeeding rates appear to be plateauing after nine years of rises, with 327,048 women (approximately half of all new mothers) not breastfeeding their baby by the time of their six-to-eight-week check-ups, despite the World Health Organisation's recommendation that babies should be exclusively breastfed for the first six months.⁴⁹¹ With less than 2% of babies being exclusively breastfed for this long, the UK continues to have some of the lowest breastfeeding rates in the world.

The Royal College of Midwives have expressed 'serious concerns over a lack of promotion of breastfeeding', stating breastfeeding is no longer treated as a public health issue, and emphasising that under the previous government, there was a 10-year infant feeding strategy, but there is no such foundation and framework in place now.⁴⁹² Health Minister, Daniel Poulter, stated that the Government is working to promote breastfeeding, by increasing the number of midwives by nearly 1,400 (since 2010) and increasing the number of health visitors by 4,200 by 2015⁴⁹³ – a goal that they are 'on target' to achieve.⁴⁹⁴ In April 2013, he announced an expansion of the Family Nurse Partnership programme, offering 16,000 places by 2015 (1,000 more than the original target).⁴⁹⁵ In March 2013, there were 11,000 places available in 91 areas. The NHS Commissioning Board is expected to expand the areas where Family Nurse Partnership places are available.⁴⁹⁶ The Family Nurse Partnership programme supports young first-time mothers through intensive, structured home visiting. Participation in the programme has been shown to result in higher levels of breastfeeding.⁴⁹⁷

Research commissioned by UNICEF UK shows that even a modest rise in breastfeeding rates could make a significant difference to public health, with calculations from a mere handful of illnesses where breastfeeding is thought to have a protective effect revealing potential annual savings to the NHS of about £40 million per year.⁴⁹⁸ Investment in effective services to increase and sustain breastfeeding rates is likely to provide a return within a few years, possibly as little as one year.

68 Promote baby-friendly hospitals

Since this Concluding Observation was issued in 2008, UNICEF's baby-friendly initiative has been extended to all healthcare services.

A total of 87% of UK hospitals, and 74% of health visiting/public health nursing services, are either working towards, or have achieved, Baby Friendly accreditation. It continues to be the case that in the UK, England has the lowest number of births in Baby Friendly hospitals. England has 27% of births taking place in accredited

487 Now known as Local Government Authority

488 European Parliament (11 June 2013) *New Rules for Baby Food, Special Diet Food and Low-Calorie Food*

489 The Baby Friendly Initiative (June 2013) *European Parliament Agrees New Rules on Formula Labelling*

490 Department of Health (June 2013) *Statistical Data on Breastfeeding in England for Quarter 4, 2012 to 2013*

491 See: <http://www.who.int/topics/breastfeeding/en/>

492 Silverton, L., (June 2013) *Breast is Still Best for Mothers, The Guardian*

493 Boffey, D., (22 June 2013) *Breastfeeding Figures Fall as NHS Budget is Cut, The Observer*

494 Department for Work and Pensions (April 2013) *Transforming Social Justice: One Year On*

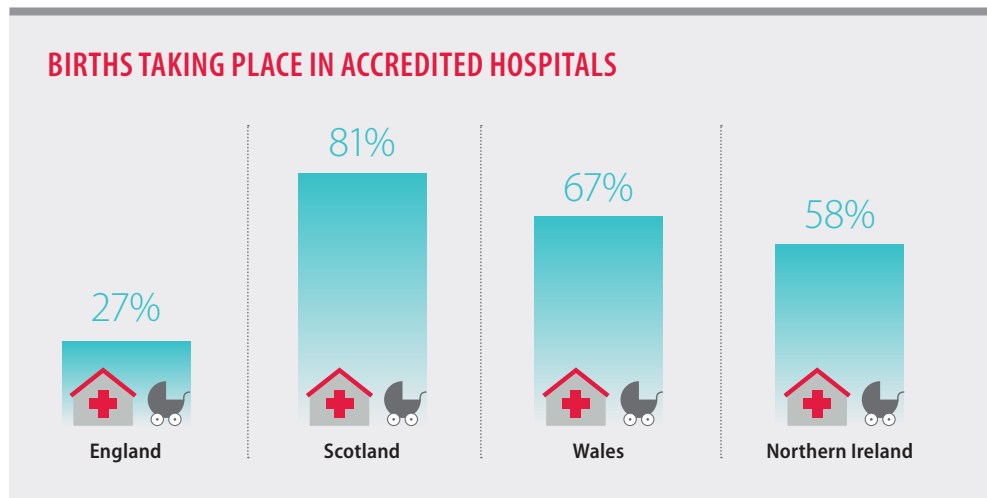
495 Department of Health (4 April 2013) *Family Nurse Partnership Programme to be Extended*

496 HC, 6 March 2013, c. 1059W

497 Department of Health (4 April 2013) *Family Nurse Partnership Programme to be Extended*

498 UNICEF UK (October 2012) *Preventing Disease and Saving Resources*

hospitals; Scotland has 81%, Wales 67% and Northern Ireland 58%.⁴⁹⁹ Regional variations in the percentage of children born in fully accredited Baby Friendly hospitals in England continue to be a cause for concern. A total of 58% of births in the South West were in Baby Friendly hospitals, and in the North West 41% took place in Baby Friendly hospitals, compared with only 13% of births in Baby Friendly hospitals in the East of England, and only 1% of births in Baby Friendly hospitals in the South Central region.⁵⁰⁰



A recent publication from UNICEF UK, *The evidence and rationale for the UNICEF UK Baby Friendly Initiative standards*,⁵⁰¹ brings together all the evidence behind the Baby Friendly Initiative's new standards around breastfeeding and relationship-building, which were revised in 2012. The new standards incorporate the previously used *Ten Steps to Successful Breastfeeding in Hospital* and the *Seven Point Plan for Sustaining Breastfeeding in the Community*, but update and expand them to fully reflect the latest evidence around delivering the best outcomes for mothers and babies in the UK.

69

Provide appropriate reproductive health services for young people

In recent years, there has been an increase in sexual health screening, and particularly for Chlamydia and Gonorrhoea, but sexually transmitted infections (STI) diagnoses remain high.⁵⁰² Figures from the National Chlamydia Screening Programme based on data from Public Health England indicate that between January and December 2012, 25.8% of 15–24 year-olds had been tested.⁵⁰³ Public Health England data on the number of STI diagnoses in England makes it clear that the highest rates of infection are among those aged 15–24.⁵⁰⁴ The number of new diagnoses of STIs rose by 5% in 2012, with it estimated that those under 25 accounted for 64% of all new Chlamydia cases and 54% of all genital warts diagnoses in heterosexuals in 2012.

The number of legal abortions in 2012 totalled 185,122, of which 12,873 related to women under 18.⁵⁰⁵ This represents a decrease on the year before, where the figures were 189,931 and 14,599 respectively.⁵⁰⁶

A report commissioned by sexual health charities, Brook and the Family Planning Association (FPA), highlights that NHS efficiency savings are already undermining the quality of contraception services available, through postcode and age-based restrictions, limits on services offered by Primary Care Trusts, and changes to commissioning structures.⁵⁰⁷ It also highlights that, should these restrictions to contraception and other sexual health services continue, they will have a real impact on people's health, lives and families, including increases in both the number of unintended pregnancies and STIs by 2020. Over 100 real life cases were shared with Brook and the FPA.⁵⁰⁸ Some of these highlight the difficulties faced in accessing contraception and sexual health services, including not being provided with the whole range of contraception choices on offer, no

499 Email from UNICEF UK to Children's Rights Alliance for England, 22 October 2013

500 Email from UNICEF UK to Children's Rights Alliance for England, 22 October 2013

501 UNICEF UK (September 2013) *The Evidence and Rationale for the UNICEF UK Baby Friendly Initiative Standards*

502 Public Health England (June 2013) *Health Protection Report, Weekly Report, Vol. 7 No. 23*

503 Public Health England (June 2013) *National Chlamydia Screening Programme NSCP Data*

504 Public Health England (2013) *Sexually Transmitted Infections and Chlamydia Screening in England 2012*

505 Department of Health (July 2013) *Abortion Statistics: England and Wales 2012*

506 Department of Health (July 2013) *Abortion Statistics: England and Wales 2012*

507 Development Economics (January 2013) *Unprotected Nation: The Financial and Economic Impacts of Restricted Contraceptive and Sexual Health Services*

508 Brook (16 September 2013) *Continued Cuts to Sexual Health Services are Increasing Sexually Transmitted Infections (STIs) and Resulting in Significant NHS & Welfare Costs*

nearby surgery, reduced hours available for appointments or not feeling listened to when it came to making the right choices. Others do reveal some positive experiences of local services, including accessibility to services regardless of age, STI screenings and smear tests being offered alongside advice and contraceptives and examples of staff being patient, judgement-free, understanding, helpful and friendly.⁵⁰⁹

In March 2013, the Department of Health published *A Framework for Sexual Health Improvement in England*.⁵¹⁰ The Framework sets out the Government's ambition to improve the sexual health of the whole population. For children up to age 16, the focus is: building knowledge and resilience through education, awareness of consent issues, and awareness of access to services. Simon Blake OBE, Brook's Chief Executive, welcomed the fact the Framework has 'clear aspirations for the improvement of young people's sexual health'.⁵¹¹ However, he regrets the failure to put a comprehensive programme of Sex and Relationships Education (SRE) on a statutory footing, a concern shared by Jane Lees, Chair of the Sex Education Forum:

*While all primary and secondary schools are expected to comply with the government guidance on SRE the reality is that some schools offer precious little teaching on topics such as puberty, sexual consent and relationships. We recommend that SRE (as part of PSHE education) is made statutory. This would give Ofsted the means to pick up schools with inadequate performance on SRE and help them improve.*⁵¹²

This is considered more fully in relation to Concluding Observation 70 below.

70

Increase provision of appropriate sex and relationships education in schools

Sex education is compulsory within maintained secondary schools, but apart from the requirements of the science programme of study, schools are free to determine what and how they teach it. Practice is poor.

Current SRE practice has been the subject of significant criticism. A report by Ofsted showed that SRE required improvement in over a third of schools,⁵¹³ and that different sorts of improvements were needed in primary and secondary schools:

Sex and relationships education required improvement in over a third of schools. In primary schools this was because too much emphasis was placed on friendships and relationships, leaving pupils ill-prepared for physical and emotional changes during puberty, which many begin to experience before they reach secondary school. In secondary schools it was because too much emphasis was placed on 'the mechanics' of reproduction and too little on relationships, sexuality, the influence of pornography on students' understanding of healthy sexual relationships, dealing with emotions and staying safe.

A survey carried out by Research Now, on behalf of the National Association of Head Teachers, showed that 88% of parents said sex education and lessons on adult and peer relationships should be mandatory in schools.⁵¹⁴ A YouGov poll found that 86% of parents thought lessons should cover how to develop 'respectful relationships'.⁵¹⁵ Teaching on relationships is not currently satisfactory. The End Violence Against Women Coalition, published a report calling for a statutory obligation on schools to address violence against women and girls and gender equality in the curriculum.⁵¹⁶ According to research by the British Humanist Association, around 44 schools and academy groups in England have SRE policies reflecting a clause passed by the Thatcher government but since repealed,⁵¹⁷ which forbade councils from allowing teaching which promoted the 'acceptability of homosexuality as a pretended family relationship'.⁵¹⁸

A new National Curriculum will be in place from September 2014.⁵¹⁹ It makes a number of positive changes regarding SRE education:

- It refers to sex and relationships education (rather than just sex education) as compulsory for all state secondary schools, meaning they will no longer simply be required to teach about the biological aspects of sex, but must now cover issues like consent, love and contraception; and

509 Brook (16 September 2013) *Continued Cuts to Sexual Health Services are Increasing Sexually Transmitted Infections (STIs) and Resulting in Significant NHS & Welfare Costs*

510 Department of Health (March 2013) *A Framework for Sexual Health Improvement in England*

511 Brook (15 March 2013) *Brook Responds to Department of Health Publication of the Framework for Sexual Health*

512 National Children's Bureau (15 March 2013) *Response to Dept. of Health's 'Framework for Sexual Health Improvement'*

513 Ofsted (May 2013) *Not Yet Good Enough: Personal, Social, Health and Economic Education in Schools*

514 National Association of Head Teachers (14 May 2013) *Parents want Schools to Manage Dangers of Pornography, says NAHT survey*

515 R, Garner. (23 May 2013) 'Majority of Parents Believe Sex Education should be Compulsory in Secondary Schools, YouGov poll reveals', *The Independent*

516 End Violence Against Women (March 2013) *Deeds or Words?*

517 Local Government Act, s. 28; introduced in 1988 and repealed in 2003.

518 Bingham, J. (19 August 2013) 'Schools Accused of Reviving Section 28 in Sex Education Policies', *The Telegraph*

519 Department for Education (October 2013) *National Curriculum*

- It includes a new reference to all children learning about puberty in Year 5.

However, a number of organisations still have concerns about the content of the new curriculum.⁵²⁰ These include:

- At Key Stage 1 – there is still no reference to children learning the words for their genitalia, which is essential language to know given the potential danger of child sexual abuse;
- At Key Stage 1 & 2 – Teachers are discouraged from teaching about reproduction.
- At Key Stage 3 – topics such as hormones, contraception, sexually transmitted infections, sexual health and fertility – which are in the current curriculum – will no longer need to be taught and 'will see pupils let down'.⁵²¹ Removal of all references to "sexual health" was a specific concern of The Sex Education Forum at consultation stage.⁵²²

In September 2013, the Government updated its PSHE Guidance which will take effect in September next year.⁵²³ This has been criticised, however, by Brook and FPA for amounting to 'little more than a reaffirmation of where things already stood'.⁵²⁴ They refer to the fact the guidance 'draws short on a number of levels, not least':

- Failing to make PSHE statutory;
- Stating that Academies do not have to provide SRE;
- Failing to update outdated 2000 SRE guidance; and
- Failing to require schools to work with reputable and recognised professional organisations regarding teaching of content.

Many organisations were 'disappointed' that PSHE will not be a statutory subject as not all young people will have access to high-quality SRE education and teachers will not receive extra training and support. FPA's Director of Health and Wellbeing, Natika H Halil, has said:

*... rather than being given sensible guidance, schools have been told when they are teaching SRE they must follow a document written in 2000. We live in a different world now, where young people can so easily be exposed to confusing and misleading sexual imagery and content on the internet and on mobiles and smart phones. In the face of this, they need to know what is healthy and acceptable. Despite recent assurances from David Cameron that he would support SRE being 'up to date on the problems of the internet', there is nothing in the Government's new guidance to help teachers broach some of these very real and very modern issues.*⁵²⁵

Concern has been raised about the impact of pornography on children. A report published by the Children's Commissioner stated that there is growing evidence young people are unhappy with the sex education they are receiving and that they increasingly use pornography, expecting it to give information regarding sexual practices and norms.⁵²⁶ A survey by the National Association of Head Teachers found that 83% of parents wanted 'issues around pornography' to form part of sex education.⁵²⁷

71

Strengthen mental health and counselling services and ensure they are both accessible for and sensitive to young people

A four year initiative – the Children and Young People's Improving Access to Psychological Therapies (CYPIAPT) programme – began in 2011.⁵²⁸ The programme has been extended to include 24 new sites, meaning by the end of 2013 it will cover 54% of the population of 0–19 year-olds in England.⁵²⁹ The Government mandate to the NHS commissioning board outlined a clear objective of ensuring that by 2015 there will be more open access to the IAPT programme, for children in particular.⁵³⁰

520 See for example: Brook and Family Planning Association (12 September 2013) *National Curriculum: Key Changes re SRE, Policy and Parliamentary Update*

521 British Humanist Association (8 August 2013) *BHA Responds to latest English National Curriculum Consultation*

522 Emmerson, L., Coordinator, Sex Education Forum (29 August 2013) 'Mr Gove, Why do you Want to Omit 'Sexual Health' from the National Curriculum?', *The Telegraph*

523 Department For Education (September 2013) *Personal, Social, Health and Economic Education*

524 Family Planning Association and Brook (12 September 2013) *PSHE Education, September 2013 Guidance: Policy and Parliamentary Update*

525 Family Planning Association (12 September 2013) *Government Guidance on Sex and Relationship Education Falls Short*

526 The Children's Commissioner for England (May 2013) *Basically... Porn is Everywhere*

527 Paton, G. (20 May 2013) 'Head Teachers Call for Lessons on Dangers of Pornography', *The Telegraph*

528 See: <http://www.iapt.nhs.uk/silo/files/cyp-iapt-new-sites-press-release-july-13-.doc>

529 Children and Young People's Improving Access to Psychological Therapies (July 2013) *New Sites to Join Children and Young People's IAPT Programme*

530 Department of Health (November 2012) *The Mandate A Mandate from the Government to the NHS Commissioning Board: April 2013 to March 2015*

Having received substantial funding from the Department of Health, an e-portal – MindEd – is to be launched in the spring of next year. It is intended to assist all who come into contact with children to identify children with mental health issues, to speed up diagnosis and provide a high quality, comprehensive and consistent service to children.

However, evidence to CRAE from Su Sukumaran, a consultant child and adolescent psychiatrist, highlights that changes to funding and commissioning arrangements in health and social care which emphasise outcomes, such as payment-by-results, are creating pressure to focus on time-limited interventions which will produce greater throughput.⁵³¹ In CAMHS specifically, she notes a move towards more brief work, measured by face-to-face contact, reducing capacity for inter-agency work, potentially affecting the ability to manage more complex and risky cases. She also refers to the variation across the country in the availability and organisation of mental health services for older children (16 and 17 year-olds), including a shortage in the south of England of in-patient beds for those with serious mental illness who self-harm and those with learning disability.

72 Study the causes of substance misuse in order to provide targeted preventative measures

The NHS Health and Social Care Information Centre commissioned a Smoking, Drinking and Drug Use survey of approximately 6,000 children aged 11–15.

Survey results show that in 2012, children who were non-smokers believed their peers smoked because it was cool (86%), due to peer pressure (71%) and because they were addicted (70%). Children who were regular smokers said they smoked because it helped them cope with stress (87%), because they were addicted (78%) and because smoking gave them a good feeling (66%). Very few children are smokers when they start secondary school: regular smoking increases with age, from less than 0.5% of 11 year-olds to 10% of 15 year-olds.⁵³²

The charity, Drinkaware, highlighted the problem that children as young as 10 are seeing drunkenness normalised through images – whether this is online, in the media or through their own experiences.⁵³³ Almost four in ten children aged 10 to 17 said they had seen online pictures of drunk friends, and nearly a fifth of those in that age group said all or most of their friends drink alcohol.⁵³⁴

73 Provide accurate and objective information on drugs and alcohol to young people

In its response to a report of the Home Affairs Select Committee, *Drugs: Breaking the Cycle*,⁵³⁵ the Government 'welcomed the Committee's recommendation that the next version of the Drug Strategy contain a clear commitment to an effective drugs education programme'.⁵³⁶ During a debate on the report, the Government stated that education will be their focus in the third year of their drugs strategy. Responding, Keith Vaz MP argued that three years is too long to wait for things to improve.⁵³⁷

Little survey data exists on children's experience of health promotion.⁵³⁸ However, a 2013 survey indicates that the proportion of pupils who remember receiving drug-related health education lessons has remained relatively stable at around 60%.⁵³⁹ The majority of pupils considered the lessons had helped in terms of increasing their knowledge about risk and sources of help or advice.⁵⁴⁰ However, pupils who have taken drugs more recently are least likely to feel the lessons had helped them to avoid future drug taking, or given them strategies for managing high-risk situations. A Centre of Social Justice report refers to the fact schools are not doing enough to address the needs of their pupils, with drugs, alcohol and tobacco covered once a year or less by more than 60% of schools for 7 to 11 year-old children and 74% of schools for pupils aged five to seven.⁵⁴¹

531 Sukumaran, S. (September 2013) *Response to CRAE Consultation on the State of Children's Rights*

532 The Information Centre for Health and Social Care (July 2013) *Smoking Drinking and Drug use Among Young People in England in 2012*

533 Withnall, A. (14 August 2013) 'One in Eight Children aged 10 to 12 Have Seen Pictures on Social Media of Their Friends Drunk', *The Independent*

534 Withnall, A. (14 August 2013) 'One in Eight Children aged 10 to 12 Have Seen Pictures on Social Media of Their Friends Drunk', *The Independent*

535 House of Commons (December 2012) *Drugs Breaking the Cycle, Ninth Report of Session 2012–13*

536 Home Office (March 2013) *The Government Response to the Ninth Report from the Home Affairs Select Committee, Drugs: Breaking the Cycle*

537 HC, 6 Jun 2013, c. 267WH

538 Association for Young People's Health (2013) *Key Data on Adolescence 2013*

539 Association for Young People's Health (2013) *Key Data on Adolescence 2013*

540 Association for Young People's Health (2013) *Key Data on Adolescence 2013*

541 Centre for Social Justice (September 2013) *No Quick Fix: Exposing the Depth of Britain's Drug and Alcohol Problem*

In September 2013, a consultation on standards for drug and alcohol education was launched by the Alcohol and Drug Education and Prevention Information Service (funded by the Department for Education).⁵⁴² The consultation responds to a survey of teachers, which identified a number of gaps in drug education provision. The intention is to provide practical tools for schools and others to assess their drug and alcohol education and prevention, and to help them plan to further protect pupils from the harms associated with misuse.

The Government continues to run FRANK, providing information and confidential drugs advice to children.⁵⁴³ When asked whether the website of the FRANK drug information campaign is fully compliant with Article 33 of the Convention on the Rights of the Child, the Secretary of State for Health said that regular evaluation of the FRANK service is undertaken to ensure that the content is correct, up-to-date and provides a valuable resource to those who use it.⁵⁴⁴ The Home Office has funded advertising to raise awareness of the service.⁵⁴⁵ A recent report by the Centre for Social Justice, however, highlights that whilst FRANK remains the Government's flagship prevention programme, funding for it has mostly been withdrawn.⁵⁴⁶ It also refers to the programme as 'ineffective', with only one in ten children calling the FRANK helpline to talk about drugs. It states '[w]e can do better than that, to ensure that schools help children to be resilient in the face of the increasing availability of drugs'.

74 Ensure support is given to those attempting to end dependency on toxic substances

Substance misuse is falling amongst children, but important opportunities to further tackle smoking and drinking by introducing standard cigarette packaging and minimum prices for alcohol units were not taken up.

The Local Government Association points out that addiction problems are decreasing among children.⁵⁴⁷ Last year, just over 20,000 people under the age of 18 accessed substance misuse services. The overwhelming majority was for cannabis or alcohol problems. This showed an overall fall of 6% in a year.⁵⁴⁸ The reasons for this fall are said to be unknown, with experts agreeing it is hard to say exactly what has prompted the trend. It is likely to be a combination of factors from better access to treatment and health promotion campaigns to a wider cultural shift away from traditional drug use. However, there has begun to be growing concern about the use of so-called legal highs.⁵⁴⁹ The *World Drugs Report 2013* found that Britain had become the largest market in Europe for New Psychoactive Substances or so-called "legal highs" (substances that mimic the effect of banned drugs) – with 670,000 people aged 15 to 24 experimenting with them.⁵⁵⁰

It is estimated that every year more than 207,000 children in the UK start smoking.⁵⁵¹ However, the number of cigarettes smoked by both regular and occasional smokers has fallen significantly since 2007 and the proportion of children who have ever smoked continues to decline, most markedly among older pupils.⁵⁵² Deborah Arnott, chief executive of health charity ASH, comments:

*The continued decline in child smoking shows the importance of having a comprehensive tobacco control strategy. Much has been achieved in recent years but still around 200,000 children take up smoking each year. The failure of the Government to bring forward legislation to implement standard packaging was a missed opportunity to significantly reduce the attractiveness of smoking to children.*⁵⁵³

Similarly, the Alcohol Health Alliance expressed its disappointment at the Government's decision to abandon the introduction of minimum unit pricing for alcohol, which it promised to introduce in its Alcohol Strategy in March 2012 and is supported by doctors and children's charities.⁵⁵⁴

The Government published *Reducing Drugs Misuse and Dependence*, a document highlighting the preventative steps it is taking, including supporting troubled families and providing accurate information on drugs and alcohol through drug education and the FRANK service. At the same time, *Reducing Harmful Drinking* was published, detailing the actions the Government has taken to tackle drinking, including making sure that hospitals have alcohol liaison nurses, informing people about the risks of drinking through its *Change4Life* campaign,

542 Mentor (27 September 2013) *Launch of Draft Standards and Survey on Drug and Alcohol Education*

543 See: <http://www.talktofrank.com/>

544 HC, 24 Jun 2013, c. 105W

545 HC, 15 May 2013, c. 302W

546 Centre for Social Justice (September 2013) *No Quick Fix: Exposing the Depth of Britain's Drug and Alcohol Problem*

547 Local Government Association (January 2013) *Tackling Drugs and Alcohol – Local Government's New Public Health Role*

548 Local Government Association (January 2013) *Tackling Drugs and Alcohol – Local Government's New Public Health Role*

549 Local Government Association (January 2013) *Tackling Drugs and Alcohol – Local Government's New Public Health Role*

550 UN Office on Drugs and Crime, *World Drugs Report 2013*

551 Cancer Research UK (March 2013) *Childhood Smokers*

552 The Information Centre for Health and Social Care (July 2013) *Smoking Drinking and Drug Use among Young People in England in 2012*

553 Cambridge News (2013) *Fall in Children on Drink and Drugs*

554 Alcohol Health Alliance UK (17 July 2013) *Abandoning Minimum Alcohol Prices Puts Lives at Risk, say Leading Doctors*

and working with the regulators (the Advertising Standards Authority and Ofcom) to look at ways to make sure adverts promoting alcohol are not shown during programmes that appeal to children⁵⁵⁵

75 Adopt and adequately implement legislation aimed at achieving the target of ending child poverty by 2020, including by establishing measurable indicators

The Government is yet to meet targets to reduce child poverty as enshrined in the Child Poverty Act 2010 and child poverty is predicted to rise considerably in the coming years. According to Government figures released in June 2013:

- In both 2010–11 and 2011–12, there were 2.3 million children living in relative poverty (households with incomes below 60% of the average disposable income, before housing costs) – still 600,000 short of the number required to meet the target for 2010–11 set out in the Child Poverty Act;
- The numbers of children living in absolute low income increased by two per cent – by 300,000 children. This rise represents the first percentage point increase since the early 1990's and has been attributed to a reduction in real terms income and increasing inflation; and
- Children in workless families were more likely to be affected by low income and material deprivation. However, around two in three children living in relative and absolute low income were in working families.⁵⁵⁶



An assessment of Labour's record on income poverty by the Institute for Fiscal Studies highlighted significant falls in child and pensioner poverty between 1997 and 2010, helped largely by additional money in the form of welfare benefits.⁵⁵⁷ The report notes that the increased spending by the Labour party led to reductions in child poverty, but cuts to support for families and pensioners by the current Government may mean that *'Labour's legacy may prove fragile'*. Of particular note in this regard is the decision to increase certain benefits by 1% per year for the next 3 years instead of increasing them in line with inflation.

Child poverty is predicted to rise considerably in the coming years; research published by the Institute for Fiscal Studies shows that in 2020–21, child poverty is projected to be 23.5% and 27.2%, using the relative and absolute low-income measures respectively, compared to targets of 10% and 5%.⁵⁵⁸ This translates to increases across the decade of 1.1 million in the number of children in poverty, according to the relative low-income measure, and 1.4 million in the number of children in poverty, according to the absolute low-income measure.

As previously reported, the Government has consulted on changing the way in which it measures child poverty. The consultation proposed a multi-dimensional measure of child poverty including eight dimensions:

- 1 Income and material deprivation;
- 2 Worklessness;
- 3 Unmanageable debt;

⁵⁵⁵ Department of Health (March 2013) *Reducing Harmful Drinking*

⁵⁵⁶ Department for Work and Pensions (June 2013) *First Release: Households Below Average Income (HBAI) Statistics, June 2013*

⁵⁵⁷ Institute for Fiscal Studies (June 2013) *An Assessment of Labour's Record on Income Inequality and Poverty*

⁵⁵⁸ Institute for Fiscal Studies (May 2013) *Child and Working-Age Poverty in Northern Ireland from 2010 to 2020*

- 4 Poor housing;
- 5 Parental skill level;
- 6 Access to quality education;
- 7 Family stability; and
- 8 Parental health.

The Child Poverty Action Group expressed concern that the proposed measure was unnecessary given the existing range of child poverty and wellbeing measures; that it was not robust and combines 'the causes, correlates and consequences of poverty in an illogical manner and would produce an indicator that is not sensitive to changes in income'; and that the consultation process would see the Government failing to comply with the Child Poverty Act 2010 which required it to report on four distinct poverty indicators.⁵⁵⁹ A critique of the consultation by Professor Jonathan Bradshaw asserted that the consultation ignored previous developments in the measurement of child poverty indicators, and overlooked not only much of the work carried out by previous Governments on child poverty, but also its own work.⁵⁶⁰ Bradshaw writes:

... the main defect with the consultation document is that it is conceptually completely inept and confused in that it fails to recognise the fundamental distinction between measures of poverty and the characteristics of poor children and the associations and the consequences of poverty.

At the time of writing, the Government had yet to publish its response to this consultation, which ended in February 2013.

The Social Mobility and Child Poverty Commission – an independent and statutory body established to monitor and report on what is happening to child poverty and social mobility in the UK – published its own response to the Government's proposals. The Commission broadly welcomed the multi-dimensional nature of the proposals but stressed that any new measurement must supplement and not replace the framework established by the Child Poverty Act. The Commission also expressed concern that the dimensions used to measure child poverty 'conflate the causes and consequences of poverty' and are likely to create confusion. 'Parental skill level' and 'family stability', for example, are included alongside 'income and material deprivation' and 'unmanageable debt'.⁵⁶¹

The Social Mobility and Child Poverty Commission published its first annual report in October 2013.⁵⁶² In relation to child poverty, the report finds:

... the UK has gone from having one of the highest levels in Europe to a rate near the average over the last 15 years. Numbers of children in relative poverty have fallen recently but those in absolute poverty increased by more than 275,000 in 2011/12. Since 2010 there has been a dramatic 15 per cent decline in the number of children in workless households but a big rise in the proportion of poor children who are in families where someone is in work. Two-thirds of poor children are now in working households.

The Commission's report questions whether the 'scale and depth of activity' are sufficient to achieve the goal of becoming a low-poverty society. The conclusion is that this is not the case:

... the UK is not on track to meet the statutory goal of ending child poverty by 2020. The best projections we have suggest that the target will be missed by a considerable margin, perhaps by as many as 2 million children in relative poverty. Although we know it is probable that any government would be finding it hard to remain on course in the teeth of the economic issues and the fiscal challenges that Britain faces, we are deeply concerned that a decade or more of reductions in child poverty could be coming to an end. ...

In April 2013, UNICEF placed the UK 14th out of 21 of the world's richest countries for its levels of material well-being for children. This was an improvement on the bottom placed position of 21st out of 21 countries in 2001. UNICEF's findings were based on figures of relative child poverty, the child poverty gap (between the national poverty line and the median income of households below the poverty line), child deprivation, and family affluence.⁵⁶³

In February 2013, the European Commission published *Investing in Children: breaking the cycle of disadvantage*. One of its recommendations called for governments to take a child rights approach to tackling child poverty and social exclusion and said that integrated strategies should be based on three pillars:

- Access to adequate resources
- Access to affordable quality services; and
- Children's right to participate.⁵⁶⁴

559 Child Poverty Action Group (February 2013) *Measuring Child Poverty: a Consultation on Better Measurements of Child Poverty, CPAG's Response*

560 Poverty and Social Exclusion in the UK (January 2013) *Consultation on Child Poverty Measurement: PSE Policy Response Working Paper, No. 8*

561 Social Mobility and Child Poverty Commission (2013) *Response to Measuring Child Poverty: a Consultation on Better Measures of Child Poverty*

562 Social Mobility and Child Poverty Commission (October 2013) *State of the Nation 2013: Social Mobility and Child Poverty in Great Britain*

563 UNICEF Office of Research (2013) *Innocenti Report Card 11: Child Well-being in Rich Countries, A Comparative Overview*

564 European Commission (February 2013) *Commission Recommendation of 20.2.2013 Investing in Children: Breaking the Cycle of Disadvantage*

There is no evidence to suggest that the Government has taken any action in relation to this recommendation.

Research published by the Child Poverty Action Group highlighted the differences between the Government's approach to tackling child poverty and the approach that children themselves might take to deal with the problem.⁵⁶⁵ The research notes that many problems identified by children, such as the costs of public transport, were not identified by the Government, whilst issues seen as critical to tackling poverty, such as parenting programmes, were not mentioned at all by children. Where there was agreement in the problems identified, the solutions suggested by children were the opposite of those currently being implemented by the Government; *'young people wanted benefits for low-income families improved and funding for youth activities protected.'*

76 In such measures, prioritise children and families in most need of support

There has been increasing concern in 2013 over the negative impact of measures implemented in the name of austerity – in particular those relating to the tax and welfare system – on children and families in the most need of support.

When questioned on the impact of Government fiscal policy on child poverty, ministers said that, *'Government has protected vulnerable groups as far as possible while urgently taking action to tackle the record deficit'*.⁵⁶⁶ A report, published by the OCC in June 2013, concluded that spending decisions and changes to the tax and welfare system by the Government for 2010–15 have had a disproportionately negative impact on the most vulnerable families: *'some of the most vulnerable groups have lost the most'*.⁵⁶⁷ The impact assessment found:

- Low-income families lost a greater proportion of income than high-income families;
- Families with more children were likely to experience greater losses; and
- Families with disabled children suffered bigger than average losses. Children with disabled parents were also likely to experience greater than average losses.

The Social Mobility and Child Poverty Commission, in its October 2013 report, expressed concern that spending cuts have been regressive, with those on lower incomes making larger contributions.⁵⁶⁸ In addition, the report notes that changes to public spending have been *'intergenerationally unfair: pensioners have been protected but families with children (32 per cent of working-age families) bear half the cost of tax and benefit changes and almost two-thirds of spending cuts'*.

50% of children on "section 4 support" are on it for two years or more, leaving around 800 children growing up on as little as £5 per day during their early years of development

In January 2013, the report of the Parliamentary Inquiry into Asylum Support for Children and Young People was published.⁵⁶⁹ The inquiry heard evidence of children being left destitute and homeless, without any support from the State. It found that over 50% of those on "section 4 support" are on it for two years or more, *'leaving around 800 children growing up on as little as £5 per day'* during their early years of development. Evidence from the Red Cross indicated that of the 10,000 destitute refugee and asylum seekers in the UK, 20% are families with small children. The inquiry expressed serious concern that current levels of support are far too low to meet children's essential needs, and that they do not enable children to grow and develop. Further, evidence suggested that the low levels of support may lead to higher infant mortality and maternal deaths. The inquiry report concluded that the current asylum support system is in *'urgent need of reform if it is to have regard to the safety and well-being of children and meet its obligations to promote children's best interests'*. Key recommendations included a call for the Government to *'implement a single cash based support system for all children and their families who need asylum support while they are in the UK'* and for support to be increased annually, and in line with

565 Child Poverty Action Group and Webb Memorial Trust (December 2012) *Young People's Thoughts on Child Poverty Policy*

566 HC, 14 May 2013, c. 166W

567 Office of the Children's Commissioner (June 2013) *A Child Rights Impact Assessment of Budget Decisions: Including the 2013 Budget, and the Cumulative Impact of Tax-Benefit Reforms and Reductions in Spending on Public Services 2010–2015*

568 Social Mobility and Child Poverty Commission (October 2013) *State of the Nation 2013: Social Mobility and Child Poverty in Great Britain*

569 The Children's Society (January 2013) *Report of the Parliamentary Inquiry into Asylum Support for Children and Young People*

income support. The Government has announced that it is undertaking an internal review of asylum support rates which has taken into account the inquiry report.⁵⁷⁰

A report by the Joint Committee on Human Rights on the human rights of unaccompanied migrant children and young people in the UK also highlighted the inadequacy of resources to effectively support these children.⁵⁷¹ Witnesses suggested that the financial climate was leading to the underfunding of care services for unaccompanied migrant children:

The NSPCC noted a £43m decrease in spending on asylum-seeking children between 2009/10 and 2011/12 with a further £12m reduction in the 2012/13 financial year. This, it noted was "likely to have a significant impact on the availability of support and care services for separated children"

The Committee expressed concern about the position of children whose appeal rights have been exhausted and who no longer qualify for local authority support, and who are therefore at risk of destitution. The Committee said that the Government must 'provide effective and properly resourced support' and 'ensure clarity for local authorities and children.'

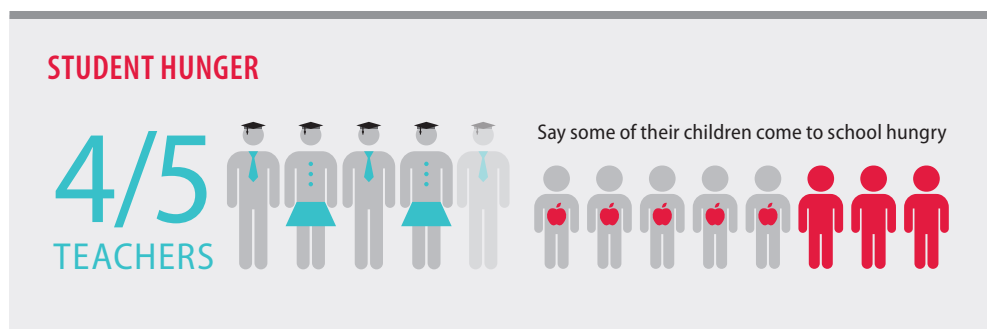
Research commissioned by the Office for the Children's Commissioner sought to gain a better understanding of the impact of living in low income families on the rights of disabled children and young people.⁵⁷² In relation to rights to money, benefits and social support, the analysis found that families with disabled children experience financial disadvantage which is a direct result of higher living costs; 'many of those interviewed suggested that benefit levels are inadequate and do not cover these costs'. The report makes several recommendations for the Government, including a call for an independent review into the adequacy of support for disabled children and young people. The review should include analysis of:

... whether the welfare and benefit system is sufficient to provide for disabled children and young people's basic needs, and accounts for the higher food, housing, heating, clothing, education, health and transport costs faced by families with disabled children.

77 Extend material assistance and support programmes for children living in poverty, particularly with regard to nutrition, clothing and housing

Material deprivation is rising, with a serious negative impact on children's wellbeing.

A report by Church Action on Poverty and Oxfam highlights the rise in food poverty.⁵⁷³ Referring to the situation as 'a national disgrace' the report estimates that over 500,000 people are now reliant on food aid – the use of food banks and receipt of food parcels – and that this number is likely to increase due to benefit cuts and the introduction of Universal Credit. It notes that some of the increase in use of food banks is caused by unemployment, increasing levels of underemployment, low and falling income, and rising food and fuel prices. It also notes, however, 'more alarmingly' that up to half of people turning to food banks are doing so as a direct result of having benefit payments delayed, reduced, or withdrawn altogether. It highlights that four out of five teachers are reporting that some of their children are arriving at school hungry, and states that the benefit sanctions regime has gone too far, and is leading to destitution, hardship and hunger on a large scale; 'the social safety net is failing in its basic duty to ensure that families have access to sufficient income to feed themselves adequately'.



570 HL, 3 June 2013, c. WA103

571 Joint Committee on Human Rights (May 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK*

572 Office of the Children's Commissioner and UCLAN (October 2013) *"We Want to Help People See Things Our Way" A Rights-Based Analysis of Disabled Children's Experience Living with Low Income*

573 Cooper, N. and Dumpleton, S. (May 2013) *Walking the Breadline the Scandal of Food poverty in 21st Century Britain*, Church Action on Poverty and Oxfam

The Government's recent announcement that every child in state-funded infant schools will receive a free school lunch from September 2014 was warmly welcomed by children's charities. According to The Children's Society, this means around 1.4 million more children will be able to get a free school meal, lifting an estimated 25,000 more school children out of poverty.⁵⁷⁴ At the moment, free school meals are available only to children whose parents are on benefits or earn less than £16,190 a year.

In relation to housing, the most recent statistics show that the numbers of people living in overcrowded housing is increasing. Between 2002–03 and 2011–12, the overcrowding rate in the social rented sector has increased from 5% to 7% (from 216,000 to 249,000 households). In the private rented sector it has increased from 4% to 6% (from 80,000 to 207,000 households). In the owner occupied sector, the overcrowding rate has remained at 1% (204,000 households in 2002–03 and 187,000 in 2011–12).⁵⁷⁵ In October, the Local Government Ombudsman published a report highlighting councils' use of unsuitable bed & breakfast accommodation for homeless families and young people.⁵⁷⁶ The Local Government Ombudsman has found fault in decisions where councils have: incorrectly placed 16 and 17 year-olds in bed and breakfast accommodation and not made referrals to children's services; placed families in bed and breakfast accommodation where alternatives were available; not made a genuine and sustained effort to move families out of such accommodation; and have used such accommodation for significant numbers of families and young people for longer than six weeks, even where a plan exists to tackle the problem.

The case studies in [the] report range from the case of a sixteen year old who was forced to live in a tent for over a year, to a five-person family left to live in a single-room accommodation for five months. In the latter story a girl attempted to take her life – evidence of the serious impact that unsuitable living conditions can have on people.

The new benefits system, Universal Credit, came into effect this year. The Government's Child Poverty Strategy had indicated that this new system would lift lone parents working 24 hours a week (at the National Minimum Wage) out of relative income poverty.⁵⁷⁷ However, research by Barnardo's has found that, once childcare costs have been factored in, these families will face significant disincentives for working themselves out of poverty.⁵⁷⁸ Universal Credit covers up to 70% of childcare costs, but families are expected to pay the remaining 30%. Under the new system, lone parents with one pre-school child stand to gain very little from working beyond the 15 hours covered by free childcare for three and four year-olds (and disadvantaged two year-olds). Factoring in childcare costs, for every hour worked above this, the family stands to gain £1.10 per hour. Once the parent becomes subject to tax and national insurance, this drops to £0.40 per hour. The situation is even worse for lone parents with two pre-school children. These families stand to gain nothing from working above 15 hours. If they worked more than 23 hours they would effectively be being paying £0.28 per additional hour. Beyond 28 hours, they would be paying £0.72 per hour.

Jobcentre staff have allegedly been subject to targets to remove benefits from job-seekers as a sanction, despite Ministers' statements that no such targets exist. In March 2013, an internal email from a jobcentre manager was published in the Guardian, implying that jobcentres across London and the Home Counties were ranked on the number of sanctions that had been issued.⁵⁷⁹ The newspaper has since received further information from jobcentre staff indicating that setting targets for removing benefits is a widespread practice.

Research by The Children's Society has linked material deprivation to lower wellbeing in children.⁵⁸⁰ Children lacking five or more items from their child-centred material deprivation index were found to be less happy than other children in many aspects of their lives.

The Children's Society's child-centred material deprivation index

- 1 Some pocket money each week to spend on yourself
- 2 Some money that you can save each month, either in a bank or at home
- 3 A garden at home, or somewhere nearby like a park where you can safely spend time with their friends
- 4 A family car for transport when you need it
- 5 At least one family holiday away from home each year
- 6 Family trips or days out at least once a month
- 7 The right kind of clothes to fit in with other people your age
- 8 A pair of designer or brand name trainers
- 9 An iPod or other personal music player
- 10 Cable or satellite TV at home

574 The Children's Society (17 September 2013) *Fair and Square Campaign Victory*

575 HC, 10 October 2013, c. 393W

576 Local Government Ombudsman (October 2013) *No Place Like Home: Councils' Use of Unsuitable Bed & Breakfast Accommodation for Homeless Families and Young People*

577 Department for Education (2011) *A New Approach to Child Poverty: Tackling the Causes of Disadvantage and Transforming Families' Lives*

578 Barnardo's (January 2013) *Paying to work: Childcare and Child Poverty*

579 The Guardian (22 March 2013) *Labour Demands Action over Jobcentre Targets*

580 The Children's Society (July 2013) *The Good Childhood Report 2013*

The comparisons are stark between children who lack five or more of these items and those who lack none, or only one, of the items. For example, materially deprived children are thirteen times more likely to disagree with the statement *'I feel safe at home'* and four times more likely to say that their health is bad or very bad.

78 Re-introduce a statutory duty for local authorities to provide safe and adequate sites for travellers

There is no statutory duty to provide safe and adequate sites for travellers.

Official statistics show that in January 2013 there were almost 18,730 Gypsy and Traveller caravans in England. This figure is approximately 20 fewer than in January 2012.

Overall, the January 2013 count indicated that 86% of Gypsy and Traveller caravans in England were on authorised land and 14% were on unauthorised land.⁵⁸¹

86% of Gypsy and Traveller caravans in England were on authorised land and 14% were on unauthorised land

In April, the Government revoked regulations which exempted residential caravans from Temporary Stop Notices (TSNs) used to prohibit unlawful development. Previously, local planning authorities could only issue TSNs to caravans used as a main residence if the risk of harm to a compelling public interest was so serious as to outweigh any benefit to the occupier of the caravan. The new regulations mean that families may be ordered to move out of their homes with immediate effect. Lord Avebury objected to the introduction of the new regulations⁵⁸² in the House of Lords:

Parliament has rightly in the past made a distinction between a caravan which is somebody's home and all other types of development. There is a huge difference between stopping ordinary breaches of planning control and depriving a family of their home, with devastating consequences for their future. Not only do they become homeless, but their access to education, health and other public services is seriously prejudiced.⁵⁸³

Lord Avebury questioned the impact of the new regulations on the best interests of the child as enshrined in Article 3 of the UNCRC. He also highlighted that the regulations could give rise to breaches of Articles 6, 8 and 14 and the first protocol of the European Convention on Human Rights.

It will be the responsibility of local planning authorities to decide whether the use of a TSN is a proportionate and necessary response. The Government indicated that it plans to issue guidance to assist councils in making decisions which take account of their obligations under human rights and equality law. However, the new guidance, *Dealing with illegal and unauthorised encampments*, makes no reference to human rights or equality. It sets out powers councils and landowners now have to remove unauthorised traveller sites, protest camps and squatters from both public and private land, as well as tackling the mess from such sites. It sets out the powers to issue TSNs, which can be backed up with potentially unlimited fines.⁵⁸⁴

In July the Government revoked the 2005 practice guidance *Diversity and equality in planning*, and stated that *'under the last administration's flawed rules, a sense of unfairness was embedded in the planning system. Unauthorised developments created tensions between travellers and the settled population, whilst some community groups seemingly were given favoured treatment. That approach has harmed community cohesion'*.⁵⁸⁵

The Department for Communities and Local Government has indicated that scrapping *Diversity and equality in planning*, and strengthening the power of councils, is intended to ensure that planning rules are enforced consistently, and that no groups receive special treatment.⁵⁸⁶ However, the new guidance has drawn criticism, with the Travellers Movement stating that *'the Government is again failing to address the root causes of these encampments, which is the severe lack of suitable Traveller sites'*.⁵⁸⁷

581 Department for Communities and Local Government (May 2013) *Gypsy and Traveller Caravan Count: January 2013*

582 The Town and Country Planning (Temporary Stop Notice) (England) (Revocation) Regulations 2013

583 HL, 17 June 2013, c. 83

584 Department for Communities and Local Government (August 2013) *Councils can Quickly Stop Illegal Encampments*

585 Department for Communities and Local Government (July 2013) *Written Ministerial Statement by Local Government Minister Brandon Lewis Originally given at House of Commons*

586 Department for Communities and Local Government (August 2013) *Councils Can Quickly Stop Illegal encampments*

587 Travellers Movement (August 2013) *Travellers Movement Reacts to Eric Pickles 'blight' of Unauthorised Sites Statement*

6

EDUCATION, LEISURE AND CULTURAL ACTIVITIES

ARTICLES 28, 29 AND 31

All children have the right to an education which they must enjoy without discrimination. The Committee has said:

[T]he key goal of education is the development of the individual child's personality, talents and abilities, in recognition of the fact that every child has unique characteristics, interests, abilities, and learning needs... Basic skills include not only literacy and numeracy but also life skills such as the ability to make well-balanced decisions; to resolve conflicts in a non violent manner; and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents, and other abilities which give children the tools needed to pursue their options in life.

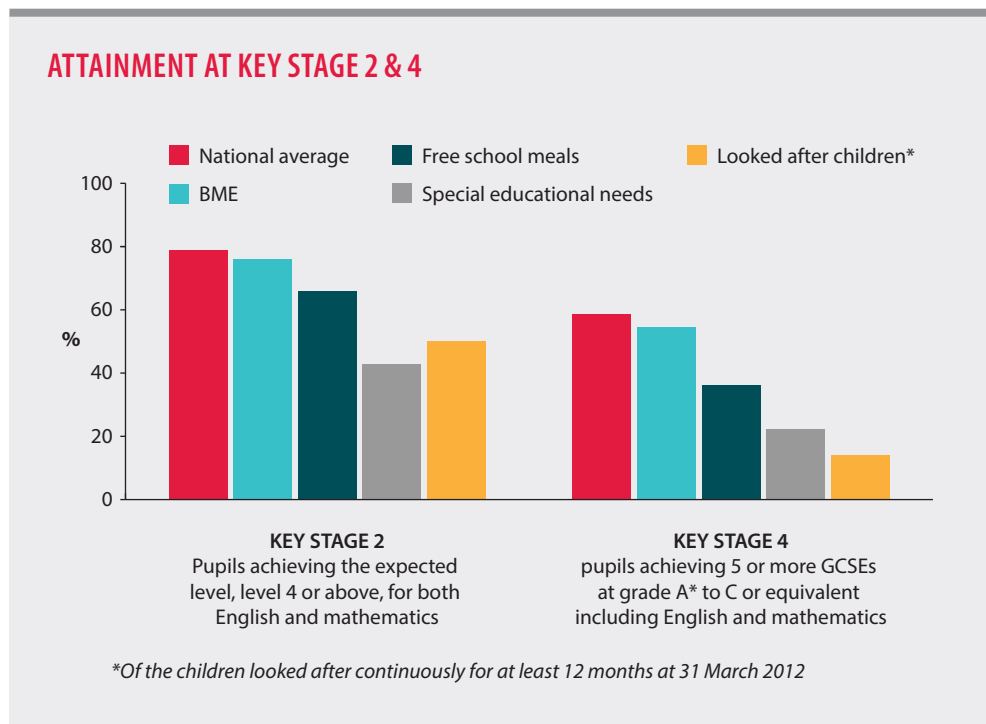
Children's right to play (Article 31 of the CRC) is also the right to rest, leisure, recreational activities (including sports and other hobbies), cultural life and the arts. The Committee's guidance on Article 31 highlights the child-led nature of play and states that it is '*a fundamental and vital dimension of the pleasure of childhood, as well as an essential component of physical, social, cognitive, emotional and spiritual development*'.

79

Invest considerable additional resources to ensure the right of all children to a truly inclusive education, in particular children from disadvantaged, marginalised and school-distant groups

Investment in Education

In June 2013, Chancellor of the Exchequer, George Osborne, announced that the Education Department's overall budget would be increased to £53 billion and that schools spending would be protected in real terms.⁵⁸⁸ Osborne also announced that schools spending would be allocated in a 'fairer way than ever before', and that the Government would consult on its plans. The Government will, however, reduce central education support by reducing the Education Services Grant (ESG), which is used to fund central services such as school improvement, asset management and behaviour support, by around £200 million in 2015–16.⁵⁸⁹ Analysis published by the Office of the Children's Commissioner found that because the Government's ringfence only applies to schools' current expenditure budget, significant cuts to the capital expenditure will mean an 11% cut in overall schools spending by 2015.⁵⁹⁰ It does note, however, that '[t]here has been some protection for spending on low income through the introduction of the pupil premium, and for some families this has offset other reductions'. The Children's Commissioner found that early years spending (nursery education and Sure Start), spending on which was already lower than for other forms of education, has been cut by proportionately more than other areas of spending, with cuts of 18% anticipated by 2015–16.



According to a report by the National Audit Office in March 2013, despite the creation of almost 81,500 extra primary places over the last two years, 256,000 new school places are needed by 2014–15 to meet rising demand – 240,000 of which are in primary schools.⁵⁹¹ It notes, for example, that in May 2012, 20.4% of primary schools were full or had more pupils than their capacity. Local Government Association (LGA) analysis also shows that, by September 2016, as many as two in three councils in England could see more children looking to start primary school in their area than they can accommodate.⁵⁹² The LGA reveals that the pressures are leading to some schools having to convert non-classroom spaces, reduce playground space, or expand classes beyond the statutory 30 children per class. The LGA is calling on the Department for Education to: ensure capital funding is given to local authorities with the greatest need for extra places; make sure no new free schools are built

588 HM Treasury (26 June 2013) Oral Statement to Parliament, *Spending Round 2013*

589 HM Treasury (26 June 2013) Oral Statement to Parliament, *Spending Round 2013*

590 Office of the Children's Commissioner (June 2013) *A Child Rights Impact Assessment of Budget Decisions: Including the 2013 Budget, and the Cumulative Impact of Tax-benefit Reforms and Reductions in Spending on Public Services 2010 – 2015*

591 National Audit Office (March 2013) *Capital Funding for New School Places*

592 Local Government Association (3 September 2013) *Councils Warn of Rising Demand for Primary School Places*

in areas where there is a surplus of places; and develop a more realistic assumption about the level of financial contribution authorities can be expected to make to deliver school places.⁵⁹³

The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 came into force in April 2013. There will not be legal aid for education cases, other than in relation to special educational needs,⁵⁹⁴ which means that issues relating to exclusions, admissions, bullying and alternative education provision – all issues which disproportionately affect disadvantaged groups – will be excluded from legal aid support. This will make it more difficult for the most vulnerable children to assert their rights in respect of education.

Certain disadvantaged and school-distant groups of children, including disabled children and young people, those with SEN, looked after children, children in low-income families, and particular ethnic minority groups, continue to face significant barriers to a good education.

Disabled children and children with SEN

The right of disabled children to an inclusive education continues to be a matter of significant concern. The proportion of disabled children in mainstream schools remains low. As at January 2013, 53% of pupils with statements of SEN were attending mainstream schools (nursery, primary, secondary, academies, city technology colleges), compared to 53.7% in 2012.⁵⁹⁵

A report by the Academies Commission has given new weight to concerns that the rapid spread of academy schools will undermine the inclusion of disabled children in mainstream education.⁵⁹⁶ The report notes that, between May 2010 and November 2012, there had been an increase from 203 to 2,456 academies, with more than half of all secondary schools, and a growing number of primary and special schools, having now become, or set to become, academies. As of February 2013, the number had increased to 2,673.⁵⁹⁷ It describes how parents are reporting being unable to gain places in academy schools for their disabled children, and are expressing concerns about the level of SEN support provided by academies. It also says that there certainly appears to be a trend for alternative provision under the banner of Free Schools, and also refers to the evidence of '*significantly higher rates of exclusion*' within academies than in local authority maintained schools. The report concludes that one of the three '*imperatives*' for the improvement of the academy system is to ensure it is '*fair and equally accessible to children and young people from all backgrounds*' particularly in supporting fair access to all schools for children with SEN.⁵⁹⁸

The Children and Families Bill,⁵⁹⁹ which was introduced into Parliament in February 2013, sets out the duties for all the agencies involved in providing services for children and young people with SEN.⁶⁰⁰ Several of the Bill's provisions may erode the right of disabled children and those with SEN to receive a high quality inclusive education, including loss of the local authority's coordination role in relation to SEN, cuts to SEN services and greater autonomy for schools in relation to admissions. In June 2013, the JCHR published its legislative scrutiny of the Children and Families Bill.⁶⁰¹ The JCHR welcomed several of the Bill's provisions relating to SEN and disabled children as being '*positive human rights enhancing measures*,' but expressed significant concerns in relation to the issue of inclusion. The report makes specific recommendations aimed at strengthening the principle of inclusive education:

... in our view, the commitment to increase access to mainstream schools and staff, being the subject of an international treaty obligation which the Government accepts, should be expressly stated in the "general principles" clause (clause 19) at the beginning of Part 3 of the Bill. We recommend that clause 19 be amended to include an additional "general principle" which requires local authorities to have regard to the need to continue to develop an inclusive system where parents of disabled children have increasing access to mainstream schools and staff.

We also recommend that the final version of the SEN Code of Practice should include detailed examples of the reasonable steps that could be taken to prevent the admission of a child with SEN being incompatible with the efficient education of other children, and ask that the draft text of this addition to the Code be made available before the Bill reaches its Committee Stage in the Lords.

The Department for Education is currently consulting on a draft Code of Practice,⁶⁰² with draft regulations and draft guidance, to provide more detail about how the new Children and Families Bill will work in practice. ALLFIE expressed concern that the text of the draft Code does not reflect the spirit of Article 24 (Inclusive Education) of the UN Convention for Persons with Disabilities or the Public Sector Equality Duty, and called for the revised Code to reflect a broad, inclusive approach to accommodate children and young people's SEN in mainstream schools and colleges.⁶⁰³ ALLFIE has raised particular concern in relation to:

593 Local Government Association (3 September 2013) *Councils Warn of Rising Demand for Primary School Places*

594 In relation to Part 4 of the Education Act 1996 and Learning and Skills Act 2000

595 Department for Education (July 2013) *Statistical First Release: Special Educational Needs in England, January 2013*

596 Academies Commission (January 2013) *Unleashing Greatness: Getting the Best from an Academised System*

597 HL, 14 February 2013, c. 772

598 The Academies Commission (January 2013) *Unleashing Greatness: Getting the Best from an Academised System*

599 See: <http://services.parliament.uk/bills/2012-13/childrenandfamilies.html>

600 Children and Families Bill (HL Bill 32), Part 3

601 Joint Committee on Human Rights (June 2013) *Legislative Scrutiny: Children and Families Bill; Energy Bill*

602 Department for Education and Department for Health (October 2013) *Draft Special Educational Needs (SEN) Code of Practice for 0 to 25 Years*

603 Public Bill Committee (April 2013) *Children and Families Bill: Memorandum submitted by the Alliance for Inclusive Education (ALLFIE) (CF 109)*

- The omission of any reference to the inclusion principle;
- The focus on reasonable adjustments for individual students without the broader aspiration for the development of inclusive practice; and
- The withdrawal of the *'incompatibility with efficient education of other pupils'* guidance.

Particular groups face particular problems. Whilst 80% of deaf children are now being educated in mainstream schools, concerns have been raised as to their attainment. Government figures suggest that only 37% of deaf children achieved five good GCSEs last year, compared with 69% for hearing children.⁶⁰⁴ Issues have also been raised by MPs in parliamentary debate about funding, access, support, data, inspection and the wider SEN reforms.⁶⁰⁵ Cuts to the specialist support deaf children receive in schools have, according to Brian Gale, Director of Policy and Campaigns at The National Deaf Children's Society, had *'a devastating effect on deaf children's education'*.⁶⁰⁶ Furthermore, a survey, by The National Deaf Children's Society in March 2013, of 150 local authorities across England shows that 29% plan to cut education services for deaf children in 2013–14, with a further 31% possibly making cuts.⁶⁰⁷ In light of these figures, 51,000 people signed an e-petition calling on the Government to protect specialist deaf services and 79 MPs pledged support for a debate on the subject.⁶⁰⁸

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The Government has set out its current disability strategy, which includes a section on education. The measures identified are stated to *'ensure that disabled people are supported in their educational aspirations'* and *'reduce the gap in educational attainment between disabled and non-disabled young people'*.⁶⁰⁹ To improve educational provision for pupils with SEN, the Government has pledged, in addition to the provisions in the Children and Families Bill which will bring all state-funded schools and colleges into the support system for children with SEN, to fund degree-level specialist training for talented support staff working with children with SEN.

See also Concluding Observation 57.

Looked after children

Data from the Department for Education shows the attainment gap between looked after and non-looked after children persists at various stages of their schooling. From April next year, looked after children will benefit from a new "Pupil Premium Plus". This will more than double their current funding to £1,900 per pupil. This support will also reach more children. At the moment, looked after children attract the Pupil Premium if they have been looked after for six months or more, but in future they will be funded from their first day in care. The Department for Education says that 10,000 more children will benefit.⁶¹⁰

Attainment of looked after children and non-looked after children in English and mathematics in 2011–12.⁶¹¹

Percentage achieving A* to C GCSEs in English and mathematics.⁶¹²

Year	Looked after children	The Rest	Attainment gap (percentage points)
2009–10	12.7	53.5	40.8
2010–11	14.1	59.1	45.0
2011–12	15.5	58.7	43.2

604 HC, 17 October 2013, c. 966

605 HC, 17 October 2013, c. 964–984

606 The National Deaf Children's Society (25 June 2013) *Leading Charity Warns Deaf Children are at Risk Ahead of Comprehensive Spending Review*

607 The National Deaf Children's Society (25 June 2013) *Leading Charity Warns Deaf Children are at Risk Ahead of Comprehensive Spending Review*

608 HC, 17 October 2013, c. 975 and c. 987

609 Department for Work and Pensions (July 2013) *Fulfilling Potential Making It Happen: Action Plan*

610 Department for Education (1 October 2013) *£100 Million to Support the Education of Children in Care*

611 Department for Education (11 February 2013) *Attainment Gap at Ages 11, 16 and 19: Impact Indicators 10 and 11*

612 Department for Education (11 February 2013) *Attainment Gap at Ages 11, 16 and 19: Impact Indicators 10 and 11*

Continue and strengthen efforts to reduce the impact of socio-economic background on children's achievement at school

Economic disadvantage remains strongly associated with poorer performance at school. The attainment gap between economically disadvantaged pupils (i.e. those eligible for Free School Meals) was evident at each key stage in 2012.⁶¹³ While the gap is narrowing, progress is very slow.

FSM attainment gaps 2007–08 to 2011–12:⁶¹⁴

	2007/8	2008/9	2009/10	2010/11	2011/12	Shift in attainment gap 2007/8 to 2010/11
5 or more GCSEs at grade A* to C or equivalent including English and mathematics	27.8	27.7	27.6	27.4	26.3	-1.5

A report from Ofsted shows that the quality of schools in England has improved over time, but schools are improving too slowly in areas of higher deprivation.⁶¹⁵ In December 2012, 74% of maintained schools were judged to be 'good' or 'outstanding' for overall effectiveness compared with 66% in August 2009.⁶¹⁶ During this period, the percentage of 'outstanding' schools has also risen from 16% to 21%.⁶¹⁷ However, the report notes there are clear differences in the overall quality of provision between those schools serving the least and most deprived communities. The proportion of 'good' or 'outstanding' schools in the most deprived areas is 20% lower than in the least deprived areas. The proportion of 'outstanding' schools alone, in the least deprived areas, is nearly double the figure for the 'deprived' and 'most deprived' communities added together.

The Government aims to promote the educational achievement of disadvantaged pupils via free early education, the Pupil Premium, and the 16 to 19 Bursary.

In the Spending Review, the Government announced that it will maintain funding for 15 hours a week of free early education for all three and four year-olds. The entitlement will be extended to the most disadvantaged 20% of two year-olds in September 2013, and to around 40% in 2014–15.⁶¹⁸ Analysis by the Children's Commissioner finds, however, that 'the decision to fund this free early education from the Early Years Intervention Grant – effectively a cut – is likely to reduce services and particularly for under-twos'.⁶¹⁹

There are positive developments in relation to the Pupil Premium: the Government has pledged to spend more on it; there are signs that it is being spent more effectively; and there are also new oversight mechanisms to bring some accountability for how it is spent. The Government has announced it is to increase the Pupil Premium in 2014–15 to £1,300, an increase of £400 per pupil. This has been largely welcomed, but schools have been urged to look at the evidence before deciding how to spend it.⁶²⁰ Concerns are ongoing as to how the Pupil Premium is being used. Independent research published by the Department for Education shows four out of five secondary schools and more than two-thirds of primary schools have introduced or enhanced support for disadvantaged pupils as a direct result of the Pupil Premium.⁶²¹ However, it also shows that some schools are prioritising interventions that evidence suggests are not consistently cost-effective or good value, and some are not using or aware of robust evidence of what works. In February 2013, Ofsted published a report on how schools were using the Pupil Premium. The report showed that whilst a growing number of schools are using their Pupil Premium funding effectively to raise achievement levels, a significant minority are struggling to show how the funding is making a meaningful impact on narrowing the gap between pupils from low-income and more affluent families.⁶²²

There is, however, increased scrutiny of how schools are using the Pupil Premium. From September 2013, Ofsted inspections have had a sharper focus on the performance and progress of Pupil Premium pupils, with

613 Department for Education (25 April 2013) *Attainment Gap at Ages 11, 16 and 19*

614 Department for Education (24 January 2013) *GCSE and Equivalent Attainment by Pupil Characteristics in England: 2011 to 2012*

615 Ofsted (June 2013) *Unseen Children – Access and Achievement 20 Years On*

616 Ofsted (June 2013) *Unseen Children – Access and Achievement 20 Years On*

617 Ofsted (June 2013) *Unseen Children – Access and Achievement 20 Years On*

618 HM Treasury (June 2013) *Spending Round 2013*

619 Office of the Children's Commissioner (June 2013) *A Child Rights Impact Assessment of Budget Decisions: Including the 2013 Budget, and the Cumulative Impact of Tax-benefit Reforms and Reductions in Spending on Public Services 2010–2015*

620 The Sutton Trust (17 July 2013) *Pupil Premium 'Could Change Lives of Poor Children'*

621 Department for Education (2 July 2013) *Evaluation of Pupil Premium: Research Brief*

622 Ofsted (11 February 2013) *Ofsted Chief: More Schools using the Pupil Premium to Good Effect but Others Still Struggling to Make a Real Difference*

it being unlikely that a school will be judged 'outstanding' if its disadvantaged pupils are not making good progress. Schools are now to be held specifically to account for the attainment gap between disadvantaged pupils and their peers and more particularly:

- The attainment of their disadvantaged pupils;
- The progress made by their disadvantaged pupils; and
- The in-school gap in attainment between disadvantaged pupils and their peers.⁶²³

In further support of primary school-aged children, in September 2013, Nick Clegg announced at the Liberal Democrat conference that the Free School Meals programme would be extended to all five to seven years-olds in 2014.⁶²⁴ Hilary Emery, Chief Executive of the National Children's Bureau, sees it as an encouraging sign that politicians have recognised the clear link between a good diet, children's health and their educational performance, and that it will 'provide a level playing field for all pupils'.⁶²⁵

The adequacy of financial support for older children in education remains a problem. The £180 million 16 to 19 Bursary Fund targets support towards the most financially disadvantaged 16 to 19 year-olds, who most need help with the costs of education or training.⁶²⁶ From the start of the 2013–14 academic year, all children in England are required to continue in education or training until the end of the academic year in which they turn 17. From summer 2015 this will be until their 18th birthday. The Government has not issued plans to increase funding for the Bursary Fund in the light of these changes, or to increase vulnerable students' hardship grants in line with inflation. Barnardo's has warned that the most disadvantaged children could go from NEET to truant if they can not afford to stay in education or do not have the right opportunities.⁶²⁷ It is calling on the Government to make funding and educational resources available to the most disadvantaged so they can afford to continue in education or training.

The Government has consulted on a new method for allocating the Bursary Fund from the academic year 2014–15.⁶²⁸ This would involve looking at the number of students previously eligible for the Pupil Premium, to estimate disadvantage. There would also be an extra weighting for disadvantaged students who live in rural areas, to reflect the higher transport costs often incurred by those students. Previous research from Barnardo's showed that the current £180 million fund is insufficient to cover the poorest students' day-to-day costs, forcing them to choose between travel to school and buying hot lunches.⁶²⁹ Barnardo's has said that that the current allocation should be increased by £70–80 million, to guarantee that the poorest children are given a bursary of £30 per week.⁶³⁰ If the increase in funding is not possible, then in Barnardo's view funding should be allocated on the basis of eligibility for Free School Meals in year 11. This would concentrate the allocation of funding on the most disadvantaged pupils, rather than spreading it amongst the larger group of young people previously eligible for the Pupil Premium.

Recent reports show that careers guidance in schools is inadequate. Since September last year, schools have been responsible for providing careers guidance to students aged 14 to 16, with local authorities retaining the responsibility for individual support for vulnerable students. The National Careers Service provides guidance via a website and a telephone service for users from the age of 13. A report by Barnardo's found that while provision is still available for the very vulnerable (those children NEET or bottom of the attainment scale), careers services are not reaching those who have low qualifications and are disengaged from school but who are not considered as the most "at risk" by local authorities.⁶³¹ No child interviewed knew about the National Careers Service website or Government-funded *Plotr* site. Some children reported that their school provided few or no face-to-face sessions. Disengaged pupils reported feeling unable to trust the careers guidance given by schools, as they assumed the advice would be prejudiced.

Ofsted has also found that three quarters of schools visited were not implementing their duty to provide impartial careers advice effectively.⁶³² Ofsted found that guidance for schools on careers advice is not explicit, the National Careers Service is not promoted well enough, and there is a lack of employer engagement in schools. A report by the National Careers Council also highlights the need for an urgent culture change in careers provision, to address the mismatch between high unemployment and employers who are struggling to recruit.⁶³³ The Government has set out how it proposes to help schools and colleges carry out their duty, saying it will:

623 Department for Education (July 2013) *Pupil Premium Evaluation Paves Way for New Raft of Measures so Schools Help Disadvantaged Pupils*

624 Robinson, N. (17 September 2013) 'All Infants in Lunch to Get Free School Lunches', *BBC News*

625 National Children's Bureau (18 September 2013) *Response to Coalition Plans for Free School Meals for Infant School Pupils, Announced by Nick Clegg*

626 Department for Education (14 August 2013) *The 16 to 19 Bursary Fund*

627 Barnardo's (2 September 2013) *Don't Let NEETs Become Truants*

628 Department for Education (17 July 2013) *16 to 19 Bursary Fund: Allocation of Discretionary Element to Providers*

629 Barnardo's (February 2012) *Staying the Course: Disadvantaged Young People's Experiences in the First Term of the 16–19 Bursary Fund*

630 Barnardo's (2013) *Consultation on the Method Used to Allocate the Discretionary Element of the 16–19 Bursary Fund to Providers, Consultation Response Form*

631 Barnardo's (August 2013) *Helping the Inbetweeners: Ensuring Careers Advice Improves the Options for all Young People*

632 Ofsted (September 2013) *Going in the Right Direction? Careers Guidance in Schools from September 2012*

633 National Careers Council (June 2013) *An Aspirational Nation: Creating a Culture Change in Careers Provision*

- Revise the guidance it provides to schools and colleges, making it clearer what constitutes excellent careers guidance;
- Improve the information about where pupils go on to after they finish their GCSEs and A levels. It will give schools and colleges more information to assess the effectiveness of their careers guidance; and
- Improve the National Careers Service to give children a greater understanding of the full range of options available to them. It will use its local networks to bring employers, schools, charities and social enterprises together.⁶³⁴

81 Ensure children without parental care have an advocate to actively defend their best interests in school

There is currently a statutory requirement for all maintained schools to have a designated teacher for looked after children.⁶³⁵ The Government has stated that it believes the educational attainment of looked after children is improving, but is not doing so fast enough.⁶³⁶ Therefore, the Children and Families Bill 2013 will require every local authority to have a Virtual School Head to champion the education of children in the authority's care.⁶³⁷ The Government has announced that it plans to extend the role of the Virtual School Head to work with schools to manage the Pupil Premium Plus and ensure that the money is spent on securing the best educational support and services for children in care.⁶³⁸

Whilst this proposal and putting Virtual School Heads on a statutory footing are welcomed by many, The Who Cares? Trust and the National Care Advisory Service at Catch 22, backed by a number of other charities,⁶³⁹ are calling on the Government to extend the Virtual Head's role to working with care leavers up to the age of 25.

82 Intensify efforts to tackle bullying and violence in schools, including through teaching human rights, peace and tolerance

Bullying remains widespread, with a severe impact on children's lives. Efforts to tackle bullying have been found to be inadequate, and especially in relation to homophobic and disablist bullying.

The first Annual Bullying Survey, published by Ditch the Label in 2013, found that up to 69% of children will experience bullying before their eighteenth birthday.⁶⁴⁰ Of this figure, 53.6% were bullied in primary school, 77.1% in secondary school and 13% in college. 22.4% of children surveyed said they were bullied daily. Disabled children or children from sexual minorities were found to be most at risk of bullying. The survey also looked at different types of bullying of children:

- 43% reported being verbally bullied 'frequently';
- 16% experienced physically bullied 'frequently'; and
- 9% had been sexually harassed 'frequently'.

In their Cyberbullying Survey seven in ten young people reported being victims of cyberbullying, with 20% of young people experiencing extreme cyberbullying on a daily basis.⁶⁴¹

Bullying was found to have a negative effect upon pupils' studies, social lives, optimism and self-esteem. One 17 year-old male respondent said:

I don't think the people who bullied me thought they were bullying. They had the idea that it was needed to "put me in my place" as I "deserved it" etc. It has completely destroyed my self confidence and now I have developed social anxiety and find it hard to make friends as I constantly think everyone is whispering something behind my back and that I don't deserve friends.

634 Department for Education (10 September 2013) *Government Calls for Culture Change in Careers Guidance*

635 Children and Young Persons Act 2008, s. 20

636 Department for Education (updated 7 November 2013) *Children and Families Bill 2013*, accessed at: www.education.gov.uk/a000221161/

637 Department for Education (updated 7 November 2013) *Children and Families Bill 2013*, accessed at: www.education.gov.uk/a000221161/

638 Department for Education (1 October 2013) *£100 Million to Support the Education of Children in Care*

639 This includes the National Children's Bureau, Barnardo's, the British Association of Social Workers, the Care Leaver's Association, the Fostering Network, and The Adolescent and Children's Trust

640 Ditch the Label (February 2013) *Annual Bullying Survey 2013*

641 Ditch the Label (September 2013) *Annual Cyberbullying Survey 2013*

The survey found that 57% of bullied students are dissatisfied with support services on offer to them.

While all schools should teach Personal, Social, Health and Economic (PSHE) education, schools have been left to tailor their own PSHE programmes.⁶⁴² A report from Ofsted showed that the quality of PSHE education is not yet good enough in a sizeable proportion of schools in England.⁶⁴³ The report stated that in the weaker schools, the casual use of homophobic and disablist language was commonplace, and pupils' personal and social skills required improvement. In the stronger schools, the development of pupils' personal and social skills was good and outstanding. In particular they learnt about the impact of bullying, including the casual use of racist, disablist, sexist or homophobic language, why it is damaging, and how to deal with it. Other findings from the report included:

- Pupils' understanding of diversity, prejudice and discrimination was not developed well enough in one in four primary schools and one in eight secondary schools;
- Pupils had learned about racism and sexism, but not about other forms of discrimination, resulting in their failure to appreciate the impact on others of derogatory language, particularly homophobic and disablist comments; and
- Ofsted carried out an online survey of children. Responses to this showed that only one third had learned about homophobic behaviour and its impact.

A report by Ofsted also shows that more than half of England's schools are failing to provide appropriate religious education.⁶⁴⁴ It highlights low standards, weak teaching and examination and confusion about the purpose of religious education. Many pupils leave school with '*scant subject knowledge and understanding*', and the teaching '*often fails to challenge and extend pupils' ability to explore fundamental questions about human life, religion and belief*'. The report highlights the '*key role*' the subject plays in '*promoting social cohesion and the virtues of respect and empathy, which are important in our diverse society*'.

Currently, the police and CPS record as a "hate crime" any crime that is perceived, by the victim or another person, to have been motivated by hostility or prejudice based on a person's race, religion, sexual orientation, disability or transgender identity. However, the criminal offences for hate crime only cover some of these "protected characteristics". The Government has asked the Law Commission to review whether there is a case for reforming the law so that existing hate crime offences apply in the same way to sexual orientation, transgender identity and disability as for race and religion.⁶⁴⁵ The consultation closed at the end of September and a final report is expected in Spring 2014.

83

Use permanent or temporary exclusion from school only as a last resort, and reduce the number of exclusions

Permanent exclusions in state-funded primary, state-funded secondary and special schools increased in the years 2010–11 to 2011–12, whilst the number of fixed period exclusions decreased significantly.

	Permanent Exclusions	Fixed Period Exclusions
2010–11	5,080	324,110
2011–12	5,170	204,370

Certain groups of pupils are disproportionately affected by exclusions:⁶⁴⁶

- Pupils with SEN (but no statement) are eleven times more likely to receive a permanent exclusion than pupils with no SEN, and five times more likely to receive one or more fixed period exclusions.
- Pupils eligible for free school meals are four times more likely to receive a permanent exclusion than other pupils.
- Pupils of 'Black Caribbean' and 'White and Black Caribbean' ethnic groups are around three times more likely to be permanently excluded than the school population as a whole.

⁶⁴² Department for Education (March 2013) *Personal, Social, Health and Economic (PSHE)*

⁶⁴³ Ofsted (May 2013) *Personal, Social, Health and Economic Education in Schools*

⁶⁴⁴ Ofsted (October 2013) *Religious Education: Realising the Potential*

⁶⁴⁵ Law Commission (June 2013) *Hate crime: the Case for Extending the Existing Offences*

⁶⁴⁶ Department for Education (25 July 2013) *Permanent and Fixed Period Exclusions from Schools in England: 2011 to 2012 Academic Year*

- While low numbers make comparison difficult, pupils of 'Gypsy/Roma' and 'Traveller or Irish Heritage' backgrounds have the highest rates of permanent exclusion.

A survey by the charity, Contact a Family, showed that disabled children are routinely illegally excluded from school.⁶⁴⁷ Fifty-three per cent of families had been asked to collect their child during the school day because there were not enough staff available to support them. Twenty-two per cent of disabled children are illegally excluded every week and 15% every day.

According to information released by the Department for Education, the most common reason for exclusion was persistent disruptive behaviour, accounting for 32.9% of permanent exclusions and 24.1% of fixed period exclusions from all schools.⁶⁴⁸

The Children's Commissioner has completed the second year of her Inquiry into school exclusions. In *They never give up on you*, the report on the first year of the Inquiry, the Commissioner reported that schools' awareness of the requirements of the Equality Act was very low, and that no explicit reference to the equality duty was made in school decision-making regarding exclusion.⁶⁴⁹ One year on, the OCC has published *They go the Extra Mile*, which indicates 'very little seems to have changed'.⁶⁵⁰ No school visited for the report explicitly mentioned the need to pay attention to the equality duty when designing behaviour systems or making decisions about exclusions; only just over a third (37%) of teachers responding to the survey had been made aware by their school of the duty; and even where schools were informed of the equality duty requirements, they did not necessarily fully engage with them and they had little impact on teaching.⁶⁵¹ The report highlights that a small minority of schools have practices that are either directly or indirectly discriminatory.

The OCC has published a report on its findings on illegal exclusions.⁶⁵² It stresses that illegal exclusions continue to pose a significant problem, undermining children's right to an education. This is made worse by a lack of transparency and oversight. The report found children being illegally excluded by:

- Failing to follow proper procedures to record exclusions. These exclusions are usually for short periods, but they may be frequently repeated with the same child, causing them to miss substantial periods of education;
- Placing pupils on 'extended study leave', on part-time timetables, or at inappropriate and questionable quality 'alternative provision', as a way of removing them from school;
- Coercing parents into moving their child to a different school, or expecting them to 'educate them at home', under threat of permanent exclusion; and
- Encouraging children to stay at home rather than attend school.

Three main reasons for illegal exclusions were identified as:

- Parents, children and even teachers do not know what the law says. This means that schools can act illegally 'by accident' and that parents and children do not know the school has done anything wrong;
- With the partial exception of Ofsted, no public body – local or national – is doing enough to identify and reduce illegal exclusions. This means illegal exclusions are unlikely to be reported or, if they are, it is unlikely that there will be anything done about them. Local authorities and the Education Funding Agency are the bodies which ought to be tackling this issue; and
- There is no meaningful sanction against excluding illegally, and the incentive structure for schools may, unintentionally, encourage some head teachers to do this.

The report notes that, whilst aware of widespread accusations that Academies and some established faith schools, especially in the secondary sector, are more likely to engage in illegal activity than maintained schools, they have found no evidence to support these claims. It does, however, consider that Academies' governance and accountability arrangements could make it less likely that any illegal activity would be identified and addressed easily or quickly, as more schools become Academies or Free Schools. It notes that this will potentially be compounded by the fact that schools deemed "outstanding" will not regularly be inspected or called to account.

647 Contact a Family (19 February 2013) *Disabled Children Illegally Excluded from School Every Week*

648 Department for Education (25 July 2013) *Permanent and Fixed Period Exclusions from Schools in England: 2011 to 2012 Academic Year*

649 Office of the Children's Commissioner (March 2012) *'They never give up on you'* Office of the Children's Commissioner School Exclusions Inquiry, Final report

650 Office of the Children's Commissioner (April 2013) *Office of the Children's Commissioner's Response to the Government's Equality Duty Review*

651 Office of the Children's Commissioner (March 2013) *'They Go The Extra Mile' Reducing Inequality in School Exclusion*

652 Office of the Children's Commissioner (24 April 2013) *Always Someone Else's Problem*

84 Place social workers and educational psychologists in schools to support children in conflict with their schools

There is no requirement to place social workers and educational psychologists in schools to support those in conflict with their schools.

The founder of the charity, Kids Company, Camila Batmanghelidjh has drawn attention to the impact that a lack of professionals in schools has on the educational outcomes of pupils.⁶⁵³ She stated that a team of social workers, mental health professionals and other advisors should be stationed in schools and said: *'Education is failing because of an underestimation of the impact social care issues have on children's ability to access learning.'*

There are no official statistics in England on the number of schools offering counselling. The Government, however, relying on a 2012 survey by the British Association for Counselling and Psychotherapy which estimated that between 61% and 85% of English secondary schools provide access to counselling, states that school-based counselling is one of the most widely delivered forms of psychological therapy for children in the UK.⁶⁵⁴

85 Ensure that all children out of school receive high quality education

The Department for Education has acknowledged that children educated in alternative provision are among the most vulnerable.⁶⁵⁵ Large numbers of pupils in alternative provision do not achieve meaningful qualifications: in the year 2011–12, only three per cent of pupils in alternative provision achieved five or more GCSEs at grade A* to C, or equivalent, including English and mathematics.⁶⁵⁶ There has been an improvement over time. In the year 2009–10, this figure was just 1.4%.⁶⁵⁷

In response to a review of alternative provision in England, the Government published statutory guidance for all alternative provision.⁶⁵⁸ The Government has, among others, taken the following actions to improve alternative provision:

- Extended the duty on local authorities to provide full-time education for pupils who are unable to attend mainstream education;
- Trialled a new approach where schools choose and fund the alternative provision for their excluded pupils; and
- Introduced initial teacher training in PRUs by allowing trainee teachers to carry out practical teaching experience at PRUs and allowing PRUs to employ trainees on an employment-based teacher training basis.⁶⁵⁹

The Department for Education has stated that it is too early to assess the impact of the measures taken to improve alternative provision.⁶⁶⁰ It has, however, released an initial evaluation of its 3-year school exclusion trial (which started in autumn 2011) which gives schools responsibility for placing and funding excluded pupils in alternative provision, with money devolved from local authorities.⁶⁶¹ It also gives flexibility for funding earlier intervention to reduce the need for exclusion in the first place. The report warns that its findings need to be interpreted with caution, but found evidence from some trial schools that they had started to implement changes, such as additional training for existing staff and increased support for pupils at risk of permanent exclusion. However, it raised the following issues:

- Ensuring that schools had the capacity and expertise to commission, manage and monitor alternative provision;
- Increasing the extent of early intervention at the first sign of difficulties; and

653 London Evening Standard (18 January 2013) *Call for Social Workers and Therapists in Every School*

654 HL, 20 June 2013, c. 424

655 Department for Education (April 2013) *Improving Education for Pupils Outside Mainstream School*

656 Department for Education (April 2013) *Improving Education for Pupils Outside Mainstream School*

657 Department for Education (27 February 2012) *Academy Freedoms for Pupil Referral*

658 Department for Education (January 2013) *Alternative Provision*

659 Department for Education (April 2013) *Improving Education for Pupils Outside Mainstream School*

660 Department for Education (22 April 2013) *Improving Education for Pupils Outside Mainstream School*

661 The Institute of Education, University of London & the National Foundation for Educational Research (March 2013) *Evaluation of the School Exclusion Trial (Responsibility for Alternative Provision for Permanently Excluded Children), First Interim Report*, Department for Education

- Concern about the availability of sufficient, local, flexible, high quality alternative provision to meet the needs of students.

86

Strengthen children's participation in all matters of school, classroom and learning that affect them

The Government has still not implemented the duty on schools to invite and consider the views of students.

The UK Youth Parliament's (UKYP) Campaign for 2013 – *Curriculum for Life* – is aimed at reforming the National Curriculum through a youth-led review so that it promotes young people's political knowledge, better SRE, cultural awareness, community cohesion, finance skills and sustainable living.⁶⁶² The support for this campaign is very strong, it having received 154 of the 295 votes cast in a UKYP vote, more than double the number received for any other issue.⁶⁶³ Young people's evidence to the Youth Select Committee Education and Life Skills Inquiry highlights that young people have had insufficient involvement in shaping the National Curriculum, with no involvement in developing SRE, PSHE and citizenship curriculums,⁶⁶⁴ or even whether or not these were delivered within their school.⁶⁶⁵ The view that children were insufficiently involved is shared by Janet Palmer, Ofsted's national adviser for PSHE, who in evidence said that consultation of pupils in schools remains largely an issue for the school council – a venue that often does not include the engagement of the most vulnerable.⁶⁶⁶

The Children and Families Bill is currently before Parliament. Part 3 of the Bill relates to the system of support for children and young people with SEN. Clause 19 of the Bill sets out the general principles underpinning the involvement of children and young people with SEN in decision-making. It requires local authorities to have regard to:

- The views, wishes and feelings of the child or young person;
- The importance of the child or young person participating as fully as possible in decisions;
- The importance of the child or young person being provided with the information and support necessary to enable participation in those decisions; and
- The need to support the child or young person in order to facilitate their development and help them to achieve the best possible educational and other outcomes.⁶⁶⁷

This clause was introduced, following pre-legislative scrutiny by the Education Select Committee. The Government confirmed that it '*shares the Committee's views about the importance of involving children, young people and their parents at the heart of legislation*'.⁶⁶⁸ However, several clauses in the Bill exclude younger children from participation in SEN decision-making, by providing for the involvement of only parents and young people over the age of 16.⁶⁶⁹

Members of the Lords have sought assurances that the principles for involving children and young people with SEN in decision-making apply to all clauses in Part 3 of the Bill.⁶⁷⁰ The Government spokesperson, Baroness Northover, responded:

*I assure noble Lords ... that Clause 19 enshrines the principle that children and young people should be involved in decisions about their lives. I hope it reassures ... noble Lords that this applies throughout Part 3, including to the clauses on assessment and planning. This is reflected in the draft code of practice ... However, I hear what noble Lords have said ... about any inconsistencies. I am sure that we can double-check to ensure that what was intended runs through both the Bill and the code of practice.*⁶⁷¹

662 See: <http://www.ukyouthparliament.org.uk/campaign/curriculum-life/>

663 See: <http://www.ukyouthparliament.org.uk/campaign/curriculum-life/>

664 FPA Youth Advisory Committee (2013) *Response to the Youth Select Committee Inquiry into the Role of the Education System and the National Curriculum in Equipping Young People with the Skills for Later Life*

665 Brook (June 2013) *Brook's Young Persons Response to the Youth Select Committee Inquiry*

666 Optimus Education (15 July 2013) *Listening to Vulnerable Children*

667 Participation Works (July 2013) *Children and Families Bill House of Lords Second Reading, 2 July 2013*

668 Department for Education (February 2013) *Children and Families Bill 2013: Contextual Information and Responses to Pre-Legislative Scrutiny*

669 Participation Works (July 2013) *Children and Families Bill House of Lords Second Reading*

670 Including Lord Storey, Baroness Hughes of Stretford, Baroness Howarth and Chair of the All Party Parliamentary Group for Children, Baroness Massey of Darwen

671 HL, 23 October 2013, c. GC410

Non-statutory advice to schools regarding the payment of teachers was issued by the Department for Education this year.⁶⁷² It makes it clear that in assessing performance and performance-related pay rises, school governors and head teachers may consider evidence from a range of sources, including the views of pupils and parents.

In June 2013, an evaluation of the SEND Pathfinders programme was published.⁶⁷³ The aim of the report was to focus 'on the processes that have been developed and tested by pathfinders, drawing out examples of effective practice and highlighting areas where further evidence is now required.'⁶⁷⁴

Key findings of the evaluation are:

*... Parents have also been involved as part of the assessment and planning process, through the use of person / family centred approaches and key working. However, there has been less progress in terms of the involvement of children and young people. We would expect more balance between the inputs of parents and children and young people moving forward.'*⁶⁷⁵

In relation to care and support planning:

Limited parental/carer involvement and engagement of young people in care/support planning – parents/carers voiced concerns that their views and wishes were not generally taken into account during the planning of services for their child and similarly, that children and young people had not been encouraged to express their thoughts or preferences. This problem was also likely to be heightened for more vulnerable and less articulate families.

In relation strategic decision-making:

Although the effective engagement of children and young people with SEND in strategic developments was universally recognised as challenging, 10 out of 29 areas reported having reached full implementation of this activity by the end of March 2013 (see Figure 11). This lack of involvement may reflect variations in the local infrastructure at the start of the programme and the challenges around involving this group. That many areas remained at 'partial development' suggested they were continuing to seek additional ways to increase the involvement of children and young people...

[A]lthough some progress had been made, it was apparent that children and young people had not been fully involved in influencing pathfinder activities in many areas. Although it is currently too early to tell, this lack of engagement may result in the new processes being more parent carer focused, as opposed to child and young person. This could cause issues where young people and their parents have differing views about their needs or outcomes.

87

Ensure that children, and particularly children in care, have the right to appeal against their exclusion

Since new arrangements for school exclusion came into force in September 2012, the process for challenging a school's decision to permanently exclude a pupil has changed. The old system of independent appeal panels has been replaced by independent review panels.⁶⁷⁶ The independent review panel can: uphold the decision to permanently exclude a pupil; recommend that the governing body reconsider its decision; or direct the governing body to reconsider its decision.⁶⁷⁷

Whilst statutory guidance from the Department for Education states that excluded pupils should be enabled and encouraged to participate at all stages of the exclusion process, taking into account their age and understanding,⁶⁷⁸ only parents and excluded pupils over the age of 18, may appeal against an exclusion. Head teachers should, as far as possible, avoid permanently excluding any pupil with a statement of SEN or a looked after child.⁶⁷⁹ A report by the Children's Commissioner showed evidence of schools failing to have due regard to their legal responsibilities regarding the exclusion of such children.⁶⁸⁰ The report gave the following quote from a school, which would not exclude looked after children:

672 Department for Education (April 2013) *Departmental Advice: Reviewing and Revising Your School's Approach to Teachers' Pay*

673 Craston, M., Graham, T. & Spivack, R., (June 2013) *Evaluation of the SEND Pathfinder Programme Process and Implementation Research Report June 2013*, Department for Education

674 See: <http://www.sendpathfinder.co.uk/evaluation/>

675 Craston, M., Graham, T. & Spivack, R., (June 2013) *Evaluation of the SEND Pathfinder Programme Process and Implementation Research Report June 2013*, Department for Education

676 Department for Education (20 February 2013) *Statutory Guidance and Regulations on Exclusion*

677 Department for Education (20 February 2013) *Statutory Guidance and Regulations on Exclusion*

678 Department for Education (21 June 2013) *Statutory Guidance and Regulations on Exclusion: Key Points*

679 Office of the Children's Commissioner (24 April 2013) *Always Someone Else's Problem*

680 Office of the Children's Commissioner (24 April 2013) *Always Someone Else's Problem*

Often Looked After Children are left to languish for months after being excluded as it is difficult to place them and this is not ideal for the students as not only is their schooling disrupted but also their confidence and social awareness and social skills ... Adults in the school will work with the children so they have an understanding that they are wanted and not rejected by the adults.

88

Ensure that children, and particularly children in care, have the right to appeal to a special educational needs tribunal

Children do not currently have the right to appeal to a special needs tribunal. The Children and Families Bill will allow for pilot schemes to be introduced, which would enable children in England to appeal to the First-tier Tribunal (Special Educational Needs and Disability).⁶⁸¹ Once such a pilot scheme has run for two years, the right to appeal may be extended to children throughout England.⁶⁸² The Joint Committee on Human Rights has welcomed these developments, stating:

*Providing a direct right of appeal for children strengthens the UK's implementation of Article 12 UNCRC, particularly for Looked After Children, whose legal "parent" is the very body against whom such appeals are made.*⁶⁸³

However, the Committee noted that legal aid will not be available to fund advocacy and representation of the cases, and the Bill has not expressly provided for the appointment of an independent advocate for looked after children who want to exercise the right of appeal.⁶⁸⁴ In response, Children's Minister, Edward Timpson stated that the Government's intention is to require local authorities to make arrangements for the provision of independent advocacy services for children who want to make an appeal. He also proposed that children would have access to "case friends" who can help them through the whole process of making an appeal.⁶⁸⁵

With regards eligibility for legal aid in preparing appeals, the Government is proposing to withdraw funding for those who have been lawfully resident in the UK for less than a year.⁶⁸⁶ This means that children whose immigration status is unclear or do not have necessary documentation will not be entitled to legal aid, even if they have SEN. Sarah Teather, MP and Chair of the All-Party Parliamentary Group on Refugees, has commented:

*Many migrant children with special educational needs who are fighting for the support that they deserve will not be able to get legal advice... Coupled with the changes to judicial review, these proposals – which will almost certainly end up costing more money than they save – will stop people from accessing the justice system just when they need it the most.*⁶⁸⁷

89

Strengthen efforts to guarantee children's right to rest and leisure, to engage in play and recreational activities appropriate to their age, and to participate in cultural life and the arts

In 2011, the Department for Education stopped funding the Play Strategy in England. Over the past two years, the number of playwork professionals employed by local authorities has dropped significantly.⁶⁸⁸

In an interview with the Daily Mail, Childcare Minister Elizabeth Truss, has criticised 'chaotic' nurseries for failing to prepare children for school life. She referred to the fact she had seen 'too many chaotic settings, where children are running around. There's no sense of purpose'.⁶⁸⁹ She called for a more traditional model of early years akin to the French one with its strong focus on structured learning, where children 'learn to socialise with each other, pay attention to the teacher and develop good manners, which is not the case in too many nurseries in Britain'.⁶⁹⁰

681 Children and Families Bill (HL 32), c. 54

682 Children and Families Bill (HL 32), c. 55(2)

683 Joint Committee on Human Rights (June 2013) *Third Report Legislative Scrutiny: Children and Families Bill; Energy Bill*

684 Department for Education (February 2013) *Letter from the Chair, to Rt Hon Edward Timpson MP, Minister of State for Children and Families*

685 Joint Committee on Human Rights (June 2013) *Memorandum on Consideration of Part 3 of the Children and Families Bill in light of the United Nations Convention on the Rights of Persons with Disabilities & Answers to Specific Questions from the Joint Committee on Human Rights – Annex A1, sections 19–24, of Letter to the Chair of the Joint Human Rights Committee from Edward Timpson MP, Parliamentary Under Secretary of State for Children and Families, Department for Education*

686 Ministry of Justice (September 2013) *Transforming Legal Aid: Next Steps*

687 Boycott, O. (23 September 2013) 'Legal Aid Residence Test 'Will Just Shift Cost to Council Taxpayers'', *The Guardian*

688 KIDS (August 2013) *Playday Survey 2013 – Examining the Survey Responses and the Impact on Disabled Children*

689 Jozwiak, G. (23 April 2013) 'Nursery Leaders Round on Truss Criticism', *Children & Young People Now*

690 Williams, M. (22 April 2013) *Childcare Minister Elizabeth Truss Attacks Unruly Nurseries*, *The Guardian*

These comments have 'outraged' childcare providers and teaching unions as 'ill-judged' and not painting a picture 'that would be recognised by anyone who knows anything about child development'.⁶⁹¹ According to Professor Elizabeth Wood, an early education expert at Sheffield University, the Minister is going against '50 years' worth of rigorous empirical research':

Children who are confined indoors and sitting in chairs, at this age, will miss out on a large part of their physical development. If we shut the doors on our nurseries, it is very likely that children will not learn to combine the whole range of different motor skills they need, for example, to develop strength, stability, balance and co-ordination. We have seen a huge expansion of development of outdoor spaces in the last 20 years with nurseries and children's centres building playgrounds and fitting poly-tunnels, and adding other equipment. All this is grounded in research that says it is very important to have a rich and varied outdoor space.⁶⁹²

Concerns have also been voiced regarding the Anti-social Behaviour, Crime and Policing Bill and the 'unintentional consequences' that are likely to result 'as the normal everyday freedoms to play outdoors that children have enjoyed for generations could bring them into conflict with civil and criminal law'.⁶⁹³ In Play England's view, the proposals to change the definition of anti-social behaviour to 'conduct capable of causing nuisance and annoyance' and to lower the burden of proof to the 'balance of probabilities' are likely to have 'a particularly detrimental effect on children's freedom to play with friends in their neighbourhoods'.⁶⁹⁴

This concern is supported by over 50 charities who in a letter to the Times, stated:

Not only does this legislation directly contradict the United Nations call to support children's right to play, but rather than tackling the root issue of anti-social behaviour, this will merely serve as another barrier stopping children from playing outdoors with their friends in the street, the park or other public spaces, further jeopardising the physical and mental health of children.⁶⁹⁵

The Family and Childcare Trust has found that there is a shortage of school holiday programmes for older children.⁶⁹⁶ Provision of sport and cultural activities in the school holidays has seen extensive funding cuts since 2010.⁶⁹⁷ The Family and Childcare Trust is mapping cuts to youth service budgets across England, and it estimates that local authority youth service budgets have fallen by an average of 4.9% between financial years 2012–13 and 2013–14, although some local authorities have cut more, and a minority have ended all local authority youth service provision entirely.⁶⁹⁸

The Education Committee published a report on school sport, following the Olympic Games, and said that the 2012 legacy, which aimed to increase the number of children participating in sport, was at risk of being lost because of a lack of long-term funding for, and poor inclusivity of, school sport schemes.⁶⁹⁹ The Government is providing additional annual funding of £150 million for academic years 2013–14 and 2014–15 to improve provision of physical education and sport in primary schools.⁷⁰⁰

90

Provide children, including those with disabilities, with adequate and accessible play spaces

A survey commissioned by Play England, and others, found that a lack of dedicated community space hampered children's opportunities to play. Almost a third of adults (32%) and a fifth of children (20%) said that more spaces to play within their local community would mean that more children would play outside.⁷⁰¹ There is inequality in access to play spaces. NCB reported that children living in the most deprived areas are much less likely than those living in the least deprived to have access to green space and places to play.⁷⁰²

A report by KIDS, showed that the vast majority of disabled children in England do not have equal access to play.⁷⁰³ The survey, which examined play provision for disabled children, received 952 responses from various

691 Chapman, J (22 April 2013) *A Third of Pupils 'Can Hardly Communicate' when they Start School: Education Minister Risks Fresh Clash with Nursery Chiefs*, Schools Database

692 Richardson, H. (27 April 2013) 'What would a 'Schoolification' of Our Nurseries Mean?', *BBC News*

693 Play England (July 2013) *Anti-social Behaviour, Crime and Policing Bill: Written Evidence*

694 Play England (July 2013) *Anti-social Behaviour, Crime and Policing Bill: Written Evidence*

695 Letter to the Times published on 16 July 2013; see <http://www.playengland.org.uk/news/2013/07/letter-to-the-times-on-the-anti-social-behaviour,-crime-and-policing-bill.aspx>

696 Family and Childcare Trust (2013) *Holiday Childcare Costs Survey 2013*

697 Family and Childcare Trust (2013) *Holiday Childcare Costs Survey 2013*

698 Family and Childcare Trust (2013) *Holiday Childcare Costs Survey 2013*

699 Education Committee (July 2013) *Report on School Sport Following London 2012: No More Political Football*

700 Department for Education (June 2013) *Primary School PE and Sport Funding*

701 Play England (7 August 2013) *Unwelcoming Communities Stop Children Playing Out*

702 National Children's Bureau (August 2013) *Greater Expectations: Raising Aspirations for Our Children*

703 KIDS (August 2013) *Playday Survey 2013 – Examining the Survey Responses and the Impact on Disabled Children*

groups including: parents of disabled children, play workers, SENCOs, and social workers. The report found that many disabled children have no play opportunities at all. Those who are able to access play often find it offered in tightly controlled environments without access to outdoor spaces. Fifty-eight per cent of respondents said disabled children were included in universal play services; 47% said local services and play spaces were accessible to disabled children. However, tension was found between services described as inclusive/accessible and the experience of families with disabled children trying to access those services. Many settings may describe themselves as open to disabled children, but have none amongst their user groups, so it is difficult to determine the extent of genuine inclusion.

7

SPECIAL MEASURES OF PROTECTION

ARTICLES 22, 30 AND 32–40

Particularly vulnerable children – children in situations of emergency, in conflict with the law, in situations of exploitation and children belonging to a minority – need special protection and have particular rights.

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.

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.

States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee shall... receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

91 Intensify efforts to ensure that the 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 Government considers it has met its commitment to end child detention for immigration purposes,⁷⁰⁴ but in practice this has not happened.

Statistical evidence does not show that the Home Office is adhering to its own policy that '*detention must be used sparingly, and for the shortest period necessary*'.⁷⁰⁵ In the first quarter of 2013, provisional figures show 37 children entered detention, a decrease of 16 on the same period in 2012, but an increase of 18 on the same period in 2011.⁷⁰⁶ The statistics note that the temporary fall coincided with the closure of Tinsley House for two months and that the general trend has been a rise in children entering detention since the opening in 2011 of the new pre-departure accommodation, Cedars. Sixteen of those detained were under five years old and a further 13 between five and 11 years old.⁷⁰⁷ These figures do not include all those children held for less than 24 hours, or recorded as detained under both criminal and immigration powers.

A significant number of children are released after being in detention, raising serious questions about the lawfulness of their detention. Of the 38 children leaving detention between January and March 2013, 14 were granted temporary admission or release into the community,⁷⁰⁸ indicating their detention was unnecessary, and therefore not a measure of last resort. A report by the UN High Commissioner for Refugees (UNHCR) highlights poor decision-making in relation to families' applications for asylum,⁷⁰⁹ which can lead to inappropriate enforcement action being taken against families, often involving detention.

In terms of detention periods, Government statistics show 34 of those leaving detention had been detained for less than three days, three for between four and seven days and one for between two and three months.⁷¹⁰

Families and unaccompanied children can still be held in short-term holding facilities at UK ports of entry (or in Tinsley House Immigration Removal Centre) pending their admission to or immediate removal from the UK. The Government said that it expected these powers to be used sparingly (for a '*few dozen families each year, usually for less than 24 hours*'). However, figures disclosed suggest that a far greater number of children have been held in these facilities in practice.⁷¹¹ An inspection of the short term holding facility at London City Airport showed in the previous three months the holding room had been occupied, on 21 days out of 91, by 23 people, of whom three were children; most detainees were held for no more than a few hours.⁷¹² In response to a parliamentary question the Government confirmed that 1,386 children were intercepted and detained in Greater London and South East ports. This compares with 1,538 children in 2011.

The first UK study of children separated from their parents by immigration detention shows they are at risk of serious harm, with detrimental effects on children including loss of weight, nightmares, insomnia, extreme isolation, moving between unstable care arrangements and neglect.⁷¹³ Parents were detained without time limit, for an average of 270 days. In 92 out of 111 cases, the parents were eventually released, meaning that their detention served no purpose. In 15 cases, parents were returned to their country of origin without their children. It has and will become increasingly difficult to challenge a parent's immigration detention following changes to the legal aid system brought in by the LASPO Act 2012 and proposals to further limit legal aid and to restrict the availability of judicial review.

There are currently no figures on the number of children and age disputed young people who are detained in prisons or the children's secure estate under Immigration Act powers, after serving time for criminal offences.

704 HC, 19 March 2013, c. 576W

705 Home Office (undated) *Enforcement Instructions and Guidance*

706 Home Office (23 May 2013) *Immigration Statistics January to March 2013*

707 Home Office (January 2013) *Migration Statistics Children Entering Detention under Immigration Act Powers*; Home Office (February 2013) *Migration Statistics Children Entering Detention under Immigration Act Powers*; and Home Office (March 2013) *Migration Statistics Children entering Detention under Immigration Act Powers*

708 Home Office (23 May 2013) *Immigration Statistics January to March 2013*

709 United Nations High Commissioner for Refugees (June 2013) *Untold Stories: Families in the Asylum Process*

710 Home Office (23 May 2013) *Immigration Statistics January to March 2013*

711 Gower, M. (2 January 2013) *Commons Library Standard Note: Ending Child Immigration Detention*, Home Affairs Section

712 HM Chief Inspector of Prisons (22 February 2013) *Report on an Unannounced Follow-up Inspection of the Non-residential Short Term Holding Facility at: London City Airport*

713 Bail for Immigration Detainees (April 2013) *Fractured Childhoods: the Separation of Families by Immigration Detention*

Ensure there are adequate safeguards in place when children are returned to their originating country, including an independent assessment of the conditions upon return, and of the family environment awaiting the child

The JCHR's recent report on migrant children concluded that '[o]n the balance of evidence we received, we are not persuaded that best interests are being considered adequately at present [in immigration decisions affecting children]. Immigration concerns are too often being given too much weight, which must change'; whilst returns need not be to a family member, they should be secure and effective, support the child's development needs, and be evaluated after return.⁷¹⁴ The Children's Society expressed serious concerns to the Committee:

*There is currently no systematic procedure to determine what the "best interests" of a child are before an immigration decision is made, nor is the type of leave granted to the child reflective of their immediate and long-term protection needs. We are deeply concerned to see many vulnerable young people, namely those who are under 25 and came to the UK as unaccompanied children, being forcibly returned to countries such as Afghanistan and Iraq where they are at risk of further violence and abuse. Furthermore, we are alarmed that the government is considering returns of unaccompanied minors to countries where many trafficked children originate from, such as Vietnam.*⁷¹⁵

The JCHR recommended that the Government should reassert the need to consider the best interests of the child throughout the asylum process, and consider whether a formal Best Interests Determination Process should be introduced.

Widespread concern has been expressed that whilst country information-gathering processes may to some extent have improved,⁷¹⁶ the manner in which this information is used, including cases in which there is a lack of sensitivity in assessing the information, or even in which the information is ignored, is said to prevent a 'balanced consideration' of children's best interests.⁷¹⁷ For example, evidence of risk to children in Afghanistan is considered by the Refugee Children's Consortium to be overwhelming, but positive asylum decisions for Afghan children remain lower than for Afghan adults and lower than for most other countries of origin.⁷¹⁸

Whilst, so far, only one child is known to have been returned to Afghanistan, and that was in error,⁷¹⁹ the Government has confirmed it still proposes to arrange for the forcible return of unaccompanied children to their families, or to institutional care facilities in Afghanistan and Iraq, through the European Return Platform for Unaccompanied Minors (ERPUM).⁷²⁰ No care centres or reception facilities have yet been established, but the Government has stated that it will ensure these care arrangements meet standards published by the UNHCR.⁷²¹

The proposals have been heavily criticised, given continued humanitarian issues and conflict in Afghanistan – with returns in such circumstances illustrating 'how far we are removed from looking at the best interests of children and the human rights of children', according to The Refugee Council.⁷²² Human Rights Watch said that returning children to Afghanistan without proper family tracing could lead to a 'real risk of irreparable harm', citing problems in relation to education, healthcare and possible underage military recruitment.⁷²³ The JCHR has recommended that enforced returns proposals should not be progressed while conflict or humanitarian concerns continue, and that, if this cannot be guaranteed within the ERPUM, the Government should withdraw from further participation in it.⁷²⁴

714 Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

715 Evidence of The Children's Society cited in Joint Committee of Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

716 Evidence of The Refugee Children's Consortium in Home Affairs Committee (October 2013) *Asylum, Seventh Report of Session 2013–14, Volume I: Report, together with Formal Minutes, Oral and Written Evidence*

717 Evidence of Dr Christine Mounge cited in Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

718 Evidence of The Refugee Children's Consortium in Home Affairs Committee (October 2013) *Asylum, Seventh Report of Session 2013–14, Volume I: Report, together with Formal Minutes, Oral and Written Evidence*

719 HC, 17 June 2013, c. 473W

720 HC, 13 February 2013, c. 756W

721 HC, 13 February 2013, c. 756W

722 Evidence of The Refugee Council cited in Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

723 Evidence of Human Rights Watch cited in Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

724 Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

The Home Office has stated that there are insufficient resources to establish a policy of routine monitoring of how individual unsuccessful asylum seekers are treated on removal from the UK.⁷²⁵ It considers that the best way to avoid ill-treatment is to ensure those at real risk of torture, or other inhumane or degrading treatment, are not returned to their country of origin based on up-to-date country of origin information.

93 Ensure that the UK Border Agency appoints specially-trained staff to conduct screening interviews of children

Whilst the Immigration Rules require that only a person with specialist training in the interviewing of children carries out the substantive interview with children in asylum applications,⁷²⁶ there is still no such requirement for the initial screening interview.

Training arrangements remain the same. UNHCR recognises significant recent efforts made by the Home Office to improve the asylum process for children, and notes that training ensures decision-makers are equipped with the necessary skills for interviewing children.⁷²⁷ However, not only do both the victims of trafficking guidance⁷²⁸ and the more general guidance for asylum applications⁷²⁹ make it clear such training is limited to decision-makers rather than those undertaking the screening interviews, but UNHCR recommends it needs strengthening,⁷³⁰ noting in particular that the training has tended to date to focus on unaccompanied children.⁷³¹

Views of asylum seekers to the ongoing Asylum Inquiry by the Home Affairs Select Committee refer to screening interviews which were undertaken by officials who: were unsympathetic to victims of torture and to women; had a hostile manner; asked unclear questions so the asylum seekers did not know how to answer; and did not give them the space to tell their stories. One asylum seeker observed: *'I had my son of 14 with me at my screening interview. He was only a child. They threatened us both with jail if we didn't return.'*⁷³² That there is too little emphasis, during the screening process, on the needs of children and of the need to tailor processes to their age and background, is a view shared by the JCHR, based on evidence presented to it. The process is described by organisations giving evidence to the JCHR as *'very detrimental to children'*,⁷³³ often *'very frightening'*,⁷³⁴ and not *'young person friendly'*.⁷³⁵ Specific criticism includes that interpreters often lack experience of the asylum process generally, and of working with children in particular.⁷³⁶ that *'minimal adaptations'* are made for children⁷³⁷ and that screening too often blurs into wider information-gathering,⁷³⁸ with insufficient regard to the child's age and status in terms of interview length, and the techniques and reasoning used during questioning.⁷³⁹ In light of this evidence, the JCHR is calling on the Government to develop and deliver a training programme designed to improve awareness and understanding among immigration staff of the UNCRC, particularly the principle of best interests.⁷⁴⁰

The Minister of State for Children and Families has recognised that there are *'bound to be cases in which people do not do as the policy sets out'*, but does not consider there to be a *'systemic problem'*, or widespread

725 Evidence of the Home Office in Home Affairs Committee (October 2013) *Asylum, Seventh Report of Session 2013–14, Volume I: Report, together with Formal Minutes, Oral and Written Evidence*

726 Immigration Rules, para 352

727 United Nations High Commissioner for Refugees (June 2013) *Quality Integration Report – Second Report to the Minister Untold Stories: Families in the Asylum Process*

728 UK Border Agency (23 January 2013) *Victims of Human Trafficking – Guidance for Front Line Staff (version 2)*

729 UK Border Agency (August 2010) *Processing Asylum Applications from a Child*

730 United Nations High Commissioner for Refugees (June 2013) *Quality Integration Report – Second Report to the Minister Untold Stories: Families in the Asylum Process*

731 United Nations High Commissioner for Refugees (June 2013) *Quality Integration Report – Second Report to the Minister Untold Stories: Families in the Asylum Process*

732 Memorandum by Lucy Fairley and asylum seekers who wish to remain anonymous in Home Affairs Committee (October 2013) *Asylum, Seventh Report of Session 2013–14, Volume I: Report, together with Formal Minutes, Oral and Written Evidence*

733 Evidence of The Refugee Council cited in Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

734 Evidence of Baljeet Sandhu of the Migrant and Refugee Children's Legal Centre at the Islington Law Centre cited in Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

735 Evidence of Northern Ireland Commissioner for Children and Young People cited in Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

736 Evidence of Barnardo's cited in Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

737 Evidence of Ilona Pinter, Young Refugees and Migrants at the Children's Society cited in Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

738 Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

739 Evidence of Refugee Council, NSPCC, Law Centre (Northern Ireland), Refugee Action, Office of the Children's Commissioner for England cited in Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

740 Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

difficulties with screening and information-gathering.⁷⁴¹ The current guidance and policy on screening has been retained under the new asylum and immigration process introduced in April 2013.⁷⁴²

For many trafficking victims, first contact with the authorities is at the Asylum Screening Unit (ASU) in Croydon. Aftercare providers have expressed major concerns that staff at the ASU are not trained to deal with victims of trafficking, with reports of insensitive handling of cases.⁷⁴³ Some aftercare agencies have formed arrangements with their local immigration office so screening interviews can take place locally, ensuring the survivor is appropriately supported.⁷⁴⁴ During 2012, UKBA changed the physical arrangements at the ASU, including making private areas available for the screening interview. These improvements have not been made as yet in other screening locations such as ports, police stations, local immigration offices, detention centres and prisons.⁷⁴⁵

94 Consider the appointment of guardians to unaccompanied asylum-seekers and migrant children

In evidence to the JCHR, the Minister of State for Children and Families has confirmed that whilst he is 'not persuaded that a guardianship scheme would add value' to the current system, given the role and responsibilities of professionals already involved in the care of looked after children, he is 'open-minded' about possible developments, particularly if the Scottish Guardianship Service demonstrates its ability to represent children's views effectively.⁷⁴⁶

The Centre for Social Justice found that the service offered to trafficked children by social workers was inadequate. Home Office-commissioned research, carried out by The Children's Society and Refugee Council, into the experiences of trafficked children, illustrated the particular need of this group of children for an independent adult to support child victims of trafficking.⁷⁴⁷ Children who had been traumatised, isolated and scared by their exploitation were poorly served by the authorities. Authorities treated them suspiciously and had a lack of understanding of trafficking, and there was no continuity in the personnel dealing with children. As a result, children were left confused by complex immigration and criminal justice processes and denied essential support. A two and a half year pilot scheme for a Scottish Guardianship Service ended in March 2013. During the pilot, unaccompanied asylum seeking and trafficked children arriving in Scotland from outside the EU were provided with an advocate independent of the immigration authorities and local authority. Independent evaluation of the service concluded that guardians had provided clarity, coherence, and continuity for the children involved, and had enhanced overall service provision by creating opportunities for greater collaboration, information sharing, and interagency working.⁷⁴⁸

Whilst views differ on whether a system of guardianship would be better established on a statutory or non-statutory basis,⁷⁴⁹ and some consider further work is needed to establish the exact form such a scheme should take,⁷⁵⁰ the idea of guardianship has significant support in principle.⁷⁵¹ ECPAT, for example believes a guardian would lead to more lasting solutions, more information for children and more effective joint working – a representative 'by their side and on their side'.⁷⁵² The idea of guardianship is supported by the Children's Commissioner for England on the basis it would significantly help children to have their views heard in line with Article 12 of the UNCRC. The JCHR recommended pilot programmes are set up in England and Wales to examine the case for guardianship in more depth.⁷⁵³

741 Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

742 Immigration Law Practitioners' Association (May 2013) *Information Sheet: Asylum Operating Model*

743 Centre for Social Justice (March 2013) *It happens Here: Equipping the UK to Fight Modern Slavery*

744 Centre for Social Justice (March 2013) *It happens Here: Equipping the UK to Fight Modern Slavery*

745 Asylum Aid (March 2013) *National Country Report: the UK*

746 Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

747 The Children's Society and Refugee Council (September 2013) *Still at Risk: A Review of Support for Trafficked Children*

748 Crawley, H. and Kohli, R.S. (2013) *'She Endures with Me': An Evaluation of the Scottish Guardianship Service Pilot*

749 Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

750 Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

751 Support includes UNICEF UK, Barnardo's, Praxis, The Children's Commissioner, The Children's Society, Immigration Law Practitioners' Association; See Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

752 Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

753 Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

95 Provide disaggregated statistical data in the next periodic report on the number of children seeking asylum, including those subject to age disputes

The Home Office publishes statistics on the number of children seeking asylum, disaggregated by sex, age and country of origin. It also publishes statistics on the number of applications subject to age-disputes, disaggregated by nationality.

In 2012, there were 1,168 applications from unaccompanied asylum seeking children, a decrease of 16% on the year before and a continuing decrease since 2008. The overall number of cases where age is disputed has fallen (by 12% since 2012 – 328 cases having been disputed),⁷⁵⁴ as has the proportion of cases where age is disputed.⁷⁵⁵ There is still no information in relation to the number of children who are not formally subject to an age dispute, but are treated as adults because *'their physical appearance/demeanour very strongly suggests that they are significantly over 18 years of age'*, though a pilot had been started for the collection of this data. The Coram Children's Legal Centre has criticised this lack of transparency stating:

*If the Home Office is to have a policy intended to cover what it perceives to be obvious cases then it must be accountable, subject to the appropriate scrutiny, and must provide data to demonstrate that its policy is not being routinely misused.*⁷⁵⁶

There are no centrally held statistics on the outcomes of age disputes, information which the UK Children's Commissioners have insisted is needed.⁷⁵⁷ Further, data on the number of children seeking asylum as dependants is limited as the category of dependants is not disaggregated.

In August 2013, the Home Office changed the method for counting both unaccompanied asylum seeking children and age dispute to better reflect an applicant's status during the asylum process.⁷⁵⁸ The Government is also considering carrying out a formal assessment of compliance with the obligation to record age dispute cases.

The JCHR has recommended that the Government record and publish statistics of all those claiming to be children whose age is disputed, disaggregated by gender and nationality, including: those treated as adults; the number placed in immigration detention and any subsequent action; the number of cases where age is assessed by local authorities, and, in such cases, the number determined to be adults and children respectively; and the number of cases that are challenged by judicial review and number of successful challenges.⁷⁵⁹ It also recommends that local authorities be required to produce statistics for any cases where those requesting support and claiming to be children emerge outside of the usual asylum and immigration processes.⁷⁶⁰

96 Give the benefit of the doubt to children in age-dispute cases

The Government claims that Home Office policy⁷⁶¹ is followed by immigration officials, insisting that, where a person claims to be below the age of 18, the benefit of the doubt is given unless two agency officers of sufficient grade conclude the individual's physical appearance or demeanour *'very strongly suggests that they are significantly over 18'*, or there is credible documentary evidence to that effect.⁷⁶² Where the Home Office has doubts, it will refer the individual to social services for a formal age assessment, and they are given the benefit of the doubt pending the outcome of the assessment.⁷⁶³ Nonetheless, the Government states that there will be exceptional instances where individuals are initially detained as adults but later assessed to be under 18 – but that these should only relate to *'age dispute'* cases.⁷⁶⁴

754 Home Office (May 2013) *Immigration Statistics January to March 2013*

755 Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

756 Coram Children's Legal Centre (May 2013) *Happy Birthday? Disputing the Age of Children in the Immigration System*

757 Evidence of the UK Children's Commissioners cited in the Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

758 Home Office (May 2013) *Immigration Statistics April to June 2013*

759 Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

760 Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

761 Home Office (2011) *Asylum Process Guidance Assessing Age*

762 Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

763 HC, 17 June 2013, c. 474W

764 HC, 16 July 2013, c. 600W

Evidence suggests the culture of disbelief remains a key issue – both for immigration services and for social care professionals.⁷⁶⁵ Not only does this result in children facing harmful, protracted disputes, during which they frequently do not receive the support and protection to which they are entitled,⁷⁶⁶ but also puts children at risk of exploitation and abuse,⁷⁶⁷ and mental health issues.⁷⁶⁸ The Coram Children's Legal Centre points out that, as a result of incorrect identification of a child's age, children can be housed with adults, denied access to education or college, or detained as an adult in an Immigration Removal Centre and forcibly removed from the UK.⁷⁶⁹ In its report in relation to child victims of trafficking, The Children's Society found:

Ten of the young people [17 interviewed for the study] that were interviewed for this research had their age disputed. All of them, eventually, were assessed to be children. The impact of being treated as an adult for all young people can be significant, but for this group of children where there may be additional risks around re-trafficking, this process can expose them to harm not experienced by others who have their age disputed.⁷⁷⁰

Immigration officials seem to dispute children's age as a matter of course,⁷⁷¹ and, according to a recent report by Coram Children's Legal Centre, that "culture of disbelief" has been adopted by some local authorities to a 'striking' extent.⁷⁷² Many assessments seem to start from the position of disbelieving the child, with minor inconsistencies in their account being used to undermine their credibility, and significant weight being given to physical appearance and demeanour.⁷⁷³ It also notes that some social workers feel under pressure from their managers either to find a child to be an adult or to decide that they are over 16.⁷⁷⁴ Many assessments examined for the report showed unsound conclusions. Figures from The Refugee Council show they worked with 24 children who were wrongly detained as adults in 2012, and with nine children in the first three months of 2013, who have subsequently been released from detention.⁷⁷⁵ These figures suggest that children are not being given the benefit of the doubt in age-disputed cases.

Evidence suggests the culture of disbelief remains a key issue – both for immigration services and for social care professionals

Further, Ministry of Justice figures show that whilst there were 73 applications to the Administrative Court for judicial review of age assessments in the financial year 2011–12, and 23 in 2012–13, only nine substantive age dispute judicial review hearings were heard in the Upper Tribunal in 2012–13.⁷⁷⁶ Many cases are settled before getting to court, or the local authority will concede. Of the cases Coram Children's Legal Centre examined, a third of them involved either the local authority settling the case accepting the young person's claimed age, or agreeing to undertake a reassessment.⁷⁷⁷ Of the eight full fact-finding hearings in the financial year 2012–13 for which there are reported judgments as at May 2013, the court upheld the assessment as adult by the local authority in three cases (albeit disagreeing with the age in one case); agreed with the claimed age of the child in one instance; and in the rest held them to be a child, albeit a completely different age from claimed, often assigning a date of birth mid-way between that claimed and that given by the local authority.

The JCHR considers changing the "culture of disbelief" to be a paramount concern and has advocated a clear set of statutory guidelines which makes clear that 'young people should be given the benefit of the doubt unless there are compelling grounds to discount their claim'.⁷⁷⁸

The current approach taken by the courts has been reaffirmed recently in *R (MK) v Wolverhampton City Council*.⁷⁷⁹ It stops short of recognising the existence of a formal "benefit of the doubt" principle, acknowledging

765 Coram Children's Legal Centre (May 2013) *Happy Birthday? Disputing the Age of Children in the Immigration System*; and Evidence of Refugee Children's Consortium, The Children's Society, Asylum Aid, Refugee Council, ECPAT, Barnardo's, Coram Children's Legal Centre to the Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

766 Coram Children's Legal Centre (May 2013) *Happy Birthday? Disputing the Age of Children in the Immigration System*

767 Written Evidence of Barnardo's in Home Affairs Committee (October 2013) *Asylum, Seventh Report of Session 2013–14, Volume I: Report, together with Formal Minutes, Oral and Written Evidence*

768 ECPAT cited in Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

769 Coram Children's Legal Centre (May 2013) *Happy Birthday? Disputing the Age of Children in the Immigration System*

770 The Children's Society and Refugee Council (September 2013) *Still at Risk: A Review of Support for Trafficked Children*

771 Written Evidence of The Refugee Children's Consortium in Home Affairs Committee (October 2013) *Asylum, Seventh Report of Session 2013–14, Volume I: Report, together with Formal Minutes, Oral and Written Evidence*

772 Coram Children's Legal Centre (May 2013) *Happy Birthday? Disputing the Age of Children in the Immigration System*

773 Coram Children's Legal Centre (May 2013) *Happy Birthday? Disputing the Age of Children in the Immigration System*

774 Coram Children's Legal Centre (May 2013) *Happy Birthday? Disputing the Age of Children in the Immigration System*

775 Written evidence submitted by The Detention Forum (April 2013) to the Home Affairs Select Committee *Asylum Inquiry*

776 Coram Children's Legal Centre (May 2013) *Happy Birthday? Disputing the Age of Children in the Immigration System*

777 Coram Children's Legal Centre (May 2013) *Happy Birthday? Disputing the Age of Children in the Immigration System*

778 Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

779 *R (MK) v Wolverhampton City Council* [2013] UKUT 00177 (IAC)

only that the lack of such a principle does not mean the tribunal should 'eschew a sympathetic assessment of evidence'.

Where immigration officers detain a child in the reasonable, but mistaken, belief that they are over 18, the Supreme Court has held that this will breach their obligations to have regard to the need to safeguard and protect a child's welfare under Section 55 of the Borders, Citizenship and Immigration Act 2009.⁷⁸⁰ This is an important case as it goes against the only domestic authority on the issue,⁷⁸¹ and all ECHR cases relate to situations where detaining officers knew the detainee was a child.

With regard to trafficked children, Article 13.2 of the European Trafficking Directive states that where the age of a person is uncertain and there are reasons to believe that the person is a child that person should be presumed to be a child in order to receive immediate access to assistance, support and protection. This presumption offers greater protection to children than the mere application of the benefit of the doubt. The latter depends on the subjective assessment of the person applying it.

97

Seek guidance from experts when determining age in disputed cases

Age assessments studied by Coram Children's Legal Centre as part of its casework show a continued lack of consistency within and between local authorities in their approach to, and conduct of, age assessments.⁷⁸² Likewise, Barnardo's has experience of social workers not following the relevant age assessment guidelines.⁷⁸³ Similar deficiencies are highlighted within UK Border Force (UKBF), by an inspection of the holding facility at London City airport; some UKBF staff were not aware of the process for managing age dispute cases and had not heard of a Merton compliant assessment.⁷⁸⁴

Some courses cover the issues to consider when carrying out an age assessment and give an overview of legal developments in case law and, in view of increased demand, some local authorities now deliver in-house training.⁷⁸⁵ However, there is no statutory guidance or training, despite social workers often asking for specialised help and training in this area.⁷⁸⁶

The Children's Commissioner has expressed concern over the level of training given to staff carrying out age assessments.⁷⁸⁷ This concern is shared by the JCHR who notes with disappointment 'the inertia' in carrying out many of its predecessor Committee's recommendations regarding age assessment, including more training and consideration of a wide range of evidence.⁷⁸⁸ The JCHR notes there to be still too little input from relevant professionals, and recommends age assessment guidance for local authorities which insists on the involvement of a far more diverse range of professionals to ensure the process is more robust.

Strong support has been expressed for greater multi-agency involvement in the existing process, with The Children's Society, for example, advocating as the best approach a 'multi-agency approach, whereby social workers, paediatricians, support workers, teachers and all those who are involved in the child's life can contribute'.⁷⁸⁹ There is some evidence, according to The Children's Society, of social workers currently dismissing expert evidence and simply making their own judgement, for example in relation to issues such as learning difficulty.⁷⁹⁰

The Minister of State for Children and Families, in evidence to the JCHR, noted the practical difficulty of assessing age⁷⁹¹ but the Government said that careful decisions were reached following consideration of all available evidence, and it is keen to examine and continuously improve the process. The Minister has indicated proposals from the Royal College of Paediatrics and Child Health (RCPCH) to involve paediatricians in age assessments,⁷⁹² although

780 *AA v Secretary of State for the Home Department* [2013] UKSC 49

781 *AAM v Secretary of State for the Home Department* [2012] EWHC 2567

782 Coram Children's Legal Centre (May 2013) *Happy birthday? Disputing the Age of Children in the Immigration System*

783 Written evidence of Barnardo's in Home Affairs Committee (October 2013) *Asylum, Seventh Report of Session 2013–14, Volume I: Report, together with Formal Minutes, Oral and Written Evidence*

784 HM Chief Inspector of Prisons (22 February 2013) *Report on an Unannounced Follow-up Inspection of the Non-residential Short Term Holding Facility at London City Airport*

785 Coram Children's Legal Centre (May 2013) *Happy Birthday? Disputing the Age of Children in the Immigration System*

786 Coram Children's Legal Centre (May 2013) *Happy Birthday? Disputing the Age of Children in the Immigration System*

787 Evidence of Children's Commissioner for England cited in Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

788 Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

789 Evidence of The Children's Society cited in Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

790 The Children's Society in (May 2013) *Happy Birthday? Disputing the Age of Children in the Immigration System*, Coram Children's Legal Centre

791 Evidence of Minister of State for Children and Families cited in Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

792 Evidence of Minister of State for Children and Families cited in Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

this does not have Government funding as yet.⁷⁹³ The JCHR has recommended that the Government commission the RCPCH to develop guidelines for a stronger contribution from paediatric consultants in assessing age.⁷⁹⁴

98 Consider amending section 2 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 to allow for an absolute defence for unaccompanied minors entering the UK without valid immigration documents

There is no absolute defence for unaccompanied children who fail to produce a passport on arrival in the UK.

99 Do more to collect data on the extent of sexual exploitation and abuse of children, in order to prepare adequate responses to these issues

See Concluding Observation 53.

100 Ensure that, in both legislation and practice, children involved in sexual exploitation and abuse (including as child prostitutes) are always considered as victims of crime in need of support, not as offenders

CPS guidance⁷⁹⁵ and ACPO guidance⁷⁹⁶ advise against prosecution or detention where a child is suspected or determined to have been trafficked. However, there is a disparity between the commitment at policy level not to prosecute and its practical implementation.⁷⁹⁷ Research shows, for example, that CPS policy is not widely known about, has not got the necessary scope to inform and guide all professionals in the criminal justice system and that some police and prosecutors have neither seen nor heard of the guidance.⁷⁹⁸ Consequently, trafficked children are still being prosecuted for crimes they are forced to commit while being exploited, especially Vietnamese children who are being arrested when found in cannabis farms and being sent to prison or YOIs.⁷⁹⁹

The Government has stressed its commitment to raising awareness around the criminalisation of children, a 'key issue in the Government's Human Trafficking Strategy' and that work to ensure 'trafficked children found involved in criminal activity are safeguarded and are not unnecessarily criminalised is ongoing'.⁸⁰⁰

The Court of Appeal has confirmed that children should not be prosecuted for crimes committed as a consequence of being trafficked.⁸⁰¹ Quashing the convictions of three Vietnamese children forced to work in cannabis factories, the Court found that, where a child victim of trafficking was facing criminal proceedings, his or her best interests had to be a primary consideration, and that victims of crime should be treated as such. Where victims may be children two questions have to be addressed; firstly, age has to be established and, then, the extent to which the crime alleged against him was 'consequent on and integral to' the exploitation they were subject to.⁸⁰²

793 Evidence of Royal College of Paediatrics and Child Health cited in Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

794 Joint Committee on Human Rights (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

795 Criminal Prosecution Service (Aug 2011) *CPS Policy for Prosecuting Cases of Human Trafficking*

796 Association of Chief Police Officers (Undated) *Position from ACPO Leads on Child Protection and Cannabis Cultivation on Children and Young People Recovered in Cannabis Farm*

797 The Anti-Trafficking Monitoring Group (June 2013) *In the Dock: Examining the UK's Criminal Response to Human Trafficking*

798 The Centre For Social Justice (2013) *It Happens Here: Equipping the United Kingdom to Fight Modern Slavery*

799 The Anti-Trafficking Monitoring Group (June 2013) *In the Dock: Examining the UK's Criminal Response to Human Trafficking*

800 HM Government in Evidence to the Human Rights Joint Committee (June 2013) *Human Rights of Unaccompanied Migrant Children and Young People in the UK, First Report of Session 2013–14*

801 L, HVN, THN & T V R [2013] EWCA Crim 991

802 L, HVN, THN & T V R [2013] EWCA Crim 991

The term "child prostitute" or "child prostitution" continues to be used to refer to children who are sexually exploited, for example, in the Sentencing Council's consultation on a Sexual Offences Guideline.⁸⁰³ The Government has not yet acted upon the recommendation of the Children's Commissioner in its interim report on the Inquiry into Child Sexual Exploitation in Gangs and Groups:

A review of all legislation and guidance which makes reference to children as 'prostitutes' or involved in prostitution (Appendix F) should be initiated by the Government with the view to amending the wording to acknowledge children as sexually exploited, and where appropriate victimised through commercial sexual exploitation.

As part of its Inquiry into Child Sexual Exploitation in Gangs and Groups, the OCC's interim report highlighted that, of the 2,409 victims reported in the call for evidence process, 155 were identified as also being perpetrators of child sexual exploitation.⁸⁰⁴ It also revealed that agencies varied as to their approach to treating a child as victim or offender, with age, gender and degree of corroboration influencing their judgement to different degrees.

101 Ratify the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse

The UK has not yet ratified the *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*. The UK's failure to ratify has once again been noted by the European Parliament, who has asked the European Commission to confirm whether more countries intend to ratify and implement the Convention and whether any timetable is envisaged.⁸⁰⁵

There have been a number of drives for ratification by NGOs and politicians alike, both directly to the Government⁸⁰⁶ and to the UN Committee on the Rights of the Child.⁸⁰⁷

On 9 January 2013, the Government stated that ratification 'is not a straightforward process, but that officials across a number of Government Departments have been considering the steps that would be required to ratify and implement the convention. Those discussions are continuing'.⁸⁰⁸

On 12 April 2013, in a response to a letter from Caroline Lucas MP, the Government confirmed that child protection is 'an absolute priority', tackling child sexual exploitation 'remains high on the agenda' and that they hope, once the notification requirements on registered sexual offenders (which came into force in August 2012) are complete, they 'will be better placed to know more about timescales'.⁸⁰⁹

102 Provide the necessary resources to effectively implement the Anti-Trafficking Action Plan

The inter-Departmental Ministerial Group Report on human trafficking includes details of the departments and agencies working to combat human trafficking. Expenditure by each department and agency on work to combat human trafficking is not recorded separately or centrally.⁸¹⁰

The Government has indicated, however, that in 2012–13 the Home Office and the Ministry of Justice (MoJ) jointly provided £3 million of funding to support victims of human trafficking.⁸¹¹ This is a significant increase on previous years but as it is not disaggregated it is not possible to establish what proportion, if any, relates specifically to child trafficking. £1.5 million is known to have been paid by the Home Office to the MoJ to fund the victim care contract for adult victims of trafficking in England and Wales.⁸¹² In 2013 the Home Office and the UK Human Trafficking Centre spent a total of £97,266.60 on raising awareness of human trafficking.⁸¹³ The great majority of this was given to NGOs (Stop the Traffik, Eaves and NSPCC) for awareness-raising activities for frontline professionals.

803 Sentencing Council (December 2012) *Sexual Offences Guideline Consultation in Relation to Section 7 Offences*

804 Office of the Children's Commissioner (November 2012) *Inquiry into Child Sexual Exploitation in Gangs and Groups, Interim Report*

805 Parliamentary Question from two members of the European Parliament to the European Commission, dated 29 May 2013

806 Letter from Caroline Lucas MP to the Home Secretary, dated 22 March 2013

807 Joint Submission by CRAE and ECPAT UK (supported by Barnardo's, The Children's Society and CCLC) (June 2013) *Alternative Report on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*

808 HC, January 2013, c. 272W

809 Letter from the Home Secretary to Caroline Lucas MP, dated 12 April 2013

810 HC, 23 April 2013, c. 795W

811 HC, 3 Jun 2013, c. 905W

812 HC, 5 July 2013, c. 840W

813 HC, 25 June 2013, c. 170W

The Home Office provides funding to local authorities to help with their costs in supporting unaccompanied children who have claimed asylum, including those who have been trafficked. The funding is used to cover the costs of accommodation arrangements and social workers. Currently, £95 per day is provided for each supported child under 16 and £71 per day for each child aged 16 or 17. Extra funding is also provided to those local authorities that support high numbers of cases, usually because of proximity to major ports or asylum screening offices. £150 per week is also provided to the local authority for each person they have a duty to continue to support after 18, for example because they have been granted refugee status. (This is additional to the mainstream benefits and housing assistance available to the majority).⁸¹⁴

Funding for research projects is considered as required.⁸¹⁵ No Home Office funding for research into the prevention of human trafficking was allocated in 2012–13 but it granted £44,266, in total, to the Refugee Council and The Children's Society to undertake a scoping review of the practical care arrangements for looked after children who have or may have been trafficked.⁸¹⁶ The review is intended to promote better understanding of the issues affecting trafficked children and so help shape future policy and enhance practice.

The Department for Education (DfE) is supporting a Barnardo's project through an investment of £1.4 million over two years from 2011–12 to 2012–13. This project is developing specialised foster care placements for victims of trafficking and child sexual exploitation, including a high quality two day training course for foster carers.⁸¹⁷

Budgets for research and rehabilitation in 2014–15 have not yet been agreed.⁸¹⁸ The DfE is currently considering applications from voluntary and community sector organisations for grants for the years 2013–14 and 2014–15.

103 Ratify the Council of Europe Convention on Action Against Trafficking in Human Beings



The UK ratified the Convention on 17 December 2008 and so is bound by its provisions. However, the UK has still not adopted legislation incorporating the Convention into domestic law and so its provisions cannot be relied upon directly in English courts or tribunals.

The EU Directive on combating trafficking, which the UK opted into, came in to force on 6 April 2013. Whilst its provisions are therefore now binding on the UK Government, the Government has some discretion as to how to adapt UK law to ensure it is in line with the Directive's goals. Very little has been done in the UK so far to change national law and the authorities have been criticised by leading experts and practitioners for not taking further steps in this respect.⁸¹⁹ However, as a Directive, any provision that is clear, precise and unconditional can be relied on directly before a UK court or tribunal, even if it has not been incorporated into national law through domestic legislation. UK courts and tribunals can also now refer questions to the Court of Justice of the European Union if they have doubts about how to interpret or apply the Directive.

104 Ensure child protection standards for trafficked children meet international standards



The Second Annual Report of the Inter-Departmental Ministerial Group on Human Trafficking was published in October 2013.⁸²⁰ However, ECPAT UK has expressed its disappointment with the report, calling it 'a missed opportunity' for the Government to assess 'the mounting crisis' of child trafficking in the UK.⁸²¹ Of particular concern to them is the report's failure to address a number of issues it considers seriously affect child victims of trafficking: the lack of a system of legal guardianship for victims; the impact of legal aid proposals on trafficked children; and the continuing criminalisation of children prosecuted for crimes they are forced to commit.

The UN Committee on the Rights of the Child is reviewing the UK's implementation of the *Optional Protocol to the Convention on the rights of the child on the sale of children, child prostitution and child pornography*. In

814 HL, 17 June 2013, c. 16W

815 HC, 5 July 2013, c. 840W

816 HC, 5 July 2013, c. 840W

817 HC, 5 February 2013, c. 151W

818 HC, 5 July 2013, c. 840W

819 Dugan, E. (10 March 2013) Government Failing to Bring Britain in Line with European Rules on Human Trafficking, say Charities, *The Independent*

820 Home Office (October 2013) *Second Report of the Inter-Departmental Ministerial Group on Human Trafficking*

821 ECPAT UK (21 October 2013) *Latest Assessment of Human Trafficking Reveals Gaps in Government Response*

response to the Government's report,⁸²² alternative reports were submitted by NGOs in June 2013.⁸²³ NGOs had a number of concerns relating to implementation of international standards relating to trafficking. Issues raised include the lack of legal guardianship for trafficked children; the large number of trafficked children going missing from local authority care; the need for an independent Anti-Trafficking Commissioner to ensure accurate data collection and to monitor the Government's response to tackling child trafficking; and the need to improve protection of children from being abused by British nationals travelling or living abroad. The UN Committee examined the UK's report and alternative reports in October 2013, and has published a list of further information it wishes the Government to provide by May 2014.⁸²⁴

Despite localised examples of good practice, the criminal justice system fails to systematically prosecute traffickers and protect victims' rights

Revised guidance for all those who have a responsibility for working together to safeguard and promote children's welfare no longer includes provisions on how best to identify and protect child trafficking victims.⁸²⁵ As trafficked children are at risk of immediate and significant harm, a section 47 child protection investigation may sometimes be appropriate. However, there is evidence of non-institutionalisation of such inquiries, with their need not always recognised.⁸²⁶ Ignorance of child trafficking indicators results in investigations not being 'triggered', with evidence of social workers (even recently qualified) lacking knowledge of child trafficking or other exploitation issues, and unaware of the indicators unless given access to specialist training.⁸²⁷

The Anti-Trafficking Monitoring Group published a report in June 2013 examining the UK's criminal justice response to trafficking.⁸²⁸ It highlighted that, despite localised examples of good practice, the criminal justice system fails to systematically prosecute traffickers and protect victims' rights. It concluded that "[t]he challenge remains to ensure that the UK's obligations are met under the Convention and the Directive to adequately legislate, investigate the crime, punish the perpetrators and protect the victims".

In August 2013, the Home Secretary announced a Modern Slavery Bill for England and Wales which the Government intends to publish this session for pre-legislative scrutiny, with the aim of passing by the end of this parliament.⁸²⁹ Four of the Bill's key components are:

- Trafficking Prevention Orders: prevent people convicted of trafficking from getting involved in certain businesses or from visiting particular premises where they might return to trafficking or to exploiting others;
- Supply chain legislation: requires companies to ensure their suppliers are not using slave labour;
- Introduction of a Modern Slavery Commissioner: This will hold police and government bodies to account, pressing them on their action against slavery and human trafficking; and
- Legislation: All existing human trafficking offences will be united into a single piece of legislation.

In the meantime evidence sessions are currently being hosted about practical and effective ways of ending modern slavery in the UK, with a view to the findings being fed into the Bill.

Anthony Steen, Chairman of the Human Trafficking Foundation, has welcomed the Bill, commenting:

*This is unbelievably wonderful news, and what we have all long been campaigning for. The important thing now is to ensure that this opportunity isn't wasted and that the bill is comprehensive enough to provide for better care for victims, whether they be adults or children, as well as nailing traffickers.*⁸³⁰

822 Initial Reports of the United Kingdom of Great Britain and Northern Ireland (6 June 2011) submitted under article 12, paragraph 1 of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (CRC/C/OPSC/GBR/1)

823 Children's Rights Alliance for England and ECPAT UK (June 2013) *Alternative Report on the Implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*

824 UN Committee on the Rights of the Child (30 October 2013) *List of Issues in relation to the Initial Report of the United Kingdom submitted under the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*

825 HM Government (2013) *Working Together to Safeguard Children: A Guide to Inter-agency Working to Safeguard and Promote the Welfare of Children*

826 The Centre for Social Justice (2013) *It Happens Here: Equipping the United Kingdom to Fight Modern Slavery*

827 The Centre for Social Justice (2013) *It Happens Here: Equipping the United Kingdom to Fight Modern Slavery*

828 Anti-Trafficking Monitoring Group (June 2013) *In the Dock: Examining the UK's Criminal Justice Response to Trafficking*

829 Home Office (11 October 2013) *Home Secretary Begins Evidence Sessions on Modern Slavery*

830 Human Trafficking Foundation (27 August 2013) *Home Secretary Announces a Modern Slavery Bill and a Commissioner*

105 Fully implement international standards of juvenile justice, in particular articles 37, 39 and 40, and General Comment 10 on Children's rights in juvenile justice, the UN Standard Minimum Rules for the Administration of Juvenile Justice, the UN Guidelines for the Prevention of Juvenile Delinquency, and the UN Rules for the Protection of Juveniles Deprived of their Liberty

Children's safety and dignity continue to be undermined in the secure estate.

Government statistics show there were 1,725 incidents of self-harm⁸³¹ in the juvenile secure estate in 2011–12, up 21% on 2010–11,⁸³² despite a fall in the number of under-18s in the secure estate. The rate of self-harm incidents per 100 children in custody was higher for girls than for boys.⁸³³ Chair of the Standing Committee for Youth Justice, Penelope Gibbs, has described the overall rise in self-harm (and restraint) as 'worrying', with Frances Crook, Chief Executive of the Howard League for Penal Reform, having commented that youth jails are 'failing in their most basic duty to keep young people in their care safe'.⁸³⁴

With regards strip-searching, the Howard League for Penal Reform obtained figures that showed children had been strip-searched 11,713 times between September 2011 and September 2012; only 77 illicit items were found.⁸³⁵ These figures do not include privately run YOIs.⁸³⁶ Following a request from the Howard League in April, the Prisons Minister, Jeremy Wright confirmed that routine strip-searching on reception in YOIs would be phased out and a risk-based approach to strip-searching on reception would be piloted prior to a national roll-out. Pilots in two prisons (Werrington and Parc) were a success; there has been no increase in contraband being brought into the prisons.⁸³⁷ The National Offender Management Service has extended the pilots to two more prisons – Wetherby and Hindley – and if successful too, no children in the prison system will be subject to routine strip-searching in future.⁸³⁸ These pilots have been welcomed by Her Majesty's Inspectorate of Prisons who in their most recent annual report stated that the 'pointless' routine strip-searching of young people in custody is 'worse than useless' and 'unnecessary'.⁸³⁹

Segregation remains an issue of concern in inspections of YOIs. For Feltham YOI, for example, inspection earlier this year showed that, although use of the adult segregation unit had reduced since the last inspection, the segregation unit remained an unsuitable environment for children.⁸⁴⁰ It noted living conditions were poor and the regime was very limited. It reported that some children might be held in segregation for up to 10 days and a few might then be confined to their cells for 22 hours a day for long periods after return to the wings. Government statistics show that there were 3,881 occasions where single separation was used in SCHs and STCs in 2011–12, down 51% from 2008–09 and 13% since 2010–11.⁸⁴¹ In 2011–12 there was an average of 323 incidents of single separation per month used in SCHs and STCs. This compares to an average of 656 incidents of single separation used per month in 2008–09.

The proposal that legal aid should no longer be available for cases relating to the treatment of prisoners means that children's opportunity to challenge treatment which breaches their rights will be limited.

106 Raise the minimum age of criminal responsibility

The minimum age of criminal responsibility (MACR) in England and Wales remains at 10 years old.⁸⁴² Despite the 'increasing momentum from a wide range of organisations to raise the minimum age of criminal responsibility' noted, at the end of 2012, by the Parliamentary Office of Science and Technology,⁸⁴³ the Government continues to rule out

831 Self harm in custody is defined as any act by which a young person deliberately harms themselves irrespective of the method, intent or severity of the injury

832 Youth Justice Board and Ministry of Justice (January 2013) *Youth Justice Statistics 2011/12 England and Wales*

833 Youth Justice Board and Ministry of Justice (January 2013) *Youth Justice Statistics 2011/12 England and Wales*

834 Purfett, N. (31 January 2013) Restraint and Self-harm Incidents on the Rise in Youth Jails, *Children & Young People Now*

835 Letter from Frances Crook, Howard League for Penal Reform to Jeremy Wright, dated 11 April 2013

836 Letter from Frances Crook, Howard League for Penal Reform to Jeremy Wright, dated 11 April 2013

837 Frances Crook's Blog (31 October 2013) *Ending Routine Strip-Searching of Children*, Howard League for Penal Reform

838 Frances Crook's Blog (31 October 2013) *Ending Routine Strip-Searching of Children*, Howard League for Penal Reform

839 HM Chief Inspector of Prisons for England and Wales (October 2013) *Annual Report 2012–13*

840 HM Chief Inspector of Prisons (January 2013) *Report on an unannounced inspection of HMP/YOI Feltham (Feltham A – children and young people) 21 – 25 January 2013*

841 Youth Justice Board and Ministry of Justice (January 2013) *Statistics 2011/12 England and Wales*

842 Children and Young Persons Act 1933, s. 50

843 POST (3 December 2012) *Age of Criminal Responsibility*

any change to the status quo. The Minister of State for Justice, Lord McNally, has reaffirmed the Government's position, stating that the MACR in England and Wales accurately reflects what is required by the UK's justice system.⁸⁴⁴

The Government's position is noted with regret by the Committee against Torture (CAT), who has recently commented:

*The Committee remains concerned ... that criminal responsibility starts at the age of 10 in England, Wales and Northern Ireland and regrets the State party's reluctance to raise it despite the call of more than 50 organizations, charities and experts in December 2012 and the repeated recommendations made by the Committee on the Rights of the Child.*⁸⁴⁵

Lord Dholakia has sponsored a Private Members Bill which seeks to raise the age of criminal responsibility to 12. The Bill had its first reading in the House of Lords in January 2013. The second reading is yet to be scheduled.⁸⁴⁶

The Parliamentary Office for Science and Technology (POST) will shortly be issuing a new briefing on Age of Criminal Responsibility for Parliamentarians:

*This POST note will give an overview of the scientific literature describing the development of the brain in childhood and adolescence and the resulting impact on a child's ability to make decisions and control behaviour. It will also give an overview of research examining the impact of a child's experience within the criminal justice system and how these factors might inform policy.*⁸⁴⁷

107 Develop a broad range of alternative measures to detention for children in conflict with the law

On 8 April 2013, the out-of-court disposals provisions in the LASPO Act 2012 came into effect. Whilst this reduces the number of out-of-court disposals available for children, it does give greater flexibility in responding to offending behaviour, based on the circumstances of the offence and the child, not simply by escalation.⁸⁴⁸ Both the reprimand and final warning scheme and Penalty Notices for Disorder are abolished. The reprimand and final warning scheme is replaced by a new youth caution, the major difference being that a youth caution can be used even where the child has previous pre-court disposals or convictions. Youth conditional cautions (YCC) are now also available for 10 to 17 year-olds nationwide. According to the Ministry of Justice, conditions attached to these cautions can be *'reparative, rehabilitative or punitive in nature. Punitive conditions should only be used where rehabilitative and reparative conditions are not suitable or sufficient to address the offending.'*⁸⁴⁹ This raises concerns about punitive conditions being imposed on children other than as a result of court proceedings. The need to seek the approval of the CPS is also removed, except for the most serious offences and a YCC may be issued even where the child has previous convictions. The intention is that police and prosecutors have more discretion in deciding whether to offer an out-of-court disposal and to make the decision.

Greater discretion is also given by the LASPO Act 2012 to the courts (for offences or breaches committed since 3 December 2012) by allowing courts to conditionally discharge a child who pleads guilty to their first offence, and removing the restriction on repeated use of the referral order for children who plead guilty.

Unfortunately, however, the LASPO Act 2012 increases the maximum daily length of a curfew from 12 to 16 hours, and the maximum period from six to twelve months. It also sees the maximum fine for breach of a youth rehabilitation order increased dramatically to £2,500, although the courts are meant to take into account the child's financial circumstances when determining the amount.

The Crime and Courts Act 2013 amends the Powers of Criminal Courts (Sentencing) Act 2000 to defer the passing of sentence to allow for a restorative intervention. However the Government has indicated that:

*The offender's participation in [restorative justice (RJ)] activity will not automatically affect the sentence that he receives. It will be for the court to decide whether or not the offender's participation in RJ will affect the sentence that is imposed... RJ will not lead to offenders escaping punishment.*⁸⁵⁰

The increasing localism agenda and decrease in ring-fencing of funding has had an impact on the availability of alternatives to detention, such as intensive fostering and intensive supervision and surveillance

844 HL Deb, 15 January 2013, c. 121W

845 Committee Against Torture (May 2013) *Concluding Observations on the Fifth Periodic Report of the UK, adopted at its Fiftieth Session*

846 See: <http://services.parliament.uk/bills/2012-13/ageofcriminalresponsibility.html>

847 See: <http://www.parliament.uk/mps-lords-and-offices/offices/bicameral/post/work-programme/biology-and-health/minimum-age-of-criminal-responsibility/>

848 Ministry of Justice (May 2013) *Government Response to the Justice Committee's Seventh Report of Session 2012-13: Youth Justice*

849 See: <http://www.justice.gov.uk/youth-justice/courts-and-orders/disposals/youth-conditional-caution>

850 Ministry of Justice (October 2012) *Government Response to Consultation, Punishment and Reform: Effective Community Sentences*

programmes. The Triennial Review report of the YJB noted that *'Ring-fencing of specific activities was removed in 2011/12 in line with the Government's approach to local authority funding and the grant to YOTs is now provided in a lump sum.'* These changes have resulted in a lack of consistency in Youth Offending Team (YOT) services across different local authorities, and a dearth of mechanisms through which to monitor and influence local authority decision-making in relation to YOT services. Intensive fostering is unavailable in many areas; there is provision in only 42 out of 158 YOTs.⁸⁵¹ There is also uncertainty about future funding.⁸⁵² According to the Triennial Review report:

There has been a change in the youth justice landscape since the YJB was established. More decisions affecting youth justice are made and driven at a local level, and the introduction of Police and Crime Commissioners means fewer funding decisions will be made centrally. More recent developments such as the extension of 'Looked After' child status to children remanded securely under LASPO will also impact on the number of levers that the YJB has to influence the youth justice system. A few respondents felt that this has resulted in the YJB being less able to influence the direction of youth justice services locally nevertheless they still called for a body which had an oversight and monitoring function to be retained.⁸⁵³

The Justice Committee has recommended that the full custody budget be devolved to local authorities to enable them to invest in alternatives to custody.⁸⁵⁴ They are worried that without this local areas will find it hard to invest in alternatives to custody and that until this happens more funding should be available where rigorous evidence of success in reducing re-offending exists. The Government, however, has indicated that it is not currently convinced of the benefits of devolving the full budget, although it is keen to learn any lessons from the devolution to local authorities of remand budgets.⁸⁵⁵

108 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

The number of children in custody continues to fall. The latest custody figures (August 2013) show that 1,239 children were incarcerated, a decrease of 404 (24 per cent) from the same point in 2012 and a 60% reduction from the population peak of 3,200 in 2002.⁸⁵⁶ However, in its recent report, while noting that many YOTs and police forces are using a restorative approach to resolving minor offences,⁸⁵⁷ the Justice Committee was concerned that England and Wales still has one of the highest rates of child imprisonment in Western Europe.⁸⁵⁸ The Prison Reform Trust has warned that the recent advances in reducing the use of custody *'could so easily be lost again'*.⁸⁵⁹

In its report, the Justice Committee was concerned that too many children end up in custody for breaching a statutory order.⁸⁶⁰ This means that children continue to be imprisoned for minor offences, and for misbehaviour that is not a criminal offence, which is not only in direct conflict with the principle of last resort, but also dilutes and undermines the message that custody must be taken seriously – as the most serious response to the most serious offences. This problem is set to worsen. Section 80 of the LASPO Act 2012⁸⁶¹ allows children to be detained for breach of a Detention Training Order (DTO), even once the Order has come to an end. The period for which children can be sent back to custody has also increased from 21 weeks to 56 weeks.

Children can be imprisoned for as little as eight weeks and the most recent figures (for 2011–12) show that the average length of sentence is just 77 days, one day less than the year before.⁸⁶² For DTOs it decreased by four days to 107 days, for remand it increased by a day to 42 days and for longer sentences it decreased by 21 days to 353 days.⁸⁶³

A significant piece of research commissioned by the Youth Justice Board recommended that the minimum sentence length should be raised to 12 months, alongside a higher custody threshold, and that sentences of six

851 Justice Committee (March 2013) *Seventh Report of Session 2012–13: Youth Justice*

852 Action for Children in evidence to the Justice Committee (March 2013) *Seventh Report of Session 2012–13: Youth Justice*

853 Ministry of Justice (July 2013) *Triennial Review of the Youth Justice Board for England and Wales, Stage One Report*

854 Justice Committee (March 2013) *Seventh Report of Session 2012–13: Youth Justice*

855 Ministry of Justice (May 2013) *Government Response to the Justice Committee's Seventh Report of Session 2012–13: Youth Justice*

856 Youth Justice Board for England and Wales (October 2013) *Monthly Youth Custody Report – August 2013*

857 Justice Committee (March 2013) *Seventh Report of Session 2012–13: Youth Justice*

858 Justice Committee (March 2013) *Seventh report of Session 2012–13: Youth Justice*

859 Evidence of Juliet Lyon cited in the Justice Committee (March 2013) *Seventh Report of Session 2012–13: Youth Justice*

860 Justice Committee (March 2013) *Seventh Report of Session 2012–13: Youth Justice*

861 Amends s. 104 of the Powers of Criminal Courts Sentencing Act 2000

862 Youth Justice Board and Ministry of Justice (January 2013) *Youth Justice Statistics 2011/12 England and Wales*

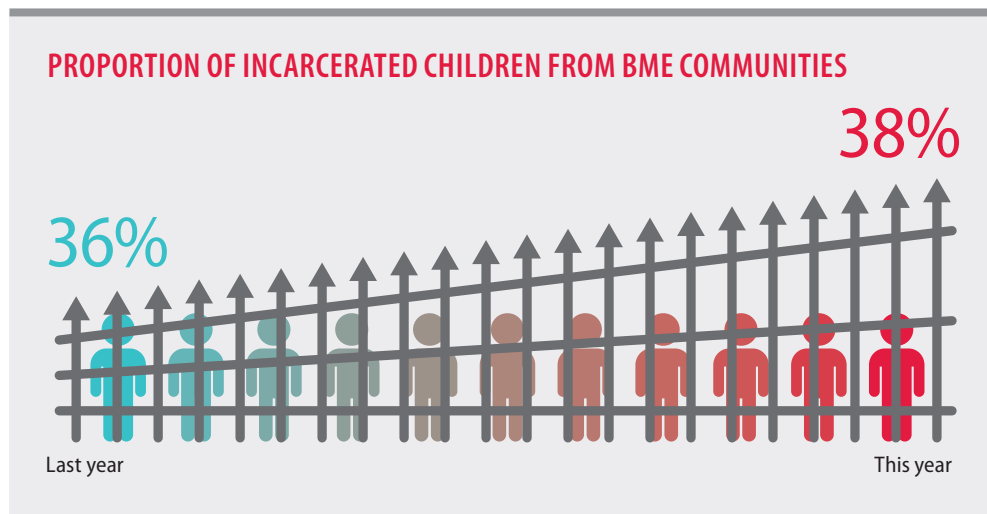
863 Youth Justice Board and Ministry of Justice (January 2013) *Youth Justice Statistics 2011/12 England and Wales*

months or less should be replaced with community based alternatives.⁸⁶⁴ The Justice Committee recommended a statutory threshold based on the Canadian model – to enshrine the principle that only the most serious and prolific offenders should be placed in custody.⁸⁶⁵ The Government, however, maintains its position, stating that such a threshold would be 'too prescriptive and may place the public at significant risk' and that there are already adequate safeguards in place to ensure detention is only imposed when an offence is so serious no alternative is justified.⁸⁶⁶

The fall in the numbers of children in custody has primarily benefited two groups: those aged 10–14 held in the secure estate fell to 44 in August 2013, representing a 66% decline since 2009.⁸⁶⁷ The number of girls in custody has reduced to 50, representing a 69% decline since 2009. There are significant issues of overrepresentation in the secure estate as some groups of children continue to be disproportionately imprisoned:

BME children

Although in August 2013, children from Black and minority ethnic communities experienced their first significant decrease in custody compared with the same time in 2012 – a 20% reduction – they have nonetheless still not benefited to the same extent as white children, who have experienced over a 24% decrease. The proportion of incarcerated children who are from Black and minority ethnic communities has grown from 36% of children last year to 38% this year.



Looked after children

Thirty per cent of boys and 40% of girls report that they have been in the care of the local authority at some point. The Justice Committee, raised concern that looked after children have not benefitted from the same shift towards a more informal approach to minor offending as other children.⁸⁶⁸

Children on remand

Since April 2013 (under the LASPO Act 2012), 12 to 17 year-olds have had to have a real prospect of receiving a custodial sentence on conviction before they can be remanded. Since then, remand budgets have also been devolved to local authorities as an incentive to local practitioners to pursue alternatives to remand. The Government estimated that the new framework will reduce the use of remand by 15%.⁸⁶⁹ The number has decreased since this change occurred – from 308 in April 2013 to 261 in August. Children on remand currently make up 21% of the total child custody population, compared to 25% at the same point in 2012. However, the figures still remain far too high. The Justice Committee points out that 61% of children on remand do not go on to receive a custodial sentence.⁸⁷⁰

Children continue to be detained overnight in police cells. Research by the Howard League for Penal Reform found that:

- 86,034 children were detained overnight in police custody in 2010 – 2011; there was a 10% decrease from 45,318 in 2010 to 40,716 in 2011;

864 Gyateng, T., Moretti, A., May, T and Turnbull, P. J. (2013) *Young People and the Secure Estate: Needs and Interventions*

865 Justice Committee (March 2013) *Seventh Report of Session 2012–13: Youth Justice*

866 Ministry of Justice (May 2013) *Government Response to the Justice Committee's Seventh Report of Session 2012–13: Youth Justice*

867 Youth Justice Board for England and Wales (October 2013) *Monthly Youth Custody Report – August 2013*

868 Justice Committee (March 2013) *Seventh Report of Session 2012–13: Youth Justice*

869 Ministry of Justice and Youth Justice Board (September 2012) *The New Remand Framework for Children: Allocation of New Funding to Local Authorities: Consultation Paper*

870 Justice Committee (March 2013) *Seventh Report of Session 2012–13: Youth Justice*

- 28% of the children detained were children of black and minority ethnic origin and 15% were girls; and
- 10 of the children detained were under the age of criminal responsibility and 387 were aged 10 or 11 years old.⁸⁷¹

109 Ensure that, unless in his or her best interests, every child deprived of liberty is separated from adults in all places of deprivation of liberty

Answering a question in Parliament, Youth Justice Minister, Jeremy Wright, revealed that five young people under the age of 18 were 'authorised to move' into the adult secure estate during 2011.⁸⁷² Figures for 2012 and details on the circumstances of the moves in 2011 were not provided. However a Prison Service spokesman said the practice is usually only used if a child is behaving badly: 'In exceptional circumstances, any young person can be transferred to an adult prison before their eighteenth birthday', the spokesman said. 'This will usually happen because a young person's violent or disruptive behaviour presents an unacceptable risk to the welfare of other young people.'

Several prison sites used to provide facilities for children and adults on the same sites, in which children were supposed to be accommodated separately from adult prisoners but were held together in particular locations such as segregation and healthcare. In a positive move, the last year saw announcements that many of these would be closed or reconfigured. However, it has been confirmed that Hindley will now hold both adults and children on the same site.⁸⁷³

Five young people under the age of 18 were 'authorised to move' into the adult secure estate during 2011

A single remand order was introduced by the LASPO Act 2012 and so, since 3 December 2012, the anomaly of treating 17 year-olds as adults for remand purposes has ended. This means they can now be remanded in SCHs or STCs, not just YOIs. As a result of this, the YJB decommissioned the remaining three young offender institution units for 17 year old girls in July, meaning that no girls in England and Wales are in prison service accommodation.⁸⁷⁴

A High Court case established a positive development for the protection of children's right to be separated from adult detainees.⁸⁷⁵ A 13 year-old with autism and learning difficulties, whilst detained in custody at a magistrates' court, walked from his cell past two adult detainees and experienced a 'cacophony' of sounds in the cell area. The Ministry of Justice submitted that the international law requiring separation was intended only to apply to long-term detention, not short-term such as police station or court. The Administrative Court held that such a narrow interpretation could not be given to these international instruments and that the defendants (Ministry of Justice and Birmingham Magistrates' Court) had breached their duty under Section 31 Children and Young Persons Act 1933 – the requirement to separate the claimant from adult defendants.

110 Provide a statutory right to education for all children deprived of their liberty

As the Ministry of Justice acknowledges, the vast majority of 15 to 17 year-olds in YOIs have been excluded from school at some point, and half are assessed as having the literacy levels expected of children aged 7 to 11.⁸⁷⁶ Despite this, while all children in detention have the right to some education, their educational rights are not equal to those enjoyed by other children.⁸⁷⁷

871 The Howard League for Penal Reform (October 2013) *Police Urged to Stop Detaining Children as Figures Show almost 800 Boys and Girls are Held Overnight in Cells Every Week*

872 HC, 10 January 2013, c. 443W

873 Puffet, N. (14 August 2013) 'Young Adults to be Held at Hindley YOI', *Children and Young People Now*

874 See: Hill, R. (4 July 2013) 'Reductions in Custody Commissioning and the Youth Justice Services Managers Conference', *YJB Bulletin*

875 *The Queen (on the application of) T v The Secretary of State for Justice and Birmingham Magistrates' Court* [2013] EWHC 1119 (Admin)

876 Ministry of Justice (February 2013) *Greater Focus on Education in Youth Estate*

877 See, for example, s. 18A of the Education Act 1996 regarding provision by the Local Education Authority of enough suitable education and training to meet the reasonable needs of children over compulsory school age 9 and subject to youth detention in their area (i.e. subject to a detention order or detained in relevant youth accommodation)

The education that is provided within the youth estate is patchy.⁸⁷⁸ Data from the Centre for Social Justice shows YOIs in England are not providing the most basic education requirements.⁸⁷⁹ Figures show that only one in nine state-run YOIs are delivering their minimum requirement of 15 hours of education to each teenager per week. Further, the position is worsening at YOIs with the number of hours of education having dropped 15% in two years to an average of just 11 hours per week for 2011–12. In terms of courses taken, the number of children enrolled in GCSE and NVQ courses in YOIs was 75 in 2010–11 but only 50 in 2011–12.⁸⁸⁰ The Government stopped collecting data in relation to qualifications actually gained in public YOIs in September 2012, making the figures difficult to compare.

An Inspection of Feltham YOI in 2013 expressed concerns over the provision of education and other 'purposeful activity', and the amount of time children were locked up in cells. The inspection found:

- Although provision has got better further improvements are required, too many young people are currently excluded from education provision;
- Approximately 15% of children were not receiving education or training as a result of disciplinary measures. These children were not receiving enough support from the education department;
- The standard of teaching and learning was regarded as variable but 'it was at least satisfactory' and the 'curriculum was well planned and in the early stages of implementation'; and
- Young people were out of their cells on average for six hours per day, though this varied hugely.⁸⁸¹

Particular concern at Feltham with regard to children on "basic level":

The regime... was too restrictive with curtailment of visits and time out of cell, exclusion from attendance at education and no access to evening association. A few young people on basic would be confined to their cell for 22 hours a day.'

Children in segregation also had limited access to education:

We were told that segregated young people were allowed to attend education and activities off the unit subject to risk assessment, but we found no evidence that this ever happened. A basic daily activity programme included showers, a 30-minute exercise period, access to telephones and in-cell education if requested. Staff from the education department visited every weekday but rarely engaged with young people. We estimated that a young person fully engaged in activities that were offered could spend a maximum of two hours a day out of his cell.

Recommendations in education included:

- All children should spend at least 10 hours outside their cells every day;
- Education provision should be increased; and
- Progress made by children in education should be formally monitored and recorded.

The education provision at Hindley YOI was seen to be more positive, with inspectors noting that:

The education and training provision was well managed and young people had access to good quality services. The standard of teaching was high and behaviour in class was good. Young people made good achievements and almost all of them gained relevant qualifications which would be of value in the community. This was the first experience of educational success for a significant number of young people... Teachers worked well with skills tutors to combine academic and practical subjects...⁸⁸²

Recommendations relating to education and vocational training included:

- All children should have equal access to vocational training;
- Quality of assessment and marking should be improved and include advice on how to progress;
- Increase the proportion of children leaving with confirmed education, training or employment; and
- Extend the use of release on temporary license to enable children secure training and work experience in the community.

Research by the Secure Children's Homes Network shows the quality of educational provision in SCHs to be very different. It reveals rates of progress three times greater than the national expectations of good progress within the first six months, as well as children resident for two – eight weeks improving their reading

878 Ministry of Justice (14 February 2013) *Greater Focus on Education in Youth Estate*

879 Centre for Social Justice Press release (May 2013) *Prisons Failing to Educate Young Offenders, Warns CSJ*

880 HL, 31 October 2013, c. 304W

881 Her Majesty's Inspectorate of Prisons (January 2013) *Report on an Unannounced Inspection of HMP/YPI Feltham, 21–25 January 2013*

882 Her Majesty's Inspectorate of Prisons (January 2013) *Report on an Unannounced Inspection of HMP/YPI Hindley, 19–23 November 2012*

ages by an average of one year.⁸⁸³ A similarly positive picture is provided in official inspections of STCs this year. For example, Hassockfield's inspection showed: teaching, learning and achievement overall to be good, with significant improvements particularly in reading; a good range of programmes in education and vocational training meeting the range of abilities and length of stay; and with those with a statement of SEN being supported well.⁸⁸⁴ Similarly, in relation to Oakhill: achievement is noted to be outstanding; links with schools to be effective; some teaching to be outstanding; and with a high number achieving accredited qualifications.⁸⁸⁵

The significant disparity between the quality and quantity of education provided in the different types of establishment in the secure estate is particularly concerning when, following decommissioning, there are fewer places in SCHs.

The Government consulted, in February 2013, on its vision for reforming youth custody, based on a system of "Secure Colleges" which place education at the heart of the youth justice system.⁸⁸⁶ Acknowledging that the system is failing to turn lives around, the Government states: '*Education is key to our vision. We want to see Secure Colleges providing education in a period of detention, rather than detention with education as an afterthought.*' The consultation, however, gave little detail as to how education would in fact be improved for those in custody, and makes clear that its primary objective is to save costs, calling into question the extent to which reforms will result in improvements in provision. Further, while many welcomed the Government's recognition that educational outcomes for children in the criminal justice system must be improved, many have advocated a more holistic approach to meeting the needs of children in custody.⁸⁸⁷ Organisations have also stressed the need for improvements in resettlement practice.

The Children and Families Bill proposes improvements to provision for children with SEN. Children in custody are more likely to have SEN: 18% of sentenced young people in custody have a statement of SEN, compared with 3% in the general population.⁸⁸⁸ However, clause 70 of the Bill specifically excludes detained children from all the proposed improvements to SEN provision. The Joint Committee on Human Rights considers this to be 'a retrograde step' and has recommended that the clause be deleted.⁸⁸⁹

111 Ensure that children in conflict with the law are always dealt with in the juvenile justice system and never tried as adults in adult courts, irrespective of the gravity of the crime they are charged with

Whilst the vast majority of children in contact with the law are tried by magistrates in the Youth Court,⁸⁹⁰ children can and are still tried in adult courts in cases in which children are co-defendants with one or more adults. Most recent figures, which relate to 2011–12, show there were 77,656 cases in which children were proceeded against in the magistrate's courts (compared with 94,060 the year before).⁸⁹¹ Of these, 32,940 were given sentences for indictable offences (compared with 38,677 the year before).⁸⁹² The most recent available figures (2009) on proceedings in the Crown Court for children aged 10 to 18 tried and/or sentenced in the Crown Court show that a total of 3,410 children were tried.⁸⁹³ Data shows a very slight fall in the number of children sentenced for indictable sentences in the Crown Court (2,053 compared with 2,064 the year before).⁸⁹⁴ These falls need to be viewed, however, in light of the drop in number of court disposals generally.

In a landmark case, the High Court has ruled that treating 17 year-olds as adults in police detention is unlawful.⁸⁹⁵ The court concluded that as England's domestic law has put the age of majority at 18, there could be 'no question but that the treatment of 17 year olds as adults when arrested and detained under Code C [of PACE], is

883 The Secure Children's Homes Network (February 2013) *Educational Progress within 14 Local Authority Secure Children's Homes*

884 Ofsted, Her Majesty's Inspectorate of Prisons and Care Quality Commission (February/March 2013) *The Inspection of Hassockfield Secure Training Centre*

885 Ofsted, Her Majesty's Inspectorate of Prisons and Care Quality Commission (March 2013) *The Inspection of Oakhill Secure Training Centre*

886 Ministry of Justice (February 2013) *Transforming Youth Custody; Putting Education at the Heart of Detention, Consultation Paper*

887 For example, the National Preventive Mechanism (April 2013) *Response to the Ministry of Justice Consultation Transforming Youth Custody*; Standing Committee for Youth Justice (April 2013) *Response to the Transforming Youth Custody Consultation*; Nacro (14 February 2013) *Response to Chris Grayling's Youth Custody Green Paper*

888 HC, 23 April 2013, c. 675

889 Joint Committee on Human Rights (June 2013) *Legislative Scrutiny: Children and Families Bill; Energy Bill Third Report of Session 2013–14*

890 Written Evidence of The Magistrates' Association in *Justice Committee Seventh report of Session 2012–13: Youth Justice, Volume I: Report, together with Formal Minutes, Oral and Written Evidence*

891 Youth Justice Board and Ministry of Justice (January 2013) *Youth Justice Statistics 2011/12, England and Wales*

892 Youth Justice Board and Ministry of Justice (January 2013) *Youth Justice Statistics 2011/12, England and Wales*

893 Ministry of Justice (October 2010) *Sentencing Statistics: England and Wales 2009*

894 Youth Justice Board and Ministry of Justice (January 2013) *Youth Justice Statistics 2011/12, England and Wales*

895 *HC (A Child, by his litigation friend CC) v Home Secretary & Commissioner of Police of the Metropolis* [2013] EWHC 982 (Admin)

inconsistent with the UNCRC and the views of the United Nations Committee of the Rights of the Child' and that the Code needs to distinguish between 17 year-old detainees and adults.

The Government decided not to appeal against the ruling and to bring about the necessary changes to implement the judgement – to ensure all children have a right to be assisted by an appropriate adult when in police custody. At the time of writing, the Government was consulting on a revised Code C, and ACPO has issued interim guidance:

We do, however, recommend that, in line with the HMIC position, and with immediate effect Forces offer the services of an appropriate adult to all 17 year olds.⁸⁹⁶

However, the Government's proposals in responding to the judgement have been criticised for failing to reflect the spirit of the decision – that all under-18s should be accorded the rights afforded to children when at the police station, including the right to be transferred to the care of a local authority, rather than detained in a police cell.⁸⁹⁷

There have been calls for greater integration between the family and youth justice courts to allow, in exceptional circumstances of significant welfare need, for a child prosecuted in the criminal courts to be referred to the family proceedings court.⁸⁹⁸ The Crime and Courts Bill Committee discussed adding a new clause to the Bill to this effect⁸⁹⁹ but no such clause was included in the final Act which received Royal Assent in April. The Government confirmed its view that it considers the criminal courts, and in particular the Youth Court, to be best equipped to determine guilt and, where necessary, the appropriate sentence.⁹⁰⁰

There have been calls for greater integration between the family and youth justice courts to allow, in exceptional circumstances of significant welfare need, for a child prosecuted in the criminal courts to be referred to the family proceedings court

The Practice Direction on special measures for young defendants in court proceedings became a mandatory part of the Criminal Procedure Rules in October 2013, but there remains a lack of equality of arms in relation to the measures which are available for young victims and witnesses, and those which are available for young defendants. In particular, a judicial review has been lodged to challenge the inadequacy of arrangements for defendants' court intermediaries.

One previous distinction between adult and child defendants was removed this year; the victim's surcharge which is imposed automatically on those convicted of a crime, irrespective of the circumstances of the crime, was extended to cover children.

112 Adopt appropriate measures to protect the rights and interests of child victims or witnesses of crime at all stages of the criminal justice process

Figures from the Office for National Statistics, for the year ending March 2013, show an estimated 821,000 crimes experienced by children aged 10 to 15; of this 57% were violent crimes (465,000), while most of the remaining crimes were thefts of personal property (314,000).⁹⁰¹ These figures, however, do not include all incidents which would be legally defined as crimes such as low-level incidents between children, or minor offences between children and family members which would not normally be treated as criminal matters. If these are included, the figures increase to 1,238,000 crimes, of which 844,000 were violent crimes.⁹⁰²

In 2013, the Government released a Strategy and Action Plan to reform the criminal justice system to be implemented over the next two years.⁹⁰³ It includes proposals to pilot pre-recorded cross-examination of child

896 See: <http://www.crimeline.info/news/appropriate-adults-and-17-year-olds>

897 Standing Committee for Youth Justice (September 2013) *Response from the Standing Committee for Youth Justice: PACE Code C Consultation*

898 For example the Youth Justice Committee (March 2013) *Youth Justice Seventh Report of Session 2012–13: Youth Justice*

899 Crime and Courts Bill Committee, 29 January 2013, c. 217–225

900 Ministry of Justice (May 2013) *Government Response to the Justice Committee's Seventh Report of Session 2012–13: Youth Justice*

901 Office for National Statistics (July 2013) *Statistical bulletin: Crime in England and Wales, Year Ending March 2013, Crime Experienced by Children Aged 10 to 15*

902 Office for National Statistics (July 2013) *Statistical bulletin: Crime in England and Wales, Year Ending March 2013, Crime Experienced by Children Aged 10 to 15*

903 Ministry of Justice (June 2013) *Transforming the CJS: a Strategy and Action Plan to Reform the Criminal Justice System*

witnesses. The Action Plan has been welcomed by the Victims' Commissioner for England and Wales for putting the needs of victims and witnesses at the centre of reform: *'It is essential that victims and witnesses have confidence in the system and practical measures such as making better use of new technology are a step in the right direction'*⁹⁰⁴ The proposal for pre-recorded cross-examination has been warmly welcomed by numerous organisations, although as highlighted by the NSPCC *'even if rolled out nationally, this needs to be seen as part of a wider root and branch review of how courts deal with these cases as it won't be a panacea on its own'*⁹⁰⁵ In this respect, Victim Support is calling for specialist witness services for children to be extended from seven trial sites to all parts of England and Wales.⁹⁰⁶

The Government consulted on improving the *Code of Practice for Victims of Crime*,⁹⁰⁷ including consulting with children. A new Code was issued in October 2013 and comes into effect in December 2013.⁹⁰⁸ Recognising that the current Code gives insufficient focus to children who have been victims of crime and is not very easy for children, their parents or guardians to use or understand⁹⁰⁹ the revised Code includes a new section dedicated to victims under 18. It sets out both their entitlements in a user-friendly way and has a section for criminal justice agencies highlighting their duties. An EasyRead publication using simple language and visual aids targeted at children and their parents is also being prepared.⁹¹⁰

Importantly, the revised Code raises the age children can access enhanced victim services from under-17 to under-18. It also makes clear that where the age of a victim is uncertain and there are reasons to believe they are under-18, criminal justice agencies should presume them to be under-18 and therefore entitled to the enhanced entitlements. More generally, it improves the complaints process so victims no longer have to try and identify the appropriate agency to contact; rather agencies now have to redirect complaints to the right agency.

The principle behind the revised Code has been widely welcomed⁹¹¹ albeit there are some concerns as to its accessibility and its failure to make explicit to both victims and professionals that victims are entitled to a certain standard of service or protection even if they have offended.⁹¹² Further, the Parliamentary and Health Service Ombudsman emphasises that revision of the Code will not be enough to achieve a more victim-centred approach:

*...our evidence is that it is not the Code itself that is the problem, but the lack of awareness of its very existence amongst practitioners who should be applying it... This had significant implications in that victims were not, for example, provided with the information about their case to which they were entitled... The impact on victims of failings such as this cannot be underestimated. Victims have told us that they were left feeling powerless and shattered.*⁹¹³

See also Concluding Observation 55.

113 Review the application of the Counter Terrorism Bill to children

This has not been done and there does not appear to be any proposal to do so at this stage.

114 Conduct an independent review of ASBOs with a view to abolishing their application to children

See Concluding Observation 29.

904 Ministry of Justice (28 June 2013) *Damian Green: 'Digital Courtrooms' to be Rolled Out Nationally*

905 NSPCC Chief Executive Peter Wanless in Huffington Post (11 June 2013) *Crime Victims to Pre-record Evidence for Trials to Protect them from Trauma*

906 Victim Support Chief Executive Javed Khan (11 June 2013) *Crime Victims to Pre-record Evidence for Trials to Protect them from Trauma, Huffington Post*

907 Ministry of Justice (29 March 2013) *Improving the Code of Practice for Victims of Crime*

908 Ministry of Justice (October 2013) *Code of Practice for Victims of Crime*

909 Ministry of Justice (29 March 2013) *Improving the Code of Practice for Victims of Crime*

910 Ministry of Justice (October 2013) *Code of Practice for Victims of Crime*

911 Including by the Children's Commissioner, Victim Support and Prison Reform Trust

912 The Children's Commissioner (May 2013) *Office of the Children's Commissioner's Response to the Ministry of Justice Consultation: Improving the Code of Practice for Victims of Crime*

913 Letter from the Parliamentary and Health Ombudsman to the Ministry of Justice, dated 10 May 2013

115 **Ratify all international human rights instruments it is not yet party to, including the International Convention on the Protection of the Rights of All Migrant Workers and members of their Families, the Convention on the Rights of Persons with Disabilities, and the International Convention for the protection of all Persons from Enforced Disappearance**

The UK has not ratified the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Government considers migrant workers' rights to be already protected under UK law.⁹¹⁴

The Government has stated it is keen to move towards signature and ratification of the Convention for the Protection of all Persons from Enforced Disappearances, but that it is inappropriate to set a timetable for ratification at this stage.⁹¹⁵ Amnesty International UK has urged the Government to set a timetable and allocate adequate resources to ensure ratification as soon as possible.⁹¹⁶ An initial assessment of areas of domestic law requiring amendment has been carried out.

The UK has not signed or ratified the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure – enabling children, after exhausting national remedies, to bring children's rights complaints to the UN Committee on the Rights of the Child. The Government is keeping the matter under review.⁹¹⁷

116 **Ratify the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography**

The UK ratified the Optional Protocol in 2009. The UN Committee on the Rights of the Child is currently reviewing the UK's implementation.

117 **Take all appropriate measures to ensure the full implementation of the UN's recommendations by submitting them to Parliament, relevant Government departments and the devolved administrations for consideration and action**

There has been no action on this Concluding Observation.

118 **Make widely available, in relevant languages and also online, the Government report and the UN's concluding observations to the public at large, civil society, youth groups and children in order to generate debate and awareness of the UNCRC**

There has been no action on this Concluding Observation in the last 12 months. The limited documentation on the Government website is in English.

914 HM Government (September 2012) *UK Universal Periodic Review: Annex Document UK's Position*

915 HC, 23 October 2012, c. 828W

916 Amnesty International UK (24 May 2013) *Written Evidence to Foreign Affairs Select Committee*

917 Foreign and Commonwealth Office (11 February 2013) *Response to FOI Request*

Review of UK's implementation of the Optional Protocol on the involvement of children in armed conflict

The UK's policy on recruitment of children conforms to the minimum standard permitted under Optional Protocol – recruitment from age 16 – and the Government has not implemented an absolute prohibition on the deployment of children into hostilities.

In the financial year to 1 April 2013, 2,470 children were recruited into the armed forces, of which 910 were aged 16.⁹¹⁸ Whilst this figure constituted almost one fifth of armed forces intake for the year (19%), it was a 4% decrease from the previous year. Whilst the decrease in child recruits is a positive step it does not reflect a change to Government policy.⁹¹⁹ It is likely to be attributable to changing attitudes. In April 2013, a poll found that 70% of respondents who expressed a view thought the minimum age to join the Army should be 18 or above.⁹²⁰ In July, the House of Commons Defence Committee challenged the Army's continued recruitment of high numbers of children and called on the Government to conduct a cost-benefit analysis of its policy.⁹²¹

There continue to be reports of children being victims of bullying, sexual assault and "beasting" in the armed forces.⁹²² In April 2013 it was revealed that there had been no criminal prosecutions and no personnel had been dismissed in relation to the sexual assault and "beasting" of four children in 2012.⁹²³ In the same month it was reported that between November 2009 and 31 December 2012, child recruits had made thirteen complaints of sexual assault, including two complaints of rape. Four of these cases are ongoing but of the nine which have concluded, only one resulted in conviction on the original charges; four cases resulted in disciplinary proceedings or court martial for "lesser offences".⁹²⁴

The automatic right of discharge for child recruits up until their 18th birthday, introduced in legislation in June 2011, was not written into recruits' enlistment documents until July 2013.⁹²⁵ Implementation of the right is limited by a three month delay at the discretion of the recruit's commanding officer, and could be subject to an indefinite delay should a Queen's Order be in force (during a time of "national danger or emergency"). Between 2011 and the end of 2012 four children were convicted by court martial for nine incidents of going absent without leave, leading in one case to a sentence of 150 days' imprisonment.⁹²⁶

A study published in August 2013 revealed that the risk of fatality in Afghanistan for recruits who had enlisted into the Army aged 16 was twice as high as for those enlisting at age 18 or above.⁹²⁷ This is believed to be predominantly due to the fact that disproportionately high numbers of 16 year-olds join front-line Infantry roles, as they lack the necessary qualifications to enlist in more technical, lower-risk positions.

918 See: www.dasa.mod.uk

919 Letter to Child Soldiers International from Headquarters – Army Training and Recruitment Division, in response to Freedom of Information request 23-07-2013-120637-005, dated 20 August 2013

920 ICM (April 2013) *Army Recruitment Survey*

921 House of Commons Defence Committee (2013) *The Armed Forces Covenant in Action? Part 4: Education of Service Personnel, Fifth Report of Session 2013–14*

922 "Beasting" is the term used to describe subjecting a new recruit to harsh physical or humiliating treatment as a form of punishment.

923 HC Deb, 10 June 2013, c4W. See also Gayle, D. 'Investigation launched after teenage Army cadets complain of perverted 'vacuum beasting'', *Daily Mail*

924 HC Deb, 25 April 2013, c. 1255W

925 Army Form B 271W (24/07/2013)

926 HC Deb, 25 April 2013, c. 1244W

927 Gee, D. and Goodman, A. (2013) *Young Age at Army Enlistment is Associated with Greater War Zone Risks*. ForcesWatch and Child Soldiers International



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