

NICCY Rights Review 2008

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INTRODUCTION

The report

This report is essentially an overview of current legislation, policy, research and literature pertaining to children's rights in Northern Ireland. It follows on from the comprehensive 'Children's Rights in Northern Ireland'¹ research report, undertaken by Queen's University Belfast, on behalf of NICCY during 2004. This report does not set out to replicate the contextual narratives, analysis or accounts of issues in the 2004 report, as this current report deals only with information in the public domain rather than feedback and views from professional and young people, which is necessary for a full contextual analysis. Rather, we draw attention to new information, developments or data brought to light in reviewing the recent literature.

The information presented here has been drawn from a range of documentation. While a number of issues are highlighted in the literature, the report should not be read as a definitive exposition or analysis of all rights issues relating to children in Northern Ireland. In relying on secondary data some issues are inevitably left uncovered, by virtue of the fact that they have yet to be researched or documented.

This report should be seen as a companion document to two pieces of primary research on children's rights undertaken by NICCY during the same period. The first of these was an extensive series of workshops conducted with children and young people, which sought their views on how their rights were being delivered upon or denied here. The second involved a similar exercise undertaken with a comprehensive range of professional stakeholders. A number of pertinent issues, which were not unearthed in this review of the literature, have been identified and analysed in the reports of that research. It is hoped that, taken together, the three reports will provide a comprehensive overview of the current state of children's rights in Northern Ireland and allied to the 2005 report prove to be a useful resource to professionals who share NICCY's commitment to working towards the realisation of children's rights here. To this end we have endeavoured to provide as much detail as possible in relation to the evidence we have discovered through the literature search.

This report is set out in six chapters, summarised below. The first chapter concerns the Implementation of the United Nations Convention on the Rights of a Child (UNCRC). It sets an overall framework for the themes elucidated in the report. Subsequent chapters deal with particular aspects of children's rights and cover the relevant standards in relation to the international child rights legislative context pertinent to the theme, including relevant instruments and commentary. Main government policy, legislative or service initiatives in relation to the theme are set out, including a summary of non-governmental organization (NGO) critiques, where available. This is followed by an exploration of the evidence emerging from the review of literature in relation to the extent to which children's rights are being met or denied. Each chapter concludes with a summary of the main issues raised and a series of recommendations.

¹ Kilkelly, U., Kilpatrick, R., Lundy, L., Moore, L., Scraton, P., Davey, C., Dwyer, C. & McAlister, S. (2005) Children's Rights in Northern Ireland. NICCY.

Methodology

The report has been developed over a number of stages:

- a meeting with NICCY staff and members of the advisory group to agree terms of reference and parameters of the review;
- initial meeting with a small number of professionals to identify relevant documentation;
- review of the relevant international instruments including the European Court of Human Rights and Fundamental Freedoms (ECHR), the Human Rights Act 1988 (HRA) and in particular the UNCRC, and the range of materials produced by the UNCRC Committee, including General Comments, reports of Days of Discussion and Concluding Observations related to State examinations;
- review of NICCY documents;
- review of documents identified through internet search engines;
- review of documents identified through relevant databases: Children in Northern Ireland (CiNI), Access Research Knowledge (ARK), Online Research Bank (ORB). In this exercise the CiNI website Child Policy Information Service was particularly useful, providing a comprehensive and well organised catalogue of policy, legislative, research, strategy, consultation responses and statistics;
- production of a first draft report, discussion and feedback from NICCY staff and steering group members;
- production of a second draft report, discussion and feedback from NICCY staff and steering group members; and
- production of final report.

Throughout the development of the report we have been conscious of Child Rights Programming (CRP) methodology. This approach has been developed globally by Save the Children, UNICEF and others. CRP involves using the principles of child rights to plan, manage, implement and monitor programmes with the overall goal of strengthening the rights of the child as defined in international law, particularly the UNCRC. Save the Children and the Children's Law Centre have taken the lead in pioneering and promoting the CRP model in strategy and service development here. They have developed tailored CRP training and delivered this to those engaged in generating the 10 year Children and Young People's Strategy and personnel, including children, involved in the Children's Services Planning process.

The CRP model involves a number of stages:

- assessing and analysing the current situation;
- gathering information in relation to statistics, quantitative data, existing provision and relevant legislation and policy from a range of sources to inform the assessment;
- determining the root causes of rights not being met involves considering the available information and asking the question why until the underlying cause is identified; this process assists agencies to design effective actions/interventions to improve the situation;
- mapping proposed action to address root causes across three pillars/dimensions:
 - practical actions: projects and programmes which are designed to address gaps or violations in the delivery of children's rights;

- legislative, policy and administrative changes: new or amended law or public policies or improvements in how these are implemented or administered;
- getting the message of children's rights accepted throughout society: educational and awareness raising activities designed to tackle attitudes and build a constituency of support for children's rights; and
- setting children's rights indicators: these provide systematic information on children's lives that support the planning, implementation and monitoring of activities to ensure the attainment of children's rights and also facilitate an assessment of the extent to which government is meeting its obligations in relation to children's rights.

The work presented here, alongside the primary NICCY research and other work recently undertaken by the Children's NGO sector (e.g. the NGO alternative report to the UNCRC Committee) contributes to the first stage of the CRP approach. It is to be hoped that this body of work might form the basis of a co-ordinated effort to apply CRP to the task of realising children's rights in Northern Ireland.

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Laura McMahon and Paula Keenan
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REPORT SUMMARY

Chapter 1: Implementation

The failure of the government to fully implement the UNCRC represents a serious barrier to the realisation of children's rights. The erratic and piecemeal approach taken to protecting and promoting children's rights perpetuates the cycle of rights violations. Failure to effectively mainstream children's rights and uphold and endorse the general principles of the UNCRC prevents children gaining access to better services, more appropriate legislation and more effective policy implementation. The totality of the research throughout this report establishes serious and systemic failings on the part of government to comprehensively address issues pertaining to child protection and to marginalised and vulnerable children. These failings are exacerbated to the extent that the government are aware of the violations and yet persistently do not act. Difficulties around monitoring, training, data and funding persist. While there has been some advancement in the realisation of the rights of children and young people, much more needs to be done to remove the variety of barriers in existence between children and their rights under the UNCRC.

Summary of key issues

- The failure of the government to incorporate the UNCRC into domestic legislation has denied children and young people the protection afforded to them at international level.
- The provisions recommended by the Children's Working Group on the Bill of Rights (BOR) for Northern Ireland represent a significant opportunity to advance and protect the rights of children in accordance with the provisions of the UNCRC.
- Strategic case law has notably enhanced awareness around and reliance on the UNCRC in the courts in Northern Ireland, and as a result, on public bodies.
- Case law decisions that NICCY is not a 'victim' for the purposes of the HRA serves to negate the possibility of the Commissioner alleging human rights violations on behalf of a vulnerable child or a representative group of children or young people.
- There is a systemic and widespread failure among public bodies to mainstream or implement the general principles of the UNCRC in legislation, policy and service provision.
- There is an increased capacity for monitoring human rights compliance in relation to children. However, both NICCY and the NIHRC face specific hurdles should they need or want to address historical children's rights violations.
- The methodology of collecting data relating to young people by the Police Ombudsman's office fails to properly identify issues relating to children.
- The powers of the Policing Board proved ineffective in preventing the Chief Constable introducing Tasers, which the Board's human rights advisors had cautioned against. It is alarming that, even with the plethora of bodies in Northern Ireland tasked with monitoring public bodies and human rights, such a blatant disregard could be shown towards a vulnerable group like children.

- There remain serious deficiencies around UNCRC awareness raising and training among all key players across all services and decisions relevant to children and young people.
- There is an absence of a unified, child's rights-centred response at the formative stage of legislation, policy and service planning, thereby preventing outputs being child rights proofed.
- While government initiatives are welcome, the lack of progression, funding, consistency, and engagement represent serious barriers to the fulfilment of children's rights.
- Devolution presents both opportunities and challenges for children sector professionals and the continued uncertainty around the devolution of policing and justice delays the tailored approach required in this area for the young people of Northern Ireland.
- Political and religious sensitivities among political representatives may result in an absence of advocacy on behalf of lesbian, gay, bisexual and transgendered young people.
- The lack of coordinated and specifically funded training within all relevant public bodies in the provisions of the UNCRC is a major hurdle in advancing the ethos and protection afforded by it.
- Mandatory training and adoption of CRP within governmental departments, public authorities and statutory agencies would represent an enormous step forward in mainstreaming children's rights.
- The lack of appropriately and uniformly collated data significantly impacts on planning and service delivery with the inevitable result that the most vulnerable children remain outside the general frame of reference unless specifically targeted and advocated for.
- Lack of openness and accountability in relation to funding leads to confusion and uncertainty, threatened job losses and the associated loss of expertise, and an inability to properly meet the competing demands from children and young people.

Chapter 2: Marginalisation and Vulnerability

Marginalised and vulnerable children and young people face particular challenges when they seek to realise their rights under both domestic and international legislation. The nature of vulnerability and marginalisation means that often, such children are not accounted for in government data. Subsequently, these children and their lives are not reflected in policy, legislation and service provision. The failure to identify and address the needs of these children serves to increase their vulnerability and marginalisation and therefore the cycle of invisibility continues. This chapter addresses the situation, emerging from recent literature, of children and young people who are marginalised because of living in care, race and ethnicity, disability, sexual orientation and involvement in the justice system. Issues pertaining to vulnerability around drugs and alcohol, sexual activity and suicide are also explored.

Summary of key issues

- Evidence suggests that children in Northern Ireland are still affected by the legacy of the conflict.

- Children in the care system continue to do significantly less well than their peers on a wide range of measures, experience high levels of mental ill health and are provided with inadequate support.
- Children from the Traveller community continue to face significant discrimination in many areas including health and education.
- There is an absence of comprehensive research into the lives of children and young people from ethnic minority communities. They are subjected to racist attacks and have difficulty accessing services.
- There is an absence of comprehensive disaggregated data in a range of areas in relation to children from minority ethnic communities and children with disabilities.
- Children with disabilities do not have access to adequate support, including play and leisure services.
- Special Education Needs and Disability (Northern Ireland) Order 2005 (SENDO) provisions are not adequately resourced and children have difficulty accessing their rights through SENDO tribunals.
- Children with visual impairments have difficulty accessing text books, which impedes their educational progress.
- Despite evidence of need, children with hearing impairments do not have access to mental health services.
- Children with learning disabilities face a range of disadvantages and inequalities, which are not being addressed, including continuing unnecessary placement in Muckamore hospital and the absence of play provision.
- Young lesbian, gay and bisexual people face a raft of homophobia in many aspects of their lives, which contributes to high levels of mental ill health and suicide.
- The needs of young transgendered people appear to be unknown and not addressed.
- The age of criminal responsibility has not been reduced in line with the UN Committee recommendation.
- Children have been subjected to strip searching in Hydebank Wood.
- There is evidence that custody is not only being used as a measure of last resort.
- ASBOs are proving to be expensive and ineffective and serve to criminalise children
- Children and young people are increasingly using alcohol and drugs – numbers being treated have trebled in a two year period.
- Increasing numbers of young people are becoming sexually active at a younger age, sex education is failing to meet their needs and does not address issues for lesbian, gay and bisexual young people.
- Issues of sexuality in relation to young people with disabilities are ignored.

Chapter 3: Protection

The protection of children is a critical duty in the realisation of children's rights. This chapter outlines State obligations under United Nations and European instruments and highlights a range of issues emerging from the current literature. Concerns are raised in relation to patterns of child abuse, the response to crimes against children, the debate around the age of consent and mandatory reporting, the nature and extent of bullying – particularly for vulnerable groups, the impact on children of domestic

violence, procedures around child deaths, children's perceptions of road safety and the introduction of police technologies which endanger children.

Summary of key issues

These are:

- the increasing incidences of and changing patterns of child abuse;
- the absence of effective therapeutic support for children who have been abused;
- the absence of collated data on the sentencing of perpetrators of child abuse;
- the risk posed to children due to variations in child protection practices and procedures across the European community;
- the differing age of consent between Northern Ireland and England and consequences for young people related to mandatory reporting requirements;
- the failure of the law to afford full protection to children in relation to assault in the home;
- the unchanged prevalence in bullying in the past five years and the vulnerability of particular groups of children including those from black and minority ethnic communities, lesbian, gay, and bisexual young people, and children with disabilities;
- the continuing impact of community violence on children and young people;
- the impact of domestic violence on children;
- the increase in road traffic accidents involving children; and
- the introduction of police technologies that are particularly dangerous and potentially lethal to children.

Chapter 4: Poverty and Material Deprivation

The UNCRC is explicit that the State has a responsibility to provide welfare benefits and to take other measures to ensure that children enjoy an adequate standard of living. Significant areas of deprivation exist for many children and young people in Northern Ireland. This chapter serves to highlight the current available data and research illustrating the extent of poverty and its impact on children's lives and the realisation of their rights. Issues highlighted in the literature include welfare benefit levels, the lack of childcare and the experience of poverty among asylum seekers and lone parent families.

Summary of key issues

These are:

- the absence of a set of measures to define the levels and depths of poverty, agreed and applied by government;
- the extent and persistence of child poverty including severe child poverty in Northern Ireland;
- poverty impacts on the right to education and government has failed to provide adequate assistance;
- poverty impacts on the right to health, most starkly reflected in the high rate of infant mortality among the Traveller community;
- benefits rates in Northern Ireland serve to lock families into poverty and are not applied equitably, nor in line with need, to 16 and 17 year olds;

- children living in poverty do not access adequate safe places in which to play;
- there is an absence of research information and data in relation to refugee children in Northern Ireland, which means that their needs cannot be assessed and addressed;
- there is insufficient affordable, accessible child care provision in Northern Ireland; and
- high proportions of children from lone parent families are living in poverty.

Chapter 5: Participation and Advocacy

It is fundamental to the realisation of the rights of children and young people, as anticipated in the UNCRC, that their needs and views should be reflected in any policy, service or legislative provisions which affect them. It is only in effectively enabling the voice of the child to be heard and taken into consideration that real progress can be made in bringing the child-centred focus envisaged in the UNCRC to life. This chapter examines the State's obligations and duties, provides information on recent initiatives and reflects on the extent to which children's voices are being heard in the care, education and justice systems.

Summary of key issues

- Schools are not designated as public bodies and are therefore not subject to the requirements of Section 75.
- Children in care are not having their views taken into account in decisions relating to the planning of their care.
- There is little evidence that children are having their views taken into account in decisions relating to choice of family and contact with birth families during adoption processes.
- The voice of the child in the education system is limited by the absence of effective school councils.
- Young people in custody do not have access to an adequate effective independent complaints system.
- Children involved in family proceedings do not have a right to separate representation.

Chapter 6: Gaps in Service Provision

The rights of children cannot be met unless appropriate services, within a clear rights framework, are developed to address their needs. In framing comments to further explain the UNCRC, the Committee has articulated the range, types and quality of services that are required to ensure the effective delivery of children's rights. The literature review indicates that variation in access to services and the quality of service provision is apparent across Northern Ireland. This chapter sets out the particular gaps and inadequacies in service provision that were identified in the areas of health, alternative care, education and family support.

Summary of key issues

These are:

- the inadequacy of mental health services for children and young people, and the continued under-resourcing in this area of provision;
- the lack of provision and under-funding of services for children with complex physical health care needs;
- inadequate provision of and unequal access to speech and language therapy services;
- the absence of accurate data in relation to the numbers of children in need of Autism Spectrum Disorder support services;
- the lack of coordinated services for children with Autism Spectrum Disorders;
- the absence of appropriate and timely supports for children in alternative care;
- the under-funding of foster care services;
- the lack of provision of integrated education in relation to demand;
- the absence of secure funding for Alternative Education Provision (AEP), resulting in reduced educational opportunities; and
- the lack of sustained support for families who have children with disabilities, particularly in relation to respite care.

RECOMMENDATIONS

Implementation

1. The government should incorporate the UNCRC into domestic law. Alternatively, the government should adopt its original position and consider its Ten Year Strategy as the implementation vehicle for the UNCRC.
2. NICCY should give consideration to fully endorsing the working group recommendations for the BOR for Northern Ireland as each proposal is evidence based and reflective of both the UNCRC and the particular circumstances of Northern Ireland.
3. Legislation should be enacted giving NICCY 'victim' status for the purposes of challenging human rights violations on behalf of children.
4. CRP should be specifically endorsed and promoted as an effective model for mainstreaming children's rights.
5. Consideration should be given to the present obstacles that exist for both the NIHRC and NICCY should issues of past rights violations against children require to be considered.
6. Appropriate funding and priority should be given to government initiatives and timeframes and outcomes should be clearly established from the outset.
7. Dedicated training on the UNCRC, funded by the government to meet their international obligations under the UNCRC, should be rolled out across all government departments initially, and eventually across all judiciary, legal professionals, State agencies and relevant statutory, voluntary and community sector organisations.
8. Disaggregated data collation, production and storage should be replicated and mainstreamed within all government departments and public authorities.
9. Gaps in research and data need to be urgently addressed as the marginalised and voiceless children are generally the most vulnerable.
10. Funding initiatives should be for longer periods to facilitate better outcomes and assist in staff retention. Funding streams should be clear and unambiguous and targeted to the point of need.

Marginalisation and Vulnerability

1. Research should be undertaken to establish the continuing impact of the conflict on children and young people with a view to identifying strategies

to address these, including the provision of adequate and appropriate leisure facilities.

2. The newly established Mental Health and Learning Disability Board, in driving the delivery of the Bamford recommendations should ensure that:
 - specific provision is developed to support children in the care system and lesbian, gay and bisexual young people;
 - services are developed to provide appropriate information, education and support for children and young people with a learning disability in the area of sexuality;
 - services are fully accessible to children and young people with hearing impairments; and
 - policy and provision for children and young people with learning disabilities takes account of their right to play and leisure.
3. A strategy for the education of Traveller children should be developed to ensure:
 - improved collection and monitoring of dates relating to the educational attainment and achievement of children;
 - improved coordination of education and related support services;
 - the issue of Traveller children leaving school early is researched and addressed; and
 - the continuation of specialist pre-school provision.
4. Comprehensive research into the lives and experiences of children from minority ethnic communities should be undertaken with a view to identifying needs as a basis for service development.
5. The NI Executive should urgently address the absence of comprehensive disaggregated data in relation to children, including those with disabilities and from minority ethnic communities.
6. The provisions of SENDO should be adequately resourced and free legal aid provided for children and families wishing to avail of SENDISTs.
7. The full range of educational textbooks should be made available in accessible form to children with visual impairments.
8. The Suicide Prevention Strategy and Action Plan should include specific actions to address the link between suicide and sexual identity.
9. The Sexual Orientation Strategy should set out clear actions in relation to developing specific support services for lesbian, gay and bisexual young people.
10. The experiences of young transgendered people should be researched with a view to identifying needs and developing services.
11. The NI Executive should take steps to raise the age of criminal responsibility in line with the UN Committee recommendation.

12. The NIO should review current policy and provision within the juvenile justice system to ensure that:
 - the specific needs of girls and young women are addressed;
 - facilities for family contact are developed in the Juvenile Justice Centre (JJC);
 - community-based facilities for mothers are developed as an alternative to custody.
 - children under 18 are not detained with adults;
 - cases in which children are involved as witnesses should be flagged, fast-tracked and timetabled;
 - child-friendly information on rights, procedures and the potential consequences of their decisions should be made available to children in all police stations and other appropriate venues;
 - children are not subjected to strip-searching; and
 - custody is only ever used as a measure of last resort.
13. Responsibility for the education of children in custodial settings should be moved from the NIO to the Department of Education (DENI).
14. The application of Anti-Social Behaviour Orders in relation to children and young people should be researched with a view to establishing their impact on children's rights under the UNCRC.
15. Sex education should provide adequate and appropriate information on contraceptive choices and address issues of sexuality in a way that is inclusive of lesbian, gay and bisexual young people and those with disabilities.
16. Dedicated sexual advice services for young people such as the Brook Clinic should be underpinned by adequate resources and expanded to meet increasing demand.

Protection

1. The introduction of the Regional Safeguarding Board should ensure synergy with the Children and Young People's Strategy and with regional mechanisms for children's services planning. It should also take account of the need for coordination and standardisation of child protection measures across the European community.
2. The Department of Health Social Services and Public Safety (DHSSPS) should urgently consider how to provide adequate therapeutic support to looked-after children who have been sexually abused.
3. The DHSSPS should research recent data in relation to child protection registrations to identify reasons underlying emerging trends.

4. The PSNI should develop clear procedures and protocols for dealing with cases of child protection, in consultation with relevant organisations.
5. The legislation aimed at protecting children at risk of sexual harm should be reviewed and if needed replaced with more appropriate and robust provisions.
6. Collated data relating to the sentencing of those who have perpetrated a crime against a child or young person should be collected and analysed to support the identification of emerging trends and the monitoring of compliance with the UNCRC and other relevant international obligations.
7. Legislation should be introduced to harmonise the age of sexual consent with that in England.
8. The government should remove the defence of reasonable chastisement in relation to the physical punishment of children in the home and gives children unambiguous protection against assault, in line with the UNCRC.
9. DENI should review actions taken to combat bullying, in order to ensure that adequate protection is afforded to children with disabilities, those who are LGBT, those from ethnic minority and Traveller communities and other groups of particularly vulnerable children and young people. It must ensure that bullying experienced by these groups of children is specifically addressed in school anti-bullying policies.
10. Strategies for tackling sectarian and community violence should be developed to address the impact of such violence on children and young people.
11. Government should review the Tackling Violence at Home Strategy to ensure full compliance with the UNCRC and should incorporate actions to:
 - collect and analyse regional data on the needs of children affected by domestic violence;
 - develop services for children affected by domestic violence which include early intervention, specialist intervention and integration into existing services;
 - assess the service needs of black and minority ethnic communities and involve those communities in service development; and
 - ensure the establishment of mechanisms to allow the voice of the child to be heard in court proceedings.
12. DRD should implement the recommendations of the NICCY 'Safer Journeys to School' report.
13. The PSNI should immediately end the deployment of Tasers until a rigorous equality impact assessment has been undertaken and should take cognisance of advice provided by the Northern Ireland Policing Board Independent Human Rights Advisors.

Poverty and Material Deprivation

1. Government should revise 'Lifetime Opportunities Northern Ireland's Anti-Poverty and Social Inclusion Strategy' and its associated action plans to include clear, specific, measurable actions and targets. These should be supported by a set of child rights Indicators, against which progress can be monitored. The strategy should be adopted and supported by an adequate budget.
2. Proposed new transfer arrangements to post-primary education should be subjected to a rigorous child impact assessment to ensure full compliance with Articles 28 and 29 of the UNCRC. They must take account of, and address, the established link between poverty and poor educational outcomes.
3. In line with the UN Committee on the Rights of the Child Concluding Observation in 2002, government should review its legislation and policies concerning benefits and social security allowances for 16 to 18 year olds.
4. Government should report on levels of child poverty using a mixed measure which combines material deprivation and low income.
5. Data relating to child poverty should be collected in a way that supports disaggregation to demonstrate differential impacts on particular groups of marginalised/disadvantaged children. This should include those with a disability, Traveller children, those from ethnic minority/migrant worker communities, refugees, those living in deprived areas, those in conflict with the law, teenage parents and children outside of mainstream education. Action plans associated with the Anti-Poverty and Social Inclusion Strategy and the Children and Young People's Strategy should be formulated to address the emerging evidence.
6. Funding should be allocated to support the implementation of the Department for Social Development (DSD) 'Including the homeless' Strategy.
7. Welfare benefits levels should be revised to ensure that family incomes are raised above the government poverty threshold.
8. The government should introduce seasonal grants to support families living in poverty to meet the financial strain occurring at particular times of year e.g. returning to school and heating costs during winter.
9. The NI 'Investing for Health Strategy' should include measures to address the health inequalities experienced by children living in poverty. This should be based on a thorough analysis of disaggregated data. In particular, the DHSSPS should, as a matter of urgency, put measures in place to address the high rate of infant mortality, and other health inequalities among children from the Traveller community.

10. The proposed play policy for Northern Ireland should address the lack of safe play provision for children living in deprived areas.
11. The proposed Refugee Integration Strategy should be developed in consultation with organisations working with refugees in Northern Ireland. It should be based on rigorous data identifying the numbers of refugees in Northern Ireland and robust research exploring their needs.
12. Government should consider the introduction of childminder start-up packages, and the Scandinavian model of childcare to ensure that quality, affordable childcare is available to parents in Northern Ireland.

Participation and Advocacy

1. Schools should be designated as public bodies under Section 75.
2. An advocacy strategy for children in care should be developed and the provision of advocacy services should be established on a statutory basis.
3. The adoption strategy should include the development of mechanisms to ensure that the views of children in the adoption process are heard and taken into account.
4. School councils should be developed in all schools in Northern Ireland in line with the NICCY Democra-School guidance.
5. The NIO should develop, in partnership with children and young people, a comprehensive, independent complaints system accessible to all children and young people involved in the juvenile justice system.
6. Children involved in family proceedings should have access to separate representation.

Gaps in Service Provision

1. The newly established Mental Health and Learning Disability Board, in driving the delivery of the Bamford recommendations should ensure that:
 - A range of services are developed to provide appropriate support for children and young people.
 - Families are provided with the level of support necessary to care for their children at home, including the provision of respite services.
 - Service development is underpinned by an adequate dedicated budget.
2. The DHSSPS should develop a framework for the provision of services to children with complex physical healthcare needs, which pays particular attention to the provision of equipment and respite services. This should be underpinned by the allocation of an adequate dedicated budget.

3. The Speech and Language Therapy Taskforce should develop a comprehensive and well resourced action plan to ensure that children have timely and adequate access to speech and language therapy services.
4. The DHSSPS should put in place measures for the collection of comprehensive and disaggregated data in relation to children with disabilities. This should form the basis of a comprehensive needs assessment and the development of appropriate service provision.
5. The DHSSPS should review services for children with Autism Spectrum Disorders to ensure that these are based on accurate data and needs assessment and that provision is appropriately coordinated.
6. Care matters should include measures to ensure that:
 - secure accommodation is provided on the basis of individual need;
 - children in care have appropriate access to family members, independent of decisions relating to their siblings;
 - therapeutic support is available to all children when they enter the care system;
 - support services are available at weekends and in the evenings;
 - children in care are given adequate opportunities to develop self care skills;
 - that every care leaver is allocated a personal advisor in a timely fashion;
 - intensive specialist therapeutic support services are developed in Northern Ireland; and
 - foster care is adequately resourced, including the introduction of an equitable system of payment for foster carers.
7. Funding for integrated education should be increased in order that provision can be expanded to facilitate parental choice.
8. DENI should work with AEPs to ensure that secure funding is put in place in order to support the delivery of a comprehensive, quality education to the children engaged in alternative provision.
9. The DHSSPS should undertake a comprehensive review of support services for children with disabilities and their families, including respite care, as a basis for developing measures to ensure that services have the capacity to meet identified needs.

IMPLEMENTATION

Introduction

This chapter considers how the implementation of the human rights of children and young people within the UNCRC² and other international human rights standards are being realised in Northern Ireland and whether the general principles of the UNCRC are providing a framework for policy, legislation, research and practice. Reference is made to some of the issues raised in later chapters to illustrate particular issues concerning the rights of children and young people. This chapter should be read not only in conjunction with the other chapters of this report, but should also be cross-referenced with the NICCY research with children and young people and professionals to enable a more comprehensive understanding of the child rights violations occurring within Northern Ireland.

The UK has ratified the UNCRC but it is not part of domestic law. In 2002 the Committee on the Rights of the Child³ recommended that the UK incorporate the rights, principles and provisions of the UNCRC to ensure all legislation complies with the requirements of the UNCRC and that the principles of the UNCRC be made widely known. Despite the recommendations of the Committee on the Rights of the Child, there remains a persistent failure to effectively protect, promote and implement the rights of children and young people. Article 4 of the UNCRC requires States to take all appropriate measures necessary to implement the Convention. The UK has failed to do this and this failure of the government to incorporate the UNCRC into domestic law means that the only statutorily available human rights instrument which may be utilised in cases of alleged rights violations is the ECHR. The HRA 'brought home' the rights contained within the ECHR by making them domestically justifiable. Therefore, the HRA is the vehicle that is available to children and young people seeking to enforce their ECHR rights unless and until the UNCRC is fully implemented at domestic level and/or the BOR for Northern Ireland grants justiciable rights to children and young people over and above those already contained within the ECHR.

General Comment no.5 from the Committee on the Rights of the Child outlines government obligations to develop 'general measures of implementation'.⁴ They explain that implementation is the process whereby States take action to ensure the realisation of all rights in the UNCRC for all children within their jurisdiction. The Committee emphasises that ratification of the UNCRC obliges States under international law to implement it. The general measures of implementation identified by the Committee are intended to promote the full enjoyment of all rights in the UNCRC by all children, through legislation, the establishment of coordinating and monitoring bodies (both governmental and independent), comprehensive data collection, awareness raising and training and the development and implementation of appropriate policies, services and programmes.

² Adopted and opened for signature, ratification and accession by the General Assembly resolution 44/25 of the 20th November 1989.

³ UNCRC Concluding Observations for the UK and NI, Para. 9.

⁴ GC No.5, CRC/GC/2003/5, 27th November 2003.

This chapter will explore how these various requirements for the realisation and implementation of the rights contained in the UNCRC are being met in Northern Ireland.

Bill of Rights for Northern Ireland

The most significant development with the potential to realise the UNCRC rights for children and young people is the BOR for Northern Ireland. Six working groups were put in place in order to prepare suggestions on a way forward for a BOR. In March 2008 all working groups delivered their final reports to the BOR Forum (which consists of both political and civic society representatives) and the Forum will provide their report by March 31st 2008. Following very successful and consistent lobbying by children's sector representatives, led by the Children's Law Centre and Save the Children, a working group specifically tasked with considering children's rights was established. Although initially this group was also tasked with responsibility for women's rights, the two groups were split, which allowed for greater in-depth consideration of the pertinent issues within these two important groupings. The remaining five working groups were:

- criminal justice and victims;
- economic and social rights, including relevant equality issues;
- culture, identity and language;
- civil and political rights, including relevant equality issues; and
- preamble, enforceability and implementation.

In preparation of the need to inform the BOR Forum and the broader working groups of issues particularly relevant to children and young people, the Children's Law Centre and Save the Children commissioned research 'Protecting children and young people's rights in the Bill of Rights for Northern Ireland - Why? How? (2005)'⁵ which provides a detailed comment on how the rights of children and young people may be advanced via a BOR.

Following comprehensive involvement with the children's sector in Northern Ireland, the representatives from civic society and from the political parties drew up draft proposals for the inclusion of children's rights in any future BOR for Northern Ireland.⁶ In order to promote and protect the rights of all children in Northern Ireland, the children's working group has recommended that children's rights should be mainstreamed throughout the BOR in addition to having a dedicated child-specific Chapter which would contain specific provisions. The working groups' suggestions include many provisions already enshrined in the UNCRC but not directly enforceable within the UK – the inclusion of these provisions in any future BOR for Northern Ireland would serve to greatly enhance the protection and advancement of children's rights. Many of the suggestions go to the core of the issues and rights violations highlighted throughout this report and represent a set of comprehensive yet appropriately focused recommendations for children and young people in Northern Ireland. The working group suggestions include provisions relating to the following:

⁵ Save the Children and the Children's Law Centre for the Children and Young People's Sector Bill of Rights Group.

⁶ The final report from all the BOR working groups have been sent to the BOR forum for discussion before final recommendations are forwarded to the NIHRC who are to advise the Secretary of State of the proposed contents of a BOR for Northern Ireland.

- a non-discrimination provision⁷;
- a best interests provision;
- recognition of the responsibilities and duties of parents/legal guardians;
- the right to education;
- the right to the highest attainable level of healthcare (with specific mention of mental healthcare);
- the right to grow up in a stable, safe and secure family environment;
- the right to play and leisure;
- the right to participate;
- protection from abuse and exploitation;
- employment protection;
- children and armed conflict;
- protection for child witnesses and victims of crime;
- all those under the age of 18 to be treated as a child for the purposes of the administration of criminal justice;
- reduction of the age of criminal responsibility to 16, and progressively to 18 years;
- protection within the criminal justice system; and
- girls to be detained separately from boys.

The rationale for each suggestion is set out within the report and identifies all the areas of concern around current rights violations for young people which motivated each recommendation. The link between the potential for change if these recommendations were enshrined in a BOR and the legacy of the 'particular circumstances' of Northern Ireland is substantiated by the findings in this report.

NI case law and the UNCRC

In the absence of its full incorporation into domestic law and in order to actively protect and promote the human rights of children and young people, the UNCRC should be considered as the prism through which all rights violations and obligations within the ECHR regarding children and young people should be viewed. Best practice at international level further dictates that the UNCRC should overarch any policy, legislation or service which impacts upon children and young people. Although the UNCRC is not yet fully incorporated in domestic law, it has been relied upon with increasing frequency when matters relating to the rights of children come before the courts. One such example is the case of *Re TP* [2005]⁸, a judicial review of decisions of the Youth Justice Agency (YJA) affecting a juvenile held on remand at the Juvenile Justice Centre (JJC) in Rathgael. In finding a breach of the young persons Article 8 rights (which protects the right to respect for private and family life), the court also stated that the welfare obligations arising from international obligations towards children and young people also 'inform the approach to Article 8'. This is significant in that it represented an acknowledgment that the ECHR rights of children should be considered in light of the UNCRC and other international obligations.

⁷ Irrespective of the child's or his or her parent's, carers or legal guardian's age, 'race', 'colour', sex, gender, language, religion, political or other opinion, national, ethnic or social origin, economic status, disability, sexual orientation, birth status, current or previous legal or other status.

⁸ [2005] NIQB 64. The NIHRC intervened by way of written submission.

NICCY, in pursuance of fulfilling its statutory duty, has both brought and been involved in cases seeking to promote and protect children's rights. In a challenge to the introduction of legislation codifying the defence of 'reasonable chastisement' in 'Re The Northern Ireland Commissioner for Children and Young People'⁹, NICCY sought to persuade the court that the existence of such a defence violated the rights of children and prevented them from being afforded the protection from being hit given to adults within the criminal justice sphere. Emphasis was also placed on the wider context of attempting to eliminate all forms of violence within the community, most particularly in Northern Ireland after so many years of violent conflict. The court in its judgment did not consider the existence of the defence of reasonable chastisement to violate the rights of children, whilst stating:

Children are a vulnerable group in our society. Smacking children to whatever degree is likely to involve their human dignity, their personal development and their own sense of self and autonomy. Children are real persons not abstractions... the child is a person not an object of concern.¹⁰

The court went on to say that the UNCRC and other relevant international instruments may inform but not determine the court's decision in considering the rights of children.¹¹ This judgment is currently under appeal with the Court of Appeal in Northern Ireland. In the recent case of *Re Ballyclare High School* [2008]¹², NICCY was invited to intervene by the court, an acknowledgment of NICCY's role in advancing and realising the rights of children and young people via the legal process. While finding that a dress and appearance code enforced by a school constituted neither unlawful sexual discrimination nor a breach of the ECHR, the court took on board the arguments put forward by NICCY relating to the significance of the UNCRC when deciding rights issues relevant to children. The courts stated that the effect of the UNCRC provisions is that:

the courts, where possible, will interpret domestic and Convention law consistently with the provisions of the UNCRC and will act in accordance with Treaty obligations unless domestic legislation requires otherwise.¹³

The court also again reiterated that the provisions of the UNCRC are relevant to the interpretation of the ECHR and should 'colour the court's approach.'¹⁴

Of particular significance in the Ballyclare case is the court's positive view of school councils, which NICCY has identified as being of vital importance if schools are to truly engage with their Article 12 UNCRC obligations by facilitating the voice of the child. NICCY has provided detailed guidance on school councils and has forwarded their recommendations on how models of councils should best be adopted, 'Having Your Say', to all schools in Northern Ireland as a guide for school councils and for anti-bullying policies. NICCY also presented to the court its submissions to the Committee on the Rights of the Child on the child's right to be heard. The court considered that the existence of a school council provided a mechanism to alter codes

⁹ [2007] NIQB 115.

¹⁰ At Para. 32, partially quoting from Baroness Elizabeth Butler-Sloss.

¹¹ Para. 64.

¹² NIQB 21. This case is subject to appeal by the young people involved.

¹³ Para. 16.

¹⁴ Para. 16 – quoting Lord Bingham in *Dyer v Watson* [2004] 1 UKPC at 23.

such as dress codes and that such a mechanism allowing alteration 'must' be present in schools.¹⁵ This is a clear endorsement of the appropriateness of ensuring the participation of children and young people in matters affecting them.

General principles

The four general principles of the UNCRC are: the right to the enjoyment of UNCRC rights without discrimination of any kind (Article 2); the best interests of the child are a primary consideration in all actions taken concerning children (Article 3); the right of the child to life, survival and development (Article 6) and the need to ensure that every child capable of forming a view has the right to express those views freely in all matters concerning him/her and to have their views given due weight in accordance with the child's age and maturity (Article 12). These general principles overarch all provisions relating to children and should be applicable to all legislation, policy and service provision. However, the application of these overarching general principles by public authorities has been both piecemeal and erratic. The following are brief illustrative examples of the general principles within Northern Ireland, some of which will be discussed in more detail throughout this report.

Best interests

While the UNCRC calls for the best interests of children to be a 'primary consideration' this is not uniformly applied. For example, it remains a continued concern that the best interests principle is not reflected in youth justice legislation, but the terminology of the 'welfare' of the child continues to be used. An example of this approach is Section 53 of the Justice (Northern Ireland) Act 2002. It requires that all persons exercising functions in relation to the youth justice system to have regard to the welfare of the children affected by the exercise of their functions: Section 53 reads:

53 Aims of Youth Justice System

- (1) The **principal aim** of the youth justice system is **to protect the public** by preventing offending by children.
- (2) All persons and bodies exercising functions in relation to the youth justice system **must have regard to that principal aim** in exercising their functions, with a view (in particular) to encouraging children to recognise the effects of crime and **to take responsibility** for their actions.
- (3) But all such persons and bodies **must also have regard to the welfare of children** affected by the exercise of their functions (and to the general principle that any delay in dealing with children is likely to prejudice their welfare), with a view (in particular) to furthering their personal, social and educational development.
- (4) 'Youth justice system' means the system of criminal justice in so far as it relates to children.
- (5) 'Offending' includes re-offending.
- (6) 'Children' means persons who are under the age of 18.
(emphasis added by report author)

¹⁵ Para. 27.

The emphasis in this legislation is on protecting the public *before* consideration is given to the welfare of the child – protecting the public is the *principal aim* and not the welfare of the child. The ‘must also have regard’ comes secondary to this principal aim. Although this legislation fails to either place the welfare of the child as the paramount consideration or reflect the ‘best interests’ ethos it does indicate that legislation can be enacted which makes no doubt as to where the priority should lie – in this case protecting the public is the priority. The Children’s Group on a BOR for NI identified this area as a rights violation and have suggested the following clause be enacted which may serve to negate non-UNCRC compliant legislation like the Justice (NI) Act 2002, above:

In all decisions taken within the context of the administration of youth justice, the best interests of the child shall be the paramount consideration.¹⁶

A further legislative failure to advance and protect children’s rights is the enactment of Article 2 of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006 which replicates Section 58 of the Children Act 2004 allowing for the continued defence of ‘reasonable chastisement’ in the physical punishment of children. This is discussed further in the Chapter on ‘Protection’.

Right to be heard

A study carried out by the Children’s Law Centre between 2002 and 2007 monitored the consultation exercises carried out by public bodies in relation to matters impacting on the lives of children and young people. In total, only 6 out of the 60 consultation exercises involved direct consultations with children and young people, and in only 4 of the consultations was child-accessible documentation made available.¹⁷ The right to be heard is discussed more fully in the ‘Participation’ chapter.

The right to life, survival and development

This general principle covers a broad spectrum of potential rights violations – from the failure of the State to provide any or adequate mental health services so desperately needed by children and young people to the constant refusal of the government to sufficiently address the educational inadequacies faced by many vulnerable groups of children and young people.

The UNCRC contains a number of articles pertaining to the rights of children in relation to health, welfare and standards of living. The United Nations Committee on the Rights of the Child has issued two General Comments, in the light of the experience of holding examinations of periodic reports in a range of countries, which raise awareness of and offer further guidance in relation to these rights.

The first of these, General Comment no. 4 (2003)¹⁸, focuses on adolescent health and development. The Committee expresses concern that States’ Parties have paid

¹⁶ At pg 30 of the final report.

¹⁷ Final Report of the Working Group on children and young people for a BOR for Northern Ireland, pg 21.

¹⁸ UNCRC, General Comment no. 4 – Adolescent health and development in the context of the Convention on the Rights of the Child, July 2003.

insufficient attention to the specific concerns of adolescents as rights holders and to promoting their health and development. The Committee clarifies that the grounds in Article 2 (non-discrimination) should be interpreted as covering adolescent's sexual orientation and health status, including HIV/AIDS and mental health (Para.6). They point out that the right to information in Article 17 should include access to information on family planning, prevention of accidents, and the abuse of alcohol, tobacco and other harmful substances (Para.10). The right to privacy and confidentiality (Article 16) applies to advice and counselling on health matters (Para.11). States are urged to adopt special measures to ensure the physical, sexual and mental integrity of adolescents with disabilities and to ensure that adolescents who are affected by poverty and socially marginalised are not criminalised (Para.12). The Committee also makes reference to the need for specific programmes to promote road safety (Para. 21) and prevent suicide (Para.22). Special efforts are advocated to protect vulnerable adolescents for example the homeless or those in institutions for young people with disabilities (Para. 23). In relation to mental health, States are urged to provide adequate treatment within the adolescent's community, and to hospitalise only where this is in their best interests and where they are separated from adult services. While hospitalised, adolescents should be able to access education, recreation and representation from someone other than a family member (Para.29). In the General Comment specific reference is made to the need to ensure informed consent for medical treatment (Para.32); access to facilities, goods and services for all adolescents with disabilities, including information on sexuality (Para.35); and provision of health and counselling services to those who have been sexually exploited (Para.37). States are also urged to invest heavily in preventative policies and measures in relation to the particular risks faced by adolescents who experience homelessness, armed conflict, all forms of injustice, family breakdown, political, social and economic instability and all types of migration (Para. 38).

The Committee also draws attention to the General Comment no.14¹⁹ from the Committee on economic, social and cultural rights. This advocates the provision of a safe and supportive environment for adolescents that ensures the opportunity to participate in decisions affecting their health; to build life skills; to acquire appropriate information and to negotiate the health choices they make (Para. 40). Finally, the Committee recommends a multisectoral approach to the promotion and protection of adolescent health and development by facilitating effective and sustainable partnerships among all relevant factors.

The absence of any adequate or appropriate mental health services for children and young people is a damning indictment of the government's failure to meet the benchmark set by the UNCRC. It is all the more concerning given that the government have ample evidence of the widespread nature of the problem and yet do not act appropriately. The multiple disadvantages faced by many children who experience mental health problems perpetuates the rights violations; many of these children have been in care, in detention, abused, exploited and marginalised and may experience mental health problems as a result of previous rights violations – the Chapter on 'Marginalisation and Vulnerability' is replete with examples of children denied access to appropriate care and services. To deny them care or to provide inadequate care

¹⁹ United Nations Committee on Economic, Social and Cultural Rights, General Comment no.14 (2000): The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc E/C.12/2000/4, 11th August 2000.

totally offends the principles and ethos of the UNCRC and the General Comments of the Committee as set out above.

General Comment no.9 concerns the rights of children with disabilities. The Committee emphasised that poverty is both a cause and a consequence of disability and that children with disabilities and their families have the right to an adequate standard of living (Para.3). They point out that the explicit reference to children with disabilities in Article 2 is unique and is because they belong to one of the most vulnerable groups and their disadvantage is often compounded by other factors (Para. 8). In relation to Article 23, which is focused on disability, the Committee explains that the core message is that children with disabilities should be included in society and that measures taken should aim to ensure this to the maximum extent (Para.11). In order to do so, States are asked to develop and effectively implement a comprehensive policy with a plan of action, which ensures that children with disabilities and their families receive the special care and assistance they are entitled to under the Convention (Para.13). They considered that clear provisions for the protection and exercise of the specific rights of children with disability should be set out in national laws and regulations (Para.17). The Committee also draws attention to the importance of including all children with disabilities in policies and programmes (Para.18). Again, as will be discussed in greater detail in the Chapter on 'Marginalisation and Vulnerability', the government is comprehensively failing to meet their international obligations towards children and young people with disabilities.

Non-discrimination

There are many examples of discrimination in the field of children's rights – one of the most obvious examples is that, unlike adults who have the full protection of the criminal justice system should their physical integrity be violated, children and young people are not free from physical punishment.

A further example is in the area of education where insufficient, inappropriate or absent services result in certain children being discriminated against within their peer groups. Education is so fundamental to the development of children's views and potential that its denying or discriminatory nature can have very serious long-term detrimental effects on children. Education is an area of particular concern to the Committee on the Rights of the Child. The UNCRC contains two articles with a primary focus on the rights of children in relation to education: Article 28, the right to education including access to education at all levels, and that measures of discipline are compliant with the rights of the child; and Article 29, which is concerned with the aims of education including that it be directed at fulfilment of potential and respect for human rights. The United Nations Committee on the Rights of the Child have also issued a General Comment, in the light of the experience of holding examinations of periodic reports in a range of countries, which raise awareness of and offer further guidance in relation to education rights. The General Comment on the aims of education²⁰ in 2001 was the first comment issued by the Committee. The Committee argues that the rights set out in Article 29 insist upon the need for education to be child-centred, child-friendly, and to empower by developing the child's skills, learning and other capacities: dignity, esteem and confidence. Education is seen as going far beyond formal schooling to include life experiences (Para. 2). According to the

²⁰ UNCRC, General Comment no. 1 – The aims of education – Article 29 (1) April 2001

Committee, the right to education involves not only access but content, which should equip the child to achieve a balanced human rights-friendly response to life's challenges including the tensions between tradition and modernity; the individual and collective; the global and the local (Para. 3) A balanced approach to education is needed and should be able to reconcile diverse values through dialogue and respect for difference (Para. 4).

The Committee draws attention to the indispensable, interconnectedness of the UNCRC Articles (Para. 6). Education must be provided in a way that respects the dignity of the child, enables the expression of their views and participation in school life, including the creation of school councils. It must also respect strict limits on discipline and promote non-violence (Para.8). The curriculum must be of direct relevance to the child's social, cultural, environmental and economic context, and must be tailored to individual needs and evolving capacities.

While the Committee considers that no child should leave school without the skills of literacy, numeracy, balanced decision-making, conflict resolution, relationship building, critical thinking and creativity (Para. 9) it is apparent that particularly vulnerable children in Northern Ireland are being failed in this respect. Worryingly, of all Traveller children recorded in post-primary schools, 42% have special educational needs.²¹ Coupled with the overall figures for Traveller children achieving expected levels at Key Stage 3, it is apparent that consideration needs to be given to overcoming the blatant discrimination Traveller children face in the education sector.²² The Committee also highlights the links between article 29 and the struggle against racism. Education must promote an understanding and appreciation of respect for difference and must challenge all aspects of discrimination and prejudice (Para. 11). The variety of contexts in which education is provided within Northern Ireland makes it difficult to assess how discrimination is handled within the curriculum. Certainly, as will be identified in later chapters, many children and young people face serious levels of discrimination and bullying in schools.²³

²¹ Traveller children are discussed more fully in the Chapter on 'Marginalisation and Vulnerability'.

²²

Subject	All pupils	Traveller children
English	73.3	19.4
Maths	71.0	29.0
Science	69.6	25.8

²³ The Committee also commented that teaching that is focused primarily on accumulation of knowledge, promoting competition and leading to an excessive burden of work on children may seriously hamper the development of the child's full potential (Para. 12). Education within the family, schools and community should develop respect for the natural environment and link issues with socio-economic, socio-cultural and demographic issues (Para. 13). Education in relation to human rights must give prominence to children's rights and children should also learn about this by seeing the rights standards implemented in practice. All states are called upon to formally incorporate the principles of Article 29 in legislation (Para. 18). The principles must be taught in teacher training and should be reflected in teaching methods. Schools must not allow bullying to take place (Para. 19). The Committee recommends that States develop a comprehensive national action plan to promote and monitor the achievement of objectives in relation to education (Para. 23) and establish review procedures to respond to complaints that policies or practices are not compliant with Article 29 (Para. 25). Finally the Committee argues that resource constraints cannot provide justification for failure to implement any or all of the measures in relation to education (Para. 28).

The Committee made a number of comments in relation to education following examination of the UK report ²⁴ (Concluding Observations: United Kingdom of Great Britain and Northern Ireland: October 2002). They expressed concern about the lack of participative mechanisms; the high rate of temporary and permanent exclusions; widespread bullying; differences in outcomes according to socio-economic background, particularly the lack of basic qualifications among children in the care system and teenage mothers; that children in detention do not have a statutory right to education and that only 4% of schools in Northern Ireland are integrated (Para. 47). They made the following recommendations:

1. Ensure that legislation throughout the State Party reflects Article 12 and respects children's rights to express their views and have them given due weight in all matters concerning their education, including school discipline.
2. Take appropriate measures to reduce temporary or permanent exclusion, ensure that children throughout the State Party have the right to be heard before exclusion and to appeal against temporary and permanent exclusion, and ensure that children who are excluded do continue to have access to full-time education.
3. Take all necessary measures to eliminate the inequalities in educational achievement and in exclusion rates between children from different groups and to guarantee all children an appropriate quality education.
4. Ensure that children in detention have an equal statutory right to education and improve education for children in care.
5. Take measures and set up adequate mechanisms and structures to prevent bullying and other forms of violence in schools and include children in the development and implementation of these strategies, in light of the Committee's recommendations adopted at its day of general discussion on violence against children within the family and in schools.
6. Taking into consideration the Committee's General Comment no. 1 on the aims of education, include the Convention and human rights education in the curricula in all primary and secondary schools and teacher training.
7. Increase the budget for and take appropriate measures and incentives to facilitate the establishment of additional integrated schools in Northern Ireland to meet the demands of a significant number of parents.
8. Develop educational programmes for teenage mothers to facilitate and encourage their further education.
9. Evaluate the impact of privatization of schools on the right of children to education.

(Para. 48)

²⁴ UNCRC, Concluding Observations: United Kingdom of Great Britain and Northern Ireland: October 2002.

As previously noted, NICCY has taken a proactive role in seeking to educate and encourage schools to form school councils, thereby enabling children to express their views and, it is hoped, have those views given due weight. The continued denial by the government of access to the NI curriculum for children in detention specifically contradicts the Concluding Observations of the UNCRC.

Following on from the Committee's comments and expectations of governments in the field of education, it is informative to consider the current state of education within Northern Ireland and whether any discriminatory patterns are prevalent or emerging. DENI compiles a range of statistics in relation to education; these are available on the DENI website²⁵. The latest figures from DENI²⁶ indicate that during 2006-2007 there were 1,595 educational establishments in Northern Ireland. Among these, 19 are Irish medium schools (18 primary and 1 post-primary) and 56 integrated schools (37 primary and 19 post-primary). The percentage of integrated schools (as a percentage of all primary and post-primary schools) has increased from 4% in 01-02 to 5% in 06-07. Overall the number of integrated schools has grown from 46 in 01/02 to 56 in 06/07 – an increase of 21%. In addition there are 45 special schools, 3 hospital schools and 18 independent schools. The independent schools do not receive recurrent funding from DENI. The number of children with special educational needs in mainstream schools has increased year on year. Also of note is the changing demographic in Northern Ireland in the last five years. While this will undoubtedly have an impact across all areas of potential child rights violations, the area of education is one in which failure to address discriminatory patterns or treatment can result in sustained disadvantage throughout a child's life. Little research has been done in this area but given that the number of pupils with English as an additional language has increased significantly year on year and increased by 50% in the last year alone, greater focus needs to be directed towards identifying and fulfilling the rights obligations towards these children.²⁷

Monitoring

NICCY has a broad mandate to monitor, promote and protect the rights of children and young people. In furtherance to establishing an understanding around the operational context of NICCY and its advancement of the realisation of the rights of Children and Young People, NICCY commissioned Article 24 of the Commissioner for Children and Young People (Northern Ireland) Order 2003 – the review of the Office of the Commissioner - Compatibility with Paris Principles (2006)²⁸. Among the report recommendations was that NICCY's mandate should be extended to include private authorities and UK wide public authorities. The report also recommended that the 2003 Order should include a provision whereby courts and tribunals should be required to take the UNCRC into account in determining any issue concerning the rights and interests of children and young people. The report acknowledges the use by NICCY of the statutory powers afforded to them under the legislation and recognises that the existence and potential for using these powers has brought about collaborative outcomes on a range of occasions.

²⁵ www.deni.gov.uk/index/32-statisticsandresearch_pg.htm

²⁶ enrolment-time-series.xls at DENI web-site.

²⁷ From a total of 2,681 to 3,911.

²⁸ Fitzpatrick, B., NICCY.

The report concludes:

Finally, this review occurs at an early stage in NICCY's development. Many of the powers available to the Commissioner have yet to be invoked, at least formally. No doubt, in the next three years, the full range of the Commissioner's powers may be exploited. Nonetheless, the present NICCY model is an amalgam of an Ombud model and a HRIC model. On occasions, elements of the Ombud model prevent the Commissioner enjoying the full scope of a HRIC model which would be compliant with the Paris Principles, as interpreted by ENOC and the UNCRC.

Whilst the existence of two human rights bodies, NICCY and the Northern Ireland Human Rights Commission (NIHRC) enables greater scrutiny of human rights compliance, their mode of set-up and powers of operation have resulted in a disparity as regards their ability to effectively protect and promote human rights. This discrepancy is further exacerbated by the recently enacted Justice and Security (NI) Act 2007 ('the 2007 Act') which extends the powers of the NIHRC. Of most significance from a practical viewpoint when attempting to hold the government to account for alleged rights violations, the 2007 Act allows the NIHRC to institute legal proceedings in its own right, and when doing so to rely upon the European Convention on Human Rights, provided that there is, or would be, a victim (as far as that Convention is concerned) of the unlawful act. This, in effect, removes the need for the NIHRC to 'find' a victim before being able to commence proceedings as it can now do so in its own right. This significant power is not available to NICCY and, following two High Court decisions in Northern Ireland, NICCY is not seen as a victim for the purposes of HRA and therefore must bring cases alleging specific human rights violations in the name of a specific child.²⁹ This legislative anomaly serves to greatly limit the ability of NICCY to protect and promote the rights of children and young people. The NIHRC powers are further extended under the 2007 Act in allowing the NIHRC by notice to require a person to produce documents or information in their possession, or to give oral evidence for the purpose of an investigation.³⁰ This power is also available to NICCY under Article 20 of the Commissioner for Children and Young People (NI) Order 2003 ('the 2003 Order'). The 2007 Act also grants NIHRC the power to enter places of detention.³¹ Under Article 21 of the 2003 Order, NICCY also has such a

²⁹ NICCY have launched an appeal against the decision of the High Court in their judicial review seeking to strike down the "reasonable chastisement" defence and this appeal will also address the "victims" issue. The appeal is to be heard later in 2008.

³⁰ The Commission must have concluded that the matter which it is proposing to investigate has not already been sufficiently investigated by another person. The Act also creates four summary criminal offences relating to the failure to comply with a requirement to provide information or give evidence to the Commission and to the falsification of evidence provided. Subsection (10) provides that the Public Prosecution Service may not be required to supply documents or evidence about a decision whether or not to institute or continue criminal proceedings. The Act also creates an exemption for national security material from the Commission's power to require the provision of information or evidence under new section 69A. The Act provides that an investigation may not consider whether an intelligence service is acting in a way that is incompatible with human rights; or other matters concerning human rights in relation to an intelligence service.

³¹ It provides that, for the purpose of an investigation under section 69(8) of the Northern Ireland Act 1998, the Commission may authorise a person to access a place of detention in Northern Ireland. It lists the places of detention in Northern Ireland that are covered by this power and grants the Secretary of State the power to amend, by order, this list. It requires the Commission, before exercising the power conferred on it to conclude that the matter it wishes to investigate, with regard to a specified place of detention, has not already been sufficiently investigated by another person. The Act allows for a place of detention to apply to the county court to order that the power conferred may not be used to enter a place of detention; to impose restrictions on the use of this power; and to require the Commission to amend its terms of reference. It allows for the Commission to apply to a county

power to enter any premises in which a child or young person is being looked after, detained or being provided with an education, health, welfare or other service. NICC has not invoked this power to date. These powers may only be exercised, however, where the Commissioner considers it necessary for the proper conduct of a formal investigation. This therefore limits the exercise of the powers under Article 21 to current issues of concern. When this limitation is coupled with one of the very restrictive new powers conferred on the NIHR it becomes apparent that neither NICC nor the NIHR may freely consider issues of historical rights violations towards children and young people as the NIHR may only use their new statutory power to require the provision of information or evidence, or to access places of detention, from 1 August 2007, and as part of investigations into matters arising or situations that exist on or after this date³². Therefore the powers conferred extend only to more 'recent' events.

Consideration of reports and research from other agencies also allows for the monitoring of compliance with the UNCRC. The restructuring of the policing and security services in Northern Ireland resulted in bodies being set up to oversee and monitor the new systems. This provided an ideal opportunity to mainstream children's rights throughout these structures and enable data to be collected to ensure an accurate picture of the position and experience of children within the criminal justice system could be obtained. This did not happen and it is of continuing concern that the bodies established failed to address the issues relating to children through the prism of the UNCRC.

The Office of the Police Ombudsman for Northern Ireland (OPONI) was established by the Police Act (NI) 1998 and is accountable to Parliament through the Secretary of State. He is directed to exercise his powers in the way he thinks best calculated to secure the efficiency, effectiveness and independence of the complaints system and the confidence of the public and of members of the police force. The Police (NI) Act 2000 extended his powers to carry out inquiries as directed by the Secretary of State and supply statistical information to the Northern Ireland Policing Board. The Act directs him to investigate a current practice or policy of the police if the practice or policy comes to his attention under the Act and he has reason to believe it would be in the public interest to investigate the practice or policy.

OPONI Annual Report and Accounts (2007)³³ provides details of complaints made against the police. As a result of investigations made by their office, recommendations have been made to the Chief Constable aimed at improving the service the PSNI

court to apply for an order requiring a person to stop obstructing access to a place of detention and creates a new criminal offence where a person fails, without reasonable excuse, to comply with an order made under the Act. The Act requires the Commission to write and distribute terms of reference for any investigation during which it wishes to exercise a power conferred on it. It requires the Commission to publish a report which indicates the findings of any investigations conducted under 69(8) of the Northern Ireland Act 1998 (regardless of whether it is exercising the new powers to require the provision of information or evidence or to access places of detention). The Commission is required, before the end of a period of two years following commencement of the new powers conferred by the Act, to make recommendations regarding the effectiveness of the new powers

³² The Commission may not require the provision of information recorded before, a document created before, or evidence relating to a time before 1st August 2007. It allows a county court to make an order preventing the Commission from using these new powers to compel evidence, or access places of detention, in contravention of the Acts provisions.

³³ Together with the Report of the Controller and Auditor General for the year end 2007.

provide to the public. A sample of the recommendations made for improving policy and practice affecting children and young people include:

- that a police supervisor should attend all initial child protection Case Conferences and any subsequent reviews if deemed necessary;
- that, in cases involving child protection issues, a multi-agency strategy be developed by way of discussion of the timing, role and responsibilities involved; and
- that all CARE units should have at least one designated police officer.³⁴

One of the most noticeable omissions of the report is that it fails to provide disaggregated data relating to children and young people. For example, the report states that respondents to a survey about their awareness of the Police Ombudsman revealed that respondents aged 25 or less showed lower levels of awareness of the Police Ombudsman than older age groups but does not indicate the ages of the respondents.³⁵ Also, of those complainants whose age was known, 23% fell within the 16-24 bracket but again it is impossible to tell how many children and young people complained.³⁶

An example from the annual report of a particular case investigated by OPONI relating to a child is the case of a complaint made by a 13 year-old boy and referred to the Public Prosecution Service (PPS). His mother complained on his behalf that he had witnessed an assault by a police officer. Numerous witnesses were interviewed during the course of the investigation, which culminated in a recommendation for a criminal prosecution. The young person was offered special measures in court on account of his age but he declined this offer indicating that he wished to be in court for the proceedings. The young person, his mother and another witness did not attend Belfast Magistrates' Court despite there being a written direction from the PPS for them to appear on the date scheduled for contest. The PPS decided that they would not proceed with the case. No indication is provided in the report as to whether or not any special procedures are in place if the complainant is a child or a young person nor is there any suggestion of introducing such procedures. It is at least open to speculation that the absence of appropriately focused and child friendly procedures resulted in the failure to properly engage the young person involved in the overall process.

District Policing Partnerships (DPPs) are partnerships of elected independent local representatives who are tasked with monitoring the effectiveness of policing in local areas. The Committee on the Administration of Justice (CAJ) published a report on DPPs, including an analysis of the relationship between DPPs and the PSNI. The report, 'Commentary on District Policing Partnerships (2005)', indicated that the DPP members' opinions as to their relationship with the PSNI were mixed. Several members complained that the information provided to them at the DPP meetings were insufficient to enable them to carry out their monitoring role effectively. Similar concerns were also raised in the 'Monitoring the Compliance of The Police Service of Northern Ireland with the Human Rights Act 1998 – Annual Report 2006', where the report endorsed the conclusion of the CAJ report which emphasised the importance

³⁴ Pg 30 and 31.

³⁵ Pg 39.

³⁶ Pg 41.

that the DPP and the PSNI work together to ensure effective accountability at the district level.³⁷

The Policing Board is required, by virtue of Section 3(3)(b)(ii) of the Police (Northern Ireland) Act 2000 to monitor the performance of the PSNI in complying with the HRA. No similar duty has been placed on any other police oversight body in the UK. In 2003, the Policing Board appointed two human rights lawyers to advise them as to how they could meet this statutory duty. The Policing Board monitors the PSNI's compliance with the HRA according to the standards set out in the Code of Ethics and the criteria set out in the Policing Board's Human Rights Monitoring Framework devised by its Human Rights Advisors.³⁸ The Community and Human Rights Committee also facilitates the Policing Board's statutory duty to monitor the human rights compliance of the PSNI. The Committee is responsible for the review of complaints and disciplinary matters, civil cases and judicial review proceedings initiated against the PSNI. The Committee also monitors the use of force by the PSNI at all levels on an ongoing basis. The Committee has an ongoing relationship of engagement with the Police Ombudsman and the Human Rights Commission in the discharge of its duties. Whilst this cooperative approach suggests that human rights would be a fundamental priority, it was of no benefit when the PSNI decided that they wanted to introduce Tasers to Northern Ireland. Despite the Policing Board expressing its view that there should be no deployment of Tasers pending an equality impact assessment (EQIA) in accordance with advice it received from the Equality Commission, the Chief Constable has gone ahead and introduced a 'pilot scheme' consisting of the deployment of 12 Tasers. This happened despite the Equality Commission advising that an EQIA was necessary to ensure the PSNI met its obligations under Section 75 of the Northern Ireland Act (NIA) 1998 and advice from the Policing Board's Independent Human Rights Advisers, who stated that the PSNI must take certain steps before deploying Tasers to ensure compliance with the HRA. With the plethora of monitoring bodies and oversight bodies and human rights institutions, it would have appeared inconceivable that the Chief Constable could simply choose to ignore all matters and proceed with a decision in the full knowledge that his actions violated human rights. This decision identifies the severe absence of proper enforcement and sanction mechanisms against a public authority that simply chooses to ignore its legal obligations.

The most recent report 'Monitoring the Compliance of The Police Service of Northern Ireland with the Human Rights Act 1998 – Annual Report 2007' is the third report seeking to identify areas of compliance with the 2006 report and making recommendations for continued improvement. The report notes that the human rights training undertaken lacks any reference to specific human rights obligations, including the UNCRC.³⁹ The outstanding issues around training and policy are particularly concerning in light of the comments in the Concluding Observation 2002 that States Parties should:

21 (b) Develop systematic and ongoing training programmes on human rights, including children's rights, for all professional groups working for and with children (e.g. judges, lawyers, law enforcement officials, civil servants, local

³⁷ Pg 140.

³⁸ The most recent report relating to PSNI compliance with the HRA is detailed in the Chapter on General Measures of Implementation and General Principles.

³⁹ Pg 11.

government officials, personnel working in institutions and places of detention for children, teachers and health personnel).
[emphasis added by author].

The Patten review of policing at recommendation 5 also stated that awareness of human rights issues and respect for human rights in the performance of duty should be an important element in the appraisal of individuals. Also, in the sixth report of the Justice Oversight Commissioner⁴⁰ it is noted that, while progress has been made in achieving recommendations set out in previous reports:

3.6 [T]his is a recommendation which will continue into the future and which will require a continuing and developing attention as time goes on. Human rights training in all parts of the criminal justice system will require to remain a matter of priority.

The sixth report also noted that the scope of human rights intended by the Criminal Justice Review was not simply limited to those set out in the ECHR but extends to those contained in a variety of other international instruments.⁴¹

The Policing Board's Human Rights and Professional Standards Committee commissioned the Monitoring Board to examine the PSNI's approach to policing children and young people.⁴² The following points are examples of the findings from this section of the report:

- PSNI issues a policy on policing with children and young people in October 2006 which 'seeks to apply the UNCRC'.
- PSNI recognises that outreach work must go beyond consultation and extend to active engagement.
- PSNI child protection policy indicates that Article 19 of the UNCRC is the benchmark for police action; this policy also gives guidance on the use of children as covert human intelligence sources but there is no suggestion of any awareness that the use of children in this way constitutes a violation of their rights under the UNCRC.
- PSNI policy requires that only officers who have undertaken specialist investigative interview training be permitted to interview children.
- PSNI policy on anti-social behaviour orders referenced human rights standards and principles in a confusing way and the Board suggests this is reviewed; there is no suggestion that the UNCRC is referenced in the policy.
- ACC Criminal Justice confirmed to the Board's human rights advisors that the PSNI would neither use nor recommend the Mosquito device. The human rights advisors endorse this position.
- Her Majesty's Inspectorate of Constabulary⁴³ expressed concern about the PSNI's approach to child protection, noting that responsibility is spread across

⁴⁰ Office of the Justice Oversight Commissioner, published June 2006. Sixth and final report.

⁴¹ Para. 3.5 at pg 37.

⁴² To this end the Monitoring Board "reviewed PSNI policies on children and young people, examined the PSNI's interaction with agencies working with children and young people, observed police training on children and young people and considered the role of specialist officers who work closely with children and young people in the investigation of abuse or in the delivery of safety education in schools". Pg 276.

⁴³ Her Majesty's Inspector of Constabulary, Baseline Assessment Police Service of Northern Ireland, October 2006.

three departments. In response, the PSNI is establishing public protection units in each of the eight District Command Units (DCUs) and believe that this framework will ensure a joined up approach to the investigation of child abuse.

While there have been significant improvements within the PSNI towards children's rights, much remains to be done. Issues around training are contrary to what is envisaged by the Committee on the Rights of the Child. In addition to this broad overview of the PSNI's compliance with the HRA, there is the issue of Tasers, which pose a potentially lethal risk to children and young people. The human rights advisors report, 'The PSNI's Proposed Introduction of Taser – Human Rights Advice'⁴⁴ concludes that 'the full effects of Taser on other groups such as children and pregnant women is not known' and the PSNI proposals to introduce them do have human rights implications.⁴⁵ The police are not the only agency tasked with incapacitants. In a recent House of Lords' written answers and statements in reply to a question from Baroness Stern, the Parliamentary Under-Secretary of State, Minister of Justice (Lord Hunt of King Heath) reported that PAVA⁴⁶ has been used in an incident involving juveniles (aged 15 to 18) at a juvenile prison.⁴⁷ Tasers are discussed further in the chapter on Protection.

'An Inspection of the Public Prosecution Service for Northern Ireland (2007)'⁴⁸ provides further evidence of a failure to adopt and implement the best interests of children in policy. The inspection reports that there is no child abuse or sexual abuse policy though it does have a domestic violence policy. Allegations of child abuse are not flagged up on the case management system despite the impact such a case has on the complainant/witness. The inspection says, however, that 'it is possible to identify most of these cases by reference to the offence and the age of the victim' – the report is silent as to whether this identification process is actively undertaken and if not, why not. Worryingly, the inspectors refer to two particular cases: one where there was an acquittal by direction and another where the prosecution offered no evidence. The inspectors also considered the applications for 'special measures' which enable a young witness to give evidence other than in the courtroom or in view of the defendant. The primary rule is that the court must, subject to a very limited discretion, grant certain special measures. Where the primary rule did not apply, the inspectors found that, in Crown Court cases, special measures were correctly applied for by the prosecution in 16 of the 21 relevant cases – therefore almost a quarter of witnesses who could have availed of special measures did not.⁴⁹ On a positive note, the inspectors found that the treatment and care of child witnesses is improving and a joint protocol with the National Society for the Prevention of Cruelty to Children is also currently being developed to ensure young witnesses in criminal trials receive the support needed and the court is informed of witness needs.⁵⁰

⁴⁴ There is no publication date on the document but a phone call to the PSNI press office confirmed it was released on the 14th June 2007.

⁴⁵ See Chapter 6 for further details of this report.

⁴⁶ PAVA is the synthetic equivalent of capsaicin the active ingredient of natural pepper.

⁴⁷ House of Lords, Summer Recess 2007, Written Answers and Statements, Young Offenders: Chemical Incapacitant, HL 5035.

⁴⁸ Criminal Justice Inspection for Northern Ireland, July 2007, Conducted by Her Majesty's Inspectorate of the Crown Prosecution Service under the delegated statutory authority of the Chief Inspector of Criminal Justice in Northern Ireland.

⁴⁹ At Para. 11.24, pg 67.

⁵⁰ See further on young witnesses in the chapter on vulnerability and marginalisation.

UNCRC – examples of compliant legislation and policy

There is a heightened awareness within the children's sector of Non Governmental Organisations (NGOs) in Northern Ireland around possible legislative or policy rights violations in relation to children. The Children's Law Centre (CLC), for example, has been consistently striving to increase governmental awareness as regards their domestic, national and international obligations to children. CLC has also led the way in attempting to advance children's rights by proactively addressing potential rights violations through the courts. Their very high level of legal expertise has benefited all within the children's sector as the involvement of CLC directly with children and young people has highlighted how real change can be affected both within and without the courtroom.

Throughout this report it is apparent that many aspects of legislation and policy not only deny children their rights under the UNCRC but actually represent barriers to those rights.

In relation to legislation, a very recent example of potentially non-UNCRC compliant legislation is the Draft Criminal Justice (NI) Order 2007. Child rights activists have raised particular concerns around many of the provisions contained in the draft Order which have the potential to impact significantly on the rights of children and young people, including concerns around:⁵¹

- lack of clarity around indeterminate and extended custodial sentences, the application of which appear to be subjective and speculative as to the likely behaviour of a young person in the future;
- the use of indeterminate and extended custodial sentences on children from the age of 10 years;
- the subjective application of what constitutes 'dangerous' will result in difficulty establishing consistency of application;
- inadequate consideration of the human rights implications in the use of electronic monitoring and curfews;
- the proposed increased use of 'live links' which have the potential to adversely impact on the ability of the young person to effectively engage in the court process and with their legal representative;
- the proposal to allow ex parte applications for interim ASBOs without notice (particularly given that a breach of an interim ASBO carries the same penalty as breach of a full ASBO);
- the proposal to introduce powers for the PSNI to test for sales of alcohol by allowing a child, under the direction of the police to enter a licensed premises and seek to purchase alcohol (while it is stated that the consent of the child's parent will be sought, there is nothing to suggest the consent of the child will be sought); and
- the introduction of supervised activity orders for young people aged 16 to 18 years.

Possible positive developments for children and young people within the order include the placing of the Multi-Agency Sex Offender Risk Management (MASRAM) on a

⁵¹ Extracts taken from the Response to the Northern Ireland Office's consultation on the Draft Criminal Justice (NI) Order 2007, Children's Law Centre, January 2008.

statutory footing and the production of specific guidance on interagency sharing of information. The order also proposes that children under the age of 18 years, who require custody, whether on sentence or remand, be accommodated at a JJC or young offenders centre rather than a prison. NGOs have called for a subsequent amendment to the Justice (NI) Act 2000 so that 17 year-olds should always be directed to the JJC rather than the young offenders centre. This would send out a clear signal, in line with the requirements of the UNCRC, that children should never be detained with adults. It is also positive that the draft order proposes to amend the relevant legislation to allow care orders to continue while a child is in custody. This will ensure continuity of care for the child involved.

As regards policy and service provision, recent research⁵² by DENI looked at pre-school education and how it enhanced the lives of children. The Effective Pre-school Provision in Northern Ireland (EPPNI) project investigated the effects of pre-school education and care on children's development for children aged 3-8 years old.⁵³ Among the key findings in the report over the pre-school period were that pre-school experience enhances cognitive and social development in all children and disadvantaged children benefit even more where they are with a mixture of children from different social backgrounds. Nursery schools/classes have the overall best outcomes, with good outcomes also for playgroups. High quality pre-schooling is related to better intellectual and social/ behavioural development for children. Staff training and qualifications are associated with better quality of provision. For all children, the quality of the home learning environment is more important for intellectual and social development than parental occupation, education or income. What parents do is more important than who parents are. The key findings at the end of Key Stage 1 included the fact that pre-school quality was significantly related to children's development over the first four years of primary school. The report drew particular attention to the situation of vulnerable children. It indicated that a small group of children continued to be 'at risk' of special educational needs, with more of the 'home' children falling into this group even after taking into account background factors. The report describes a range of multiple disadvantages associated with children 'at risk' of learning or behavioural difficulties. These disadvantages include prematurity, low birth weight, more than 3 siblings, lower parent education and socio-economic status, and poorer home learning environment. Also such children are more likely to show developmental or behavioural difficulties in infancy. Children 'at risk' of learning or behavioural difficulties are helped by pre-school experience and the better the quality of the pre-school the greater the effects, which persist until the end of Key Stage 1. Where disadvantaged children attended centres that included children from

⁵² Melhuish, E., Quinn, L., Hanna, K., Sylva, K., Sammons, P., Siraj-Blatchford, I., Taggart, B. (2006) Effective Pre-school Provision in Northern Ireland (EPPNI) Summary Report. Department of Education.

⁵³ The EPPNI team collected a wide range of information on over 800 children who were studied longitudinally until the end of Key Stage 1. Data were collected on children's developmental profiles (at ages 3, 4, 5, 6, 7, and 8 years), background characteristics related to their parents, the child's home learning environment, and the pre-school settings children attended. Eighty pre-school settings were drawn from a range of providers (nursery schools/classes, playgroups, private day nurseries, reception classes and reception groups). A sample of 'home' children, (who had no or minimal pre-school experience) were recruited to the study at entry to school for comparison with the pre-school group. The study addressed five key questions.

1. Does pre-school have an impact on children's intellectual and social /behavioural development?
2. Are some types of pre-school more effective in promoting children's development?
3. What are the characteristics of effective pre-school settings?
4. What is the impact of the home and childcare history on children's development?
5. Do the effects of pre-school continue through Key Stage 1 (up to age 8 years)?

mixed social backgrounds they showed further benefit than if they attended centres containing predominantly disadvantaged children. This type of research and evaluation is essential to enable continual monitoring of child rights compliance within service provision and policy implementation. Positive outcomes relating to children always serve to endorse and realise the provisions of the UNCRC and it is therefore vital that adequate funding is afforded to government led and all other child-focused schemes so that verifiable rights advancements may be monitored.

Government initiatives– advancing children’s rights?

The strategy, ‘Our Children and Young People – Our Pledge: A Ten Year Strategy for Children and Young People in Northern Ireland 2006-2016’ was launched in June 2006. This document was consulted on widely following a draft version ‘Making it r wrld 2’. ‘Making it r wrld 2’ was itself the product of wide-ranging consultation and reflected a UNCRC ethos throughout. Unfortunately, the subsequently published Ten Year Strategy failed to be quite as robust in ensuring the essential overarching authority of the UNCRC within all government departments. Although the government states in its Northern Ireland input to the United Kingdom report to the United Nations Committee on the Rights of the Child (2007) that it considers that the final strategy was ‘strengthened considerably through the consideration of comments on earlier drafts, received from children and young people and from NGOs’⁵⁴ there is widespread belief within the children’s sector that the strategy is less rights based than its predecessor draft strategy. It is certainly much weaker as regards the proposed role of NICCY. ‘Making it R Wrld 2’ stated that ‘the Commissioner will have a key role in commenting on the adequacy and appropriateness of the strategy and will also act as an independent monitor of its implementation’⁵⁵ but ‘Our Children and Young People Our Pledge’ states that “the Commissioner will have a role in overseeing the implementation of this Strategy”.⁵⁶ Despite this, the government has made a pledge to be guided and informed by the UNCRC when it is implementing and delivering the strategy – this is a significant shift from the previous position whereby the children’s strategy was seen by the government as the implementation vehicle for the UNCRC. It is anticipated that the Minister for Children and Young People will play a key role in progressing the strategy.

The strategy sets outcomes for progress in six areas – that children and young people are healthy; enjoying, learning and achieving; living in safety and with stability; experiencing economic and environmental well-being; and contributing positively to community and society and living in a society which respects their rights. These outcomes would have been much more readily attainable had the government maintained its position within the strategy as regards the UNCRC.

A strategy planning and review group is to be established to assist in implementation by identifying the actions which will be taken across government to deliver on the strategic aims. The strategy also places the onus on departments to provide timescales for the completion of actions and identify delivery leads and partners. The action plan produced will be reviewed on an annual basis and updated as necessary. It is anticipated that a number of other groups will be established to advise on the impacts

⁵⁴ OFMDFM January 2007.

⁵⁵ OFMDFM '04, pg 8.

⁵⁶ OFMDFM '06, pg 23.

of the strategy. The Parent's Advisory Group recommended to be established has already been set up but as yet this is the only group established⁵⁷. This delay and inaction means that there is currently no mechanism for NGOs or children and young people themselves to input into the development of the strategy. This delay in setting up the appropriate groups is inexcusable given that the strategy was launched in June 2006 and almost two years later the remaining groups have not been established.

The practical implications for this inactivity is that the first departmental action plans relating to the strategy have been developed without any input from the NGO sector who were the original drivers for change and whose effectiveness in bringing about change resulted in the development of the strategy in the first place. The 'Our Children and Young People – Our Pledge Action Plan 2007 – 2008'⁵⁸ is an action plan published in pursuance of the ten year strategy. It is cross-cutting government production setting out what will be done by all eleven NI departments, the Northern Ireland Office (NIO) and the Northern Ireland Court Service in the short to medium term to deliver on the aims of the 10 year strategy for Children and Young People. The action plan states that the government is committed to:

...narrowing the gap between disadvantaged children and their peers in achieving these outcomes. Integral to that commitment is the development of a culture which respects and progresses the rights of all children and young people, guided and informed by the UN Convention on the Rights of the Child.⁵⁹

This action plan reinforces the government's move away from implementing the UNCRC to being 'guided and informed' by it. By ratifying the UNCRC the government gave a commitment to realise the provisions of it for children and young people, yet they have failed to do so even within the duration of a ten year strategy.

In consideration of the necessity to involve children and young people in the development of the strategy, OFMDFM have established the Participation Network. The Participation Network does not engage directly with children and young people but directs statutory agencies, local government and government departments to organisations that have expertise in child and youth participation. The network invites organisations with expertise relating to children and young people to join its membership if they have the capacity to facilitate and support children and/or young people to express their views to decision makers, and the staff skilled to support such facilitation.⁶⁰

⁵⁷ The only groups yet to be established are: a Practitioner's Group, consisting of representatives of agencies delivering services for children and young people, will provide commentary on the implementation of the strategy from the perspective of front-line staff; and a Research and Information Group, consisting of key research and information interests. The group will advise on the development of a research programme and report on the findings of key research, relevant to children and young people, which may have implications for government policy and service delivery in this area.⁵⁷

⁵⁸ OFMDFM.

⁵⁹ In an attempt to ascertain the success of implementing the Ten Year Strategy, OFMDFM have developed a set of indicators which they hope to use to measure the success of it. Action plans⁵⁹, linked directly to the outcomes framework, will be produced and reviewed throughout the 10 year period of the strategy. Targets linked to indicators will also be a matter for future action plans.

⁶⁰ The Participation Network – Engaging/Empowering, OFMDFM, 2006/7. See further the Chapter on Participation.

In addition to the strategy, OFMDFM considers that ongoing work within Area Children's Services Planning Committees plays a crucial role in ensuring that a commitment to children's rights is reflected in service planning. These committees are made up of senior representatives across the statutory, voluntary and community sectors who share responsibility for the commissioning, coordination, planning and review of services for children in each of four areas. All four area committees have made a joint commitment to incorporating the principles involved in addressing children's rights in their approach to planning. Each states that their plan is based on children's rights, as set out in the UNCRC.⁶¹ This is one method of attempting to 'mainstream' children's rights within a process that impacts on their lives and goes a significant way towards implementing at service level the provisions and protections afforded of the UNCRC.

In addressing issues related to family life in Northern Ireland the government has developed Families Matter, a draft strategy⁶² for supporting families. This draft strategy sets out to enhance the services available to parents in assisting with parental responsibility through:

- the provision of positive parenting and parenting education;
- the provision of mediation services;
- the development of and expansion of child contact centres; and
- the improvement of access to information by the development of a regional database and the provision of a regional helpline.

While many of the measures proposed in the strategy have been broadly welcomed by the voluntary childcare sector it has also drawn widespread criticism in relation to the following:

- the lack of focus on children with disabilities, those with mental health problems, children in alternative family environments, such as foster families, children of different race, religion and sexual orientation and children with dependents;
- the lack of significant action to prohibit physical punishment of children within the family, in particular the failure to remove the defence of reasonable chastisement as recommended by the United Nations Committee on the Rights of a Child;
- the lack of a statutory duty to ensure cooperation;
- the lack of specificity in proposed actions and the absence of time bound targets and associated children's rights indicators;
- the absence of actions to address the gaps in children's rights knowledge among children, parents and carers; and
- the implied presumption that the children whom the strategy aims to help are likely to engage in anti-social behaviour.

⁶¹ All those involved in the Southern Area committee recently completed extensive training in the UNCRC and CRP, provided by Save the Children and the Children's Law Centre: Northern Ireland input to the United Kingdom report to the UNCRC, pg 12.

⁶² DHSSPS (2007) Families Matter: Supporting Families in Northern Ireland The Department of Health, Social Services and Public Safety's Proposals on a Regional Family and Parenting Strategy.

One particular area of potential improvement aimed specifically at children and young people is the Play Policy. The issue of play and leisure is sufficiently significant to attract particular mention in the UNCRC – the primary article relating to service provision in the area of play is Article 31. Article 13 also sets out the child’s right to participate fully, and on the basis of equality of opportunity, in cultural life and the arts. On 24th October 2006, Maria Eagle MP, who at the time was Minister for Children and Young People, launched a twelve-week consultation on a draft Play Policy⁶³ for Northern Ireland. The aim of the policy was to establish play within a policy framework thereby enhancing the importance of play in the development of children’s lives and within the broader social setting. The Play Policy is aimed at children aged 11 years and under. It is anticipated that this policy will be followed by a recreation/leisure policy aimed at the older age group as the policy states that “it is intended to develop a separate recreation policy aimed at 12–18 year-olds in 2007”. One of the main thrusts of the play policy is to encourage adults to respect and value childhood, and to recognise the importance of play in children’s and young people’s lives. Among NICCY’s detailed response to the policy were the following points:

- The policy framework envisaged should be followed by a strategic and well thought out plan for forward action with realistic timeframes, priorities and procedures.
- It is imperative that details in terms of monitoring and evaluation of the implementation of the play policy are given at the outset.
- There is no mention of how many children were consulted, what methods were used to gather their views and from what areas across Northern Ireland.
- Young people over 12 years old are not being consulted about their views—yet adults are being consulted.
- No provision has been made to take into account the *quality* of the play facilities that currently exist across NI.
- There is no reference made as to the extent to which particularly disadvantaged groups of children and young people (e.g. rural areas and those living in interface areas) can currently access play provision nor is there any mention of how the Play Policy will address the problems of community segregation in play, youth, sport, recreational and arts activity.

There would appear to have been little progress in the rolling out of the Play Policy and some uncertainty around possible timeframes for the implementation of the policy. The significance of play cannot be understated as the absence of appropriate and accessible play areas renders children invisible within wider society as well as impacting on their ability to fully participate in an age appropriate way. The failure of the government to progress with the Play Policy presents a significant barrier in establishing children and young people within communities and prevents them from being considered and catered for within policy and service provision from a rights based perspective. Historically, the government has failed to provide age appropriate and adequate play and leisure provision for significant numbers of children and young people and the continued failure to implement the Play Policy represents an ongoing rights violation in that children are being deprived of necessary and appropriate services. The contents of this report detail within the relevant sections the play and leisure gaps for particularly vulnerable and marginalised children. Children with disabilities and those children in poverty are particularly susceptible to rights violations

⁶³ Draft Play Policy for Northern Ireland, OFMDFM October 2006.

in this respect. 'Play and leisure' serves to highlight how failing to consider children as a 'whole' rather than minors in society results in a multiplicity of their needs not being met.

The Department of the Environment (DOE) is responsible for the Planning Service, the aim of which is to 'improve the quality of life of the people of Northern Ireland by planning and managing development in ways which are sustainable and which contribute to creating a better environment'. The Planning Policy Statement 8 : Open Space, Sport and Outdoor Recreation⁶⁴ sets out the policies of the DOE for the protection of open space, the provision of new areas of open space in association with residential development and the use of land for sport and outdoor recreation and advises on the treatment of these issues in development plans. The policy states: 'the government considers everyone, particularly children, the elderly and those with disabilities, should have easy access to open space and the opportunity to participate in sport and outdoor recreational pursuits.' However, there is no obligation on the planning service to 'save' space for children, nor is there any requirement for new housing developments to incorporate play and leisure space or designated areas for children and young people. It is hoped that the Review of Public Administration (RPA) will place an obligation on councils to take on board and reflect the wishes and views of their constituent as they will have a statutory duty to lead a community planning process. This will require councils to consult all constituents about issues that affect their lives and will allow people to have a say in the way in which their area is developed. There will be a statutory duty on all other agencies to work with the councils.

An RPA was launched by the Northern Ireland Executive in June 2002. RPA was a wide-ranging review of the arrangements for the administration and delivery of public services in Northern Ireland. It covered over 150 bodies, including the 26 district councils, the health and social services boards and trusts, the five education and library boards (ELBs) and approximately 100 other public bodies. The review was completed in March 2006. The implementation of the review outcomes and recommendations are the responsibility of the relevant governmental departments. In addition there are a series of cross-cutting themes, which affect or impact on more than one department, that are being overseen by the RPA steering group. The review does not refer to the guiding principles of the UNCRC. Some of the key decisions outlined by the government to date in their report to the UK report of the UNCRC are no longer certain. With the return of a devolved government to Northern Ireland, the RPA was itself under review. The entire process of RPA has caused much uncertainty across all areas concerned but also within the broader community and voluntary sector. Resource allocation and service provision will undoubtedly be affected and the financing issues implicit in any restructuring of this scale will inevitably have knock-on effects for children and young people. For example, the draft HSS (Reform) (NI) Order 2007 did not address the transfer of responsibility for the statutory Children's Services Planning process.

Although more detail is available on the new structures post RPA, it is unclear how exactly the post RPA situation will be experienced as the implementation of RPA is embryonic as regards the financial and service provision impact of the restructuring. The uncertainty facing those affected by the RPA coexists with the high levels of anxiety

⁶⁴ Planning Policy Statement 8 (PPS 8) Open Space, Sport and Outdoor Recreation, DOE February 2004.

faced by staff in children's services in the voluntary and community sector –many staff work on one-year contracts and this has a significant impact on staff morale, staff retention, loss of staff expertise and seriously undermines any ability to strategically plan service provision in the long-term.

The delays and uncertainty around RPA and the approach taken to it highlight the difficulties faced in Northern Ireland when issues are commenced under a devolved or non-devolved administration. Previously, NGOs considered that direct rule had a negative impact on children's rights as there was a 'democratic deficit' and a failure to specifically address the needs and circumstances of Northern Ireland. While it is perhaps too early to tell if devolution will result in an increased awareness around the particular needs of children in Northern Ireland, it is positive that a Minister for Children and Young People has been appointed. However, a particular concern is the continued uncertainty around the time frame for devolution of justice and policing as this is an area which impacts significantly on children and young people.

Despite the general belief that devolution in Northern Ireland will serve to enhance the issues relating to children's rights, some professionals in the field of children's rights stated that they would be reluctant to discuss issues relating to gay and lesbian young people as certain members of the local Assembly would simply not listen. It was feared that, should the issues of this group of young people be discussed, then all credibility for other issues raised would be lost as some policy makers and those in positions of political influence did not respond positively. It would appear that, in order to keep the door open for raising other issues, the apparently more controversial issues had to be sidestepped. It may be that this particular issue requires to be monitored in order to ascertain if the perceived inability to articulate concerns about gay and lesbian young people at political levels negatively impacts on their lives in the future as the new Assembly progresses.

Data collection

General Comment no. 5 calls for sufficient and reliable data collection on children, disaggregated to enable identification of discrimination and disparities in the realisation of rights which is an essential part of implementation. The Committee also recommends an annual publication of a comprehensive report on the state of children's rights in the jurisdiction. The method of data collection and collation continues to provide difficulties in all areas concerning children and young people. The variety of subject matters, parameters, timescales, age ranges, presentation and quality of data does not lend itself to providing a comprehensive overview of the state of children's lives in Northern Ireland. Since the 2004 report published by NICCY, little has changed in relation to data collection and collation. There are widespread gaps in data collection and research across all areas, but most notably as regards:

- children with a disability;
- children with mental health issues;
- the causes and wider impact of youth suicide;
- ethnic minority children;
- asylum seeking children;
- lesbian, gay and bisexual young people;
- the 'post conflict' scenario and its impact on children and young people;
- hate crime against children and young people;
- issues underpinning youth crime;

- experiences of family life; and
- the totality of the experiences of young people as they progress within the criminal justice system.

These areas are representative of the areas identified while sourcing material for this report, but do not represent all areas where data is lacking or absent.

Training

General Comment no.5 reminds States that they have a duty to develop training and capacity-building for all those involved in the process of implementing UNCRC rights and for all those working with and for children. This training should be integrated into all professional training codes and educational curricula and needs to be systematic and ongoing, emphasising the status of the child as a holder of human rights, to increase knowledge and understanding of the UNCRC and to encourage respect for its provisions (Para. 19). As detailed earlier, the PSNI have progressed in some aspects of their training but much more requires to be done to ensure their training is UNCRC compliant. The PSNI are not alone— there would appear to be a marked absence of child rights training, awareness of UNCRC principles and/or other international standards relevant to children and young people among the judiciary, the legislature, the executive, the policy makers, and the majority of statutory agencies with responsibilities impacting on the lives of children and young people. This is all the more concerning given the wealth of expertise and training and educational opportunities available to such bodies from within the NGO sector in Northern Ireland. Mandatory training in CRP for all key personnel dealing with children and young people would present a massive step forward in mainstreaming the rights of children throughout all aspects of decision making, planning, funding allocation, legislating and service provision.

Funding

The main article in relation to the State's obligation to allocate resources for the implementation of the UNCRC is Article 4. This makes clear that undertaking the measures which are needed, to make a reality of children's rights, must involve the allocation of available resources to the maximum extent possible. While the article references economic, social and cultural rights in this respect, further commentary issued by the Committee⁶⁵ makes clear that there is no simple or authoritative division of human rights and emphasises that economic, social and cultural rights, as well as civil and political rights, must be regarded as justifiable.

General Comment no. 5 (2003), General measures of implementation of the Convention on the Rights of the Child⁶⁶ clarifies a number of issues in relation to the allocation of funding. While acknowledging that the reference to 'the maximum extent of available resources' reflects a realistic acceptance that financial restrictions can hamper the full implementation of rights in some States, they emphasise that States need to be able to demonstrate that they have deployed maximum available resources (Para. 7). The Committee echoes the view of the Committee on Economic, Social and Cultural Rights, in reiterating that "even where the available resources are

⁶⁵ General Comment no. 5 (2003) Para. 6 and 25.

⁶⁶ General Comment no. 5 (2003) General measures of implementation of the UNCRC, CRC/GC/2003/5.

demonstrably inadequate, the obligation remains for a State Party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances...". They confirm that whatever their economic circumstances, States are required to undertake all possible measures towards the realization of the rights of the child, paying special attention to the most disadvantaged groups (Para. 8). A central measure of UNCRC implementation is the development of a national strategy. The Committee asserts that this must go beyond statements of policy and principle, to set real and achievable targets in relation to the full range of economic, social and cultural and civil and political rights for all children. While it is accepted that the strategy will set priorities, the Committee insists that it must not neglect or dilute in any way the detailed obligations which States Parties have accepted under the Convention, and that the strategy needs to be adequately resourced, in human and financial terms (Para. 32).

The Committee also refers to the obligation of States, in their periodic reports, to include an identification and analysis of spending on children. They point out that it is not possible for States to demonstrate the application of maximum resources unless it can identify the proportion of national and other budgets allocated to the social sector and, within that, to children, both directly and indirectly. The Committee requires information on steps taken at all levels of government to ensure that economic and social planning and decision making and budgetary decisions are made with the best interests of children as a primary consideration. They also point out that children, in particular those from marginalized and disadvantaged groups, are protected from the adverse effects of economic policies or financial downturns (Para. 51).

Following examination of the UK report in 2002⁶⁷ the Committee expressed concern that the Convention is not implemented to the 'maximum extent of...available resources' as stipulated by Article 4 of the Convention (Para. 10).

The Committee recommended:

...that the State Party undertake an analysis of all sectoral and total budgets across the State Party and in the devolved administrations in order to show the proportion spent on children, identify priorities and allocate resources to the 'maximum extent of...available resources'. The Committee also recommends that the State Party apply this principle in the activities of the Department for International Development (Para. 11).

The government has not acted on this recommendation.

In March 2006 government announced details of a £100 million Children and Young People's Funding Package⁶⁸. The overall objective of the funding package as stated was to reduce underachievement and improve the life chances of children and young people by enhancing their educational development and fostering their health, well-being and social inclusion through the integrated delivery of the support and services necessary to ensure that every child has the best start in life. Peter Hain, who was at the time, Secretary of State for Northern Ireland stated that the package:

⁶⁷ UNCRC, Concluding Observations: United Kingdom of Great Britain and Northern Ireland: October 2002.

⁶⁸ Children and Young People Funding Package NI Priorities and Budget 06-08 Securing Our Future, March 06.

...is one of three new priority funding packages being set up to redirect spending to new areas and new policies focused on improving the life chances of the next generation. The government is committed to doing all that we can to give the children and young people of Northern Ireland the best opportunity for a better, brighter future through an enhanced quality of life. We are committed to reducing social, health and educational differentials so that children and young people from the most disadvantaged backgrounds can get the best possible start in life. In this way we can best increase their opportunity for a successful future.

In March 2006 OFMDFM also announced the continuation of the Executive Programme Children's Fund. In relation to this, it should be noted that the fund was not continued in its entirety, as some projects had already ceased operation due to lack of funding.

The Children and Young People's Strategy has been allocated funding of £107 million for the period 2006–08.

The recently announced Comprehensive Spending Review (CSR) is part of the UK wide Treasury-led CSR which was announced in July 2006. It will set public spending priorities for 2008–2011. As with past spending reviews, the focus is on value for money and any identifiable efficiency savings. Among the comments made about the CSR is the following extract from the CiNI paper Briefing on NI Comprehensive Spending Review (2007)⁶⁹:

At present there are clear gaps in the funding package, with limited provision for some of our most vulnerable and in need children and young people including children and young people with disabilities and children and young people at risk of offending. There is also anecdotal evidence that, in addition to funding being slow to reach front-line services, the funding available for planned initiatives under the funding package will not be sufficient to enable full delivery of these initiatives. This is particularly the case when funding levels available for similar initiatives in England and Wales are examined.

Despite the stipulation in Article 4 of the UNCRC, and the UN Committee's comments in the 2002 Concluding Observations (which emphasised the need to identify priorities and allocate resources to the 'maximum extent of...available resources'), the findings of this review illustrate a comprehensive failure within government to adequately identify and appropriately fund services targeted to children and young people. Children equate to approximately 25% of the total population in Northern Ireland, yet due to the complexity of funding arrangements and initiatives, it is impossible to tell if they are apportioned anywhere near this percentage of the overall spending budget. There is also concern among the children's sector that the obligation on all government departments to make 3% efficiency savings each year over the next three years will have a disproportionately negative impact on children and young people seeking to access essential services such as health and education.

⁶⁹ CiNI, Briefing on NI Comprehensive Spending Review 2007.

There is also a considerable disparity with between what is allocated for children's services in England and what is made available in Northern Ireland. For example, in England, £1 million is available for the setting up of children's centres in comparison to £100,000 in Northern Ireland. Also in England, £340 million has been ring-fenced for services for children and young people with disabilities – the proportionate amount for Northern Ireland would be £11.5 million yet to date there has been no indication that these monies have been ring-fenced for local children.

Essential to the application by the State of resources within their means and financial capacities is an understanding of the overall budgetary application of public expenditure within the areas of State responsibility. With this fundamental principle in mind, NICCY invited the Economic Research Institute of Northern Ireland (ERINI) to undertake a study into how the public funding provision for children and young people in Northern Ireland compares with the rest of the UK.⁷⁰ The research specifically assesses if children and young people in greatest need have benefited (or otherwise) in comparison to their counterparts in the rest of the UK and the results are contained in the document 'An Analysis of Public Expenditure on Children in Northern Ireland (2007)'⁷¹. Among the research findings was that 27.3% of the population of Northern Ireland are children, yet only 14.1% of budget for personal and social service is spent on children's services. It also reported that Northern Ireland has the lowest spend per child on children's services in comparison to the other regions of the UK. Scotland spends 44% more per child than Northern Ireland.

The Executive Summary states:

While this report provides detailed data on relative expenditure levels between UK regions, ERINI is reluctant to make critical observations based on *relative* expenditure for children, as ultimately a number of factors (such as need, economies of scale, rurality and demography) will influence overall expenditure requirements irrespective of what other countries are spending. Essentially, Northern Ireland must aim to spend sufficient public money to ensure that the overall well-being of children is maximised subject to competing priorities. (emphasis added)

Part 1 of the report relates to the findings from 'Spending on Children's Services'; Part 2 relates to the findings from 'Government Financial Support for Children Across the United Kingdom: How Does Northern Ireland Compare?' Following this report, the Commissioner for Children and Young People, Patricia Lewsley, made numerous recommendations; among them that spending per child should be on a par with other regions and when allocating resources account must be taken of the fact that we are a post-conflict society. The Commissioner also identified that the 2002 government overview of Health and Social Care Needs and Effectiveness Evaluation showed that expenditure in England is 35% higher on social services than Northern Ireland despite higher need and proportionately more children and urged the Assembly to carry out further research as to why spending on social services in Northern Ireland is so low. She also drew attention to the policy vacuum– compared to developments in England

⁷⁰ Part One table relates to the findings from 'Spending on Children's Services'; Part Two table relates to the findings from 'Government Financial Support for Children Across the United Kingdom: How Does Northern Ireland Compare?'

⁷¹ Economic Research Institute for Northern Ireland (ERINI) and The Institute of Fiscal Studies (IFS), Commissioned by NICCY, DFP, OFMDFM.

and Wales following 'Every Child Matters' and the underinvestment in a range of preventative and care initiatives has meant inequities between children across the jurisdictions. The Commissioner strongly recommended that this imbalance is now redressed with the restoration of devolution. She further highlighted that the Expenditure Report made clear that directing funding towards schools teaching children from economically disadvantaged area is not eliminating the effects of socio-economic inequalities on educational attainment, and therefore further research needs to be commissioned into inequalities in educational attainment as it is clear that the current policy is failing pupils from socially deprived backgrounds and therefore a change in policy is needed.

Summary of key issues

- The failure of the government to incorporate the UNCRC into domestic legislation has denied children and young people the protection afforded to them at international level.
- The provisions recommended by the Children's Working Group on the BOR for Northern Ireland represent a significant opportunity to advance and protect the rights of children in accordance with the provisions of the UNCRC.
- Strategic case law has notably enhanced awareness around and reliance on the UNCRC in the courts in Northern Ireland, and as a result, on public bodies.
- Case law decisions that NICCY is not a 'victim' for the purposes of the HRA of the ECHR serve to negate the possibility of the Commissioner alleging human rights violations on behalf of a vulnerable child or a representative group of children or young people.
- There is a systemic and widespread failure among public bodies to mainstream or implement the general principles of the UNCRC in legislation, policy and service provision.
- There is an increased capacity for monitoring human rights compliance in relation to children. However, both NICCY and the NIHRC face specific hurdles should they need or want to address historical children's rights violations.
- The methodology of collecting data relating to young people by the Police Ombudsman's office fails to properly identify issues relating to children.
- The powers of the Policing Board proved ineffective in preventing the Chief Constable introducing Tasers, which the Board's human rights advisors had cautioned against. It is alarming that, even with the plethora of bodies in Northern Ireland tasked with monitoring public bodies and human rights, such a blatant disregard could be shown towards a vulnerable group like children.
- There remain serious deficiencies around UNCRC awareness raising and training among all key players across all services and decisions relevant to children and young people.
- There is an absence of a unified, child's rights centred response at the formative stage of legislation, policy and service planning and enabling output to be child rights proofed.
- While government initiatives are welcome, the lack of progression, funding, consistency, and engagement represent serious barriers to the fulfilment of children's rights.
- Devolution presents both opportunities and challenges for children sector professionals and the continued uncertainty around the devolution of policing

and justice delays the possible tailored approach required in this area for the young people of Northern Ireland.

- Political and religious sensitivities among political representatives may result in an absence of advocacy on behalf of lesbian, gay, bisexual and transgendered young people.
- The lack of coordinated and specifically funded training within all relevant public bodies in the provisions of the UNCRC is a major hurdle in advancing the ethos and protection afforded by it.
- Mandatory training and adoption of CRP within statutory and voluntary agencies would represent an enormous step forward in mainstreaming children's rights.
- The lack of appropriately and uniformly collated data significantly impacts on planning and service delivery with the inevitable result that the most vulnerable children remain outside the general frame of reference unless specific targeted and represented.
- Lack of openness and accountability in relation to funding leads to confusion and uncertainty, possible job losses and the associated loss of expertise and an inability to properly meet the competing demands from children and young people.

Recommendations

1. The government should incorporate the UNCRC into domestic law. Alternatively, the government should adopt its original position and consider its Ten Year Strategy as the implementation vehicle for the UNCRC.
2. NICCY should give consideration to fully endorsing the working group recommendations for the BOR for Northern Ireland as each proposal is evidence based and reflective of both the UNCRC and the particular circumstances of Northern Ireland.
3. Legislation should be enacted giving NICCY 'victim' status for the purposes of challenging human rights violations on behalf of children.
4. CRP should be specifically endorsed and promoted as an effective model for mainstreaming children's rights.
5. Consideration should be given to the present obstacles that exist for both the NIHRC and NICCY should issues of past rights violations against children require to be considered.
6. Appropriate funding and priority should be given to government initiatives and timeframes and outcomes should be clearly established from the outset.
7. Dedicated training on the UNCRC, funded by the government to meet their international obligations under the UNCRC, should be rolled out across all government departments initially and eventually across all judiciary, legal professionals, state agencies and relevant statutory, voluntary and community sector organisations.
8. Disaggregated data collation, production and storage should be replicated and mainstreamed within all government departments and public authorities.
9. Gaps in research and data need to be urgently addressed as the most silent children may well be the most vulnerable.
10. Funding initiatives should be for longer periods to facilitate better outcomes and assist in staff retention. Funding streams should be clear and unambiguous and targeted to the point of need.

MARGINALISATION and VULNERABILITY

Introduction

Marginalised and vulnerable children and young people face particular challenges when they seek to realise their rights under both domestic and international legislation. The nature of vulnerability and marginalisation means that often, such children are not accounted for in government data. Subsequently, these children and their lives are not reflected in policy, legislation and service provision. The failure to identify and address the needs of these children serves to increase their vulnerability and marginalisation and therefore the cycle of invisibility continues.

This chapter addresses the situation, emerging from recent literature, of children and young people who are marginalised because of living in care, race and ethnicity, disability, sexual orientation and involvement in the justice system. Issues pertaining to vulnerability around drugs and alcohol, sexual activity and suicide are also explored.

Impact of the Northern Ireland conflict

It is not possible to consider the marginalisation and vulnerability of children and young people in Northern Ireland without taking into account the impact of the conflict over the past 35 years. The restoration of devolution and the power-sharing Executive at Stormont in May 2007 has given rise to a renewed optimism across the political spectrum. It is hoped that sustained political progress will allow the conflict to finally come to an end. It is important that in moving forward we do not lose sight of the enormous impact of the conflict on children and young people and the cross/trans generational impact which continues to be experienced within and beyond families. It is only relatively recently that research specific to this issue has been developed.

The BBC commissioned a survey of 667 children aged between 9 and 10 years old, who were born across Northern Ireland after the I.R.A. ceasefire in 1997⁷². The assumption was that these children had grown up in a society that was at least beginning to emerge from the protracted conflict of previous years. The results suggest that segregation very much remains a reality in children's lives here in 2007, and that it extends far beyond the fact that children tend to live in different areas and attend different schools. The authors report evidence of segregation cutting across a range of social, cultural and political activities that the children are exposed to and/or engaged in. The effects of living in a divided society can be found in relation to the tendency, among the children surveyed, to develop a strong attachment with their own community (i.e. in-group preferences). The children also showed negative attitudes towards the other community (i.e. out-group prejudices). While both sets of attitudes were evident in the study, the findings suggest that the development of in-group preferences was more prevalent. The authors conclude that while not necessarily motivated by a desire to discriminate, such in-group preferences can lead to discriminatory and/or exclusionary practices, for example in the choice of friends.

⁷² Connolly, P., Muldoon, O and Kehoe, S. (2007) *The Attitudes and Experiences of Children Born in 1997 in Northern Ireland*, BBC.

The 2004 Young Life and Times Survey⁷³ found that 2% of young people had been a victim of a paramilitary beating and 16% of young people had a member of their family or a close friend who had been injured in a paramilitary beating. In addition, almost 10% of young people had been threatened by a paramilitary group, and more than one quarter (28%) reported that a member of their family or a close friend had been threatened by a paramilitary group. The survey indicated that 3% of young people had been forced to leave their home as a result of intimidation, while a further 16% had the experience of a member of their family or a close friend being forced to move because of intimidation.

While the impact of the conflict has clearly been felt by children and families in both main communities, research has also identified the effects on the children of police officers. A Northern Ireland research paper⁷⁴ examining clinical approaches adopted by the Police Rehabilitation and Retraining Trust's Child and Adolescent Therapy Service described a range of stress factors experienced by children of police officers in Northern Ireland aged between 5 and 18 years of age. Among these were home and school moves, changes of peer groups, inconsistent presence of a parent, and their parent being the target of terrorist attacks. As a result Black argues that these children's view of the world as comprehensible, of people as benevolent, and themselves as invulnerable is drastically and often permanently altered.

There is an absence of research detailing specific areas of concern for children and young people as a result of the legacy of the conflict. While it is apparent that concentrating funding on security issues may well have impacted detrimentally in other public service provision, no large scale study has comprehensively considered and analysed the links between the conflict and its legacy and, for example, mental health issues, suicide, anti-social behaviour, poverty, social exclusion, early criminalisation of young people, family breakdown and child abuse. The absence of such analysis will continue to allow only a piecemeal approach to be taken to the existing and emerging issues relevant to the particular circumstances of Northern Ireland.

A review of the literature and service provision relating to Northern Ireland leads to the conclusion that many children here do not enjoy the safety and security envisaged by the UNCRC. The legacy of the years of violence experienced by communities and families within Northern Ireland overarches many aspects of the experiences and identities of all children and young people here. Particular concerns are identified within the literature in relation to:

- children in alternative care;
- children in the Traveller community;
- children from black and minority ethnic communities and children of migrant workers;
- children with disabilities (including learning and sensory disability);
- children who identify as lesbian, gay or bisexual;
- vulnerability – drugs and alcohol;
- vulnerability – sexual activity;
- vulnerability – suicide; and

⁷³ ARK, Young Life and Times Survey (2004).

⁷⁴ Black, A. (2004) The Treatment of Psychological Problems Experienced by the Children of Police Officers in Northern Ireland. *Child Care in Practice* Vol. 10 (2)

- children in the justice system/criminalisation of children.

Children in alternative care ⁷⁵

The UNCRC is explicit that children should have a right to a family life except in cases where it is not in their best interests to live with their families (Article 9). The Committee on the Rights of the Child has recently focused particular attention on the area of alternative care. At its fortieth session on 30th September 2005 they adopted the recommendations from a General Day of Discussion on children without parental care. The substantial report⁷⁶ from the discussion contains a number of detailed and specific recommendations on a comprehensive range of aspects of alternative care.⁷⁷ It is of note that the Committee felt there were an insufficient number of implementation measures, which resulted in the formation of a gap between laws, policies and practice.⁷⁸ They noted with concern that a significant number of children were currently orphaned or otherwise separated from their parents due to a large variety of reasons. These include areas identified from the research available in Northern Ireland: conflict, violence, poverty and social breakdown. The Committee considered that this number was certain to grow.

The population of looked-after children in Northern Ireland has remained fairly stable in recent years. According to government statistics⁷⁹ there were 2,436 children looked after at 31st March 2006. Half (50%) of these children were aged 11 years or under. Of all looked after children at 31st March 2006, 63% were placed in foster care, 20% were placed with family, and 13% were in residential care. Over half (53%) of children looked after at 31st March 2006 had been looked after for more than three years. Many of these children have suffered abuse and neglect and can no longer be protected within their families. The reason for the children being placed in care raises significant child protection issues. However, the subsequent experience of being in care, and outcomes related to this, give rise to considerable concern. Government statistics⁸⁰ reveal that young people who have been in care in Northern Ireland do significantly less well along a range of factors. Northern Ireland care leavers are 10 times more likely to have no qualifications than school leavers in general, and are 6 times more likely than other 16–18 year olds to be unemployed. Information drawn

⁷⁵ see also Chapter 'Gaps in Service Provision'.

⁷⁶ Report available at: <http://www.ohchr.org/english/bodies/crc/docs/discussion/recommendations2005.doc>

⁷⁷ The concluding statement from the Committee welcomed the efforts made by regional and inter-agency bodies to define principles and standards of care for children without parental care. The Committee recognised that precise guidance available to States, working to meet their obligations with respect to suitable alternative care, was partial and limited.

⁷⁸ The Committee recommended that the international community prepare a set of international standards for the protection and alternative care of children without parental care for the United Nations General Assembly to consider and adopt in 2006. The standards should show flexibility for cultural aspects by responding to the challenges faced by both developed and less developed countries, be practical in nature and have an effective monitoring mechanism. It further recommended that the standards should have a multi-track approach, i.e. to regulate the separation and placement into out-of-home care, to standardize the out-of-home care and the transition from the out-of-home care back to the family or into society and at the same time to address the prevention of placement and institutionalisation. The Committee underlined the need to hold consultations with children and their parents throughout the process.

⁷⁹ DHSSPS (2006) Community Statistics 1st April 2005 – 31st March 2006, Community Information Branch.

⁸⁰ Mooney, E., McDowell, P., Taggart, K. (2004) Outcome Indicators for Looked After Children Year Ending 30th September 2002, DHSSPS.

from the DHSSPS Statistical Bulletins⁸¹, published between 2004 and 2006 can be set out to illustrate the following comparisons:

Characteristic	Children in care	Children in N.I. generally
Statement of Special Educational Need	22%	4%
Suspended from school	9%	1.7%
Expelled from school	1.7%	0.02%
Contact with Criminal Justice System	10%	1%
5 or more GCSEs grade A* - C or higher	11%	59%
In education, training or employment	57%	91%
Unemployment level	30%	5%
Young women having at least one child before their 20 th birthday	28%	4.5%

These statistics graphically illustrate the gulf between the provisions set out in UNCRC Article 20, which advocates “special protection and assistance” and the reality of life in care as reflected in the outcomes described. Children in care do starkly less well in education and employment and are much more likely to experience early parenthood and contact with the criminal justice system. The care system is clearly failing children. One of the measures government has introduced to address these failures is the Children (Leaving Care) Act.

The provisions of the Children (Leaving Care) Act and its accompanying Regulations came into operation on 1st September 2005. The legislation placed new duties on health and social services trusts. The main provisions are:

- to assess and meet young people’s individual needs;
- to provide Personal Advisers for young people;
- to ensure each young person has a Pathway Plan; and
- to ensure that 16 and 17 year-old care leavers are provided with personal support and suitable accommodation.

In October 2006, the journal Young People now conducted a survey of 75 Leaving Care Teams, across the UK. While the majority felt that the situation of care leavers had improved significantly in recent years, 90% reported that there was not enough accommodation for young people leaving care in their area. A further 80% believed that insufficient resources were being deployed to ensure the implementation of the new legislation. The local agency Voice of Young People In Care (VOYPIC) has drawn attention to the fact that some young people leaving care have still not been allocated personal advisors.

In General Comment no. 4 – Adolescent health and development, States are urged to invest heavily in preventative policies and measures in relation to the particular risks faced by, among others, adolescents who experience family breakdown and social

⁸¹ DHSSPS (2006) Former Care Leavers in Northern Ireland (2003–04) Statistical Bulletin, Community Information Branch.

instability (Para. 38). The following information suggests that this standard is not being met in Northern Ireland.

Research conducted in Craigavon/Banbridge Trust and cited in the sixth Bamford report,⁸² indicated that up to 60% of young people in care within the Trust had diagnosable mental health disorders. This is comparable to rates found in studies from other parts of the UK. The figure suggests an alarming failure to put in place the preventative measures for vulnerable groups, indicated in General Comment no. 4. Clearly, the rights of children in care to attain the highest standards of health are not being met. This situation is further elucidated in a substantial research report on the 'Mental Health of Looked After Children and Care Leavers in Northern Ireland', produced by VOYPIC⁸³.

The research involved 36 young people currently in care and 15 care leavers within the Eastern Health and Social Services board (EHSSB). The young people still in care were evenly divided between those in residential and foster placements. Some of the young people recounted positive aspects of their care experience, largely in respect of what the authors call 'protective' factors. These are mostly related to supportive friendships, good relationships with carers, positive experiences of school and leisure activities and interests. The negative issues emerging from the young people's accounts of their experiences included:

- using health risk behaviours to cope, some of these learned in care, particularly in residential care;
- not talking about their feelings and cultivating a way of presenting well;
- the stigma attached to the term mental health and related services and the adult nature of settings – this creates barriers to young people accessing help;
- being referred to a range of professionals when problems arose – the authors suggest that key professionals in the young people's lives could be trained to offer informal therapeutic support;
- young people are effected socially and psychologically by the separation from their birth family and are often discriminated against isolated and bullied because of their care experience;
- large numbers of the young people desired the maintenance of the family unit;
- young people were not clear as to why they were brought into care and some blamed themselves, they were uncertain about how long they would be in care or in a particular placement;
- many were distressed at the infrequency of family contact and how it was organised;
- the vast majority of young people were critical of looked-after children reviews, experiencing them as a wholly negative personal indictment of them by a number of people in power;
- many of the young people were frustrated by the extent of rules governing their lives e.g. permission for friends to visit, being allowed to go out. They felt these exacerbated the sense of being different;
- many felt that their confidentiality and trust had been breached by staff;

⁸² 'A Vision of a Comprehensive Child and Adolescent Mental Health Service (CAMHS)' – July 2006.

⁸³ Mullan, C., Rollock, F., McAlister, S., Fitzsimons, L. (2006) Don't be so formal, I'm normal – A Research Report on the Mental Health of Looked After Children / Care Leavers in Northern Ireland VOYPIC. The work was largely qualitative in nature with the young people taking part in in-depth interviews and follow-up focus groups.

- young people in foster care felt that being sent away on occasions, to give their foster family respite, made them feel that they did not belong;
- some perceived their foster carers as too religious, strict, old or boring;
- some young people in residential care were concerned about the danger of learning new destructive behaviours such as substance abuse, absconding and criminality;
- the experience of after care was characterised by a variety of placements and moves including hostels, B&Bs, living on the street, moving back to family and renting their own accommodation; and
- many were keen to move to after care as soon as possible.

This research provides useful information on the steps that need to be taken to address the alarming incidence of mental ill health among young people in care. The report echoes the Bamford recommendation that a model to meet the mental health needs of looked-after children needs to be developed. The cornerstone of such a model must be close collaboration between social services and the network surrounding the child. Clinical aspects must include a comprehensive assessment of need and appropriate evidence based interventions (Bamford: July 2006, Recommendation 30). The VOYPIC report also suggests that further investment in Tier 1&2 services is required to enhance preventative work and to ensure that young people are enabled to access services at the time of need. This will also require training for staff across the different levels of provision within the looked-after children continuum.

The DHSSPS figures in relation to outcomes and the information from Bamford and VOYPIC presents a disturbing illustration of the impact of alternative care on children and young people. Across all levels, young people in care fare significantly worse than their peers in Northern Ireland. The VOYPIC research highlights the communication breakdown which can exist within the care system which results in young people not understanding the reason why certain rules apply to them or why certain systems are in place. This is an area where enabling participation by young people in service creation and provision, as modelled by VOYPIC, may help in minimising the negative views young people hold about the care system.

All areas in relation to the outcomes for children and young people in care are of concern and indicate an urgent need for a concerted system of cross-departmental action. Of particular note are the extremely high levels of unemployment which, should these young people have families of their own, may serve to create a new generation experiencing disadvantage, vulnerability and marginalisation.

The serious failure to deliver Article 24 rights in relation to mental health will require urgent cogent action, and should be prioritised within the new care strategy.

Given the failures within the current care system the introduction of a new strategy⁸⁴ for care in Northern Ireland presages major reform if implemented in full.

'Care Matters in Northern Ireland – A bridge to a better future', currently in draft form, was subject to consultation until September 2007.

The document is very comprehensive and details a wide ranging set of proposals which include:

⁸⁴ DHSSPS (2007) 'Care matters in Northern Ireland – A bridge to a better future'

- establishment of multi-disciplinary family support and intervention services for families whose children are at risk of coming into care;
- additional specialist salaried foster carers, including therapeutic specialists and specialists for a new Intensive support fostering service;
- a regional strategy which addresses the emotional health and well-being of children on the edge of care, in care or who have left care;
- dedicated CAHMS for children in care, based on a multisystemic therapy model;
- reduce the number of children living in most residential children's homes to a maximum of four children per home and to plan future developments of new or replacement homes on this basis;
- advocacy for all looked-after children;
- new processes for statutory looked-after children review processes in keeping with the findings of the review undertaken by the Children's Commissioner into child-centred planning (2006); and
- additional out-of-school educational support for children in residential settings as part of a personalised educational plan.

NICCY has developed a detailed response⁸⁵ to the proposals advocating the setting of firm timed targets; the inclusion of children with mental health needs who require inpatient support and children with disabilities who are require respite care; the inclusion of a dedicated training program for staff working in residential settings, including both child protection and children's rights; and the creation of a comprehensive advocacy strategy.

Adherence to child rights standards within the document is in some doubt. While much of the document makes explicit reference to the best interests of the child (UNCRC Article 3) as a primary concern in the implementation and development of the strategy, this is later undermined. The document goes on to state that "the welfare of the child must always be paramount and this overrides all other considerations" and further that "this principle must be at the heart of any strategies, policies, procedures and services to safeguard children and must be at the heart of this strategy".

The UN Committee on the Rights of the Child has been quite explicit in this regard. In 2002 the Committee, in addressing the UK report stated:

While noting that the 'welfare' of the child is included in child care and protection legislation, the Committee is concerned that the principle of primary consideration for the best interests of the child is not consistently reflected in legislation and policies affecting children throughout the State Party, notably in the juvenile justice system and immigration practices. (Para. 25)

The Committee went on to recommend:

...that the State Party adopt the best interests of the child as a paramount consideration in all legislation and policy affecting children throughout its territory, notably within the juvenile justice system and in immigration practices. (Para. 26)

⁸⁵ Response by the Northern Ireland Commissioner for Children and Young People (NICCY) to the DHSSPS Consultation on 'Care Matters' 2007

If Care Matters is to result in the development of care services which are in line with the provisions of the UNCRC, it must be underpinned by an unambiguous commitment to the principle of the best interests of the child.

Following consultation, the DHSSPS intends to establish a Project Management Board, under the auspices of the Regional Health and Social Services Authority, appointed by the Minister. It is intended that this will oversee the implementation of the Care Matters Strategy within the new post RPA Trusts.

Adoption

Where children cannot be raised within their own families, adoption provides for a legal permanent alternative. According to the DHSSPS in 2006⁸⁶ at least 500 looked-after children were adopted in Northern Ireland between 1999 and 2005. The numbers adopted in any one year, during that period, have varied widely from a low of 53 to a high of 118. The DHSSPS⁸⁷ further reports that one hundred and eighty-eight looked-after children were adopted in Northern Ireland between 1st April 2002 and 31st March 2004, 109 in 2002–03 and 79 in 2003–04.

In General Comment no. 7 – Implementing rights in early childhood, States Parties are encouraged to invest in and support forms of alternative care that can ensure security, continuity of care and affection. These must provide the opportunity for young children to form long-term attachments based on mutual trust and respect, for example through fostering, adoption and support for members of extended families. In relation to adoption States are reminded that the best interests of the child is the paramount, not just a primary, consideration. (Para.36b).

The Department acknowledges that numbers have fallen and the record here is poor compared to percentages of looked-after children who are adopted in England. Between 2002–03 and 2003–04, the numbers of children adopted from care fell by 30 (28%). In England, during the same period, the numbers of children adopted from care increased by 9%⁸⁸.

The most recent figures show that this trend has continued. Fifty-six children were adopted from care during the year ending 31st March 2006, just under 30% less than the number adopted in 2004 (79).

The percentage of looked-after children adopted from care fell from 3.2% in 2004 to 2.2% in 2006. In England, 6% of looked after children were adopted from care in 2006.

This is indicative that the State is failing in its obligations to provide sufficient opportunities for children to experience secure, continuous alternative care, in the form of adoption.

The most recent inspection of adoption services across Northern Ireland was carried out in 2002.⁸⁹ The inspection identified a range of serious problems in relation to planning; review; maintaining information; working with birth families; court and panel

⁸⁶ DHSSPS (2006) Adopting the future

⁸⁷ Children Order Statistical Bulletin 2006, DHSSPS.

⁸⁸ DHSSPS (2006) Adopting the Future Consultation.

⁸⁹ Social Services Inspectorate (2002) Adopting Best Care Inspection of Adoption Services in Northern Ireland. DHSSPS

delays.

In an attempt to address these problems the government has developed a new adoption strategy⁹⁰ which sets out new services and proposals for new legislation and the reorganisation of adoption structures in NI. These proposals include:

- a new legal framework which places the child at the centre of the adoption process;
- the provision of post adoption support services;
- the introduction of placement orders to provide greater security for children placed for adoption; and
- special guardianship providing greater permanence for some children.

The childcare sector through workshops facilitated, and reported upon, by CiNI⁹¹ has highlighted a number of issues in relation to the proposed strategy.

- The proposals lack detail and clarity and actions are not comprehensive enough – lacking timescales and indicators.
- New legislation should require that the child's best interests are paramount in the adoption process.
- Consideration should be given to extending the role of the Guardians Ad Litem rather than creating new Independent Reviewing Officers.
- Advocacy for children in the adoption process should be established on a statutory basis.
- Clear guidance is needed to set out the scope and remit of Placement Orders.
- Setting an upper age limit is unjustifiably discriminatory.
- There should be a mechanism for establishing and giving due consideration to the views of the child.
- The adopted child's right to information must be carefully prescribed in legislation and guidance.
- The centralisation of adoption should be located within the new Regional Health and Social Services Authority, rather than in one of the new Trusts.
- Any charging system for DHSSPS casework in relation to inter country adoption must be fair and proportionate to ensure equal access for all Section 75 equality groups.

Interestingly, in developing the strategy, the DHSSPS had commissioned research examining the compatibility of the Adoption (NI) Order 1987 with the international standards of the UNCRC and the European Convention on Human Rights.

The research concluded that to be fully compliant with international human rights and children's rights standards new adoption legislation should require that the child's best interests are paramount in the adoption process (Article 21 CRC). It was also suggested that the guiding principles of both Conventions should be incorporated into new adoption legislation in express form i.e. best interests of the child (Article 3 CRC), non discrimination (Article 2 CRC), respect for the views of the child (Article 12 CRC) and proportionality (Article 8 (2) ECHR).

The research also concluded that new adoption legislation should bind relevant

⁹⁰ DHSSPS (2006) Adopting the Future Consultation

⁹¹ CiNI Response, DHSSPS Consultation, Adopting the Future Consultation September 2006

authorities to act in compliance with the UNCRC - as the HRA requires government to act in accordance with the ECHR.

It is not clear to what extent the DHSSPS intends to implement the research conclusions in drafting new legislation, they have said to date that they neither accept nor reject the findings.

In publishing a summary of responses to their consultation⁹² the Department noted a range of comments pertaining to the delivery of children's rights. They set out a number of intentions and comments in relation to these:

- The Department will clarify references on human rights in view of recent case law in the final version of the strategy.
- In the development of new legislation, the Department will consider how best to ensure that it is also consistent with the principle of permanence, the principles of the UNCRC and international adoption law, without undermining the integrity of the paramountcy principle.
- The Department considers it essential that there is an appropriate system of oversight of Trust implementation of care plans to ensure that the UNCRC and human rights of children are properly protected. The presence of the reviewing officer will ensure that there is an independent safeguard in place for those looked-after children whose parents are unable or unwilling to take action if the child's rights are breached by HSS Trust inaction in the implementation of care plans.
- The Department considers that the provision of advocacy services will further underpin our concern to protect children's rights under the UNCRC and ECHR. Funding under the Children and Young People funding package has been provided to the voluntary sector to deliver advocacy services in these and other situations.

It is unlikely that a final strategy and new legislation will be produced for some time yet. The Department is clear that it will not do so in advance of the final outworking of the RPA – which is not yet finalised. Many of the proposed actions are to be welcomed and go some way to realising children's rights under the UNCRC. However, in the absence of an unambiguous commitment to incorporating the Convention in legislation, full compliance remains uncertain.

Children in the Traveller community

It is extremely difficult to obtain accurate statistics on the number of Travellers living in Northern Ireland. The 2001 Census here noted the Traveller population at 1,710, a 53% increase from the 1993 figure of 1,115.⁹³

According to the 2001 Census, 162 children aged 0–4 were among that population. However, figures generated through the Save the Children/NIPPA Toybox project⁹⁴ suggest that the numbers of 0–4 year olds is more likely to be in the region of 300–400. As the author points out:

While the Census makes efforts to address the specific challenges of recording

⁹² DHSSPS (2007) Adopting the Future Consultation: Summary and analysis of responses.

⁹³ The 2002 Census in the Republic of Ireland indicated that there were 23,681 Travellers, the vast majority of whom are Irish Travellers.

⁹⁴ Mc Veigh, R (2007) Toybox – early years development through play for Traveller children. Save the Children / NIPPA.

a nomadic population, it seems likely that a substantial number of Travellers are being missed. For example, racism and anti-Traveller attitudes may discourage people from identifying as Travellers even if they return a census form. Other factors like nomadism and non-literacy may also impact on the representation of Travellers through non-completion of census forms.

Irish Travellers are recognised as a racial group in Northern Ireland under Article 3 (a) of the Race Relations (NI) Order 1997.⁹⁵ The Race Relations Order was amended by the Race Regulations Order (Amendment) (Northern Ireland) 2003, the totality of the legislation means that public authorities are required to identify and meet the needs of minority ethnic groups (including Travellers) in Northern Ireland. The Racial Equality Strategy published by OFMDFM in 2005 establishes a framework designed to tackle racial inequality in Northern Ireland and to open up opportunities for all; eradicate racism and hate crime and, together with 'A Shared Future', initiate actions to promote good race relations. It is of concern that the current DENI circular on Travellers' education (1993–97) has not been updated since 1993. The result of this is that DENI has failed to review and amend the circular following the enactment of the Race Relations Order 1997 and the NIA 1998. While it has been documented that plans are in place to review the circular,⁹⁶ at present it is arguable that the Department is in breach of their statutory obligations under the NIA as well as in breach of their human rights obligations towards children and young people.

Children and young people within the Traveller community continue to face significant discrimination in many areas. The failure to address their needs by way of service provision is exacerbated by legislative attempts to restrict their freedom to enjoy fundamental rights. For example, the Children's Law Centre in December 2004⁹⁷ drew attention to the potential impact on the family life of Travellers of the Unauthorised Encampments (Northern Ireland) Order 2004. This legislation gives police powers to evict Travellers from sites in consultation with the Northern Ireland Housing Executive (NIHE) irrespective of the lack of available, suitable, alternative accommodation. Refusal to leave can result in prosecution, imprisonment and a fine of up to £2,500. Many NGO representatives consider that the impact on the family life of Traveller children – forced removal from and loss of home, disruption of education and routine and the trauma involved – may have far-reaching consequences. There is no information yet available indicating the specific impact of the enforcement of this legislation on children and young people.

Health is an issue of particular concern in relation to Travellers. In his most recent report⁹⁸, the Chief Medical Officer identifies that for the Traveller community life expectancy is 20% lower than in the general population and children are 10 times more likely to die before the age of 10 years. The health of children in the Traveller community has been a persistent concern for many years and a recent report in the Republic of Ireland⁹⁹ illustrates some of the inequalities experienced by the community.

⁹⁵ Which defines Travellers as "the community of people commonly so-called who are identified (both by themselves and by others) as people with a shared history, culture and traditions including historically, a nomadic way of life on the island of Ireland."

⁹⁶ Hamilton, J. et al, 'Adequacy and Effectiveness of Educational Provision for Traveller Children and Young People in Northern Ireland', commissioned by NICCY and the Equality Commission Northern Ireland, May 2007.

⁹⁷ Children's Law Centre (December 2004) Response to the Draft Unauthorised Encampments (Northern Ireland) Order 2004

⁹⁸ Your health matters - Annual Report of the Chief Medical Officer for Northern Ireland 2006, DHSSPS.

⁹⁹ Monaghan, Fr. S., Brack, J., Travellers' Last Rights, Parish of the Travelling People, Dublin 2007.

The report considered two hundred deaths of Travellers, over a ten-year period and concluded that Traveller children were 10 times more likely to die before the age of two, than their peers in the settled community. One third of Travellers died before the age of 25, compared to 2.6% of those in the general population.

The DHSSPS and the Health Service Executive, of the Department of Health and Children in the Republic of Ireland have recently announced the commissioning of a major research study. The All-Ireland Traveller Health Study will be undertaken by the School of Public Health and Population Science, University College Dublin. It will include a census of the Traveller population and an examination of their health status. The study is expected to take between two and three years to complete. It is hoped this study will provide a comprehensive picture of the health issues facing Travellers and allow for a systematic provision of service which will address the gross inequalities faced by this group. Article 29 of the UNCRC highlights that education should be directed by "the development of respect for the child's parents, his or her own cultural identity...", yet it is apparent that even the very basic educational needs of a body of Traveller children are not being met. A recent major review carried out jointly by NICCY and the Equality Commission for Northern Ireland (ECNI)¹⁰⁰ identified a continued "weakness" in curriculum provision which fails to reflect the cultural and racial diversity of society and in particular the experiences of the Traveller community.

For some younger Traveller children, early years development and therefore rights realisation has been greatly enhanced through their participation in a service based on a 'whole child' approach. The Toybox project was established to enhance the social, physical and emotional development of young Travellers and to actively promote their enrolment in pre-school settings. The project aims to tackle disadvantage, exclusion and poor educational attainments experienced by Traveller children through supporting them in their very early years, aged 0–4. Service delivery focuses on the deployment of the play workers who visit Traveller families on a weekly basis, bringing a box of toys, art materials and books. During the weekly sessions the Toybox worker plays with and engages the child seeking to develop his/her range of communication, creative, motor, speech and language and social skills. Parents are actively brought into the session, the aim being to develop and support their interaction with the child and enhance their understanding of the importance of stimulation and play in their children's early years.¹⁰¹

An evaluation of the project in November 2006¹⁰² was tasked with analysing what impact the programme was having in bringing about positive and sustainable changes

¹⁰⁰ Hamilton, J. et al, 'Adequacy and Effectiveness of Educational Provision for Traveller Children and Young People in Northern Ireland', commissioned by NICCY and the Equality Commission Northern Ireland, May 2007.

¹⁰¹ In September 2002, Save the Children and NIPPA submitted an application to the NI Executive Fund for Children. The application was successful and the project was funded for three years from August 2003 to August 2006 – Save the Children also contributed to the funding of the project. From August 2006 the project has secured further resources for a further two years which will not only allow it to maintain its existing services but also to expand. This funding will also enable the project to provide follow-up support to children whose involvement in Toybox has ended as they move to pre-school and primary school.

¹⁰² Mc Veigh, R (2007) Toybox – early years development through play for Traveller children, Save the Children / NIPPA.

in the lives of Traveller children and their families.¹⁰³ The report found that the project had made a significant and sustained impact in terms of its support for Traveller parents' learning and self-confidence. In relation to service delivery, the project was very successful in engaging Traveller families and supporting the development of Traveller children through play. It has also been very successful at filling the gap and being a catalyst between Traveller families and statutory support services, health visitors, social workers and others in the statutory sector. The report considers that the two key aspects of the project's success have been building up the confidence of Traveller parents and their relationships with Toybox, and bringing the project into the homes of Travellers:

Through the process, social, economic and physical barriers are removed which would otherwise restrict their participation in preschool provision.

While acknowledging that problems in accessing reliable population data make it difficult to conclude the extent to which Toybox has increased the enrolment of Traveller children in pre-school settings, it does report that Traveller enrolment has increased over the period of the project. Also, those children who enrol after involvement with Toybox are, from the perspective of teachers, health visitors and play workers who come into contact with them, more confident and better prepared in terms of social, physical and emotional skills.

The evaluation consultation involved direct input from the children. It was acknowledged that the young age of the children made it difficult to enable the young children to formally 'evaluate' the project. However, evaluation was facilitated in a way that gave the children a voice and provided their perspective on the project. This aspect of the evaluation shows that the Toybox initiative was a very positive experience for the children involved, in particular they had built up good relationships with the staff. The evaluation report notes that useful and meaningful data can be generated by creatively finding ways to listen to children's perspective on a project like Toybox. The evaluation also highlights the broader issues pertinent to Traveller children which illustrate the complexity of needs and rights realisation they require if they are to attain their full potential:

A critical issue addressed in this evaluation is that of institutional racism in the education system, and whether an unintended consequence of the project might be to expose greater numbers of young children to anti-Traveller racism by improving pre-school enrolment. The evaluation considers Toybox's responsibility to more effectively integrate this analysis into its practice, and to re-establish, (after the demise of Traveller Movement NI) a 'Traveller voice' in the strategic direction of the project.

The report concludes that the project is innovative in both its strategic structure and its operational implementation and it represents a potentially successful model for child development for other disadvantaged groups. The key recommendations of the evaluation are:

¹⁰³ The total number of children who have accessed the Toybox project was 273 up to the end of April 2006 and at any given time 140 children and their families are engaged with Toybox. The project has therefore comprehensively passed its target figure of 150 contacts.

- There may be a strong case for mainstreaming the project some time in the future; the need and demand for the service is unlikely to disappear in the short to medium term.
- The project should aspire to engage the whole Traveller pre-school population and parents across the north of Ireland.
- Engagement with children should be extended as they move on to pre-school and school levels (facilitated in part by the extra funding).
- The project should engage with the wider education system in a more structured and proactive way.

In 2002 the Committee's Concluding Observations for the UK and Northern Ireland expressed "concern at the still high rate of temporary and permanent exclusion from school affecting mainly children from specific groups" – the Committee went on to specifically name Irish Travellers as being such a group:

The Committee is concerned at the discrimination against children belonging to the Irish and Roma Travellers which is reflected inter alia, in the higher mortality rate among these children, their segregation in education, the conditions of their accommodation and social attitudes towards them. The Committee is also concerned at the gap between policies and service delivery. (Para. 51)

In line with its previous recommendations, the Committee recommends that the State Party devise, in a consultative and participatory process with these groups and their children, a comprehensive and constructive plan of action to effectively target the obstacles to the enjoyment of rights by children belonging to these groups. (Para. 52)

In the years since this recommendation, the research available suggests that the barriers and obstacles to the enjoyment of rights for Traveller children persist.

The Education and Training Inspectorate¹⁰⁴ conducted a survey of educational provision for Traveller children across all five ELBs in 2004.¹⁰⁵ At that time around 700 Traveller children were being educated in schools across Northern Ireland. The Inspectorate identified a number of positive developments:

- Each of the ELBs have well-structured and effective criteria for the support of Traveller children. They exhibit considerable effort and energy in working towards the inclusion of Traveller children in mainstream education.
- DENI, the Council for Catholic Maintained Schools and the ELBs are working well together in what is known as the Forum for the Education of Traveller Children (NI), and have jointly produced useful intercultural educational materials at Key Stages 1, 2, and 3.
- The Traveller support teachers employed by the ELBs are highly motivated,

¹⁰⁴ ECNI (2005) Conference report: Travellers and Education Roundtable, Belfast 22nd June 2005.

¹⁰⁵ Inspectors visited 17 schools (about 20% of all schools with Traveller children); observed 52 Traveller children in classrooms; interviewed the principals of all of the schools; held discussions with 48 teachers, classroom assistants, SENCOs, Traveller Support Teachers, ELB staff, and representatives from the Department of Education and Council for Catholic Maintained Schools. The expectation was that the survey would provide a baseline / benchmark to track the development of Traveller children, and would help inform ELBs in their future work with Traveller children.

dedicated and work hard to produce teaching materials specifically for Traveller children.

- Almost all teachers, principals, classroom assistants and SENCOs display a deep commitment in working towards the welfare of Traveller children. Schools are making considerable efforts to integrate Traveller children whilst respecting their own unique culture. There is anecdotal evidence that there is less victimisation and bullying of Traveller children than in previous years.
- Teachers, education and welfare officers and ELBs have worked hard to address the issue of poor school attendance by Traveller children. This is beginning to pay dividends with a minority of primary schools reporting the attendance of Traveller children is now above 80%.
- Post-primary schools are making good efforts to broaden the curriculum at Key Stage 4 in an effort to retain Traveller children in education.

They also identified a number of shortcomings:

- Teachers need to introduce more explicit planning for individual Traveller children; greater use of baseline assessment and tracking of Traveller children progress and attainment.
- There needs to be more opportunities for teachers of Traveller children to come together, share ideas, exchange good practice and expertise.
- As schools on their own cannot address all the disadvantages found amongst Traveller children, there is a need for all agencies and professionals concerned to work more closely together to share information and expertise.
- The ELBs and Traveller Support groups should meet more regularly to discuss ways of improving Traveller education. Issues to be discussed include: parent condoned absences; necessity of Traveller children undertaking public examinations and assessment tests; how to tackle low expectations that many Traveller parents have for their children.
- The data on Traveller children collected by the ELBs needs to be used to more effectively track progress and attainment.

The NICCY/ECNI research¹⁰⁶ found that bullying, outdated policies and poor levels of attendance mean that Traveller children are not achieving their potential in education. The review revealed that DENI gathers limited data on the educational performance of Traveller children. The absence of data also makes it impossible to draw comparisons between children attending St Mary's Primary School (which although open to all is only attended by Traveller children) and the performance of Traveller children in mainstream schools. The continued failure to collect this type of data seriously calls into question the reasons given by the government for not closing what has become a 'Traveller only' school. The 'Final Report of the Promoting Social Inclusion (PSI) Working Group on Travellers'¹⁰⁷ in 2000 recommended that the segregated provision (St Mary's Primary School) should be phased out over a five year period. The

¹⁰⁶ Hamilton, J. et al, 'Adequacy and Effectiveness of Educational Provision for Traveller Children and Young People in Northern Ireland', commissioned by NICCY and the Equality Commission Northern Ireland, May 2007.

¹⁰⁷ Government established a working group under the PSI element of the new Targeting Social Need policy specifically to make recommendations for action to improve the quality of life of Travellers. The working group produced a comprehensive report which made 33 detailed recommendations to government aimed at improving the lives of Travellers in areas such as health, education and accommodation. The report was issued for consultation in 2001. The children's sector (CiNI 2007) has expressed concern that, to date, only 4 of the 11 recommendations relating to education have been implemented.

government, nonetheless, did not accept the PSI recommendation. In a document¹⁰⁸ detailing their response to the 33 recommendations of the PSI working group it stated:

The government considers that it would be premature to take a decision at this stage on the future of St Mary's Primary School and has no plans at present to phase out the school. It is successful in delivering quality education and CCMS are strongly opposed against any steps to force closure of the school, indicating that every effort is made to facilitate the requirement that children should be educated in accordance with the wishes of their parents and it is presently the wishes of the travelling parents that their children should be educated together in this school.

The Department and the CCMS fully support the principle of the integration of Traveller children to mainstream schools. However, until the integration of the Traveller community into the general community reaches a stage where the parents of Traveller children choose to send their children to other mainstream schools, leading to the non-viability of St Mary's, the school should remain open.

Despite this position, Traveller views as to whether mainstream education is preferred by their community are mixed. The NICCY/ECNI research found that the prevailing attitude among parents of pupils at the school currently attended only by Traveller children was that it was a safe place to send their children and that this consideration outweighed, for them, factors concerning educational effectiveness. It is apparent, therefore, that parents' choices are not based on academic and social issues but rather the weighing up of one potential rights violation against another. While some parents felt that integrated education had potential to dilute Traveller tradition and culture and could expose children to dangers such as drug taking, others felt that it was important for their children to mix with settled children.

The statistics on Traveller children provided previously in this report highlight their poor educational attainment levels. These are echoed in the findings of the NICCY/ECNI study. The report raises a number of concerns:

- poor attendance levels among Traveller children and that absenteeism is not always pursued vigorously by education authorities;
- the racist discrimination children in school recounted, from both pupils and teachers;
- the fact that the Departmental circular on Traveller education has not been reviewed since 1993, there is no strategy in place and relevant statistical data is not systematically collected;
- the number of children who leave education early – some did not continue to post-primary education; and
- the view expressed by many parents and children that education was not relevant to their futures lives and that the curriculum does not reflect Traveller culture.

The NICCY/ECNI research also found that budgetary constraints prevent Traveller support teachers meeting to share ideas. The lack of a formal interagency approach, including key statutory and voluntary bodies, continues to prevent the monitoring and

¹⁰⁸ OFMDFM (2003), A response to the recommendations in the Promoting Social Inclusion working group report on travellers.

addressing of the needs of Traveller children in education. This is particularly significant given that 42% of Traveller children in post-primary school have special educational needs.¹⁰⁹ Also of concern is the lack of a collective approach to service provision for Travellers – matters such as free transport and school transport rules differ within ELB areas. The NICCY/ECNI review also identified problems of the marginalisation and exclusion of Traveller children and made a series of recommendations seeking to address the issues raised.

Among these are:

- up-dating the Departmental circular;
- improvements to data collection and monitoring in relation to Traveller children's educational performance, in a way that allows comparison with Traveller and other children in mainstream schools;
- a more co-ordinated approach to Traveller education across ELBs;
- revision of the curriculum to ensure it reflects Traveller culture – in all schools;
- research to identify and address factors which lead to Traveller children leaving the education system early;
- development of a Traveller education strategy;
- steps to address the bullying of Traveller children in schools;
- diversity training for all teachers; and
- the promotion of children's rights within the Traveller community.

The review confirms that the statement by the Office of Standards in Education in Britain (OFSTED 1999), in which 'Gypsy Traveller' pupils were referred to as "the most at risk in the education system"¹¹⁰ continues to be true almost ten years later. Government policy on good relations published in 2005¹¹¹ states that: "Separate but equal is not an option. Parallel living and the provision of parallel services are unsustainable both morally and economically", yet the government has comprehensively failed to address the barriers to the realisation of the rights of Traveller children, which has been consistently identified in research relating to their life experiences and access to service provision.

There is a considerable body of evidence built up over many years detailing the particular rights violations of children and young people in the Traveller community. Research from both the North and South of Ireland has largely provided mirror images of the problems faced by Travellers. Reports from as far back as 2001 have consistently identified the issues faced by Travellers in Northern Ireland¹¹². These include: social exclusion, widespread disadvantage and discrimination, poverty, poor health profiles, mortality rates, lack of access to service provisions and poor welfare, accommodation and support services, and yet there seems little, if any, enthusiasm from the government for addressing the issues. It is undeniable that children and young people in the Traveller community face widespread human rights violations.

¹⁰⁹ traveller_data-2.xls at DENI web-site

¹¹⁰ Hamilton, J. et al, 'Adequacy and Effectiveness of Educational Provision for Traveller Children and Young People in Northern Ireland', commissioned by NICCY and the Equality Commission Northern Ireland, May 2007 at pg 1.

¹¹¹ Office of the First and Deputy First Minister: A Shared Future – Policy and Strategic Framework for Good Relations in Northern Ireland, 2005.

¹¹² OFMDFM report on the PSI working Group for Travellers, OFMDFM 2001

Children from black and minority ethnic communities and children of migrant workers

A recent international study¹¹³ conducted by the University of Ulster found Northern Ireland to be the “most bigoted place” out of the 12 western countries surveyed. The main target of Northern Ireland’s “bigots” was homosexuals, closely followed by immigrants or foreign workers. The PSNI provides a statistical breakdown of race hate crime figures by DCU. The most recent report made available in May 2007 shows 936 incidents viewed as having racial motivation during 2005–06 and 1,037 incidents viewed as having racial motivation during the 2006–07 financial year in Northern Ireland¹¹⁴.

Such incidents are illustrated in case studies included in recent research into the experience of migrant workers in Northern Ireland¹¹⁵. In one incident the home of a migrant worker was attacked at 3.00 a.m. and the windows shattered. The mother of the family described the psychological impact on the children who lived in constant fear and refused to go to school or mix with other children. The family moved several times and experienced similar racist attacks before settling in another part of town. In another incident two young Portuguese boys were seriously assaulted with a stick by a neighbour in his thirties who objected to them playing with white children. Having reported the incident to the police the family received a number of bomb threats and had to flee their home. Research¹¹⁶ highlights a sinister element of racism in the Northern Irish context. “In Northern Ireland there are societal issues that can facilitate racism becoming racist violence more easily, not least the Loyalist paramilitary power structures that are the legacy of conflict.”

There is very little research material in relation to the experience of children and families from ethnic minorities in Northern Ireland. In a 2007 study¹¹⁷ of the access that black and minority ethnic (BME) communities have to services in the Southern Health and Social Services Board (SHSSB) area the authors had difficulty trying to establish the BME population. They found consistent evidence of significant under reporting of the total BME population within the SHSSB area. They arrived at their own estimate by a process of triangulation of existing statistics from various reliable and verifiable sources (SHSSB; CSA; SELB figures for children in school; SAAT; service user monitoring; interpreter requests). They concluded that the census figures underreport the BME population, including Travellers, by up to 50%. Their estimate assessed the population in the SHSSB area to be over 4000, while the Census returns indicate just over 2000. This misrepresentation of the true numbers has very worrying consequences for service provision for this vulnerable group and their children and young people. While the extrapolated figures relate to the SHSSB, a much wider study is required to assess the precise numbers, family make-up and particular issues of relevance to black and minority ethnic groups.

¹¹³ Borooh and Mangan (2007) *Love Thy Neighbour? How much bigotry there is in western countries*, Belfast: University of Ulster

¹¹⁴ Statistical Report No. 3. *Hate Incidents and Crimes*, 1st April 2006 – 31st March 2007 PSNI May 2007.

¹¹⁵ Holder & Lanao eds. (2006) *SobreO Viver Na Ilha Estudos sobre discriminação na Comunidade Portuguesa da Irlanda do Norte / Case Studies of Discrimination and Disadvantage for Portuguese Migrant Workers* (Dungannon: STEP & Animate)

¹¹⁶ Holder, D. (2007) *Issues facing Migrant Workers and their families in Northern Ireland: A Research Compendium of Animate and Partner Research 2004 – 7*. Animate: Dungannon and South Tyrone Borough Council/ South Tyrone Empowerment programme (S.T.E.P)

¹¹⁷ SHSSB, *Black and Minority Ethnic Access to Services in the Southern Health and Social Services Board Area*. SHSSB 2007

The SHSSB study into service access among BME communities was based on 73 individual interviews, observing 17 meetings, attending 4 conferences and visiting 24 organisations.

Key findings of the study included:

- an absence of monitoring of the BME community's needs and use of services, making it difficult to implement or assess the impact of an array of international, government and local strategies and policies;
- little evidence of integration of the various strategies in relation to planning, delivery or resources;
- the need to develop culturally and linguistically appropriate services within all health, social care, childcare, youth and education settings, as well as within specialist services such as youth justice, mental health and elder care;
- a clear need for greater awareness in the communities of their right to access health, social care and other services, and information on how to get access; and
- a parallel training need regarding statutory obligations in statutory organisations, and in private sector or voluntary organisations to whom delivery of services is delegated.

The report concluded with a series of recommendations which focus on, amongst other areas, the need for ethnic monitoring. If implemented, this recommendation could help provide much needed data to enable the development of clearly assessed service provision for this vulnerable group.

The Animate and South Tyrone Empowerment Project has published a useful compendium of their research on issues facing migrant workers¹¹⁸. A number of the studies identified difficulties migrant workers and their families had in accessing health services, as summarised below:

- 62% of Polish migrant workers were not registered with a GP and 90% not registered with a dentist. While this might in part be attributed to lack of familiarity with the requirements of the health system, further research identified discrimination as a primary category, citing incidents of GP practices refusing to register migrant patients. This included one practice which stated it would not register Timorese patients.
- Service providers' front desk staff, who are the first point of contact for migrant workers trying to access a service, quite often tend to perceive them as a burden and hence do not facilitate access and sometimes deliberately hamper it. Whilst the provision in Cookstown has improved over the last year and there are examples of good practice, instances of unprofessionalism or blatant discrimination on the part of front desk staff are not rare.
- In Cookstown, a Polish family was told they first had to apply in writing for a GP registration form, and then wait for a week until the decision was made. When they tried to find out what the decision was a week later, the same member of staff pretended there was no such procedure and the only way to

¹¹⁸ Holder, D. (2007) Issues facing Migrant Workers and their families in Northern Ireland: A Research Compendium of Animate and Partner Research 2004 – 7 (2007), Animate: Dungannon and South Tyrone Borough Council/ South Tyrone Empowerment programme (S.T.E.P).

register with the practice is to send a relevant form to the Central Services Agency (CSA).

- Another receptionist in a Cookstown surgery told a Polish patient who had been allocated to that practice by CSA that she had to get a smear test before she could get 'fully' registered with them.
- In another instance, the Cookstown Migrant Worker Support Project was approached by a GP receptionist and asked: "Not to refer all migrant workers here because the burden should be shared by all GPs in Cookstown".
- Confusion over evidence requirement has also caused problems. This has been particularly the case for Timorese persons who are Portuguese citizens and hence do not need and cannot have work permits. On occasions Timorese patients have not been able to register having been asked, on the grounds of appearance or stated national identity, for a work permit as proof of residency.
- Ballymena Ethnic Minority Project also cited an instance of practices arguing there should be quotas set for the number of migrant patients.
- In relation to specific health questions many of those interviewed stated that in the event of a health need and difficulty they would be more likely to go home for treatment unless in an emergency. Some of the reasons stated were uncertainty of entitlement.

Having poor access to services provision has a negative impact on parents and this undoubtedly results in children experiencing rights violations. Parents advocate for their own needs as well as those of their children and any barrier to that advocacy perpetuates the invisibility and marginalisation of vulnerable minority groups. Funding needs to be provided to enable a comprehensive research report to be undertaken into the current position of minority groups and to address inequalities they face. Research to date indicates that inequality in access to and provision of services is geographically dictated, which suggests that children and young people within vulnerable groups throughout Northern Ireland are experiencing widespread rights violations.

Meeting the educational needs of children and young people for whom English is not their first language presents many challenges within the traditionally structured model of education operating within Northern Ireland. The Education and Training Inspectorate published a survey of the provision of EAL in schools in Northern Ireland¹¹⁹. They found a significant growth in the number of pupils with EAL in the past three years, and in the case of some schools the growth has been exponential. The survey revealed many positive aspects to service provision while identifying some areas of concern, including: the provision for pupils with EAL varies between schools, depending on the context; the costs of translation and interpreting services are considerable; most of the pupils with EAL benefit from a policy of integration which enables them to access the full curriculum and to make progress through experiencing a wide range of both context and content based language learning. The survey also found that in a small number of primary schools, the arrangements for EAL rely overly on an external EAL teacher and do not meet sufficiently the needs of the pupils and that in a few schools, younger pupils are withdrawn unnecessarily on a long-term basis. The pressure on schools to provide EAL services is apparent in that all schools surveyed reported a need for more staff development and assistance in relation to EAL

¹¹⁹ ETI (2006) Report of a Survey on the quality of learning and teaching and the standards and outcomes achieved by the learners in relation to the provision for English as an Additional Language.

while also reporting that they work increasingly with outside agencies and the wider community.

On the basis of the ETI report, DENI has issued for consultation a policy on EAL¹²⁰. The draft policy aims to guide schools in developing ways to make sure that children and young people who have English as an additional language can get access to the curriculum and achieve their full potential. Actions proposed include putting in place a single Northern Ireland wide service to support schools in making sure pupils who have English as an additional language, learn English-language skills across the curriculum; requiring schools to assess and monitor the individual progress of pupils whose first language is not English; promoting the professional development of teaching staff and all other staff who are involved in meeting the educational needs of pupils with English as an additional language; offering interpreting and translating services to schools; developing links between homes, schools and communities; sharing existing good practice; regularly carrying out research to make sure the service can meet the demands placed upon it in the future; providing appropriate funding for the policy; working with other educational services; and promoting partnerships between organisations.

The document also announces the creation of a regional Ethnic-Minority Achievement Service (EMAS), which subsequently came into being on 1st April 2007. EMAS will have overall responsibility for dealing with issues relating to English as an additional language. It will have particular responsibility for: training and supporting teachers; providing access to interpreters; translating important documents; developing teaching resources and a website; developing a single assessment procedure and individual targets for children; ensuring each school has an EAL coordinator and promoting the Comenius Language Assistant scheme. While DENI has taken a positive step by identifying the issues facing children and young people in need of EAL service provision, the solution to the barriers faced by these young people will require cross-departmental action and a significant shift in traditional views of education provision. The proposal to allocate "appropriate funding for the policy" will only be worthwhile if it is used to fund services that meet and enhance the opportunities for the rights realisation of the children and young people. Appropriate funding will only ever be effective if it enables positive change, irrespective of the amount allocated.

Animate¹²¹ has provided an analysis of weaknesses they have identified in the draft policy. They point out that the policy overall fails to mention concepts of racism and inclusion. In fact, these words are not even mentioned in the document. It also fails to address the needs of Travellers and non-EAL ethnic minority pupils. There is no reference to areas including early years, post 16, North-South links and Initial Teacher Training. They further believe that the role of the EMAS is limited in that it is not charged with addressing issues of anti-racism and attitudinal work, mother tongue education, intercultural learning, school ethos and inclusion, the revised curriculum (including capacity to inform the citizenship curriculum) and an education sector language skills strategy. One particular point of note in the policy highlights the failure of government to consider the reality of service provision when attempting to

¹²⁰ Department of Education (2007) Policy on supporting ethnic-minority children and young people who have English as an additional language

¹²¹ Holder, D. (2007) Issues facing Migrant Workers and their families in Northern Ireland: A Research Compendium of Animate and Partner Research 2004 – 7, Animate: Dungannon and South Tyrone Borough Council/ South Tyrone Empowerment programme (S.T.E.P).

maximize resources – the new regional service is based in the Northern ELB area, without consultation. Animate points out that the Southern area has far greater inward migration and has developed good practice.

There are also concerns relating to the policy proposal that “in the future we will research what things might indicate good practice” – a sentiment which serves to ignore the range of ongoing current good practice work.

In relation to funding, given that EAL pupils arrive throughout the school year, the allocation of money on the basis of the October schools’ census is questioned. This means that in some cases money is not allocated until the following school year. Animate believes that the resourcing of a proposed contingency fund will not resolve this issue as it will fail to address a problem that is not actually exceptional but rather normal practice¹²².

Animate presents very powerful concerns around the proposed policy and identifies barriers which will continue to exist even if the policy, as proposed, is implemented in full. Without full and informed consideration of all issues, the opportunity to tackle issues which render children voiceless and invisible within EAL service provision may be wasted.

Some research has been undertaken to try and establish the needs and vulnerabilities faced by children and young people within BME communities. The Police Accountability and the Black and Minority Ethnic Communities in Northern Ireland¹²³ reports that the 2001 Census indicates that the numbers of individuals from minority ethnic backgrounds, currently living in Northern Ireland, are very small (14,279 adults and children or 0.85% of the population of Northern Ireland). However, these figures are contested by many from within the BME community and it is likely that the figure is closer to 45,000.

Although this report did not focus specifically on children and young people, the focus groups consisted of three children within the African Community Support Network NI, nine Irish Traveller children from An Munia Tober and two Sri Lankan children. Consequently some issues are of particular relevance.

For example, the report highlighted the issue of children, on occasion, having to act as interpreters for adult family members. This could involve children in having to inappropriately describe very distressing incidents to police officers. The inappropriate use of families to provide interpreting services was a recurrent theme according to the researchers despite the PSNI having an extensive set of interpreting facilities and resources. A Chinese woman is quoted in the report:

Men came into the shop with guns and when police came, they had a delay in taking my statement, and my daughter was asked to interpret for us. When they came for a second statement, they didn’t offer an interpreter either. This is not good for her to see us so upset and to have to explain why.

¹²² Proposals in relation to assessment and inspection are felt to run contrary to best practice and the EMAS will not have powers to implement their proposed role. It is not clear that ongoing issues relating to post primary admissions, including role of educational psychology service will be dealt with effectively.

¹²³ Radford, K., Betts, J., Ostermeyer, M., Institute for Conflict Research, February 2006

The report recommends that:

A protocol should be developed that ensures that children are not required to act as interpreters, nor to recount traumatic incidents and racially motivated crimes.

Hate crime

A recently published report dealing with the issue of hate crime is Hate Crime in Northern Ireland – A thematic inspection of the management of hate crime by the criminal justice system in Northern Ireland¹²⁴. Although this is an area that undoubtedly impacts on young people due to their potential perceived affiliation to one particular section in the community, their perceived or actual sexual orientation, or by the fact that they suffer a disability, the report is silent as to the particular impact hate crimes have on young people. Again, the figures relied on in the report are not disaggregated by age and it is therefore impossible to tell how hate crime impacts on young people. The aim of the inspection was to review the effectiveness of mechanisms across the Criminal Justice System to combat hate crime perpetrated against “the increasingly diverse Northern Ireland community”.

The Criminal Justice (No.2) (Northern Ireland) Order 2004 details hate crime into four main categories: racial, homophobic, religion and disability. For monitoring purposes the PSNI has created an additional ‘sectarian’ category (which in 2005–06 represented 57% of all hate crimes) to specifically record hate incidents perpetrated between the Catholic and Protestant communities.

The Criminal Justice Inspectors found that in some cases insufficient regard is paid to the definition of ‘hostility’ under Article 2(3) of the Criminal Justice (No.2) (Northern Ireland) Order 2004. Under this provision ‘hostility’ has to be demonstrated either at the time of the offence, immediately before or after its commission. Inspectors found widespread concern that the impact the legislation was meant to make, had not yet been achieved. The Inspectors also considered it important that prosecutions attract widespread media attention to act “as a deterrent to others that hate crime will be robustly tackled by the criminal justice system”.

The Northern Ireland Affairs Committee (NIAC) (2005)¹²⁵ report The Challenge of Diversity: Hate Crime in Northern Ireland recommended:

...that the PSNI, the Policing Board and the NIO closely monitor the effectiveness of the new legislation (Criminal Justice No.2 (NI) Order 2004).¹²⁶

Having found no evidence of monitoring in this regard, the Inspectors renewed this call.

Unlike England and Wales there are no specific hate crime offences in Northern Ireland. Consequently, as the Northern Ireland Court Service records court statistics under offence types, no statistical information is captured specially under headings associated with hate crime. This compounds the already existing lack of information

¹²⁴ Criminal Justice Inspectorate, January 2007.

¹²⁵ Published in April 2005.

¹²⁶ At Para. 101.

relating to hate crime and children and young people. As part of the inspection the Inspectors reviewed the court records and subsequently confirmed that there is no administrative system in place to record any information in relation to the use of the Criminal Justice (No.2) (Northern Ireland) Order 2004. As the situation stands within the current legislative framework, the Northern Ireland Court Service is under no statutory requirement to record this information. The Inspectors considered it important that such information is available from within the Criminal Justice System to facilitate effective management of hate crime cases¹²⁷. The Inspectorate further recommended that more cohesive interchange links need to be developed across government bodies. They considered that the NIO should lead on behalf of the criminal justice agencies to establish better co-ordination and assessment of strategies with others to combat hate crime.

Of specific note to provisions already in place dealing with young witnesses, the Inspectors considered that improvements could be made in this area for those giving evidence in hate crime cases. The Inspectors felt that improvements could be made in this area by introducing an Intermediary Service¹²⁸ for Northern Ireland with a similar framework to that currently available in England and Wales through the service supported by the Home Office. This provision in England and Wales is one of a range of measures which, under the Youth Justice and Criminal Evidence Act 1999, "the courts may make available to vulnerable witnesses to assist them to communicate with the police, prosecution, defence and judiciary to process a case through the CJS including giving evidence in court". As with all special measures, this provision may be used by both defence and prosecution witnesses. The Inspectors viewed the possible existence of intermediaries as perhaps being the difference between vulnerable witnesses reporting and communicating their best evidence or not communicating at all. As well as improving access to justice for vulnerable people, intermediaries can also help criminal justice practitioners by:

- improving decision making by providing practical information about a witness's needs;
- making investigation interviews and court testimony more productive; and
- improving the prospect that a case will have a positive outcome in court.

The Inspectors therefore recommended that the necessary legislative and procedural framework should be enacted to introduce an intermediary service to Northern Ireland. They also recommended that the NIO on behalf of the CJAs should co-ordinate census information needs with the Northern Ireland Statistics and Research Agency (NISRA) on the most appropriate methods to provide accurate population data on the numbers and trends within the minority communities in Northern Ireland to aid criminal justice policy development.

Children with disabilities

As with other groups of marginalised children it is very difficult find accurate data in relation to the numbers of children with disabilities in Northern Ireland. During 2003,

¹²⁷Para. 6.3.

¹²⁸ An intermediary is a specially recruited person who can help a vulnerable witness to understand questions they are asked and who can then communicate the witness's responses. Intermediaries can help witnesses at each stage of the criminal justice process, from police investigations and interviews, through to pre-trial preparations to Court.

NISRA commissioned a review of the existing stock of information on people in Northern Ireland with disabilities¹²⁹. The review found that:

- There is a lack of good quality information on people in Northern Ireland with a disability, especially in terms of their multiple identities and their experiences across a range of social and economic contexts such as education, employment, transport and claiming of benefits.

User needs are varied and there are significant difficulties surrounding the definition (or definitions) of disabilities, including the conflict between the medical and social models.

In response, NISRA conducted a Northern Ireland Survey of people with Activity Limitations and Disabilities (NISALD)¹³⁰. The survey team worked closely with members of the working group for promoting social inclusion of people with disabilities, during 2006–2007. The survey used a broad definition of disability. In addition to limitations in daily living that would be commonly associated with disability, this definition also encompassed the impacts of long-term illnesses and conditions. The survey only encompassed those living in households – a further survey is currently underway to estimate numbers of those living in communal establishments.

The NISALD survey results were released in July 2007 and are summarised below.

- 18% of the Northern Ireland population of all ages living in private households face limitations in their daily living as a consequence of a disability or long-term condition.
- Almost two out of every five households in Northern Ireland include at least one person with a limiting disability.
- More than one-fifth (21%) of adults in Northern Ireland have at least one disability.
- Amongst children¹³¹, 6% are affected by a disability.
- Amongst the very youngest within Northern Ireland's households, the prevalence of disability is higher amongst boys than amongst girls. Around 8% of boys aged 15 and under were found to have a disability, compared with 4% of girls of the same age.
- The most common types of disabilities reported by adults were associated with chronic illnesses, pain, mobility difficulties and dexterity difficulties.
- Amongst children, the most common types of disabilities were linked with chronic illnesses, learning difficulties and social / behavioural difficulties.
- The incidence of multiple disabilities is not as pronounced amongst children as amongst adults. The most common number of disabilities for children was one, with just over 2% of children having a disability within one area only. However, a notable number of children across Northern Ireland (almost 4%) are living with two or more disabilities.
- Chronic illness, learning difficulties, social or behavioural difficulties, intellectual difficulties and difficulties with breathing were the most prevalent disabilities reported for Northern Ireland children. Many of those children with

¹²⁹ MSA Ferndale (April 2004) 'Review of Disability Information – Project for DFP NISRA'.

¹³⁰ The Prevalence of Disability and Activity Limitations amongst adults and children living in private households in Northern Ireland - First Report from the Northern Ireland Survey of people with Activity Limitations and Disabilities. NISRA (2007)

¹³¹ It is important to note that the survey defined children as aged 15 and under. This is less than helpful. Monitoring compliance with the UNCRC is only possible if statistical information is disaggregated in a way that specifically identifies children i.e. those under 18 years.

a chronic illness were living with asthma and had associated breathing difficulties, illustrating the interaction between these two particular categories. However, more than one-quarter of children with a chronic illness had a disability associated only with that chronic illness which was not manifest in any of the other areas included in this survey.

Using the NISRA mid-year population estimates¹³² for 2006 it is possible, albeit with caution¹³³, to calculate estimated numbers based on the survey finding of 6% of the population aged up to 15, having a disability. A further number can be similarly extrapolated in relation to those under 18:

	NISRA mid year population estimate 2006	Percentage with a disability	Estimated numbers
Population aged 0–15	380, 141	6%	22,808
Population aged 0–17	432, 014	6%	25,920

While the studies and reports on children and young people who have a disability detailed below represent specific areas of disability, they are in no way intended to reflect the entire range of experiences of children and young people with a disability nor are they suggestive of a hierarchy of disability. The studies and reports reflect the information that is available for consideration and are relevant in that they serve to identify areas of concern which may be experienced by children and young people whatever the nature and origin of their disability.

A number of reports have commented on the particular vulnerabilities experienced by children with disabilities. A qualitative study¹³⁴ undertaken with 18 families of children, who had acquired a brain injury in Northern Ireland, highlights the impact on not only the injured child, but on all the family members. In terms of changes to lifestyle the children themselves reported the negative impact in terms of physical limitations, fatigue and other cognitive aspects, such as change in personality, memory and loss of concentration, confidence and independence. Opportunities for socialising were in almost all cases restricted. Many young people spoke of their sadness at the loss of friendships, changes in relationships with friends, and the frustration of having to spend too much time with parents.

The parents described how their own relationship was affected. While some felt that the trauma had resulted in a closer relationship, many experienced difficulties often related to stress and not having time for each other because of the pressure of care.

¹³² Mid year population estimates 2006. NISRA - www.nisra.gov.uk/archive/demography/publications/mye_methodology.doc

¹³³ The NISALD survey does not include children living in communal establishments such as residential or care homes and long-stay hospital wards. The survey sampling error in relation to prevalence rates for children is 0.34% and confidence intervals for the overall prevalence rates for children are ± 0.66 .

¹³⁴ Anderson, M (2003) Living with Acquired Brain Injury in Northern Ireland, A Family Perspective, Child Brain Injury Trust.

As a result of the pressure on parents to be with the injured child during hospitalisation, the impact on the siblings was often not noticed until much later. Some parents spoke of the positive result of the sibling being very caring and much more understanding as a result of having a disabled brother or sister. However, many parents were of the opinion that siblings missed out on their childhood because parents were so involved with the injured child. Overall parents were impressed with the support their children received while in hospital but felt that support for the child and the family faded rapidly when the child returned home¹³⁵. As previously stated, these findings are significant as, although specific to children who had experienced a brain injury, it is very likely that the findings reflect the broader concerns and life experiences of children and families who experience disability.

Recent research by NICCY¹³⁶ focused on the needs of and services for children with Asperger Syndrome¹³⁷ (AS) in Northern Ireland and draws attention to many of the same issues. Parents in this study highlighted the need for more support for the whole family. They felt that more support would allow the children with AS to access more activities outside the home and support the parents to organize holidays and other family activities. As found in the previous study on brain injury, parents also described their feelings of guilt that other children in the family lost out because of the amount of attention that needed to be directed towards the child with AS.

UNESCO's 'Guidelines for Inclusion: Ensuring Access to Education for All' (UNESCO 2005) provides the following definition:

Inclusion is seen as a process of addressing and responding to the diversity of needs of all learners through increasing participation in learning, cultures and communities, and reducing exclusion within and from education. It involves changes and modifications in content, approaches, structures and strategies, with a common vision which covers all children of the appropriate age range and a conviction that it is the responsibility of the regular system to educate all children...

It is clear from the NICCY research and other research detailed throughout this report that education provision in Northern Ireland is far from inclusive. The NICCY research on AS found that 68% of the young people would have liked their school or college to be different. Almost three-quarters of the parents were satisfied with the child's current school or college placements and said this was their greatest source of support. Some, however, had experienced serious problems with schools in the past which had led them to take their child out of the school. Overall a quarter of the parents were not satisfied with how the school or college addressed their child's needs.

The report points out that one of the diagnostic criteria for AS is that the child or young person has average or above-average intellectual ability. Given this, it would be assumed that most of the children would be placed in mainstream schools. However,

¹³⁵ See also the Chapter on gaps in service provision.

¹³⁶ Jones, Dr. G., Ellins, Dr. J., Guldborg, K., Jordan, Professor R., MacLeod, A., Plimley, L. (2007) 'A Review of the Needs and Services for 10-18 year-old Children and Young People diagnosed with Asperger Syndrome living in Northern Ireland', NICCY.

¹³⁷ Asperger syndrome is one of a range of Autism Spectrum Disorders see Chapter "Gaps in Service Provision" for further discussion.

data from special schools show that there was a total of 66 children and young people attending special schools. The authors point out that some of the children may have had intellectual impairments and so it is possible that they were wrongly identified as having AS.

The report recommends that:

Parents and schools need guidance on how best to assess the needs of children and young people with Asperger syndrome and then to make sensible decisions on which interventions (in the broadest sense of the term) to use. Understanding the principles of the interventions is the key, rather than using interventions without sufficient training. This is compatible with the policy of DENI – the approach should be child-centred and not method-centred.

The report also points out the impact of some of the behaviours of children and young people with AS on family life. For example repetitive behaviours; fixed routines; incessant questioning or arguing the point; self-injury; refusal to follow family routines or wishes, are distressing for all concerned and can lead to huge family arguments.

In relation to play and leisure, the UNCRC General Comment no.9 (2006) on the Rights of Children with Disabilities¹³⁸ emphasises that Article 31 of the UNCRC, which stipulates that activities should be appropriate to the age of the child, should be interpreted to include mental, psychological as well as the physical ages of the child. It goes on to say:

Play has been recognized as the best source of learning various skills, including social skills. The attainment of full inclusion of children with disabilities in the society is realized when children are given the opportunity, places, and time to play with each other (children with disabilities and no disabilities. Training for recreation, leisure and play should be included for school-aged children with disabilities. (Para. 70)

The importance of play within the home and the benefit to both child and parent was reported in 'Everybody Here? Play and Leisure for disabled children and young people'.¹³⁹ The significant potential of structured play, facilities and services was identified as enhancing the quality of children's play at home. Despite these obvious and significant advantages, there is a total failure to provide play and leisure facilities, in either formal or informal settings, for children with disabilities.

Special Educational Needs and Disability Order 2005

SENDO contains measures intended to end discriminative practices and to increase the access of children with special needs to a mainstream education. The legislation became effective on 1st September 2005. Key features of the legislation include:

¹³⁸ Committee on the Rights of the Child, Forty-third Session, Geneva, 11th-29th September 2006, CRC/C/GC/9 27th February 2007

¹³⁹ Contact a Family, 2002; Contact a Family survey of family's experiences.

- strengthening of the right to a mainstream school place for children with a statement, unless it is against the wishes of the parents or is incompatible with the efficient education of others;
- ELBs will provide an Information and Advice Service on SEN matters to parents of children with SEN in the area. This includes the establishment of a new, accessible website which provides a broad range of information on SEN;
- ELBs will provide a new Dispute Avoidance and Resolution Service (DARS) to attempt to resolve disputes between parents and schools and parents and boards;
- responsible bodies of schools and relevant nursery providers are able to request a statutory assessment or re-assessment of the SEN of one of their pupils;
- parents have increased rights of appeal to the SENDIST when the ELBs make an assessment of SEN. ELBs must maintain statements until the outcome of an appeal is known
- all schools will be prohibited from discriminating against children who have disabilities in their admissions arrangements, in the education and associated services provided by the school and in relation to expulsions and suspensions from the school;
- ELBs are subject to more clearly defined timeframes for the drafting of statements;
- all schools will be prohibited from discriminating against children who have disabilities in their admissions arrangements, in the education and associated services provided by the school and in relation to expulsions and suspensions from the school;
- schools have to take reasonable steps to ensure pupils who have a disability are not placed at substantial disadvantage, in comparison to pupils who do not have a disability, in relation to the education and associated services provided to them;
- ELBs have to produce an 'accessibility strategy' to increase accessibility to the curriculum and school premises;
- ELBs have to improve the delivery of information, which is provided in writing for pupils who do not have a disability, to pupils who have a disability, in ways that are determined after taking account of the effects of the disabilities and any preferences expressed by the pupil or their parents;
- schools have to produce and keep under review disability accessibility plans and will have to publish information about their plans in their annual Board of Governors report;
- ELBs will have a duty not to discriminate against a person or prospective pupil with a disability in carrying out their functions under various Orders relating to education; and
- SENT has been restructured to become SENDIST and now hears claims against disability discrimination by schools and ELBs, as well as appeals against the special educational provision made by ELBS.

The effectiveness of the legislation has been criticised on a number of fronts. A study of the experiences of young adults with a disability in relation to post-16 education highlights a range of discriminatory practices in third level education¹⁴⁰. Byrne points out that the SENDO focus on eliminating practices of direct discrimination is insufficient, and results in underplaying the practice of indirect discrimination. She argues that this may have the effect of driving the more complex forms of discrimination, as identified in her research, underground. The concepts of 'reasonable adjustment' and 'justifiable discrimination' contained within the legislation may encourage institutions to find ways of retaining discriminatory practices. She concludes that:

Until there is a sense of need for the majority population to change deeper structures of domination and oppression and to instigate this change, complex forms of discrimination as experienced by (dis)abled people in our society will prevail.
(Byrne: 2006)

A recent article in the *Belfast Telegraph*¹⁴¹ highlights the views of a special school head teacher, who argues that insufficient resources have been allocated for the implementation of SENDO. The article claims that mainstream schools are not equipped, and teachers are not sufficiently trained, to meet the needs of SEN pupils, resulting in patchy provision and the operation of a post code lottery. The head teacher commented:

Where the schools are well resourced there can be very good inclusion and probably the best examples are in schools where inclusion was taking place before SENDO. However, it is not just about accommodating wheelchairs. It is about the number of pupils in a class, resources, training and support. Unless we have the training and resources needed, we are going to continue to struggle. We need to remove the postcode lottery that currently exists so that every child gets what they are entitled to. Inclusion was not a cheap option. It is expensive and more money is needed to make sure that we have a wide range of services and schools available for children. Not every school can meet the needs of every child with a learning disability. We need a very connected up policy and hopefully this will happen under the new Education and Skills Authority and the Assembly.

A major barrier to ensuring that children with SEN can realise their right to education, is that legal aid is not available for SENDISTS. This is particularly difficult, as those wishing to challenge board decisions must pay for the compilation of expensive specialist reports. This is a measure clearly beyond the reach of many families, especially in the light of information, previously presented, regarding the link between poverty and disability.

The Children's Law Centre currently operates the only free legal representation service in Northern Ireland. They do so on very limited resources and their capacity is

¹⁴⁰ Byrne, B., (2006) From Ability To (Dis)Ability: A Bourdieudian Analysis And Case Study Of The Experiences Of Young Adults In Utilising Post-16 Educational Provision In Northern Ireland. Unpublished Thesis for the Degree of Doctor of Philosophy

¹⁴¹ Torney, K., *Belfast Telegraph*, 19th June 2007.

extremely stretched in this area of work. While the denial of free legal aid persists many children will be unable to challenge the realisation of their rights in relation to the provisions of SENDO.

Children with sensory disabilities

In 2006 the Royal National Institute for the Blind (RNIB) published research¹⁴² into the availability of textbooks for school children who were visually impaired across the UK. Despite the fact that there are over 20,000 children in the UK between the ages of 5 and 16 with a visual impairment severe enough to require specialist educational support, access to textbooks was a major problem.

The survey found in relation to pupils at Key Stage 3:

- Of the 129 maths titles surveyed 2.3% were available in large or giant print, 14% were available in Braille.
- Of the 88 science titles surveyed 2.3% were found in giant print, with none at all in large print, 6.8% were available in Braille
- Of 143 English language textbooks surveyed one was available in giant print, with nothing in large print, two were available in Braille.
- Of the 63 English literature texts surveyed 3.2% existed in large print, 11.1% were available in Braille.
- Of the 23 reference titles identified only one was available in Braille or in large print.

For pupils studying GCSEs:

- Of the 37 maths generic titles identified, one was available in large print and giant print, 16.2 % were available in Braille.
- One of the eight prescribed maths texts in Northern Ireland is available in Braille, with none at all in large or giant print.
- None of the science textbooks prescribed in Wales or Northern Ireland is available in any format.
- Of the 17 generic English language or literature study support texts identified only one was found in an alternative format.
- In Northern Ireland, just over one in four (27.6 %) of English set texts were available in large or giant print and 37.9% were available in Braille.
- Of the 17 reference titles identified, none was available in any alternative format.

Teaching staff in Northern Ireland reported to the survey that they were never able to access large print books without delay. Overall, 92% of teaching staff across the UK felt that delays in accessing textbooks had a “large” effect or “some effect” both on their pupils’ social development and their educational progress. The RNIB has called on the UK and devolved governments to draw up and implement a well-resourced national plan to modernise the production of accessible textbooks and radically improve their availability.

¹⁴² RNIB (2006) Where’s my book? - Tackling the textbook deficit faced by school pupils with sight loss.

A further report by The National Deaf Children's Society (NDCS) for the Mental Health and Deafness Regional Forum ¹⁴³ illustrates the complexities facing children who are disadvantaged in multiple ways. The report found that children who are deaf with mental health problems are not accessing services. The authors gathered reliable population prevalence data on deaf children and young people up to 19 years in Northern Ireland. By using this data, and figures from the child and adolescent mental health teams, the report demonstrates that far fewer individuals have presented with mental health problems compared to the numbers that would be expected among this group. The report argues that deaf children have an increased prevalence of mental health problems. Reasons for this include:

- an excess of organic problems (usually due to the cause of the deafness);
- an excess of emotional, psychological and behavioural disorders; and
- delays in access to service, which increase the duration of mental health problems.

Deaf children, particularly those from hearing families, may be exposed to an excess of the risk factors that can affect all children and lead to adjustment disorders in adolescence. These factors include academic failure, low self-esteem, rejecting relationships, inconsistent discipline, failure of age-appropriate development, and abuse (sexual, physical and emotional). Most of these are secondary to negative attitudes to deafness and, above all, to failure to develop age-appropriate communication.

The report indicates that on 30th May 2004 the number of deaf children aged between 0 and 18 in Northern Ireland was 1166. Given that, in the general population, 20% to 25% of children and young people might be expected to present with some kind of mental health problem, the report predicts a cautious estimate of 233 deaf children and young people with mental health problems in Northern Ireland. Around 15% of these deaf children will require CAMHS, although it may be that this figure is higher in Northern Ireland due to additional risk factors. This would suggest a conservative figure of approximately 35 young people falling within the criteria required to access CAMH Services. Yet the report found that between the years 2001 to 2003 only four cases have presented to CAMHS teams: less than 12% of the number that are predicted from the data.

Children with learning disabilities

In October 2002 the DHSSPS initiated the Bamford review. This major, wide-ranging and independent review on Mental Health and Learning Disability was completed in October 2006. The review had a particular focus on learning disability. The report on this area of enquiry is entitled 'Equal lives'¹⁴⁴ and provides a comprehensive overview of law, policy and services relating to learning disability in Northern Ireland. The report defines learning disability as follows:

Learning disability includes the presence of a significantly reduced ability to

¹⁴³ The National Deaf Children's Society (NDCS) Developing mental health services for deaf children and young people in Northern Ireland, NDCSNI 2005.

¹⁴⁴ Bamford Review: Equal lives Review of Policy and Services For People with a Learning Disability in Northern Ireland. September 2005.

understand new or complex information or to learn new skills (impaired intelligence), with a reduced ability to cope independently (impaired social functioning), which started before adulthood with a lasting effect on development. (Equal Lives: 3.13)

The report points out the difficulty in estimating the prevalence of people with learning disability here, but references a DHSS study from 2003¹⁴⁵ which estimates a total of 8,150 children young people with learning disability, aged 0–19. Of these 6,432 have a mild to moderate disability and 1,718 have a severe to profound disability. The report urges some caution in relation to these figures as they are based on those who are known to services at a particular point in time. The actual figure may be significantly higher.

The report summarises inequalities experienced by children with learning disability and their families as:

- Many children are unable to access mainstream play and leisure activities.
- Access to pre-school facilities for these children is curtailed.
- Mothers are less likely to be in employment and more likely to report symptoms of ill health such as depression.
- The burden of caring is more likely to fall on the mother.
- Families of disabled children face financial burdens that are not always met by disability benefits and due to reduced income they are more likely to experience social deprivation.
- Siblings of severely learning disabled children may also face inequalities with many having less contact with friends and increased levels of anxiety compared to other children.
- Transition from school to adult services is a particular area of concern for parents. In the past commissioners and service providers have failed these children by not providing the same range of services and choices that are open to non-disabled young people, such as career guidance, further education, work experience and vocational training.

Particular issues were highlighted in the 'Equal Lives' report in relation to early intervention in childhood:

- Professional efforts are often not coordinated.
- Parents complain of having to manage multiple appointments and receiving at times conflicting advice.
- Long delays are reported for appointments to specialists.
- Key services are understaffed.
- Not all children with a learning disability receive a clear diagnosis despite the presence of complex needs. This can result in children losing out as service responses are often linked to diagnosis.
- Families report that lengthy multiple assessments can often result in little direct therapeutic or education intervention.
- Parents also report great difficulties in accessing the information they need to fulfil their parenting responsibilities including information on support, benefits

¹⁴⁵ Mc Conkey R, Spollen M., Jamison J. Administrative Prevalence Of Learning Disability In Northern Ireland Belfast: DHSSPS 2003.

and their child's condition.

Issues identified in relation to young people were:

- The experiences of young people with a learning disability are characterised by isolation and lack of social opportunities, creating over-reliance on families.
- Youth services identify the inclusion needs of young people with a learning disability as an equality issue but lack the resources to take forward the recommendations of pilot studies.
- The vulnerability of these young people to mental and physical health problems, sexual exploitation and crime as both perpetrators and victims is well documented but little preventative or reparative work is done.
- In learning disability services youth can get forgotten between children's and adult services.
- In mainstream services young people with a learning disability have difficulty getting heard.
- Young people with complex needs are further excluded. There is a need for agencies to come together to address these issues across sectors and other administrative divides.
- Young people need to be supported to engage with the authorities to ensure their views are heard. The Interdepartmental Group that has been established by DENI and DHSSPS to develop the range of support for children with special needs is an opportunity to ensure the broader agenda of young people's issues are addressed.

The report made wide reaching recommendations although due to the fragmented nature of service structure and provision, it is not easy to monitor compliance with or progress towards what was recommended.

In General Comment no. 9, the UN Committee discusses the situation of children with disabilities being placed in institutions. They state that the protection and care of the children must be the prime consideration under all circumstances and that these factors should outweigh any other consideration, such as budget (Para. 30).

A recent BBC investigation ¹⁴⁶ discovered that both adults and children with learning disability were not being discharged from Muckamore Abbey Hospital because of a lack of funding for facilities in the community. Seventeen children were among those affected, some of whom had been ready to go home for 20 months.

The following motion was subsequently passed, with cross party support, in the NI Assembly:

That this Assembly expresses concern that more than 100 adults and young people with learning disabilities have been forced to remain in Muckamore Abbey Hospital, Antrim — some for periods extending to several years — because appropriate care within the community is not available; demands a full inquiry into the situation to ensure it cannot occur again; recognises the frequently undervalued contribution of staff, families and carers; and calls upon government to implement urgently the recommendations of the Equal Lives Learning Disability Report of the Bamford Mental Health Review.

¹⁴⁶ http://news.bbc.co.uk/1/hi/northern_ireland/6277647.stm

29th January 2007¹⁴⁷

The BBC reported on the same situation one year later and found that many children and adults still remained unnecessarily in the hospital.

In the sphere of play and leisure, 'Count Us In – The Report of the Committee of Inquiry into Meeting the Mental Health Needs of Young People with Learning Disabilities'¹⁴⁸ commented on the tendency of service providers to focus on the health needs of young people with learning disabilities rather than focusing policy and provision to incorporate and promote play and leisure needs. The report considers that services used by children with a learning disability would benefit from more focus on play.

The need for out-of-school activities led to the establishment of a pilot project designed to provide play and recreational facilities for children with moderate learning disabilities. This project was established by ABACUS, a small voluntary group of parents of children with learning difficulties. The subsequent review of the effectiveness of the project, ABACUS: Is it Saturday? A Play and Recreational Programme for Children and Young People with Moderate Learning Difficulties (2004)¹⁴⁹ found that the project, which ran for twelve weeks between September and December 1998 and was attended by 11 children aged 8–12 years with moderate learning disabilities, was highly successful. The main perceived benefits by the parents were that the children were able to get out and engage in different activities. The review found the project raised the expectations of the children, who found it difficult to understand why the programme ended after twelve weeks. The project identified the lack of provision of play and recreational facilities outside school hours for children with learning disabilities in the EHSSB. The project leader and volunteers identified the lack of training opportunities at all levels as an issue. The difficulty of finding appropriate trained personnel was also constantly referred to by the various statutory agencies as one of the problems they experienced when trying to establish provision in this area and meet the needs of children with learning disabilities. Seven of the 11 children and their parents attended a review session in October 2003 and it was apparent that in the intervening period their experiences of play and recreational activities had become worse rather than better. The young people were now even more socially isolated than previously, they had fewer social contacts and were more dependent on their families for contact.

In 'Equal Lives – Review of Policy and Services for People with a Learning Disability in Northern Ireland'¹⁵⁰ emphasis is placed on the urgent need to address "the invisibility of disabled children in almost all the forms of play provision". The report considers that "attitudinal and logistical barriers often currently exclude children with severe and profound disabilities... from almost all forms of publicly funded play". In coming to this conclusion, the report relies on 'Hello! Are You Listening?'¹⁵¹ a report which, although not specifically focused on Northern Ireland, states that "initial enquiries (in Northern Ireland) indicated additional barriers in accessing mainstream leisure services because of the long-standing political situation". Equal Lives also stresses that

¹⁴⁷ Northern Ireland Assembly debates: Monday, Private Members' Business: Muckamore Abbey Hospital 29th January 2007.

¹⁴⁸ Carpenter, B., The Foundation for People with Learning Disabilities.

¹⁴⁹ Kilpatrick, R., McClinton, J. (2004), (Report), Queen's University of Belfast, Institute of Childcare Research

¹⁵⁰ Review of Mental Health and Learning Disability (Northern Ireland), September 2005.

¹⁵¹ 2002 - York: Joseph Rowntree Foundation.

experiences of young people with a learning disability are characterized by isolation and lack of social opportunities. The review states these young people can get 'forgotten' between children's and adult services and in mainstream services they have difficulty getting heard. The report urges agencies to come together to address these issues across sectors and other administrative divides. The review makes several key recommendations for improving the lives for children and young people with learning disabilities including the need, by January 2007, for joint planning and bidding mechanisms by DENI and DHSSPS for services for children and young people with a learning disability.

The government's intentions in relation to addressing the issues raised throughout this section are contained in a Disability Action Plan¹⁵². This was issued for consultation in June 2007. Commitments in relation to children with disabilities include:

- No child is to be accommodated in Muckamore Abbey Hospital, by March 2009.
- The DHSSPS will issue its response to the Bamford Review on Learning Disability 'Equal Lives', to be finalised by February 2008.
- Speech and Language Therapy Task Force is to be established and work completed by December 2007.
- Autism Spectrum Disorder Task Force is to be established and work completed by December 2007.
- The Children and Young People Funding Package Multi-Disciplinary Health Teams to be established 2006–2007.
- Regional Wheelchair Reform Group (this is part of Physical and Sensory Disability Strategy but is separated out in this context as a high priority) work to be completed by April 2008 and followed by consultation.
- Physical and Sensory Disability Strategy: The Regional Steering Group on Sensory Loss is considering that theme. Other key themes include Neurology Services, Community Care Packages, Respite and Brain Injury Services. Work to be completed by April 2008 and followed by consultation.
- The Children and Young People Funding Package – Wheelchair Services for Children to be established 2007–2008.

It is disappointing to note that there is little evidence that these targets are being met.

Children who identify as lesbian, gay and bisexual

Article 2 of the UNCRC addresses the right to live free from all forms of discrimination. While it does not specifically mention sexual orientation this is later clarified. In General Comment no. 4 the Committee specifies that the grounds in Article 2 should be interpreted as covering adolescents' sexual orientation. (Para. 6)

Northern Ireland society appears to hold particularly prejudiced attitudes towards members of the lesbian, gay and bisexual community. As mentioned earlier an international study¹⁵³ found Northern Ireland to be the "most bigoted place" out of 12

¹⁵² DHSSPS Disability Action Plan DHSSPS 2007

¹⁵³ Borooh and Mangan (2007) 'Love Thy Neighbour? How much bigotry there is in western countries' Belfast: University of Ulster.

western countries surveyed. The study concluded that the main target of Northern Irelands' "bigots" were homosexuals.

The PSNI statistical breakdown of hate crime figures by DCU gives figures on homophobic incidents. The most recent report made available in May 2007 shows 220 incidents viewed as having a homophobic motivation during 2005–06. In the following year 155 incidents were viewed as being motivated by homophobia in Northern Ireland¹⁵⁴. Unhelpfully, the statistics are not disaggregated in relation to age, so we are unable to identify the numbers of children and young people who were the subjects of this hate crime.

In the 2006 Young Life and Times survey¹⁵⁵, 7% of young men and 9% of young women identified themselves as being attracted to the same or both genders. Recent research into the health needs of lesbians and bisexual women reported the experiences of a local focus group of young lesbians¹⁵⁶. Research has indicated that young women are aware of their sexual orientation at age 13. On average these young women had known their sexual orientation for nine years before 'coming out' (i.e. telling anyone else). Participants described the anxiety they felt about telling their family members they were gay or bisexual. In relating this experience to stages of adolescent development involving 'disembedding' from the family, the report characterises the process, for young lesbians and bisexual women, as one in which they become isolated and alienated from their family and friends.

The NSPCC produced a UK wide report¹⁵⁷ detailing children's calls to Childline about sexual orientation, during the month of April in 2006. Among the 218 callers the fear of telling their parents or the experience of having been rejected by parents was the second most common reason to make the call. Childline extrapolates that 525 lesbian, gay or bisexual children call about parental issues every year.

The Gay Lesbian Youth Northern Ireland (GLYNI) group recently took part in consultations¹⁵⁸ organised by OFMDFM on their report to the UN Committee on the Rights of the Child. During discussions with departmental officials the young people raised a number of issues which serve to illustrate their day to day experience of homophobia. In relation to the experience of school¹⁵⁹ the young people discussed the need for schools to be safe places for all pupils, including those who are gay or lesbian:

"You should have a right to safe education – at all ages – that is appropriate or relevant to people's needs."

They described how their education took no account of their sexual orientation, rendering them invisible and unprotected in relation to their rights.

¹⁵⁴ Statistical Report no. 3. Hate Incidents and Crimes 1st April 2006 – 31st March 2007 PSNI May 2007.

¹⁵⁵ ARK, Young Life and Times Survey (2006).

¹⁵⁶ Quiry, M. (2007) A review of the Review of the Impact of Discrimination and Social Exclusion on Lesbian and Bisexual Women's Health in Northern Ireland (Lesbian Advocacy Services Initiative).

¹⁵⁷ NSPCC (2006) Childline casenotes – Calls to Childline about sexual orientation, homophobia and homophobic bullying.

¹⁵⁸ Haydon, D. (2007) UNCRC - Consultation with Children and Young People OFMDFM.

¹⁵⁹ See further the section on bullying in the Protection Chapter, for information on the extent and impact of homophobic bullying.

"Equality and sexuality are discussed in jobs and at FE/HE but not in schools – teachers think if you find out about sexuality at an early age you may 'turn that way'!"

"There's a fear of actually promoting homosexuality."

"There are gay rights in the workplace. Young people in schools should have gay rights."

"If we have civil partnerships now, and homosexuality is recognised as a way of life, why is this not recognised in schools?"

"If you put in the GLYNI website at school or in libraries for information about sex or relationships, access is blocked so young people can't get that information."

GLYNI argued that, given their experiences of bullying, homophobia needs to be explicitly included in school anti-bullying policies:

"Teachers know when a young person picks on another young person because of who they are. If it's because they're gay, the teacher ignores it. If it's because they're black, the teacher sees it as racism."

"Young people need to know that all bullying will be taken seriously, including racism and homophobia. And that there are different ways of dealing with specific issues."

"It's important to have it in writing."

"Policies need to include how they will deal with the repercussions of bullying."

"Teachers don't know how to deal with it [homophobic bullying]. They say things like 'You just have to have a thick skin'. They don't understand your feelings."

"I was told to 'Get into football more'."

GLYNI specifically raised the issue of their access to information and support. Gay and lesbian young people did not feel able to approach counsellors in school because of the risk of 'outing' themselves. They feared that if they spoke with teachers or counsellors, they would be 'outed' to their parents. This had been the experience of a number of young people in the GLYNI group. Teachers did not respect confidentiality – they perceived 'being gay' as an element of 'risk' or 'harm' which needed to be reported. It was not uncommon for young people to be referred to a psychiatrist when they came out:

"Being gay is seen as a mental illness. That's how we're treated."

"[We're referred] because of being gay, not because of the feelings, emotions, experiences we're going through because of the treatment we receive. That's the actual problem."

Given the fears expressed here it is unlikely that the government's initiative to introduce counsellors into every post-primary school will be effective in reaching lesbian and gay young people. It is clear that these young people require specific supports to deal with the pervasive homophobic discrimination they face in school and other areas of their lives. Government should ensure that the Contact Youth Organisation is equipped to take the steps necessary to reach and provide relevant services to lesbian and gay young people, through their schools counselling. This may involve awareness raising and skills training for counsellors and additional programmes specifically targeted towards lesbian and gay young people.

In a recent Youth Action research report¹⁶⁰ a young lesbian describes her experience of being rejected by her family when they found out she was a lesbian, in particular by her father and brother. As a consequence she was physically abused by her brother and had to leave the family home. Following this she experienced homelessness and severe financial hardship. This example starkly illustrates the spiral of vulnerability young people face as a result of societal attitudes towards homosexuality. Research on the experiences of lesbian, gay or bisexual young people is a relatively new area in Northern Ireland. There is a concern that, given prevailing homophobic attitudes in Northern Ireland some agencies are reluctant to lobby on behalf of these young people. The perception is that given the views of some who hold high political office¹⁶¹, raising concerns about the serious issues facing lesbian, gay and bisexual young people would mean those agencies losing the political 'ear' they relied on to effect change. Or that those who raise such issues may lose credibility in arguing for less contentious rights for children and young people.

In light of the emerging information about the rights violations experienced by lesbian, gay and bisexual young people, it is critically important that children's rights advocates do not balk from highlighting these issues in the public and political arenas.

A recent report¹⁶² examines the mental health of same-sex attracted young men in Northern Ireland. This study involved 190 questionnaires and sixteen in-depth interviews with young men. Key findings include:

- Nearly one third (32.4%) of the respondents reported a General Health Questionnaire (GHQ) 12 score of four or above. This indicates that nearly one third showed signs of a mental health problem.
- Over one third (34.4%) of the respondents had been diagnosed with a mental illness at some time in their lives.
- In total, 37.9% of respondents received professional help and a further 3.2% had been referred for professional help and did not follow it through.
- Nearly two thirds (65.4%) of the respondents who received professional help indicated that it was related to their sexual orientation.

¹⁶⁰ Mc Alister, S. Gray, A.M. Neil, G. (2007) Still Waiting – the stories behind the statistics of young women growing up in Northern Ireland, Youth Action.

¹⁶¹ Ian Paisley Jnr., Junior Minister with responsibility for children was formally censured by the Northern Ireland Policing Board for homophobic comments. He described homosexual relationships as immoral, offensive and obnoxious. (RTE News: www.rte.ie/news/2005/0203/paisleyi.html)

¹⁶² McNamee, H. Out on Your Own – An examination of the Mental Health of Young Same Sex Attracted Men. The Rainbow Project, 2006.

- Over one quarter (27.1%) of the respondents had attempted suicide.
- Over two thirds (71.3%) of respondents had thought about taking their own life.
- Four out of five (80.5%) of the respondents who had suicidal thoughts indicated that the suicidal thoughts were related to their same-sex attraction.
- Within the survey, 30.7% of the respondents had self-harmed. One fifth (20.6%) of the respondents had self-harmed more than once and 11.1% had self-harmed once.
- Two thirds (64.4%) of those who had self-harmed indicated that the self-harming was related to their same-sex attraction.
- Nearly half (46.8%) of the respondents were afraid people would harass them if they came out more publicly.
- Over one quarter (26.3%) would be extremely unhappy if their sexual orientation was made public.
- Over one quarter (28.4%) felt critical about themselves when they thought about their sexual orientation.

The author concludes that the impact of living in a homophobic and heterosexist society, coupled with the isolation that being non-heterosexual may bring, plays a major part in the incidence of emotional and mental health difficulties, suicidal ideation and self-harm, among these young men.

The high level (71.3%) of suicide ideation among young gay men is an alarming figure. The issue was highlighted by President Mary McAleese in an address to the International Association of Suicide Prevention Conference in Killarney in August 2007¹⁶³. The President, who is Patron of the Irish Association of Suicidology, said the link between sexual identity and suicide had to be addressed. The President went on to say:

There is still an undercurrent of both bias and hostility which young gay people must find deeply hurtful and inhibiting. Homosexuality is a discovery, not a decision, and for many it is a discovery which is made against a backdrop where, within their immediate circle of family and friends as well as the wider society, they have long encountered anti-gay attitudes which will do little to help them deal openly and healthily with their own sexuality.

The UN Committee has also raised the realisation of the rights of young lesbians, gay men and bisexuals as an issue requiring attention. Following its examination of the UK periodic report in 2002 it included the following Concluding Observation.

The Committee is concerned that homosexual and transsexual young people do not have access to the appropriate information, support and necessary protection to enable them to live their sexual orientation (Para. 43)

They recommended that the UK Government should:

Provide adequate information and support to homosexual and transsexual young people, and encourages the State Party, further to the statement of intent made by its delegation to repeal section 28 of the Local Government Act 1988, where it applies. (Para. 44d)

¹⁶³ Irish Times 31st August 2007.

That this right is still being denied is clear in the experiences described by the GLYNI group. Far from being provided with information and advice they found that their access to such advice, provided by the voluntary sector, was actively blocked by the authorities.

It is worth noting that many transgendered activists assert that their issues are related to gender, not sexual orientation¹⁶⁴. It is worrying to note that while there is increasing anecdotal evidence that transgendered young people are encountering a range of discrimination, in areas such as the health service and education, this has yet to surface in the literature. The absence of information related to the experiences of transgendered young people in Northern Ireland means that their needs and rights are unaccounted for. It is not unreasonable to conclude that the silence on these issues may be related to prejudicial attitudes, akin to those that have governed the debate on rights violations concerning sexual orientation for many years.

Given the information presented in relation to mental health and suicide it is disappointing to note that very little mention of how these issues relate to young lesbians, gay men and bisexuals appears in either the Bamford proposals or the Suicide Prevention Strategy. Equally, while a Sexual Orientation Strategy has been developed this is largely focused on issues related to adult lesbians, gay men and bisexuals.

Some progress has been made in relation to the UN Committee's recommendation. Section 28 has been repealed across the UK (it never applied to Northern Ireland). The government here has brought forward legislation to end discrimination against the gay community in relation to the provision of facilities, goods and services. However, the introduction of the legislation was met with fierce opposition by a range of religious groups, including the Christian Alliance and the Northern Bishops of the Catholic Church. Those organisations mounted a successful judicial challenge resulting in the striking out of some aspects of the legislation.

The consultation on proposals to develop a new adoption strategy and accompanying legislation included a measure that would allow same-sex couples who have a Civil Partnership to apply to adopt. This proposal was subject to an orchestrated campaign by religious groups. The DHSSPS reported that the issue provoked the largest response and opposition. According to the DHSSPS:

We are aware that material was circulated in some circles, providing advice on how to respond to the consultation. This material stressed that it was not necessary to read the consultation document.

Among comments received were the following:

- 491 respondents stated that there was strong opposition to the proposal as the majority of Northern Ireland men find homosexual practice wrong.
- There were 313 responding along the lines that the proposal was "unbiblical", "unchristian" or "immoral".

¹⁶⁴ Campaigners lobbied for their issues to be included in the OFMDFM Gender Strategy rather than the Sexual Orientation Strategy. Commenting on the Gender Strategy The Belfast Butterfly Club subsequently expressed disappointment that "throughout the document transgender is an occasional add-on rather than an integral part of the strategy" www.ofmdfmi.gov.uk/transgender-2.pdf

The Department has decided to go ahead with the proposal noting that they:
...cannot consider judgemental statements about people's sexuality. If we did, we would be in breach of the raft of legislation referred to earlier. Children can thrive in many different types of family structures and the most important thing for them is that they are loved and cared for by their carers.

The proposed measure is intended to increase opportunities for permanency for children, is clearly in their best interests and is an effort to enhance compliance with the UNCRC. However, because it is related to sexual orientation it has been met with a concerted oppositional effort by a significant proportion of people in Northern Ireland.

Those wishing to work towards a realisation of the rights of lesbian, gay and bisexual young people here would do well to develop strategies to counter such reactionary and well resourced opposition. Such strategies need to include a clear rights based and publicly articulated focus, public education campaigns and resourced partnership work with lesbian and gay organisations.

Children in the justice system¹⁶⁵

Article 40 of the UNCRC requires States to promote a distinctive system of juvenile justice for children. It contains a list of minimum guarantees for the child and it requires State parties to set a minimum age of criminal responsibility, to provide measures for dealing with children who may have infringed the penal law without resorting to judicial¹⁶⁶ proceedings and to provide a variety of alternative dispositions to institutional care. The Committee on the Rights of the Child has consistently commended the United Nations rules and guidelines on juvenile justice as providing relevant standards for the implementation of the CRC. The CRC along with the United Nations' rules and guidelines call for the adoption of a child-orientated system. The United Nations' rules and guidelines are as follows:

- United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 ('The Beijing Rules');
- the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 ('The Havana Rules');
- the United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990 ('The Riyadh Guidelines'); and
- the United Nations Standard Minimum Rules for Non-Custodial Measures, 1990 ('The Tokyo Rules).

Overarching the provisions relevant to justice and policing within the context of children and young people are the four general principles of the UNCRC – non-discrimination, best interest, survival and development and the right to be heard, as detailed in the chapter on Implementation.

¹⁶⁵ This section should be cross-referenced with the corresponding section in the Implementation chapter to obtain a greater overview of the current position.

¹⁶⁶ Implementation Handbook for the UNCRC

Following the report from the UK and Northern Ireland, the Committee published Concluding Observations¹⁶⁷ detailing aspects of the report it felt merited particular attention.

As regards the child's right to be heard, the Committee on the Rights of the Child held a Day of General Discussion on the Right of the Child to be Heard (2006)¹⁶⁸ The Committee made detailed recommendations relevant to youth justice and policing, which include the right of children to be heard in all judicial and administrative proceedings and the necessity for child-appropriate complaint systems.

As a result of the States Parties' performance in the field of juvenile justice, the Committee issued a General Comment to provide States Parties with more elaborated guidance and recommendations for their efforts to establish an administration of juvenile justice in compliance with the UNCRC¹⁶⁹. The Committee hopes that, by assisting States in this way, the best interests of children and young people will be served as well as the short and long term interest of the whole society. The Committee considers that a comprehensive policy for juvenile justice must deal with the following core elements:

- the prevention of juvenile delinquency;
- interventions without resorting to judicial proceedings and interventions in the context of judicial proceedings;
- the minimum age of criminal responsibility and the upper age limits for juvenile justice;
- the guarantees of a fair trial; and
- deprivation of liberty including pre-trial detention and post-trial incarceration.

The Committee provides detail throughout the General Comment on how States can be alert to possible violations within each of these core areas and makes recommendations to enable States to become more Convention compliant.

In light of these comments by the Committee it is very concerning that the government persists in facilitating the violation of the rights of children across the broad spectrum of the criminal justice system.

The sixth report of the Justice Oversight Commissioner¹⁷⁰ is also the final report. The Justice Oversight Commissioner was appointed in June 2003 to oversee implementation of the Criminal Justice Review in Northern Ireland. He published reports every six months which detail the progress made towards implementation of the various recommendations. The report notes progress in the areas and it appears that the following recommendations relating to children and young people have yet to be implemented or are only partially implemented:

- youth conference coordinators;
- youth conference Inter-agency Body;
- community restorative justice schemes ;

¹⁶⁷ CRC/C/15Add.188, Committee on the Rights of the Child, Thirty-first session, 4th October 2002

¹⁶⁸ "Speak, Participate and Decide – The Child's Right to be Heard", Forty-third Session, 11-29 September 2006.

¹⁶⁹ CRC/C/GC10, UNCRC General Comment No.10 (2007) Children's rights in Juvenile Justice Committee on the Rights of the Child, Forty-fourth session, 9th February 2007.

¹⁷⁰ Office of the Justice Oversight Commissioner, published June 2006, Sixth and final Report.

- provision for 10 to 13 year olds;
- Young witness service (to be rolled out to the youth courts);
- impact of devolution on juvenile justice;
- victim's advocate; and
- cross-border facilities – youth conference orders.

The recommendations from the report require immediate implementation as they detail serious rights violations against vulnerable young people exposed to the criminal justice system.

Age of criminal responsibility

In its General Comment no.7¹⁷¹, early childhood is defined by the Committee as the period below the age of eight years. They recommend that State parties review their obligations towards young children in the context of this definition (Para. 4). The Committee states that under no circumstances should young children be included in legal definitions of minimum age of criminal responsibility (Para. 36i).

In its General Comment no. 10¹⁷² the Committee discusses the age of criminal responsibility. It reports that this ranges across States from a very low level of age 7 or 8 to the commendable high level of age 14 or 16 (Para.30). The Committee states that under no circumstances should young children be included in legal definitions of minimum age of criminal responsibility. Although this General Comment states that "under no circumstances" should children under 8 years old be included in legal definitions of minimum age of criminal responsibility, there is persistent widespread unease that the age of criminal responsibility in Northern Ireland is 10 years of age. The Committee emphasised the need to establish structures of response that promote dignity and self-respect among children and young people. The Committee encourages States to increase their lower minimum age of criminal responsibility to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level (Para. 32).

In the 2002 Concluding Observations to the UK periodic report¹⁷³ the Committee raised the issue. It expressed particular concern that "the age at which children enter the criminal justice system is low with the age of criminal responsibility still set at 8 years in Scotland and at 10 years in the rest of the State Party and the abolition of the principle of *doli incapax*" (Para. 59), and among a set of other recommendations included a particular recommendation that the State Party:

...considerably raise the minimum age of criminal responsibility (Para. 62a)

The Committee has been extremely vocal on this issue. It has laid out precisely what States need to do to comply with the UNCRC in relation to the minimum age of criminal responsibility. Despite this, the age of criminal responsibility in Northern Ireland remains at 10 years of age. In light of the enduring commentary from the Committee, it is to be hoped that the recommendation of the Children's Working Group on the BOR¹⁷⁴ is given serious consideration by the government.

¹⁷¹ CRC/C/GC/7/Rev.1, 20th September 2006.

¹⁷² UNCRC, General Comment no.10 (2007) Children's rights in juvenile justice CRC/C/GC10

¹⁷³ UNCRC, Concluding Observations: United Kingdom of Great Britain and Northern Ireland: October 2002

¹⁷⁴ see chapter on Implementation.

Children in custody

The HMCIP/CJI inspection report into Hydebank Wood Young Offenders Centre (YOC) in 2005 highlighted serious concerns of ongoing and unjustified rights violations against young people in custody. The inspectors considered the first night arrangements for young people to be unsatisfactory. They noted that in the Special Supervision Unit all young people, including children, entering the unit were strip searched. On the first day of the inspection 34 young people under 18 years of age, four of whom were 16 years old, were held on the juvenile landings. It was also noted that the facilities and regime for juveniles at Hydebank Wood did not mirror that of the JJC, adding "nor would that be possible".

Recent figures indicate a rise in admissions to the juvenile justice centre – in 2006–07 436 admissions are recorded, slightly up from 2005–06. The high number of Police and Criminal Evidence (NI) Order (PACE) and remand admission to the JJC, standing at 157 and 237 respectively, does not suggest that custody is being used as a measure of last resort. The failure of the Northern Ireland Prison Service (NIPS) to keep data relevant to young people totally undermines any potential for seeking funding for and adopting appropriate services. Concerted efforts continue within the children's sector to try to effect change within NIPS in this regard. While NIPS does not keep statistics for those held under 18 years of age, it is possible to identify some worrying trends from the available data. In 2005–06, there were on average two boys aged 14–16 years held in the YOC and 105 17–20 year olds. Four boys aged 14–16 were received into immediate custody in that year and 229 17–20 year olds. For the same period there were on average two girls aged 14–16 and nine girls aged 17–29 received into immediate custody.

The particular vulnerability of young girls in custody was highlighted in the NIHRC research 'Still in Our Care' (2006)¹⁷⁵, a report that recommended that a strategy for girls in custody should be developed and that "JJC policies should specifically address gender issues including development of a policy for dealing with vulnerable girls". Still in Our Care provides a detailed study of children in custody in the JJC for Northern Ireland and finds that custody for children is not used as a last resort as required by human rights standards. This follows from a previous NIHRC investigation into children's rights in custody in Northern Ireland, *In Our Care*, published in 2002. The 2006 report identifies particular areas of concern, among them:

- Custody should only be used as a last resort and for the shortest possible time.
- Recent legislative developments in Northern Ireland have placed a welcome emphasis on restorative justice and diversion from the criminal justice system. However, the introduction of ASBOs has the potential to further criminalize children and to lead to an increase in child custody.
- The NIHRC remains concerned about the persistent high levels of custodial remand and detention of children under PACE.
- There is still an over-representation of children from looked-after care in the JJC.
- The age of criminal responsibility, at 10 years, is too low and the report recommends that it be significantly raised following appropriate consultation.

¹⁷⁵ Convery, U., Moore, L., (2006) Still in Our Care, NIHRC

- International human rights standards state that children should not be held with adults in prison, yet children under 18 years of age are still held in prison service custody at Hydebank Wood Prison and Young Offenders Centre.
- Handcuffing of children should be reduced and, if possible, eliminated.
- Greater family contact should be facilitated.
- The Commission supports the Criminal Justice Inspectorate (NI) recommendation that a review be carried out of incidents of restraint, taking into account staff and young people's views.
- All JJC policies and practices should explicitly incorporate human rights standards.

The report also found improvements including: a marked improvement in facilitating children's right to be heard through consultation and NGO involvement and a shift towards a more child-centred approach in terms of physical conditions, policy developments, attitude of management and staff, emphasis on staff training and reduction in the use of physical restraint and separation.

The NIHRC report 'The Prison Within – The imprisonment of women at Hydebank Wood 2004–2006'¹⁷⁶ is based on primary and documentary research into the rights of women in Hydebank Wood Prison and Young Offenders Centre. The report makes some disturbing findings which impact on the human rights of young women and girls:

- It recommends that the women's custody unit should establish a distinct gender-specific identity supported by a discrete management structure.
- The women's unit is restricted to four accommodation landings, with a capacity of 14 cells on each landing.
- The report concludes that human rights standards requiring appropriate separation of different categories of prisoners cannot be realised within this environment.
- Girls under 18 years of age are detained in Hydebank Wood. The holding of children under the age of 18 in prison custody is a serious breach of international human rights standards and should be ended.
- The research found no age-appropriate regimes or policies relating to girls and young women.
- Human rights standards state that the imprisonment of mothers and babies and young children must be a last resort. The report recommends the development of appropriate community-based facilities for mothers of young children as an alternative to imprisonment.

Consistent concerns from the children's sector NGOs in relation to the detention of children and young people are:

- All 17 year-olds are vulnerable and therefore all should be sent to the JJC as opposed to the YOC (not just those, at present, considered to be vulnerable).
- Fifteen year olds can be sent to the YOC if they are perceived as being a danger to themselves.
- Children should not be held in Hydebank Wood or in prison.

¹⁷⁶ Scraton, P., Moore, L., NIHRC July 2007, The research follows an earlier Commission investigation into conditions for women and girls at the Mourne House Unit, Maghaberry Prison published as "The Hurt Inside" (2005).

- The family needs of young people in custody are largely ignored.

The 'Hydebank Wood Young Offenders' Centre and Prison Visiting Committee and Board of Visitors Annual Report 2004–2005' also makes several recommendations of relevance to young people:

- In-cell sanitation should be provided for women prisoners in Ash House.
- Early consideration should be given to the provision of a custom-built women's prison for Northern Ireland.
- New arrangements should be made to accommodate women inmates considered at risk of self-harm.
- Child protection training for Juvenile Unit Staff should be provided.
- The specific needs of women prisoners should be addressed as part of the anti-bullying policy.
- Suicide awareness training should be given a priority.
- A substitute should normally be employed for all teacher and vocational training instructor long-term absences.

An unannounced inspection of Hydebank Wood and Young Offender Centre was carried out on the 14–17 March 2005. This inspection was a follow-up of one carried out in 2001 and found the following:

- Only one recommendation had been achieved – improved systems for managing suicide and self-harm. Other areas such as in-cell sanitation, sufficient education and training and improved time out of cell had not been addressed.
- Praise for standard of accommodation and environment. There have been no self-inflicted deaths at Hydebank Wood. Some of the young people at Hydebank Wood felt safer inside than outside.
- First night and anti-bullying procedures need to be developed. There were concerns that too many vulnerable young people were being placed in strip-clothing and special cells as a first response to fears of self-harm.
- There were concerns about the severity of punishments used in the 'block' and the lack of formal records and evidence of support or a structured regime for those held there.
- Staff/prisoner relations have improved but there is little positive engagement.
- Sanitation at night was found to be unacceptable.
- Time out of cell (10 hours) was not achieved during industrial action.
- There was insufficient education and training for young prisoners.
- Resettlement was praised. Good awareness training on drugs and alcohol was provided but it should have been done alongside residential staff.

A Review of 10–13 year olds Entering Custody¹⁷⁷ presents findings from a review of 10–13 year olds who were admitted to custody in the JJC between January 2003 and August 2004. During that time there were 29 children in this age group admitted to custody; between them they had a total of 71 admissions to custody over that period. The Criminal Justice Review, which reported in March 2000, stated that 10–13 year old children "should not be drawn into the juvenile custodial system and that the presumption should be that they will be diverted away from prosecution unless they are

¹⁷⁷ McKeaveney, P. (2005) 'Review of 10-13 year olds entering Custody', Belfast, YJA.

persistent, serious or violent offenders". Based on the findings of the review, observations and recommendations have been drawn out seeking to address the lack of appropriate structures and the barriers faced by these vulnerable young people. Recommendations include the need for intensive support programmes for families to provide timely, tailored response to individual circumstances and the development of new schemes and programmes to prevent offending. The recommendation that "custody should not be used as alternative accommodation to secure care or as respite care for parents or Trust carers as this brings with it human rights issues" is particularly relevant in light of the feedback for this research from professionals within the children's sector who reported frequent use of custody for 'troublesome' children when they could not be placed elsewhere. This detention without suspicion/charge or hearing is a violation of the rights of young people. Their detention must also be viewed in light of the identified systems failures preventing young people in custody accessing effective participation, advocacy and complaints systems.

While research has established that young people in custody face rights violations in relation to their participation in and ability to access systems of management, there are further concerns that the education and training of staff in Hydebank Wood is minimal compared to the JJC. As previously stated the recommendations from research conducted on behalf of the NIO in 2005 remain outstanding – including the role of appropriate adults, the difficulty young people have in understanding information given and their rights, and the needs of families to be kept informed of developments.

There is also no formalised planning for the re-integration of the young people or care planning for those who need it. As detailed elsewhere in this report, looked-after children are over-represented in custody and yet little provision is made for their needs while in prison or in preparation for release. This represents a total failure on the part of the government to secure the family life rights to which these children are entitled under both the European Convention on Human Rights and the UNCRC. Barriers to contact with their families take many forms, for example, a lack of privacy at visits. In the first three months of 2006, 341 children under the age of three years old used the crèche in visits at Hydebank Wood. This suggests the need for parenting classes and child-centred visits for the young men and women in custody but neither service is offered or planned.

The NIO currently has responsibility for the education of children in custodial settings. Such young people do not currently enjoy the right to be educated, as other children are, under the NI Curriculum. As their right to education is not being met under these arrangements it may be both more appropriate and necessary to place responsibility for their education with DENI.

Reparation Orders and Community Responsibility Orders

Consideration was given to new sentencing options implemented in 2002 in the NIO report *An assessment of the Reparation Order and Community Responsibility Order in Northern Ireland*.¹⁷⁸ The purpose of the research was to examine the use,

¹⁷⁸ NIO, released 15th December 2006. The methods used to carry out the study included a literature review to set the orders in context, the collection and examination of all available statistical information relating to the orders, and interviews with a range of key stakeholders including the young offenders, their parents/carers, magistrates,

implementation and management of two new Orders in Northern Ireland, specifically the Community Responsibility Order (CRO) and the Reparation Order (RpO).

The CRO is unique to Northern Ireland and involves a minimum of 20 and a maximum of 40 hours commitment from the offender, to a combination of instruction in citizenship and reparative activities.

An RpO involves a total maximum commitment of 24 hours, during which the offender is expected to carry out some sort of reparative activity, either directly to the victim or indirectly. The two Orders were to be supervised by the Youth Justice Agency Community Services (YJACS) projects of which there are now 23 across the province; and both Orders required the consent of the offender.

Introduction of the new Orders in Northern Ireland

The two new Orders, the CRO and the RpO, were introduced to Northern Ireland through the Justice (Northern Ireland) Act 2002. The Act also introduced the Youth Conference Order and, since all three of these were based on the principles of restorative justice, taken together they marked a new approach to dealing with youth offending. The new sentences were introduced in December 2003 and gave the courts more options when dealing with young people found guilty of offending. A Youth Conference Order was to be the first option for disposal but if the young offender did not consent to it then the CRO or RpO were introduced as viable alternatives.

Recipients of the Orders

The majority of the Orders were given to young male offenders (over 81%) and many of those who received one of the Orders had a previous conviction (over 64%). This means that for just over one third of the young people the Order was their first conviction. The average age for all of those who received an Order was just over 15 years old. Over a quarter of those given Orders were looked-after children and the offence in at least half of the cases had been committed in the residential care home. Theft, criminal damage and assault were the three main offences for which an Order was given; these were also the three offences that accounted for the highest number of referrals to the Youth Conference Service.

Response of young people to the Orders

There was agreement that most of the young people engaged with the work of the Orders in a positive way: at the time of writing over 44% of the Orders had been completed, most within the timescale of six months. During interviews carried out with a number of the young people who had received an Order, most agreed that although there was some initial apprehension, they had enjoyed the work at the various projects and external agencies. For most, the achievement of completing a practical task, and being given recognition and praise for this work, was a matter of some pride, perhaps an indication that this experience of success was not well-known to them.

The key findings of the research are as follows:

personnel from the Youth Justice Agency Community Services (YJACS) and the Probation Board for Northern Ireland.

- The two new Orders were slow to be used by the courts to begin with, with only three Orders in the first year. However, by the end of the data collection for this study there had been a total of 59 Orders, consisting of 54 CROs and five RpOs.
- The majority of the Orders were given to young male offenders (over 81%) and many of those who received one of the Orders had a previous conviction (over 64%).
- The new Orders were well received by all those involved in the process of managing and delivering them, including the YJA Community Services, the Probation Board, the courts, and other external organisations and groups. All concerned felt that the Orders represented an improved and more constructive way of dealing with young offenders.
- External agencies who worked with young people on the Orders were, in general, complimentary about the kind and level of work carried out by the young people and felt it had a positive impact on the attitudes of the young people.
- There was agreement that most of the young people engaged with the work of the Orders in a positive way: at the time of writing over 44% of the Orders had been completed, most within the timescale of six months.
- Although most of the Orders were CROs, where there was no obligation to contact victims, some interviewees were convinced that it would have been beneficial to do so. It was felt that there needed to be more work done to try to encourage the participation of victims.
- The legislation was new, and it was not unexpected that there would be some teething problems of management and practice. These were not thought to be of a serious nature, and most stakeholders agreed that they would be ironed out in the near future.

Youth conferencing

Youth conferencing aims to balance the needs of the victim and the young offender (10–16 years) by agreeing plans of action which satisfy the victim and create opportunities for the young person to make amends and stop committing crime. Evaluation of the Youth Conference Service (2006)¹⁷⁹ provided results on the impact of the service and included the following:

- 322 referrals were received by the Youth Conference Service within the period of research, 31% from the Public Prosecution Service and 69% from the court.
- 89% referred for a diversionary conference had no previous offences for which they had been sentenced.
- Most young people referred to a conference were male (86%) and aged 14–16 (77%).
- A significant proportion of young people referred to a conference were in the care system (29%).

Despite the overall positive report, those within the children’s sector express concerns that the use of youth conferencing may be undermining the restorative justice approach envisaged in the legislation. The problem arises in that children are undergoing court

¹⁷⁹ Campbell, C., Devlin, R., O’Mahony, D., Doak, J., Jackson, J., Corrigan, T., McEvoy, K., Statistics and Research Branch, NIO, October 2005.

ordered youth conferences for minor offences thereby bringing them into the youth justice system rather than being more appropriately diverted to community based diversionary schemes. This exposes young people to the criminal justice system when they may otherwise be dealt with in a less formal and more focused way. Already in the relatively early stages of the system, there are suggestions that the numbers being directed to youth conferencing is putting a significant strain on the system as well as not allowing the underlying reasons for offending to be appropriately addressed.

Bail supervision and support

Bail supervision and support (BSS) are community-based activities in programmes designed to help ensure that defendants awaiting trial or sentence successfully complete their period of bail by returning to court on the due date, without committing offences or interfering with the course of justice, and to assist the bailee to observe any conditions of their bail. Such programmes may be run by the bail supervision and support scheme itself or through referral to specialist organisations. The 'Evaluation of the Bail Supervision and Support Scheme (2005)'¹⁸⁰ report noted that overall satisfaction amongst the participants in the BSS scheme was high although the impact of BSS on the bail decision was inconclusive. All of the young people interviewed noted some form of benefit and believed they were less likely to re-offend as a result. The most positive attribute of the scheme was thought to be the dedicated and caring staff including project workers and foster carers. Parents were also highly satisfied with the programme. It is important to continue to monitor the use of the BSS scheme to ensure its continued compliance with human rights standards.

Community Restorative Justice

The NIO has recently issued a Protocol for Community-based Restorative Justice Schemes (2007)¹⁸¹. This is a result of the recognition of the finding in the Review of Criminal Justice that community-based restorative justice schemes can have a role to play in dealing with the types of low-level crime that most commonly concern local communities. The Protocol seeks to establish a framework for relations between the criminal justice system and the community-based schemes by setting in place a Protocol for the operation of the schemes in line with the Review's Protocol for the operation of the schemes in line with the review's recommendations. That framework is based on schemes' compliance with the rule of law and full co-operation with statutory agencies, including the police, in implementing the Protocol.

Experiences in communities

The 'Children in Organised Armed Violence (COAV)'¹⁸² report into 'Young people and armed violence in Northern Ireland (2005)'¹⁸³ carried out interviews with adults who had been involved as children and young people in paramilitary groups on both sides of the conflict over the last thirty years as well as interviews with young people between 15 and 24 years who were not members of paramilitary organisations, but lived in areas severely affected by the conflict and/or interface communities and were

¹⁸⁰ NIO Research and Statistical Series: Report no.13.

¹⁸¹ NIO, CJSNI, 5th February 2007.

¹⁸² This report is part of an international research project on children and youth organised armed violence.

¹⁸³ Smyth, M., Campbell, P., Institute for Conflict Research and Breen Smyth Consultants.

involved in “anti-social violence” or “recreational rioting”.¹⁸⁴ The report details that, in Belfast alone, there are 27 interfaces where sporadic violence punctuates the lives of residents. It makes the following recommendations for “possible state interveners” as they consider the recommendations address the situation of both young people involved in politically-motivated armed violence and those involved more recently in “anti-social” violence. The recommendations should be read in light of developments since the report was written, e.g. ASBOs have been introduced despite widespread and intense resistance from the key stakeholders in the youth justice sector. The report concludes that “[A]nti-Social Behaviour Orders, which merely replicate in the mainstream the kind of physical exclusion enforced in the past by paramilitary groups in Northern Ireland” reflects concerns expressed in the Committee on the Administration of Justice report: ‘Change and Devolution of Criminal Justice and Policing in Northern Ireland: International Lessons’¹⁸⁵ which carried out comparative analysis of other jurisdictions and concluded:

In South Africa, for example, there was a very strong message coming from those interviewed that the issue of dealing with crime should be central to the devolution debate. If the tackling of crime is not centre-stage, it was feared that the momentum of change could be lost and the tried and largely failed traditional methods of responding to crime would become the ‘default’ option.¹⁸⁶

Anti-Social Behaviour Orders

The very existence of ASBOs in relation to children represents a serious infringement on their human rights. The nature of the legislation is that it falls within the civil justice arena, yet a breach of a condition of an ASBO triggers criminal sanctions. This anomaly may play a significant part in the difficulty in obtaining information about the nature and frequency of ASBOs and their application and impact on children and young people. This presents a significant barrier to the role of monitoring the impact of legislation which may have serious consequences for young people. In his report published on the 8th June 2005, Mr Alvaro Gil-Robles, Commissioner for Human Rights, Council of Europe stated that ASBOs are “particularly problematic” and that:

...the ease of obtaining such orders, the broad range of prohibited behaviour, the publicity surrounding their imposition and the serious consequences of breach all give rise to concerns... I find the combination of a criminal burden of proof with civil rules of evidence rather hard to square.

NICCY unsuccessfully judicially challenged the introduction of ASBOs within Northern Ireland and they have again raised concerns¹⁸⁷, in response to the NIHE’s proposals for introducing policy and procedures in relation to ASBOs. These include:

- With reference to both Article 12 (UNCRC) and Section 75 (NI Act), and considering that ASBOs are of great relevance to children and young people, NIHE should seek to engage them in direct and meaningful consultation about

¹⁸⁴ Most of the interviewees came from Belfast or Derry, although some lived in large towns in County Antrim.

¹⁸⁵ CAJ January 2006

¹⁸⁶ At pg 123

¹⁸⁷ Response by the Northern Ireland Commissioner for Children & Young People (NICCY) to the Northern Ireland Housing Executive (NIHE) Consultation on ‘Statement of Policy and Procedures on Anti Social Behaviour’ 2006

this important issue.

- NICCY strongly recommends that NIHE adopts a children's rights-based focus, by making explicit reference to the appropriate Articles of the UNCRC.
- The context of anti-social behaviour by children and young people should always be taken into consideration.
- It is imperative that the age of the perpetrator is taken into consideration when dealing with complaints about anti-social behaviour and that NIHE officers are appropriately trained in this area.
- In relation to anti-social behaviour associated with children and young people, it must be routine practice that all other means of intervention are thoroughly exhausted before ASBOs are even considered as an option.
- NIHE should make it clear that children and young people should NOT be publicly named and shamed but get the professional help that they require to address their behavioural problems.

A prime concern for NICCY is that children and young people do not become the prime targets for the use of ASBOs. If ASBOs are not applied with extreme caution then the consequences for children and young people could be detrimental to their life chances. It is also NICCY's view that a process of 'naming and shaming' merely serves to isolate and stigmatise children and young people and does not help them address their behavioural problems.

The Children's Law Centre has expressed concern around the use of ASBOs to 'effectively' tackle anti-social behaviour¹⁸⁸. They point to the situation in England and Wales, where there is little or no evidence to suggest that ASBOs are having the desired impact on anti-social behaviour. According to the Children's Law Centre, the cost of an ASBO has rendered ASBOs an extremely flawed and ineffective measure to tackle such behaviour. They point out that:

In April 2005, Home Office figures put the average cost of an ASBO at £5,350, but a Liberty report, 'Liberty's Evidence to the Home Affairs Committee on Anti-Social Behaviour', suggests this is a conservative estimate and has called for a cost and effectiveness analysis. If an order is breached, and in England and Wales, more than one in three are, Metropolitan Police estimate the cost as high as £100,000. In Northern Ireland the Armagh Community Safety Partnership has claimed that the cost of multiple orders will be too much for any public body to bear. In covering this story the *Belfast Telegraph* (7th February 2005) referred to a case in Manchester that was appealed both at the High Court and the Court of Appeal and cost the council £187,700.

In light of the lack of evidence to suggest that ASBOs are effective in addressing anti-social behaviour, the Children's Law Centre concludes that the vast sums of money involved could be more wisely invested in addressing the root causes of anti-social behaviour.

¹⁸⁸ Children's Law Centre: Response to the Northern Ireland Housing Executive's consultation on its Statement of Policy and Procedures on Anti Social Behaviour. January 2006.

Young people's views on anti-social behaviour

A number of studies have set out to explore what young people think about anti-social behaviour. These provide useful information about the causes and effects of such behaviour and the reality of young people's lives. In doing so they provide clues as to how this issue could be dealt with more effectively. They certainly illustrate that measures that effectively criminalise young people and their behaviour do little to address the problem.

Young people's views on anti-social behaviour were researched in 2006. The report 'Anti-social Behaviour and Crime – What is it and what should be done? – Opinions of Young People in the Greater Shantallow Area' (2006)¹⁸⁹ provides feedback from questionnaires circulated to Year 9, 10, 11 pupils in St. Brigid's College – 246 were collated. Almost all the respondents were 13–15 years old and the vast majority (80%) identified themselves as living in the Greater Shantallow Area. The focus of the research was to ask young people a number of questions directly related to anti-social behaviour – “the one target group that had no real opportunity to respond or who are seldom if ever asked about anti-social behaviour” – and to carry out research into the introduction of ASBOs, which at the time was attracting significant media attention. The researchers express their concern about much of the detail and implementation of ASBOs as is evident from their summary of findings:

- Fines proved to be the most popular punishment and young people recognised that there is still a clear role for parents in helping to resolve a variety of matters particularly in relation to certain behaviours where dialogue may be more effective. There is, however, very little support for the notion of meeting victims.
- Respondents generally look upon issues of noise at home or in the street, playing football in the street, engaging in graffiti and drinking in the streets as low-level disturbance that is not and should not be looked upon as a criminal offence and is questionable as to whether it should even be classified as anti-social.
- However, in the event that someone was caught stealing a car the majority favoured a prison sentence. Community Service did not top any of the lists of responses but consistently figured well as an option with percentages on all but four listed activities ranging between 13 and 24%.
- There seems to be a link between damage to property and that of employing fines as a response. Fines were more common where attacks on emergency or ordinary vehicles took place or where there was damage to property, i.e., domestic, school or environment (such as cutting down/burning trees or graffiti on a person's home). It seems that where damage affects individuals directly it is more likely to be viewed as a crime, for example, only one in five respondents viewed cutting down/burning trees or lighting fires in the street as a crime.

¹⁸⁹ Anti-social Behaviour and Crime – What is it and what should be done? – Opinions of Young People in the Greater Shantallow Area Off the Streets Community Youth Initiative, January 2006.

- As many young people viewed setting fire to an abandoned car as a crime as those who viewed it as anti-social behaviour (44%).
- Significant percentage differences show that whilst the 10–12 age group is more likely to be involved in stone throwing incidents, the 13–15 year-old age group is as equally likely to be involved in graffiti as 16–18 year-olds are involved in the use of drink and drugs.
- In general, around half of all respondents viewed stoning, the use of alcohol and drugs and causing damage more as anti-social behaviour than as a crime. However, and somewhat surprising, almost 7 out of 10 young people view stealing as a crime.
- Questions to a large extent concentrated on asking young people to classify certain behaviours as crime, antisocial behaviour or not at all. However, when asked to classify behaviours as acceptable or unacceptable this proved interesting. For example, figures for the same behaviours seen as 'Never OK' ranged from just over 63% for graffiti and using drink and drugs to causing damage (71.1%), stoning (77%) and stealing (79.5%).
- Six out of 10 said it was 'Never Ok' to stone a police vehicle, 1 in 4 said it was 'Sometimes Ok' but only 1 in 10 said it was 'Always Ok'.

A major study into young people and violence: 'Troubled Youth? Young People, Violence and Disorder in Northern Ireland'¹⁹⁰, looked at the attitudes of young people to a variety of forms of public disorder and violence in order to better understand the persistent problems being experienced in many areas across Northern Ireland. The authors considered that the "boundaries separating the different types of violence are very porous" and therefore approaches that help to rationalize or explain disorder at interfaces are relevant to understanding city centre disorder and anti-social behaviour. The diverse methodology included participant observation, interviews, focus groups, informal discussion, surveys and "an innovative form of participative action research". These were spread over a variety of distinct areas in both Belfast and Derry. This research also provides extensive direct feedback from young people.

One of the findings was that, in certain areas, fear of attacks and fights had become part of everyday life for many young people. The young people complained of boredom and "lack of things to do", and this featured heavily in the discussion with young people as factors that encourage their participation in forms of violent behaviour. Although safety was an issue, in general young women felt safe in their own residential areas, but they felt less safe when they moved further afield to neighbouring areas, regardless of the religious background. All young people complained about the lack of facilities, although in most cases it appeared to be less the case that there were no facilities, but rather they were not stimulating enough, or they were orientated to a different age group, not in a suitable area, or simply did not meet the needs of the young people. Many of the young people could identify a range of facilities that they would have access to in ideal circumstances, and while some of these would cost considerable amounts of money to provide, others could be

¹⁹⁰ Hansson, U., (2005) 'Troubled Youth? Young People, Violence and Disorder in Northern Ireland', Institute for Conflict Research, November 2005.

met if there were a more serious engagement with the young people to identify their needs.

The report found that the most successful interventions by youth, community and arts projects appeared to be those that aim to actively involve the young people from an early age, and invite the young people to help design and develop activities, rather than simply provide them for them. However, at one level many young people would be quite happy with a safe space that they could use to do little more than hang out with friends. The report also confirmed that geographical sectarian divisions impinge considerably on the lives of young people, through restricting movements, limiting access to resources and generally narrowing their social horizons. While many young people have reported having friends from the other community, they also noted the difficulties in engaging in sustained work with people from neighbouring interface areas, particularly where there has been a history of violence and hostilities.

In general, the relations between young people and the police and between young people and the paramilitary structures were not based on any sense of respect and trust, but rather on hostility and fear and were underpinned by a threat of violence. Rather worryingly, many of the young people seemed to accept that their reality was a life in which forms of threat and violence were a norm. They might expect to be verbally harassed and chased by the police, and on occasion they might be physically assaulted if they were caught. Equally, they lived with the threat of physical violence or intimidation from the local paramilitaries if they crossed certain boundaries of acceptable behaviour. Overall there was a sense of mutual suspicion and distrust between the young people and many of the adults who seek to impose a sense of order over public space or to impose their authority over the local communities. These mutual suspicious and mistrustful relationships are sustained not only by a lack of constructive dialogue, but also by the legacy of violence that legitimizes and condones the use of force too readily and in too many contexts.

The report concludes:

The challenges increasingly appear to be to work on the intra-community dimensions and try to improve young people's relationships within their communities. Although it has become something of a stock response to complain about a lack of facilities, it is still incumbent on adults and local organisations to engage more effectively with young people and to develop a more detailed approach to address their needs. The findings from the research showed that the needs and concerns of young people were similar throughout the areas and work is ongoing in many areas to involve young people in the design as well as the implementation of programmes and activities both through statutory agencies and voluntary groups. The intensity and energy that young people are prepared to commit towards some 'cultural activities' highlight the possibilities of a commitment and a valuable resource, which needs to be developed. What also comes across strongly from this research is that there is no single solution to the multitude of issues relating to violence and disorder involving young people. Rather, as has been noted by numerous other pieces of work, what is needed is a multi-agency approach to the issues of youth violence, involving representatives from the voluntary, community and statutory agencies.

It is apparent from UK wide studies that the lack of appropriate services and facilities, and the inability to access those that exist, results in the continued marginalisation of children and young people within society. When actively consulted, young people freely identify and acknowledge the isolating influence of the absence of age-appropriate services. This is a substantial block to their full participation as active members within society and serves to create circumstances where young people are seen as 'anti-social'. In a recent UK wide report, 'The Make Space Youth Review'¹⁹¹ 16,000 teenagers were consulted about their lives and what improvements they would like to see. Statistics indicated that as schools prepare to break up for the summer holidays, over one million teenagers could be wandering the streets because there is nowhere else to go. They discovered that young people were fearful for their own safety, with 60% of young people in deprived areas becoming victims of crime in their community; 80% of young people said they had nowhere to go and nothing to do outside school and hung around on the streets bored as a result; 70% of teenagers said that they believed that young people got involved in anti-social behaviour because they were bored; more than 70% of 11–16 year olds said that they have witnessed anti-social behaviour over the last year, whilst 12% of young people belong to a gang; 62% said that they did not know where to go to get help or information if they needed it. These figures identify the significant link between isolating young people by failing to meet their needs and the perception projected onto them by a society which has largely accepted the criminalisation of certain childhood behaviour.

The failure to address the lack of facilities and services appropriate to all children and the encouragement of viewing certain activity as potentially 'criminal' is difficult to defend when costs are considered. The 'Make Space Youth Review' reports that youth crime costs up to £13 billion per year compared to £1.6 billion spent by government on positive prevention and youth programmes. It costs £35,000 to put a young person in a detention centre for a year. The report made several key recommendations which would go some way to breaking down the barriers blocking the participation of children and young people in society. These included a youth centre in every community; support for parents; action on bullying and free public transport for all young people under 18 to ensure access for all.

Children as witnesses

Children and young people who attend court as either victims or witnesses are very vulnerable and require special service provision¹⁹². A recent Evaluation of the NSPCC Young Witness Service¹⁹³ confirms that this service is highly valued by young witnesses and their parents and held in esteem by other agencies. The following are some of the recommendations made:

- The NIO should proceed immediately to establish a working group to focus on how cases in the Magistrates/Youth Courts can be best served.
- A firm protocol must be established with both PSNI and PPS to ensure that referrals are immediate.

¹⁹¹ Source: 4Children Press Release 11th July 2007.

¹⁹² This issue is also mentioned in Chapter On 'General Measures of Implementation'.

¹⁹³ HSSP, Commissioned by NIO Community Safety Unit and Completed by SSI, June 2006.

- It would be preferable, in the interests of avoiding delay, to facilitate a pre-trial Direction Hearing in Magistrates' Court where it can be established whether the accused will plead guilty.
- It is important to reinforce the need for feedback from children after the court case.
- An approach should be made to PSNI and the PPS to explore why there are no children from ethnic minority backgrounds coming through as witnesses.
- The Inspection of Delay by the CJINI noted that cases involving children were subjected to greater delay – cases in which children are witnesses should be flagged, fast tracked and timetabled (in a similar manner to the Liverpool model).

It is clear that assisting young witnesses at court is essential to allow them to participate to a high level. The service provided by the NSPCC continues to be vital, therefore, in assisting and advocating for young people called as witnesses. However, the failure of the government to roll the young witness project out at all court levels means that not all children and young people have access to this service. Despite the special measures available for young witnesses who go to court, it is arguable that the decision of using the measures or not should be one for the young person rather than being a mandatory requirement irrespective of their views. Giving evidence by live link should only be considered on a case by case basis, with the informed consent of the child. The best interests of the child should be the primary consideration but this is not the focus of the legislation enacting the special measures legislation.

In January 2007 the NIO undertook a public consultation on a draft victim and witness five year strategy and its initial action plan proposals for 2007–2008. The draft strategy set out a number of proposals aimed at enhancing the delivery of services for victims and witnesses of crime across the criminal justice system. The summary of responses to 'Delivering a Better Service to Victims and Witnesses of Crime' was published in July 2007. Two children's sector organisations responded – the NSPCC and NICCY¹⁹⁴. Several points were raised in the consultation response which reflect the vulnerability of children and young people who find themselves as victims or witnesses of crime:

- Access to information: more effective outreach measures were advocated for, to capture the views of all sections of the community and in particular young people.
- Setting up a confidential telephone service supported by a liaison officer.
- Some concerns were raised about the accessibility of complaints mechanisms, particularly for more vulnerable groups such as children.
- The importance of consistent post-abuse treatment services for young people was highlighted.
- Those who identified the need for a full EQIA, considered that the strategic proposals had the potential to adversely impact upon people with disabilities and children and young people.

Several new pieces of legislation have recently been enacted that make provision for vulnerable witnesses in various settings. The Magistrates' Courts (Children (Northern Ireland) Order 1995 (Amendment) Rules (Northern Ireland) 2007 amend the

¹⁹⁴ There were 9 responses in total.

Magistrates' Courts (Children (Northern Ireland) Order 1995 Rules (Northern Ireland) 1996 to enable the court to allow a witness to give evidence through a video link or by any other method of direct communication. The Magistrates' Courts (Domestic Proceedings) (Amendment) Rules (Northern Ireland) 2007 amend the Magistrates' Courts (Domestic Proceedings) Rules (Northern Ireland) 1996 to enable the court to allow a witness to give evidence by video link or any other method of direct communication in domestic proceedings.

Vulnerability – drugs and alcohol

The UNCRC is explicit about the States' duties to protect children from the illicit use of drugs:

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances. (Article 33)

In General Comment no.4 the UN Committee points out that the right to information in Article 17 should include access to information on family planning, prevention of accidents, and the abuse of alcohol, tobacco and other harmful substances (Para. 10).

Recent research in Northern Ireland shows that the use of alcohol and drugs is increasing at alarming rates, and that some very young children are beginning to experiment with both substances. The Central Survey Unit of NISRA undertook a survey into primary school children's knowledge and use of drugs, cigarettes and alcohol in 2006¹⁹⁵ (DHSSPS 2007). The findings below, concerning drugs and alcohol are based on responses to a questionnaire from a representative sample of 3,734 primary school children in P5, P6 and P7.

- 38% (1,421) of all children surveyed (3,734) reported that they had tried alcohol, 56% of these were given it by their parents and the most common age (24%) was nine years old.
- 13% (485) of all children surveyed (3,734) reported that they were currently using alcohol. Of those pupils who currently drink, more than half (51%) drink only on special occasions such as Christmas, Easter, holidays or parties. A further 5% reported drinking alcohol about once a week whilst 1% reported that they drank every day.
- More than one in ten (13%) pupils who have tried alcohol have been in trouble as a result of drinking. Almost three in five (59%) of these pupils have been in trouble with their parents.
- More than four in five (81%) pupils had heard of drugs before the survey. The most commonly recognised drugs are cannabis (77%) and cocaine (71%).
- 5% of pupils who have heard of drugs, have been offered them.
- Of the pupils who knew what cannabis, solvents, ecstasy, cocaine and heroin were (90%) think that it dangerous to take to take cocaine, followed by cannabis (89%), heroin (85%), solvents (76%) and ecstasy (75%).

¹⁹⁵ Knowledge and Use of Alcohol, Cigarettes and Drugs Primary School Survey 2006, Central Survey Unit, NISRA, DHSSPS 2007.

- Less than 2% (1.6% = 58 pupils) of all children surveyed (3,734) reported that they had tried drugs. The drugs most commonly tried by pupils were cannabis (31%) and solvents (27%).
- Less than half of 1% (0.3% = 11 pupils) of all children surveyed (3,734) reported that they were currently using drugs. Of these more than half (55%) do so only a few times a year, more than one in five (27%) use them only on special occasions whilst fewer than one in five (18%) reported that they use drugs every day.
- More than one in three (34%) pupils who have tried drugs, have been in trouble as a result of taking drugs. The most common people that these pupils have been in trouble with are their parents (36%).

The Young Life and Times survey of 824 young people aged 16 in 2004¹⁹⁶ asked a series of questions about health risk behaviours, including drinking alcohol, using illegal drugs and solvent use (Ark: 2004). The most common behaviour was drinking alcohol. Results show that 77% of 16 year olds said they had drunk alcohol. Of these 8% drank alcohol only once, 30% a 'few times' and 39% 'many times'. Of the 49% of respondents who had smoked, 13% had done so once, 17% a 'few times' and the remaining 19% 'many times'.

In relation to using illegal drugs 19% said they had done so. Of these 6% had on one occasion, 8% a 'few times' and a further 5% 'many times'. The least common behaviour among the sixteen year olds involved solvent use. Only 5% had ever done so, 2% of these on one occasion, 2% a 'few times' and only 1% 'many times'. It is difficult to establish the level of information provided through formal structures which inform young people of the risks associated with alcohol and drugs. A substantial area of discretion is afforded to schools in Northern Ireland as to what they include in the detail of their classes. While citizenship classes can encapsulate a broad range of topics, both the content of such classes and the mode of delivery are entirely up to the school in question. This may mean that young people are not being provided with information in a uniform and comprehensive way that enables them to make real lifestyle choices.

The Drug and Alcohol Information and Research Unit (DAIRU) is located within the DHSSPS. The unit gathers statistics on problem drug users presenting to services for the first time, or for the first time in six months or more, during a twelve-month period¹⁹⁷. Statistics come from 50 treatment sites across Northern Ireland. A problem drug user is defined as a person who experiences social, psychological, physical or legal problems (related to intoxication and/or regular excessive consumption and/or dependence) as a consequence of their own use of drugs or chemical substances. Drugs are defined as any drug, whether prescribed or not, including solvents and tranquillisers but excluding alcohol and tobacco.

Information for the year 2005–2006 was based on 1,754 (95%) service users who consented to provide their details. According to these statistics, 468 teenagers presented for treatment during the year. Of these, 143 were aged 15 or under with the remaining 325 aged between 16 and 19 years of age. Overall 356 were male

¹⁹⁶ ARK, Young Life and Times Survey (2004).

¹⁹⁷ Statistical Bulletin 3/2006, Statistics from the Northern Ireland Drug Misuse Database, 2005–06 DAIRU / DHSSPS October 2006.

and 74 female. Of those aged under 15, the majority (83%) were being treated for cannabis misuse and 11% in relation to solvents. The older age group also comprised a majority (78%) of cannabis users with the next highest incidence (7%) relating to ecstasy. (Statistical Bulletin 3/2006: DAIRU/DHSSPS).

A further statistical bulletin has been produced by DAIRU in relation to a census type survey on treatment for the use of both alcohol and drugs during 2005–2007¹⁹⁸ (Statistical Bulletin 2/2007:DAIRU/DHSSPS). The survey provides a snapshot whereby a number of agencies record the numbers in treatment on the 31st March in each of the two years. Eighty-eight agencies were involved in the census in 2007. It is possible that individuals received treatment from more than one agency so some double counting may occur. In total 5,583 individuals of all ages were being treated on 31st March 2007.

It is of particular concern that the numbers of under 18 year-olds being treated for alcohol and/or drugs misuse has more than trebled over the two year period. In March 2005, 271 were being treated. This figure increased to 847 in March 2007, an increase of 213%. Of the 847 children and young people being treated 502 were male and 345 female. During the same period the numbers of those aged 18 or over decreased by 57.

Of the 116 individuals who received treatment in residential centres, none was aged under 18. Figures for those under 18, drawn from the survey, are presented in the table below to show the breakdown of behaviours and the types of agency providing treatment:

Behaviour treated	Total numbers	Non-statutory agency	Statutory agency	Prison
Drugs only	176	171	5	0
Alcohol only	377	377	0	0
Drugs and alcohol	294	288	0	6
Total	847	836	5	6*

*The six individuals in prison were all male.

Presumably in light of the lack of uniformity in the provision of information and the rising incidence of alcohol and drug use, the DHSSPS launched a new strategic direction for alcohol and drugs¹⁹⁹ in May 2006. This set out a number of short, medium and long-term outcomes.

These include measures directed specifically at young people and families, in relation to prevention and early intervention, the aims of which are:

- to increase awareness on all aspects of alcohol and drug-related harm in all settings and for all age groups; and
- to promote opportunities for those under the age of 18 years to develop appropriate skills, attitudes and behaviours to enable them to resist societal

¹⁹⁸ Statistical Bulletin 2/2007, Census of Drug and Alcohol Treatment Services in Northern Ireland: 1st March 2007. DAIRU / DHSSPS August 2007.

¹⁹⁹ New Strategic Direction for Alcohol and Drugs 2006 - 2011, DHSSPS May 2006.

pressures to drink alcohol and/or use illicit drugs.

The following are the key priorities:

- developing a four tier model for services for children, young people and adults;
- promoting good practice in respect of alcohol and drug related education and prevention;
- addressing under-age drinking;
- addressing community issues;
- targeting those at risk and vulnerable.

Given the alarming statistics concerning children's use of alcohol and drugs given earlier, it is essential that adequate resources are allocated to the strategy. Equally, the success of the measures supported within the strategy will need to be closely monitored. The DHSSPS allocated resources of £4 million to fund the strategy in its first year.

Vulnerability – sexual activity

UNCRC Article 24, focused on the right to health, specifies that children and young people have the right to family planning services. In General Comment no. 4, the UN Committee has also pointed out that the right to information in Article 17 should include the right to access information on family planning (Para. 10). They further set out that the right to privacy and confidentiality (Article 16) applies to advice and counselling on health matters (Para. 11).

That these rights are necessary is illustrated in recent research that indicates that many young people are sexually active, and at younger ages than in previous generations.

In a survey²⁰⁰ of 279 young people in North and West Belfast nearly three quarters (73%) of respondents said they had had sex.

The average age at first sex for these respondents was 14.5 years. Over half of all respondents had experienced not only heavy petting, but also sexual intercourse by age 15. At age 18, over nine in ten (96%) respondents said they had experienced sexual intercourse. About two thirds of respondents (66%) said they had used contraception when they first had sex. Contraceptive use was significantly lower among respondents who said they were not heterosexual.

Younger respondents were more likely than older respondents to say that they had used contraception at first sex; however, they were least likely to use contraception with their current partner. The most commonly used method of contraception was condoms (95%); 27.1% used the contraceptive pill.

Forty per cent of respondents said they had used Emergency Contraception (EC); 60% of these had used it once, 30% had used it more than once but less than five times, and 11% had used it more than five times. Over three quarters of respondents (79%) got their EC from Brook, 8% got it from a chemist, 6% from GP and 5% from a family planning clinic.

²⁰⁰ 'How Is It For You?' - A Survey Into The Sexual Health Services Needs Of Young People In North and West Belfast, North and West Health Action Zone 2007.

Love for Life surveyed young people during research²⁰¹ conducted in 117 schools in Northern Ireland. Results showed that 14% of 14 year olds and 22% of 15 year olds answered 'yes' to the question 'have you ever had sexual intercourse?' Marginally more males than females answered positively to this question and this difference was noted at both age levels. These figures concur with the Young Life and Times survey of 824 young people aged 16 in 2004, which established that 22% of young people had had sexual intercourse at least once. The figures were marginally higher for males (23%) as opposed to females (20%) and for young people who said they had no religion (29%) compared to Protestants (21%) and Catholics (19%).

Sex education

The religious dimension to many schools in Northern Ireland means that it is difficult to access information on the level and extent of sex education provided to young people. Again, the flexibility within the curriculum allows schools to adapt their own content under the umbrella of what must be included in all curricula. This does not allow proper consideration to be given to how appropriate and relevant the information being provided to young people actually is within the construct of their lives.

The Still Waiting research report²⁰² (Youth Action 2007) is based on focus groups involving 48 young women and in-depth interviews with a further 43. Thirty-eight of the young women discussed the sex education they had received in school. Only six young women (16%) described the sex education they received in school in their own terms as 'good', with the remaining 32 (84%) describing it in various ways as 'poor'. Furthermore, no young women attending Catholic maintained schools described their sex education as good and only 20% of those attending State Controlled schools found it good. Other general findings regarding the young women's sex/sexual health education within compulsory education included:

- Twenty-three young women reported that it was delivered only by teachers.
- Seven young women reported that someone external to the school had delivered all or part of their sex education.
- Fifteen young women reported that their sex education was limited to part of their science/biology class.
- There were mixed views on whether sex-education was best received within single or mixed sex groups.
- Young women reported receiving little information on periods – a number discussed a 'one-off talk' that focused on the physicalities or 'mechanics of it'.
- Young women talked of feeling embarrassed during sex education and discussions of menstruation at school.
- Only one young woman reported that relationships other than heterosexual were discussed in her sex education.

This latter point is reflected in the Rainbow project research study²⁰³ on the mental health of same sex attracted young men in Northern Ireland. The survey and

²⁰¹ Love for Life: Risk behaviours in Northern Ireland: 14-15 year old school children, Craigavon: Love for Life, 2005.

²⁰² Mc Alister, S. Gray, A.M. Neil, G. (2007) 'Still Waiting – the stories behind the statistics of young women growing up in Northern Ireland', Youth Action

²⁰³ McNamee, H. (2006) 'Out on Your Own – An examination of the Mental Health of Young Same Sex Attracted Men' The Rainbow Project

interviews showed that most young men realise their sexual orientation while still at school. This confirms the findings in the Shout²⁰⁴ report, which indicated that young men on average realize their sexual orientation at age 12 and young women at age 13. Nearly two-thirds (65.3%) of the young men in the Rainbow research experienced some difficulties in school related to sexual orientation²⁰⁵. The analysis of the interviews indicates that the endemic homophobic pejoratives in school can have a negative impact on a young gay man's acceptance of his sexuality. This was coupled with a lack of teaching on non-heterosexual orientations. Two thirds (66.3%) of the respondents stated they would like more training in schools. The young men's accounts also indicated their overwhelming conviction that sexuality needs to be covered in the education system and some form of confidential and non-judgmental support needs to be available to students.

This view is echoed in a recent report²⁰⁶ on the health needs of lesbian and bisexual women in Northern Ireland. The report reviews the literature and notes that the experience of young lesbians was that sex education in schools ignored sexual identity and assumed that everyone is heterosexual. This was reinforced by the responses received from the lesbian and bisexual women in four local focus groups who all expressed a need for more information on sexual health.

The North West Action Zone research concluded with some useful recommendations in relation to school based Relationship and Sexuality Education (RSE):

- Multi-disciplinary training and protocol development is required for professionals on young people's rights, including the right (or not) to confidentiality.
- RSE needs to be inclusive of lesbian, gay, bisexual and transgender groups and young people with disabilities.
- RSE should be timely, age-appropriate and not based solely on a medical model. A core element should be emotional feelings and the ability to develop and maintain safe and satisfying relationships.
- RSE should include confidence building activities as a priority, particularly for young men who often require assistance to ask for help and support on sexual health issues.

Accessing information and advice

It is not possible to ascertain the level of information provided to young people about sexually transmitted diseases, yet it is clear from the research available that levels of infection are increasing in certain cases. The incidence of sexually transmitted diseases is recorded by the Communicable Diseases Surveillance Centre NI (CDSC(NI): KC60 tables)²⁰⁷. Figures for 2004–2006 show that the numbers of new episodes of two diseases have increased in that period²⁰⁸. While the figures are not broken down in

²⁰⁴ YouthNet (2003), 'Shout: Research into the needs of young people in Northern Ireland who identify as lesbian, gay, bisexual and/or transgender (LGBT)', Summary Research Document. Belfast: YouthNet.

²⁰⁵ See section in this Chapter on bullying.

²⁰⁶ Quiry, M. (2007) 'A Review of the Impact of Discrimination and Social Exclusion on Lesbian and Bisexual Women's Health in Northern Ireland' (Lesbian Advocacy Services Initiative).

²⁰⁷ Communicable Diseases Surveillance Centre NI, KC60 tables, 2006.

²⁰⁸

STD	2004	2005	2006
Chlamydia	1453	1631	1979
Gonorrhoea	124	182	195

relation to age, the increase in the general population is likely to be reflected among sexually active adolescents. The Brook Clinic began testing for Chlamydia in July 2005. During 2005– 2006, 512 young people from Belfast were tested, 103 (20%) had positive test results. Of the 38 young men tested, all had positive results.

The Brook clinic²⁰⁹ is the only non-statutory sector agency offering sexual health and advice services to young people under 19 years old. In the course of gathering information for this review, Brook staff raised a number of concerns in relation to young people's rights to access their services. The first is that in order to enter the clinic in Belfast City Centre, young people have to 'run the gauntlet' of pickets by the Free Presbyterian Church, Precious Life and the Life League. Brook is concerned that this may serve to dissuade some young people from seeking the support of the clinic and is distressing for those that do as some protestors display photographs of aborted fetuses and have buckets of plastic fetuses, covered in red paint. These concerns are borne out in a recent research report²¹⁰ where one of the young women refers to the on-going picket at Brook:

... outside the Brook Clinic, there'd always be a loadsa protests outside it ... but I don't see why there should be protests because it's not like they're doing any harm, they're just helping young girls. They're there for the young girls who need the help. But people just don't wanna go, they see the protests outside it, they'd be scoudered walking in or in case anybody sees them. (Neimh, aged 17)

It is apparent from the research with young people that significant areas of concern exist around adequate and appropriate service provision pertinent to them. Young people seeking advice and help on sexual matters are extremely vulnerable as a result of the ramifications should such advice not be available, accessible and appropriately focused.

A survey undertaken in 2006 by Brook in England²¹¹ highlights the importance of confidentiality to young people seeking sexual health advice and services. The survey involved 768 young people who had received services at ten clinics. The young people were asked to identify the most important characteristics of sexual health services for young people. Fifty-three per cent of respondents said that confidentiality was the single most important thing for them when they were seeking sexual health advice. The next most popular answer was 'not being judged by anyone', accounting for 19% of responses, closely followed by 'that it is free', which was the answer chosen by 18% of respondents. The findings suggest that confidentiality is particularly

²⁰⁹ It was established by the Eastern Health and Social Services Board in 1992 and currently operates in Belfast only, although plans are underway to establish a clinic in Coleraine. Services include after-sex contraception, pregnancy testing, contraception, condoms/femidoms, Chlamydia testing, sexual health advice, someone to talk to and psychosexual counselling. During 2005-2006 9,886 visits were made to the clinic – an increase of 13% on the previous year; the total number of clients was 5,458; 28% of clients were under 16, 44% were 16–17 and 28% were 18 and over; 66% of visits were made for contraception; 26% of visits were made for after-sex contraception; 8% of visits were made for pregnancy testing – 9.7% of the tests were positive and of these 65.6% said they would continue with the pregnancy; 19.5% of visits were from young men – an overall increase of 19% on the previous year; the religious breakdown of clients is 40% Protestant and 59% Catholic

²¹⁰ Mc Alister, S. Gray, A.M. Neil, G. (2007) Still Waiting – the stories behind the statistics of young women growing up in Northern Ireland. Youth Action

²¹¹ Brook Clinic, Wise-up survey, 2006.

important for young people under the age of 16. Sixty-two per cent of this age group said that confidentiality was the single most important thing for them. Eighteen per cent said not being judged was the most important thing for them, and 14% said that the fact the services were free was most important.

It should be noted that mandatory reporting is a major factor in relation to sexual activity among young people generally and the issue of confidentiality in particular. This is discussed fully in the chapter on Protection.

Sexuality and young people with disabilities

In General Comment no. 4, the UN Committee stressed that young people with disabilities have the right to access information on sexuality (Para. 35). Yet the following information shows that there are significant breaches in relation to this right.

NICCY's report²¹² on young people with AS indicates that references to the sexuality of people with AS have only recently appeared in the literature. The authors conclude that this may be due to the fact that issues of sexuality and the sexual behaviours of children are under-represented in the literature generally, but may also be as a result of the view that people with disabilities cannot be sexual beings or that people with AS do not have an interest in a sexual relationship with another person. The report summarises the work of Lynne Moxon (2004)²¹³ who works with students with AS in a college of further education. Moxon asserts that sexuality for individuals with AS can encompass a broad range of responses and has outlined a number of dimensions, including the moral, social, biological and psychological dimensions. She argues that an appropriate personal, social, sexual health programme for individuals with AS can be developed using the dimensions as a basis. Until proper consideration is given to these issues, the sexual identity and needs of children and young people with AS will not be adequately addressed.

Research from the University of Ulster and the Family Planning Association²¹⁴ highlights that the sexual needs of people with learning disabilities are being ignored. The report is the result of a three year research project, involving over 500 people, including people with learning disabilities, family carers, professionals and front-line staff.

The report shows that there is a lack of acknowledgement of the sexuality of people with learning disabilities and that consequently their needs are being fundamentally ignored. The main findings of the report include:

- People with learning disabilities feel they want to learn more about sexual health and relationships.
- People with learning disabilities want to have relationships and express fears of being lonely, but they feel over-protected by professionals and family carers.

²¹² Jones, Dr. G., Ellins, Dr. J., Guldborg, K., Jordan, Professor R., MacLeod, A., Plimley, L. (2007) A Review of the Needs and Services for 10-18 year-old Children and Young People diagnosed with Asperger Syndrome living in Northern Ireland, NICCY.

²¹³ Moxon, L. (2004) 'Lecture on sex and sexuality with people with ASDs', Good Autism Practice Conference, Harrogate. Quoted in Jones et al above

²¹⁴ Out of the shadows, University of Ulster and the Family Planning Association 2006

Consequently there are few opportunities to develop relationships and meet new people.

- Some family carers want their child to have the same rights as everyone else. But they feel embarrassed to talk about sex with their children and are concerned for their safety. Feeling unsupported and isolated stops them from raising these issues in the home.
- Professionals and front-line staff are aware that the issues around sex and sexuality are often not being addressed. However, they are inhibited by being under-resourced, under-trained and at times restricted by a lack of clear guidelines and policies to support them.

The report recommends greater access to information, education and support for people with learning disabilities and their family carers. It also calls for clear policies and guidelines and better training and resources to help front-line staff and professionals to implement them.

Despite being aware of the sexual and reproductive health needs for people with disabilities, the government has failed to provide any or adequate service provision or information for young with people with disabilities. The DHSSPS Equality and Human Rights Strategy and Action Plan (2005) highlights the lack of information, advice and services for people with disabilities on sexual and reproductive health, including the need for:

- the DHSSPS in association with HSS Board Trusts and disability groups/organisations to conduct a study and needs assessment of the sexual health, sex education and family planning needs of people with disabilities;
- Northern Ireland wide audience-specific sex education and reproductive health programmes for people with disabilities which should be designed and delivered in settings such as special schools, day centres, health centres, etc.
- the design and promotion of information and advice/leaflets/videos on sexual health and disability. These should be produced in a wide range of formats. Information on how and where to access appropriate services or further advice should also be included.

Vulnerability – suicide

The right to life, survival and development (Article 6) is a fundamental principle underpinning the UNCRC. Suicide among young people is an issue which brings the guarantees within that Article into sharp relief. The State, as duty bearer under the Convention, has primary responsibility to ensure that appropriate policy and provision is in place to ensure that all children enjoy the right to life. In General Comment no. 4 the UN Committee draws attention to the need for specific programmes to prevent suicide (Para. 22).

There has been growing concern in relation to suicide in recent years given the widespread reports of young people taking their lives. Government figures²¹⁵ show that between 2000 and 2004, there have been approximately 150 deaths by suicide in Northern Ireland each year, and the vast majority (79%) have been male.

²¹⁵ DHSSPS (2006) The Northern Ireland Suicide Prevention Strategy and Action Plan 2006-2011.

However, 2005 witnessed a significant increase, to 213, in the number of suicides recorded. According to the document, risk factors include depression, alcohol and drug misuse, personality disorder, hopelessness, low self-esteem, bereavement, break-up of a relationship and social isolation. In relation to self-harm, a term which covers a wide range of behaviours including habitual self-cutting and poisoning, there has been a substantial increase in self-harm related admissions to hospital in recent years. It is difficult to access up to date statistics for suicide as it takes some time to confirm that deaths are related to suicide and, perhaps, in some cases there is a reluctance to determine suicide to be the definite cause. In addition to this, statistics are not issued in a way that facilitates the calculation numbers under age 18, nor is it possible to identify from the statistics factors contributing to the suicide.

In 2005 NICCY conducted a Message to the Minister ²¹⁶campaign. During the six-week campaign 112 submitted their views on suicide. Messages concerning the causes of suicide identified paramilitaries and bullying as the two most common factors. Alongside these were, an experience of care or custody, bereavement, family breakdown, mental ill health, sexual or physical abuse, drug use and lack of self-worth. The young contributors also pointed out that often it is not any one particular factor that causes young people to self-harm or take their own lives, but rather the culmination of several different contributing factors. The children and young people also raised the following issues:

- difficulties identifying appropriate sources of advice and support;
- unacceptable delays in accessing services;
- inappropriate placement of adolescents in adult mental health units;
- inappropriate incarceration of young people with mental health needs;
- insufficient needs-focused training and education amongst professionals;
- inappropriate responses from professionals approached for help;
- continued stigma/negative societal attitudes;
- under-funding of services resulting in continued insufficient service provision across the fields of education, health and social services.

The 'Northern Ireland Suicide Prevention Strategy and Action Plan 2006–2011'²¹⁷ sets out to reduce the suicide rate in Northern Ireland in line with two targets: (1) to obtain a 10% reduction in the overall suicide rate by 2008; and (2) to reduce the overall suicide rate by a further 5% by 2011. The following actions relate to children and young people:

- To promote the inclusion of promoting positive mental health as a key element of the Healthy Schools programme and ensure that children and young people are protected from all forms of bullying.
- To raise awareness of and ensure availability and timely access to appropriate intervention services (e.g. CAMHS, mentoring schemes and other appropriate statutory and voluntary services).
- To make suicide awareness and positive mental health and well-being training,

²¹⁶ available on NICCY web-site: www.niccy.org/

²¹⁷ DHSSPS (2006) The Northern Ireland Suicide Prevention Strategy and Action Plan 2006-2011.

including how to deal sensitively with disclosure of self-harm or suicidal behaviour, a priority for teachers, youth workers, etc.

- To promote a culture of help seeking behaviour, particularly among young people.
- To encourage the inclusion of coping and life skills, emotional literacy, and programmes that promote positive mental health in the school curriculum.
- To develop and implement practices, protocols and referral pathways to smooth the transition from youth to adult Health and Social Services.

This strategy pays scant attention to the issue of suicide and suicide ideation among young gay men, as highlighted in the earlier section.

NICCY has commented that a much more detailed action plan needs to be developed²¹⁸. This should address the fundamental underlying causes of self-harm and suicide: low self-esteem, consequences of abuse, drug and alcohol misuse, impact of paramilitary control etc. As well as these social issues, the government approach of treating young people as 'problems' to be sorted has led to increased marginalisation of young people. Measures such as the introduction of ASBOs can serve in many respects to criminalise childhood and the negative impact of such measures can have a catastrophic affect on young people resulting in feelings of marginalisation and loneliness.

During 2006 the government allocated £1.8 million per annum under the Children and Young People Funding Package to provide counselling support for children in all grant aided post-primary schools. The service, which began in January 2007, is provided by the Contact Youth organization and is independent of the schools. All counsellors have recognised qualifications and are provided with professional supervision. This initiative is clearly to be welcomed; however, the focus solely on older children means that the need for support among younger children remains unaddressed. The government should extend the scheme to children in primary education.

In November 2007 the DHSSPS Committee established an inquiry into the prevention of suicide and self-harm in Northern Ireland. In reporting to that Committee at its outset, the Minister of Health outlined a series of measures which had been undertaken in relation to the issue.

- In 2007–08, £3 million was allocated to the suicide-prevention strategy, of which £1.8 million was invested to support communities.
- The Mental Health and Learning Disability Board as its first piece of work is to consider the underlying causes of suicide, in conjunction with the Queen's University research and development department.
- The suicide strategy implementation body, which includes key stakeholders, bereaved families and local communities, has established a number of local

²¹⁸ NICCY Response to the Consultation Document 'Protect Life A Shared Vision' – The Northern Ireland Suicide Prevention Strategy and Action Plan 2006 – 2011, 24th April, 2006.

schemes including a self-harm mentoring scheme in the WHSSB, and a pilot suicide-prevention 24/7 telephone helpline in north and west Belfast, the latter is to be extended across Northern Ireland.

- A GP depression-awareness training programme has been launched.
- A joint North/South public information campaign has begun and includes work with the media to encourage responsible and sensitive reporting.

The effectiveness of these measures and whether they will be adequately resourced, remains to be seen. The inquiry report, when available, should serve to ensure that attention to the issue of suicide remains high on the political agenda.

Summary of key issues

As with all chapters, the cross cutting themes are apparent: for example, the very absence of data collection and the research gaps among minority ethnic groups of itself suggests the extent of the problems that exist for this particular group. Even within each 'grouping' of identified marginalisation and vulnerability lie a myriad of complex issues which combine to make up the multiple identities of children and young people. It is precisely because of the complexities of the identities and experiences of children that the domestic application of the UNCRC is so fundamentally important. The provisions of the UNCRC in their totality enable a whole child and child-centred approach to be taken, which, if interpreted in a positive child focused way, could meet the needs of all children irrespective of the source of their marginalisation or vulnerability.

- Evidence suggests that children in Northern Ireland are still affected by the legacy of the conflict.
- Children in the care system continue to do significantly less well than their peers on a wide range of measures, experience high levels of mental ill health and are provided with inadequate supports.
- Children from the Traveller community continue to face significant discrimination in many areas including health and education.
- There is an absence of comprehensive research into the lives of children and young people from ethnic minority communities. They are subjected to racist attacks and have difficulty accessing services.
- There is an absence of comprehensive disaggregated data in a range of areas in relation to children from minority ethnic communities and children with disabilities.
- Children with disabilities do not have access to adequate support, including play and leisure services.
- SENDO provisions are not adequately resourced and children have difficulty accessing their rights through SENDISTs.
- Children with visual impairments have difficulty accessing text books, which impedes their educational progress.
- Despite evidence of need, children with hearing impairments do not have access to mental health services.
- Children with learning disabilities face a range of disadvantage and inequalities, which are not being addressed, including continuing unnecessary placement in Muckamore hospital and the absence of play provision.

- Young lesbian, gay and bisexual people face a raft of homophobia in many aspects of their lives, which contributes to high levels of mental ill health and suicide.
- The needs of young transgendered people appear to be unknown and not addressed.
- The age of criminal responsibility has not been reduced in line with the UN Committee recommendation.
- Children have been subjected to strip searching in Hydebank Wood.
- There is evidence that custody is not being used only as a measure of last resort.
- ASBOs are proving to be expensive and ineffective and serve to criminalise children.
- Children and young people are increasingly using alcohol and drugs – numbers being treated have trebled in a two year period.
- Increasing numbers of young people are becoming sexually active at younger ages; sex education is failing to meet their needs and does not address issues for lesbian, gay and bisexual young people.
- Issues of sexuality in relation to young people with disabilities are ignored.

Recommendations

1. Research should be undertaken to establish the continuing impact of the conflict on children and young people with a view to identifying strategies to address this, including the provision of adequate and appropriate leisure facilities.
2. The newly established Mental Health and Learning Disability Board, in driving the delivery of the Bamford recommendations should ensure that:
 - specific provision is developed to support children in the care system and lesbian, gay and bisexual young people;
 - services are developed to provide appropriate information, education and support for children and young people with a learning disability in the area of sexuality;
 - services are fully accessible to children and young people with hearing impairments;
 - policy and provision for children and young people with learning disabilities takes account of their right to play and leisure.
3. A strategy for the education of Traveller children should be developed to ensure:
 - improved collection and monitoring of data relating to the educational attainment and achievement of children;
 - improved co-ordination of education and related support services;
 - the issue of Traveller children leaving school early is researched and addressed;
 - the continuation of specialist pre-school provision.
4. Comprehensive research into the lives and experiences of children from minority ethnic communities should be undertaken with a view to identifying needs as a basis for service development.

5. The NI Executive should urgently address the absence of comprehensive disaggregated data in relation to children, including those with disabilities and from minority ethnic communities.
6. The provisions of SENDO should be adequately resourced and free legal aid provided for children and families wishing to avail of SENDISTS.
7. The full range of educational textbooks should be made available in accessible form to children with visual impairments.
8. The Suicide Prevention Strategy and Action Plan should include specific actions to address the link between suicide and sexual identity.
9. The Sexual Orientation Strategy should set out clear actions in relation to developing specific support services for lesbian, gay and bisexual young people.
10. The experiences of young transgendered people should be researched with a view to identifying needs and developing services.
11. The NI Executive should take steps to raise the age of criminal responsibility in line with the UN Committee recommendation.
12. The NIO should review current policy and provision within the juvenile justice system to ensure that:
 - the specific needs of girls and young women are addressed;
 - facilities for family contact are developed in the JJC;
 - community-based facilities for mothers are developed as an alternative to custody;
 - children under 18 are not detained with adults;
 - cases in which children are involved as witnesses should be flagged, fast tracked and timetabled;
 - child friendly information on rights, procedures and the potential consequences of their decisions, should be made available to children in all police stations and other appropriate venues;
 - children are not subjected to strip searching;
 - custody is only ever used as a measure of last resort.
13. Responsibility for the education of children in custodial settings should be moved from the NIO to DENI.
14. The application of ASBOs in relation to children and young people should be researched with a view to establishing their impact on children's rights under the UNCRC.
15. Sex education should provide adequate and appropriate information on contraceptive choices and address issues of sexuality in a way that is inclusive of lesbian, gay and bisexual young people and those with disabilities.

16. Dedicated sexual advice services for young people, such as Brook clinic should be underpinned by adequate resources and expanded to meet increasing demand.

PROTECTION

Introduction

The protection of children is a critical duty in the realisation of children's rights. This chapter outlines State obligations under United Nations and European instruments and highlights a range of issues emerging from the current literature. Concerns are raised in relation to patterns of child abuse, the response to crimes against children, procedures around child deaths, the debate around the age of consent and mandatory reporting, the physical punishment of children in the home, the nature and extent of bullying – particularly for vulnerable groups, the safety of children in their own communities, the impact on children of domestic violence, children's perceptions of road safety and the introduction of police technologies which potentially endanger children.

The United Nations Convention on the Rights of the Child

One of the principal tenets of the UNCRC involves the protection of children. A number of articles set out the State's responsibilities to protect the child as necessary for his or her well-being, within the family and in alternative care; from all types of violence and abuse; from illicit drug use and from sexual and other forms of exploitation. Article 3 establishes that the best interests of the child is the primary consideration in all actions concerning children and that the State is obliged to ensure that children are protected and cared for. The primary article concerning the protection of children is Article 19. This details the obligation to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse. It also establishes the need to provide support programmes for children and carers, prevention programmes, treatment programmes and mechanisms to investigate and where necessary involve the judicial system. Article 20 places an obligation on States to provide special protection to children who are not living with their families, including the requirement to ensure alternative care. States are obliged to protect children from the illicit use of drugs (Article 33), from all forms of sexual exploitation and sexual abuse (Article 34) and from all other forms of exploitation (Article 36).

Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

The Committee of Ministers of the Council of Europe recently adopted a new Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse²¹⁹. It sets out detailed measures for countries to provide legal safeguards against all the different forms of sexual exploitation and abuse. The new Convention is the first instrument to establish the various forms of sexual abuse of children as criminal offences, including such abuse committed in the home or family.

The Convention obliges governments to:

²¹⁹ The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Council of Europe, July 12th 2007.

- take measures to prevent abuse, for example, encouraging awareness of abuse among professionals working with children and educating children about abuse and how to protect themselves;
- implement measures to protect and assist victims of abuse including supporting telephone or internet helplines, ensuring confidentiality rules don't prevent the reporting of abuse by professionals, and taking measures to assist the recovery of victims;
- take action to deal with offenders, for example, providing intervention measures for offenders to minimise the risks of repeat offences;
- ensure that sexual abuse and exploitation of children are criminalised and offenders are accorded appropriate punishment. It sets out what acts must constitute a crime, for example, sexual abuse, child prostitution and child pornography;
- ensure that offences are investigated and prosecuted in the correct manner, including for example always taking the best interests of the child into account in investigations and criminal proceedings;
- collect and store information about people convicted of child sexual offences, and ensure that this information can be shared with other states.

The adoption of this Convention may provide a timely opportunity to drive the issue of child sexual exploitation and abuse forward.

The following sections discuss a range of issues related to the protection of children highlighted in recent literature.

Child abuse

General Comment no. 7 (2005) concerns implementing child rights in early childhood²²⁰, and makes the following references to the State's obligation to protect very young children. The Committee points out that young children are frequent victims of neglect, maltreatment and abuse, including physical and mental violence. Abuse very often happens within families, which can be especially destructive. Young children are least able to avoid or resist, least able to comprehend what is happening and least able to seek the protection of others. There is compelling evidence that trauma as a result of neglect and abuse has negative impacts on development, including, for the very youngest children, measurable effects on processes of brain maturation. Bearing in mind the prevalence of abuse and neglect in early childhood and the evidence that it has long-term repercussions, States Parties should take all necessary measures to safeguard young children at risk and offer protection to victims of abuse, taking positive steps to support their recovery from trauma while avoiding stigmatization for the violations they have suffered. (Para. 36a)

²²⁰ General Comment 7 (2005) Implementing child rights in early childhood CRC/C/GC/7/Rev.1 20 September 2006.

The Children Order statistical bulletin 2007²²¹ reports that there were 2,320 child protection investigations in 2006–07, 9% more than in 2005–06. On 31st March 2007 there were 1,805 children on the child protection register in Northern Ireland. This represents a worrying increase of 10% on the previous year (166 cases). Overall there has been an increase of 18% between 2002 (1,531 cases) and 2007 (1,805 cases).

Age of children on the register 06/07	< 1yr	1–4	5–11	12–15	16+
	8.2%	24.9%	36.3%	23.4%	7.1%

A greater proportion of children on the register were boys (53%) than girls (47%).

Northern Ireland had the highest rate of children on the child protection register in the UK, 41.8 per 10,000 population aged under 18. This figure is considerably higher than in Wales (35.8), England (25.4) and Scotland (24.7).

Type of abuse at 31 st March 2007 ²²²	Number	Percentage
Neglect	569	31.5%
Physical	357	19.8%
Emotional	226	12.5%
Sexual	226	12.5%
Mixed (more than one type of abuse)	428	23.7%
Total	1805	

A 10% increase in the overall number of registrations since the preceding year is a cause of concern. In the same period the statistics indicate that the number of children on the register, in relation to mixed types of abuse, increased in number from 245 in 2006 to 428. This represents an increase of 75%. One cannot draw firm conclusions about this data and the implications for children in the absence of further research. To ensure that children are fully protected work should be undertaken to establish the reasons underlying the change in this particular pattern of abuse.

A recent Review of Child Protection Services²²³ across Northern Ireland (DHSSPS 2006) included input, facilitated by NICCY, from children and young people. Two thirds of the young people taking part were or had been in residential care as a result of their experiences. The majority of children spoke positively of the child protection services they had been involved with and spoke of their relief that the issue of their abuse had been brought to light and addressed. Some expressed resentment at what they perceived to be forced intervention in their lives and the damage this had caused to relationships within their families.

In addition to positive aspects of the support they had received, a number of criticisms were made in relation to looked-after children reviews including high turnover of and difficulty in contacting social workers, lack of privacy when meeting social workers and difficulty in accessing their case records.

²²¹ Children Order Statistical Bulletin 2007, DHSSPS.

²²² Children Order Statistical Bulletin 2007, DHSSPS.

²²³ DHSSPS (2006), Our children and young people – our shared responsibility. Inspection of child protection services in Northern Ireland.

Given the obvious levels of trauma the young people experienced through their abuse, perhaps the most concerning finding of the NICCY researchers was that therapeutic support had not been made widely available to the young people concerned. The UN Committee in 2002 made a recommendation to the UK Government that they “provide for the care, recovery and reintegration of victims” (Para. 40g). Clearly, the provision of therapeutic support should be part of implementing that recommendation.

There is evidence of a failure to provide a co-ordinated and comprehensive police approach to child protection issues. The Police Ombudsman in her Annual Report and Accounts (2007)²²⁴ provides details of complaints made against the police. As a result of investigations made by her Office, recommendations have been made to the Chief Constable aimed at improving the service the PSNI provides to the public. Recommendations made for improving policy and practice in relation to child protection include:

- that a police supervisor should attend all initial child protection case conferences and any subsequent reviews if deemed necessary;
- that, in cases involving child protection issues, a multi-agency strategy be developed by way of discussion of the timing, role and responsibilities involved;
- that all CARE units should have at least one designated police officer²²⁵.

It is extremely concerning that there appears to be a fragmented approach to children at risk of sexual harm. A very high proportion of these children come from the care sector and are already vulnerable, yet there is a lack of a legislative/policy framework that would allow the PSNI and social workers to take action to protect these children. Although far from ideal, the position in England is significantly better than in Northern Ireland. For example, in Manchester a co-ordinated approach has been developed between all relevant professionals which allows for a much better informed and more proactive approach to child protection. The legislation creating the Risk of Sexual Harm Orders (RSHO) allows the police to go to court to seek the protection of a young person. An RSHO can be considered if an adult of 18 or over has engaged in a course of conduct on at least two occasions involving specified acts towards a child under 17 years and there is reasonable cause to believe that an Order is necessary to protect a child or children from such an adult. Professionals seeking to invoke such Orders have stated that, although the Order is a civil sanction, the courts require quite strong evidence before allowing Orders to be made and the comment “but the young person hasn’t complained” is frequently aired as a reason for reluctance or refusal to grant an Order. Despite concern among professionals working with vulnerable children that such children are frequently preyed on by sexual offenders, only nine RSHOs were granted in 2006–2007, though it is not known how many were applied for overall²²⁶. This small number suggests that either the problem of potential sexual harm towards children and young people is not significant, or, as professionals working within this field suggest is more likely, the legislative framework and co-ordinated response required are absent. For example, before an RSHO can be obtained there must be two occasions when acts are committed which may harm a

²²⁴ Together with the Report of the Controller and Auditor General for the year end 2007

²²⁵ Pg. 30 and 31.

²²⁶ The Northern Ireland Sex Offender Strategic Management Committee, Annual Report 2006/07

child. To fulfil these criteria requires knowledge of a first act which may have caused harm but because of the legislative requirement, the act must be repeated before action is taken. In areas of England the police rely on section 2 of the Child Abduction Act 1984 whereby a person commits an offence if, without lawful authority or reasonable excuse, that person takes or detains a child under 16 years and removes them or keeps from their parent/legal guardian. Although this legislation allows for immediate action rather than 'two occasions' it has two immediate drawbacks – firstly, it deals only with children below the age of 16 years and, secondly, it provides a defence if the person taking the child proves that he believed the child was over 16 years. The Child Abduction Act 1984 relates to England, Scotland and Wales, but the provisions relating to Northern Ireland under Article 4 of The Child Abduction (NI) Order 1985 are exactly the same. It is not known if and how often the 1985 Order has been invoked to protect a child or young person.

The result of the current available avenues of redress in Northern Ireland means that the absence of a properly resourced, experienced and coordinated team with a suitable remit of legislative powers and sanctions enables vulnerable children to be exposed to sexual harm. These children may be experiencing many challenges in securing the rights protection afforded by the UNCRC – they may be in care, excluded from family and school and may already be marginalised. A comprehensive, targeted and appropriately funded service should be provided to protect, engage and rehabilitate these vulnerable young people.

In 2002 the Committee expressed deep concern in relation to many of these issues, particularly that one or two children die every week as a result of violence and neglect in the home. It was also concerned at the prevalence of violence, including sexual violence, throughout the State Party against children within families, in schools, in institutions, in the care system and in detention. It further noted with deep concern the growing levels of child neglect. The Committee was alarmed at the lack of a coordinated strategy to limit the extent of these phenomena (Para. 39). They made the following recommendations:

Ensure consistent legislative safeguards for all children in alternative care, including those who are privately fostered. (Para. 40c)

Establish effective procedures and mechanisms to receive, monitor, investigate and prosecute instances of abuses, ill-treatment and neglect, ensuring that the abused child is not victimized in legal proceedings and that her/his privacy is protected. (Para 40e)

It would appear that these issues have still not been effectively addressed.

A further issue arises in relation to the sentencing of those found guilty of sexual offences against minors. Amid growing concerns about the leniency in sentencing perpetrators, the Attorney General appealed on 4th October 2007 against lenient sentences handed down to men who raped children aged 9 and 14. The Attorney General considered that the sentences sent out a poor message as regards child protection. The absence of collated data relating to the sentencing of those who have perpetrated a crime against a child or young person is a barrier to identifying trends and critically analysing the sentencing provisions passed down by the court against the backdrop of the UNCRC and other relevant international obligations.

The protection of children is not simply a matter of domestic legislation and procedures. The NSPCC has recently produced a report²²⁷ detailing concerns about the protection of children in a European context. According to the study children in the UK are put at risk because of variations in standards relating to pre-employment checks across the member States. In some countries there are fewer safeguards applied to employment involving access to children, than in others.

The report refers to evidence that suggests that people who have been convicted of sexual offences against children are increasingly travelling to other countries. Given this situation, concern is expressed that in 2004 17,013 nationals came to the UK from the ten newly acceded EU member States and applied to the Home Office Worker Registration Scheme to work with children and vulnerable adults, as care assistants or home carers.

The authors detail a number of existing initiatives that should be pursued and also outline a series of new initiatives that should be undertaken to address the issues raised in the report.

The report urges cooperation between member States, at a level that ensures convicted sex offenders cannot get a job that brings them into contact with children when they move between countries. It concludes:

All EU member states have ratified the UN Convention on the Rights of the Child and so have a responsibility to cooperate where necessary to prevent the abuse and exploitation of children. The cross-border movement of people calls for child protection systems that reflect this commitment. As this report explains, it is necessary to put in place cross-border mechanisms to protect children from abuse by persons in positions of trust. Article 29 of the EU Treaty provides a basis to work together in protecting children from abuse. EU institutions should use this to underpin full cooperation between member states to ensure that unsuitable people are not able to work with children.

Crimes against children

The NSPCC²²⁸ has produced an analysis of PSNI figures in relation to crimes recorded against children during 2006–07. A total of 6,478 offences against the person and sexual offences against children under 18 were recorded during this period. This indicates a rise of 3% from the previous year.

Statistics show that 18% of the 31,846 offences recorded against the person in 2006–07 involved victims under the age of 18. Additionally, 47% of the 1,803 sexual offences involved victims under the age of 18. The report also shows that in relation to the 5,623 offences against the person, involving children under 18:

- 55% involved assault occasioning actual bodily harm;
- 35% involved aggravated or common assault;
- approximately 3% involved wounding with intent, grievous bodily harm (GBH) with intent, wounding and GBH;

²²⁷ Fitch, K. with Spencer Chapman, K. and Hilton, Z.(2007) Protecting children from sexual abuse in Europe: Safer recruitment of workers in a border-free Europe November 2007 NSPCC.

²²⁸ Hall, M. (2007) Key Child Protection Statistics in Northern Ireland, NSPCC, Northern Ireland Policy and Research Unit September 2007.

- 1.5% involved child abduction;
- 1% involved child cruelty; and
- 6% involved other offences against the person.

There was one recorded case of murder, manslaughter or infanticide. Almost three quarters (74%) of offences against the person involving children, were recorded against teenagers (13–17) whilst the remaining quarter were recorded against children between the ages of 0–12 years.

There were 855 recorded sexual offences against children and young people aged under 18 years in 2006–07. Of these offences:

- 55% were classified as indecent assault;
- 20% as rape/attempted rape,
- 11% as unlawful carnal knowledge;
- 7% as indecent exposure;
- 4% as indecent conduct towards a child; and
- 3% other sexual offences.

Almost three in five (58%) sexual offences were recorded against teenagers whilst the remaining 42% were recorded against children between the ages of 0 and 12 years.

These figures starkly illustrate the vulnerability of children to physical and sexual assault and underscore the need for the State to introduce effective measures to ensure that it meets its responsibilities for protecting children.

Proposed Regional Safeguarding Board

The government is currently consulting on proposals to establish a Regional Safeguarding Board for Northern Ireland (SBNI)²²⁹. This is intended to replace the four current Area Child Protection Committees. The new Board will have an independent chair and membership will be drawn from relevant organisations such as Health and Social Care Trusts, Youth Justice, the NSPCC, the judiciary and others. A small focused working group has been established to take forward the main issues relating to the establishment of the Board.

Organisations within the children's sector have broadly welcomed the proposals to establish the SBNI. Comments from the children's sector umbrella organisation, CiNI²³⁰, include:

- Account needs to be taken of current proposals from the four HSS Boards which would see both the planning *and* commissioning of children's services sitting at a regional level, driven by a Children and Young People's Strategic Partnership. Members from across sectors would be under a statutory duty to work together to develop a Children and Young People's Plan, to deliver on the outcomes of the Children and Young People's Strategy. The Chair of the SBNI should sit on the strategic partnership.
- The work of the SBNI needs to dovetail with the outcomes of the regional Children and Young People's Strategy.

²²⁹ DHSSPS (2007) Consultation paper, Safeguarding Board for Northern Ireland. January 2007.

²³⁰ CiNI Response to the DHSSPS Consultation Paper Safeguarding Board for Northern Ireland 2007

- A young people’s forum should be established to directly inform the work of the SBNI – its membership should include younger people and ensure representation in line with Section 75 groups.
- Core criteria to initiate a Serious Case Review should include instances where the failure of agencies to work together has been a contributory factor in a child dying or being seriously harmed.
- Concern is expressed at the tight timeframe for establishing the SBNI.

Child deaths

According to statistics drawn from the Registrar General annual reports and presented in the ‘Northern Ireland report to the United Nations Committee on the Rights of the Child’²³¹ the number of child deaths related to factors other than illness in recent years are as follows:

Cause	1999	2000	2001	2002	2003	2004	2005
Traffic and other accidents	55	59	44	42	60	44	60
Suicide	7	11	8	8	3	3	10
Assault	2	12	4	1	2	1	2

The 2004 Children’s Rights report²³² identified the need to invest in structural improvements to the child protection system, concluding that the procedural and legislative framework for child protection can be regarded as light and underdeveloped in Northern Ireland.

The issue of child deaths was also raised by the UN Committee on the Rights of the Child, in Concluding Observations related to the UK report in 2002. The Committee noted the absence of adequate, systematic follow-up of child deaths and recommended the introduction of statutory child death inquiries (Para. 40a).

Among a number of measures to address these structural issues a Child Death Review protocol has since been developed. The protocol is meant to implement one of the key recommendations arising from the Lewis Inquiry and the case management review into the death of David Briggs.

The protocol is for use by professionals who deal with child deaths. It outlines the responsibilities of statutory agencies and professional staff in cases where the death of a child is sudden or unexpected. It is designed to ensure that all relevant information about a child’s death is brought together at an early stage and that bereaved parents will receive a more coordinated response. The protocol was drafted by a multidisciplinary regional working group and has been subject to a period of consultation. The final document is yet to be published.

Age of consent and mandatory reporting

In England, Scotland and Wales there is no formal requirement in law to report child protection concerns to the statutory authorities. However, in Northern Ireland, Section

²³¹ Northern Ireland report to the UNCRC, OFMDFM 2007

²³² Kilkelly, U., Kilpatrick, R., Lundy, L., Moore, L., Scraton, P., Davey, C., Dwyer, C. & McAlister, S. (2005) Children’s Rights in Northern Ireland, NICCY.

5(1) of the Criminal Law Act (1967) provides for a criminal offence of failing to disclose an arrestable offence to the police, which, de facto, includes most offences against children. This is interpreted in Northern Ireland in a way that means that having sex with someone who is under 14 is an arrestable offence and therefore it is a mandatory duty to report to the police any knowledge of this occurring. This is reflected in Area Child Protection Committees' Regional Policy and Procedure in Northern Ireland with regard to young people under 14. In England the age of consent is set at 16, a year earlier than in Northern Ireland. Consequently, concerns are addressed in relation to children under 13 rather than under 14.²³³

The Brook Clinic has expressed concerns that mandatory reporting requirements in Northern Ireland may adversely impact on young people. Their work suggests that those under 14, who are having consensual sex with a young person of similar age, will be deterred from seeking advice, because they worry that they or their partner will be reported to the police.

This situation is seen by Brook as quite distinct from instances where young people may be vulnerable to sexual abuse or exploitation, when the Brook Protecting Young People Policy would automatically be triggered, whatever the age of the client. Brook has recently obtained legal advice which suggests that the current application of the law may be in breach of young people's rights under Article 8 of the HRA.

The NSPCC has produced a report²³⁴ examining the impact of mandatory reporting through reviewing the international evidence and experiences of mandated reporting legislation. The report considers whether or not mandatory reporting legislation better protects children and young people from abuse. It includes an overview of international reporting systems, an analysis of the evidence relating to the impact of mandatory reporting laws, and an exploration of the factors that are associated with reporting behaviours and attitudes. It also briefly describes the reporting systems currently in operation within the UK and examines the Northern Ireland reporting system in relation to the findings from the international evidence.

The report concludes that mandatory reporting is unlikely to lead to improvements in the protection of children and young people. The authors suggest that a voluntary system of reporting strengthened by interagency protocols and guidance and accompanied by professional training and awareness raising would be the preferred option in Northern Ireland. This would not only be in keeping with recent Northern Ireland and UK developments but would provide a more flexible environment in which

²³³ The revised version of Working Together to Safeguard Children from Harm (DfES 2006) provides guidance on working with sexually active young people. It states that in making decisions about whether to share information about a young person with children's social care the child's best interests must be the overriding consideration. Decisions should always be based on an assessment of that individual's situation and professionals have discretion to make decisions on a case by case basis taking account of a range of factors. This applies to all young people, including those under the age of 13.

The guidance states that cases involving under-13s should always be discussed with a nominated child protection lead in the practitioner's organisation. However, it clearly indicates that professionals have the discretion not to refer a young person to other agencies where this would not be in their best interest. The reasons for this decision need to be fully documented.

Local Safeguarding Children Boards are expected to develop local protocols based on this guidance. Local protocols, which require mandatory reporting on the basis of age, are understood not to be in accordance with Working Together to Safeguard Children from Harm.

²³⁴ Wallace, I. Bunting, L. 2007, An examination of local, national and international arrangements for the mandatory reporting of child abuse: the implications for Northern Ireland NSPCC.

to explore the balance between protection and confidentiality.

Consequently the report recommends:

- repealing Section 5(1) of the Criminal Law (Northern Ireland) Act (1967) as it relates to child protection interfaces;
- strengthening information sharing protocols and clarifying reporting processes for different professional groups. This should involve having an open debate about how best to balance confidentiality and protection to more effectively meet the needs of children and young people;
- continuing education and training in order to tackle non-reporting amongst professionals, coupled with increased public awareness raising, regardless of the reporting system in operation.

Many of these issues are addressed in draft legislation²³⁵ in relation to sexual offences which has proposed harmonising the age of consent here with that in England. 'Reforming the law on sexual offences in Northern Ireland',²³⁶ was issued for consultation in July 2006. The document sets out a wide range of options. The summary of responses published by the NIO indicates that there was broad support for the following proposals in relation to children:

- Not criminalising consensual sexual activity between those under the age of consent and those under 18 (82% of those who gave a clear view agreed).
- Lowering the age of consent to 16 (66% of those who gave a clear view agreed).
- Removing the time limit for prosecution for the new offence of adult sexual activity with a child (91% of those who gave a clear view agreed).
- The proposal that "Those recognised as giving help, advice, treatment and support to children and young people in matters of sexual health should not be regarded as aiding and abetting a criminal offence, nor should the children and young people who seek help and advice about sexual health matters, including contraception" (89% of those who gave a clear view agreed).

The NIO issued draft legislation for further consultation. The legislation contains the same provisions which were set out in the original consultation document. An ad hoc Assembly Committee was established to consider the draft legislation in December 2007.

The Committee reported on 21st January 2008²³⁷ and was broadly supportive of the legislation. In relation to the proposal to reduce the age of consent, the Committee was divided. The majority view prevailed and the Committee strongly recommended that the age of consent should remain at 17.

However, the NIO Minister is not obliged to accept the Committee view. In his evidence to the Committee the Minister indicated that even if the Committee was unanimous in the view that the current situation should remain, he would still need to be convinced of the advantages of being out of step with the age of consent pertaining in England and Wales.

²³⁵ Draft Sexual Offences (NI) Order 2007.

²³⁶ Reforming the law on sexual offences in Northern Ireland, Consultation 2006

²³⁷ Ad Hoc Committee on the Draft Sexual Offences (NI) Order 2007 Report, January 2008.

Physical punishment of children

The Children's Rights Alliance in England and the NSPCC²³⁸ have attempted to establish the extent of the use of physical punishment in homes in the UK. They cite research carried out for the Department of Health that showed that 48% of four year olds, 35% of seven year olds and 11% of 11 year olds were hit by their parents at least once a week. Perhaps most worryingly, over half of one year olds were smacked at least once a week by their parents, making this the age group most likely to be hit. According to a prevalence study conducted for the NSPCC in 2000²³⁹, 7% of young adults experienced serious physical violence by their parents/carers as children, with a further 14% suffering intermediate levels of physical abuse.

The National Study of Parents, Children and Discipline in Britain²⁴⁰ found that young parents, and those who describe their relationship with their children as hostile or less warm, are more likely to resort to physical punishment. In this study, only 10% of parents felt that physical punishment was always acceptable, most felt its use should be conditional or rejected the practice entirely. Almost all parents felt that hitting a child with an implement was wrong. Again, toddlers and pre-school children were the most likely to be subjected to physical forms of punishment.

Following two days of general discussion on violence against children, held in 2000 and 2001, the Committee on the Rights of the Child decided to issue a series of General Comments concerning eliminating violence against children. The first of these has been published as General Comment no. 8²⁴¹ (2006) – The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment. In a wide-ranging exploration of the issue the Committee explains the importance of addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family, schools and other settings. Doing so is not only an obligation of States Parties under the Convention but is also a key strategy for reducing and preventing all forms of violence in societies. (Para. 3) The Committee defines 'corporal' or 'physical' punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (smacking, slapping, spanking) children, with the hand or with an implement – a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child. (Para. 11)

²³⁸ Child Rights Alliance England / NSPCC (2006) "You feel like you're nothing. Ending violence against children in England"

²³⁹ Cawson, P., Wattam, C., Brooker, S., Kelly, G. (2000) Child Maltreatment in the United Kingdom: a Study of the Prevalence of Abuse and Neglect. NSPCC

²⁴⁰ Economic and Social Research Council (2003) The National Study of Parents, Children and Discipline in Britain

²⁴¹ General Comment no. 8²⁴¹ (2006): The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, CRC/C/GC/8 21 August 2006.

The Committee on the Rights of the Child has raised eliminating corporal punishment with certain States during the examination of their reports. Governmental representatives have sometimes suggested that some level of 'reasonable' or 'moderate' corporal punishment can be justified as being in the 'best interests' of the child. The Committee has identified, as an important general principle, the Convention's requirement that the best interests of the child should be a primary consideration in all actions concerning children (Article 3, Para. 4). The Convention also asserts, in Article 18, that the best interests of the child will be parents' basic concern. But interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence and the requirement to give due weight to the child's views; it cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity. (Para. 26)

The Committee notes that in many States there are explicit legal provisions in criminal and/or civil (family) codes that provide parents and other carers with a defence or justification for using some degree of violence in 'disciplining' children. For example, the defence of 'lawful', 'reasonable' or 'moderate' chastisement or correction has formed part of English common law for centuries, as has a 'right of correction' in French law. At one time in many States the same defence was also available to justify the chastisement of wives by their husbands and of slaves, servants and apprentices by their masters. The Committee emphasizes that the Convention requires the removal of any provisions (in statute or common – case law) that allow some degree of violence against children (e.g. 'reasonable' or 'moderate' chastisement or correction), in their homes/families or in any other setting. (Para. 31)

Following the UK examination in 2002 the Committee expressed "deep regret that the State Party persists in retaining the defence of 'reasonable chastisement' and has taken no significant action towards prohibiting all corporal punishment of children in the family". (Para. 36) They were of the opinion that "the Government's proposals to limit rather than to remove the 'reasonable chastisement' defence do not comply with the principles and provisions of the Convention and the aforementioned recommendations, particularly since they constitute a serious violation of the dignity of the child. Moreover, such defences serve to suggest that some forms of corporal punishment are acceptable, thereby undermining educational measures to promote positive and non-violent discipline".

In the light of this they recommended that the State:

- (a) with urgency adopt legislation throughout the State Party to remove the 'reasonable chastisement' defence and prohibit all corporal punishment in the family and in any other contexts not covered by existing legislation;
- (b) promotes positive, participatory and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, involving children and parents and all those who work with and for them, and carry out public education programmes on the negative consequences of corporal punishment. (Para. 38)

Despite this direction the government here introduced changes to the legislation²⁴² which removes the defence of 'reasonable chastisement' in certain instances but falls far short of affording children the same protection against assault as that enjoyed by adults. This legislative change is clearly not enough to meet the level of protection required by the UN Committee.

During the public debate on the issue some arguments were rehearsed suggesting that affording children full protection under the law would result in large scale prosecution of parents for relatively minor behaviour. The UN Committee has offered clear guidance in relation to this, stating that the principle of equal protection of children and adults from assault, including within the family, does not mean that all cases of corporal punishment of children by their parents that come to light should lead to prosecution of parents. The *de minimis* principle – that the law does not concern itself with trivial matters – ensures that minor assaults between adults only come to court in very exceptional circumstances; the same will be true of minor assaults on children. States need to develop effective reporting and referral mechanisms. While all reports of violence against children should be appropriately investigated, and their protection from significant harm assured, the aim should be to stop parents from using violent or other cruel or degrading punishments through supportive and educational, not punitive, interventions. (Para. 40)

The issue of the use of physical punishment against children in Northern Ireland has been receiving a great deal of attention in recent years. The children's sector is virtually unanimous in demanding a full ban on physical punishment and the new legislation has been the subject of a judicial review, brought by NICCY. While the applicant's case in relation to this was dismissed in December 2007, the wide-ranging judgement is currently being analysed by NICCY, with a view to appeal. Following the judicial decision the Children's Commissioner issued a statement²⁴³ outlining her position.

The court's decision on the Judicial Review of Government's failure to stop all physical punishment was a breach of children's basic right to be protected from harm. Although the Judgment is disappointing, it is important that the Judge recognised today, that my action in taking this challenge was entirely responsible.

I would be failing in my duty to safeguard the rights and best interests of the 500,000 children and young people that I represent if I did not challenge this ruling. My team and I will be examining the detail of today's Judgment, as there are many points of law to consider. I will want to make sure that by appealing I am exercising the powers granted to me by the Northern Ireland Assembly; powers which mean I am the only champion children and young people have to make sure their rights and best interests are protected. However, we want the message to be clear that we believe hitting children is wrong. It has been already banned in over fifty countries worldwide and all the Commissioners in the United Kingdom are clear that we want all physical punishment of children and young people to stop.

Given the clear breach of UNCRC requirements and guidance on this issue it is likely

²⁴² Article 2 of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order (2006), HMSO

²⁴³ NICCY press release 21st December 2007

that the children's sector will continue to challenge the government position.

Bullying

DENI produced a report²⁴⁴ (2007) of quantitative research on bullying in schools here. Surveys were conducted with 2,312 pupils from 60 primary schools (Year 6) and 60 post-primary (Year 9) schools across the North of Ireland. The results were compared with those of a similar survey in 2002. Overall the extent of bullying had changed little in the five year period.

Extent and duration of bullying

- Of the 993 Year 6 pupils surveyed, 56.7% stated that they had not been bullied during the past couple of months, 26.2% said that it had only happened once or twice and 17.1% responded that they had been bullied "two or three times a month" or more often during the "past couple of months".
- Of the 1,319 Year 9 pupils surveyed, 71.2% said that they had not been bullied during the past couple of months, 21.1% responded that it had only happened once or twice and 7.7% stated that they had been bullied "two or three times a month" or more often during the "past couple of months".
- 23.9% of Year 6 pupils reported that they were subjected to bullying that lasted "one or two weeks", 9.6% were subjected to bullying lasting "about a month" and 3.8% of pupils were subjected to bullying that lasted "about six months". The frequencies increase to 4.7% of Year 6 pupils enduring bullying for "about a year" and 4.8% for "several years".
- 18% of Year 9 pupils stated that they were subjected to bullying that lasted "one or two weeks", 6.2% were subjected to bullying lasting "about a month", 2.5% of pupils were subjected to bullying that lasted "about six months", 3% of Year 9 pupils reported that they had endured bullying for "about a year" and 1.1% for "several years".

Nature of bullying

- Being "called mean names, made fun of or teased in a hurtful way" was the most common type of bullying experienced by both boys and girls in Year 6.
- Overall, the second most frequently reported behaviour in Year 6 was bullying "with mean names, comments or rude gestures" and the third most common type of bullying was "Other pupils told lies or spread false rumours about me and tried to make others dislike me".
- Year 6 girls recorded a tendency to be excluded more often than boys, while Year 6 boys tended to be the victims of physical bullying more often than girls. Both boys and girls tended to be bullied by pupils in their own class.
- In Year 9, being "called mean names, made fun of or teased in a hurtful way" was the most common type of bullying experienced by both boys and girls.
- The second most frequently reported behaviour in Year 9 was "Other pupils told lies or spread false rumours about me and tried to make others dislike me".
- The third most common type of bullying recorded by Year 9 pupils was "Other pupils left me out of things on purpose, left me out from their group of friends or

²⁴⁴ Livesey, Dr. G., McAleavy, Professor G., Donegan, Dr. T., Duffy, J., O'Hagan, C., Adamson, G., White, R. (2007) The Nature and Extent of Bullying in schools in the North of Ireland. Department of Education

- completely ignored me”.
- Year 9 girls recorded a tendency to be excluded more often than boys. They also tended to report that “Other pupils told lies or spread rumours about me and tried to make others dislike me” more often than boys.
 - Year 9 boys tended to be the victims of physical bullying more often than girls. Boys tended to record that they had been “bullied with mean names or comments about my race or colour” or “bullied with mean names or comments” regarding both ability and disability, more frequently than girls.
 - In Year 9 girls tended to report that they had been “bullied with the use of mobile phones” more often than boys. Both boys and girls tended to be bullied by pupils in their own class.

Overall, both sets of pupils felt that teachers had done either “a good deal” or “much” to deal with the bullying (Year 6: 61%; Year 9: 55%). The results of the DENI study are similar to the Young Life and Times survey of 819 sixteen year olds in 2005²⁴⁵. This found that 30% of respondents said they had been bullied at school.

Vulnerability to bullying

Pupils in the DENI study were asked if children were more likely to be bullied on the basis of their race or skin colour, having a disability or their religion:

More likely to be bullied because of?	Year 6 - yes	Year 9 – yes
Race / skin colour	46.4%	61.1%
Disability	44.1%	49.9%
Religion	48.3%	53.3%

These results suggest that certain groups of young people may be particularly vulnerable to bullying. The DENI study highlights issues of race, religion and disability in this respect. While substantial information on the experience of children from black and minority communities in school is generally in short supply, the research produced by Animate²⁴⁶ makes reference to racist bullying experienced by the school-aged children of migrant workers.

The Health Impact Assessment in Cookstown also recorded “a number of accounts of migrant workers experienced forms of racist abuse ranging from verbal abuse, bullying in the workplace or school to attacks on property and physical violence”.

The stresses of barriers to children accessing education, including racial bullying, also impact on primary carers. A case study records the stresses of a mother who had to deal with her son being referred to as a “Portuguese bastard” and being physically assaulted.

NICCY research²⁴⁷ has highlighted the issue of bullying for children from the Traveller

²⁴⁵ ARK, Young Life and Times Survey (2005).

²⁴⁶ Holder, D. (2007) Issues facing Migrant Workers and their families in Northern Ireland A Research Compendium of Animate and Partner Research 2004 – 7. Animate: Dungannon and South Tyrone Borough Council/ South Tyrone Empowerment programme (S.T.E.P)

²⁴⁷ Hamilton, J., Bell, J (Institute for Conflict Research); Bloomer, F. (Trademark). Holohan, J. (An Munia Tober).

community in Northern Ireland. In reviewing the literature pertaining to Traveller children the report shows that this has been a pervasive problem here. Parents in particular raised the issue with the researchers, in some instances they stated a preference for segregated education for their children so that they would not be subjected to bullying in mainstream schools. The report includes a recommendation related to bullying.

We recommend that DENI take forward plans to record and monitor bullying and anti-bullying policies and practice within schools to determine reasons for bullying against Traveller children, ensure protection of Traveller children from bullying and ensure that bullying is not a barrier to Traveller children accessing education.

Bullying in schools has been shown to be a significant problem for children and young people with disabilities. The Still Waiting research²⁴⁸ (Youth Action 2007) reports that three of the four young women attending special schools had been bullied. The NICCY research²⁴⁹ in relation to AS showed that teasing and bullying was the negative reaction most often reported by children and young people and was also noted as a concern by their parents. However, in the study, this was not identified as an issue by any of the school personnel surveyed, and none of them mentioned the need for anti-bullying policies or measures. The report recommended that staff in schools and colleges are made very aware of the high probability of bullying and teasing, and that they identify crisis times within the school day and areas of the school where this is most likely to occur.

A further component of bullying relates to sexual orientation. The Young Life and Times²⁵⁰ 2005 survey found that among young people who were same-sex attracted the percentage who had been bullied increased to 47%. This is borne out by the Out on your Own²⁵¹ report. That survey found that most young men realise their sexual orientation while at school. Nearly two-thirds (65.3%) experienced some difficulties in school related to sexual orientation. Most common were homophobia from other pupils (51.9%) and bullying (44.7%). The serious repercussions for those who were bullied in school were reflected in the findings that they were more likely to:

- have been diagnosed with a mental health problem;
- have been referred for professional help;
- have a lower self-esteem;
- have self-harmed;
- have considered suicide;
- have attempted suicide.

The survey also revealed that homophobia from teaching staff was a key factor which

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²⁴⁸ Mc Alister, S. Gray, A.M. Neil, G. (2007) Still Waiting – the stories behind the statistics of young women growing up in Northern Ireland. Youth Action

²⁴⁹ Jones, Dr. G., Ellins, Dr. J., Guldborg, K., Jordan, Professor R., MacLeod, A., Plimley, L. (2007) A Review of the Needs and Services for 10-18 year-old Children and Young People diagnosed with Asperger Syndrome living in Northern Ireland, NICCY.

²⁵⁰ ARK, Young Life and Times Survey (2005).

²⁵¹ McNamee, H. (2006) Out on Your Own – An examination of the Mental Health of Young Same Sex Attracted Men: The Rainbow Project.

explained higher GHQ score and referral for professional help.

These findings were also reflected in a report²⁵² by the Institute of Conflict Studies (2006). Questionnaires were completed by 193 members of the lesbian, gay and bisexual community. Of those who had had contact with the education system, 29 respondents (40%) felt that they or their children had been unfairly treated due to their sexual orientation, with the largest number of respondents (37%) referring to either bullying or not being helped. A further six individuals (35%) referred to their children being bullied.

Respondents were asked if they agreed that the education system in Northern Ireland is free from discrimination against lesbian, gay, bisexual and transgender people. Seventy-two per cent of respondents disagreed or strongly disagreed and only 4% agreed or strongly agreed with the statement. When asked if they agreed with a statement suggesting that the education system in Northern Ireland is taking a strong stance against homophobic/transphobic bullying, 69% disagreed or strongly disagreed that this was the case. Only 4% agreed or strongly agreed.

Stonewall has produced a leaflet²⁵³ about homophobic bullying which points out the impact on students' education:

- Lesbian and gay pupils are more likely to leave school at 16 despite achieving marks that merit continuing with their education.
- Two in five say they fear that bullying will continue if they stay.
- Three in four bullied lesbian and gay young people say they feign illness or play truant to escape the impact of bullying.
- The effects of homophobic bullying are not limited to lesbian, gay and bisexual young people. An educational culture where homophobic bullying exists can affect anyone singled out as different. A culture where any sort of bullying exists makes schools unsafe for everyone.

The issue of homophobic bullying²⁵⁴ in schools was raised by young people in consultations²⁵⁵ organised by OFMDFM on their report to the UN Committee on the Rights of the Child. Young people from the GLYNI group described their experiences in school and made strong representations that the issue of homophobic bullying should be specifically addressed in school anti-bullying policies.

Responses to bullying

The Education and Libraries Order (NI) 2003²⁵⁶ includes provisions to safeguard and promote the welfare of all registered pupils while in the care of the school and to ensure that every school develops and implements a child protection policy. Article 19 of the Order states that the prevention of bullying should be specifically addressed in consultation with pupils.

²⁵² Hansson, U., Hurley Depret, M., Fitzpatrick, B., (2007) Equality Mainstreaming - Policy and Practice for LGB People. Institute for Conflict Research.

²⁵³ Stonewall (2006) Tackling homophobia in schools.

²⁵⁴ see further discussion of this issue in the Marginalisation and Vulnerability chapter.

²⁵⁵ Haydon, D. (2007) UN Convention on the Rights of the Child - Consultation with Children and Young People OFMDFM.

²⁵⁶ Education and Libraries Order (NI) 2003 HMSO 2003.

NICCY has produced research²⁵⁷ which aimed to determine the views and experiences of children and young people in relation to the development and review of bullying policies in schools in Northern Ireland. The study concerned 14 schools of various types across Northern Ireland and incorporated a literature review, school documentation review, questionnaires, interviews and focus group discussions with pupils and interviews with school staff.

The study found that while all the schools did have anti-bullying policies, very few had been developed with the involvement of pupils. Given the increasing evidence in relation to the levels and impact of homophobic bullying, it is interesting that this issue did not arise in the course of the research, even though pupils were given the opportunity to discuss this. None of the schools identified homophobic bullying in their anti-bullying policies. The authors conclude that the fact that the issue was not taken up by participants in the research project may suggest that in a heteronomic society a discussion of homosexuality itself is regarded as threatening. While the special schools in the survey were sensitive to issues of bullying, the study found little evidence of bullying because of physical disabilities in the schools visited.

Based on the research NICCY has developed a 'Stop Bullying' guidance pack to help schools involve pupils in preventing bullying. The pack, 'Having Your Say in Bullying Policies', was launched in November 2006 and aims to help involve children and young people in school anti-bullying policies.

The safety of children in their own communities

Given the legacy of the conflict here, manifested in ongoing incidents of disorder and violence, it is not surprising that children and young people do not always feel safe and protected in their own communities. Many still directly experience sectarian and communal violence.

The Institute for Conflict Research conducted a study²⁵⁸ exploring issues in relation to violence, community safety and policing in North Belfast during 2004–2005. In the course of the research 2,486 young people completed questionnaires. Focus groups were also conducted with young people, police officers and community representatives in the area.

North Belfast has experienced widespread interface violence since 1996 in response to disputes over parades. In the Ardoyne-Glenbryn area the violence and tension peaked during the Holy Cross dispute between June and November 2001. Antagonisms have continued since. Although the authors acknowledge that work has been done with younger children in the area, particularly in relation to the impact of the protests related to access to Holy Cross Primary School, they feel that little work has been carried out specifically on how young people have been affected by the disorder of the last several years. The research project, endeavoured to address that knowledge gap. The extensive report details considerable direct feedback from young people and concludes that the attitudes and beliefs of the young people have been shaped by incidents of sectarian and communal violence.

²⁵⁷ Schubotz, D., Sinclair, R., (2006) Being part and parcel of the school - The views and experiences of children and young people in relation to the development of bullying policies in schools, NICCY.

²⁵⁸ Byrne, J, Conway, M., Ostermeyer, M., (2005) Young People's Attitudes and Experiences of Policing, Violence and Community Safety in North Belfast. Institute for Conflict Research

Although geographically limited, the extensive involvement of children and young people in this survey resulted in a very valuable insight into their experiences of community life.

An analysis of the questionnaires included the findings that:

- 82% of young people indicated an experience of violence and disorder in North Belfast, with the most commonly reported incident being fighting between members of the Catholic and Protestant communities;
- 61% of respondents felt that their community background restricted their movement within North Belfast;
- 51% of young people had experienced an incidence of violence and/or threatening behaviour while travelling to and from their schools, with the most frequently reported incident being a school bus being attacked (20%);
- 66% of young people felt that the police did not provide a safe environment for young people travelling to and from school.

All of the young people involved in focus group interviews had experienced violence and disorder in their communities. The most frequently reported incident was sectarian fighting.

In relation to policing, the majority (65%) of the 2,486 young people who completed questionnaires felt that the PSNI did not understand the issues and problems experienced by young people in the area.

The report concluded with a series of recommendations. Among these were:

- More should be done by local community representatives, politicians and representatives from the statutory and voluntary sector in reaching out and engaging with young people on issues that are relevant to them.
- The report highlights that young people in North Belfast have experienced, and continue to experience, high levels of violence, and significantly higher levels of violence than young people in nearby areas. This needs to be taken into consideration by all statutory bodies working with young people.

Still within the context of interface discord and violence, the report on 'Working at the Interface – Good Practice in Reducing Tension and Violence'²⁵⁹ highlights the importance of a small number of events (such as parades, football matches, Hallowe'en), activities (drinking alcohol, flying flags) and categories of person (young people, outsiders) as key triggers that raise tensions and spark violence in interface areas. It also outlines the growing awareness of links between disorder in interface areas and anti-social behaviour more generally. The report considers that those mainly involved in interface incidents include young people "who are attracted to interface areas because of the lack of adult control and authority and who use the spaces as a place to hang out with friends".

In line with the UNCRC, children exposed to violence in their communities are entitled to protection. To date the response of the authorities would appear to amount to little

²⁵⁹ Jarman, N., (2006) Working at the Interface – Good Practice in Reducing Tension and Violence Institute for Conflict Research.

more than the introduction of ASBOs²⁶⁰. These orders are not directed towards protecting children but, rather, serve to criminalise them.

Children and domestic violence

Statistics drawn from the 2005 NI Crime Survey²⁶¹ give some indication of the extent of domestic violence. The report considered domestic violence in Northern Ireland under the following five headings:

- the extent of domestic violence in Northern Ireland;
- the risk factors associated with domestic violence victimisation;
- the characteristics of domestic violence victimisation;
- the experience of domestic violence; and
- policy responses to domestic violence in Northern Ireland.

During 2005–2006, the police responded to 23,059 domestic incidents and 9,353 domestic crimes were recorded, an increase of 10% on the previous year. It should be borne in mind that these statistics only relate to those incidents that were reported to the police – the actual number of incidents across Northern Ireland is likely to be much higher. According to the DHSSPS²⁶² 11,000 children in Northern Ireland are living with domestic violence. In Carmichael's survey of 2,108 households, 13% of respondents had experienced at least one incident of domestic violence. Figures indicate that 19% of the worst of these incidents (i.e. those involving force, threats of and actual violence) were witnessed by children.

Further findings relevant to children and young people indicate that a greater proportion of 16–29 year-olds claimed to have been victims of domestic violence than those aged 30–59 years (16% and 12% respectively). The difference was more marked for females with 20% of females aged 16–29 being victimised compared with 14% of females aged 30–59. This compared with 11% of males aged 16–29 and 10% of males aged 30–59. Seventeen per cent of all female victims had suffered threats and/or force from a partner while they were pregnant. For over half of these females (56%), the violence had started during their pregnancy. Approximately two fifths (42%) of all respondents thought that the government and its agencies, such as the police and courts, were not doing enough about domestic violence. Less than one in five (19%) felt enough was being done to address the problem.

Because of the levels of fear experienced by victims only a proportion of women affected by domestic violence seek help from Women's Aid. Over a period of 14 years, 18,098 children were accommodated in Women's Aid hostels in Northern Ireland²⁶³. This gives an average figure of more than 1,000 children leaving their homes because of domestic violence every year. According to the DHSSPS²⁶⁴ 700 families are re-housed each year by the NIHE because of domestic violence. In

²⁶⁰ ASBOs are discussed in the chapter on Vulnerability and Marginalisation.

²⁶¹ Carmichael, M. (2007) Experience of Domestic Violence: Findings from the 2005 Northern Ireland Crime Survey, Research and Statistical Bulletin 5/2007 NISRA.

²⁶² DHSSPS (2005) Tackling Violence at Home – A Strategy for Addressing Domestic Violence and Abuse in Northern Ireland October 2005

²⁶³ <http://www.niwaf.org/>

²⁶⁴ DHSSPS News release 20th June 2007

addition to this, every year in Northern Ireland domestic violence results in around five deaths, and over 6,000 assaults.

An analysis of the needs of children affected by domestic violence was recently undertaken in the SHSSB Area²⁶⁵. Of 250 questionnaires sent to agencies dealing with domestic violence, 73 were returned. Although only based on a return rate of 29% the number of children identified as being affected by domestic violence was 547. The actual figure in the Board area is likely to be much higher.

The report concludes that the large number of signposting services available indicates a willingness to identify domestic violence, and to refer those affected to services which will meet their needs. This suggests a strong commitment to addressing domestic violence within the community and forms a sound foundation on which to build further awareness raising, training and service developments for adults and children alike. The report made a number of recommendations including that: the Children's Services Planning Working Group on Domestic Violence should develop a detailed proposal for services for children affected by domestic violence, based on the information within this document. This should take account of the need for early intervention, specialist intervention and integration into existing services. There is currently little published information on the services available to children and young people affected by domestic violence.

In relation to black and ethnic minority groups the report identifies the need to create links with those providing services to those communities. This would enable an assessment of the community's needs and how these can best be met. The engagement should also focus on developing mechanisms for effective data collection, to establish the need for services for children affected by domestic violence. Such a development would require an agreed interagency approach and protocol. Given the link established in research between domestic violence and child abuse, the report felt that consideration should be given to screening child protection referrals in relation to domestic violence. This would require cross-departmental cooperation.

A recent international study²⁶⁶ on the impact of domestic violence reports that children who live with domestic violence not only endure the distress of being surrounded by violence, but also are more likely to become victims of abuse themselves. An estimated 40% of child-abuse victims also have reported domestic violence in the home. Even when children are not physically abused themselves, their exposure to domestic violence can have severe and lasting effects. The impact begins early: younger children are more likely to be exposed to domestic violence than older children, which can impair their mental and emotional growth in a critical stage of development. As they grow up, children who are exposed to domestic violence continue to face a range of possible effects including trouble with school work, limited social skills, depression, anxiety and other psychological problems. They are at greater risk for substance abuse, teenage pregnancy and anti-social behaviour.

The report also finds that the single best predictor of children continuing the cycle of domestic violence – either as perpetrators or as victims – depends on whether or not

²⁶⁵ Southern Area Children's Services Planning Working Group on Domestic Violence (2007) Children and young people affected by domestic violence – analysis of needs. Southern Area Children and Young People's Committee

²⁶⁶ UNICEF/The Body Shop International (2006) Behind Closed Doors: The Impact of Witnessing Domestic Violence on Children.

they grow up in a home with domestic violence. Research shows that rates of abuse are higher among women whose husbands were abused as children or who saw their mothers being abused. It has also been found that children from violent homes show signs of more aggressive behaviour, such as bullying, and are up to three times more likely to be involved in fighting.

The government has developed a strategy for dealing with domestic violence²⁶⁷. This strategy acknowledges that children are often the 'silent victims' of domestic violence and recognises that their experiences can affect their emotional, psychological, physical and sexual development. The strategy identifies a number of objectives aimed at supporting children who live in violent homes. Annual Action Plans are meant to translate the strategy's principles and aims into practice by setting out the key actions to be achieved within defined timescales. Recent actions cited include the roll out and funding of the Barnardo's Risk Assessment model; and funding the evaluation and roll out of NSPCC pilot programmes to address the needs of children and families affected by domestic violence. Government has announced proposed legislative change, which will strengthen the protections available for all victims of domestic violence and abuse.

The response to the strategy within the children's sector raised a number of issues:

- the need for more effective recording of the impact of domestic violence on children and young people;
- the need for sensitively delivered awareness raising of the issue among children and young people, with adequate supports inbuilt;
- the need for children and young people to be involved in designing materials on the issue, and for these to be widely available;
- the need for specialised training for magistrates, lay magistrates, solicitors, PSNI and court staff;
- in line with the UNCRC, the introduction of a mechanism whereby children involved in domestic violence cases can have their views assessed in a meaningful way and represented in court;
- the need to ensure that domestic violence support services are accessible to marginalised communities including, Travellers, those who are lesbian, gay, bisexual and transgender, from ethnic minorities or who have a disability;
- the need to address the lack of supervised contact;
- the need to ensure adequate resources are made available to deliver the strategy.

Road safety

In 2005 the Northern Ireland Commissioner for Children and Young People (NICCY), the General Consumer Council for Northern Ireland (Consumer Council) and the Department for Regional Development (DRD) commissioned the Transport Planning and Policy Group of TRAC at the University of Ulster to undertake research²⁶⁸ into safety issues relating to journeys to school.

Road safety was the concern rated the highest by pupils (57%) along with safety on

²⁶⁷ DHSSPS (2005) Tackling Violence at Home – A Strategy for Addressing Domestic Violence and Abuse in Northern Ireland October 2005

²⁶⁸ Hine, Professor J.P., Mackey, Dr. S., Gunay, Dr. B., (2006) Safer journeys to school: NICCY.

public transport (52%). The main pupil concerns are:

- standing on school buses;
- seating on school buses and the use of the '3 for 2' rule ;
- lack of seatbelts on school buses;
- behaviour of other young people on school buses and while walking or cycling to and from school;
- behaviour and attitudes of bus drivers;
- heavy traffic and congestion, especially close to the school;
- traffic speeds;
- traffic noise;
- the time taken to make journeys on foot, by bus or in the car;
- the distances to be travelled to and from school;
- walking and using footpaths safely;
- the provision and maintenance of safe footpaths and cycle lanes; and
- crossing roads and the provision and availability of safe crossing points or crossing patrols.

The key issues of concern identified by parents included:

- traffic congestion, especially outside the school gates;
- the provision of footpaths, especially in rural areas and alongside busy roads;
- the state and general repair of footpaths;
- the provision of crossing points and patrols especially at busy routes close to schools and in both urban and rural areas;
- safety concerns while walking – as a result of traffic concerns and worries about personal security in some areas;
- the provision of cycle lanes and associated facilities;
- the availability of seatbelts on school buses;
- the enforcement of wearing seatbelts on school buses;
- issues of standing and overcrowding on school buses, mainly on those provided by Translink; and
- the behaviour of other young people, especially on board buses and while walking or cycling to and from school.

The issues raised by NICCY have yet to be adequately addressed, however, DOE has issued guidelines²⁶⁹ which make a commitment to prohibiting the use of the '3 for 2' by the end of the school year and the phasing out of standing on school services. They have however, noted "unforeseen fluctuation of passenger numbers at the start of the school year" as an exceptional circumstance.

The concerns expressed in the NICCY report have been echoed by the road safety charity, Brake²⁷⁰. According to the charity, child road deaths across the UK rose sharply between 2005 and 2006, after falling steadily over the past decade. Child pedestrian deaths rose from 69 in 2005 to 75 in 2006, while child cyclist deaths rose from 23 to 31. In the same period the total number of children killed on the roads (on foot, bicycle and in vehicles) rose from 156 to 178 (a 14% increase). In Northern Ireland during 2006, four children were killed and 76 were seriously injured while walking and cycling.

²⁶⁹ Guidelines for the use of '3for2' and standing capacity in exceptional circumstances on school buses (2006) Department of the Environment

²⁷⁰ Brake, Press release 6th November 2007

Brake conducted a survey with 295 children in Northern Ireland in 2007. The children's survey found that:

- more than four in ten (45%) have been hit or nearly hit by a vehicle while walking;
- more than half (55%) fear being knocked down;
- more than six in ten (65%) say the roads around their school are dangerous;
- more than four in ten (44%) say they find it hard to find a safe place to cross;
- 71% of children would prefer to walk or cycle to school, while only 39% do so;
- four in ten (39%) know someone who's been knocked down by a vehicle;
- more than four in ten (43%) say someone in their family drives too fast;
- of those who say they cycle, one third have been hit or nearly hit by a vehicle while cycling.

Brake has called on the government to require local authorities to install 20mph zones around schools and homes in Northern Ireland and throughout the UK. Such zones are already being introduced around every school in Scotland.

Police technologies

The UN Committee has repeatedly expressed concern at government's use of plastic baton rounds during civil disturbances. Following examination of the UK report in 2002²⁷¹ the Committee expressed concern at "the continued use of plastic baton rounds as a means of riot control in Northern Ireland as it causes injuries to children and may jeopardize their lives". (Para. 27)

It went on to recommend:

Following the recommendations of the Committee against Torture (A/54/44, Para. 77 (d)), the Committee urges the State Party to abolish the use of plastic baton rounds as a means of riot control. (Para. 28)

While the L21A1 baton round is no longer used, further technologies have been introduced. These have given rise to similar concerns.

The Attenuating Energy Projectile (AEP) was introduced into all UK police forces as a less lethal replacement for the L21A1 baton round. Research indicates that AEPs left one third of patients examined with injuries to the head and neck and 17% with injuries to the chest; in total over 50% of injuries were to the face, neck, chest or head.

Irrespective of the technological advances, the overarching principles of the UNCRC remain constant – children and young people need to be protected while encouraged to reach their full potential as human beings. The Committee on the Rights of the Child has been forceful in calling for the ban of potentially fatal incapacitants. The lack of international conformity of opinion around the use of AEPs by the PSNI is apparent when considering the report of the Joint Committee on Human Rights on the UK's compliance with the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, which was published in May 2006²⁷². The Joint

²⁷¹ UNCRC, Concluding Observations: United Kingdom of Great Britain and Northern Ireland: October 2002.

²⁷² Joint Committee on Human Rights 19th Report, The UN Convention Against Torture, HL Paper185-I, HL 701-I published on the 26th May 2006.

Committee in its Joint Committee on Human Rights 19th Report – The UN Convention Against Torture (2006) rejected the contention that AEP impact rounds could never be used. However, the Committee took the position that they can be used against individual aggressors in riot situations and can be justified in human rights terms as a proportionate response to serious violence which threatens the lives of the police or the public. The Joint Committee suggested that PSNI guidance on the use of AEP impact rounds should make clear that AEP impact rounds should only be used in circumstances where live fire could otherwise be used. The authors of ‘Monitoring the Compliance of The Police Service of Northern Ireland with the Human Rights Act 1998 – Annual Report 2006’ considered that this approach would “inadvertently affect the threshold for the use of live fire” but nonetheless recommended that the PSNI should consider it as a suggestion ²⁷³.

In March 2005 the Policing Board voted to endorse the Chief Constable’s decision to introduce the AEP for use by the PSNI. At the time of the Policing Board’s decision, a number of children and young people’s organisations and other human rights based NGOs raised concern about the impact of AEPs on children. The PSNI addresses this issue on its website by stating that the “Policing Board continues to work with the PSNI and other interested parties to address these concerns”. It gives no further information as to how these concerns are being addressed.

A Taser²⁷⁴ is any member of a family of the most commercially recognized brand of electroshock guns. It is an incapacitant weapon used for subduing a person by firing something which administers electric shock, disrupting superficial muscle functions. Modern Taser-type weapons fire small dart-like electrodes with attached metal wires that connect to the gun, propelled by small gas charges.

The Taser is the most controversial proposed incapacitant and therefore requires specific consideration. In June 2005, the Chief Constable of the PSNI informed the Policing Board of his intention to introduce Taser for limited use by PSNI specialist firearms officers. In March 2006, the Policing Board undertook a consultation exercise on the Chief Constable’s proposal, during which it received written views from a range of interested parties. Given the concerns raised through this initial consultation, the Policing Board called on the PSNI to undertake an equality screening exercise. The Policing Board also requested its Independent Human Rights Advisors to provide their advice on the human rights implications of Taser.

The Independent Human Rights Advisors report²⁷⁵ sets out in detail the controversy and current thinking around the use of Taser from other jurisdictions. The report notes that there is limited research available on the particular effects of Taser on children, but what research does exist identifies two main sources of risk to them: firstly, a heightened risk of cardiac arrest resulting from ventricular fibrillation; and, secondly, a greater risk of injury from the penetrative effects of the Taser barbs.

²⁷³ At pg 77.

²⁷⁴ TASER was first devised in 1970 by Juhn H. Clover and is an acronym for “Thomas A Swift Electric Refile” after the Tom Swift fantasy stories that John H. Glover read as a child.

²⁷⁵ Northern Ireland Policing Board Independent Human Rights Advisors report: The PSNI’s Proposed Introduction of TASER – Human Rights Advice (June 2007).

Studies carried out by the Canadian Police Research Centre²⁷⁶ has interpreted the results obtained in their study as suggesting that those with a lower body weight (e.g. children) have lowered margins of safety when exposed to electrical current²⁷⁷. It has also been suggested that the penetrative effects of barbs may be more severe for children than adults. Although the effects of Taser on pregnancy are not fully known, one reported case in the US indicated that there may be a link between Taser and miscarriage²⁷⁸.

The BBC recently reported on research conducted in Canada²⁷⁹. According to the news agency, scientists at the trauma centre in Chicago's Cook County Hospital stunned 11 pigs with Taser guns for two periods of 40 seconds at 15 second intervals. All of the animals suffered heart rhythm problems and two later died. One of the lead researchers on the study said the fact that one of the pigs died three minutes after being stunned cast doubt on the weapon's safety. The results indicated that effects of the Taser shot can last beyond the time when it is being delivered.

In providing its advice to the Policing Board, the Human Rights Advisors reached the following conclusions:

- The PSNI proposal to introduce Taser does have human rights implications.
- It is clear that some groups are more vulnerable to the use of Taser than others (e.g. those suffering from mental illness, those using drugs and/or those in a state of excited delirium) and all the evidence available to date from England, Wales and Scotland suggests that in a high percentage of cases, Taser has been used against these very groups.
- The full effects of Taser on other groups such as children and pregnant women are not known.
- The proper test under Article 2 ECHR and the HRA for the use of Taser is that its use will be lawful where it is immediately necessary to prevent or reduce the likelihood of recourse to lethal force (e.g. conventional firearms) [emphasis original].
- This is a test that is just below that for the use of lethal force, but a much stricter test than that which applies for other uses of non-lethal force. It means that Taser can be used in circumstances where there is a threat to life or a threat of serious injury, but that threat has not quite reached the threshold where lethal force (such as conventional firearms) could be justified.
- As currently presented, we are not satisfied that the PSNI proposal to introduce Taser meets that requirement.
- We recommend that the Policing Board should require the PSNI to provide clearer evidence of a capability gap requiring the introduction of Taser before its proposal is progressed. That evidence should take account of the test for the use of Taser set out above.

²⁷⁶ Canadian Police Research Centre Report (CPRC), pg 15.

²⁷⁷ Northern Ireland Policing Board Independent Human Rights Advisors report: The PSNI's Proposed Introduction of TASER – Human Rights Advice (June 2007) pg 18.

²⁷⁸ Northern Ireland Policing Board Independent Human Rights Advisors report: The PSNI's Proposed Introduction of TASER – Human Rights Advice (June 2007) pg 19.

²⁷⁹ http://news.bbc.co.uk/go/em/fr/-/1/hi/northern_ireland/7240106.stm 30th January 2008.

The Defence Scientific Advisory Council ²⁸⁰ subcommittee on the Medical Implications of Less-lethal Weapons (DOMILL) has recently stated that until more research is undertaken to clarify the vulnerability of children to Taser currents, children and persons of small stature should be considered at possible greater risk than adults and this should be stated in the guidance and training modules²⁸¹

Despite the ongoing concerns about the use of Tasers, a Ministerial Statement gave approval from the 20th July 2007 for Chief Officers throughout England and Wales to deploy Taser for use by Authorised Firearms Officers while also approving a 12-month trial of the deployment of Taser by specially trained units who are not firearms officers.

On 6th December 2007²⁸² the Chief Constable of the PSNI confirmed that he was considering deploying 12 Tasers in a pilot scheme and that the PSNI could start training specialist officers in the use of the stun guns in January 2008. Sir Hugh Orde said he would make a final decision on 17th December after meeting senior colleagues.

Since then 12 Tasers have been purchased and are available for use in Northern Ireland. A further six weapons are being used for training purposes and specialist firearms officers have been given two days training. Given that this move has been undertaken despite Policing Board and ECNI objections, it is clear that this issue remains a live one and will undoubtedly fall for consideration again in the near future.

Given the UN Committee's unambiguous statements in relation to the use of State sanctioned weapons, the introduction of Tasers, the effect of which on children and pregnant women is not yet known, is a particularly worrying and blatant action contravening the UNCRC and possibly the ECHR.

Summary of key issues

- The increasing incidences of and changing patterns of child abuse
- The absence of effective therapeutic support for children who have been abused
- The absence of collated data on sentencing of perpetrators of child abuse
- The risk posed to children due to variations in child protection practices and procedures across the European Community
- The unequal age of consent between Northern Ireland and England and consequences for young people related to mandatory reporting requirements
- The failure of the law to afford full protection to children in relation to assault in the home
- The unchanged prevalence in bullying in the past five years and the vulnerability of particular groups of children including those from black and minority ethnic communities, lesbian, gay and bisexual young people and children with disabilities
- The continuing impact of community violence on children and young people
- The impact of domestic violence on children

²⁸⁰ Defence Scientific Advisory Council – a non departmental public body of the Ministry of Defence.

²⁸¹ DOMILL has been requested by the Northern Ireland Policing Minister to identify essential studies that would enhance DOMILL's confidence in their developing views on whether children and vulnerable adults are likely to be at greater risk from the adverse effects of TASER, than normal adults.

²⁸² The Irish Times December 6th 2007.

- The increase in road traffic accidents involving children
- The introduction of police technologies that may be particularly dangerous and potentially lethal to children

Recommendations

1. The introduction of the Regional Safeguarding Board should ensure synergy with the Children and Young People's Strategy and with regional mechanisms for Children's Services Planning. It should also take account of the need for coordination and standardisation of child protection measures across the European Community.
2. The DHSSPS should urgently consider how to provide adequate therapeutic support to looked-after children who have been sexually abused.
3. The DHSSPS should research recent data in relation to child protection registrations to identify reasons underlying emerging trends.
4. The PSNI should develop clear procedures and protocols for dealing with cases of child protection, in consultation with relevant organisations.
5. The legislation aimed at protecting children at risk of sexual harm should be reviewed and if needed replaced with more appropriate and robust provisions.
6. Collated data relating to the sentencing of those who have perpetrated a crime against a child or young person should be collected and analysed to support the identification of emerging trends and the monitoring of compliance with the UNCRC and other relevant international obligations.
7. Legislation should be introduced to harmonise the age of sexual consent with that in England.
8. The government should remove the defence of reasonable chastisement in relation to the physical punishment of children in the home and give children unambiguous protection against assault, in line with the UNCRC.
9. DENI should review actions taken to combat bullying, in order to ensure that adequate protection is afforded to children with disabilities, those who are lesbian, gay, bisexual or transgender, those from ethnic minority and Traveller communities and other groups of particularly vulnerable children and young people. It must ensure that bullying experienced by these groups of children is specifically addressed in school anti-bullying policies.
10. Strategies for tackling sectarian and community violence should be developed to address the impact of such violence on children and young people.
11. Government should review The Tackling Violence at Home Strategy to ensure full compliance with the UNCRC and should incorporate actions to:
 - collect and analyse regional data on the needs of children affected by domestic violence;

- develop services for children affected by domestic violence which include early intervention, specialist intervention and integration into existing services;
- assess the service needs of black and minority ethnic communities and involve those communities in service development; and
- ensure the establishment of mechanisms to allow the voice of the child to be heard in court proceedings.

12. DRD should implement the recommendations of the NICCY 'Safer Journeys to School' report.

13. The PSNI should immediately end the deployment of Tasers until a rigorous Equality Impact Assessment has been undertaken and should take cognisance of advice provided by the Northern Ireland Policing Board Independent Human Rights Advisors.

POVERTY and MATERIAL DEPRIVATION

Introduction

The UNCRC is explicit that the State has a responsibility to provide welfare benefits and to take other measures to ensure that children enjoy an adequate standard of living. Significant areas of deprivation exist for many children and young people in Northern Ireland. This chapter serves to highlight the current available data and research illustrating the extent of poverty and its impact on children's lives and the realisation of their rights. Issues highlighted in the literature include, welfare benefit levels, the lack of childcare and the experience of poverty among asylum seekers and lone parent families.

The United Nations Convention on the Rights of the Child

The right of every child to benefit from social security, including social insurance is established in Article 26 of the UNCRC. This also sets out that the granting of benefits should take account of the resources and circumstances of the child and those who care for him/her. In relation to the right to an adequate standard of living, Article 27 sets out that this should be such as to ensure the child's physical, mental, spiritual, moral and social development. The article points out that parents or other carers have primary responsibility in this area but that they should be supported by the State and, where there is need, the State must provide material assistance and programmes of support. Particular mention is made of nutrition, clothing and housing.

The United Nations Committee on the Rights of the Child periodically issues General Comments, in the light of the experience of holding examinations of reports in a range of countries, which raise awareness of and offer further guidance in relation to particular rights. Two of these make particular reference to the issue of poverty. One of the objectives of General Comment no.7 (2005) 'Implementing child rights in early childhood'²⁸³ is "to emphasize the vulnerability of young children to poverty, discrimination, family breakdown and multiple other adversities that violate their rights and undermine their well-being" (Para. 2(f)). It sets out the need for early intervention strategies to tackle poverty (Para. 8) and advocates access to services for the most vulnerable, including those living in poverty (Para. 24). In paragraph 26 the Committee outlines the impact of poverty and emphasises the need for a range of measures:

Growing up in relative poverty undermines children's well-being, social inclusion and self-esteem and reduces opportunities for learning and development. Growing up in conditions of absolute poverty has even more serious consequences, threatening children's survival and their health, as well as undermining the basic quality of life. States Parties are urged to implement systematic strategies to reduce poverty in early childhood as well as combat its negative effects on children's well-being. All possible means should be employed, including 'material assistance and support programmes' for children

²⁸³ General Comment no. 7 (2005) Implementing child rights in early childhood CRC/C/GC/7/Rev.1 20 September 2006.

and families (Article 27.3), in order to assure to young children a basic standard of living consistent with rights.

In General Comment no. 9 (2006) 'The rights of children with disabilities'²⁸⁴ the Committee highlights the link between poverty and disability:

Poverty is both a cause and a consequence of disability. Children with disabilities and their families have the right to an adequate standard of living, including adequate food, clothing and housing and to the continuous improvement of living conditions. The question of children with disabilities living in poverty should be addressed by allocating adequate budgetary resources as well as by ensuring access by children with disabilities to social protection and poverty reduction programmes. (Para. 3)

In their Concluding Observations following the examination of the UK report in 2002²⁸⁵ the Committee expressed their concern:

...at the high proportion of children living in poverty in the State Party, which limits their enjoyment of many rights under the Convention and leads to a higher incidence among those children of death, accidents, pregnancy, poor housing and homelessness, malnutrition, educational failure and suicide. The Committee welcomes the State Party's commitment to eliminate child poverty and the initiatives taken in this regard, but notes the lack of an effective and coordinated poverty eradication strategy across the State Party. (Para. 45)

The Committee urged the government to:

- (a) take all necessary measures to the "maximum extent of ... available resources" to accelerate the elimination of child poverty;
- (b) better coordinate and reinforce its efforts to address the causes of youth homelessness and its consequences; and
- (c) review its legislation and policies concerning benefits and social security allowances for 16 to 18 year-olds. (Para. 46)

Lifetime Opportunities and Inquiry into Child Poverty

In 2002 the UK Government made a commitment to reduce the number of children in low-income households by at least a quarter by 2004, as a contribution towards the broader target of halving child poverty by 2010 and eradicating it by 2020²⁸⁶. This commitment is translated into policy here through Lifetime Opportunities, Northern Ireland's Anti-Poverty and Social Inclusion Strategy²⁸⁷. The strategy is based on the key principle of (1) New Targeting Social Need which is to target resources and effort within programmes at those areas, groups and individuals in greatest objective need; and (2) PSI as an approach to working in partnership with relevant sectors to tackle exclusion of different vulnerable groups such as lone parents. Two overall objectives are to:

²⁸⁴ In General Comment no. 9 (2006) The rights of children with disabilities CRC/C/GC/9 29 September 2006.

²⁸⁵ UNCRC, Concluding Observations: United Kingdom of Great Britain and Northern Ireland: October 2002

²⁸⁶ HM Treasury. Spending Review 2002: public service agreements (Chapter 15)

²⁸⁷ Lifetime Opportunities, Government's Anti-Poverty and Social Inclusion Strategy for Northern Ireland. OFMDFM 2006

- work towards eliminating poverty and social exclusion in Northern Ireland by 2020; and
- end child poverty by 2020. Based on the estimate of approximately 130,000 children in Northern Ireland in relative income poverty in 1998–99, this means lifting 65,000 children out of poverty by 2010 on the way to eradication by 2020.

The strategy defines specific goals and targets for four key stages in life – early years (0–4), children and young people (5–16), working age adults, and older citizens. In relation to early years the goal is to ensure that every child should have a chance to develop their full potential in infancy regardless of social background. In relation to children and young people the goal is to allow all children and young people to experience a happy fulfilling childhood, while equipping them with the education, skills and experience to achieve their potential to be citizens of tomorrow.

While many aspects of the strategy have been broadly welcomed by NGOs, some serious concerns have been raised. Save the Children²⁸⁸ has produced an analysis of the weakness in the strategy. They feel the strategy has been broadened to encompass social inclusion, which it is feared may result in the dilution of its primary focus to eradicate poverty. The targets are a particular focus for criticism. They are not seen as being based on a robust analysis of the roots and impacts of poverty, but are rather, in general, derived from commitments that have already been made, or work already started. There is very little that is new or innovative, or that will lead to actions that are capable of effectively reducing child poverty.

Of particular concern is the fact that the strategy has not yet been adopted by the NI Assembly and, consequently, no money has been allocated to meet the costs of implementation. The NGO sector is clear that the strategy needs to be adopted, resourced and built upon.

Towards the end of 2007 the Committee of the Office of First Minister and Deputy First Minister established an Inquiry into Child Poverty. The aim of the Inquiry is to examine the current strategic approach to tackling child poverty in Northern Ireland. In a submission to the Inquiry NICCY²⁸⁹ made the following recommendation in relation to the anti-poverty strategy

Targets set by the government in the anti-poverty strategy must be reviewed and improved by all government departments; interim targets need to be set, that are monitored on a regular basis. The Executive must ensure that adequate resources are allocated to fully implement the anti-poverty strategy. All government departments must work together to develop, implement and monitor action plans in line with the strategy. These plans should be both department specific, but should be joined to ensure greatest impact.

The government has issued a new strategy,²⁹⁰ Including the Homeless. It includes figures from the NIHE for 2006. These show that the number of presenters accepted

²⁸⁸ Save the Children, Getting On Track for 2020 - An analysis of Lifetime Opportunities ability to tackle child poverty. December 2006.

²⁸⁹ Submission by NICCY to OFMDFM's Inquiry into Child Poverty

²⁹⁰ DSD (2007) Including the homeless – A strategy to promote the social inclusion of homeless people, and those at risk of becoming homeless in Northern Ireland.

as full duty applicants²⁹¹ has doubled during the last ten years. In 1995 the figure was 4,000; in 2006 this had risen to 9,749. Approximately 50% of those presenting were accepted as full duty applicants.

The strategy sets out a number of principles and actions – many of these concern things that have been in train for some time. It is a cause of some disappointment that the strategy makes very little mention of children or young people and that actions are not yet targeted. One action concerns the NIHE developing a protocol with Social Services. In relation to this the Department is proposing that the legislation should be amended to ensure that all 16 and 17 year-olds who are homeless and do not fall within the remit of social services would have priority need status. However, no additional funding has been allocated to implement the strategy.

Measuring poverty

One of the most difficult areas in the poverty debate is the lack of an agreed set of measures in relation to poverty. Government, NGOs and researchers over the years have used a variety of measures to assess when poverty occurs. This has obvious repercussions in relation to setting targets, planning interventions and tracking progress.

The government currently measures poverty in relation to low income. Save the Children²⁹², among others, argues that this is actually a measure of income inequality and is not the most appropriate way of measuring poverty. Save the Children advocates a mixed measure of poverty, which goes beyond income to include other measures of deprivation. Additional measures might include having to go without things that the public consider to be necessities in life, such as being able to pay heating and phone bills on time, affording a nutritious diet, buying new rather than second-hand clothes and family outings. A further area of confusion arises in relation to how income itself is measured in various studies. Studies can use a figure of income that either includes or excludes the costs of housing i.e. rent, mortgage interest, rates, water charges etc. A recent study²⁹³ of poverty in Northern Ireland used a measure of income after housing costs (AHC) were removed. This indicated that poverty in Northern Ireland was around the UK average. However, along a range of other indicators, the same report found that Northern Ireland compared unfavourably with all of the nine English regions, as well as with Scotland and Wales. These included: the high number of people receiving out-of-work benefits; the high numbers without paid work; the high number of disabled people, especially related to mental ill-health; and the extent of low pay among full-time employees.

The Department of Work and Pensions issued a consultation document²⁹⁴ in 2002 which sought consensus in relation to measuring poverty across the UK. As a result²⁹⁵ they decided on a tiered measure of child poverty as the best way to monitor progress

²⁹¹ refers to those applicants under the Housing (NI) Order 1988 full duty status who are found to be homeless, eligible for assistance, in priority need and unintentionally homeless.

²⁹² Save the Children: Getting On Track for 2020 - An analysis of Lifetime Opportunities ability to tackle child poverty. December 2006.

²⁹³ Kenway, P., MacInnes, T., Kelly, A., Palmer, G. Monitoring poverty and social exclusion in Northern Ireland. Joseph Rowntree Foundation 2006.

²⁹⁴ Measuring Child Poverty (2002), A consultation document. Department of Work and Pensions

²⁹⁵ Department of Work and Pensions (2003) Measuring Child Poverty, DWP

over the long term. The tiers involve a set of inter-related indicators of absolute low income, relative low income and a mixed material deprivation and low income tier.

The three tiers and their objectives are:

- Absolute low income – to measure whether the poorest families are seeing their incomes rise in real terms.
- Relative low income – to measure whether the poorest families are keeping pace with the growth of incomes in the economy as a whole.
- Material deprivation and low income combined – to provide a wider measure of people's living standards – the mixed tier.

While the government has been collecting information in relation to the third tier for the past two years they have yet to report on child poverty using this measure. A recent announcement suggests that the NI Executive is to address this issue. On 4th February 2008, the Junior Ministers with responsibility for children and young people, made a statement heralding the re-establishment of the Ministerial Subcommittee on Children and Young People. In the course of the debate Minister Kelly made the following statement:

There are different ways of defining severe child poverty. The government's published statistics on relative income poverty are arranged in order of depth of poverty: that is, children of households whose income is less than 70%, 60%, and 50% of median income. We have asked the NISRA statisticians to consider the best ways of defining different levels or depths of poverty. That work is under way.²⁹⁶

The extent of poverty in Northern Ireland

In 2004 Save the Children produced a report²⁹⁷ focused specifically on severe child poverty in Northern Ireland. Based on data from the Poverty and Social Exclusion study²⁹⁸ 2002–2003 and using a definition of poverty that included three measures (low household income, child deprivation, and parental deprivation) the study concluded that 8% of all children were living in severe poverty (i.e. poor on all three measures) with a further 42% of children living in non-severe poverty (i.e. poor on one or two measures). When these figures are extrapolated to the whole population of children in Northern Ireland who were under 16 years, this would indicate that approximately 32,000 children were living in severe poverty and a further 167,000 were living in non-severe poverty. The report found that 50% of children in Northern Ireland were poor on at least one measure compared to 45% in Britain. Almost a third of children in Northern Ireland (30%) were poor on at least two measures compared to 23% of children in Great Britain.

The study also indicated that worryingly high proportions of children, living in severe poverty, were going without the following, due to lack of money:

²⁹⁶ <http://www.niassembly.gov.uk/record/reports2007/080204.htm#3>

²⁹⁷ Monteith, M and McLaughlin, E (2004) *The Bottom Line: Severe Child Poverty in Northern Ireland*. Belfast: Save the Children.

²⁹⁸ The Poverty and Social Exclusion survey in Northern Ireland was directed by Professor Eithne McLaughlin (Queen's University Belfast), Professor Paddy Hillyard (University of Ulster) and Mike Tomlinson (Queen's University Belfast); key findings were reported in *Bare Necessities: Poverty and Social Exclusion in Northern Ireland* (Hillyard et al, 2003).

- meat, fish or a vegetarian equivalent at least twice a day (22% of severely poor children);
- fresh fruit and vegetables at least once a day (20% of severely poor children);
- three meals a day (14% of severely poor children);
- new clothes when needed (42% of severely poor children);
- educational games (23% of severely poor children).

In a further report for OFMDFM²⁹⁹ the same authors present a series of statistical analyses based on a variety of measure combinations. Findings include:

Using an income only measure

- Between one fifth and one quarter of all children in Northern Ireland are living in low income households.
- 71% of children living in workless households are income poor.
- 64% of children living in households claiming income support or Jobseekers Allowance are income poor.
- 59% of children living in NIHE accommodation are income poor.
- 46% of children living with lone parents are income poor.
- 47% of children living in large families are income poor.
- 36% of children living with a disabled or chronically ill parent are income poor.
- 32% of disabled children are poor.

Using the consensual (mixed income and deprivation) measure

- Almost two fifths of Northern Ireland's children are considered poor using the consensual poverty measure.
- More than four out of every five children living in workless households were poor.
- 84% of children living in NIHE accommodation were poor.
- Two thirds of children of lone parents were poor.
- Three in five children living with a chronically ill or disabled parent were poor.
- Three in five disabled children were poor.
- 55% of children living in large families were poor.
- Two fifths of Catholic children were poor.
- Two fifths of children living in households with one worker were poor.

Using the Department of Work and Pensions 3 tier measures

- 14% of children in Northern Ireland are living in absolute low income poverty.
- 19% of children in Northern Ireland are living in relative low income poverty in relation to average household incomes in Northern Ireland.
- 23% of children in Northern Ireland are living in relative low income poverty in relation to average household incomes in UK.
- 34% of children in Northern Ireland are living in households with an income less than 70% of the equalised median household income for Northern Ireland.
- 16% of children in Northern Ireland live in households that are seriously behind with one or more key payments.
- 20% of children are poor on a combined measure of adult and child

²⁹⁹ McLaughlin, E. and Monteith, M (2006) Child and Family Poverty in Northern Ireland, OFMDFM

- deprivation and relative low income.
- 8% of children are poor on a measure combining debt with adult deprivation, child deprivation and relative low income.

While presenting robust analyses of the relative merits of the various methodologies the authors conclude that the Save the Children severe poverty measure is the most effective in terms of charting progress on government targets over time for those in deepest poverty. This is largely because it uses a combination of a very low income level with a full complement of consensually agreed adult and child deprivation indicators.

Save the Children has recently published a report³⁰⁰ on severe child poverty across the UK adapting this mixed measure for use with the Family Resources Survey which is the data collection tool for the government’s annual tracking of child poverty. This shows that 10% of children here are living in severe child poverty; this corresponds to around 44,000 children.

A number of studies in Northern Ireland in recent years have highlighted that poverty is a pervasive feature of many children’s lives here. The following sections highlight issues raised in the literature related to the impact of poverty in relation to children’s rights.

Poverty and the right to education

Save the Children has prioritised child poverty as an area of work in Northern Ireland for several years. The organisation has recently published its first annual report³⁰¹ on the state of child poverty here. This document provides a comprehensive overview and analysis of poverty research pertaining to children in Northern Ireland.

The report sets out a number of findings in relation to education. These illustrate how the child’s right to an effective education, as set out in UNCRC Articles 28 and 29, can be limited by the experience of poverty. Examples include:

Finding	Source
Young children living in areas of high deprivation score less well on verbal skills, early number concepts and general cognitive skills. They also show less progress on sociability and cooperation.	Melhuish, E. et al (2006), Effective Pre-School Provision in Northern Ireland, Summary Report. DENI.
8.8% of 16 year-olds describing themselves as ‘not well off’ indicated that they were unhappy at school compared to 1.4% of their ‘well off’ peers.	Schubotz, D., D. Simpson and A. Tennant, (2007), Participation, happiness and achievement: the impact of poverty on the school experiences of 16 year –olds (ARK and Save the Children, Belfast)
Families experiencing poverty pay an average of £8 per week on extra costs associated with their children’s education – in some cases £30 extra per week was paid.	McAleavy, G. et al, (2004), Addressing Policy Implications of Transgenerational Poverty, (The Further and Higher Education Research Unit, University of Ulster).
Where mothers have no educational qualifications, 87% of their children are living	Magadi M. and Middleton, S., (2007), Measuring Severe Child Poverty in the UK, (Save the Children, London).

³⁰⁰ Magadi, M. and Middleton, S., (2007) Measuring severe Child poverty in the UK (Save the Children, London).

³⁰¹ Save the Children (2007), A 2020 Vision – Ending Child Poverty in Northern Ireland. Annual Child Poverty Report 2007.

in poverty, 45% of whom are in severe poverty.	
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Since 1947 the post-primary education of children in Northern Ireland has been determined by an academic test undertaken at eleven years of age (the 11 plus transfer test). Critics of academic selection have pointed to unreasonable stress placed upon young children by the transfer test and how it skews the focus of teaching in the last years of primary school. Recent research³⁰² among primary school children in Northern Ireland reveals that tests were the single most cited reason for worrying about school. All the children worried about tests, but children in the advantaged schools were far more worried and under greater pressure to do well in all their tests. The children who planned to do the eleven plus said they found it "stressful", that they worried about their parents' expectations and feared they would "let them down" by not doing well enough.

The effect of failure at age eleven and its concomitant impact on self confidence and self-esteem in future years has also been highlighted. Clearly, poverty impacts on educational opportunity and outcomes. Children from poorer backgrounds are more likely to be placed in secondary schools. According to DENI, 48.7% of pupils in schools with the lowest proportion of children in receipt of free school meals achieve a grade A in the transfer test. Only 17.7% of children in schools with the highest proportion do so³⁰³. Further, secondary schools have four times more children in receipt of free school meals than grammar schools³⁰⁴.

The recent research³⁰⁵ among primary school children here clearly shows that most children's experience of school is determined by the level of disadvantage they face. Poorer children accept from a young age that their social position will be reflected in their experience of school and they are not going to get the same quality of schooling, or of outcomes, as children who are better off. Children and parents identified the main costs of school as uniform (including shoes), lunches and school trips. Children in disadvantaged schools were very aware of all the costs and of the difficulties parents faced in finding as little as 50 pence or a pound for school events. The experiences of school for children from poorer families were narrower and less rich. For example, children in disadvantaged schools had limited access to music, art and out-of-school activities that children in advantaged schools generally took for granted.

The report concludes that:

Putting these children's views together with the quantitative evidence for the detrimental impact of selection on disadvantaged children, there is strong evidence to support plans to end the Eleven Plus. Indeed, the evidence points towards the complete abolition of academic selection.

Following two reports into post-primary education, the Burns Report in 2001 and the Costello Report in 2003, the government took the decision to end academic selection in Northern Ireland. On 5th December 2007 the Minister of Education announced that

³⁰² Horgan, G. (2007), The impact of poverty on young children's experience of school, Joseph Rowntree Foundation.

³⁰³ DENI, (2002), Transfer Procedure Test Results 2001–2002.

³⁰⁴ DENI, (2006), Annual School Census 2005–06.

³⁰⁵ Horgan, G. (2007) The impact of poverty on young children's experience of school, Joseph Rowntree Foundation.

the final 11-plus transfer test will take place in 2008 and that pupils transferring to post-primary school in September 2010 will do so on the basis of criteria including community, geographic and family criteria. While further details in relation to how the plans are to be implemented have yet to be announced, significant political opposition to the proposals has been expressed.

Given the weight of empirical evidence that shows the impact of poverty on children's educational experience, it will be important for any new arrangements for post-primary education to be clearly rooted in the UNCRC. In particular, teaching in the final years of primary school must not be allowed to be skewed because of the imperatives of transfer arrangements.

In General Comment no.1 the UN Committee makes clear that teaching that is focused on accumulation of knowledge, promoting competition and leading to an excessive burden of work on children may hamper the development of the child's full potential (Para. 12).

The Committee also stresses that resource constraints cannot provide justification for failure to fully implement education provisions of the UNCRC (Para. 28). Article 28 makes clear that where financial assistance is needed to ensure full delivery of the right to education, States are obliged to provide this. Children should not miss out on educational opportunities because their parents cannot afford to pay for the additional costs.

Poverty and the right to health

In his 2006 annual report the Chief Medical Officer highlights the well-established and persistent link between poor health outcomes and poverty:

Not everyone in Northern Ireland will experience the same levels of good health or life expectancy. People who experience disadvantage, social exclusion, lower educational attainment, poor housing or are unemployed, for example, are likely to suffer poorer health and an earlier death when compared with the rest of the population. There is also a clear link between poverty and ill health. People living in the 'more disadvantaged' areas are more likely to have poorer health and are less likely to live as long as people living in the 'well-off' areas.³⁰⁶

He goes on to present statistics comparing the health of those living in the 20% most deprived electoral wards, with the general Northern Ireland population. Among those living in these wards:

- men will die on average four years earlier and women two years earlier;
- men are 43% more likely to die before the age of 75, women are 38% more likely to do so;
- suicide rates per 100,000 of the population are 13.8 compared to 9.9;
- admissions to hospital are 20% higher;
- infant mortality rates are a third higher than in the rest of Northern Ireland.

³⁰⁶ Annual Report of the Chief Medical Officer for Northern Ireland 2006

Studies referenced in the Save the Children report³⁰⁷ also show the impact of poverty on the child's right to enjoy the highest attainable standard of health. Examples include:

Finding	Source
The infant mortality rate for the most deprived areas of Northern Ireland is 23% higher than the Northern Ireland average	DHSSPS, (2004), Equality and inequalities in health and social care in Northern Ireland (DHSSPS, Belfast).
There is a disabled child in 15.2% of families living in severe poverty, compared to 9.6% of families not experiencing poverty.	Magadi M. and Middleton, S., (2007), Measuring Severe Child Poverty in the UK, (Save the Children, London).
Children from low income families are more likely to visit a GP than children from families with a higher income.	CSU, (2006), Continuous Household Survey 2005–06. NISRA.
13% of children in severe child poverty are without health or disability aids because their parents cannot afford them.	McLaughlin, E. and M. Monteith (2004), The Bottom Line, (Save the Children, Belfast).
Children born into poverty are four times more likely to die before the age of 20, are 15 times more likely to die as a result of a house fire and are five times more likely to die in accidents.	DHSSPS, (2000), Investing in Health: Consultation Document, (DHSSPS, Belfast).
The mortality rate of Traveller children, up to the age of ten, is ten times that of the population as a whole.	Traveller PSI Working Group report (OFMDFM, 2001)
One in seven children in severe poverty in Northern Ireland goes without three meals a day because of low income – almost double the rate in Great Britain.	McLaughlin, E. and M. Monteith (2004), The Bottom Line, (Save the Children, Belfast).
Of all regions in the UK the cost of food in Northern Ireland is second only to the cost in London.	Wingfield, D. et al, (February 2004), Relative regional consumer price levels in 2004, (ONS, Economic Trends 615).
Children living in bad housing are more likely to develop diseases such as bronchitis, TB or asthma.	Shelter, (2006), Toying with their future: the hidden cost of the housing crisis. www.shelter.org.uk
In 2004, in the most deprived areas of Northern Ireland, seven girls in every thousand aged 13–16 gave birth – in other areas the figure was two girls of this age in every thousand.	Kenway, P. et al, (2006), Monitoring poverty and social exclusion in Northern Ireland 2006, (JRF, York).

Again, there is overwhelming evidence that the healthy development of children is severely impeded by the experience of poverty. The mortality rate of Traveller children is a particularly damning indictment of the government's record in relation to delivering on Article 6 – the right to life, survival and development, one of the four General Principles of the UNCRC.

Children living in poverty in Northern Ireland clearly do not enjoy the right to the highest attainable standard of health, as set out in UNCRC Article 24.

³⁰⁷ Save the Children (2007): A 2020 Vision – Ending Child Poverty in Northern Ireland, Annual Child Poverty Report 2007.

Poverty and the right to an adequate standard of living

The DSD has recently issued a report³⁰⁸ providing information on potential living standards, as determined by disposable income in 2005–06. The data is based on the Family Resources Survey. In relation to children the statistics are summarised as:

- In 2005–06, more than half of children in Northern Ireland lived in households with incomes in the bottom two quintiles of the income distribution.
- Children in households with two adults were less likely to be in lowest income quintile than children in households with one adult.
- The greater the number of children in a family, the increased likelihood of low-income.
- Children living in families with at least one disabled adult were more likely to experience low-income than those living in households with no disabled adults.
- Children living in Catholic families were more likely to experience low-income, compared to those in Protestant families.

The report also examined the family and household characteristics of children living in low-income households in Northern Ireland. The most concerning statistic indicates that child poverty (calculated using 60% of median income) has increased overall by 4.6 compared to 2004–05.

The Save the Children Annual Child Poverty report gathered information from studies related to housing and the neighbourhood environment in which children here grow up. Again, this draws attention to how poverty affects the child's right to a standard of living, which the UNCRC states should be adequate for the child's development. Examples include:

Finding	Source
In 2005–06 there were 32,215 applicants on the waiting list for a social rented sector home, with 17,433 of these considered to be in 'housing stress'.	Department of Social Development, (2006), Northern Ireland Housing Statistics 2005-2006, Statistics and Research Branch (Core).
Six in ten children in severe poverty (59.5%) live in rented accommodation compared with one in ten children who are not in poverty.	Magadi M. and Middleton, S., (2007), Measuring Severe Child Poverty in the UK, (Save the Children, London)
The price of fuel and light per unit in Northern Ireland is the highest for any region in the UK.	Office of National Statistics, Relative Regional Price Levels in 2004
50% of households with an annual income below £10,000 face fuel poverty.	NIHE (2004), Housing Conditions Survey
Children living in severe poverty are five times as likely to live in an area where drug use and dealing is a problem: three times as likely to live in an area where joy riding is a problem and six times as likely to live in an	McLaughlin, E. and M. Monteith (2004), The Bottom Line, (Save the Children, Belfast).

³⁰⁸ DSD (2007) Households Below Average Income, Northern Ireland, 2005-06.

area where punishment beatings are a problem.	
Children living in deprived areas of North and West Belfast are more likely to be involved in road traffic accidents and suffer from burns, scalds and high falls.	Silversides, J.A. et al, (2005), Social Deprivation and Childhood Injuries in North and West Belfast, The Ulster Medical Journal.
Lone parents are twice as likely to be victims of burglary and almost three times as likely to be victims of violence as families with children in general.	French, B. and P Campbell, Crime Victimization in Northern Ireland: Findings from the 2003–4 Northern Ireland Crime Survey, Research and Statistical Bulletin 2004–2005, NIO Statistics and Research Branch
The proportion of unfit housing in rural areas is twice the level in urban areas.	Rural Community Network response to Targeting Social Need consultation. www.ruralcommunitynetwork.org/text/NewTSNResponse.doc

The State’s obligations in relation to ensuring that children enjoy an adequate standard of living are set out in UNCRC Article 27. The State is required to support parents and those in need must be provided with material assistance. One of the appropriate measures in this regard is the provision of welfare benefits. That these are woefully inadequate in Northern Ireland, is starkly illustrated by Save the Children.

Their annual Child Poverty report draws on government figures to show that families with children, who are claiming all the benefits they are entitled to, are living below the government poverty threshold (60% of median household income). For example, a couple with four children can claim £289 per week, this is £128 below the poverty line for a family of this composition. This is all the more worrying given that the report indicates the low uptake rate of some benefits.

Clearly, benefit levels are so low in Northern Ireland that, rather than supporting families to attain an adequate standard of living, as required by the UNCRC, they serve to lock many families into the experience of poverty.

There is evidence that adolescents are also failed in this regard. In a submission to the Inquiry into Child Poverty established in late 2007 by the Committee of the Office of First Minister and Deputy First Minister the Children’s Law Centre³⁰⁹ highlighted, what has been a consistent concern in relation to benefits for 16 and 17 year-olds.

The Children’s Law Centre points out that young people aged 16 and 17 have no automatic right to social security benefits and also receive a lower level of income support and Jobseeker’s Allowance than adults over 25, regardless of the fact that they may be living independently. This situation persists despite the UN Committee’s recommendation in 2002 that the UK Government should “review its legislation and policies concerning benefits and social security allowances for 16 to 18 year-olds.” (Para. 46c)

A related infringement of their rights is that young people under 16 have no right to the minimum wage and those aged between 16 and 18 receive a lower rate of the minimum wage even though they may be living independently, working full-time and doing the same job as their older colleagues.

³⁰⁹ Written Evidence to the Committee for the Office of the First Minister and Deputy First Minister on the Inquiry into Child Poverty, Children’s Law Centre 2007

In responding to such issues the government here consistently argues that commitments to maintaining parity with Great Britain means that they are not in a position to introduce change.

Poverty and the right to play

In General Comment no. 7 the UN Committee notes that States have paid insufficient attention to “the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts” (Article 31). They emphasise the role and value of play in early childhood education and point to the lack of safe play space in many urban environments, where the design and density of housing, commercial centres and transport systems combine with noise, pollution and all manner of dangers to create a hazardous environment for young children. They stress that planning for towns, and leisure and play facilities should take account of children’s right to express their views and encourage States to pay greater attention and allocate adequate resources (human and financial) to the implementation of the right to rest, leisure and play. (Para. 34)

The impact of poverty on the right to play is addressed in the Save the Children report³¹⁰. This notes that, according to the Poverty and Social Exclusion Survey (2003), one in five children (21%) does not have access to nearby safe play areas, and this rises to more than one in three children (37%) experiencing severe child poverty. The report further notes that one in ten severely poor children (8%) did not have access to nurseries, playgroups or mother and toddler groups. Children in this group are also more likely to go without particular forms of toys or games – almost a quarter (23%) go without educational games and construction toys, and more than one in three (38%) goes without a bike because a parent can’t afford them.

In relation to safe places to play, the DOE is responsible for the Planning Service, the aim of which is to “improve the quality of life of the people of Northern Ireland by planning and managing development in ways which are sustainable and which contribute to creating a better environment”. The Planning Policy Statement 8: Open Space, Sport and Outdoor Recreation³¹¹ sets out the policies of the DOE for the protection of open space, the provision of new areas of open space in association with residential development and the use of land for sport and outdoor recreation and advises on the treatment of these issues in development plans. The policy states: “the government considers everyone, particularly children, the elderly and those with disabilities, should have easy access to open space and the opportunity to participate in sport and outdoor recreational pursuits.” However, there is no obligation on the planning service to ‘save’ space for children, nor is there any requirement for new housing developments to incorporate play and leisure space or designated areas for children and young people.

The impact of poverty on a family means that choices have to be made as to the allocation of the financial resources available. Food, clothes, fuel and other essentials can mean that parents are unable to find the money for leisure and hobby activities.

³¹⁰ Save the Children (2007), A 2020 Vision – Ending Child Poverty in Northern Ireland, Annual Child Poverty Report 2007.

³¹¹ Planning Policy Statement 8 (PPS 8) Open Space, Sport and Outdoor Recreation, DOE February 2004.

The report considers that this is reflected in the fact that one in three severely poor children (33%) lacks sports' gear or leisure equipment and one in seven (14%) is unable to take part in any hobby or leisure activities because parents are unable to afford them.

To alleviate such situations Save the Children³¹² has called for the introduction of seasonal grants in the summer holidays and in the winter to help families manage at the most financially pressured times of year. According to Save the Children, seasonal grants would lift over 400,000 children out of poverty in the UK and would help the government, as part of the wider necessary investment of £4 billion, to get back on track on the target of halving child poverty by 2010. If they were offered seasonal grants, 59% of parents said they would use the grant to help pay for back-to-school costs and 55% said it would help pay for activities for their children.

Poverty in relation to asylum seekers and refugees

In General Comment no. 7 the UN Committee calls on States Parties to ensure that all young children (and those with primary responsibility for their well-being) are guaranteed access to appropriate and effective services, including programmes of health, care and education specifically designed to promote their well-being. The Committee stresses that particular attention should be paid to the most vulnerable groups of young children and to those who are at risk of discrimination in line with Article 2 of the UNCRC, this includes asylum-seeking children. (Para. 24)

Throughout the course of this review it has proved extremely difficult to access locally published research in relation to the rights of children who are asylum seekers or refugees. Under the NIA 1998, immigration is an excepted matter and not within the competence of the NI Assembly. Consequently, asylum claims are dealt with by the Home Office. Asylum seekers who are given permission to stay in the UK become known as refugees. According to the NI Racial Equality strategy³¹³ the numbers of refugees here is not known but government estimates the numbers as small. The NI Executive has, however, signalled to the United Nations Committee on the Rights of the Child³¹⁴ that it intends to develop a Refugee Integration Strategy.

Research highlighted by Oxfam³¹⁵ in the UK, presents stark evidence of the severe poverty experienced by asylum seekers there. The findings show that asylum seekers receive benefits 70% below the basic benefits level. Of particular concern is that those with additional needs (such as pregnant women, families with young children, people with disabilities, victims of torture and the elderly) are also not entitled to additional special needs provisions or 'passported' benefits on the same terms as UK citizens. Surveys have shown that 85% of asylum seekers experience hunger, 95% could not afford to buy shoes or clothes, and 80% were not able to maintain good health.

The proposed Refugee Integration Strategy in Northern Ireland will need to take account of and address the experiences detailed in the Oxfam research and, to be

³¹² Save the Children press release July 11th 2007.

³¹³ A Racial Equality Strategy for Northern Ireland 2005-2010 OFMDFM 2005

³¹⁴ Northern Ireland Report to the UNCRC (2007) OFMDFM

³¹⁵ <http://www.oxfamgb.org/ukpp/safe/myths1.htm>

effective, must be based on an accurate identification of the numbers of refugees in Northern Ireland.

Childcare

The UNCRC acknowledges that many parents are economically active, often in poorly paid occupations which they combine with their parental responsibilities (General Comment no. 7, Para. 21). Specifically UNCRC Article 18.3 requires States Parties to take all appropriate measures to ensure that children of working parents have the right to benefit from childcare services.

The Northern Ireland Child Minding Association (NICMA) has recently produced a document³¹⁶ which illustrates continuing concerns in relation to childcare provision here.

They reiterate the findings of a comprehensive survey of parents and childcare providers in Northern Ireland, commissioned in part by the Department for Employment and Learning (DEL)³¹⁷, in 2003. The survey found that:

- there was a significant shortfall in childcare places in Northern Ireland;
- two-thirds of non-employed mothers said that lack of adequate, quality childcare deterred them from seeking work;
- demand for childminding far outstripped supply;
- a further 20% expansion in the number of childminders was needed to meet demand.

NICMA points out that instead of any increase in the number of childminders since the report was written, there has actually been a sharp drop in childminding places; in the three years to March 2006, there was a 19% fall in the supply of places with registered childminders³¹⁸.

The Children's Law Centre³¹⁹ has also drawn attention to the issue, citing the fact that following the introduction of Children First, the NI Childcare Strategy in 1999, the number of childcare places only increased by 5.7% in the first five years. To address the current shortfall in registered childminders, NICMA has proposed to government the introduction of a childminder start-up package. This would involve a start-up grant combined with one-to-one mentoring for those entering the profession.

Clearly affordable accessible childcare, which facilitates parents to work is a major factor in ensuring that families have incomes adequate to lift them out of poverty.

Poverty and lone-parenthood

In a submission to the recent Child Poverty Inquiry, Gingerbread³²⁰ has outlined

³¹⁶ Northern Ireland Executive Draft Programme for Government and Draft Budget 2008 – 2011 Response from NICMA – the Childminding Association December 2007.

³¹⁷ Gray, A. and Bruegal, I. The availability, use of and demand for childcare services among the parents of children aged 0-14 in Northern Ireland, Commissioned by the Equality Commission for NI, DEL and the four Childcare Partnerships in 2003.

³¹⁸ Children Order Statistical Bulletin 2006, The actual number of registered childminders fell by 14% during the same period.

³¹⁹ Written Evidence to the Committee for the Office of the First Minister and Deputy First Minister on the Inquiry into Child Poverty, Children's Law Centre 2007

³²⁰ Gingerbread Submission to the Child Poverty Inquiry, January 2008.

research on lone-parenthood in Northern Ireland. According to the agency:

- There are 92,000 one parent families in Northern Ireland incorporating 150,000 children.
- Statistical evidence and recent research indicate that over 70% of these children are living in poverty.
- 90% of lone parents have indicated that they would like to work outside the home.
- 23% of children living with a working lone parent are poor due to low wages.
- Lone parents are less likely to have academic qualifications than mothers in couple families and to find well-paid jobs.

Gingerbread has recently undertaken research in partnership with DEL and the University of Ulster. Part of the work looked at poverty and wellbeing. This details how poverty restricts the choices and opportunities available to lone parents and their children. Lone parents spoke frequently of the impact of living on a low income. This included the constant stress that resulted from a relentless struggle to make ends meet, not being able to buy children things and the impact this had on the lone parent's ability to lead a healthy life.

Commenting on the government target of getting 70% of lone parents into work by 2010 the organisation points out that meeting this target will require the creation of an additional 30,000 childcare places and 10,000 jobs. They recommend that the government explores the introduction of models of childcare provision that mirror Scandinavian initiatives, where childcare is subsidised and almost universal.

Summary of key issues

- The absence of a set of measures to define the levels and depths of poverty, agreed and applied by government
- The extent and persistence of child poverty including severe child poverty in Northern Ireland
- Poverty impacts on the right to education and government has failed to provide adequate assistance
- Poverty impacts on the right to health, most starkly reflected in the high rate of infant mortality among the Traveller community
- Benefits rates in Northern Ireland serve to lock families into poverty and are not applied equitably, nor in line with need, to 16 and 17 year olds
- Children living in poverty do not access adequate safe places in which to play
- There is an absence of research information and data in relation to refugee children in Northern Ireland, which means that their needs cannot be assessed and addressed
- There is insufficient affordable, accessible childcare provision in Northern Ireland
- High proportions of children from lone parent families are living in poverty

Recommendations

1. Government should revise the Lifetime Opportunities, Northern Ireland's Anti-Poverty and Social Inclusion Strategy and its associated action plans to include clear, specific, measurable actions and targets. These should be supported by

- a set of child rights indicators, against which progress can be monitored. The strategy should be adopted and supported by an adequate budget.
2. Proposed new transfer arrangements to post-primary education should be subjected to a rigorous child impact assessment to ensure full compliance with Articles 28 and 29 of the UNCRC. They must take account of, and address, the established link between poverty and poor educational outcomes.
 3. In line with the UNCRC Concluding Observation in 2002, government should review its legislation and policies concerning benefits and social security allowances for 16 to 18 year-olds.
 4. Government should report on levels of child poverty using a mixed measure which combines material deprivation and low income.
 5. Data relating to child poverty should be collected in a way that supports disaggregation to demonstrate differential impacts on particular groups of marginalised / disadvantaged children. This should include those with a disability, Traveller children, those from ethnic minority and migrant worker communities, refugees, those living in deprived areas, those in conflict with the law, teenage parents and children outside of mainstream education. Action plans associated with the Anti-Poverty and Social Inclusion Strategy and the Children and Young People's Strategy should be formulated to address the emerging evidence.
 6. Funding should be allocated to support the implementation of the DSD Including the homeless Strategy.
 7. Welfare benefits levels should be revised to ensure that family incomes are raised above the government poverty threshold.
 8. The government should introduce seasonal grants to support families living in poverty to meet the financial strain occurring at particular times of year e.g. returning to school and heating costs during winter.
 9. The Northern Ireland Investing for Health Strategy should include measures to address the health inequalities experienced by children living in poverty. This should be based on a thorough analysis of disaggregated data. In particular, the DHSSPS should, as a matter of urgency, put measures in place to address the high rate of infant mortality, and other health inequalities among children from the Traveller community.
 10. The proposed play policy for Northern Ireland should address the lack of safe play provision for children living in deprived areas.
 11. The proposed Refugee Integration Strategy should be developed in consultation with organisations working with refugees in Northern Ireland. It should be based on rigorous data identifying the numbers of refugees in Northern Ireland and robust research exploring their needs.

12. Government should consider the introduction of Childminder Start-up packages, and the Scandinavian model of childcare to ensure that quality, affordable childcare is available to parents in Northern Ireland.

PARTICIPATION and ADVOCACY

Introduction

It is fundamental to the realisation of the rights of children and young people, as anticipated in the UNCRC, that their needs and views should be reflected in any policy, service or legislative provisions which affect them. It is only in effectively enabling the voice of the child to be heard and taken into consideration that real progress can be made in bringing to life the child centred focus envisaged in the UNCRC. This chapter examines the State's obligations and duties, provides information on recent initiatives and reflects on the extent to which children's voices are being heard in the care, education and justice systems.

Article 12 of the UNCRC sets out that all children who are capable of forming views have the right to express these freely in all matters that affect them. The State also has an obligation to give the views of children due weight in line with their age and maturity. In General Comment no. 7 the Committee expands on what this means in relation to very young children. They point out this Article 12 reinforces the status of the young child as an active participant in the promotion, protection and monitoring of their rights. They have found that respect for the young child's agency – as a participant in family, community and society – is frequently overlooked, or rejected as inappropriate on the grounds of age and immaturity. They go on to emphasise that Article 12 applies both to younger and to older children. As holders of rights, even the youngest children are entitled to express their views, which should be “given due weight in accordance with the age and maturity of the child” (Article 12.1). The Committee asserts that young children are acutely sensitive to their surroundings and very rapidly acquire understanding of the people, places and routines in their lives, along with awareness of their own unique identity. They make choices and communicate their feelings, ideas and wishes in numerous ways, long before they are able to communicate through the conventions of spoken or written language. (Para. 14)

Fulfilling the rights of children in this respect means that sufficient mechanisms must be put in place to enable the voices of all children, most especially those who are vulnerable and marginalised, to be heard. Article 12 applies equally to all measures adopted by States to implement the Convention³²¹. In addition, Article 13 recognises the right of children and young people to seek and receive information. Article 17 states that they should have access to appropriate information aimed at the promotion of their well-being. The Committee on the rights of the Child emphasises the need for documents and processes to be accessible to effect real change, and acknowledges that, while listening to children is ‘relatively unchallenging’, giving due weight to their views requires ‘real change’³²².

Of particular significance to participation and advocacy is Article 42, which requires that children and adults are informed about their rights. Failure to meet the requirements of Article 42 is significant for two reasons: firstly, it results in an absence

³²¹ Committee on the Rights of the Child, General Comment no.5, CRC/GC/2003/5, 27th November 2003, General Measures of Implementation of the Convention on the Rights of the Child, Para. 12.

³²² *Supra*.

of procedural rights thereby denying a voice to rights holders to 'have their say', and, secondly, it may also lead to substantive rights violations due to the lack of awareness of rights holders.

Some measures taken to facilitate the views of children can, at times, appear perfunctory and reactive insofar as they are not based on a belief that children *should* be involved in the process and outcomes, but rather on the imperative of complying with international standards. The end result of such an approach is to render the process useless, as such tokenism simply does not translate in any meaningful way. The ideal scenario is that the positive presence of children and young people is apparent within any process that touches their lives. If the process is scrutinized, the positive presence of the child within that process should be immediately visible whether throughout the ongoing process or in the outcome achieved by the process.

The Committee on the Rights of the Child 2006 'Day of General Discussion on the Right of the Child to be Heard'³²³ reiterated the significance of the importance of the implementation of Article 12 and reaffirmed that listening to children should not be seen as an end in itself, but rather as a means by which States make their interactions with children and their interactions on their behalf "ever more sensitive to the implementation of children's rights...Article 12 requires consistent and ongoing arrangements. Involvement of and consultation with children must avoid being tokenistic". While noting the importance of encouraging opportunities for child participation as a tool to stimulate the evolving capacities of the child, the Committee emphasised the need:

...to speak, to participate, to have their views taken into account. These three phases describe the sequence of the enjoyment of the right to participate from a functional point of view. The new and deeper meaning of this right is that it should establish a new social contract. One by which children are fully recognised as rights holders who are not only entitled to receive protection but also have the right to participate in all matters affecting them, a right which can be considered as the symbol for their recognition as rights holders. This implies, on the long term, changes in political, social, institutional and cultural structures.

The Committee made wide-ranging comments in relation to the significance of participation in all aspects relevant to children and young people. Amongst others, the Committee reaffirmed the link between Article 12 and 13 of the UNCRC, as the right to receive and impart information is an important pre-requisite to realising participation of children. States Parties were urged to consider developing child friendly information in relation to all matters affecting children. They also reiterated that age should not be an impediment for the child to access complaints mechanisms within the justice system and administrative proceedings.

In General Comment no. 9 on the Rights of Children with Disabilities, the UN Committee on the Rights of the Child stated that clear provisions for the protection and exercise of the specific rights of children with disability should be set out in national laws and regulations (Para. 17). The Committee also emphasises the importance of including all children with disabilities in policies and programmes (Para. 18). Specific

³²³ Committee on the Rights of the Child, Forty-third session 11-29 September 2006

attention is drawn to the right of children with disabilities to participate. The Committee's experience is that these children and young people are often left out of the decision and policy making process. States are urged to include their representation on various bodies such as Parliament, committees and other forums. The children should also be equipped with whatever mode of communication they require to facilitate expressing their views (Para. 32).

Duties of public authorities

The Committee on the Rights of the Child has urged governments to "move from an events based approach of the right to participation to systematic inclusion in policy matters in order to ensure that children can express their views and effectively participate in all matters affecting them." They have called on governments "to comply with their obligation to ensure that child participation is taken into account in resource allocation and that mechanisms to facilitate the participation of children be institutionalised as a tool for implementation."³²⁴

Section 75 of the NIA 1998 was enacted to advance equality and good relations in Northern Ireland. It creates a statutory obligation on a public authority to promote equality of opportunity "between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation. Most equality legislation prior to the 1998 Act involved setting out rules forbidding certain practices. For instance, anti-discrimination legislation sets out clearly what is considered unacceptable behaviour but Section 75 is couched in more positive terms:

Section 75 is a positive duty which goes well beyond, in its positive obligations and requirements, the more limited (although no less important) requirement of the negative duty in much anti-discrimination law.³²⁵

A critical element of ensuring compliance with the legally enforceable duties imposed under Section 75 is the concept of increased participation in policy making and development. The fact that age is one of the nine categories specified in the legislation, means that there is a need to consult directly with children in policy formulation and development, on matters which affect their lives, whether or not they have a personal interest.

In a submission to the UN 'Day of General Discussion on the Right of the Child to be Heard'³²⁶ NICCY commented that the combination of UNCRC Article 12 and Section 75 of the NIA provides a useful framework for ensuring that children and young people in Northern Ireland are consulted about decisions that affect their lives.

In relation to Section 75 they pointed to difficulties regarding its inconsistent application and inadequate monitoring and to the failure of designated authorities to adequately self-regulate in relation to Section 75 equality standards. NICCY recommended that the Committee on the Rights of the Child pass a resolution requiring States Parties to incorporate Article 12 into domestic legislation. They felt that a useful mechanism for ensuring this in Northern Ireland might be the development of a BOR or

³²⁴ Committee on the Rights of the Child, Forty-third session 11-29 September 2006

³²⁵ McLaughlin, E, Faris, N. (2004) The Section 75 Equality Duty – An operational review, Vol. 2.

³²⁶ Committee on the Rights of the Child, Forty-third session 11-29th September 2006

the further extension of Section 75's remit.

It is of concern that individual schools are not bound by Section 75, although DEL and the ELBs who provide the finance and governance to schools, are.

The Equality Commission is currently considering whether or not schools might be included within the remit of Section 75 and to this end have commissioned research from the National Foundation for Educational Research at Queen's University Belfast.

In their response to consultation on the matter, the Children's Law Centre³²⁷ has pointed to the incongruence of the lack of designation of schools as public bodies. They have commented:

At present, the majority of children and young people in Northern Ireland spend a large part of their day within the mainstream school system. Education is a major part of a child or young person's life, yet there is no obligation on schools to ensure that gaining an education is an experience where equality of opportunity is delivered by schools. This is a ludicrous position when one considers that all the further education colleges and universities in Northern Ireland are designated public bodies. It would appear that the delivery of education is not an obstacle to the need to have due regard to the promotion of opportunity under Section 75, so one must only conclude that the age of the children and young people concerned precludes schools from being designated under Section 75. Resultantly, vulnerable children and young people are afforded no protection in school under Section 75, whereas their older student peers are.

The most significant legal development regarding Section 75 was the decision of the Court of Appeal In The Matter of an Application by Peter Neill for Judicial Review³²⁸. The Court considered the availability of judicial review as a remedy to any alleged breach of Section 75 and concluded that the NIA 1998, while providing its own remedial process for an alleged breach of this particular section, did not comprehensively preclude the availability of judicial review in certain circumstances. The following extracts from paragraphs in the judgment highlight the findings of the Court:

[30] The conclusion that the exclusive remedy available to deal with the complained of failure of NIO to comply with its equality scheme does not mean that judicial review will in all instances be unavailable. We have not decided that the existence of the Schedule 9 procedure ousts the jurisdiction of the court in all instances of breach of section 75. Mr Allen suggested that none of the hallmarks of an effective ouster clause was to be found in the section and that Schedule 9 was principally concerned with the investigation of procedural failures of public authorities. Judicial review should therefore be available to deal with substantive breaches of the section. It is not necessary for us to reach a final view on this argument since we are convinced that the alleged default of NIO must be characterised as a procedural failure. We incline to the opinion,

³²⁷ Children's Law Centre Response to the NFER at QUB's Consultation on Mainstreaming Equality in Schools in Northern Ireland February 2006.

³²⁸ No. [2006] NICA 5

however, that there may well be occasions where a judicial review challenge to a public authority's failure to observe Section 75 would lie. We do not consider it profitable at this stage to hypothesise situations where such a challenge might arise. This issue is best dealt with, in our view, on a case by case basis.

[31] It should perhaps be observed that, even if judicial review is available to challenge breaches of Section 75, it is by no means automatic that, in a situation where legislation has been enacted following the breach, it would be thereby rendered invalid. Much will depend on the nature of the breach and the availability of other effective remedies. Again, however, further comment on this should await instances where the issue arises directly.

[43] We have concluded that the only route by which NIO's avowed failure to comply with its equality scheme can be challenged is by the procedure set out in Schedule 9 to the Northern Ireland Act 1998 and that in this instance judicial review is not available to the appellant. We have further concluded that the Secretary of State's consent was not required for the enactment of the Anti-social Behaviour (Northern Ireland) Order 2004. The appeal must therefore be dismissed.

While Section 75 may appear on the face of it to require adherence to its provisions, the outworking of this judgment may well serve to lessen the application of what had originally been viewed by many as stringent criteria. The effect of this ruling is to seriously narrow the possible sanctions, should the option of judicial review be ruled out in any given case, against a public authority should they fail to adhere to their legislative requirements under Section 75. The Court did not detail the criteria it would apply before deciding whether judicial review proceedings would be appropriate in any given case and so it will fall for each case to be decided on a case by case basis. The uncertainty of this approach requires that any future attempts to enforce the statutory obligations inherent on public bodies by virtue of Section 75 should be considered very carefully in light of the cost implications of such a decision.

Initiatives to promote participation in public decision making

The area of participation is perhaps one where most progress in the realisation of children's rights has been made in recent years. A number of initiatives hold promise for further securing opportunities for children to exercise their Article 12 rights.

ECNI Draft Guidance for Public Authorities on Consulting with Children and Young People

The recently published ECNI document: *Let's Talk: Let's Listen, Draft Guidance for Public Authorities on Consulting with Children and Young People (2007)*³²⁹ is an attempt to support public bodies to be effective in their engagement with children and young people.

The guidance aims to help public authorities fulfil Section 75 obligations effectively, specifically with regard to consulting directly with children and young people.

³²⁹ *Let's Talk: Let's Listen, Draft Guidance for Public Authorities on Consulting with Children and Young People (2007 Equality Commission for Northern Ireland)*.

Furthermore, the guidance aims to enable public authorities to move beyond compliance to develop best practice. The guidance covers the following areas:

- why it is important for public authorities to consult with children and young people;
- what is meant by consultation, engagement and active participation;
- how to identify the impact of policies on children and young people;
- how to incorporate the requirement to consult with children and young people into the strategic planning process;
- how to identify barriers to consultation with children and young people and to outline actions which enable successful consultation;
- how to identify other issues which need to be taken into account in consulting with children and young people.

The guidance outlines the benefits of direct consultation with children and young people. These include better formulation of policy and practice to target services for children and young people more effectively and more appropriate and effective policies and services based on actual rather than presumed need.

The guidance is a welcome development and supports public authorities to consider their statutory duty as something which is mutually beneficial, rather than merely a mandatory requirement carrying possible sanctions for non-compliance³³⁰.

The Participation Network

A feasibility study on the involvement of children and young people in public decision making was undertaken in 2004 by a number of agencies including Save the Children and the Youth Council for Northern Ireland³³¹. Following this exercise OFMDFM funded the establishment of The Participation Network in January 2007. While many organisations have been working with children and young people to support them to develop a voice, The Participation Network is the first agency to focus exclusively on preparing adult decision makers to listen to that voice. The emphasis on supporting decision makers to engage directly with children is in line with the UN Committee's exhortation in General Comment no. 5:

It is important that governments develop a direct relationship with children, not simply one mediated through non-governmental organizations (NGOs) or human rights institutions. (Para. 12)

The aim of The Participation Network is to develop the capacity of statutory authorities and bodies in Northern Ireland to fulfil their duties to effectively engage, consult with and involve children and young people in decision making.

The objectives of The Participation Network are:

³³⁰ Consultation on the draft guidance took place from 4th May to 27th July 2007 and it is anticipated the consultation responses will be published.

³³¹ Keenan, P. & Harvey, C. (2004). Turning up the Sound. Belfast, Save the Children; Youth Council NI; NI Youth Forum; YouthNet

1. To create a network of agencies with expertise in child and youth participation in public decision making.
2. To offer training and consultancy support to statutory agencies, local government and government departments in order to develop their internal capacity to engage directly with children and young people.
3. To log, coordinate and disseminate requests from statutory agencies, local government and government departments in relation to engaging children and young people in public decision making.
4. To develop and promote standards of good practice in relation to child and youth participation in public decision making.
5. To develop a bank of resource materials, information and a website in relation to child and youth participation in public decision making.

The Participation Network is managed by CiNI on behalf of an interagency steering group. The group includes OFMDFM, DENI, NICCY, Save the Children, NI Youth Forum, Youth Council for NI, Children's Services Planning, Play Board and Youthnet.

The Network provides free consultancy and advice services and tailored training to public authorities. It also facilitates a network of 50 agencies working directly with children and young people, including marginalised groups. This enables the signposting of decision makers to the organisations that can facilitate their direct engagement with children affected by their policies and services.

The Participation Network is centred on the understanding that meaningful direct engagement between children, young people and decision makers results in tangible improvements in policy and service development. Such participation goes beyond simple consultation at the end of the process. The Network promotes a number of models which involve children (including very young children) and young people at early stages of policy development.

An interim independent evaluation³³² of the project states that The Participation Network has successfully met its objectives in the first year of operation. Comments made in relation to the project include:

Having both OFMDFM and the Department of Education represented on the steering group is critically important and signals a willingness to emerge from the 'silo' behaviour of the past, where Departments kept very much to themselves – which of course inhibited the development of 'joined up government'. As envisaged in 'Our children – our pledge', Departments working together will be a major factor in government substantially delivering on Children's Rights.

DARD is currently working with The Participation Network, an organisation that facilitates direct engagement with children in order to determine their needs.

³³² Quiry, M. (2008) Interim evaluation of The Participation Network, CiNI

We intend to do this for the strategies that will emerge from the prospective local action groups (LAGs) implementing the Rural Development Plan.

The Participation Network is most valuable in developing interagency cooperation – the answer to consultation fatigue is more cooperation.

We would rely on The Participation Network for advice re: black and minority ethnic groups and lesbian and gay young people.

The work undertaken by The Participation Network is an essential component of ensuring that the participation of children and young people in public decision making, is based on direct engagement and embedded in the culture of public authorities, as required by the UNCRC. Such work brings government a step closer to the creation of the 'social contract' envisaged by the UNCRC.

Northern Ireland Network for Children and Young People

A further positive development is the work, led by DENI to establish a Northern Ireland Network for Children and Young People. DENI set up a working group comprised of representatives of the statutory and voluntary child and youth sectors. The terms of reference were as follows:

To develop a draft proposal for a mechanism which will realise the Department of Education's goal of 'strengthening the direct voice of young people in all relevant aspects of government provision'.

The group will advise the Department of Education on possible options for consideration. Any proposals will need to ensure that the mechanism:

- will be an integral and essential component of an overall coherent participation system within Northern Ireland;
- will be complementary to other relevant participation initiatives;
- will be recognized by all sectors providing services to children and young people, and by the NI Assembly, NI Executive and all government departments;
- will have effective links at both regional and local level;
- will be accessible to all children and young people in the age range 4–25.

The working group has established mechanisms to ensure the participation of children and young people in the development of a range of options. It is expected that these will be subject to full consultation in late spring 2008.

It is to be hoped that the final mechanism will be compliant with the UNCRC in ensuring that the voices of all children and young people, including those who are marginalised, will be heard. It is also important that clear methods for monitoring the impact and effect of children's views are established.

PSNI Independent Advisory Groups

In 2006³³³, the PSNI indicated that their Community Safety branch would establish Independent Advisory Groups (IAGs) with minority ethnic communities, older persons, disabled persons, lesbian, gay, bisexual and transgender communities and young people.

The Northern Ireland Policing Board³³⁴ has reported on the development of the IAGs. Each IAG is made up of a panel of advisors who meet on a quarterly basis. The PSNI has drawn up a policy on the role, structure and function of IAGs, which is currently in draft form.

The PSNI District Commander or Head of Department is responsible for defining the role of an IAG, which may include advising on policy and strategy, assisting with critical incidents, participating in training and ensuring transparency in decision making. While the PSNI administers and supports each IAG, in the main, an independent member of the IAG assumes the role of chairperson.

As part of this initiative the PSNI, in February 2007, developed four IAGs for young people across Northern Ireland. These groups are specifically designed to facilitate a process of engaging and consulting with children on policing matters which impact on their daily lives.

At this early stage of their development there has been no formal evaluation of how effective the young people's groups are in impacting on PSNI policy and operations. Include Youth³³⁵ at the time of the initial proposal of IAGs, welcomed the development but cautioned that:

- They must include Section 75 groups and also marginalised young people whom consultation processes generally do not reach, for example, children in the youth justice system, children being looked after, members of minority ethnic groups, such as Traveller children.
- It is essential that the IAG mechanism provides a clear, transparent and robust structure to facilitate real and meaningful participation for children and young people.
- In order for the IAG process to work, it will be important to support police officers at all levels through training to gain the necessary knowledge, skills and understanding to 'meet' / 'interact with' the children and young people participating in this process.
- The remit of the IAGs should be a matter for joint discussion and agreement between young people and the police. There is a risk of alienating young people if they are not involved in the development of the IAGs and there is a very real possibility that prescriptive terms of reference, which young people have no input into, will render such consultation tokenistic and young people will not engage.

An assessment of the initiative's compliance with the UNCRC can only be made on the basis of information about the composition of the groups, the participative processes involved and their effectiveness in influencing the PSNI.

³³³ Human Rights Programme of Action 2006-2007, PSNI.

³³⁴ Human Rights Annual Report 2007, Northern Ireland Policing Board

³³⁵ Include Youth Response to the Police Service of Northern Ireland's Consultation on its draft Policy Directive on Policing with Children and Young People, Nov 2005.

The voice of the child in the care system

The Northern Ireland based organisation VOYPIC has produced extensive work in recent years, which serves to describe young people's views of their care experience³³⁶. They have consistently found that children and young people want to be consulted, informed and to have a say in the decisions that are made about their lives.

When given opportunities to provide their own perspective of their care experience, children in care highlight issues that adult decision makers are not necessarily aware of. They express the need to have private space within foster and residential homes. Like most children, they want to feel safe in their homes and to feel wanted by their foster parents. It is important to them that their needs are met in their placements and that they can feel secure that they can stay there in the long term. The children say that they want to be treated the same as other pupils in school and not be singled out as being looked-after children. They do not want to have to change school so often and would like the opportunity to have a stable educational experience. Confidentiality in relation to their personal and birth family details is also a prime concern. They want to have information about what is happening with their birth families and they don't want to have their family members maligned. The children spoke of how difficult it is for them to have constant changes in social worker. In terms of social work support they want someone who will spend regular time with them, not just when there is a crisis. Perhaps most poignantly the children said they wanted to have someone to talk to about their feelings around constant placement and school moves, about contact with their families and more generally about worries and concerns.

Given that the outcomes of being in care remain so poor, it is essential that there are forums within which decision makers can hear these concerns and take them into account in policy and service development. VOYPIC, as a well established advocacy agency, has developed a number of innovative models for such direct engagement. Their extensive involvement in ascertaining the views of children in care in relation to the Care Matters proposals has been a welcome development. The organisation received funding of £1.32 million for a period of two years to further develop regional advocacy services for children in care. While this is a positive initiative, in order to fully comply with the requirements of the UNCRC government must ensure that such services are legislated for and established on a permanent basis.

The Care Matters strategy document makes a commitment to delivering advocacy for all looked-after children in Northern Ireland. In responding to this proposal NICCY³³⁷ made the following recommendations:

- A clear advocacy strategy incorporating standards should be developed for roll out across Northern Ireland, and this should encompass children in care as one part of the overall strategy.
- Assurances should be given that children in hospital care, in special boarding schools and those placed outside the jurisdiction will have access to advocacy services. NICCY is especially concerned to ensure that disabled children in

³³⁶ McAuley, C., Bunting, L., (2006) The views, experiences and aspirations of care experienced children and young people, VOYPIC.

³³⁷ Response by the Northern Ireland Commissioner for Children and Young People (NICCY) to the DHSSPS Consultation on 'Care Matters' 2007

- care, including those in respite care, are enabled to access advocacy services
- Advocacy arrangements should be encompassed in legislation to ensure that the service is implemented and available to all children and young people who are in care.
- A comprehensive advocacy strategy should set in place arrangements by relevant authorities to develop, implement, manage and review advocacy for children in need and children looked after.
- The DHSSPS facilitates and funds the establishment of an advocacy forum, to enable coordination of advocacy services, standards to be developed and sharing of good practice.

NICCY recently conducted an extensive review of children's participation in the care planning and review process³³⁸. The study involved questionnaires with 165 children and young people aged 5–18 years, 70 foster carers, 87 birth parents and 20 residential staff. Focus groups and interviews were also held with a selection of Trust staff, foster carers and young people. The key findings were:

- The current looked-after children system is not, in the opinion of both service users and many service providers, adequately addressing the Article 12 rights of children and young people to express their opinion and have this taken seriously (UNCRC).
- For many looked-after children and young people in Northern Ireland, the experience of care planning is one that is far from ideal, both in terms of their own wishes, desires and needs and the recommended standards advocated by experts in the field.
- Whilst there has certainly been notable progress in recent years, children and young people do not yet feel they are active participants in their care planning. Many young people, particularly those of post-primary age, want to have a more active and meaningful role in decisions about their lives. They want to be active partners in, not passive recipients of, their care planning.
- Many birth parents, foster carers and Trust staff also recognise both the need for, and benefits of, increased participation amongst children and young people.
- Good practice does currently exist and this is to be commended. It is not, however, uniform across all Trusts, or indeed even within Trusts.
- The current review process is neither appropriate, nor effective, for many children and young people. It is too formal, inflexible and adult-centred.
- Reviews are not the only vehicle for participation. Alternative means of participation are not, in most cases, being sufficiently utilised or explored.
- Though there is a general commitment to the participative process on the part of most interested parties, children and young people's understanding of what participation entails is substantially different to that of most adult respondents.

³³⁸ NICCY (2006) A review of looked after children and young people's involvement in care planning.

- The inflexibility of the current system does not easily accommodate the effective realisation of a participative culture.
- Children and young people, together with those Trust staff working on the ground, have a multitude of suggestions as to how the system could be improved, ranging from a series of easily implemented practical recommendations to a complete shift in organisational culture. It is, however, difficult to feed these into the current planning structures.

In the light of these findings, NICCY has recommended that DHSSPS establishes a time-bound, action-oriented working group to review current policy and practice in relation to care planning, with particular emphasis on the findings of this review.

Adoption

There is no direct research on how children are facilitated to participate in decisions made within the adoption system in Northern Ireland. However, a recent study in England highlights issues which may well be relevant to children and young people in the adoption process in Northern Ireland. The Commission for Social Care Inspection (CSCI) recently produced an overview of adoption services and agencies in England. A companion report³³⁹ surveyed 208 children and young people with experience of adoption.

Children were asked about having a say in decisions. When asked how much choice they had had themselves in choosing the family they were now adopted by, two thirds of the children said they were too young at the time to have had any choice. However, 68 children did describe how much choice they had – of these, just under half (43%) said that they didn't really have much say in it. A further third said that they had some say in the final choice of family. A quarter said that they had been able to make the final choice of family themselves. In relation to contact with birth families, 64% of the children reported that they had no say themselves in whether or not this happened. Nearly one in five (19%) had some say in this, while 17% said it was their own choice whether or not they kept in contact with their birth family. It is clear from the views of these children that adoption processes need to adequately address the lack of participatory mechanisms for enabling the voice of the children to be heard.

The government has developed a new adoption strategy (see chapter on Marginalisation and Vulnerability) which sets out new services and proposals for new legislation and the reorganisation of adoption structures in Northern Ireland.

Critics of the proposed strategy suggest that advocacy for children in the adoption process should be established on a statutory basis, there should be a mechanism for establishing and giving due consideration to the views of the child and the adopted child's right to information must be carefully prescribed in legislation and guidance.

³³⁹ Morgan, Dr. R., OBE. Children's Rights Director (2006) About Adoption: A Children's Views Report. Commission for Social Care Inspection

The voice of the child in the education system

There is little evidence that the voice of the child is adequately heard within the education system. The Committee on the Rights of the Child stated in its General Comment no. 1 – on The Aims of Education that:

the participation of children in school life, the creation of school communities and student councils, peer education and peer counselling, and the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning and experiencing the realization of rights.

In its Concluding Observations in 2002³⁴⁰, the UN Committee on the Rights of the Child was particularly concerned about the lack of participative mechanisms in UK schools.

The Committee is also concerned that in education, schoolchildren are not systematically consulted in matters that affect them (Para. 29)

The Committee recommends that the State Party, in accordance with Articles 12 to 17 of the Convention, take further steps to promote, facilitate and monitor systematic, meaningful and effective participation of all groups of children in society, including in schools, for example through school councils (Para. 30).

An examination of this issue formed part of the work of the NICCY report³⁴¹ on school anti-bullying policies. The research determined the level of involvement of pupils in developing the policies. Fourteen schools took part in the research (five primary, four post-primary, five special). Only 15% of primary school pupils and 32% of post-primary pupils said that they had ever been asked their opinion on how something was done in their school. The differences between schools in the different sectors were significant. Less than one in five (18%) primary school pupils and just over one in ten (11%) post-primary pupils said that they had helped to change something in their school. In relation to schools councils, two out of five primary schools and three out of four post-primary schools had a formally established school council. However, the majority of pupils in two out of the five schools that had councils did not know about or thought that there was no school council, suggesting that the schools did not involve most pupils in any meaningful way. Data collected suggests that pupils in schools with an active and working school council had a greater sense of ownership of their school.

The 2006 YLT survey³⁴² of 772 young people aged 16 asked a series of questions about participation in school life. They produced the following results:

Would you say that students at your school were generally allowed to express their views about the running of the school?

A lot	12%
A little	58%
Not at all	26%

³⁴⁰ UNCRC, Concluding Observations: United Kingdom of Great Britain and Northern Ireland: October 2002.

³⁴¹ Schubotz, D., Sinclair, R., (2006) Being part and parcel of the school - The views and experiences of children and young people in relation to the development of bullying policies in schools, NICCY.

³⁴² ARK, Young Life and Times Survey (2006).

Don't know 4%

Did your school have a school council, that is, a body made up of teachers and students who together decide some things about the running of the school?

Yes 56%
No 33%
Don't know 10%
Not answered 1%

Those who said their school had a council (56%) were asked:

How effective was the school council in raising and influencing issues affecting school life?

Very effective 25%
Not very effective 52%
Not at all effective 15%
Don't know 6%
Not answered 3%

What kinds of things did the students at your school have a say in?

	Yes	No	Don't know	Not answered
School uniform	23%	66%	7%	4%
Budget allocation	6%	72%	17%	5%
Curriculum	9%	69%	16%	7%
Facilities e.g. toilets/ lockers	41%	43%	11%	4%
School policies	42%	40%	15%	4%
Other	12%	18%	13%	57%

The fact that 56% of 16 year-olds said their school had a council but 67% of those said it was "not at all" or "not very" effective suggests that putting structures in place, of itself, does not guarantee effective participation.

NICCY has developed a programme called Democra-School to support and encourage the development of meaningful school councils and the practice of democracy in the school environment. The programme began in 2006 with the aim of demonstrating the benefits to schools of having an effective school council and developing guidance for schools. The design of the guidance was led and steered by young people and based on good practice from school councils in Northern Ireland.

The importance of facilitating the participation of children and young people within the school system was highlighted in the recent case NICCY was involved in, in which the court stated that a mechanism allowing alteration "must" be present in schools³⁴³.

³⁴³ See further pg 19–20.

The voice of the child in the justice system

The Committee on the Rights of the Child has clearly stated that age should not be an impediment to the child's accessing complaints mechanisms within the justice system³⁴⁴. Two issues directly related to the Committee's comments and further requirements under the UNCRC – child friendly information and appropriate access to complaints systems – have recently been identified as being inadequate for young people within the criminal justice system.

Review of the complaints system

The complaint system within the criminal justice system was reviewed in the recent report 'The Handling of Complaints in the Criminal Justice System Inspection Report'³⁴⁵. The inspection concentrated on the seven main Criminal Justice Organisations (CJOs). The inspection examined how complaints against those organisations were handled, either by themselves or by other agencies.

The process involved consideration of complaints made by anyone outside the CJOs – the internal complaints mechanism did not form part of the inspection. The period under review was from November 2005 to October 2006. This inspection coincided with work being carried out by the Regulation and Quality Improvement Authority (RQIA) into complaints by young persons at the Lakewood Centre and work by NICCY at the JJC.

The Review of the Criminal Justice System in Northern Ireland (2000) described the handling of complaints as "an essential part of effective accountability mechanisms". Recommendation 16 of the Review advocated systems that should be "accessible, understood, administered sensitively and expeditiously, and having an independent element where appropriate". The Chief Inspector, in his foreword to the inspection report comments:

Complaints handling should be an integral part of continuous improvement strategies designed to enable organisations to improve the quality of the services that they provide and to learn lessons from mistakes that may have occurred.

Some organisations have more mature complaint systems than others, whilst the Youth Justice Agency had only recently introduced a completely new system which will need time before a comprehensive review of it can be undertaken.

While acknowledging that bespoke complaints systems are part of the organisational independence of CJOs, the Chief Inspector considered:

...there is scope for developing a system of unified, independent oversight of complaints within the compact jurisdiction of Northern Ireland.

³⁴⁴ Day of General Discussion on the Right of the Child to be Heard, Forty-third Session, 11-29th September 2006.

³⁴⁵ Criminal Justice Inspection, Northern Ireland July 2007. See also Chapter One for critique of reports on the PSNI Human Rights Act Compliance and an inspection report of the Public Prosecution System.

The Youth Justice Agency complaint system had been finalised in October 2006 and no review of its effectiveness had yet been conducted. This, and the fact that the YJA has a custodial element (Juvenile Justice Centre ³⁴⁶), is reflected in the number and type of recommendations made. The inspection report found that, while there was clarity around what amounts to a complaint, issues perceived as falling below the threshold of a formal complaint are generally not recorded by the receiving department. It was felt that this resulted in missed opportunities to enable an organisation to develop its policies and processes to the benefit of its service users. Better communication was highlighted by the vast majority of complainants as being the single most important factor to improve. It was not just an increase in the frequency of communication that complainants referred to but the style of communication. Many stated that the letters or emails they received used legal jargon and were difficult to understand. Unsurprisingly, the complainant's perception of the level of service received was greatly enhanced if the organisation offered an apology, or showed empathy towards their feelings.

Apart from complaints against the police and the prison service, the level of complaints recorded was very low. This may be as a result of good service, complaints not being recorded, people not knowing how to complain, or underreporting of concerns, or a mixture of all of these reasons. The inspection report specifically identifies young people in detention, either at the JJC or Hydebank, where Inspectors found "a high level of apathy as regards complaining".

The 2007 report makes reference to a previous inspection – Inspection of the JJC (Northern Ireland) (2004)³⁴⁷ – and notes that the 2004 report stated:

The need for an 'independent person' to monitor the process of the complaint was identified... It is expected that the draft Child Protection Procedures and Complaints Charter which are in process of consultation, will address the plan to include people with the specific remit to oversee referrals from an independent stand point.

This issue was also addressed in The NIHR report 'Still in our care: Protecting children's rights in custody in Northern Ireland', September 2006. That document recommended the introduction of an independent complaints system.

Despite both these recommendations, the CJI 2007 report deals with this issue by stating:

Since then [2004 inspection] there has been good progress in appointing the Independent Complaints Reviewer³⁴⁸ as the independent oversight body³⁴⁹ for complaints against the YJA ³⁵⁰

³⁴⁶ Proposals for the Juvenile Justice Centre Order (Supervision) Rules (NI) 2007 are currently out for consultation.

³⁴⁷ Criminal Justice Inspectorate, October 2004.

³⁴⁸ Independent Complaints Reviewer

³⁴⁹ There are 3 internal stages of complaint, with external scrutiny through an Independent Complaints Reviewer (ICR). The YJA signed a Service Level Agreement (SLA) on the 1st October 2006 with the ICR - at the time of inspection fieldwork the YJA did not yet appear on the ICR website as an organisation it provided a service for. No YJA complaints had been referred to the ICR

³⁵⁰ Para. 2.24, pg 8

without explaining further why, three years since the initial recommendation was made, an independent complaints system has not been implemented.

It is a clear violation of the rights of children and young people when facilities and services are recognised as being required and yet are not provided. While the internationally recognised concept of 'progressive realisation' clearly recognises the budgetary constraints of governments in seeking to realise the rights of individuals and groups, it is extremely concerning that young people in custody, who are highly vulnerable and marginalised, do not have an adequate and effective independent complaints mechanism.

The views of young people

The provision for custody of children is undertaken on a single site at the JJC at Rathgael in Bangor. During the 2007 inspection the Inspectors spoke directly to young people in the JJC and also to some young people who had left the Centre. This feedback identified serious issues about the failure of the voice of the young people to be heard. The participation of those who completed questionnaires, who took part in focus groups facilitated by the inspection, resulted in the following direct feedback:

- Most young people currently resident in the Centre said they had been informed they could make a complaint. A third of former residents said they had been informed they could make a complaint while at the Centre.
- Less than half of current residents and none of the former residents remembered being given any complaints literature whilst at the centre.
- Young people wanting to make a complaint had to request a form from a staff member and there could be a delay, sometimes overnight before a form is given to them.
- Young people believed that how a complaint is dealt with could depend on the complaint itself or on the young person.
- They complained about the lack of confidentiality in that completed forms could be read by any member of staff.
- Many said they experienced a delay when initially asking for a complaint form and some stated that by the time the form was supplied they had moved on from what had happened..
- The time it took to deal with a complaint was also raised as was the lack of communication about the status of a complaint.
- Only two of the young people resident at the time of the visit said that they had made a complaint in the last year. One stated that the complaint had not yet been sorted out and the other did not know what the outcome of the complaint was. The complaints charter³⁵¹ provides for a feedback mechanism and at the time of inspection staff at the JJC were aware of it and stated "that they were implementing it". No reason is given for the delay in implementation.
- Young people spoke positively of some staff at the Centre and said they would wait until they came on duty to raise issues as they would be confident that something would be done.
- Young people expressed very little confidence in the current complaints system within the JJC, repeatedly stating that there was "*no point*" in making a complaint as nothing positive ever happened as a result of them and

³⁵¹ YJA Complaints Charter introduced in October 2006.

complaints were not taken seriously – “[staff] could just shred them; they don’t get back to us about it”.

- When asked if they had ever wanted to make a complaint but had not actually done so, 54% of current residents and 89% of ex-residents replied “yes”. When asked why this was the case, the most common responses were “there’s no point – no-one listens” and “*I was scared I’d make things worse/get in trouble*”.
- The young people repeatedly made reference to a fear of negative treatment by staff, in particular the receipt of an adverse report, and a perception that staff do not actually act on any complaints made.

In response to the question, “Why do you not complain?” young people said:

“No point. No point. Noooooooooo point.”

“When we complain, we get an adverse [report].”

“[I] wouldn’t complain about anything – couldn’t be bothered – it wouldn’t make any difference.”

“They write stuff down and throw it away.”

“You get a bad name if you tout.”

The Inspectors also spoke to the young people about the Independent Representation Project (IR Project). This service is provided by Northern Ireland Association for Care and Resettlement of Offenders (NIACRO) who work with and visit young offenders and raise issues with staff on their behalf. The Independent Representative is not part of the complaints scheme, but they may support young people in making a complaint. It appears that many of the young people were unclear about the role of those involved in the IR Project and were uncertain of their effectiveness:

“IR? Meant to complain on your behalf but do nothing for you.”

“Don’t listen when you complain.”

“No point talking to them ‘cos they don’t do anything.”

One young person spoke of a positive experience with an IR but others complained they “looked down” on them and/or “didn’t understand” them. The young people also complained about the inconsistency of personnel making building relationships difficult, as well as a perceived lack of confidence based on a perception that IRs made their notes available to Centre staff. Infrequency of visits by IRs was also a problem:

“I’ve been here three months and not seen an IR”.

“I’ve met them once in six weeks”.

In addition to the attendance of IRs there is also an advocacy scheme available to young people at the JJC delivered through NIACRO. At the time of the inspection it

had been used only once. The inspection report does not indicate when this scheme commenced or when further evaluation of its effectiveness is to be carried out.

In relation to young people and their ability to complain within other agencies, most of the young people surveyed by the Inspectors said they would like to complain about how they had been treated by the police (in terms of the degree of restraint used and/or discriminatory attitudes and actions) but did not complain as they felt they wouldn't be believed. Only a few young people had heard of the Office of the Police Ombudsman (OPONI) and those that had did not realise that it was independent of the police. In Northern Ireland the vast majority of complaints against the police are dealt with by the independent OPONI. Inspectors found that the system of handling complaints against the police was of a high standard. Significantly, young people stated that they felt people in authority did not acknowledge or believe their complaints because of their offending: *[they] think I'm dishonest 'cos I'm in here*. They felt that this bias was particularly apparent when it was their word against that of a professional or adult, both within the centre and outside. They felt that just because they had a criminal record they were deemed untrustworthy: *[people] don't believe us just 'cos we've done a bit of stealing or whatever*.

When asked about possible improvements, the young people offered the following suggestions:

- Ensure complaint forms are easily accessible.
- Ensure complaint forms can be confidentially given to one person, without other members of the staff being able to see them.
- Ensure completed forms can be confidentially given to one person, without the other members of staff being able to see them.
- Ensure there is someone available who is approachable and accessible and who will listen to a young person and genuinely support them in raising and seeing through a complaint. Ideally the young people would like this to be someone young, with an understanding of what it feels like to be in their position.

Staff at the JJC were aware of the new complaints procedures in place and the recording method now required, but stated that they took a pragmatic approach in trying to resolve the issues at the time. None of the staff was apparently aware of a young person having to wait overnight to be supplied with a form. Other common issues raised by young people at the Centre are smoking, food and bedding. In light of their findings, the inspection report made detailed recommendations relating to the YJA. In summary these are:

- The YJA complaints charter should be fully implemented and young people should be informed about and supported through the process of making a complaint.
- Explanations of complaint procedures should be facilitative, and confirmation that this process has occurred should be officially recorded.
- Complaints awareness work should be increased, at the JJC this may best be achieved by using an appropriate independent organisation.
- The YJA should ensure that written youth friendly information about the complaints procedure, in alternative formats where necessary is always given to a young person during their first encounter with YJA staff.

- Written information about the complaints procedures (e.g. posters) should be permanently displayed at key locations in all YJA premises. This should also be in a format that is both accessible and understandable to young people.
- Complaint forms should be directly accessible to all young people having contact with the YJA. In the JJC, forms, together with sealable envelopes, should be freely available in a place where young people can easily access them without having to ask staff. Complaints made in this way should be dealt with in confidence and should be registered by the receiving officer.
- Young people's views should form part of a regular wider review and revision of support systems for complainants. This should include full consultation with all service users, complainants' satisfaction surveys and integration of results from the recently implemented auditing of complaints.
- The YJA should communicate the results of their audit procedures for complaints to all service users in a format that is easily understood and accessible. Results of complaints detailing the issues raised and how they were resolved should be displayed in prominent positions in all YJA premises and in each of the units at the JJC.

Include Youth, in preparation for its response to the proposed Child Protection Policy for the Northern Ireland Prison Service, held a number of consultation sessions with young people from their Young Voices project. This included six sessions at Hydebank Prison and the Young Offenders Centre – three involving females and three involving young males. This research reiterates that young people in the criminal justice system do not make complaints:

"Cos they work for the government and we're criminals – they're hardly gonna believe us over the cops."

"I wouldn't complain – I wouldn't get believed and they'd give me hell. I just want to keep my head down now and get on with it."

"You don't complain no matter what though – you can't win. It's been going on for years, it's not going to stop just 'cos a couple of juveniles say something."

The young people also expressed their views on the detention of young men and women with adults, which is specifically prohibited in the UNCRC:

"It's just a mixing bowl in here – everyone's thrown in together. It's not safe."

"This isn't a good place if you're under 18."

"The only way to stop child protection being a problem in here is not send anyone here till they're 18."

The current position for facilitating the views, concerns, complaints and suggestions of young people in custody is unacceptable. It is clear from consultations with young people, that when they are actively engaged in a process of evaluation, they provide practical solutions to problems as well as readily identifying avenues of redress. It is of note that very few, if any, of the suggestions for improvement involve capital

expenditure – rather the answers lie in appropriate infrastructures being in place supported by good inter and cross-departmental communication.

The 2007 Criminal Justice Inspection clearly established a high level of failure to realise the participation rights of young people. Only the full implementation of the report recommendations across all sections of the system will assist in advancing the full realisation of these rights. If implemented, they would enable, among other outcomes, accurate data to be collated to accurately reflect the nature and source of complaints. It is apparent that the absence of accurate demographic data within the criminal justice system continues to prevent appropriate redress of issues and allows rights violations to persist. In view of the statutory requirements of Section 75 of the NIA 1998, it is imperative that appropriate data is collected to enable the monitoring of systems in place for young people. It may be that, in striving to meet their statutory obligations, the criminal justice system will finally collect and collate age-appropriate data that will provide an evidentiary basis for considering how the rights of young people are promoted and protected.

Private law proceedings

Article 12(2) of the UNCRC provides for the child's right to be heard in judicial and administrative proceedings. The right of the child to be heard in judicial and administrative proceedings applies to all relevant settings without limitation, including children separated from their parents, custody and adoption cases, children in conflict with the law, children victims of physical violence, sexual abuse or other violent crimes, asylum seeking and refugee children and children who have been the victims of armed conflict and in emergencies. Despite this, and the UN Committee's affirmation that age should not be a barrier to the child's right to participate fully in the justice process³⁵², the voice of children continues to be absent in private law proceedings.

According to the NSPCC³⁵³ around 3 million of the 12 million children in the UK will experience the divorce or separation of their parents during the course of their childhood. In 2005 there were 151,654 petitions for divorce and 85,835 applications to the court concerning disputes about children's residence and contact arrangements. Each year, between 25,000 and 30,000 children go through the divorce or separation of their parents for a second or subsequent time. The UK-wide research with 141 children who had been involved in court proceedings when their parents divorced or separated, showed how disruptive these events were to the children's family life. For 38% of the children the consequences involved moving home or school; a further 23% experienced both.

The children were largely satisfied with the decisions of the courts, although 5% were not happy with the residency arrangements and 14% were unhappy about arrangements for contact with the non-resident parent. The children were also

³⁵² When States parties have established a minimum age for the right of the child to be heard, measures should be taken to ensure that the views of the child below the minimum age be considered in accordance with the maturity of the child by specially trained social workers or other professionals.... all children involved in judicial and administrative proceedings must be informed in a child friendly manner about their right to be heard, modalities of doing so and other aspects of the proceedings.

³⁵³ Timms, JE. Bailey, S. Thoburn, J (2007) Your shout too! A survey of the views of children and young people involved in court proceedings when their parents divorce or separate. Policy Practice Research Series, NSPCC.

concerned about the amount of contact they had with their grand-parents (30%) and with siblings who were living elsewhere (16%). Of concern is that only 7.5% of the children had attended court, while of those who did not attend, 40% would have liked to have attended and to have spoken to the judge. In relation to having a say in what happened, 74% felt they did have a say, however 45% felt that this had made no difference to the outcome.

The Office of the Official Solicitor and the Guardian Ad Litem exists to protect and promote the rights of children and young people deemed too vulnerable or incapacitated within certain court proceedings. However, many NGOs and those involved in the provision of social care for children in Northern Ireland have drawn attention to the fact that children involved in private family court proceedings still do not have a right to separate representation. The Children (NI) Order 1995 confers automatic party status on children who are the subject of Public Law or 'specified' proceedings. Children subject to such proceedings automatically have the benefit of representation by a solicitor and a Guardian ad Litem. The rationale for this is that Public Law applications involve questions of child protection and can result in the parent being deprived or restricted in exercising their parental responsibility. By contrast, children whose parents have initiated Private Law applications do not enjoy the automatic party status granted to their peers who are the subject of Public Law proceedings. In an effort to consider the issues raised by this anomaly, the Children's Order Advisory Committee (COAC) established a sub-committee to produce a report on "how children involved in Private Law proceedings can be empowered to participate in a meaningful and appropriate manner in decision making about their futures". The Committee has undertaken to analyse responses to their report and use these to inform proposals regarding the provision of separate representation for children in Private Law proceedings.

The CRC has made specific reference to the need to establish specialised legal aid support systems in order to provide children involved in administrative and judicial proceedings with qualified support and assistance³⁵⁴. In light of this, of particular concern was the report of the Belfast Family Court Business Committee to COAC that the Committee had been informed by the Guardian ad Litem Agency that it had been forced to suspend funding of separate legal representation of children deemed to be competent to give instructions to their legal team. COAC considered that, "[a]lthough this involves a small number of children it could be of vital importance to them"³⁵⁵. There is no data as to the numbers of children impacted by this decision or any information as to what factors were weighed in the balance before a decision was taken to stop funding a small but vulnerable group of children.

Summary of key issues

- Schools are not designated as public bodies and are therefore not subject to the requirements of Section 75.
- Children in care are not having their views taken into account in decisions relating to the planning of their care.

³⁵⁴ Committee on the Rights of the Child, Forty-third session 11-29th September 2006

³⁵⁵ Children Order Advisory Committee Seventh Report, pg 17.

- There is little evidence that children are having their views taken into account in decisions relating to choice of family and contact with birth families during adoption processes.
- The voice of the child in the education system is limited by the absence of effective school councils.
- Young people in custody do not have access to an adequate effective independent complaints system.
- Children involved in family proceedings do not have a right to separate representation.

Recommendations

1. Schools should be designated as public bodies under Section 75.
2. An advocacy strategy for children in care should be developed and the provision of advocacy services should be established on a statutory basis.
3. The adoption strategy should include the development of mechanisms to ensure that the views of children in the adoption process are heard and taken into account.
4. School councils should be developed in all schools in Northern Ireland in line with the NICCY Democra-school guidance.
5. The NIO should develop, in partnership with children and young people, a comprehensive, independent complaints system accessible to all children and young people involved in the juvenile justice system.
6. Children involved in family proceedings should have access to separate representation.

GAPS in SERVICE PROVISION

Introduction

The rights of children cannot be met unless appropriate services, within a clear rights framework, are developed to address their needs. In framing comments to further explain the UNCRC, the Committee has articulated the range, types and quality of services that are required to ensure the effective delivery of children's rights. The literature review indicates that variation in access to services and the quality of service provision is apparent across Northern Ireland. This chapter sets out the particular gaps and inadequacies in service provision that were identified in the areas of health, alternative care, education and family support.

The United Nations Convention on the Rights of the Child

All children are guaranteed the right to the highest attainable standard of health. Article 24 of the UNCRC obliges the State to provide facilities for the treatment of illness and rehabilitation of health. Health care services should be accessible to all children. Particular reference is made to the need for measures to diminish child and infant mortality.

The UNCRC recognises that parental support is not always either available or in a child's best interests. In such cases States are required to provide special protection and assistance to children who are deprived of their family environment (Article 20). This Article, along with Article 21, places obligations on the State to provide alternative care in the form of foster placement, institutional care or adoption.

The right to education is addressed in Articles 28 and 29 of the Convention. The first of these establishes that the realisation of this right should be developed on the basis of equality of opportunity. Among the State's responsibilities are the encouragement of attendance and the reduction of drop out rates. Article 29 establishes some detail in relation to the aims of education. It states that the education of the child must be directed towards the development of child's personality, talents and mental and physical abilities to their fullest potential.

The needs and rights of children with disabilities are addressed in Article 23. The Article sets out the range of services that the State must provide to children with disabilities. The Article is specific that those who care for children with disabilities are entitled to assistance from the State.

The UNCRC is explicit that children should have a right to a family life and to live with and be cared for by their families, except in cases where it is not in their best interests to do so (Article 9). This sets the context within which States are expected to deliver services to children.

In Article 18 it is made clear that governments must support parents and guardians in their child rearing responsibilities, for the express purpose of ensuring that all the rights in the Convention are delivered.

Issues highlighted in the literature review

The literature review highlighted a range of gaps and variations in service provision relating to health, alternative care, education and family support.

Overall the variation in both the provision of and access to services is apparent across Northern Ireland. Continuing gaps in service provision is difficult to comprehend given that, in many instances, the need for services has been highlighted over many years in a range of studies and reports, including some undertaken by government itself. In other instances, it is apparent that the absence of robust data, comprehensive research and needs analyses leads to a failure to address service provision issues in the neglected areas.

Health

Mental Health

A great deal of information about law, policy and services relating to mental health and learning disability has been brought together through the work of the Bamford Review. In October 2002 the DHSSPS initiated this major, wide-ranging and independent review of the subject. The review completed work in October 2006 by holding a concluding conference at which the Minister with responsibility for Health and Social Services outlined the government's broad response to the Bamford Review recommendations.

During the four years of work a number of expert working groups produced papers, overviews of research and statistics, reports on user and family perspectives and consultation documents. This work culminated in the publication of 11 extensive reports³⁵⁶, covering a range of aspects of mental health and learning disability. Each of the reports details recommendations for government.

Of most relevance here is the sixth report, published in July 2006 – 'A Vision of a Comprehensive Child and Adolescent Mental Health Service (CAMHS)'. In this report the prevalence of CAMH problems and disorders is clearly linked to deprivation. Vulnerable children are identified as including those exposed to a wide range of problems including social and educational disadvantage. The report highlights that looked-after children, abused children, asylum seekers, refugees and homeless children may be particularly vulnerable and in need of protection and intervention.

³⁵⁶ Bamford review reports:

1. A Strategic Framework for Adult Mental Health Services (AMH) Report - June 2005.
2. Equal Lives: Learning Disability Report – September 2005.
3. Alcohol and Substance Misuse Report – December 2005.
4. Mental Health Promotion Report – May 2006.
5. Autistic Spectrum Disorders (ASD) Report – May 2006.
6. 'A Vision of a Comprehensive Child and Adolescent Mental Health Service (CAMHS)' – July 2006.
7. Forensic Services Report – October 2006.
8. Human Rights and Equality Report – October 2006.
9. Living fuller lives: Dementia and Mental Health issues in Older Age Report June 2007.
10. A comprehensive legal framework for Mental Health and Learning Disability August 2007.
11. Promoting Social Inclusion Report August 2007.

The proportion of Northern Ireland's children in need of CAMH services is conservatively estimated at (10%). This means that approximately 45,000 children and young people aged 5–15 have a moderate to severe mental health disorder, requiring intervention from specialist CAMH Services in Northern Ireland. Lowest estimates suggest that 0.075% (340) will require inpatient services.

Key statistics, research findings and conclusions cited in the report indicate that:

- Northern Ireland has a higher overall prevalence of mental illness of a magnitude estimated to be 25% higher than England.
- Children with physical disability are at higher risk of developing mental health problems.
- Children and adolescents with learning disability are proportionately more vulnerable to the full range of mental health disorders – typically about 40%. Prevalence rates are three to four times higher in those with significant learning disability.
- The UK National Inquiry into deliberate self-harm which began in 2004, in the light of concern about increasing rates of self-harm over the last decade, reported that 1 in 10 teenagers deliberately self-harm and more than 24,000 teenagers are admitted to hospital in the UK each year after deliberately self-harming. These rates in the UK are the highest in Europe.
- Research conducted in Craigavon/Banbridge Trust indicated that up to 60% of young people in care within the Trust had diagnosable mental health disorders. This is comparable to rates found in studies from other parts of the UK.
- The challenge for CAMH services is how to provide services to children and adolescents from ethnic minorities in an accessible and non discriminatory way.
- No CAMH services are adequately resourced at present to comprehensively address the needs of 16 and 17 year-olds.
- Children who have physical disabilities and long-term health problems have higher rates of mental health problems. Their parents may have higher than average rates of social welfare problems and relationship breakdown and their siblings higher than expected rates of mental disorder.

It is clear that mental ill health is an issue affecting large numbers of children and young people here. Their needs are not being met and the government has failed to protect their rights under the Convention.

That particularly marginalised children, those with disabilities, in care and from ethnic minority communities appear to be the most impacted upon by the lack of service provision speaks of a further and compounding violation of rights, in relation to non discrimination as guaranteed under UNCRC Article 2.

The sixth Bamford report illustrates in detail the severe deficits and inadequacies in a service that is, as the report points out, “characterized by overwhelming need and chronic under investment”. The report concludes with a number of key recommendations including:

- the development of Children's Services Directorates in Trust to integrate all services for children;
- joint work by DHSSPS and DENI to plan and commission services;
- the identification of a separate CAMHS budget;

- the development of CAMHS networks locally and a regional network supported by a coordinator;
- the appointment of CAMHS service managers;
- the development of the four tier model for CAMHS³⁵⁷ with an expansion of specialist inpatient services at Tier 4; and
- further work to examine the specific needs areas such as forensic services and eating disorder services.

In response to the Bamford Review reports, in May 2007 the DHSSPS announced the establishment of a new Mental Health and Learning Disability Board in Northern Ireland.

The new Board has been set up to act as champions for people with mental health and learning disabilities and is intended to drive the delivery of the Bamford recommendations. However, the process to appoint a Director of Mental Health and Learning Disability, as a measure to ensure the implementation of the Bamford recommendations, was delayed following two unsuccessful recruitment attempts. The Minister since announced³⁵⁸ his decision not to advertise the post nationally and regionally again but to appoint immediately a board of experts. The Board will advise the Minister about the implementation of the Bamford Review and fulfil the role of the director.

The Department also announced that work on the new £5 million mental health adolescent specialist unit in Belfast will start later in 2007. Plans to build a new replacement £10 million mental health facility for children are also being progressed. It is intended that these units will provide 33 specialist places for children and young people, in line with Bamford recommendations.

Despite the recommendation of the UN Committee in 2002 that the government should:

³⁵⁷ The CAMHS four tier strategic framework for planning commissioning and delivering services may have some variations but generally involves:

Tier 1 CAMHS at this level are provided by practitioners who are not mental health specialists working in universal services; this includes GPs, health visitors, school nurses, teachers, social workers, youth justice workers, voluntary agencies. Practitioners will be able to offer general advice and treatment for less severe problems, contribute towards mental health promotion, identify problems early in their development, and refer to more specialist services.

Tier 2 Practitioners at this level tend to be CAMHS specialists working in community and primary care settings in a uni-disciplinary way (although many will also work as part of Tier 3 services). For example, this can include primary mental health workers, psychologists and counsellors working in GP practices, paediatric clinics, schools and youth services. Practitioners offer consultation to families and other practitioners, outreach to identify severe or complex needs which require more specialist interventions, assessment (which may lead to treatment at a different tier), and training to practitioners at Tier 1.

Tier 3 This is usually a multi-disciplinary team or service working in a community mental health clinic or child psychiatry outpatient service, providing a specialised service for children and young people with more severe, complex and persistent disorders. Team members are likely to include child and adolescent psychiatrists, social workers, clinical psychologists, community psychiatric nurses, child psychotherapists, occupational therapists, art, music and drama therapists.

Tier 4 These are essential tertiary level services for children and young people with the most serious problems, such as day units, highly specialised outpatient teams and in-patient units. These can include secure forensic adolescent units, eating disorders units, specialist neuro-psychiatric teams, and other specialist teams (for children who have been sexually abused, for example), usually serving more than one district or region.

³⁵⁸ Northern Ireland Assembly debates. Tuesday, 15th May 2007.

Take all necessary measures to strengthen its mental health and counselling services, ensuring that they are accessible and sensitive to adolescents (Para. 44)

the Northern Ireland Executive has failed to grasp the opportunity, presented by the comprehensive work of the Bamford Review in relation to mental ill health.

The publication of the draft budget 2008–2011³⁵⁹ did not identify the implementation of the Bamford recommendations as a priority within the DHSSPS budget allocation. Given this, it would appear that the egregious failure to deliver on the UNCRC rights of children who experience mental ill health is set to continue in Northern Ireland.

Children with complex physical health care needs

The Institute of Nursing Research has produced a report on the nursing response to children and young people with complex physical health care needs³⁶⁰. The research was conducted with both families and professionals. The report acknowledged the lack of precise information on the numbers of children requiring services in Northern Ireland but estimates that around 250 children here would require active support at any one time with a further 250 children liable to make demands on services and require some form of ongoing support.

Thirty families from across Northern Ireland were interviewed for the report. The views they shared included:

- They wanted their child to be part of the family; stays in hospital should be minimal.
- Caring for the child had had a major impact on their lives: moving house; marital separation; giving up careers; financial difficulties; illness and stress.
- A recurring theme in talking with parents about services was the fight they had in order to get the help and support they needed. Parents talked about “battles” and “being in the trenches”.
- Getting appropriate equipment was the thing that made the biggest difference for them. Even though the costs were small, delivery times were protracted.

The report highlighted a number of concerns relating to service provision, which arose in the course of the research.

Equipment:

The provision of aids and wheelchairs is one of the pressing concerns and frustrations experienced by families and professionals. Various accounts were told of inefficiencies and waste in present arrangements. Equipment is an integral part of the nursing response yet it is often beyond the control of nurses to effect the necessary improvements, as they do not have access to a dedicated equipment budget.

³⁵⁹ Building a better future: Draft Programme for Government 2008-2011 Draft Budget 2008-2011 N.I. Executive

³⁶⁰ McConkey, R., Barr, O., Baxter, R., Complex Needs - the nursing response to children and young people with complex physical health care needs. Institute of Nursing Research 2007

Respite:

There are particular issues around the registration of residential respite homes as 'children's homes'. There were various examples of families being turned away from facilities on the grounds that they were unable to manage the risks these children presented. Arguably these parents are the very ones who are most in need of respite breaks.

In addition to the commissioning of a review of respite provision, there is an urgent need to address the particular dearth of facilities that can offer either emergency care of the child on a short-term basis or planned breaks so that parents can have a respite during the day or overnight. Failure to do so can mean unnecessary hospital admissions with the attendant risks to the child and family well-being.

Priority and finance:

A major concern among informants is that the needs of this client group will be forgotten among the many other pressing demands within health and social care. Comment was made about how children's health issues have not had a priority within the DHSSPS and it is not clear how the new Health and Social Care Authority will handle the commissioning of children's health services.

The report concludes that services to this group of children and their families are currently under-funded, although it is not possible to put a figure on the deficit. The dearth of provision is likely to be further underscored given that demand for services is likely to increase as children survive for longer and more children are born who require complex physical health care throughout their life.

Again, the situation described in the report serves to highlight a flagrant failure to address children's rights. In this case, the provisions of Article 23 are being denied to children with physical disabilities. That Article sets out that children with mental or physical disabilities should enjoy a full and decent life – with dignity, self-reliance and active participation in community. They also have the right to special care and assistance.

In General Comment no. 9 the UN Committee notes that children with disabilities are still experiencing serious difficulties and barriers to the full enjoyment of the rights enshrined in the Convention. The Committee emphasizes that the barrier is not the disability itself but it is a combination of social, cultural, attitudinal and physical barriers which children with disabilities encounter in their daily lives. (Para. 5)

The identification, in the research, of the lack of necessary equipment represents such a barrier, and serves to 'disable' the child.

General Comment no. 9 also recognises that children with disabilities are best cared for and nurtured within their own family environments provided that the family is adequately supported in all aspects. This support should include different forms of respite care, such as care assistance in the home and day care facilities directly accessible at community level. The Committee points out that such services enable parents to work, as well as relieve stress and maintain healthy family environments. (Para. 15)

The research not only highlights the absence of adequate respite provision but

worryingly states that this can lead to the children being unnecessarily hospitalised. This clearly contravenes the Best Interest provision of the Convention (Article 3). Explaining the application of Article 3, in General Comment no. 9, the Committee points out that the placement of children in institutions must have the safety, protection and care of children as their prime consideration, and that this consideration should outweigh any other (Para. 30) and that placement in an institution should only be considered as a matter of last resort (Para. 47). Clearly in these instances children are being hospitalised because of the failure to resource a more appropriate service.

In relation to service provision the report made the following recommendations:

- A specific service framework for children with complex physical health care needs should be developed for Northern Ireland.
- A single assessment tool for identifying and assessing children with complex health care needs should be developed for use by services in Northern Ireland.
- An audit of nursing services to children should be undertaken in the five new Health and Social Care Trusts.
- The DHSSPS and the HSC Authority will commission a review of respite provision for children throughout Northern Ireland.
- A review of provision of equipment to children with complex physical health care needs will be undertaken. This will be done with reference to the ongoing review of wheelchair provision.

As pointed out in General Comment no. 9, access to affordable quality health care is an inherent right for all children. Children with disabilities are often left out because of several challenges, including discrimination, inaccessibility because of the lack of information and/or financial resources, transportation, geographic distribution and physical access to health care facilities. Another factor is the absence of targeted health care programmes that address the specific needs for children with disabilities (Para. 51).

The implementation and resourcing of the measures recommended in the report would go some way towards developing compliance with the UNCRC, which establishes that services for children with disabilities must address the attainment of the highest possible standard of health (Article 24).

Speech and language therapy

In March 2005 NICCY published an overview³⁶¹ of Speech and Language Therapy (SLT) services in Northern Ireland. A number of failures to meet children's rights were highlighted in relation to:

- unequal access to services based on where the children lived;
- the best interests of the child, which did not appear to be the main concern in planning and resourcing services;
- the lack of timely assessment and provision of services;
- inadequate provision, meaning that children lack the supports they need to voice their opinions and freely express themselves;
- delays in assessment and provision, which runs contrary to ideas of preventative health care and equality provision;
- huge disparities in resources across special educational establishments.

³⁶¹ NICCY's Overview of Speech and Language Therapy Provision in Northern Ireland 2004 –2005, NICCY 2005

A year later, in response to increasing complaints to NICCY, the Commissioner undertook a further and more comprehensive review³⁶².

Statistics provided by the HSS Trusts for the review show that up to 21,004 children and young people may presently require access to SLT services within Northern Ireland. This equates to 4.5% of the overall 0–18 year old population within Northern Ireland.

A total of 15,547 children and young people are currently receiving SLT within Northern Ireland. A further 2,055 children and young people are currently awaiting assessment for SLT.

The findings of the follow-up review revealed that just over one quarter (26%) of children and young people in need of either assessment or therapy were still waiting to access the service. In terms of waiting times experienced by such young people, the geographical inequity observed the previous year between Trusts was still very much evident. Whilst some Trusts had managed to decrease their overall waiting times (with varying degrees of success), many others noted little change or indeed an increase in possible waiting times.

NICCY summarized their concerns as follows:

- The continued existence of a postcode lottery. NICCY would question why waiting times and service delivery are not uniformly satisfactory across all Trusts within Northern Ireland.
- The significant number of children and young people who require access to SLT services, particularly those who are presently awaiting assessment and/or therapy, both in the community and special schools.
- The inadequate provision of resources specifically targeted at SLT services for children and young people.
- The disparity between the increased volume of complaints received by NICCY and the reduced number of formal complaints recorded by Trusts.
- The overall lack of action at a strategic and/or policy level as regards the concerns raised by NICCY, professionals in the field and parents/carers.

In concluding the report NICCY urged the Children's Minister to set up the Task Force, which had been recommended in the initial report, to review SLT provision within Northern Ireland. It further recommended that the Task Force develop a time-bound action plan to address the issues raised in both the current and the previous year's review. NICCY further stressed that those actions must be taken to ensure that children and young people's rights under Articles 6 (Life, survival and development) and 23 (Children with disabilities) of the United Nations Convention on the Rights of the Child are fulfilled, through the provision of timely and adequate access to SLT.

At a conference hosted by NICCY in March 2006 the government announced plans to improve the provision of SLT throughout Northern Ireland. Plans were outlined to establish a Regional Task Force as recommended by NICCY. This would be made up of a variety of stakeholders to develop an action plan to improve the provision of SLT.

³⁶² Follow-up Review 2005–2006 on Speech and Language Therapy Services for Children and Young People. NICCY 2006.

Government acknowledged the need for inter-departmental collaboration and outlined a number of steps that would be taken to enhance joint working between DHSSPS and DENI, including collaboration to produce draft standards to promote collaborative working between teachers and therapists in schools and the drawing up 'Partnership Agreements' to address the needs of children and break down the barriers caused by professional groups working in isolation.

An annual sum of £4 million was made available through the Children & Young People's Funding Package, in March 2006. This money was allocated for the establishment of multi-disciplinary teams to provide services such as SLT to schools and other settings. In addition, DENI committed further resources to support the project 'Early intervention for Children with Speech and Language Difficulties'. The Task Force has since been established, a number of working groups have been set up and were expected to complete a variety of tasks by December 2007.

In June 2007 the NI Assembly debated ³⁶³ a motion "That this Assembly notes the inequalities in the provision of speech and language therapy throughout Northern Ireland, and calls on the Executive to provide adequate and equitable resources and financial support".

All MLAs contributing to the debate extensively referenced the NICCY reports. In response to the issues raised the DHSSPS Minister confirmed that an additional £1 million had been made available to drive down further the length of time that children and young people have to wait for assessment and therapy.

Further assessment of progress awaits the publication of the Task Force report.

Autistic Spectrum Disorders

In March 2006 the national charities on autism in Northern Ireland and Wales published a report³⁶⁴ highlighting issues in both jurisdictions. (Autism NI / Autism Cymru:2006). The report defined Autistic Spectrum Disorder as a relatively new term used to describe children and adults who have a number of features in common and are affected in their ability to:

- understand and use non-verbal and verbal communication;
- interpret social behaviour which in turn affects their ability to interact with children and adults;
- think and behave flexibly (i.e. to know how to adapt their behaviour to suit specific situations).

They may also be quite different from each other, in their abilities and areas of strengths and weaknesses. Different sub-groups within the spectrum have been described including AS; High-functioning autism and Kanner syndrome.

According to the report, the identified number of school age children with Autistic Spectrum Disorders in Northern Ireland has increased from 1,000–3,000 within the last three years. The two organizations are collaborating to lobby the UK Government

³⁶³ Northern Ireland Assembly debates Tuesday, 5th June 2007

³⁶⁴ Autism Northern Ireland / Autism Cymru (2006) Government and Autism: Opportunities and Solutions.

to recognize Autistic Spectrum Disorders (including AS) as separate from other disorders and or disabilities in legislation and to produce national strategies seeking to underpin and address the needs of people with Autistic Spectrum Disorders and their families.

The report is critical of the Bamford Review recommendation that autism should become the responsibility of Mental Health Services. They believe this exemplifies confusion in relation to where autism services should be located and that it conflicts with the latest DHSSPS policy and funding of Autistic Spectrum Disorders diagnosis and early intervention through Child Health. They also stress that vital and extensive expertise in autism resides in Learning Disability Services.

Two studies in Northern Ireland illustrate the range of problems children with Autistic Spectrum Disorders and their families face in accessing the services envisaged within the UNCRC Articles 23 (Rights of children with disabilities) and 24 (Right to health). These studies raise issues in relation to the absence of accurate data to facilitate needs assessment and service development, increasing demand on services, lack of family support, ineffective service co-ordination and the need for training for professionals.

In the first study DENI³⁶⁵ set out to identify the level of need of and to review service provision for children under five, who have a confirmed diagnosis of Autistic Spectrum Disorder. The report found that in Northern Ireland, as well as internationally, the incidence is increasing of pre-school children – boys especially – who are diagnosed with an Autistic Spectrum Disorder.

As in other areas of child service provision, the research identified wide variation in the number of children identified and suspected as having an Autistic Spectrum Disorder across the five ELBs and across the HSS Trusts.

This was attributed to variability in the availability of diagnostic services, in the criteria used in identifying Autistic Spectrum Disorder and in the lack of a standard dataset of identified children across agencies. Because of this variation the report was unable to provide an accurate count of possible numbers of pre-school children with Autistic Spectrum Disorder in Northern Ireland.

This represents a barrier to the effective realisation of the rights of children with disabilities. If there is no clear mechanism for identifying the numbers of children requiring a service and assessing their needs, it is not possible to develop an appropriate service. This issue has been highlighted by the UN Committee in General Comment no. 9.

In order to fulfil their obligations, it is necessary for States Parties to set up and develop data gathering mechanisms, which are accurate, standardized and allow disaggregation, and which reflect the actual situation of children with disabilities. The importance of this issue is often overlooked and not viewed as a priority despite the fact that it influences not only the measures that need to be taken in terms of prevention but also the distribution of very valuable resources that are needed to fund programmes. One of the main challenges in

³⁶⁵ McConkey, R., Kelly G., Cassidy A. An Evaluation of the Need and Early Intervention Support for Children (Aged 2-4 Years) with an Autistic Spectrum Disorder in Northern Ireland, Department of Education No 44, 2007.

obtaining accurate statistics is the lack of a widely accepted clear definition for disabilities. (Para. 15)

In relation to their experience of service provision, issues raised by parents included:

- frustration and anger with the length of time it took for assessments to be made and a diagnosis to be given;
- a lack of follow-up by the professional;
- lack of time spent by professionals in giving explanations to parents;
- pessimistic attitude to the child;
- lack of knowledge about autism and insufficient contact.

Professionals identified the need for:

- improved diagnostic and assessment services to reduce waiting times;
- better support for families from when the problem is recognised;
- multi-disciplinary and inter-agency working.

The report concludes that the over-riding priority for Autistic Spectrum Disorder provision is to create structures and systems that will encourage partnership working between education and Health and Social Services while strengthening local initiatives especially with mainstream community and voluntary organisations.³⁶⁶

Similar issues have been highlighted in a comprehensive review by NICCY in relation to children with AS³⁶⁷. The overarching aims of the review were to: identify the needs of young people with AS who are aged between 10 and 18 years and living in Northern Ireland; to identify what services are currently provided for these young people and their families; and how these might be further enhanced.

The review included the views of 59 parents, 35 young people with AS aged 10–18 and 42 professionals.

Key findings included:

- As in other studies, there was difficulty in establishing the exact numbers of children and young people with AS within Northern Ireland or elsewhere in the UK. The serious implication of this in terms of both the planning and provision of services is stressed.
- Both parents and professionals within the review identified ongoing difficulties with the diagnostic process. Particular reference was made to the need to reduce waiting times, different practices within different areas and the need for more resources to support young people and their families both during and after diagnosis. The dilemmas and issues associated with sharing a diagnosis of AS with a child or young person and supporting them and their families in deciding whether or not to disclose the diagnosis to peers, teaching staff and

³⁶⁶ A framework for strategic planning is proposed; the central driver of which is an inter-departmental Task Group between DE and DHSSPS to produce a joint strategy on assessment and intervention with pre-school children with ASD and support for their families. This 'early years' strategy should cover the age range 0 to 8 years so as to include the children's school placement up to the end of Key Stage 1 and the identification of those with Asperger's Syndrome.

³⁶⁷ Jones, Dr. G., Ellins, Dr. J., Guldberg, K., Jordan, Professor R., MacLeod, A., Plimley, L. A Review of the Needs and Services for 10-18 year-old Children and Young People diagnosed with Asperger Syndrome living in Northern Ireland, NICCY 2007.

other key personnel were also raised.

- Parents/carers in this review highlighted the lack of inadequate support for both themselves and their children.
- The increasing numbers of children and young people being diagnosed with an ASD (AS or otherwise) means that ASD advisory teams and classroom assistant provision are becoming stretched beyond capacity.
- A key theme arising from professionals was the need for further training.

The review concludes with a series of strategic recommendations including the need for the Minister for Health, Social Services and Public Safety and the Minister for Education to work together to:

- (1) ensure that an effective and comprehensive system is developed for collecting and collating data on the numbers of children and young people with AS in Northern Ireland; and
- (2) to ensure greater coordination of services between health, social services and education, with the aim of improving access to, and provision of, services for children and young people with AS and their parents/carers.

Alternative care

As previously identified,³⁶⁸ outcomes for children in the care system illustrate that care services are comprehensively failing to meet the requirements of UNCRC Article 20 which entitles children, who are temporarily or permanently deprived of their families to “special protection and assistance provided by the State”.

The VOYPIC organisation has highlighted a range of gaps in service provision. It has pointed to problems in relation to secure care, where there are not enough places available to meet the needs of children. On occasions, by the time a bed becomes available it is too late for the young person and no longer needed. There is also the danger of a postcode lottery operating as beds are allocated on an area basis, rather than on the basis of individual need. This results in some children not receiving the necessary provision.

Children had also raised with VOYPIC a difficulty in relation to contact with birth families. This is assessed in relation to the youngest child and if deemed unsuitable for them (because, for example, the child might become upset) the decision is also applied to older siblings.

A major issue relates to the lack of therapeutic support when a child comes into care.

VOYPIC believes therapeutic support should be standard at this point as children are often coming from traumatic situations. Intervention later, when problems have manifested, is less likely to be effective.

VOYPIC has identified the need for mental health legislation to be brought into line with the Children’s Order. According to the organisation, children as young as 11 or 12 years old are detained for treatment, in the same way as adults. They retain an

³⁶⁸ see Chapter on Marginalisation and Vulnerability.

official record as having been detained as a minor, which can have a serious detrimental impact on their future life.

Out of hours supports and services are severely lacking, there is little in the way of provision in the evening and at the weekends.

Regimes in children's homes emphasise health and safety concerns, which result in children not being allowed to use kitchens unsupervised or use knives to cut fruit. VOYPIC points out that this is not what would happen in a normal family home and that children were leaving care, to live alone, without having developed basic skills of self care. There have also been concerns raised that Personal Advisors have not been allocated to some care leavers, as required by the legislation.

VOYPIC has also identified an issue in relation to the amount of money (estimated at £5 million) spent on sending children from here to England for intensive specialist therapeutic support. The organisation suggests that a specialist unit should be established here or perhaps developed on an all-Ireland basis.

Foster care

The majority of looked-after children in Northern Ireland (63%)³⁶⁹ are currently in foster placements. Clearly such placements afford children the closest approximation of family life. However, agencies working in the field of fostering have consistently pointed to under-investment and under-resourcing of this service.

The four Health and Social Services Boards worked alongside the Fostering Network NI to produce a regional strategy in 2004³⁷⁰ (Fostering Network NI 2004). This identified a range of problems within the fostering system including difficulties in recruiting foster carers, shortage of and waiting lists for placements, the need for training and support and a coherent system of finance.

In developing the strategy VOYPIC consulted young people in foster care. Key points emerging were that the young people:

- endorsed the need for training for foster carers;
- felt ambivalent about paying carers for caring for them – indicating that this issue needs to be sensitively handled;
- placed value on the role of the social worker and other support services and the need to develop these;
- articulated the need to improve the review processes, particularly in the ways they seek to involve young people;
- gave a varied response to family and friends as carers with some believing it to be a good idea and some feeling it was not.

The strategy sets out a range of objectives and actions to address what is referred to as the “emerging crisis in foster care”. Given that foster care is the primary care service, inadequacies could have far reaching implications for children.

³⁶⁹ DHSSPS (2006) Community Statistics 1st April 2005 – 31st March 2006, Community Information Branch,

³⁷⁰ Regional Fostering Strategy for Northern Ireland (2004). EHSSB, SHSSB, WHSSB, NHSSB, Fostering Network NI,

More recently the Fostering Network has produced an analysis of fees paid to foster carers across the UK (Swain 2007)³⁷¹. In a survey of 1,064 carers it emerged that foster carers in Northern Ireland received less support than their counterparts. Only 35% of foster carers here receive fees, compared to a UK average of 60%. While 24% of Northern Irish foster carers are on benefits, 73% of all carers here receive less than the minimum wage.

The Fostering Network recommends the implementation of a payment system based on a number of factors including: level of skill or experience required; the level of risk management; working with other agencies; expectations regarding after care; training, mentoring and supporting other foster carers; benchmarking with other child care workers; local and regional recruitment and retention factors and the number of children fostered.

It is clear that failure to address these concerns and ensure that foster carers are adequately compensated, could lead to a reduction in placements for children who have a right to support.

The UN Committee in Comment 7 draws attention to the circumstances of children who live without their families in alternative care. They point to research that shows that low-quality institutional care is unlikely to promote healthy physical and psychological development and can have serious negative consequences for long-term social adjustment, especially for children under three but also for children under five years old. Such services should ensure early placement in family-based or family-like care which are more likely to produce positive outcomes for young children.

Consequently governments are encouraged to invest in and support forms of alternative care that can ensure security, continuity of care and affection, and the opportunity for young children to form long-term attachments based on mutual trust and respect. Foster care is specifically cited as an example of such provision. (Para .36b)

Education

Integrated education

In 2002 the UN Committee³⁷² welcomed the development of integrated schools in Northern Ireland, but remained concerned that only about 4% of the schools are integrated and that education “continues to be largely segregated”. (Para. 47)

Among a series of recommendations in the area of education they stipulated that the State:

Increase the budget for and take appropriate measures and incentives to facilitate the establishment of additional integrated schools in Northern Ireland to meet the demand of a significant number of parents; (Para. 48 (g))

³⁷¹ Swain, V. (2007) Can't Afford to Foster: A survey of fee payments to foster carers in the UK, The Fostering Network,

³⁷² UNCRC, Concluding Observations: United Kingdom of Great Britain and Northern Ireland: October 2002.

DENI compiles a range of statistics in relation to education; these are available on the DENI website³⁷³. The latest figures³⁷⁴ available show that during 2006-2007 there were 1,595 educational establishments in Northern Ireland. These were made up as follows:

372	Pre-school education centres
99	Nursery schools
896	Primary schools
228	Post-primary schools

Among these are 56 integrated schools (37 primary and 19 post-primary). The percentage of integrated schools, (as a percentage of all primary and post-primary schools) has increased from 4% in 01-02 to 5% in 06-07.

In June 2003 the Northern Ireland Council for Integrated Education (NICIE) produced the results of a public opinion survey conducted with 1,018 individuals selected using quota controls to be representative of the Northern Ireland population. Survey findings indicated widespread support for integrated education:

- In 2003, over half (52%) the sample states that they do not send their child/ren to an integrated school because there are none in the area. A further 3% state that they would like to send their child/ren to an integrated school but cannot find a place.
- 82% of the respondents with children or grandchildren under 19 years of age personally support integrated education in Northern Ireland.
- 72% of the parents and grandparents of children under 19 years of age would choose an integrated school if there was one close to where they live, assuming no negative differential in academic or other standards.
- A majority (81%) of the parents and grandparents consider integrated education to be important to peace and reconciliation in Northern Ireland.

While there has been a 1% increase in the number of schools in 06-07, NICIE has commented that "It is an unfortunate fact that in September 2005 around 500 applicants for places in integrated schools had to be turned away due to lack of places"³⁷⁵. Taken with the survey results this would suggest that there is a significant gap between the service required and that provided, in this area of education.

Alternative education provision

Young people who participate in AEP have been failed by the mainstream education system. They are often at risk of social exclusion and face a raft of complex and difficult experiences that impact on their ability to engage in school. These include issues relating to mental health, as well as the impact of family breakdown.

³⁷³ www.deni.gov.uk/index/32-statisticsandresearch_pg.htm

³⁷⁴ enrolment-time-series.xls at DENI web-site

³⁷⁵ Northern Ireland Council for Integrated Education website: www.nicie.org

Like all children they are entitled to an education based on equality of opportunity (UNCRC Article 28) and directed towards the development of their personality, talents and mental and physical abilities to their fullest potential (UNCRC Article 29).

In General Comment no. 1 the UN Committee specifies that every child has the right to receive an education of good quality which in turn requires a focus on the quality of the learning environment, of teaching and learning processes and materials, and of learning outputs (Para. 22). The Committee also argues that resource constraints cannot provide justification for failure to implement any or all of the measures in relation to education (Para. 28).

An examination of the provision currently available in alternative schools shows that these standards are not being met.

DENI recently published a study³⁷⁶ which engaged 318 young people in their last year of compulsory schooling at AEP and tracked their progress 6, 12 and 18 months after leaving. Three types of AEP were under consideration in the research: Community-based Provision; Training Organisation/School Partnerships and Key Stage 4 Flexibility Initiative (KS4FI). This last provision was introduced in 2000 by DENI to encourage schools to explore new ways of approaching the curriculum at 14–16 years. Many schools have developed partnerships with the further education sector in order to deliver a range of vocational subjects at NVQ Level 1, which is offered in tandem with a reduced number of GCSE subjects. Pupils involved in KS4FI are most often recommended to participate by their school and neither they nor the teachers involved view the programme as alternative provision.

Both young people and staff from Community-based Provision and Training Organisation/School Partnerships felt that there was stigma attached to alternative education. Many cited AEP as either a 'sin bin' or as provision for the 'stupid', further stigmatising young people who attend. The report raised concerns over the limited access to physical resources including ICT equipment available to young people on AEP. In some settings, standards of the fabric of the built environment were worryingly poor. The available curriculum was very narrow for some young people due to the lack of qualified teachers in many AEP projects. In particular, there was little or no access to areas such as Art, Science and PE.

Those in Community-based Provision did not have the same access to work-related learning as their counterparts in KS4FI or Training Organisation/School Partnerships. In addition, the nature of provision was gendered in most projects. Vocational opportunities were limited to traditional roles, and any request for access to courses outside these often was not facilitated.

AEP staff in the Community and Training Organisation settings had little opportunity for career progression and job security, demonstrated in the fact that they have do not have access to in service training (INSET) and are not assigned a teacher number. The research found that there was almost no access to various educational support service agencies for staff or pupils in the community based projects including curriculum advisory support services and educational psychology services.

³⁷⁶ Kilpatrick, R., McCartan, C., McKeown, P., with Gallagher, T. (2007) Out of the Box – Alternative Education Provision (AEP) in Northern Ireland, Department of Education.

A major problem concerned funding instability, especially for Community-based Provision. Management committees and project staff spent a disproportionate amount of time in chasing funds, and because of funding uncertainty long-term planning could not take place.

It is greatly to the credit of AEP staff that despite the financial and other resource constraints most young people leave AEP with some level of qualification (ranging from Entry Level Qualifications to GCSE Grade A–C). Although most participants enjoyed AEP, the curriculum and qualifications available to them were perceived as having a reduced value in the labour market.

The report recommended that:

- Consideration should be given to the resource and physical environment of AEP and the potential to share and access mainstream resources with a view to improving the quality and range of activities and subjects available.
- Funding for AEP should be reviewed to include an economic formula based on the educational entitlement of the young person as opposed to the ad hoc nature and inequalities associated with the current system.

The manager of an AEP project reiterated many of the concerns noted above. Although there have been some improvements in relation to staff accessing Continuing Professional Development and INSET courses and being able to avail of some resources in mainstream schools, this is not reflected consistently across all providers.

A major problem persists in the impact of the variation of funding to the range of AEPs. This may lead to inconsistency and disparity in service delivery. The lack of a dedicated Departmental policy meant that some projects, on the basis of individual lobbying and negotiation with departments, were able to secure allowances and opportunities for their students, which were not necessarily available across the board.

Such disparity could be ended if government departments (e.g. DENI and subsequently the Education and Skills Authority) were to become the employing authority for all AEP staff and allocate funding for each pupil, based on a formula that takes account of individual circumstances. Currently the manager's project has 20 students but only 6 of these are funded. The project has to raise the funding shortfall themselves.

In relation to pupils with SEN, the manager stated that many pupils arrived at the project without a diagnosis or indeed had been misdiagnosed previously. This meant that they had been denied an effective education and that this situation was unlikely to be redressed in the last year of their schooling as the statementing process was so protracted. The lack of access to external support, available in the mainstream, was illustrated by the fact that children in AEP cannot yet avail of the counselling services provided by Contact Youth to all post-primary schools in Northern Ireland.

A conference on AEP in Northern Ireland was organised by Save the Children in March 2004³⁷⁷. Following expert input and wide-ranging discussion, delegates

³⁷⁷ Save the Children (2004) Conference report: "Not Included?" A one day conference exploring community based alternative education 11th March 2004.

generated a number of recommendations, which were subsequently debated and agreed at a follow-on seminar in October of the same year. These included:

Core funding for AEPs:

It is recommended that a common funding formula is established for alternative providers. This formula should have clear agreed criteria for young people formally excluded from school. Funding should be made available according to the needs and interests of the young people involved. For young people remaining on the school roll arrangements should be made for funding to follow the child upon a referral being made. An agreed time limit must be established as part of the criteria for a referral to an alternative setting.

Effective monitoring and evaluation systems:

It is recommended that all alternative provisions are inspected annually and common indicators are used to assess the level of service and appropriate support. This would involve the development of agreed qualitative and quantitative indicators.

None of the recommendations outlined in this section has yet been implemented. Consequently children in AEP are receiving a diminished educational experience in comparison to their peers in mainstream education. They are unable to access the full curriculum, additional support services, or educational equipment. Additionally, for many, their learning experiences take place in unsuitable buildings.

Family support services

The UNCRC recognises that children have a right to a family life and should live with and be cared for by their families, except in cases where it is not in their best interests to do so (Article 9). This sets the context within which States are expected to deliver services to children.

In Article 18 it is made clear that governments must support parents and guardians in their child rearing responsibilities, for the express purpose of ensuring that all the rights in the Convention are delivered.

The importance of family life

Recent research illustrates the importance of family life and relationships to children and young people. A study³⁷⁸ undertaken with 417 young people living in the greater Shantallow area in Derry sheds some light on this area. Children and young people aged 11–19 took part in the survey. While the findings must be seen in the context of the small scale nature of the study, and the fact that all respondents were from the Catholic community, it nonetheless gives an interesting glimpse into the family lives of the young people involved.

When asked to list things that gave them cause for concern most of the young people (89%) said they were “concerned” or “very concerned” about their families. The importance of family to the young people surveyed was further underlined by answers to a question posed about who they would turn to when they had problems: 69%

³⁷⁸ Off the Streets Community Youth Initiative, Institute for Conflict Research and St Brigid's College, Galliagh. (2004) Young people in the greater Shantallow area – a study of values, attitudes and opinions.

cited their parents as the first port of call in such a situation; 34% said they would turn to a brother or sister; and 25% named another relative.

The authors point out that this information goes some way to contradict the commonly held view that young people do not or cannot talk to their parents. The young people were involved in a variety of activities with their families. Foremost among these was sharing meals together (89%) and going on family holidays (88%). Watching television together was a family activity named by 81% of respondents. A further 71% said they spent time visiting relatives with their families. The results are indicative of close ties with both immediate and extended family members.

The Still Waiting research report³⁷⁹ (Youth Action 2007) is based on focus groups involving 48 young women and in-depth interviews with a further 43. Some of the young women described the importance of supportive family relationships where family members provided a sense of security. The young women felt that their family would be there to support them as they encountered problems in developing independence.

Support for families of children with disabilities

A number of reports have commented on the particular supports needed to ensure that children with disabilities enjoy their right to family life.

In General Comment no. 9 the UN Committee explains that the core message of Article 23 of the UNCRC is that children with disabilities should be included in society and that measures taken should aim to ensure this to the maximum extent (Para. 11). In order to do so, States are asked to develop and effectively implement a comprehensive policy with a plan of action, which ensures that children with disabilities and their families receive the special care, and assistance they are entitled to under the Convention (Para. 13).

The Committee also recognises that children with disabilities are best cared for and nurtured within their own family environments provided that the family is adequately supported in all aspects. This support should include different forms of respite care, such as care assistance in the home and day care facilities directly accessible at community level. The Committee points out that such services enable parents to work, as well as relieve stress and maintain healthy family environments. (Para. 15)

It is clear that failure to provide adequate supports to families is a denial of the rights of children with disabilities. A qualitative study³⁸⁰ (Anderson 2003) undertaken with 18 families of children who had acquired a brain injury in Northern Ireland, highlights the impact of the trauma, not only on the child but on all the family members.

In terms of changes to lifestyle the children themselves reported the negative impact in terms of physical limitations, fatigue and other cognitive aspects, such as change in personality, memory and loss of concentration, confidence and independence. Opportunities for socialising were in almost all cases restricted. Many young people spoke of their sadness at the loss of friendships, changes in relationships with friends,

³⁷⁹ Mc Alister, S. Gray, A.M. Neil, G. (2007) Still Waiting – the stories behind the statistics of young women growing up in Northern Ireland, Youth Action.

³⁸⁰ Anderson, M. (2003) Living with Acquired Brain Injury in Northern Ireland, A Family Perspective, Child Brain Injury Trust.

and the frustration of having to spend too much time with parents. The parents described how their own relationship was affected. While some felt that the trauma had resulted in a closer relationship, many experienced difficulties often related to stress and not having time for each other because of the pressure of care.

Because of the pressure on parents to be with the child during hospitalisation, the impact on the siblings was often not noticed until much later. Some parents spoke of the positive result of the sibling being very caring and much more understanding as a result of having a brother or sister with a disability. Many parents were of the opinion that siblings missed out on their childhood because parents were so involved with their child with a disability.

Overall parents were impressed with the support their children received while in hospital but felt that support for the child and the family faded rapidly when the child returned home.

The situation of children who have acquired brain injury is likely to be reflected in the family life experience of children with a range of other disabilities.

Recent research³⁸¹ into the needs of and services for children with AS here draws attention to many of the same issues. Parents in this study highlighted the need for more support for the whole family. This would allow the children with AS to access more activities outside the home and support the parents to organize holidays and other family activities. The parents also described their feelings of guilt that other children in the family lost out because of the amount of attention that needed to be directed towards the child with AS.

The report points out the impact of such behaviour, of children and young people with AS, on family life. For example repetitive behaviours; fixed routines; incessant questioning or arguing the point; self-injury; refusal to follow family routines or wishes, are distressing for all concerned and can lead to huge family arguments.

Mencap has issued a report (Breaking Point) of a survey³⁸² undertaken with 96 families caring for children and adults with severe and profound learning disabilities in Northern Ireland. The findings illustrate the impact of caring responsibilities on family life, and that families are left to carry the burden with little support or respite provided by statutory authorities.

The survey found that:

- 8 out of 10 families have reached or come close to breaking point because of a lack of short break services;
- 8 out of 10 families provide more than 15 hours of care every day;
- 5 out of 10 families always provide care during the night;
- 5 out of 10 family carers who are in poor physical health say it is because of the amount of care they provide;
- 10 out of 10 family carers who are in poor mental health say that it is because

³⁸¹ Jones, Dr. G., Ellins, Dr. J., Guldberg, K., Jordan, Professor R., MacLeod, A., Plimley, L. (2007) A Review of the Needs and Services for 10-18 year-old Children and Young People diagnosed with Asperger Syndrome living in Northern Ireland, NICCY.

³⁸² Mencap (2006) Breaking Point – families still need a break: A report on the continuing problem of caring without a break for children and adults with severe and profound learning disabilities in Northern Ireland.

- of the amount of care they provide;
- 7 out of 10 families don't get a short break that fully meets their needs;
- 1 in 3 families has experienced a cut in their short break services in the last year;
- 7 out of 10 families have not had a carer's assessment;
- 5 out of 10 families who had a carer's assessment still didn't receive any services;
- 6 out of 10 families have never been offered a choice of short break service.

Mencap made the following recommendations:

- Every family should be entitled to a minimum level of short breaks.
- Every family should have their needs assessed and receive a written support plan.
- Every local authority should audit its current provision.
- There should be a public service agreement on the provision of short break services.
- Families need a carers' strategy that delivers quality services to meet their needs.
- Central government must provide increased funding to local authorities for short breaks.

There are no clear figures on the number of children with a learning disability here who do not live with their families. The 'Equal Lives' report³⁸³ (2005) has estimated that 140 children may be in this position. CiNI, among others, has called for additional support to be provided to their families. Unless such services are developed, these children will lose out on the right to a family life by remaining in institutions³⁸⁴. As the UN Committee highlighted in General Comment no. 9, placement of children in institutions must have the safety, protection and care of children as their prime consideration, and that this consideration should outweigh any other (Para. 30) and that placement in an institution should only be considered as a matter of last resort (Para. 47).

Families Matter

In addressing issues related to family life in Northern Ireland the government has developed Families Matter, a draft strategy³⁸⁵ for supporting families.

This draft strategy sets out to enhance the services available to parents in assisting with parental responsibility through the provision of positive parenting and parenting education; provision of mediation services; development of and expansion of Child Contact Centres; improvement of access to information by the development of a regional database and the provision of a regional help line.

While many of the measures proposed in the strategy have been broadly welcomed by the voluntary childcare sector it has also drawn widespread criticism in relation to the following:

³⁸³ Equal Lives: Review of policy and services for people with a learning disability in Northern Ireland (2005), Review of Mental Health and Learning Disability (NI) DHSSPS.

³⁸⁴ This issue is also raised in relation to concerns about children and young people in Muckamore Hospital – see the Chapter on Marginalisation.

³⁸⁵ DHSSPS (2007) Families Matter: Supporting Families in Northern Ireland, The Department of Health, Social Services and Public Safety's Proposals on a Regional Family and Parenting Strategy.

- The lack of focus on children with disabilities, those with mental health problems, children in alternative family environments, such as foster families, children of different race, religion and sexual orientation and children with dependents.
- The lack of significant action to prohibit physical punishment of children within the family, in particular the failure to remove the defence of reasonable chastisement as recommended by the United Nations Committee on the Rights of the Child.
- The lack of a statutory duty to ensure cooperation.
- The lack of specificity in proposed actions and the absence of time bound targets and associated child rights indicators.
- The absence of actions to address the gaps in child rights knowledge among children, parents and carers.
- The implied presumption that the children whom the strategy aims to help are likely to engage in anti-social behaviour.

The denial of rights to children with disabilities, raised in this section could usefully be addressed in the strategy.

Summary of key issues

- The inadequacy of mental health services for children and young people, and the continued under resourcing in this area of provision.
- The lack of provision and under funding of services for children with complex physical health care needs.
- Inadequate provision of and unequal access to SLT services.
- The absence of accurate data in relation to the numbers of children in need of ASD support services.
- The lack of coordinated services for children with ASD.
- The absence of appropriate and timely supports for children in alternative care.
- The under funding of foster care services.
- The lack of provision of integrated education in relation to demand.
- The absence of secure funding for AEP, resulting in reduced educational opportunities.
- The lack of sustained support for families who have children with disabilities, particularly in relation to respite care.

Recommendations

1. The newly established Mental Health and Learning Disability Board, in driving the delivery of the Bamford recommendations should ensure that:
 - a range of services are developed to provide appropriate support for children and young people;
 - families are provided with the level of support necessary to care for their children at home, including the provision of respite services; and
 - service development is underpinned by an adequate dedicated budget.
2. The DHSSPS should develop a framework for the provision of services to children with complex physical healthcare needs, which pays particular

attention to the provision of equipment and respite services. This should be underpinned by the allocation of an adequate dedicated budget.

3. The Speech and Language Therapy Taskforce should develop a comprehensive and well resourced action plan to ensure that children have timely and adequate access to SLT services.
4. The DHSSPS should set in place measures for the collection of comprehensive and disaggregated data in relation to children with disabilities. This should form the basis of a comprehensive needs assessment and the development of appropriate service provision.
5. The DHSSPS should review services for children with ASD to ensure that these are based on accurate data and needs assessment and that provision is appropriately coordinated.
6. Care matters should include measures to ensure that:
 - secure accommodation is provided on the basis of individual need;
 - children in care have appropriate access to family members, independent of decisions relating to their siblings;
 - therapeutic support is available to all children when they enter the care system;
 - support services are available at weekends and in the evenings;
 - children in care are given adequate opportunities to develop self care skills;
 - every care leaver is allocated a personal advisor in a timely fashion;
 - intensive specialist therapeutic support services are developed in Northern Ireland;
 - foster care is adequately resourced, including the introduction of an equitable system of payment for foster carers.
7. Funding for integrated education should be increased in order that provision can be expanded to facilitate parental choice.
8. DENI should work with AEP providers to ensure that secure funding is put in place in order to support the delivery of a comprehensive, quality education to the children engaged in alternative provision.
9. The DHSSPS should undertake a comprehensive review of support services for children with disabilities and their families, including respite care, as a basis for developing measures to ensure that services have the capacity to meet identified need.

APPENDIX 1

Summary of UN Committee General Comments referred to in report

United Nations Committee on the Rights of the Child periodically issues General Comments, in the light of the experience of holding examinations of reports in a range of countries. These are intended to increase awareness of, and offer further guidance in relation to, particular rights.

General Comment 1

The United Nations Committee on the Rights of the Child, General Comment no. 1 – **The aims of education** – Article 29 (1) April 2001.

The General Comment on the aims of education in 2001 was the first comment issued by the Committee. The Committee argues that the rights set out in Article 29 insist upon the need for education to be child-centred, child friendly, and to empower by developing the child's skills, learning and other capacities, dignity, esteem and confidence. Education is seen as going far beyond formal schooling to include life experiences (Para. 2).

According to the Committee the right to education involves not only access but content, which should equip the child to achieve a balanced human rights friendly response to life's challenges including the tensions between tradition and modernity; the individual and collective; the global and the local (Para. 3) A balanced approach to education is needed and should be able to reconcile diverse values through dialogue and respect for difference (Para. 4).

The Committee draws attention to the indispensable, interconnectedness of the UNCRC articles (Para. 6). Education must be provided in a way that respects the dignity of the child, enables the expression of their views and participation in school life, including the creation of school councils. It must also respect strict limits on discipline and promote non-violence (Para.8). The curriculum must be of direct relevance to the child's social, cultural, environmental and economic context, and must be tailored to individual needs and evolving capacities. No child should leave school without the skills of literacy, numeracy, balanced decision-making, conflict resolution, relationship building, critical thinking and creativity (Para. 9). Discrimination is not just about denying access to education but can also be reflected in the failure to apply the principles of Article 29 e.g. environments which are unfriendly for girls. Children with disability and those with HIV/AIDS are heavily discriminated against (Para.10).

The Committee highlights the links between article 29 and the struggle against racism. Education must promote an understanding and appreciation of respect for difference and must challenge all aspects of discrimination and prejudice (Para.11).

Teaching that is focused primarily on accumulation of knowledge, promoting competition and leading to an excessive burden of work on children may seriously hamper the development of the child's full potential (Para.12). Education within the family, schools and community should develop respect for the natural environment and

link issues with socio-economic, socio-cultural and demographic issues (Para. 13). Education in relation to human rights must give prominence to children's rights and children should also learn about this by seeing the rights standards implemented in practice.

All States are called upon to formally incorporate the principles of Article 29 in legislation (Para.18). The principles must be taught in teacher training and should be reflected in teaching methods. Schools must not allow bullying to take place (Para.19).

Every child has the right to receive an education of good quality which in turn requires a focus on the quality of the learning environment, of teaching and learning processes and materials, and of learning outputs (Para.22). The Committee recommends that States develop a comprehensive national action plan to promote and monitor the achievement of objectives in relation to education (Para.23) and establish review procedures to respond to complaints that policies or practices are not compliant with Article 29 (Para.25).

Finally the Committee argues that resource constraints cannot provide justification for failure to implement any or all of the measures in relation to education (Para.28).

General Comment 4

United Nations Committee on the Rights of the Child, General Comment no. 4 – **Adolescent health and development in the context of the Convention on the Rights of the Child** July 2003

General Comment no.4 (2003) focuses on adolescent health and development. The Committee provides guidance in relation to how adolescent health services should be developed and delivered.

The Committee expresses concern that States Parties have paid insufficient attention to the specific concerns of adolescents as rights holders and to promoting their health and development.

The Committee clarifies that the grounds in Article 2 (non-discrimination) should be interpreted as covering adolescent's sexual orientation and health status, including HIV/AIDS and mental health (Para. 6). They point out that the right to information in Article 17 should include access to information on family planning, prevention of accidents, and the abuse of alcohol, tobacco and other harmful substances (Para. 10). The right to privacy and confidentiality (Article 16) applies to advice and counselling on health matters (Para. 11). States are urged to adopt special measures to ensure the physical, sexual and mental integrity of adolescents with disabilities and to ensure that adolescents who are affected by poverty and socially marginalised are not criminalised (Para.12).

The Committee also makes reference to the need for specific programmes to promote road safety (Para. 21) and prevent suicide (Para. 22). Special efforts are advocated to protect vulnerable adolescents for example the homeless or those in institutions for young people with disabilities (Para. 23). In relation to mental health, States are urged to provide adequate treatment within the adolescent's community, and to hospitalise only where this is in their best interests and where they are separated from adult services. While hospitalised, adolescents should be able to access education, recreation and representation from someone other than a family member (Para. 29).

In the General Comment specific reference is made to the need to ensure informed consent for medical treatment (Para. 32); access to facilities, goods and services for all adolescents with disabilities, including information on sexuality (Para. 35); provision of health and counselling services to those who have been sexually exploited (Para. 37). States are also urged to invest heavily in preventative policies and measures in relation to the particular risks faced by adolescents who experience homelessness, armed conflict, all forms of injustice, family breakdown, political, social and economic instability and all types of migration (Para. 38).

Finally, the Committee recommends a multisectoral approach to the promotion and protection of adolescent health and development by facilitating effective and sustainable partnerships among all relevant actors.

General Comment 5

United Nations Committee on the Rights of the Child, General Comment no.5 – **General Measures of Implementation** of the Convention on the Rights of the Child, 27 November 2003, CRC/GC/2003/5.

The purpose of this General Comment is to outline States Parties' obligations to develop what the Committee has termed "general measures of implementation". The Committee begins by emphasising that ratification of the UNCRC obliges States, under international law, to implement it. They explain that Implementation is the process whereby States Parties take action to ensure the realization of all rights in the Convention for all children in their jurisdiction.

As stated in Article 4, States are required to take "all appropriate legislative, administrative and other measures" to implement rights. 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. In addition, the Committee draws attention to the wide range of measures that are needed for effective implementation, including the development of special structures and monitoring, training and other activities in government, Parliament and the judiciary at all levels. (Para. 1)

The general measures of implementation identified by the Committee are intended to promote the full enjoyment of all rights in the Convention by all children, through legislation, the establishment of coordinating and monitoring bodies - governmental and independent - comprehensive data collection, awareness-raising and training and the development and implementation of appropriate policies, services and programmes. (Para. 9)

The Committee reiterates the obligations under the General Principles of the UNCRC - Articles 2, 3, 6 and 12. In relation to Article 2 (non-discrimination) they highlight, in particular, the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified. To comply with Article 3 (Best interests) the Committee points out that every legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children's rights and interests are or will be directly or indirectly affected by their decisions and actions.

In discussing Article 6 (Right to life, survival and development) attention is drawn to the concept of the child's development as embracing their physical, mental, spiritual, moral, psychological and social development. Therefore, implementation measures should be aimed at achieving the optimal development for all children.

In relation to Article 12 (Participation) the Committee points out that children are disenfranchised and that meaningful consultation requires both accessible documents and processes. The Committee emphasises that the ascertainment of the views of particular groups of children on particular issues is critical - for example children who have experience of the juvenile justice system on proposals for law reform in that area. They also point to the importance of governments developing a direct relationship with children, not simply one mediated through NGOs or human rights institutions. (Para. 12)

The Committee urges States to ratify the two Optional Protocols to the UNCRC and other major international human rights instruments. (Para. 17)
Effective remedies must be available when rights are violated, this will necessitate the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance. (Para. 24)

The Committee recommends the development of a comprehensive national strategy or national plan of action for children, built on the framework of the Convention. (Para.29) This should pay particular attention to identifying and giving priority to marginalized and disadvantaged groups of children. (Para.30). The strategy must set real and achievable targets, be adequately resourced (Para. 32) and coordinated at a high strategic level across government Departments. (Para. 37)

The Committee points out that while self-monitoring and evaluation is an obligation for governments they also regard the independent monitoring of progress towards implementation by, for example, parliamentary committees, NGOs, academic institutions, professional associations, youth groups and independent human rights institutions, as essential. (Para. 46)

The Committee emphasises that the collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realization of rights, is an essential part of implementation. They remind States Parties that data collection needs to extend over the whole period of childhood, up to the age of 18 years. (Para. 48)

In considering government periodic reports, the Committee has paid attention to the identification and analysis of resources for children in national and other budgets. They stress that no State can tell whether it is fulfilling children's economic, social and cultural rights "to the maximum extent of ... available resources", as it is required to do under article 4, unless it can identify the proportion of national and other budgets allocated to children, both directly and indirectly. (Para. 51)

The Committee reiterates States' obligation to develop training and capacity-building for all those involved in the implementation process - government officials, parliamentarians and members of the judiciary - and for all those working with and for children. They set out examples of groups that should be included: community and

religious leaders, teachers, social workers and other professionals, including those working with children in institutions and places of detention, the police and armed forces, including peacekeeping forces, those working in the media and many others. (Para. 53)

The Committee recognizes that responsibilities to respect and ensure the rights of children extend in practice beyond the State and State-controlled services and institutions to include children, parents and wider families, other adults, and non-State services and organisations. (Para. 56) Given this, the State is urged to work closely with NGOs in the widest sense, while respecting their autonomy; these include, for example, human rights NGOs, child- and youth-led organizations and youth groups, parent and family groups, faith groups, academic institutions and professional associations. (Para. 58). In respect of this, Independent human rights institutions are recognised as having a particular role which is complementary to effective government structures for children; the essential element of which is independence. (Para. 65)

The Committee proposes that States should develop a comprehensive strategy for disseminating knowledge of the Convention throughout society. (Para. 67) Children need to acquire knowledge of their rights and the Committee places special emphasis on incorporating learning about the Convention and human rights in general into the school curriculum at all stages. (Para. 68) The Convention explicitly requires States to make their reports widely available to the public; this should be done when they are submitted to the Committee. The Committee recommends that reports should be made genuinely accessible, for example through translation into all languages and into appropriate forms for children and for people with disabilities. (Para. 71)

General Comment 7

United Nations Committee on the Rights of the Child, General Comment no. 7 – **Implementing child rights in early childhood** (2005) CRC/C/GC/7/Rev.1 20 September 2006.

One of the objectives of General Comment no. 7 (2005) “Implementing child rights in early childhood” is “to emphasize the vulnerability of young children to poverty, discrimination, family breakdown and multiple other adversities that violate their rights and undermine their well-being” (Para. 2(f)). The Committee defines early childhood as the period below the age of eight years and they recommend that State parties review their obligations towards young children in the context of this definition (Para. 4).

The Committee reiterates that service provision for children must take account of the best interests principle. This includes actions directly affecting children (e.g. related to health services, care systems, or schools), as well as actions that indirectly impact on young children (e.g. related to the environment, housing or transport). (Para. 13b) They point out that the process of examination has shown that early childhood services are often fragmented, divided across several departments and that planning can be piecemeal and uncoordinated. They can be under-resourced and poorly regulated. They advocate a comprehensive framework for early childhood services, provisions and facilities, backed up by information and monitoring systems. (Para. 22) The Committee advocates access to services for the most vulnerable, including those living in poverty (Para. 24), outlines the impact of poverty and emphasises the need for a range of measures. (Para. 26)

They note that States have paid insufficient attention to “the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts” (Art 31). They emphasise the role and value of play in early childhood education and point to the lack of safe play space in many urban environments, where the design and density of housing, commercial centres and transport systems combine with noise, pollution and all manner of dangers to create a hazardous environment for young children. They stress that planning for towns, and leisure and play facilities should take account of children’s right to express their views and encourage States to pay greater attention and allocate adequate resources (human and financial) to the implementation of the right to rest, leisure and play. (Para. 34)

The Committee points out that young children are frequent victims of neglect, maltreatment and abuse, including physical and mental violence. Abuse very often happens within families, which can be especially destructive. Young children are least able to avoid or resist, least able to comprehend what is happening and least able to seek the protection of others. There is compelling evidence that trauma as a result of neglect and abuse has negative impacts on development, including, for the very youngest children, measurable effects on processes of brain maturation. Bearing in mind the prevalence of abuse and neglect in early childhood and the evidence that it has long-term repercussions, States Parties should take all necessary measures to safeguard young children at risk and offer protection to victims of abuse, taking positive steps to support their recovery from trauma while avoiding stigmatization for the violations they have suffered. (Para. 36a)

The Committee draws attention to the circumstances of children who live without their families in alternative care. They point to research that shows that low-quality institutional care is unlikely to promote healthy physical and psychological development and can have serious negative consequences for long-term social adjustment, especially for children under 3 but also for children under 5 years old. Such services should ensure early placement in family-based or family-like care which are more likely to produce positive outcomes for young children. States Parties are encouraged to invest in and support forms of alternative care that can ensure security, continuity of care and affection, and the opportunity for young children to form long-term attachments based on mutual trust and respect, for example through fostering, adoption and support for members of extended families. In relation to adoption they remind States that the best interests of the child is the paramount, not just a primary, consideration. (Para. 36b)

The Committee stresses that young children should never be institutionalised solely on the grounds of disability. It is a priority to ensure that they have equal opportunities to participate fully in education and community life, including by the removal of barriers that impede the realisation of their rights. Young disabled children are entitled to appropriate specialist assistance, including support for their parents (or other caregivers). Disabled children should at all times be treated with dignity and in ways that encourage their self-reliance. (Para. 36 d)

The Committee states that under no circumstances should young children be included in legal definitions of the minimum age of criminal responsibility. (Para. 36i) They comment on the allocation of resources for early childhood services, advocating an

increase in human and financial resource allocations for early childhood services and programmes. This will allow for the adoption of comprehensive, strategic and time-bound plans for early childhood within a rights-based framework. (Para. 38)

Finally, the Committee points out that many States Parties lack adequate national data collection systems on early childhood for many areas covered by the Convention, and in particular that specific and disaggregated information on children in the early years is not readily available. The Committee urges all States Parties to develop a system of data collection and indicators consistent with the Convention and disaggregated by gender, age, family structure, urban and rural residence, and other relevant categories. This system should cover all children up to the age of 18 years, with specific emphasis on early childhood, particularly in relation to children belonging to vulnerable groups. (Para. 39)

General Comment 8

United Nations Committee on the Rights of the Child, General Comment no. 8 –**The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment** 21 August 2006 CRC/C/GC/8

Following two days of general discussion on violence against children, held in 2000 and 2001, the Committee on the Rights of the Child decided to issue a series of General Comments concerning eliminating violence against children. The first of these has been published as General Comment no. 8 - The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment. In a wide-ranging exploration of the issue the Committee explains the importance of addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family, schools and other settings. Doing so is not only an obligation of States Parties under the Convention but is also a key strategy for reducing and preventing all forms of violence in societies. (Para. 3).

The Committee defines 'corporal' or 'physical' punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting ('smacking', 'slapping', 'spanking') children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child. (Para. 11)

The Committee on the Rights of the Child has raised eliminating corporal punishment with certain States during the examination of their reports. Governmental representatives have sometimes suggested that some level of 'reasonable' or 'moderate' corporal punishment can be justified as in the 'best interests' of the child. The Committee has identified, as an important general principle, the Convention's requirement that the best interests of the child should be a primary consideration in all actions concerning children (Article 3, Para. 4). The Convention also asserts, in Article

18, that the best interests of the child will be parents' basic concern. But interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence and the requirement to give due weight to the child's views; it cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity. (Para. 26)

The Committee notes that in many States there are explicit legal provisions in criminal and/or civil (family) codes that provide parents and other carers with a defence or justification for using some degree of violence in 'disciplining' children. For example, the defence of 'lawful', 'reasonable' or 'moderate' chastisement or correction has formed part of English common law for centuries, as has a 'right of correction' in French law. At one time in many States the same defence was also available to justify the chastisement of wives by their husbands and of slaves, servants and apprentices by their masters. The Committee emphasizes that the Convention requires the removal of any provisions (in statute or common - case law) that allow some degree of violence against children (e.g. 'reasonable' or 'moderate' chastisement or correction), in their homes/families or in any other setting. (Para. 31)

The Committee addresses the objection that such action could lead to parental prosecution for minor actions. They state that the principle of equal protection of children and adults from assault, including within the family, does not mean that all cases of corporal punishment of children by their parents that come to light should lead to prosecution of parents. The *de minimis* principle - that the law does not concern itself with trivial matters - ensures that minor assaults between adults only come to court in very exceptional circumstances; the same will be true of minor assaults on children. States need to develop effective reporting and referral mechanisms. While all reports of violence against children should be appropriately investigated and their protection from significant harm assured, the aim should be to stop parents from using violent or other cruel or degrading punishments through supportive and educational, not punitive, interventions. (Para. 40)

General Comment 9

UNCRC, General Comment no. 9, **The rights of children with disabilities**
CRC/C/GC/9 29 September 2006.

General Comment no. 9 concerns the rights of children with disabilities. In reviewing State party reports the Committee found that they had to make recommendations concerning the rights of children with disabilities in almost all countries. The Committee emphasised that poverty is both a cause and a consequence of disability and that children with disabilities and their families have the right to an adequate standard of living (Para. 3). They note that children with disabilities are still experiencing serious difficulties and barriers in the full enjoyment of the rights enshrined in the Convention. The Committee emphasizes that the barrier is not the disability itself but it is a combination of social, cultural, attitudinal and physical barriers which children with disabilities encounter in their daily lives. (Para. 5)

They point out that the explicit reference to children with disabilities in Article 2 is unique and is because they belong to one of the most vulnerable groups and their disadvantage is often compounded by other factors (Para. 8). In relation to Article 23, which is focused on disability, the Committee explains that the core message is that

children with disabilities should be included in society and that measures taken should aim to ensure this to the maximum extent (Para. 11). In order to do so, States are asked to develop and effectively implement a comprehensive policy with a plan of action, which ensures that children with disabilities and their families receive the special care, and assistance they are entitled to under the Convention (Para. 13).

The Committee also recognises that children with disabilities are best cared for and nurtured within their own family environments provided that the family is adequately supported in all aspects. This support should include different forms of respite care, such as care assistance in the home and day care facilities directly accessible at community level. The Committee points out that such services enable parents to work, as well as relieve stress and maintain healthy family environments. (Para. 15)

Clear provisions for the protection and exercise of the specific rights of children with disability should be set out in national laws and regulations (Para. 17). The Committee also draws attention to the importance of including all children with disabilities in policies and programmes (Para. 18). Extra efforts are also required to ensure that there are comprehensive data and statistics in relation to children with disability (Para. 19). Resources allocated should be sufficient to cover all their needs including the funding of programmes for training professionals to work with them, such as teachers, physiotherapists and policy makers. Resources should also cover educational campaigns, financial support for families, income maintenance, social security, assistive devices and related services (Para. 20). Services for children with disability are often delivered by a range of departments and are subsequently fragmented. An appropriate coordination mechanism is essential (Para. 21).

The Committee stresses that national human rights institutions must be well known and accessible to children with disabilities and their care givers. They must also have appropriate legal authority to receive, investigate and address complaints (Para. 24). The State must also support, enable and cooperate with NGOs in the provision of services (Para. 25).

In relation to children placed in institutions the Committee stresses that their protection and care must be the prime consideration under all circumstances and that this should outweigh any other consideration, such as budget (Para. 30).

Attention is drawn to the right of children with disabilities to participate. The Committee's experience is that they are often left out of the decision and policy making process. States are urged to include their representation on various bodies such as Parliament, committees and other forums. The children should also be equipped with whatever mode of communication they require to facilitate expressing their views (Para. 32). Further, programmes and activities designed for the child's cultural development and spiritual well-being should include children both with and without disabilities in an integrated and participatory fashion (Para. 33).

Measures also need to be taken to ensure that children with disabilities have access to information about their disabilities; appropriate technology (Para. 37) and public transport and facilities (Para. 39).

The Committee raises child protection as a particular concern in relation to children with disabilities saying they are particularly vulnerable to physical, sexual and mental abuse as well as neglect and negligent treatment. They are also exposed to bullying in school. A range of measures are set out to address these issues (Para. 42 and 43).

States are urged to encourage fostering as an appropriate placement for children with disabilities (Para. 46), to ensure children's voices are heard in separation and placement processes (Para. 48), to set up programmes for the de-institutionalisation of children (Para. 49) and to establish community based assistance and rehabilitation strategies when providing health care (Para. 52).

The Committee draws attention to the importance of addressing preventative measures involving road safety, drug and alcohol abuse in pregnancy, dumping of hazardous materials (Para. 54) and the need to establish early identification and intervention systems (Para. 56).

States are urged to provide adolescents with adequate and disability specific information in relation to reproductive health (Para. 59) and to prohibit by law the enforced sterilisation of children on the grounds of disability (Para. 60).

In relation to education the Committee clarifies that this should involve providing the child with an empowering experience of control, achievement and success to the maximum extent possible (Para. 64). Schools, including those in higher education, should be without communicational as well as physical barriers and children should be provided with personal assistance and taught by those who have received specialised training in relation to their needs (Para. 65).

The Committee addresses the concept of inclusivity as the primary goal in education, as reflected in the International Convention on the Rights of Persons with Disabilities (Para. 66). They stress the importance of understanding that inclusion should not be understood as simply integrating children with disabilities into the regular system regardless of their challenges and needs. Rather, school curricula must be re-evaluated to meet the needs of children with or without disabilities and training of educators must be similarly adjusted (Para. 67). Addressing issues of career development and vocational skills must be included in the curriculum at an early stage (Para. 68, 69).

Additionally, given the importance of play in learning social skills, training for recreation, leisure and play should be included for school-aged children with disability (Para. 70). Equally, children must have opportunities to participate in various cultural, arts and sports activities (Para. 71) and these should be integrated, where possible (Para. 72).

In relation to children with disabilities in the juvenile justice system, a number of measures are recommended and States are urged not to place children in a regular detention centre by way of pre-trial detention or punishment. Deprivation of liberty should only be applied if necessary with a view to providing the child with adequate treatment for addressing the problems which have resulted in the commission of a crime. In such instances children should be placed in institutions with specially trained staff and treatment facilities (Para. 74)

Finally attention is drawn to the need for special measures in relation to children who are also members of minority and indigenous groups, who are more likely to be already marginalised. Programmes and policies must always be culturally and ethnically sensitive (Para. 80)

General Comment 10

United Nations Committee on the Rights of the Child, General Comment no.10 (2007)
Children's rights in juvenile justice CRC/C/GC10.

As a result of the States Parties' performance in the field of juvenile justice, the Committee issued a General Comment. This is intended to provide States with more elaborated guidance and recommendations, to support their efforts to establish an administration of juvenile justice which is UNCRC compliant. The Committee hopes that, by assisting States in this way, the best interests of children and young people will be served as well as the short and long term interest of the whole society. (Para. 3) The Committee considers that a comprehensive policy for juvenile justice must deal with the following core elements:

The prevention of juvenile delinquency; interventions without resorting to judicial proceedings and interventions in the context of judicial proceedings; the minimum age of criminal responsibility and the upper age limits for juvenile justice; the guarantees for a fair trial; and deprivation of liberty including pre-trial detention and post-trial incarceration. (Para. 15)

The Committee asserts that a juvenile justice policy without a set of measures aimed at preventing juvenile delinquency suffers from serious shortcomings. They urge States Parties to fully integrate into their comprehensive national policy for juvenile justice, the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) adopted by the General Assembly in its resolution 45/112 of 14th December 1990. (Para. 17)

Emphasis should be placed on prevention policies that facilitate the successful socialization and integration of all children, in particular through the family, the community, peer groups, schools, vocational training and the world of work. The States Parties should also develop community-based services and programmes that respond to the special needs, problems, concerns and interests of children, in particular of children repeatedly in conflict with the law, and that provide appropriate counselling and guidance to their families. (Para. 18)

In accordance with UNCRC Article 40, it is necessary - as part of a comprehensive policy for juvenile justice - to develop and implement a wide range of measures to ensure that children are dealt with in a manner appropriate to their well-being, and proportionate to both their circumstances and the offence committed. These should include care, guidance and supervision, counselling, probation, foster care, educational and training programmes, and other alternatives to institutional care. (Para. 23)

The Committee advocates that States Parties take measures for dealing with children in conflict with the law without resorting to judicial proceedings as an integral part of their juvenile justice system, and ensure that children's human rights and legal safeguards are thereby fully respected and protected. (Para. 26)

In relation to diversion (i.e. measures for dealing with children, alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings) the Committee states that this should be used only when there is compelling evidence that the child committed the alleged offence, that he/she freely

and voluntarily admits responsibility, and that no intimidation or pressure has been used to get that admission and, finally, that the admission will not be used against him/her in any subsequent legal proceeding. In addition the child should give consent in writing. The law must contain specific provisions indicating in which cases diversion is possible, and the child must be given the opportunity to seek legal or other appropriate assistance on the appropriateness and desirability of the diversion. Finally the completion of the diversion by the child should result in a definite and final closure of the case. (Para. 27)

When judicial proceedings are initiated, the principles of a fair and just trial must be applied. At the same time, the juvenile justice system should provide for ample opportunities to deal with children in conflict with the law by using social and/or educational measures, and to strictly limit the use of deprivation of liberty, and in particular pre-trial detention, as a measure of last resort. (Para. 28)

In relation to the child's reintegration the Committee is clear that no action may be taken that can hamper the child's full participation in his/her community, such as stigmatization, social isolation, or negative publicity of the child. (Para. 29)

The Committee discusses the age of criminal responsibility. They report that this ranges across States from a very low level of age 7 or 8 to the commendable high level of age 14 or 16. (Para. 30) The Committee encourages States to increase their lower Minimum Age of Criminal Responsibility to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level. (Para. 32)

The Committee also draws attention to the upper age-limit for the application of the rules of juvenile justice. (Para. 36) They recommend that those States Parties which limit the applicability of their juvenile justice rules to children under the age of 16 (or lower) years, or which allow by way of exception that 16 or 17 year-old children are treated as adult criminals, change their laws with a view to achieving a non-discriminatory full application of their juvenile justice rules to all persons under the age of 18 years. (Para. 38)

States are reminded the child has the right to be treated in accordance with the presumption of innocence and it is the duty of all public authorities or others involved to refrain from prejudging the outcome of the trial. States Parties should provide information about child development to ensure that this presumption of innocence is respected in practice. Due to the lack of understanding of the process, immaturity, fear or other reasons, the child may behave in a suspicious manner, but the authorities must not assume that the child is guilty without proof of guilt beyond any reasonable doubt. (Para. 42)

In relation to Article 12 of the UNCRC, the Committee points out that the right to be heard must be fully observed at all stages of the process. This starts with the pre-trial stage, when the child has the right to remain silent, as well as the right to be heard by the police, the prosecutor and the investigating judge. But it also applies to the stages of adjudication and of implementation of the imposed measures. The child must be given the opportunity to express his/her views freely, and those views should be given due weight in accordance with the age and maturity of the child. (Para. 44)

The Committee cites Article 14 of the Beijing Rules which provides that the proceedings should be conducted in an atmosphere of understanding to allow the child to participate and to express himself/herself freely. Taking into account the child's age and maturity may also require modified courtroom procedures and practices. (Para. 46)

The Committee recommends that State parties provide as much as possible for adequate trained legal assistance for the child, such as expert lawyers or paralegal professionals. Other appropriate assistance is possible (e.g. social worker), but that person must have sufficient knowledge and understanding of the various legal aspects of the process of juvenile justice and must be trained to work with children in conflict with the law. (Para. 49)

In relation to the length of the judicial process the Committee recommends that the States Parties set and implement time limits for the period between the commission of the offence and the completion of the police investigation, the decision to bring charges against the child, and the final adjudication and decision by the court. These time limits should be much shorter than those set for adults. (Para. 52)

The child has the right to appeal against the decision by which he is found guilty of the charge(s) brought against him/her and against the measures imposed as a consequence of this guilty verdict. This appeal should be decided by a higher, competent, independent and impartial authority or judicial body. (Para. 60)

If a child cannot understand or speak the language used by the juvenile justice system, he/she has the right to get free assistance of an interpreter, at all stages of the juvenile justice process. (Para. 62) In relation to children with disabilities, the Committee recommends that States Parties ensure that children with speech impairment or other disabilities are provided with adequate and effective assistance by well-trained professionals. (Para. 63)

The right of a child to have his/her privacy fully respected during all stages of the proceedings reflects the right to protection of privacy enshrined in Article 16 of the UNCRC. In the context of juvenile justice, it is meant to avoid harm caused by undue publicity or by the process of labelling. The Committee states that no information should be published that may lead to the identification of a child offender because of its effect of stigmatization, and possible impact on his/her ability to have access to education, work, housing or to be safe. This means that a public authority should be very reluctant with press releases related to offences allegedly committed by children and limit them to very exceptional cases. They must take measures to guarantee that children are not identifiable via these press releases. Journalists who violate the right to privacy of a child in conflict with the law should be sanctioned with disciplinary and when necessary (e.g. in case of recidivism) with penal law sanctions. (Para. 64)

The Committee is clear that no child who was under the age of 18 at the time he or she committed an offence should be sentenced to life without the possibility of release or parole. (Para. 77)

They assert that every child deprived of liberty shall be separated from adults and should not be placed in an adult prison or other facility for adults. There is abundant evidence that the placement of children in adult prisons or jails compromises their

basic safety, well-being, and their future ability to remain free of crime and to reintegrate. States Parties should establish separate facilities for children deprived of their liberty, which include distinct, child-centred staff, personnel, policies and practices. (Para. 85)

Further, the child has the right to maintain contact with his/her family through correspondence and visits. In order to facilitate visits, the child should be placed in a facility that is as close as possible to the place of residence of his/her family. Exceptional circumstances that may limit this contact should be clearly described in the law and not be left to the discretion of the competent authorities. (Para. 87)

The Committee emphasises that, when deprived of liberty children should be provided with a physical environment and accommodations which are in keeping with the rehabilitative aims of residential placement, and due regard must be given to their needs for privacy, sensory stimuli, opportunities to associate with their peers, and to participate in sports, physical exercise, in arts, and leisure time activities. They also stress that every child of compulsory school age has the right to education suited to his/her needs and abilities, and designed to prepare him/her for return to society; in addition, every child should, when appropriate, receive vocational training in occupations likely to prepare him/her for future employment.

In relation to the use of restraint, the Committee points out that restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted. It must never be used as a means of punishment. Staff of the facility should receive training on the applicable standards and members of the staff who use restraint or force in violation of the rules and standards should be punished appropriately. The Committee also highlights the right of the child to make requests or to complain. This should be enabled without censorship as to the substance, to the central administration, the judicial authority or other proper independent authority, and the child should be informed of the response without delay. Children need to know about and have easy access to such mechanisms. (Para. 89)

The Committee concludes by expressing deep concern about the lack of even basic and disaggregated data on: the number and nature of offences committed by children; the use and the average duration of pre-trial detention; the number of children dealt with by resorting to measures other than judicial proceedings (diversion); and the number of convicted children and the nature of the sanctions imposed on them. The Committee urges the States Parties to systematically collect disaggregated data relevant to the information on the practice of the administration of juvenile justice, and necessary for the development, implementation and evaluation of policies and programmes aiming at the prevention and effective responses to juvenile delinquency in full accordance with the principles and provisions of UNCRC. (Para. 98)

APPENDIX 2

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APPENDIX 3

Acronyms

Access Research Knowledge (ARK)

Alternative Education Provision (AEP)

Asperger's Syndrome (AS)

Bill of Rights (BOR)

Black and Minority Ethnic (BME)

Central Services Agency (CSA)

Child and Adolescent Mental Health Services (CAMHS)

Children in Northern Ireland (CiNI)

Child Rights Programming (CRP)

Department of Education Northern Ireland (DENI)

Department of Health, Social Services and Public Safety (DHSSPS)

Department for Social Development (DSD)

Department of the Environment (DOE)

Dispute Avoidance and Resolution Service (DARS)

District Command Unit (DCU)

Economic Research Institute of Northern Ireland (ERINI)

English as an Additional Language (EAL)

Ethnic Minority Achievement Service (EMAS)

European Court of Human Rights and Fundamental Freedoms (ECHR)

Human Rights Act (HRA)

National Deaf Children's Society (NDCS)

Northern Ireland Affairs Committee (NIAC)

Northern Ireland Human Rights Commission (NIHRC)

Northern Ireland Statistics and Research Agency (NISRA)

Northern Ireland Survey of People with Activity Limitations and Disabilities (NISALD)

Office of Standards in Education (OFSTED)

Online Research Bank (ORB)

Promoting Social Inclusion (PSI)

Royal National Institute for the Blind (RNIB)

Special Educational Needs and Disability Tribunal (SENDIST)

Special Educational Needs Tribunal (SENT)

United Nations Convention on the Rights of the Child (UNCRC)

Youth Justice Agency (YJA)
