

Children on the edge of care

Human rights and the Children Act

Jenny Morris

This report concerns three groups of children who have not been accorded the full protection of the Children Act 1989 in terms of either meeting their needs or protecting them from harm.

The report examines how local authorities respond to the needs of: unaccompanied asylum-seeking children, disabled children at residential special schools, and children who are privately fostered or who live with relatives rather than their birth parents. It provides a critical analysis of what we know about the circumstances of these groups of children, what their entitlements are under the Children Act, how local authorities respond to their needs and entitlements, and whether recent changes will redress past inadequacies. It concludes that a shortage of resources, and inadequate knowledge about the views and experiences of these three groups of children have resulted in a failure to recognise and promote their human rights.



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Introduction

This paper looks how the Children Acts 1989 and 2004 are applied to three groups of children and young people: unaccompanied asylum-seeking children, disabled children at residential special schools and children who are privately fostered or who live with relatives rather than with their birth parents. These groups of children may experience very different circumstances but, it will be argued, they have one thing in common: they have not been accorded the full protection of the Children Act 1989 in terms of either meeting their needs or protecting them from harm. The paper provides a critical analysis of what we know about the circumstances of these groups of children, what their entitlements are under the Children Act, how local authorities respond to their needs and entitlements, and whether recent changes will redress past inadequacies.

The Children Act 1989 was the key mechanism for fulfilling the United Kingdom's responsibilities under the United Nations Convention on the Rights of the Child. Article 9 of the UN Convention recognises children's rights to live with their parents, unless this is not in their best interests, while Article 18 commits governments to 'render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities'. These human rights are reflected in the requirement placed on local authorities by the Children Act to:

- a. safeguard and promote the welfare of children within their area who are in need; and
- b. so far as is consistent with that duty, to promote the upbringing of such children by their families,

by providing a range and level of services appropriate to those children's needs.

(Children Act, 1989, Section 17 [1])

Section 17 defines children as being 'in need' if they are unlikely to experience 'a reasonable standard of health or development' without assistance, or if they are disabled.

In addition, the Children Act 2004 requires children's services authorities to work with other relevant organisations to improve the well-being of *all* children in their area, in terms of:

- physical and mental health and emotional well-being
- protection from harm and neglect
- education, training and recreation
- the contribution made by them to society
- social and economic well-being.

Article 12 of the UN Convention on the Rights of the Child accords the child 'who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child'. The Children Act 1989 requires courts to have regard to 'the ascertainable wishes and feelings of the child' when making decisions about their care (Section 1 [3]), and local authorities to 'ascertain the wishes and feelings' of children when providing them with care away from their families (Sections 20 [6], 22 [4 and 5]). Section 53 of the Children Act 2004 amends the Children Act 1989 to require that the wishes and feelings of children are ascertained and given due consideration when making any decisions about how to meet a child's needs.

Article 25 of the UN Convention says that children who receive care outside their home have the right to all aspects of the placement being evaluated at regular intervals. The Children Act introduced the legal concept of 'looked after' to cover, not only those situations where the State has taken over parental responsibility, but also those situations where local authorities provide short-term substitute care to assist families at times of crisis or when under stress. Regulations on placements give children an entitlement to a care plan and to regular reviews (in which they should be fully involved). The Adoption and Children Act 2002 introduced on a statutory basis Independent Reviewing Officers to chair reviews of looked after children and monitor the local authority's reviews. The Children Act 1989 laid down that children who are not 'looked after' but who live with people who are not close relatives should be visited regularly in order to protect and promote their welfare.

This paper will argue that interpretations of when a child is 'looked after' have been more important in determining the way local authorities have responded to the needs of the three groups of children under discussion than the human rights promoted by the Children Act. Moreover, it will be argued, assumptions about the needs and circumstances of these children, together with pressure on local authority resources, have encouraged practice that is at variance with both the specific terms of the

Children Act and its wider intentions. Although some progress has been made in the last two years on addressing the needs of these children, some important factors that created poor practice in the past remain largely unaddressed.

Unaccompanied asylum-seeking children

The numbers of children and young people recorded as 'unaccompanied children' applying for refugee status increased from 631 in 1996 (Audit Commission, 2000, p. 66) to 6,200 in 2002 (Home Office, 2003). However, prior to 2002, not all applications were counted, so the extent of the actual increase in applications is unclear. In 2003, applications declined by 49 per cent to 3,180 (Home Office, 2004) and, in 2004, fell to 2,990 (Home Office, 2005).

Patterns of asylum seeking reflect political conflicts in various parts of the world. Thus, in the last few years, there has been a decrease in the numbers of children and young people coming from the former republic of Yugoslavia (mainly Kosovo), but an increase in the numbers coming from Afghanistan, Iran, Somalia and Iraq. In 2003, 60 per cent of unaccompanied children were 16 or 17 years old, 29 per cent were 14 or 15, and 11 per cent were under 14 (Home Office, 2004, p. 8). The majority are supported by London local authorities, in particular Hillingdon, Croydon and Lambeth (London Asylum Seekers Consortium, 2005), or by Kent or West Sussex County Councils (Audit Commission, 2000; Dennis and Kidane, 2001).

In July 2005, the Home Office Immigration and Nationality Directorate (IND) launched the National Register for Unaccompanied Children. This is a database shared between the Home Office and local authorities, and is intended to enable more control of 'the numbers of children, costs of care and length of stay in the asylum system' (National Register for Unaccompanied Children, 2005). It has been reported that the Government is expecting use of the database to save £4.5 million by 2006/07 by reducing reapplications at different local authorities (*Community Care*, 2004a). Launch of the Register was delayed because of concerns on the part of local authorities that the IND would use the database to aid the removal of young people once they had reached 18, and unaccompanied status and age disputes are 'ongoing issues between the Home Office and local authorities' (National Register for Unaccompanied Children, 2005).

Until the National Register enables a comprehensive analysis of unaccompanied asylum-seeking children, the information available about their circumstances is limited. An Audit Commission study, published in 2000, found that the majority of 16- and 17-year-old unaccompanied asylum seekers were housed in either bed and

breakfast accommodation or other privately rented property (Audit Commission, 2000). In contrast, the majority of under-16s were placed with foster parents or in children's homes, although 12 per cent were in bed and breakfast, hostels or hotel annexes (Audit Commission, 2000). Some young people are held in detention, usually because they are assumed to be adults and this is sometimes because they have had to travel on a false passport (Ayotte and Williamson, 2001).

Reports published by both Save the Children (Ayotte, 2000; Stanley 2001) and the British Association for Adoption and Fostering (Kidane, 2001a) contain powerful testimony of the (unsurprising) high levels of needs among children and young people who have been separated from their families, flee from desperate circumstances and arrive with little or no resources in a strange country. In spite of high levels of material and emotional needs, they frequently experience difficulties in getting access to mainstream education, are subject to bullying and racial harassment, are placed in poor-standard accommodation and receive little help in getting access to the support they need (Dennis, 2002; Hewett *et al.*, 2004). The placement of 16 and 17 year olds in unsupported housing, with adults who are strangers to them, raises child protection concerns that are not always recognised or addressed. Research on both refugee experiences generally and on children's mental health and emotional needs indicate that refugee children and young people who are separated from their families are likely to experience significant psychological stress and threat to their emotional well-being. Moreover, like most young people who are separated from their families, unaccompanied asylum seekers are likely to need continuing support as they grow into adulthood.

The Audit Commission report, *Another Country*, published in 2000, concluded:

Many unaccompanied children have multiple needs because of their experiences of separation, loss and social dislocation. Their development may be accelerated in some areas and arrested in others, and they may need additional support to make the transition to adulthood.
(Audit Commission, 2000, p. 66)

Unaccompanied asylum seekers and the Children Act

Article 20 of the UN Convention on the Rights of the Child states that: 'A child temporarily or permanently deprived of his or her family environment ... shall be entitled to special protection and assistance provided by the state'. The British Government recognises its responsibilities under this Article by accepting that children and young people, aged 17 and below, who have come to this country from

abroad and are not accompanied by an adult who has responsibility for them, have the same legal entitlements as children who are British citizens. This includes the entitlements accorded to 'children in need' and 'looked after' children as defined by the Children Act and discussed above. Once the unaccompanied asylum seeker turns 18 they lose their entitlements as children and do not gain the same legal entitlements as adult British citizens until they are granted refugee status or exceptional leave to remain (now 'discretionary leave to remain' or 'humanitarian protection'). There is one exception to this: where the young person has been recognised as 'looked after' within the terms of the Children Act 1989, they are entitled to various forms of continuing support from their local social services authority, under the Children (Leaving Care) Act 2000.

There are thus three crucial criteria that determine the legal entitlements of young asylum seekers: their age; whether they are accompanied by an adult who has parental responsibility for them; and whether, through the support given by a social services authority, they are defined as 'looked after' within the terms of the Children Act.

In January 2001, a mapping exercise carried out by the British Association for Adoption and Fostering (BAAF) and the Refugee Council found 6,078 unaccompanied children and young people supported by English local authorities who were either seeking asylum or had been granted refugee status or exceptional leave to remain (Dennis and Kidane, 2001, Appendix 4). Local authorities were only asked to distinguish unaccompanied asylum seekers among looked after children in 2002¹ when a total of 2,200 were recorded (Department of Health, 2003a). It would appear, therefore, that, in the late 1990s and early years of this decade, only about a third of these children and young people, separated from their families, were accorded the full protection of the Children Act.

However, in August 2003, a High Court judgement made it clear that local authorities should be treating this group of children and young people as 'looked after'. Before looking at the impact of this judgement it is worth considering the situation that existed prior to the High Court ruling, as this illustrates the problems with the implementation of the Children Act highlighted by this paper (and is relevant to the two other groups of children discussed here).

The Audit Commission's study of how unaccompanied asylum seekers were treated by local authorities during the late 1990s concluded: 'In many cases, they do not receive the same standard of care routinely afforded to indigenous children in need, even though their legal rights are identical' (Audit Commission, 2000, p. 66). Two areas of dispute were key: the age of the young person and whether the support

provided by the local authority meant that they had 'looked after' status under the Children Act.

The Audit Commission's investigation found a number of local authorities believed that increasing numbers of young adults were claiming to be under 18 years of age in order to qualify for additional services under the Children Act. At that time, there was a shortfall between government grants and actual expenditure on unaccompanied asylum seekers (Audit Commission, 2000, p. 67; Ayotte and Williamson, 2001, p. 41) and this created strong 'gatekeeping' pressures among local authorities. As one team manager responsible for duty assessments in an inner city area stated: 'The question for a local authority officer becomes 'is this family [or child/young person] eligible?' not 'is this child in need?'' (Khan, 2002, p. 2).

Even when a young person was accepted as being unaccompanied and under 18, and provided with accommodation, many local authorities tried to avoid according them 'looked after' status. Since the passing of the Children Act there had been a widespread assumption that the definition of 'looked after' within the terms of the Children Act hinged on either the child being the subject of a care or supervision order (as a result of legal proceedings under Section 31 of the Act) or offered accommodation under Section 20 of the Act. The following quote from research commissioned by the Refugee Council and Save the Children reflects a common understanding of how many local authorities applied their Children Act responsibilities towards unaccompanied asylum seekers:

The vast majority of 16–17 years olds are receiving services under section 17 of the Children Act, consisting primarily of housing and payments in cash, kind and vouchers. They are not therefore 'looked after' children, i.e. those who are accommodated under section 20 of the Children Act and benefit from a number of safeguards and provisions. (Ayotte and Williamson, 2001, p. 35)

In fact, until November 2002, the definition of 'looked after' was not determined by whether accommodation was provided under Section 20. Section 23 of the Children Act defined 'looked after' as any child who is:

- (a) in *[local authority]* care; or
- (b) provided with accommodation by the authority in the exercise of any functions (in particular those under this Act) which stand referred to their social services committee under the Local Authority Social Services Act 1970.

The same section then said “accommodation” means accommodation which is provided for a continuous period of more than 24 hours’. There was no mention in this definition of the accommodation being provided under Section 20 of the Act.

When originally passed in 1989, therefore, the Children Act did not make a distinction between accommodation provided under Section 17 and that provided under Section 20, when defining a child as ‘looked after’. The practice of many local authorities, however, was very different. Custom and practice grew up resting on the assumption that a distinction between accommodation offered under Section 17 and placements made under Section 20 was crucial to the role of local authorities and their responsibilities towards the children concerned.

Many local authorities have also acted on the assumption that their role and responsibilities towards 16 and 17 year olds are different from when the child is below 16 years of age. Again, this stance is not dictated by the Children Act but has its origins in assumptions that are made about the children and young people concerned and in the desire of local authorities to limit their responsibilities. The Children Act defines a ‘child’ as anyone up to their 18th birthday. Section 20 (1) requires local authorities to:

... provide accommodation for any child in need within their area who appears to them to require accommodation as a result of:

- (a) there being no person who has parental responsibility for him
- (b) his being lost or having been abandoned, or
- (c) the person who has been caring for him being prevented (whether or not permanently, or for whatever reason) from providing him with suitable accommodation or care.

Moreover, Section 20 (3) requires local authorities to ‘provide accommodation for any child in need within their area who has reached the age of sixteen and whose welfare the authority consider is likely to be seriously prejudiced if they do not provide him with accommodation’. These reasons (under both Section 20 [1] and Section 20 [3]) would seem to be particularly applicable to young people who are seeking asylum in this country and who have become separated from their parents. However, many local authorities – by custom and practice – did not offer 16- and 17-year-old separated asylum seekers accommodation under Section 20 of the Act. Instead, they provided accommodation using their powers to assist children in need under Section 17.

There were thus two assumptions underpinning local authorities' practice towards unaccompanied asylum seekers, neither of which had any basis in the Children Act. The fact that these assumptions were held, and widely acted upon, illustrates the strength of the pressures within local authorities to avoid accepting responsibilities for young people who were seeking refugee status.

However, following a series of judicial reviews (which did not relate to unaccompanied asylum-seeking children) that threw into question whether accommodation could in fact be provided under Section 17, the Government amended the Act to allow for this. At the same time, it took the opportunity to amend the Act to the effect that a child provided with accommodation under Section 17 would *not* acquire 'looked after' status. Some local authorities initially welcomed this, as it seemed to reduce their legal obligations towards unaccompanied asylum-seeking children who they provided with accommodation under Section 17. This would also mean that the Children (Leaving Care) Act did not apply to these young people so local authorities would not have to provide them with ongoing support.

In fact, the Government's guidance on the amendment set out quite clearly that 'where a child has no parent or guardian in this country, perhaps because he has arrived alone seeking asylum, the presumption should be that he would fall within the scope of section 20 and become looked after' (Department of Health, 2003b). The guidance also usefully stated that, before deciding which section of the Children Act provides the legal basis for the provision of support, local authorities should carry out an assessment of a child's needs using the *Framework for the Assessment of Children in Need and their Families* (Department of Health *et al.*, 2000).

In August 2003, the High Court reviewed the cases of four young people supported by the London Borough of Hillingdon. The Court found that, although the young people were nominally receiving services under Section 17 of the Children Act, their needs and the services provided meant that they were looked after as defined by Section 20 of the Act (*Berhe v. London Borough of Hillingdon* [2003]). This provided judicial confirmation that unaccompanied children and young people should be accorded the full protection of the Children Act, including rights to leaving care services under the Children (Leaving Care) Act.

Since 2003, therefore, it has been clear that, in most cases, children and young people separated from their families, who are seeking refugee status, should be accorded looked after status and provided with leaving care services when they reach the age of 18.

Initial research by the Refugee Council indicates that the majority of local authorities are having to change their policy as a result of the Hillingdon judgement – in other words they had previously been accommodating unaccompanied asylum seekers without according them looked after status (Refugee Council, 2005). Some authorities with higher numbers of young people are taking on new staff, reviewing their services and planning to work with increasing numbers of care leavers. Save the Children is carrying out more detailed research on the effect of the 2003 Circular and High Court judgement, which will be published later in 2005.

In the meantime, the Fostering Network and other organisations have expressed concern that some young people are being removed from their foster carers and local communities once they reach the age of 18. Some will be provided with services under the Children (Leaving Care) Act and a few will become the responsibility of the National Asylum Support Service. Some of those whose claim of asylum has failed:

... are being sent back to their country of origin with little or no thought as to their safety or future well being. This contravenes the Children (Leaving Care) Act 2000, which states that these care leavers are to be provided with further support until the age of 21.
(Fostering Network, www.thefostering.net/asylum.php)

Reference was made earlier to the importance of the age of a young person in determining their entitlement to support. This has increased in significance:

For national agencies and current budgets a great deal ... appears to depend on a rigid definition of whether an individual is 18 years of age or younger.
(Michie, 2005, p. 612)

The Association of Directors of Social Services has said that, in spite of falling numbers of asylum seekers, local authorities are still struggling to provide services to unaccompanied young people (*Community Care*, 2004b). Not only does acceptance as a minor mean that the young person will be offered support by a local authority's children's services rather than be dispersed to services provided by the National Asylum Support Services, but also looked after status means that they will receive support as a care leaver up until the age of 21 (24 for disabled young people). If there continue to be financial and other resource pressures that make it difficult to meet these needs, the incentive remains to try to avoid accepting that a young person is under 18. If the Immigration and Nationality Directorate and the local authority disagree about the age assessment, it is the policy of the IND to accept the

social services' assessment. The increasingly negative attitudes towards asylum seekers in general does not help this situation, as it makes it more difficult to gain public support – nationally or locally – for increased resources to separated children and young people.

There is no accepted measure of age that can give a degree of accuracy across different ethnic and socio-economic groups, and national guidelines emphasise that a margin of error of plus or minus two years should be adopted (Michie, 2005, p. 613). In spite of this, the Refugee Council has reported an increase in the number of disputes about a young person's age, estimating that about a half are now challenged (*Community Care*, 2004b).

Rights to family life and guardianship

There are two further aspects of the legal situation facing unaccompanied asylum seekers that undermine their human rights. The first relates to their right to a family life. Unaccompanied asylum seekers and refugees have no automatic entitlement to reunification with their family in the UK. Immigration rules focus on spouses and dependent children; separated children may apply to bring their parents into the country but this is entirely up to the discretion of the Home Office and is very unusual (Ayotte and Williamson, 2001, pp. 64–5). The Government has opted out of a European Directive that would give children with refugee status the right to reunification with their families.

At the same time, the limited way in which local authorities tend to discharge their duties under the Children Act towards this group of children, particularly for 16 and 17 year olds, means that there is often no one who has parental responsibility for them. It is unusual for a social services department to acquire parental responsibility for an unaccompanied refugee and the United Kingdom Government has chosen to implement at the lowest possible level the 1997 EU Council Resolution that calls on Member States to provide legal guardianship or representation by a national organisation responsible for the care of the child. As the Refugee Council has pointed out:

... there are no mechanisms in the UK that provide for an independent, legally empowered individual who ensures that a separated child's entitlements are respected and their needs met.
(Ayotte and Williamson, 2001, p. 67)

In the early 1990s, organisations representing the interests of child refugees argued for a statutory service to assist children separated from their families. Instead of this, the Refugee Council's Panel of Advisors was set up on a non-statutory basis and, in 2001, was reported to be so overwhelmed with referrals that the majority were not allocated (Ayotte and Williamson, 2001, p. 66). There do not currently seem to be any intentions of following the Statement of Good Practice recommended by the Separated Children in Europe Programme, which states:

As soon as a separated child is identified a guardian or adviser should be appointed to advise and protect separated children in a long-term perspective. Their role is to ensure that decisions are made in the child's best interests, that a child has suitable care, education, health care and legal representation, to consult with children and provide a link between the child and service providers, to assist the child with family tracing and to contribute to a positive durable solution.

(Ayotte and Williamson, 2001, p. 66)

An Audit Commission Briefing described good practice for unaccompanied asylum-seeking children and young people as involving:

- a full assessment of the child's needs as soon as possible after arrival, plus regular review meetings
- a dedicated social services team for separated children
- joint commissioning of accommodation possibly in partnership with voluntary sector organisations
- promoting links with the refugee communities and development of social support networks
- preparation for independence (quoted by Ayotte and Williamson, 2001, p. 37).

While the legal framework exists for all these recommendations to be delivered, there is still a long way to go towards fully protecting and promoting the human rights of this group of young people.

Disabled children at residential schools

Until recently, the placement of disabled children at residential schools, funded by local education and/or health and social services authorities, was an area of public policy and expenditure characterised by a lack of knowledge and understanding. However, research (Morris, 1998b; Abbott *et al.*, 2000, 2001) highlighted this as an important issue and in 2001 the Government gave a commitment to find out more about 'the numbers, characteristics and outcomes of disabled children in residential settings' recognising that the majority of such children are in residential special schools (Department of Health, 2001a). The Department for Education and Skills held a seminar in 2003, bringing together people with knowledge of this issue and published a report the following year (Department for Education and Skills, 2004a).

In 2003, the SEN Regional Partnerships started to collect information on out-of-authority placements by all English local authorities. In 2005, it was estimated from these returns that a total of 5,404 out-of-authority residential school placements were made where the education authority contributed some or all of the costs and 757 out-of-authority residential school placements where social services paid all of the costs (SEN Regional Partnerships, 2005, pp. 7–8).

Almost 90 per cent of social care only funded placements are recorded as 52-week placements, while 25 per cent of residential education funded placements were of this type, with 36 per cent being termly, 29 per cent weekly and 5 per cent fortnightly placements. Although there appears to be a downward trend in the mean number of placements being made as a proportion of the nought to 19 population, the cost of placements is rising (SEN Regional Partnerships, 2005, pp. 6–7). This supports anecdotal evidence that the children being placed in residential schools have increasingly complex needs.

Children with behavioural, emotional and social difficulties made up 29.5 per cent, and children with autistic spectrum disorder 20.7 per cent, of the total placements funded by education (SEN Regional Partnerships, 2005, p. 13).² Among placements solely funded by social services, children with behavioural, social and emotional difficulties made up 69.8 per cent of the total (SEN Regional Partnerships, 2005 p. 14).³ The majority of out-of-authority placements are made either at or after transition to secondary school.

Research carried out by the Norah Fry Research Centre (Abbott *et al.*, 2000, 2001) found that children are placed at residential special schools for a range of reasons. Educational factors include the difficulties local schools have in meeting specific needs; this is particularly the case for children with a diagnosis of autistic spectrum

disorder and for Deaf children using British Sign Language. 'Social' factors include inadequate support for parents to continue caring for their child at home (Abbott *et al.*, 2001, Chapter 2). This research concluded, however, that, while professionals often tried to separate out 'social' and 'educational' factors when determining who should pay for a residential school placement, parents tended to see a close connection between these two aspects of their children's lives and needs:

The majority [*of parents*] spoke of a lack of understanding and support at school and at home, leading to their conclusion that a specialist residential setting was the only way of meeting their child's needs and those of their family.
(Abbott *et al.*, 2001, p. 26)

This research also found that most children and young people would not have chosen to go away to school, although many wanted to leave their old school because they were so unhappy there. All of those participating in the research experienced homesickness but most were positive about at least some aspects of their boarding school, particularly their friends. Parents would have welcomed more support from both education and social services in finding an appropriate school, and in ensuring that their child was well cared for and that their educational needs were met.

Disabled children at residential special schools and the Children Act

The research referred to above looked at the decision-making processes that lead to residential school placements and found that the professionals making the decisions usually had little opportunity to consider the needs of individual children, and that placements were not routinely or adequately reviewed. 'Both education and social services professionals admitted that they would rarely know if children were safe and happy' (Abbott *et al.*, 2001, p. 113). Moreover, children were rarely consulted about their 'wishes and feelings' during the course of making placements or when reviews were carried out.

Uncertainty about the role and responsibilities of local authorities is one of the key stumbling blocks to ensuring that this group of children's welfare is protected and promoted. Local authorities' interpretation of 'looked after' status has implications for whether social services have any involvement in assessing and reviewing whether children's needs are being met while they are being cared for away from home. If a child in a residential school is recognised as 'accommodated' and 'looked after' within the terms of the Children Act then the social services department will have an ongoing responsibility to ensure their needs are being met by the placement. If they

are not recognised as looked after then the only scrutiny will be by the education authority and will be concerned with whether the placement meets their educational – rather than their wider welfare – needs.

The majority of children in residential weekly, fortnightly or termly placements are not treated as having looked after status, while a third in 52-week residential placements are not looked after (SEN Regional Partnerships, 2005, p. 40).

The Norah Fry Research Centre research looked in some depth at how four local authorities in England treated residential school placements and found a range of different interpretations of responsibilities under the Children Act towards these children. These differing interpretations were found not only between local authorities but also within the same social services departments and indeed, sometimes, within the same social work team. Six main interpretations were found.

- 1 All children who are funded, or part funded, by social services to attend residential schools are treated as ‘accommodated’ and ‘looked after’. ‘We wanted to make sure they were part of the Children Act reviewing system. It isn’t just the fact that they’re a major expense, it’s also to make clear these are cases for whom we have significant responsibility’ (senior social services manager, quoted in Abbott *et al.*, 2001, p. 99).
- 2 Children at residential special schools are only treated as ‘accommodated’ and ‘looked after’ if the placement is for 52 weeks of the year.
- 3 ‘A child is only “looked after” if they are away from home for more than 120 nights a year’ (social services team leader, quoted in Abbott *et al.*, 2001, p. 100) – this assumption stems from a misinterpretation of the regulations on short-term placements, which say that a series of such placements can be treated as one placement as long as the child is not away from home for more than 120 days in one year.
- 4 Children at residential schools are only ‘looked after’ if they are also the subject of a care order but those who are not are still, in practice, treated as ‘accommodated’. ‘When we started placing children in boarding schools we were concerned that no one was looking after these children, why weren’t we treating them the same as other placements? So, we sought legal advice and were told that you don’t have to regard them as “accommodated” children but you must visit them as if they are “accommodated”’ (team manager, quoted in Abbott *et al.*, 2001, p. 100).

- 5 Children at residential school are not treated as 'looked after' or 'accommodated' unless they are the subject of a care order. 'We don't treat any of ours as "looked after" ... We thought we were treading on thin ice so we actually got counsel's opinion and I know the view is that we do not have to "accommodate" the children we've funded as "looked after"' (senior manager, quoted by Abbott *et al.*, 2001, pp. 100 – 1). This manager was in the same local authority as the team manager quoted in point 4 above and was referring to the same legal opinion. It should also be pointed out here that another local authority participating in the same research had sought counsel's opinion and had received the advice that, if a placement was wholly or partly funded by social services, then the child was 'accommodated' and 'looked after'.

- 6 Children at residential school, funded by social services, are 'looked after' and 'accommodated' but social services involvement varies according to their assessment of parental involvement and capacity. As one social worker said: 'When the parents are fully involved we are much less involved, which I think is right; it's not our role to take things over because it's a real shock for parents to realise that their child is being taken into care' (Abbott *et al.*, 2001, p. 101).

This last statement illustrates how important the colloquial meaning of the term 'in care' is. Members of the public, and – it would seem – some professionals, link local authorities' responsibilities towards children with an image of a child who is 'in care' because their parents are unable to look after them properly or have abused them. The Children Act, however, tried to widen local authorities' responsibilities towards their local child population by introducing a requirement to support families where children were identified as being 'in need' under Section 17 of the Act (and if a child is disabled they are considered to be 'in need'). It also introduced the term 'looked after' to cover, not just those children for whom the local authority has taken parental responsibility as a result of a care order, but also those children who have been provided with accommodation (including on a temporary and/or short-term basis) in order to meet their and their family's needs. It was intended that the words 'accommodated' and 'looked after', within the terms of the Children Act, would include situations where the local authority was working in partnership with parents to assist them in looking after their children. This followed many years of evidence that most children do better if they remain with their families, as long as the support that some families require is available. Providing somewhere for a child to stay on a temporary, short-term basis was seen as an important service promoting 'the upbringing of children by their families' (as required by Section 17 of the Act). This was a particularly important service for parents of disabled children, many of whom expressed a need for 'respite' from looking after their child. In contrast to 'accommodation' provided under Section 31 of the Children Act, there is nothing

compulsory about this form of 'accommodation'. Nevertheless, such 'accommodated' children are still 'looked after' within the terms of Section 23 of the Children Act. To associate 'looked after' status with the colloquial meaning of 'in care', therefore, is entirely misleading.

The placement regulations that should be implemented when a child is 'accommodated' and 'looked after' require the local authority to carry out regular reviews, to write a care plan, and to ensure that the child's wishes and feelings are ascertained. The research referred to above found that, even when a child placed at a residential special school was recognised as 'looked after', social services departments did not always carry out these duties. Reasons given were a shortage of social work time and expertise, particularly when placements were a long way away and/or children had significant communication and/or cognitive impairments. It also seemed to be rare for assessments or care plans to cover how parents could be assisted to maximise their child's experience of family life. Overall, there was little sense of local authorities acting in partnership with parents to maximise children's life chances.

We know from earlier research that disabled children who spend long periods of time away from their families are vulnerable to abuse: they are often physically and socially isolated, receive intimate care from large numbers of people, and their physical, communication and/or cognitive impairments can make disclosure of abuse difficult (Marchant and Cross, 1993; Kennedy, 1996; Morris, 1999, 2003). There is a particular need, therefore, for statutory agencies to work together with parents to ensure their children are safe while they are away from home.

The Government recognised the need for local authorities to use their powers under the Children Act to safeguard disabled children at residential schools and issued a Circular stating that children should not normally be maintained in schools by social services departments unless they are looked after (Department of Health, 2003b). However, this guidance did not cover the large numbers of disabled children at residential school who are not considered to come under Children Act responsibilities at all. Although social services departments have, in recent years, been more likely to jointly fund residential school placements, the majority of placements are still funded solely by local education authorities. Social services departments consider that they do not have any responsibilities towards these children, even though most of the children concerned are 'children in need' because they come under the Children Act's definition of 'disabled'. And local education authorities assume that they do not have any responsibility for the children's general welfare, even though the full implementation of the UN Convention would require all aspects of local (and central) government to take responsibility for protecting and promoting children's

rights. Although education authorities *do* have responsibility for carrying out an annual review of the child's Statement of special educational need, it is common for this to be done merely by receiving a report from the school and unusual for the views of the child to be sought (Abbott *et al.*, 2000, 2001). The setting up of Children's Trusts, and the statutory requirement to appoint a Director of Children's Services, should encourage a more corporate approach to Children Act obligations but – at the point of writing – it remains unclear whether this will, in practice, increase involvement with the welfare of children in residential placements funded solely by education.

As with unaccompanied asylum-seeking children, the way in which the Children Act is being implemented for disabled children at residential schools has less to do with such children's actual entitlements under the legislation, or indeed their needs and circumstances, and much more to do with custom and practice, which has grown up over the years – and which is very much influenced by the need to gatekeep scarce resources.

The decision-making processes that lead to a residential school placement are dominated by arguments about resources. Boarding school placements are expensive and neither education nor social services authorities want this drain on their resources, particularly because such placements run counter to the philosophy of inclusion. In spite of this general opposition, however, residential school placements continue to be made – usually because local education and support services cannot meet the needs of the child, and sometimes following a Special Educational Needs Tribunal ruling against the local education authority. Following such a decision, in the majority of cases there is very little monitoring of whether the placement is meeting the child's needs or whether they are safe.

Privately fostered children and kinship foster care

Children who are privately fostered or cared for by relatives share with the previous two groups of children discussed in this paper a poor recognition of their entitlements under the Children Act. This was brought starkly to public attention by the report of an inquiry into the death of Victoria Climbié, who was abused, tortured and eventually killed by her aunt and the man with whom they lived (Laming, 2003). The Government's response to the Inquiry was followed by the Green Paper *Every Child Matters* (Department for Education and Skills, 2003), which included a range of measures to address the problems highlighted by Lord Laming.

Private foster care

Under the terms of the Children Act 1989, 'private fostering' is a term applied to situations where a parent arranges for their child under the age of 16 (18 if disabled) to be cared for and provided with accommodation, for more than 28 days and nights, by someone who does not have parental responsibility for him/her and is not related to the child. It does not apply where a child is 'looked after' by a local authority and/or is accommodated in a residential setting. The legislation, guidance and regulations thus distinguish between children who are placed with foster carers by local authorities and children whose parents have entered into a private arrangement for someone else to look after their child.

Although the term 'private fostering' may give the impression that this is a private matter between parent and foster carer – and private foster carers are not required to be registered – the Children Act 1989 gave local authorities a clear responsibility to ensure that children placed by their parents in someone else's home are properly looked after. Guidance and regulations issued following the Children Act 2004 have reaffirmed and strengthened this responsibility (Department for Education and Skills, 2005b, 2005c). The Children Act 1989 requires both parent and private foster carer to give advance notice to the local authority of a private fostering arrangement and places a duty on social services authorities to: visit the foster carer before the child arrives; visit six weekly during the first year of a placement and then every three months; satisfy themselves that the child is being properly cared for (covering their needs relating to development, emotional well-being, education, religion, culture, language and race, health and physical care); inspect the accommodation and satisfy themselves as to its suitability; ascertain the child's wishes and feelings (Children Act 1989, Part IX; The Children (Private Arrangements for Fostering) Regulations 1991; The Children Act 1989 Guidance and Regulations, Volume 8).

Section 44 of the Children Act 2004 amended the Children Act 1989 and, among other things, placed a duty on local authorities to promote public awareness, in their area, of the notification requirements. National Minimum Standards on private foster care were published in 2005 (Department for Education and Skills, 2005d) and the Commission for Social Care Inspection will be inspecting the implementation of these standards by children's services authorities in 2006.

The legislation thus makes what is usually considered a private arrangement into a public matter by giving local authorities a role in ensuring that children are well looked after. This, of course, is part of the way that the Children Act is a mechanism for protecting and promoting the human rights laid down in the UN Convention on the Right of the Child, rights that are accorded to all children, whatever their

circumstances. Local child protection systems should also respond to any situation where a child is suffering abuse or neglect.

In practice, in the 15 years following the Children Act 1989, privately fostered children were usually not accorded the statutory protection to which they are entitled. This is partly because there was little attempt – at either a national or local level – to tell parents and prospective foster carers of their duties under the Act to inform local authorities when a private arrangement is contemplated. The Department of Health concluded in 1994 that this requirement ‘was virtually unknown to the general public’ (Department of Health, 1994). The Government gave a commitment – following the 1997 report on safeguards for children in public care (Utting, 1997) – to increase awareness about the legislative framework concerning private fostering, but there was little evidence that the situation had improved by the time of the Victoria Climbié Inquiry (Philpot, 2001). The new measures taken since then are, however, aimed at promoting a better understanding among parents, foster carers and professionals of the notification and other requirements.

The legal definition of private fostering covers a wide range of circumstances:

- children (mainly of West African or Chinese origin) whose parents are studying or working in this country and whose hours or location of work or study make it difficult for them to look after their children
- children at boarding school who live away from their parents in the school holidays, usually because their parents are abroad
- children and young people from abroad who come to study at language schools and are placed with ‘host’ families
- children from abroad on cultural exchanges
- ‘backdoor’ pre-adoption arrangements, usually involving children from other countries
- children and young people who live with friends after their family has moved, often so they can continue at the same school/college to take exams
- young people who go to live with their boy/girlfriend’s family, sometimes following a row at home.

It is generally thought that West African children make up the largest group of privately fostered children, although, in some localities, Chinese children or children at language schools are the largest group (Holman, 1973; McGrath, 2002). Terry Philpot's (2001) investigation and review of research identified a number of difficulties that can arise in these situations involving West African children.

- Different expectations are held by parents and foster carers: for example, parents often think living with a white English family (especially in a rural area) will give their child access to a good education. Yet foster carers do not always place a high value on education.
- Many foster carers are white and there is substantial anecdotal evidence that many children's cultural needs are not met. When they return to their parents they may be estranged from them and their community of origin.
- Cases have been reported where children are passed from one foster carer to another and parents have lost contact with them.
- Sometimes foster carers – having looked after a child for some time – successfully apply to adopt the child and this is against the parents' wishes and intentions.

There are many references in the literature to West African cultural practices that are said to encourage private foster care. The saying 'It takes a village to raise a child' is cited as evidence that there is greater acceptance of private foster care than among the white English community. That this is not always the case, however, is indicated by research that found a rather different picture among West Africans in one London health authority area. A questionnaire was sent to 600 randomly selected African families with young children resident in the City and Hackney health authority area. About a third responded and among these 29 (14 per cent) had sent at least one of their children to a private foster carer. Only one of these felt that foster care was a preferred option; the remainder would have preferred alternative suitable day care (Olusanya and Hodes, 2000).

Whatever the circumstances in which children are privately fostered, it is likely that a significant proportion of them would come under the Children Act definition of being 'in need'. It is also the case that local authorities have a duty to visit them regularly and satisfy themselves they are well cared for. Nevertheless, up until now, this has been a duty that has been frequently unfulfilled.

Terry Philpot's investigation of private fostering, carried out for the British Association for Adoption and Fostering, was dedicated to the memory of Victoria and the concluding sentence of his report was: 'In 2001, Victoria Climbié, a privately fostered child, died tragically at the hands of her carer and her carer's partner' (Philpot, 2001, p. 52). In fact, until the police investigation following Victoria's death, it appeared to the three local authorities with whom she was in contact that she was being cared for by a 'close relative', her aunt. While Victoria's parents had given her into the care of this woman in the belief that they were thereby securing her a better educational and economic future, the 'aunt' was more probably motivated by the fact that Victoria was a passport to her own economic advantage, for example by the claiming of child benefit and social housing. In terms of labels, therefore, it is unclear whether 'private foster care', 'kinship care', 'child trafficking' or 'unaccompanied asylum seeker' would have been most appropriate. What *is* clear is that Victoria was a 'child in need' as defined by the Children Act and that the three social services departments with whom she was in contact had duties to her under Section 17 of the Act, which they failed to fulfil. It is also clear that all three departments should have recognised and acted on clear signs that Victoria was experiencing physical abuse and neglect (and possibly sexual abuse), but they in fact failed to carry out the required child protection procedures. The biggest and most glaring failure, evident from all the evidence presented to the Inquiry, was the failure of almost all those involved to actually speak to Victoria and find out direct from her about her needs, wishes and feelings – again a clear requirement laid down by the Children Act. Victoria was thus denied two fundamental human rights that proper implementation of the Children Act would have delivered to her: a right to be consulted; and a right to be safe from harm.

Kinship care/friends and family care

Whereas public discussion about private fostering is often dominated by implicit, sometimes explicit, judgements about irresponsible parents who dump their children on strangers, kinship fostering is discussed in terms that conjure up a cosier picture – for example, of grandparents stepping in when a birth parent dies or is unable to look after their child. Research (some of which is summarised by Research in Practice, 2003 and Social Care Institute for Excellence, 2004) has drawn attention to the importance of kinship foster care. The Children Act encourages such placements but it would appear they are often not formally recognised or supported by social services authorities. Jane Rowe's study of long-term foster placements, published in 1984, 'discovered' a significant number of kin placements – one in four of her total sample (Rowe *et al.*, 1984). David Berridge concluded from his review of research on fostering that kinship care 'is a proven success' and 'it seems curious that such arrangements are not more common' (Berridge, 1997, pp. 78 and 26).

The National Foster Care Association, among others, has pointed to the wide variations in the way kinship care placements are treated by local authorities and how this influences the provision of financial and other support (Waterhouse, 1997). A common complaint among grandparents who take on the care of their grandchildren is that they are offered far less support, especially financial support, than foster carers formally registered with their local authority (Family Rights Group, 2001). Research on kinship foster care in one London local authority found that there was confusion among social workers about their responsibilities when children were looked after by relatives, and at the same time a reluctance to properly support carers in this situation on the grounds that this might 'open the floodgates' (Broad *et al.*, 2001).

It is not yet clear whether England will see the 'tremendous increase' in formally recognised kinship foster care that the United States has experienced in recent years (Scannapieco and Hegar, 1999, p. 1). A number of reasons have been identified for this increase in the USA, some of which may apply to the English situation.

- It has only recently been fully recognised that 'the formal systems of substitute care' have not traditionally catered for African-American families and this is undoubtedly one reason for the relatively high levels of kinship foster care among this community (Scannapieco and Hegar, 1999, p. 22). These arrangements, which previously existed outside the formal child welfare system, are becoming more likely to be formally recognised and supported.
- A more positive professional attitude towards kinship foster care has been encouraged in recent years, partly because of the limited availability of non-relative foster carers and partly because 'research has begun to portray kinship foster care as a much more attractive alternative than has previously been thought' (Greef, 1999, p. 36).
- Some urban areas of the US 'have lost part of a generation in the young child-bearing years to crack cocaine and other drugs, the HIV/AIDS epidemic, and crime and prison' (Hegar, 1999b, p. 23). In these situations, it is common for grandparents, primarily grandmothers, to step in.

Research evidence in America and in Britain highlights that kinship foster care is associated with greater stability for the children concerned and better continuity in terms of family and cultural issues than non-kin foster care (Rowe *et al.*, 1984; Berrick *et al.*, 1994; Greef, 1999). However, there is also evidence that kinship foster carers are likely to experience greater economic difficulties and poorer

accommodation than non-kin foster carers (Gebel, 1996; Ehrle and Green, 2002). Some social workers caution against too rosy a view of kinship foster care. As one experienced worker has written, kinship foster placements:

... should only be made when it can be demonstrated that the placement is a safe and positive choice. An over-reliance on the blood tie can leave children at risk of long-term significant harm or abuse. Naivety in child protection work is costly and it is children who will ultimately pay the price. (Foulds, 1999, p. 82)

Waterhouse and Brocklesby caution that: 'There is no reason to suppose that ... kinship carers have any less need than other carers of skilled training and support'. Yet, as they argue, 'there is no consistency in policy or practice, or indeed body of knowledge or guidance upon which to base practice' (Waterhouse and Brocklesby, 1999, pp. 96–7).

It is already the case that local authorities are required to consider 'possibilities for a child to be cared for within the extended family' (*Children Act 1989 Guidance and Regulations, Vol. 3, Family Placements*). However, this consideration of kinship foster care is more likely to take place in the context of a formal recognition of concerns about parents' ability to look after their child and/or evidence of abuse or neglect. Not all situations where a relative steps in to look after a child warrant this kind of attention from the local authority. On the other hand, it is probably the case that many children experiencing separation from their birth parent – for whatever reason and whether temporarily or not – come under the Children Act definition of being 'in need' as set out in Section 17 of the Act. This was certainly indicated by research that found that about half of relative carers were struggling to cope with difficult behaviour of the children and young people they were looking after, and most wanted more financial and social work support (Broad *et al.*, 2001). Even if such arrangements were not part of the formal childcare system (where the foster carers would have been registered by the local authority and the children recognised as formally 'looked after'), such situations would warrant support from the local authority in the exercise of its duties under Section 17 of the Act.

A discussion paper on 'friends and family care' for the Department of Health recognises that 'social services have tended to allocate resources based on the legal status rather than the needs of the child' arguing that, in contrast, eligibility for services should be 'based on the needs of the child, not on the type of placement being considered' (Department of Health, 2002a, p. 10). The paper emphasises that family and friends 'make a significant contribution to providing for the needs of children in a variety of circumstances', and that local authorities should know more

about the numbers involved and the type of support they require. A judicial review, 'the Munby judgement', established that it is unlawful for local authorities to treat 'friends and family' carers differently from 'stranger carers' in terms of payment and support (*L. [A child]v. Manchester City Council*[2002]). This judgement confirms that it is children's and carers' needs that should determine eligibility for support, not whether the child is formally recognised as 'looked after' or not. The High Court held that the Council's policy of discriminating against relative foster carers in relation to allowance payments was neither 'necessary nor proportionate' and breached the child's rights under Article 8 of the European Convention on the Rights of the Child, the right to respect for family life. According to the Fostering Network, this judgement has meant that local authorities have had to review their policies on paying foster carers (Fostering Network, 2004, p. 6).

Conclusion

It is nothing new to say that local authorities have found it difficult to respond to the broad definition of 'in need' contained within Section 17 of the Children Act and to provide the family support services that the Act sought to promote. A summary of government-commissioned research on the implementation of the Children Act concluded there had been three main problems:

- a failure to understand that duties in relation to section 17 are statutory
- a continuing emphasis on linking interpretations of 'in need' with eligibility criteria based on risk; and
- concern that moving to a broader definition of children in need, as the Act intended, would open the floodgates to a demand for services that could not be met.
(Aldgate and Statham, 2001, pp. 22–3)

All these factors form the backdrop to the way social services departments have responded to the needs and circumstances of unaccompanied asylum seekers, disabled children at residential schools and children who are privately fostered or placed with relatives. In addition, there have been misinterpretations of the statutory requirements placed on local authorities in respect of when children in these three groups should be treated as 'looked after'.

When resources are scarce relative to need, organisations and individual workers are under pressure to restrict eligibility. Moreover, there are attitudes held about these groups of children that get in the way of acknowledging their needs and that sometimes prevent action being taken to protect them from harm. It is difficult to read the evidence presented to the Inquiry into the death of Victoria Climbié without coming away with the impression that some professionals did not value this child's life highly enough. Disabled children struggle daily with attitudes that do not value their lives as highly as those of non-disabled children and a long-standing failure to recognise their vulnerability to abuse. Asylum-seeking children, particularly the 16 and 17 year olds who make up the majority of this group, are often treated with suspicion at worst and at best are assumed to be too 'street wise' to need 'looking after'.

The Children Act 1989, and the regulations relating to 'looked after' status, were intended to ensure that the State paid particular attention to the welfare of certain vulnerable groups of children. The Department of Education and Skills, writing about disabled children in residential settings, emphasises the role of 'looked after' status, which applies equally to all three groups of children discussed here:

The question whether a child is looked after is not an obscure question or legal nicety. Where a child is looked after there are consequential actions, designed specifically to safeguard the welfare of the child. These actions are based on an acknowledgement of the separation of the child from family and of the increased vulnerability of the child.

(Department for Education and Skills, 2004a, p. 5)

It is difficult to overestimate the significance of a shortage of resources. Evaluation of both family support services and child protection services – and inquiries such as Lord Laming's – have generally found that, while the Children Act is a robust legal framework, in practice its implementation is sometimes inadequate. Poor practice on the ground is created by inadequate training and supervision, too few experienced workers, poor management practice and a lack of communication and co-ordination across different agencies. All these factors are in turn associated with a failure to target sufficient resources in an appropriate manner. In these circumstances, social workers and others look for ways to limit resources rather than for ways in which to meet children's needs. The Government's own report on the Children Act indicated that, for a variety of reasons, local authorities are having to focus more on children in the greatest need at the expense of more preventative support services (Department of Health, 2002b, p. 21).

It is these pressures on resources that are, arguably, more important than any inadequacies in the existing statutory framework. There has, for example, been pressure for some time from voluntary organisations that private foster carers should be required to be approved and registered by the local authority. Yet local authorities already have quite clear duties to visit such children regularly and ensure their needs are met. They do not carry out these duties because a shortage of resources leads to the prioritising of groups of children whose needs are seen as being greater than those of children in private foster care.

As long as resources remain stretched, local authorities as organisations, and professionals as individuals, will always find reasons for not responding to need. Until social services' responsibilities towards children receive the same kind of financial and political support that health services and education have received from government – and from society at large – it will always be a struggle to meet children's needs and some children (including these three groups of children) will be particularly vulnerable to their needs falling off the agenda.

In spite of the increased attention given to children's services following first the Utting Report (which prompted the Quality Protects programme) and then the Victoria Climbié report (which has prompted a wholesale shake-up of children's services), it would be naïve to think that sufficient resources to make a real difference are likely to be allocated to children's services in the near future. In these circumstances, therefore, it is important to identify what opportunities do exist that might increase the likelihood of better meeting the needs of these three groups of children.

Perhaps the most important step would be to create more opportunities for the voices of these children to be heard by those who make decisions that affect their lives. The Quality Protects initiative enabled the direct experiences of children and young people to be heard at both governmental and local levels. The post of Children's Rights Director, introduced in the Care Standards Act 2000, has the responsibility of ensuring that the voices of looked after children are heard.

We need to focus on the experiences of children who are commonly missed out in these initiatives. The BAAF Refugee Children Project used its existing contacts with refugee children to find out about their experiences and to disseminate these more widely through their report *I did not Choose to Come here* (Kidane, 2001a). We need similar consultative exercises with unaccompanied asylum-seeking children, disabled children at residential schools and privately fostered children. None of these groups of children and young people, for varying reasons, is likely to be involved in more general consultations with children and, while their voices remain unheard, not only are they being denied their human right to be consulted, but also their missing experiences allow ill-informed assumptions to dominate policy and practice.

Another way of protecting children's human right to be heard and to be consulted is to ensure that, when assessments of their needs are carried out, they are fully involved in them. This means addressing any barriers to such involvement. For example, many children placed at residential schools have high levels of cognitive and/or communication impairments and it is common for social workers to feel that they cannot ascertain such children's 'wishes and feelings' (Morris 1998b; Abbott *et al.*, 2001). Nevertheless, there are increasing examples where children with high levels of communication and/or cognitive impairments *are* consulted about their wishes, feelings and experiences (for example, Marchant *et al.*, 1999; Triangle 1999, 2000; Triangle/NSPCC, 2001). It should not be possible for any decision to be taken about how to meet a child's needs without there being clear evidence that information has been gathered about the child's perspective. This is already a requirement of both general assessment procedures and child protection procedures but the fact that this does not always happen means a lot more attention is needed to the detail of its implementation. For example, one chair of a Resources Panel in a county council social services department adopted a policy that no request for placement funding for disabled children would be heard unless the child's views were represented to the Panel. It will always be possible to find similar checks in existing systems and procedures that encourage good practice.

Another important step would be to ensure that the *Framework for Assessment of Children in Need and their Families* (Department of Health *et al.*, 2000) is used by all public authorities in contact with these groups of children. The *Framework* was issued by the Department of Health, the Department for Education and Employment and the Home Office, and the Government emphasised that it 'is intended to provide a valuable foundation for policy and practice for *all* professionals and agencies who manage and provide services to children in need and their families' (Hutton *et al.*, 2000). All these three groups of children and young people would benefit from a clear lead being given by Government that their circumstances mean they are likely to be children 'in need' and, as such, should be accorded proper assessment of their needs (using the *Framework for Assessment of Children in Need and their Families*). Unaccompanied asylum seekers are specifically mentioned in the *Framework for Assessment* (Department of Health *et al.*, 2000, p. 48), which recommends the *Statement of Good Practice* issued by the Separated Children in Europe Programme. The Government also endorsed a guide written by the British Association for Adoption and Fostering on assessing the needs of unaccompanied asylum-seeking children (Kidane 2001b). The Government's most recent report on the implementation of the Children Act reiterated that unaccompanied asylum seekers should receive an assessment of their needs using the *Framework for Assessment* (Department for Education and Skills, 2004b). A similar clear lead is required on assessing the needs of children placed with private foster carers and those who are being considered for a residential school placement.

Many of the more 'mainstream' initiatives concerning children and young people provide an opportunity to address the needs of these particular groups of children and young people. For example, Sure Start – with its focus on younger children and the important role of health visitors – provides a key opportunity for identifying children who are privately fostered. Connexions personal advisers have the potential to play an important role in addressing the needs of disabled young people at residential schools as they make the transition to adulthood. Unaccompanied asylum seekers need to benefit from the promotion and strengthening of advocacy for children by the Children and Young People's Unit.

Both central and local government need to address how the experiences of these, relatively small, groups of children and young people can be measured against the Government's various targets for children's services. For example, what evidence is there that unaccompanied asylum-seeking children – whose experiences may create long-term mental health difficulties – are benefiting from the National Priorities Guidance Target: 'To improve provision of appropriate, high quality care and treatment for children and young people by building up locally-based Child and Adolescent Mental Health Services' resulting in 'a comprehensive assessment and, where indicated, a plan for treatment without a prolonged wait' (Department of Health, 1999, para. 3.5). Arguably, the targets and measures that make up the Performance Assessment Framework are too 'broad-brush' to enable an assessment of whether minority groups of children are benefiting from the setting of national priorities and allocation of resources.

More fundamentally, we need to keep in mind the intended role of the Children Act in delivering the Government's responsibilities under the UN Convention on the Rights of the Child. The fundamental characteristic of human rights is that they apply to everyone, regardless of where they come from, what their circumstances and background are, whether they are disabled or not, and whatever their race or religion. Those responsible for implementing the Children Act are responsible for delivering human rights. In this sense the Children Act was merely a means to an end and there is a danger that we lose sight of the end in arguments about means. Both central and local government need to focus on how the Act can be used to protect and promote the rights set out in the UN Convention on the Rights of the Child. Currently, however, a shortage of resources, and inadequate knowledge about the views and experiences of these three groups of children, have resulted in a failure to recognise and promote their human rights.

Notes

- 1 The Children in Need Census recorded 'asylum-seeking children' for the first time in 2001 but the 12,600 children in this category included those living with their families.
- 2 These percentages relate to the total number of out-of-authority placements, 53 per cent of which were residential, the remainder being day placements.
- 3 In contrast with education-funded placements, over nine out of ten of authority placements that were solely funded by social services were residential.

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