

Children's Rights Alliance
for England

State of Children's Rights in England

2012

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

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

CRAE has produced an annual *State of children's rights in England* report since 2003. This report is the tenth in the series. It summarises children's rights developments from November 2011 to December 2012.

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Many individuals and organisations contributed evidence and materials, drafted sections and reviewed drafts of this publication. Any views expressed or errors in this report are CRAE's and do not reflect the views of these individuals and organisations, or of CRAE's members.

Children's Rights Alliance for England
94 White Lion Street
London, United Kingdom
N1 9PF

T: 00 44 (0) 207 278 8222
E: info@crae.org.uk

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Adrian Matthews (Office of the Children's Commissioner)
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Overview

In 2013, the Government will be preparing its next report for the UN Committee on the Rights of the Child. The reporting process should be the Government's opportunity to show that it has responded to the Committee's last set of concluding observations, and to demonstrate that, in the UK, children's rights are fully protected. This might have been possible had the Government spent the last four years making changes to those laws and policies which the Committee identified in 2008 as violating children's rights, but as this report shows, in far too many areas children's rights continue to be breached.

It is clear that there has been progress in some areas. Most significantly, proposed reforms to the Office of the Children's Commissioner will give it greater independence and a rights-based mandate, which should allow it to act as a strong champion for children's rights. There have been many statements (though no legislation) around the Government's commitment to children's participation rights. Despite problems with the detail of the draft legislation, there are some welcome proposals in relation to provision for children and young people with special education needs. The Government has certainly expressed a strong commitment to improving outcomes for looked after children and in relation to adoption and family justice (though there are concerns that in some respects these prioritise the rights of parents over the best interests of the child).

But there are real threats elsewhere.

In many areas the Government has stated explicitly that it proposes to maintain policies which were found in 2008 to breach children's rights. Thus for example, the Government has made clear that:

- It will not raise the minimum age of criminal responsibility;
- It will not legislate to prohibit parents and other carers from hitting their children; and
- It will not make changes necessary to ensure that 17 year-olds are treated as juveniles by the police.

In other areas, the evidence shows that we are moving backwards in relation to many of the issues which concerned the Committee on the Rights of the Child back in 2008.

Unsurprisingly, many of these areas of regression relate to a lack of resources. In 2012, it was officially recognised that the Government had not met the 2010 child poverty target: 2.3 million children were living in relative income poverty, 600,000 more than set by the target. Even worse, it is anticipated that child poverty will rise, so that 800,000 more children will be in relative poverty by 2020 than there are today.

Evidence suggests that the most disadvantaged families will be worst affected by changes to benefits, tax and public services. Spending on many public services delivering children's rights to education, health, play and to be safe fell significantly in real terms, and cuts faced by the voluntary sector mean that they have been unable to plug the gaps. Changes to legal aid mean that children will be unable to access justice when their rights have been breached.

In reality, tackling these issues is a matter of prioritisation. The CRC requires ratifying states to secure children's economic, social and cultural rights 'to the maximum extent of their available resources'.¹ A lack of money is not an excuse for the Government's failure to secure children's rights in these areas, particularly when the Government does nothing to assess the impact of its spending decisions on children's rights, meaning that it simply does not know whether it complies with this obligation. The UK remains one of the world's richest economies: even in times of constraint, there can be no justification for penalising the smallest, weakest and poorest members of society.

In addition, measures have been proposed which seriously undermine children's rights and which do not relate to a lack of resources. For example, despite both Coalition parties' stated commitment to civil liberties, the Government has published repressive legislation to tackle anti-social behaviour. The new system would allow a child who has threatened 'to engage in conduct which might cause nuisance or annoyance' to be issued with an injunction prohibiting him or her from any given number of activities, including from entering a particular area, breach of which could result in imprisonment. Proposals to require private telecommunications companies to hold records about all communications are likely to have a disproportionate impact on children. A new system of

restraint for use on children in the secure estate will continue to allow guards to deliberately inflict pain on children.

A number of high-profile stories have highlighted the fact that our systems for protecting children against sexual abuse and exploitation are not working. In particular, several reports published this year confirmed that older children are less well cared for by child protection services than their younger peers, that when they make complaints, their concerns are less well-addressed, and that they are let down when leaving care. Yet while age discrimination in public services and functions became unlawful in 2012, children were excluded from this protection.

In other areas, moves to cut red tape and reduce bureaucracy raise a real risk that legislation and guidance central to the protection and promotion of children's rights will be removed or weakened. The clearest example was the announcement that the Government would be reviewing the equality duty as part of its 'red tape challenge', accompanied by a high profile speech from the Prime Minister which dismissed attempts to assess the equality impact of policies as '*bureaucratic nonsense*'.² Other concerns include the move to significantly reduce the extent of statutory guidance around child protection, by, for example, removing time limits within which assessments must take place. The deregulation of education means that increasing numbers of academies and free schools are not under an obligation to, for example, teach key aspects of the curriculum in relation to sex and relationships, drugs and alcohol and citizenship. It also means that schools are subject to weaker accountability and oversight mechanisms. Similarly, new arrangements for the inspection of secure training centres are less stringent and do not reflect the standards of the CRC.

Most worryingly, even human rights, including children's rights, have been cast as 'red tape' that obstructs decision-making by public bodies. At the Conservative party conference in October 2012 the Home Secretary said:

*I still believe we should scrap the Human Rights Act altogether – but for now, we're doing everything we can to stop human rights laws getting in the way of immigration controls.*³

This year saw the Bill of Rights Commission publish its final report. Human rights have become such a divisive subject that even the group of nine commissioners could not reach a consensus on whether

1. CRC, Article 4

2. See: <http://www.number10.gov.uk/news/speech-to-cbi/>

3. See: http://www.conservatives.com/News/Speeches/2012/11/Theresa_May_Conference_2012.aspx

there should be a new Bill of Rights. The only issue on which they appeared to agree was that there are '*profound differences*' of opinion in relation to human rights and '*a highly polarized division of views between those for and against our current human rights structures*'.⁴

The European Convention on Human Rights and the Human Rights Act 1998 are the strongest measures protecting children's rights in the UK. In recent years the Human Rights Act has been used to challenge a local authority which failed for years to protect children against abuse, to stop the mother of British children from being deported from Britain, and to ensure that where a child with learning disabilities is involved in a trial, measures are put in place to ensure that the child understands the proceedings and is able to participate effectively. Yet this year saw ongoing attacks on the Human Rights Act and on the international mechanisms for protection of children's rights, such as the European Court of Human Rights. There remains a real threat that the Human Rights Act may be repealed entirely and that we may withdraw from the European Convention on Human Rights. Not only does this situation do '*profound damage to the standing of the United Kingdom within the international community*',⁵ it will also make it impossible for the Government, when it reports to the UN Committee on the Rights of the Child this year, to assert with any credibility that it is committed to the protection of children's rights.

State of Children's Rights: The Key Facts

	Total Number of Concluding Observations	+	-	=
General Measures	16	5	4	7
General Principles	12	3	5	4
Civil Rights and Freedoms	14	3	3	8
Family and Alternative Care	14	2	6	6
Basic Health and Welfare	22	7	9	6
Education, Leisure and Cultural Activities	12	5	4	3
Special Measures of Protection	28	5	6	17
TOTAL	118	30	37	51

General Measures of Implementation

- Evidence suggests that the Government does not routinely fulfill its commitment to give due consideration to the CRC when making new policy and legislation.
- The Children's Commissioner's primary function will be to promote and protect the rights of children.

- Statutory guidance for Directors of Children's Services states that the DCS '*should have regard to the General Principles of the CRC in the development and delivery of local services*'.

General Principles

- The Leveson Inquiry report, published at the end of November 2012, did not make any recommendations relating to the inappropriate characterisation of children and young people in the media.
- Forty-eight children died as a result of '*deliberately inflicted injury, abuse or neglect*' in 2011-12. **Sixty-five per cent of these deaths were 'modifiable'** – there were factors involved in the death indicating that achievable steps could be taken to reduce the risk of future deaths.
- Between April 2009 and April 2010, **Tasers** were used on under-18s a total of 144 times. In the previous 12 month period Tasers were used on children 102 times – **an increase of 41%**.
- Thirty-three children have died in custody in England and Wales since 1990. In January 2012, **two children died within a week**.
- A boy born in Kensington and Chelsea has an average **life expectancy** of 85.1 years. A boy born in Blackpool can expect to live 73.6 years.
- The **use of handcuffs on children rose by 500%** in one STC in 2011-12. Hassockfield STC used handcuffs on children 21 times, compared with 4 times in the previous year. Oakhill, Medway and Rainsbrook STCs did not use handcuffs at all during the same period.
- *Positive for Youth* places a strong emphasis on respecting young people's right to be heard.

Civil Rights and Freedoms

- Legislative proposals to tackle anti-social behaviour will carry forward many of the flaws of ASBOs, and, in some respects, is worse for children's rights.
- The Protection of Freedoms Act 2012 brought in several positive developments for children's privacy rights.
- On average, a child in custody was subject to a **restraint resulting in an injury requiring hospital treatment** once each month during 2010-11.

4. Commission on a Bill of Rights (July 2012) *A UK Bill of Rights? The Choice Before Us*

5. Bratza, N. (13 November 2012) *Comments offered at reception and dinner held at Lincoln's Inn*, cited in Commission on a Bill of Rights (July 2012) *A UK Bill of Rights? The Choice Before Us*, p. 224

Family and Alternative Care

- The Government has announced a raft of proposals for **speeding up the adoption process**.
- Official statistics published in November 2012 reported that the number of children going **missing from foster care** had increased by 19% in the previous year.
- More than 3,000 foster children are estimated to have gone missing in the year up to March 2012. As of 31 March 2012 there were a reported **1% still missing from care**.
- In 2011 only **13.9% of children in care achieved good GCSE grades** (A* to C) in both English and mathematics, compared to 58.6% of their peers. The attainment gap has risen from 37.2 in 2007 to 44.7 in 2011.
- When they visit a looked after child, social workers are required to **speak to the child in private**, but only 39% of children say that this happens on every visit, and 5% of children said that this never happens.
- Official figures published in November 2012 revealed that of 6,610 care leavers aged 19, **36% (2,390) were not in education, employment or training**. This percentage is at its highest since 2008 (when it was 24%).

Basic Health and Welfare

- Changes to the **welfare system** are widely considered to have rolled back disabled people's rights, including children.
- Draft legislation to reform provision for children with **special educational needs** has been broadly welcomed.
- The Health and Social Care Act 2012 creates a duty requiring certain public authorities to have regard to the need to reduce **health inequalities**.
- Additional investment in **mental health** services announced.
- Out of all the countries in the UK, England still has considerably the lowest number of **births in baby friendly hospitals**. Currently England only has 21.1% of births in accredited hospitals, while Scotland has 78.8%, Wales 69.1% and Northern Ireland 57.8%.
- 91% of women who left full-time education after the age of 18 **breastfeed**, while amongst those who left at or prior to the age of 16 only 63% were found to breastfeed.

- In the South East and East of England **one quarter of pupils entitled to free school meals are not claiming them**.
- Child poverty is set to rise.

Education, Leisure and Cultural Activities

- In 2011 only 13.9% of **children in care** achieved good GCSE grades (A* to C) in both English and mathematics, compared to 58.6% of their peers.
- Of the 14,000 children attending Pupil Referral Units – educational units for those who can't attend mainstream schools because of exclusion, illness, or for some other reason – 79% have special educational needs. Only **1.4% of pupils attending pupil referral units achieve 5 or more good GCSEs**, including English and Mathematics, compared to 53.4% of their peers in all schools.
- Just 25% of **Gypsy, Roma and Traveller** pupils achieved national expectations in English and mathematics at the end of their primary education, compared with 74% of all pupils.
- When asked by Ofsted, 50% of primary pupils and 38% of secondary school pupils said that they had been **bullied** at their current school.
- Pilot schemes are proposed that will give children in test areas the right to **bring their own appeal** in special educational needs matters and to bring their own disability discrimination claims.
- The number of **permanent exclusions** decreased by 11.5% in 2010-11.
- The Government agreed to implement many of the recommendations in the Taylor Review of **alternative provision**.

Special Measures of Protection

- **65% of children who left immigration detention** between July and September 2012 (n=35) **stayed in the UK**, suggesting that their detention was not necessary for the purposes of removal.
- In October 2012, **37% of all children in custody were BME**. While the number of children in custody has fallen by a huge 21% since October 2011, the number of BME children in custody has **increased** by 3%.

Introduction

The UN Committee on the Rights of the Child is the highest authority on the Convention on the Rights of the Child (CRC). It issued its recommendations on the UK in October 2008 after considering evidence and analysis from the Government, the UK's four Children's Commissioners and the Equality and Human Rights Commission (EHRC), as well as non-governmental organisations (NGOs) and children and young people. It held separate sessions with Government officials, NGOs and children and young people, and the Committee's Country Rapporteur met a variety of children's rights experts (including under-18 year-olds) in England ahead of the formal proceedings in Geneva.




There are 118 recommendations applying to children's rights in England. In preparing this report, CRAE examined all significant developments in law and policy over the past 12 months; we analysed official data relating to children's wellbeing; scrutinised information made available through our own and others' Freedom of Information (FOI) requests and parliamentary questions; and read relevant research and consultation documents reporting children's own views and testimony.

Thirty organisations attended our children's rights symposium in July 2012 to examine key developments since the publication of last year's report in November 2011. We also received written evidence from a variety of NGOs – particularly from those working with and for children suffering rights violations. This report summarises key developments – positive as well as negative – in children's human rights in England in the 12 months to December 2012.

The review follows our comprehensive submission to the Committee on the Rights of the Child in 2008, which was supported by over 100 NGOs including all the major children's charities.

Not all our member organisations will necessarily agree with all the assessments in this report.

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

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

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

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

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

Section 1

General Measures of Implementation

“...the Committee remains concerned that the principles of the Convention are not duly taken into account in all pieces of legislation throughout the country and that the State party has not incorporated the Convention into domestic law nor has ensured the compliance of all legislation affecting children with it.”⁶

“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.”⁷

⁶ UN Committee on the Rights of the Child (2008) Concluding observations: United Kingdom of Great Britain and Northern Ireland. Paragraph 10. CRC/C/GBR/CO/4

⁷ UN Committee on the Rights of the Child (2003) General Comment No. 5: General measures of implementation. Paragraph 1

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

The CRC is not incorporated into a domestic Bill of Rights. In its formal response to the Universal Periodic Review, the Government reiterated that it does not plan to incorporate the Convention and stated:

The UK Government is fully committed to the promotion and implementation of the UN Convention on the Rights of the Child. The Convention does not itself require states to incorporate its provisions directly into domestic law. The UK’s approach to ensuring it meets its obligations under the UNCRC is, accordingly, to pursue implementation by means of a combination of legislative and policy initiatives, in keeping with general practice in the UK.⁸

It did, however, reaffirm its commitment to the CRC in response to the recommendation from France to ‘take all measures necessary to fully implement the CRC’:

The recommendation enjoys the support of the United Kingdom. The UK Government is fully committed to the promotion and implementation of the UN Convention on the Rights of the Child and ensures that its policies and legislation complies with it. The education, health and wellbeing of children are vital for our society and the principles and standards defined in the Convention are an important framework for our thinking.⁹

The Cabinet Office guide to making legislation was amended in June 2012. Paragraph 11.29 states:

The Government has also made a commitment to give due consideration to the articles of the UN Convention on the Rights of the Child (UNCRC) when making new policy and legislation. In doing so, the Government has stated that it will always consider the UN Committee on the Rights of the Child’s recommendations but recognises that, like other state signatories, the Government and the UN committee may at times disagree on what compliance with certain articles entails. It would be helpful to Parliament and the Joint Committee on

⁸ United Kingdom (September 2012) *UK’s formal response to the Universal Periodic Review – Annex document*

⁹ United Kingdom (September 2012) *UK’s formal response to the Universal Periodic Review – Annex document*

*Human Rights (JCHR) if explanatory notes included a summary of the anticipated effects of legislation on children and on the compatibility of draft legislation with the UNCRC.*¹⁰

Despite this, there still is no formal process for scrutinising the compatibility of policy and legislative proposals with the CRC and the Department for Education does not monitor whether other departments do so.

In 2011 the Government established the Commission on a Bill of Rights to consider whether there should be a UK Bill of Rights and to provide advice on reform of the European Court of Human Rights. The Commission published its final report in December 2012.¹¹ The Commissioners did not reach a unanimous position, but the majority concluded that the case has been made for a UK Bill of Rights. The Commission's report recommended that if there were to be a UK Bill of Rights, consideration should be given to whether it should contain additional rights to those currently protected by the Human Rights Act 1998. It notes that in response to its consultations:

The most frequently supported candidate put forward by those advocating additional rights was for a UK Bill of Rights to explicitly incorporate the rights in other international instruments – such as the United Nations Convention on the Rights of the Child – which the UK has signed but not incorporated into our domestic law.

Because the CRC is not part of UK law, the rights therein are not justiciable. One way in which children can seek legal redress (though not for a direct breach of a CRC right) is judicial review. In November 2012, Chris Grayling, Justice Secretary, indicated that judicial review is set to be curtailed. He announced plans to review judicial review, stating that the Government is concerned about the burdens that the growth in such legislation has placed on public services.¹²

Reforms brought in by the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPOA) will also make it more difficult for children to access justice when their rights have been breached. Part 1 radically reforms our legal aid system, to exclude many categories of cases, such as those relating to immigration, family disputes, education and welfare, to which children's human rights are often central. The reforms are likely to create a context in which

there is less impetus for public authorities to respect children's rights, because children, and those who care for them, are unable to challenge violations. The Act will have a major impact on children and young people. A parliamentary briefing by The Children's Society explains that while there is a safety net in the form of the exceptional funding scheme for cases not covered by legal aid, only 5% of excluded education cases will gain exceptional funding and the scheme will not apply in immigration matters.¹³ Only solicitors will be able to apply for this exceptional funding, and there is not funding available for them to do so. The Children's Society has estimated that 6,000 children who would previously have been eligible for legal aid will no longer be entitled to receive it.¹⁴ Out of these, approximately 2,500 relate to immigration matters. A report by Sound Off for Justice and the JustRights campaign estimated: '...[LASPOA] will leave 140, 000 children... struggling with serious legal problems related to employment, education, welfare, benefits, homelessness, debt and family breakdown'.¹⁵

The Government has not yet signed the Third Optional Protocol to the CRC, which would give children a right to complain to the UN Committee on the Rights of the Child about a breach of their rights. The Government said:

*The UK Government is considering the merits of the new Optional Protocol for the whole of the UK, taking account of the views of the Devolved Administrations and in light of how it will be applied in practice. The Government will consider signing the Optional Protocol when it has fully evaluated its merits for the UK.*¹⁶

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



The Government is yet to publish any strategic document specifically devoted to implementation of the CRC.

There has been some progress in promoting implementation of the CRC at the local level. In April 2012 the Secretary of State for Education issued statutory guidance on the roles and responsibilities of the Director of Children's Services (DCS) and the Lead Member for Children's Services (LMCS). Local

¹⁰ Cabinet Office (June 2012) *Guide to Making Legislation*

¹¹ Commission on a Bill of Rights (July 2012) *A UK Bill of Rights? The Choice Before Us*

¹² HC, 19 Nov 2012, c. 22WS

¹³ See: http://www.childrensociety.org.uk/sites/default/files/tcs/u32/the_childrens_society_laspo_bill_briefing_-_third_reading_-_march_2012.pdf

¹⁴ See: http://www.childrensociety.org.uk/sites/default/files/tcs/u32/the_childrens_society_laspo_bill_briefing_-_third_reading_-_march_2012.pdf

¹⁵ Sound Off for Justice and JustRights (2011) *Not seen and not heard – how children and young people will lose out from cuts to civil legal aid*

¹⁶ United Kingdom (September 2012) *UK's formal response to the Universal Periodic Review – Annex document*

authorities in England must have regard to the guidance in relation to the appointment of the DCS and the designation of the LMCS. The guidance states that the DCS 'should have regard to the General Principles of the United Nations Convention on the Rights of the Child (UNCRC) and ensure that children and young people are involved in the development and delivery of local services.'¹⁷

There were moves to better coordinate the Government's policies affecting children. In December 2011 the Government published a statement bringing together all of the Government's policies for young people aged 13 to 19.¹⁸ It covers a wide range of issues – from education and youth services, to health, crime and housing. Nine Government departments were involved in developing it – including the Department for Education (DfE), the Department of Health, the Home Office and the Department for Communities and Local Government. The Government states that its approach is in line with its commitment to the CRC, its determination to ensure that young people's views are listened to when making new policy and legislation, and that young people respect the rights of others. Annex 2 sets out in more detail how the statement supports the CRC.

There is no equivalent document for younger children.

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

As state party, the Westminster Government is responsible for the overall coordination and evaluation of implementation of the CRC. The Department for Education is the lead department on children's rights. In September 2012 there was a Government reshuffle and Edward Timpson MP took over responsibility for children's rights from Sarah Teather MP. Whilst Sarah Teather was a minister, he is Parliamentary Under Secretary of State (children and families) and, tellingly, the CRC and children's rights are not named on the list of his responsibilities.¹⁹ The CRC **was** listed under Sarah Teather's ministerial responsibilities.²⁰

A small Children's Rights and Wellbeing Team within the Department for Education has become even smaller over this year. This has occurred in the light of significant cuts to the

Department for Education, which are set to increase in 2013. A review published by the Department for Education announced plans to deliver a 50% reduction in administration costs between May 2010 and May 2015, with further implications for staffing:

*While there is no formal headcount target this is likely to mean that by 2015 the Department will have fewer than 3,000 posts, around 1,000 fewer than we have now.*²¹

Concerns have also been expressed about the balance of priorities at the Department for Education by the Education Select Committee. The Committee's report, *Governance and Leadership of the Department for Education*, raises questions about the resources devoted to non-schools areas of the Department's remit.²² The Committee says that an organisation-chart shows that these areas 'benefit from less senior staff input than their schools counterparts and, following the recent Ministerial reshuffle, they also have less Ministerial input as well'. In the report, the Committee urges the Government 'to maintain focus on the critical children's policy agenda, and to ensure these areas receive adequate Ministerial and senior official attention. The DfE should consider appointing a non-executive Board member with specific knowledge of such issues, as it has done for schools policy'.

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

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

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

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

¹⁷ Department for Education (April 2012) *Statutory Guidance on the Roles and Responsibilities of the Director of Children's Services and the Lead Member for Children's Services*

¹⁸ HM Government (19 December 2011) *Positive for Youth: A new approach to cross-government policy for young people aged 13 to 19*

¹⁹ See: <https://www.education.gov.uk/aboutdfe/departamentalinformation/ministerialteam/timpson>

²⁰ Department for Education (3 June 2010) *Press release: Full list of the Department ministerial appointments confirmed*

²¹ Department for Education (2012) *Department for Education Review: Review Report*

²² Education Committee (October 2012) *Governance and Leadership of the Department for Education*

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



The Government has not published any CRC implementation action plans for particularly vulnerable groups of children. However, a vast number of policy proposals published over the past 12 months relate to the rights of vulnerable groups of children, and these increasingly refer to the CRC. For example, the Government response to the Family Justice Review states that the reforms it proposes are *'intrinsically in line'* with the general principles of the CRC,²³ and the explanatory notes accompanying draft legislation on reform of provision for children and young people with special educational needs state:

*The special educational needs provisions have also been considered with reference to the UN Convention on the Rights of the Child. Clause 31 'Appeals and Claims by Children: pilot schemes' allows the Secretary of State to make an Order to provide for pilot schemes to give children in test areas a right to appeal in special educational needs matters and to bring their own disability discrimination claims. This seeks to take on board Article 12 UNCRC and the child's right to express his or her views.*²⁴

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



The Government does not explicitly allocate resources to implementation of the CRC.

It has maintained the goal of ending child poverty in the UK by 2020, but seems unlikely to achieve this objective. In June 2012, as required by section 1(1) of the Child Poverty Act 2010, the Government published a report on its progress in tackling child poverty.²⁵ The target to halve child poverty by 2010 was not met. The number of children living in relative income poverty in 2010-11 was reduced to 2.3 million. This is 600,000 short of the number required to meet the target.

A UNICEF UK report published in May 2012 shows the UK to have been comparatively successful in tackling child deprivation when

compared against other developed nations, placed ninth out of 29 countries. However, the UK did markedly less well on the relative income poverty measure. When considering the percentage of children living in households below 50% of the national median household income, the UK came 22nd out of 35 countries.²⁶

The Institute for Fiscal Studies (IFS) estimates that the package of direct tax and benefit reforms implemented or planned between April 2011 and April 2014 will reduce the incomes of low-income households with children by proportionately more than those of other groups. Its projections show that absolute income poverty would rise for children in each year between 2010-11 and 2013-14. Relative income poverty among children will start to rise again from 2012-13 onwards, when median income starts to grow while welfare cuts affecting low-income households with children continue.²⁷

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



The Government does not carry out child rights impact assessments to evaluate whether budget allocations are proportionate.

In December 2010, then-Children and Families Minister Sarah Teather made *'a clear commitment that the Government will give due consideration to the UNCRC Articles when making new policy and legislation. In doing so, we will always consider the UN Committee on the Rights of the Child's recommendations but recognise that, like other State signatories, the UK Government and the UN Committee may at times disagree on what compliance with certain Articles entails'*.²⁸

Government departments do not always appear to comply with this commitment in practice. In its scrutiny of the Government's Welfare Reform Bill, the Joint Committee on Human Rights expressed regret that the Bill had not been accompanied by any analysis of compatibility with international instruments such as the CRC, reminding Ministers and officials of the 2010 commitment.²⁹

On 22 March 2012, members of the House of Lords asked the Government how it had implemented the commitment made in December 2010 that new legislation and policy will be assessed against the CRC.³⁰ The Minister, Lord Hill of Oareford, responded

23 Department for Education (February 2012) *The Government Response to the Family Justice Review: A system with children and families at its heart*

24 Department for Education (September 2012) *Draft legislation on Reform of provision for children and young people with Special Educational Needs*

25 Department of Work and Pensions and Department for Education (June 2012) *Child Poverty in the UK: The Report on the 2010 Target*

26 UNICEF UK (2012) *Report Card 10: Measuring Child Poverty*

27 Cribb, J., Joyce, R., Phillip, D. (2012) *Living standards, poverty and inequality in the UK: 2012*

28 Department for Education (2010) *Publication of the independent review of the Children's Commissioner, written ministerial statement*

29 Joint Committee on Human Rights (Dec 2011) *Legislative scrutiny: Welfare Reform Bill, paras 1.35-36*

30 HL, 22 March 2012, c.1017

that the 'Government have used the home affairs clearance process to consider the implications of their proposals for children's rights'. Lord Hill went on to say that the Minister for Children had written recently to all Government departments to reinforce this commitment and confirmed that departments will be given further guidance and support on the CRC ahead of the next legislative session, due to begin in May 2013.

Cabinet Office guidelines for officials responsible for drafting public Bills also reflect this commitment and suggest 'it would be helpful to Parliament and the Joint Committee on Human Rights (JCHR) if explanatory notes published alongside Public Bills included a summary of the anticipated effects of legislation on children and on the compatibility of draft legislation with the UNCRC'.³¹ The Government has also confirmed that 'Information on the UNCRC has been provided to Bill teams across government'.³²

However, these positive moves may be undermined by a more recent development. On 19 November 2012, in a speech to the CBI, David Cameron pledged to reduce bureaucracy by removing the requirement for officials to produce Equality Impact Assessments – 'extra tick-box stuff' – when developing new policy or law.³³ CRAE is concerned that this attitude may affect the expectation that, in line with the 2010 commitment, new law and policy will be subject to some form of children's rights impact assessments.

In January 2012, the Office of the Children's Commissioner (OCC) published its first child rights impact assessment³⁴ (CIA) – itself focused on the Welfare Reform Bill – which received widespread media coverage and influenced debates then taking place in Parliament.³⁵ The OCC aims to produce more CIAs in 2012-13, and will have a statutory basis for doing so. Draft legislation³⁶ has been published that would, if passed, give the OCC an explicit power to consider the potential effect of policy and legislative proposals on the rights of children.

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

In July 2012, the Department for Education published draft clauses³⁷ to take forward reforms to the OCC originally outlined in the Dunford Review.³⁸

The Children's Commissioner's primary function will be to promote and protect the rights of children and, as part of this, to promote awareness of the views and interests of children. In discharge of its primary function, the Children's Commissioner will undertake CRIAs on policy and legislative proposals; look at complaints and advocacy services for children; and retain the powers to initiate inquiries, enter premises and conduct interviews.

The duties and functions of the Office of the Children's Rights Director (OCRD) will become part of the reformed OCC. The Children's Commissioner will be under a duty to pay particular regard to the rights of children living away from home or receiving social care, as well as others identified as being particularly vulnerable or marginalised.

The Paris Principles set out six main criteria that National Human Rights Institutions should satisfy:

- A broad mandate based on universal human rights standards
- Autonomy from Government
- Independence guaranteed by statute or constitution
- Pluralism, including through membership and/or effective cooperation
- Adequate resources
- Adequate powers of investigation.

In October 2012, UNICEF published a summary report on independent human rights institutions for children³⁹ which, among other things, compares the Paris Principles with recommendations adopted by the UN Committee on the Rights of the Child in its General Comment 2.⁴⁰ This provides a template for measuring the OCC proposals for reform.

While many provisions in the draft legislation are welcome, it does not go far enough in guaranteeing the independence of the OCC, does not grant the OCC a broad enough mandate, and does nothing to suggest that the OCC will be adequately resourced. In particular, the relevant Secretary of State will have the power to appoint, dismiss and set the budget for the Children's Commissioner. The Joint Committee on Human Rights, which carried out pre-legislative scrutiny of the draft clauses welcomed, in principle, the content of the draft clauses 'as constituting a significant human rights enhancing measure and a step-change in the UK's implementation of the UN Convention on the Rights of

31 Cabinet Office (June 2012) *Guide to making legislation*, para 11.29

32 HC, 28 November 2012, c. 348W

33 See: <http://www.number10.gov.uk/news/speech-to-cbi/>

34 Office of the Children's Commissioner (Jan 2012) *Child rights impact assessment of the Welfare Reform Bill*

35 Office of the Children's Commissioner (2012) *Annual report and financial statements*

36 Department for Education (July 2012) *Reform of the Office of Children's Commissioner: draft legislation*

37 Department for Education (July 2012) *Reform of the Office of the Children's Commissioner: draft legislation*

38 Dunford, J. (2010) *Review of the Office of the Children's Commissioner (England)*, Department for Education.

39 UNICEF Research Centre (2012) *Championing children's rights: a global study of independent human rights institutions for children – summary report*

40 UN Committee on the Rights of the Child (2003) *The role of independent national human rights institutions in the promotion and protection of the rights of the child (General Comment No.2)*

the Child'.⁴¹ However, its report recommended that the mandate of the Children's Commissioner should be broadened to include monitoring implementation of the CRC, that the Commissioner should be granted additional powers, including the power to initiate and participate in legal proceedings, and that the Commissioner's independence should be enhanced.

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

When John Dunford considered this issue during his 2010 review of the OCC the review concluded that:

- To act effectively the Commissioner must not be overburdened with individual casework. The OCC is not resourced to carry out such a role and there is no prospect of resources becoming available in the foreseeable future on the scale that would be necessary.
- The Commissioner should have discretion to investigate a small number of individual cases that have wider significance, reflecting its strategic priorities and having regard to the effective use of resources.
- The Commissioner should not become a de facto court of appeal when all other legitimate routes have been exhausted or have the power to adjudicate or enforce implementation of a decision.
- When appropriate, the Commissioner should signpost children to complaints mechanisms and advocacy services.
- The Children's Commissioner should take action to monitor and review complaints and advocacy arrangements.⁴²

The draft legislation that will reform OCC specifies that the Children's Commissioner for England '*may not conduct an investigation of the case of an individual child in the discharge of the primary function*'.⁴³ However, the Children's Commissioner will be able to provide advice and assistance to children living away from home or receiving social care as well as '*other groups of children who the Commissioner considers to be at particular risk of having their rights infringed*'.⁴⁴

Explanatory Notes to the draft clauses explain the policy intention as one that '*will allow the Commissioner to concentrate on strategic issues that affect a larger number of children, rather than provide an ombudsman service for individual children on issues that are only relevant to that child*'.

In comparison, in a recent consultation paper outlining proposals for future children's legislation, the Scottish Government set out proposals to grant Scotland's Commissioner for Children and Young People the power to undertake individual investigations, stating:

*This change would introduce an important mechanism for children to seek redress in response to perceived violations of their rights. Indeed, the nature of the Commissioner's work would make this avenue more child friendly than a judicial process.*⁴⁵

The draft legislation gives the Children's Commissioner the power to '*consider or research the availability and effectiveness of complaints services for children*'. Additionally, it allows the Children's Commissioner to '*consider or research the availability and effectiveness of advocacy services for children*'.⁴⁶ The Children's Commissioner has worked on a number of reports relating to complaints – most recently, asking for children's views on complaints about the mental health and sexual health services they use.⁴⁷

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

Currently, citizenship education – including the study of political, legal and human rights, and responsibilities of citizens – is part of the National Curriculum for secondary schools.

Following the general election in 2010, the Government instigated a review of the National Curriculum in England for five to 16 year-olds. The Government wants to '*slim down*' what it regards as an unwieldy set of subjects and overly centralised and prescriptive programmes of study. The reformed National Curriculum is meant to reflect '*the body of essential knowledge which all children should learn*' whilst giving schools greater freedoms to teach other subjects and develop their own programmes of learning.⁴⁸ It applies only to maintained schools – academies and free schools

41 Joint Committee on Human Rights (December 2012) *Reform of the Office of the Children's Commissioner: draft legislation*

42 Dunford, J. (2010) *Review of the Office of the Children's Commissioner (England)*, p.32

43 Department for Education (2012) *Reform of the Office of Children's Commissioner: draft legislation*, clause 2(5)

44 Department for Education (2012) *Reform of the Office of Children's Commissioner: draft legislation*, clause 2D

45 Scottish Government (2012) *A Scotland for Children: a consultation on the Children and Young People Bill*, para. 59

46 Department for Education (2012) *Reform of the Office of Children's Commissioner: draft legislation*, clause 2(3)(e)-(f)

47 Office of the Children's Commissioner (2012) *Listen Up: listening to your views on what it's like to make a complaint about health services*

48 See: <http://www.education.gov.uk/schools/teachingandlearning/curriculum/nationalcurriculum/b0073043/remit-for-review-of-the-national-curriculum-in-england>

are not obliged to follow the National Curriculum, but must teach 'a broad and balanced curriculum'.⁴⁹

In proposals to (and accepted by) the Secretary of State for Education, the Expert Panel for the National Curriculum Review recommended reclassifying citizenship education from a foundation subject, for which the Secretary of State is required to publish a Programme of Study and Attainment Target, to become part of the Basic Curriculum, meaning that it would continue to be a compulsory requirement, but schools would be able to determine for themselves the specific nature of this provision.⁵⁰ Changes are due to begin in September 2014. Those who oppose this move are concerned that it will reduce the importance of citizenship education in schools, which will be downgraded when decisions are made about funding for teacher training.⁵¹

The Department for Education provides information on the CRC, including its history and the reporting process, on its website.⁵²

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

There is no overall strategy to do this in England.

In September 2012, Ofsted issued new guidance on school inspections,⁵³ which applies to maintained schools and academies – although those judged to be 'outstanding' are exempt from future school inspection. This specifies that:

Inspectors report on the quality of education provided in the school by looking at:

- The achievement of pupils at the school;
- The quality of teaching in the school;
- The behaviour and safety of pupils at the school;
- The quality of leadership in, and management of, the school.

When reporting, inspectors must also consider:

- The spiritual, moral, social and cultural development of pupils at the school;

- The extent to which the education provided by the school meets the needs of the range of pupils at the school, and in particular the needs of disabled pupils and those who have special educational needs.

During the inspection – which normally takes place over two days – inspectors will be expected to talk to a range of pupils.

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

Although work has taken place within different Government departments, there is no overall strategy in place for disseminating or raising awareness of the CRC within civil society, nor is training on the CRC a compulsory element of professional training programmes. In a response to a parliamentary question in November 2012 on this issue, the Government responded:

It is for the employers or professional bodies of staff... to determine their training arrangements in line with relevant national requirements, including in relation to the UNCRC...

The Department for Education has embarked on a programme of awareness raising and training on the UNCRC for relevant officials in other Government departments, Information on the UNCRC has been provided to Bill teams across government and more detailed training sessions have been run for staff in the Home Office and Department of Health. A further session is due to take place for staff in the Department for Work and Pensions next month. This process is set to continue.

*Information on the number of people undertaking such training is not available.*⁵⁴

Social work standards issued by the Health and Care Professions Council in 2012 do not refer to the CRC, but standard 2.4 stipulates that social workers must be able to 'understand the need to respect and uphold the rights, dignity, values and autonomy of every service user and carer'.⁵⁵

49 Education Act 2002, s. 78

50 Department for Education (December 2011) *The framework for the National Curriculum: a report by the Expert Panel for the National Curriculum Review*

51 For example, see: Blunkett, D. (Feb 2012) *Citizenship Foundation blog*, available at: <http://blog.citizenshipfoundation.org.uk/2012/02/03/david-blunkett-interview-the-governments-plan-for-citizenship-education-is-really-very-bad-news/>

52 See: <http://www.education.gov.uk/childrenandyoungpeople/healthandwellbeing/b0074766/uncrc>

53 Ofsted (Sept 2012) *The framework for school inspection*

54 HC, 27 November 2012, c. 336W

55 Health and Care Professions Council (2012) *Standards of Proficiency: Social workers in England*

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

A webpage on the Department for Education site states that:

The Government is committed to children's rights and participation. Under Article 12 of the United Nations Convention on the Rights of the Child (UNCRC), children and young people have the right to express their views, and for these to be respected by adults when making decisions on matters that affect them.

The Government believes that children and young people should be given opportunities to express their opinion in matters that affect their lives. Effective participation gives children and young people the opportunity to make a positive contribution to their communities and to develop the skills, confidence and self-esteem they will need for the future.

Involving children and young people in the planning, delivery and evaluation of services that affect their lives is not only likely to improve services, but also helps in developing confident, engaged and responsible citizens.⁵⁶

The Under Secretary of State for Education (Children and Families) meets with a stakeholder group of NGOs to discuss children's rights twice a year.

More generally, there is likely to be less civil society involvement in policy development. The Government has announced that there will no longer be an expectation that policies should be subject to consultation with the public. On 19 November 2012, the Prime Minister announced that current practice, according to which public consultations are open for three months, will be changed:

...we are saying to Ministers: here's a revolutionary idea – you decide how long a consultation period this actually needs... And we are going further, saying: if there is no need for a consultation, then don't have one.⁵⁷

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

The Department for Education intends to launch its consultation process on the next periodic report in January 2013. Officials are clear that they expect to involve NGOs and children and young people in the next periodic reporting process.

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

There has been no commitment to implement the outstanding recommendations.

⁵⁶ See: <http://www.education.gov.uk/a0074787/children-and-young-people-participation>

⁵⁷ See: <http://www.number10.gov.uk/news/speech-to-cbi/>

Government fails to comply with commitment to analyse Government policy against CRC

In 2010, the Government made a commitment to check whether its laws and policies breach children's rights:

‘a clear commitment that the Government will give due consideration to the UNCRC Articles when making new policy and legislation’

The Government is not complying with this promise.

When requested by CRAE, the Government was unable to provide evidence that it routinely assesses the impact of its policies on children's rights.

CRAE submitted Freedom of Information (FOI) requests to 17 Government departments,⁵⁸ asking what each department does to assess the impact of its policies on children's rights and requesting evidence of this analysis.⁵⁹ CRAE also asked for details in relation to specific policies.

Not complying

Of the 17 departments, three stated that they did not hold the information requested.⁶⁰ This suggests they do nothing to assess the compatibility of their policies with the CRC.

Inadequate Response

The Treasury confirmed it had *‘not specifically commissioned any analysis to consider the compatibility of its policies and spending decisions with the [CRC]’*.⁶¹ Because age was not a protected characteristic covered by equality legislation at the time of the 2010 Spending Review, it did not consider age discrimination against children as part of its equality analysis. The Treasury stated that, in response to a request from the DfE, it had provided an official to liaise with the department on issues relating to the CRC.

CRAE specifically requested information from the YJB as to whether it had assessed its new system of restraint, which allows guards to intentionally inflict pain on children in custody, against the requirements of the CRC. The YJB told CRAE that no formal children's rights impact assessment had been undertaken for MMPR, though the CRC articles had been taken into account when developing this new system.⁶² It did not provide CRAE with any document as evidence of its analysis.

The Department for Transport said: *‘The Department has not taken specific steps to assess the compatibility of its policies with the [CRC]...’*⁶³ It did say that, *‘however in line with Article 12... we are always willing to listen to the views of children and young people’* and confirmed it is committed to ensuring that disabled young people are able to play a full role in society, in line with Article 23 of the CRC.

Ignoring evidence which does not support its position

The only department which provided evidence of any significant children's rights assessment was the DfE. It provided analysis of four legislative proposals: reform of the Office of the Children's Commissioner, changes to the family justice system, changes to the law around parenting after separation, and proposals for child arrangement orders, which will change the system of contact and residence orders. The documents explain how the policies will affect children, give details of how the Department had consulted children in relation to the policies and set out concerns raised by relevant experts and organisations. They identify which children's rights are engaged by each policy, and analyse whether the policies breach those rights. In a welcome move, the documents consider whether the Committee on the Rights of the Child has previously raised concerns in relation to the policy area under consideration.

CRAE was not provided with evidence that the Government analyses the children's rights implications of other, non-legislative, proposals emanating from the Department. Whilst it is very positive that DfE is analysing legislative proposals against the CRC and the Committee's recommendations, this reflects neither the breadth of the Government's 2010 commitment nor the full extent of the Government's obligations under the CRC.

The analysis seen by CRAE indicates that, when considering the likely impact of its proposals, the Government has tended to refer to that evidence which seems to support its policy position. In relation to shared parenting, for example, there is very little reference to the very weighty evidence indicating that its proposals will undermine the best interests of the child.

Too expensive

Five departments did not send CRAE any data in response to the FOI, stating that it was too expensive to do so.

The Department for Work and Pensions and the Department for Business, Innovation and Skills both stated that they **do** take the CRC into account when developing new policies and legislation, but were unable to disclose the information requested as it would be too expensive to do so.

Limited analysis

The Department of Energy and Climate Change stated it had assessed the compatibility of the Energy Bill with the CRC, but would not provide a copy of its analysis, as it is covered by legal privilege. The explanatory notes accompanying the Energy Bill suggest that children's rights are not engaged.⁶⁴ The Department for Environment, Food and Rural Affairs informed CRAE that it had considered the CRC in the development of its *Ethical Procurement Policy*, particularly with regard to child labour.⁶⁵ It did not say whether it had analysed the impact of any other policies on children's rights. The Department of Health (DH) told CRAE that it *‘does not hold a document summarising our assessment of the compatibility of the draft Care and Support Bill with the United Nations Convention on the Rights of the Child’*,⁶⁶ though it had considered the impact of the draft Bill on different age groups, including children and young people, as part of its equality analysis of the Draft Bill.⁶⁷

58 Attorney General's Office, Cabinet Office, Department for Business, Innovation and Skills, Department for Communities and Local Government, Department for Culture, Media and Sport, Department of Energy and Climate Change, Department for Education, Department for Environment, Food and Rural Affairs, Department of Health, Department for International Development, Department for Transport, Department for Work and Pensions, Foreign and Commonwealth Office, HM Treasury, Home Office, Ministry of Defence, Ministry of Justice

59 Letter from CRAE dated 3 December 2012

60 Attorney General's Office, Department for Culture, Media and Sport and the Department for International Development

61 Letter from HM Treasury to CRAE dated 27 November 2012

62 Email from Youth Justice Board to CRAE dated 13 December 2012

63 Letter from Department for Transport to CRAE dated 27 November 2012

64 Department of Energy and Climate Change (November 2012) *Energy Bill: Explanatory Notes*

65 Department for Environment, Food and Rural Affairs (March 2011) *Ethical Procurement Policy Statement*

66 Letter from Department of Health to CRAE dated 30 November 2011

67 See: <http://www.dh.gov.uk/health/2012/07/careandsupportbill/>

Section 2

General Principles

“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”⁶⁸

“The Committee is also concerned at the general climate of intolerance and negative public attitudes towards children, especially adolescents, which appears to exist in the State party, including in the media, and may be often the underlying cause of further infringements of their rights”

68 UN Convention on the Rights of the Child, Article 2

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

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

The Ministerial Foreword to *Positive for Youth*, the Government’s strategy on youth and youth services, states:

Young people often say to me that they feel unfairly treated in the media, and how disappointed they are that the unacceptable behaviour of a minority can reflect badly on all young people. It is not a matter for public policy to dictate to the press how they should talk about young people.⁶⁹ But I encourage young people and all those who care about them to put the record straight if they think reports are unfair...⁷⁰

The document goes on to acknowledge that images of young people in the media and in wider society can have a major impact:

Negative images that present young people as a nuisance can also undermine young people’s self-esteem as well as their confidence in their legitimate and valued place in society – also influencing adults and other young people to develop unwarranted feelings of mistrust.⁷¹

The Youth Media Agency (YMA) brought together over 60 youth organisations, representing hundreds of thousands of children and young people, to call for reforms to be made to the Editors’ Code and Press Complaints Commission (PCC) in a bid for a fairer, more balanced press in the UK. The Presschange4youth Campaign coordinated by the YMA has four recommendations:

1. ‘Age’ should be included as a classification of discrimination into the Editors’ Code;
2. A new clause should be added to the Editors’ Code and the National Union of Journalists’ Code of Conduct: *‘Journalists should exercise a duty of care and avoid negative generalisations about children and young people’*;

69 Emphasis added

70 Department for Education (December 2011) *Positive for Youth. A new approach to cross-government policy for young people aged 13 to 19*

71 Department for Education (December 2011) *Positive for Youth. A new approach to cross-government policy for young people aged 13 to 19*, p. 5

3. The Press Complaints Commission should be made more accessible to children and young people;
4. The Press Complaints Commission should ensure someone within the organisation has trained skills in working directly with children and young people.⁷²

The campaign group made a written submission to the Leveson Inquiry,⁷³ but was not permitted to give oral evidence to the Inquiry.

The Leveson Inquiry report, published at the end of November 2012, did not make any recommendations relating to the inappropriate characterisation of children and young people in the media.⁷⁴ The section in the report dedicated to children opens with the comment: 'A further criticism made by some Core Participants to the Inquiry was the failure of parts of the press to treat children with dignity and respect.' However, the report focuses on the privacy rights of children, rather than the broader issue of how they are represented in the media (and the subsequent impact of this). In contrast, the report makes an explicit link between media representations of women and certain minority groups and the way they are treated/regarded in wider society:

Of greater potential concern to the Inquiry is the degree to which the images may reflect a wider cultural failure to treat women with dignity and respect and/or a practice which, intentionally or not, has the effect of demeaning and degrading women.

...a raising of the game is also required in relation to the representation of some ethnic minorities, immigrants and asylum seekers.

...when assessed as a whole, the evidence of discriminatory, sensational or unbalanced reporting in relation to ethnic minorities, immigrants and/or asylum seekers, is concerning. The press can have significant influence over community relations and the way in which parts of society perceive other parts. While newspapers are entitled to express strong views on minority issues, immigration and asylum, it is important that stories on those issues are accurate, and are not calculated to exacerbate community divisions or increase resentment.

As reported in last year's *State of Children's Rights* report, much of the response to the riots in the summer of 2011 contributed to a misperception that the majority of offenders were young people.

The interim report of the Riots Communities and Victims Panel states that 'these were not riots carried out by children. They were – largely – carried out by young adults'.⁷⁵ The final report of the Riots Communities and Victims Panel commented on the negative stereotypes of children and young people in the media and the need for campaigns to promote positive perceptions of young people:

We heard from many about the negative images of young people portrayed by the media, which help to fuel a negative stereotype of young people. This then shapes society's views of the value young people can add and impacts on employers, local residents and young people themselves. Only 14 per cent of people in the Panel's Neighbourhood Survey feel that the media is positive about young people. This feeling was also widespread among the young people we spoke to.

More young people were involved in the clean-up operation than the riots themselves – however, media reports generally did not reflect this. A recent submission to the Leveson Inquiry by the Youth Media Agency highlighted the 'discriminatory attitude of the media towards children and young people during and following the riots'...

*The Panel therefore recommends that Brands use their marketing expertise, working together to launch a campaign promoting positive perceptions of young people.*⁷⁶

There has been no official Government response to the recommendations in this report to date.

Similar concerns relating to the portrayal of young people in the media were expressed in the National Council for Voluntary Organisations (NCVO) report on the causes of the riots.⁷⁷ Evidence gathered for this report suggested that the way that the majority of the media reported the disturbances – especially the age of the rioters – was at odds with official Government figures. It was felt that this was typical of negative stereotyping of young people by the media. Concerns were also expressed that information used by politicians and the media was confusing and contradictory. The report highlighted the fact that, while official statistics showed that approximately 21% of rioters were under the age of 18, young people were disproportionately blamed.

⁷² See: <http://www.youthmediaagency.org.uk/what-we-do/presschange4youth/>

⁷³ See: http://www.participationworks.org.uk/news/youth-organisations-call-for-reforms-to-press?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+ParticipationWorksNewsUpdates+%28Participation+Works+News+Updates%29

⁷⁴ The Right Honourable Lord Justice Leveson (November 2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report*

⁷⁵ Independent Riots Communities and Victims Panel (2011) *5 Days in August: An Interim report on the 2011 English Riots*

⁷⁶ Independent Riots Communities and Victims Panel (2012) *After the Riots – the final report of the Riots, Communities and Victims Panel*

⁷⁷ NCVO (2012) *After the riots: Evidence from the Voluntary and Community Sector on the causes of the 2011 riots and next steps for policy and practice*

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

While our UK legislative framework for protection against discrimination is strong, and some important moves have been made to promote equality, there remain significant gaps in protection, and threats to some of the most important measures in the Equality Act 2010. This means that, in practice, children face huge inequalities.

Implementation of the Equality Act 2010 continued in 2012. The Equality Act 2010 extended the reasonable adjustment duty to require schools to provide auxiliary aids and services to disabled children. This came into force on 1 September 2012.

The EHRC has published guidance for schools on the Public Sector Equality Duty (PSED) in the Equality Act.⁷⁸ Updated guidance for schools has also been issued by the Department for Education.⁷⁹

In October 2012, the ban on age discrimination in goods, services and public functions came into force. This does not apply to under-18s. However, children continue to experience age discrimination in practice. A report by the Education Select Committee described a ‘worrying picture’ with regard to the protection and support of older children in the child protection system.⁸⁰ It found older children suffered from a lack of services, a lack of recognition of the signs of abuse and neglect in teenagers, and a lack of understanding about the long-term impact on them. It concluded that ‘*the system as a whole is still failing this particular group in key ways*’.

In May 2012, the Government published an update on its equality strategy detailing where progress had been made on tackling discrimination against children and adults.⁸¹ It refers to many of the Government’s measures aimed at increasing social justice and mobility, including introduction of the pupil premium, the extension of free early years education and action to increase the number of health visitors, which are dealt with in other sections of this report. It also refers to action taken to support particular groups,

including reform of support for children with special educational needs (see concluding observation 57 for more detail).

In December 2011 the Government published its vision for delivering greater equality for transgender people.⁸² The action plan includes a range of commitments to ensure that schools are more inclusive for transgender children, including providing updated guidance for schools on how to implement the PSED and considering the teaching of transgender equality issues as part of the Department for Education internal review of personal, social, health and economic education (PSHE).

The progress report by the ministerial working group on tackling inequalities experienced by Gypsies and Travellers (published in April 2012) includes several commitments relating to children and young people:⁸³

- Ofsted’s revised inspection framework highlights Gypsy, Roma and Traveller students as a vulnerable group. Inspections will pay particular attention to progress and attainment of these groups of students.
- Department for Education to establish Virtual Head Teachers Pilot for Gypsy, Roma and Traveller children, similar to that in place for looked after children.
- Reviewing section 444 (6) of the 1996 Education Act which relates to protection from prosecution for school non-attendance on specific grounds and considering whether this legislation should be repealed in order to improve school attendance.
- Taking measures to address the high levels of school exclusion amongst Gypsy and Traveller children.
- Ofsted survey on prejudice-based bullying.
- Learning lessons from schools that support Gypsy and Traveller children well and support them to achieve.
- Series of measure relating to improving health outcomes for Gypsies and Travellers.

In March 2012, the Government published an update on its strategy to end violence against women and girls.⁸⁴ The document includes several new actions, including more work on increasing personal safety for woman and girls, empowering communities to take action on female genital mutilation (FGM) and dedicated funding for ‘Young people’s advocates for sexual violence’.

78 Equality and Human Rights Commission (November 2012) *Public sector equality duty guidance for schools in England*

79 Department for Education (September 2012) *Equality Act 2010: Advice for school leaders, school staff, governing bodies and local authorities*

80 Education Committee (October 2012) *Children first: the child protection system in England*

81 Home Office (May 2012) *The Equality Strategy Building a Fairer Britain: Progress Report*

82 HM Government (December 2011) *Advancing transgender equality: a plan for action*

83 Department for Communities and Local Government (April 2012) *Progress report by the ministerial working group on tackling inequalities experienced by Gypsies and Travellers*

84 HM Government (March 2012) *Call to End Violence against Woman and Girls. Taking Action – the next chapter*

The Department for Work and Pensions published *Fulfilling Potential: Next Steps*, which sets out the Government's 'vision and principles for further reform' to achieve equality and independence for disabled people and 'increasing society's knowledge and understanding of disability'.⁸⁵ This document makes very limited reference to children and young people.

Despite some significant actions and activities aimed at strengthening anti-discrimination activities, there have been several developments that may undermine efforts to promote equality and tackle discrimination for children and young people.

As highlighted in the previous edition of *State of Children's Rights*, the Government is conducting a "Red Tape Challenge" – an ongoing online public discussion about which regulations are working and which should be scrapped. The Equality Act 2010 – the major piece of equality legislation in the UK – was included in the Red Tape Challenge when it was launched in 2011. In May 2012, the Home Secretary Theresa May announced that there would be a review of the Public Sector Equality Duty. She said:

... We have also looked again at the public sector equality duty (PSED). This Government have a strong commitment to equality of opportunity. But we also have a strong desire to reduce unnecessary bureaucracy where it exists and consider alternatives to legislation. We committed last year to assess the effectiveness of the PSED specific duties. We have decided to bring forward that review and extend it to include both the general and specific duties to establish whether the duty is operating as intended....⁸⁶

In the same statement, the Home Secretary confirmed that the Government would repeal the socio-economic duty in the Act and delay the commencement of the dual discrimination provisions.

In a further attack on the PSED, Prime Minister David Cameron made a speech to the CBI in which he reiterated the idea that it is overly burdensome:

Take the Equality Act. It's not a bad piece of legislation. But in government we have taken the letter of this law and gone way beyond it, with Equality Impact Assessments for every decision we make. Let me be very clear. I care about making sure that government policy never marginalises or discriminates. I care about making sure we treat people equally. But let's have the

courage to say it, caring about these things does not have to mean churning out reams of bureaucratic nonsense. We have smart people in Whitehall who consider equalities issues while they're making the policy. We don't need all this extra tick-box stuff. So I can tell you today we are calling time on Equality Impact Assessments. You no longer have to do them if these issues have been properly considered.⁸⁷

These developments have the potential to significantly undermine the protection of children against discrimination. Although the Equality Act 2010 did not extend the ban on age discrimination to under-18s, elements of the Public Sector Equality Duty **do** help to protect children and young people against age discrimination.

This year has seen significant reforms to the Equality and Human Rights Commission, which are widely expected to weaken the national human rights institution. In her statement to the House of Commons in May 2012, Theresa May announced that 'we have decided to scrap vague, unnecessary and obsolete provisions from the Equality Act 2006 to focus the EHRC on its core functions.' She also confirmed that the Government would be conducting a comprehensive review of the EHRC's budget and 'implementing tighter performance and financial controls'.⁸⁸ The EHRC has already been subject to huge cuts to its budget. The Government has also embarked on a series of non-legislative reforms to the EHRC, including the closure of its helpline. This has been replaced with the Equality Advisory and Support Service (EASS), which will be overseen by the Government Equalities Office.⁸⁹ The grant-making function of the Commission will cease as of March 2013.

The Government has introduced huge reforms to the welfare system in the past 12 months through the Welfare Reform Act 2012. Major concerns have been expressed over the likely negative impact on vulnerable children and young people.

A Child Rights Impact Assessment on the Welfare Reform Bill, published in January 2012 by the OCC, highlighted likely outcomes of the Bill including an increase in child poverty, a rise in homelessness and increased in-country migration as families are forced to move away from neighbourhoods, communities and support networks.⁹⁰ The impact assessment highlights the potentially disproportionate impact on specific groups of children:

85 Department for Work and Pensions (2012) *Fulfilling Potential: Next Steps*

86 See: <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120515/wmstext/120515m0001.htm#12051577000007>

87 See: <http://www.number10.gov.uk/news/speech-to-cbi/>

88 See: <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120515/wmstext/120515m0001.htm#12051577000007>

89 See: <http://www.equalityhumanrights.com/about-us/equality-advisory-support-service/>

90 Office of the Children's Commissioner (January 2012) *A Child Rights Impact Assessment of the Welfare Reform Bill*

The imposition of the household benefit cap, in our view, risks unjustified discrimination in the enjoyment of the right to social security by children from larger families; children from BME groups with a higher rate of large family size; and disabled children and children of disabled parents/carers, where the disabled person is not eligible for exempting disability benefits, in breach of Article 2 UNCRC. Viewing the child as the holder of the right to social security both makes plain the discriminatory effect of the cap (eg on family size grounds) and counters the argument that parents can find work in order to avoid the imposition of the cap, since children are powerless to affect this.

In April 2012, the OCCE published evidence of inequalities experienced by children and young people across the nine protected characteristics set out in the Equality Act 2010.⁹¹ This was published in part to show how the Office is complying with the PSED in the Equality Act 2010, and to highlight areas of work that the Children's Commissioner plans to take forward. The report shows that children and young people in England continue to face significant and multiple inequalities and discrimination based on their personal characteristics and circumstances.

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

The Government does not plan to legislate to protect children against discrimination because of their age.

In September 2012, the Government published draft legislation which, if passed in its current form, will introduce pilot schemes to give children in test areas the right to bring their own disability discrimination claims.⁹² The draft legislation also proposes to give a power to the Secretary of State to enable all children to make these claims – this power would be used after the pilots have been run.

The LASPOA will have a significant impact on the availability of legal aid for children and young people and their ability to secure access to justice in respect of discrimination. Discrimination will continue to come within the scope of legal aid, but in practice access will be challenging. Whilst education cases involving discrimination and

cases relating to special educational needs (SEN) will still qualify for legal aid support, these cases will qualify only for telephone advice through a mandatory telephone gateway. There will only be very limited face to face legal advice available. There will be no legal aid for other education cases, which means that issues relating to exclusions, admissions, bullying and alternative education provision, all issues which disproportionately affect disadvantaged groups, will be excluded from the scope of legal aid.

The changes to the powers and functions of the EHRC (outlined above in relation to Recommendation 18) are likely to affect its ability to address and resolve cases of discrimination against children.

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

When considering changes to the law regulating post-separation parenting, the final report of the Family Justice Review, emphasised that the welfare of the child must be a paramount consideration:

*No change should be made that might compromise this principle. Accordingly no legislation should be introduced that creates or risks creating the perception that there is a parental right to substantially shared or equal time for both parents... we have concluded that this would do more harm than good.*⁹³

The Government disagreed with this position. In its response to the Family Justice Review⁹⁴ it stated that the Government believes there should be a 'legislative statement of the importance of children having an ongoing relationship with both their parents after family separation, where that is safe, and in the child's best interests'. The document went on to state that any legislative changes would be 'complementary to, not in conflict with the principle... that the welfare needs of the child are the paramount consideration: this remains the "gold standard"'.

Following a consultation process on four possible legislative options, the Government announced in November 2012 that it intended to go ahead with its preferred legislative measure that would amend section 1(2) of the Children Act 1989 to introduce

⁹¹ Office of the Children's Commissioner (April 2012) *Children and Equality – Equality evidence relating to children and young people in England*

⁹² Department for Education (September 2012) *Draft legislation on Reform of provision for children and young people with Special Educational Needs*

⁹³ Family Justice Review panel (November 2011) *Final Report*

⁹⁴ Ministry of Justice and Department for Education (February 2012) *The Government Response to the Family Justice Review: A system with children and families at its heart*

a presumption to promote shared parenting.⁹⁵ The NSPCC, in its response to the consultation had stated:

*... the welfare of children rather than parental entitlement must be the most important factor when designing the framework which governs decision-making in private law cases. In all decisions affecting children, the paramountcy principle (putting the child's best interests first) must be the primary consideration. The NSPCC would be concerned about any changes which could lead to a shift in emphasis away from what is best for the child and towards the feelings and desires of parents.*⁹⁶

The response called on the Government to learn lessons from the experiences of courts in Australia where, following the introduction of similar legislation, courts found it harder to prioritise the welfare of children over the wishes of parents. This situation later led to further legislative change to re-assert the welfare of the child as the primary consideration.

On 13 June 2012, the Home Office published changes to the Immigration Rules, which affect applications by children wishing to come to or remain in the UK.⁹⁷ It is feared that, by trying to limit the circumstances in which a family member might rely on Article 8 of the Human Rights Act 1998 to seek a right to stay in the UK, the new rules will undermine consideration of the best interests of the child by the courts.⁹⁸

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

Statutory guidance sets out the procedures to be followed when a child dies.⁹⁹ Two processes are conducted to review child deaths. A rapid response by key professionals is undertaken to investigate each individual unexpected death of a child. A Child Death Overview Panel will also conduct an overview of all child deaths in the area covered by the Local Safeguarding Children Board (LSCB). Either of these processes can trigger a Serious Case Review.

Child death review processes became mandatory in April 2008, though LSCBs have been able to implement these functions since April 2006.

There were 4,012 child death reviews in the year ending 31 March 2012. This is slightly lower than the number of reviews carried out in the previous year.¹⁰⁰ Official data shows that there were 784 'modifiable' deaths in England in 2011-12. A modifiable death is the official term given to a death where one or more factors could be modified (changed) to reduce the risk of future child deaths. (This is the same proportion as the previous year – 20% of the total number of child deaths reviewed)

The age breakdown of the 784 'modifiable' deaths is as follows:

- Newborns under the age of 27 days accounted for 45% of modifiable child deaths (an increase of 12% on the previous year)
- Infants aged between 28 and 364 days accounted for 21% of modifiable child deaths
- Children aged between 1 and 4 years accounted for 12% of modifiable child deaths
- Children aged between 15 and 17 years accounted for 9% of modifiable child deaths
- Children aged between 10 and 14 accounted for 7% of modifiable child deaths
- Children aged between 5 and 9 years accounted for 6% of modifiable child deaths.¹⁰¹

Older children who died aged 15-17 years were more likely to have modifiable factors identified in their deaths, with 32% of this age group having modifiable factors identified, compared to 18% of children aged under one-year.¹⁰²

Of the 43 children that died in England in 2011-12 as a result of deliberately inflicted injury, abuse or neglect over half (28) were deemed to have modifiable factors. Six per cent (45) of the 784 children who died where modifiable factors were identified were, or had been, subject to a child protection plan at the time of death; and 50 of the 784 children were or had been subject to a statutory order at the time of death.

The EHRC's *Human Rights Review* states that local authority mechanisms for investigating and learning from serious cases of ill-treatment may be 'insufficient'.¹⁰³ The Review reiterates the concerns expressed in the Munro Review that serious case reviews are failing to identify the core issues that prevent child protection professionals from protecting children. In addition,

95 Department for Education (November 2012) *Cooperative parenting following family separation: proposed legislation on the involvement of parents in a child's life Summary of consultation responses and the Government's response*

96 NSPCC (September 2012) *NSPCC response to 'Co-operative parenting following family separation: Proposed legislation on the involvement of both parents in a child's life'*

97 Home Office (2012) *Immigration Rules*, available at: <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/>

98 See, for example, ILPA (July 2012) *Information Sheet: Best Interests 3*

99 Department for Education (2010) *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children*

100 Department for Education (July 2012) *Statistical Release. Child Death Reviews: Year ending 31 March 2012*

101 Department for Education (July 2012) *Statistical Release. Child Death Reviews: Year ending 31 March 2012*

102 Department for Education (July 2012) *Statistical Release. Child Death Reviews: Year ending 31 March 2012*

103 Equality and Human Rights Commission (2012) *Human Rights Review*, chapter 3

the EHRC concludes that agencies often fail to work together effectively to prevent the ill-treatment of children. The report notes that in child protection cases there is often a blurring of boundaries between different agencies. This lack of communication means that at-risk children can fall through the gaps.

Following the Munro Review, significant changes are being made to the process of Serious Case Reviews (SCRs), aimed at improving learning. In July 2012, the Government announced a consultation on revised statutory guidance on SCRs, requiring LSCBs to introduce local learning and improvement frameworks which should include arrangements for reviews of all child deaths, SCRs where a child dies or is seriously harmed and where abuse or neglect is known or suspected to be a factor and other reviews and learning processes led by LSCBs.¹⁰⁴ The Government has not yet published its response to the consultation.

Local Safeguarding Children's Boards will be required to use "systems methodology", an approach which 'provides a clear theoretical framework for learning from incidents, looking not only at what professionals did in a case but also why they acted as they did. It should also free up professionals from bureaucracy in the process; and allow them to develop capacity and expertise to respond to review findings and bring about improvements'.¹⁰⁵ Pilots are being conducted to evaluate whether this approach encourages better learning from SCRs, and increases transparency and accountability.

In July 2012 the former Children's Minister Tim Loughton MP wrote to LSCBs and Directors of Children's Services to inform them about an immediate change to the statutory guidance set out in *Working Together to Safeguard Children* relating to the evaluation of SCRs. Transitional arrangements for evaluation of SCRs by Ofsted were put in place in January 2012 using streamlined criteria focused on the quality of learning. Ofsted's responsibility for evaluating SCRs ended in 31 July 2012.¹⁰⁶

An analysis of the learning from SCRs over the period 2009-11 was published in July 2012. The researchers found that there was an average of 47 recommendations per SCR, and that '*the largely successful endeavour to make them specific, achievable and measurable has resulted in a further proliferation of tasks to be followed through*', which takes up significant time. They commented that there was a tendency to recommend further training and introduce

new procedures rather than focusing on supervision and support as a means of encouraging staff to improve their judgement and practice. The report stated: '*Recommendations can be helpful if they lead to definitive action but implementing them should not be seen to imply that learning has taken place. The best learning from serious case reviews may come from the process of carrying out the review*'.¹⁰⁷

Following publication of the SCR overview report on the case of two children in Edlington, Doncaster in March 2012, the Secretary of State Michael Gove MP asked Lord Carlile to conduct an independent review of the issues and actions taken. In November 2012, the report was published. In addition to supporting the recommendations made by the Munro Review with regard to SCRs, Lord Carlile called for SCRs to be published in two forms, open (non-redacted) and closed. He recommended that designated family judges should participate as advisers in every SCR in order to provide some expertise and oversight and called for the establishment of a "Digest" of open versions of SCRs, which he hoped would lead to better reports and learning.¹⁰⁸

Infant mortality rates continue to decline. According to the Office for National Statistics (ONS), in 2011 the infant mortality rate was 4.1 deaths per 1,000 live births, having fallen from 4.2 deaths in 2010.¹⁰⁹ ONS figures show that in 2011 infants from the poorest households in England and Wales were almost twice as likely to die in their first year than infants with parents in higher managerial and professional occupations (no change on previous year).

There continue to be considerable differences in life expectancy according to sex and geography. A boy born in Kensington and Chelsea has an average life expectancy of 85.1 years. A boy born in Blackpool can expect to live 73.6 years.¹¹⁰

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

Two young people died within a week in custody in January 2012. Jake Hardy (aged 17) and Alex Kelly (aged 15) were both being held at Young Offender Institutions (YOIs).

A press release from the organisation INQUEST cited a statement from the Prison Service, that both children '*had been identified as being*

¹⁰⁴ Department for Education (2012) *Consultation on revised safeguarding statutory guidance*

¹⁰⁵ See: <http://www.education.gov.uk/childrenandyoungpeople/safeguardingchildren/reviews/a00209970/scr-munro>

¹⁰⁶ Letter from Tim Loughton to LSCBs dated 5 July 2012

¹⁰⁷ Brandon, M., Sidebotham, P., Bailey, S., Belderson, P., Hawley, C., Ellis, C., & Megson, M. (July 2012) *New learning from serious case reviews: a two year report for 2009-2011*

¹⁰⁸ Department for Education (November 2012) *The Edlington case: A review by Lord Carlile of Berriew CBE QC*

¹⁰⁹ Office for National Statistics (October 2012) *Childhood, Infant and Perinatal Mortality in England and Wales, 2011*

¹¹⁰ Office for National Statistics (October 2011) *Life expectancy at birth and at age 65 by local areas in the United Kingdom, 2004-06 to 2008-10*

at risk of suicide and self-harm'.¹¹¹ INQUEST stated that it has now recorded 33 deaths of children in custody in England and Wales since 1990. Yet there has never been a public inquiry into these deaths.

The organisation said:

INQUEST has consistently argued for a holistic inquiry, in public, to examine the underlying systemic and policy issues. The failure of successive governments to hold an inquiry makes it impossible to learn from failures that have cost children their lives. We hope that this week's events not only prompt parliamentary debate but decisive action by this government.'

In October 2012, the Prison Reform Trust and INQUEST published a report exploring the experiences and treatment of children and young people who died in custody between 2003 and 2010, based on analysis of data from INQUEST's casework (including some previously unpublished).¹¹² The report asserts that there have been failures in how the state treats children and young people in conflict with the law, and *'that the learning and recommendations from inquests and investigations into previous deaths have not been properly implemented.'* The report makes several recommendations aimed at improving the way that children and young people are supported and treated. Four recommendations relate explicitly to the process of investigating deaths in custody:

- *Delays in the inquest process must be addressed as a matter of urgency to ensure bereaved families do not have to wait years to hear the circumstances of a relative's death in prison, and that organisational learning from deaths is timely.*
- *Families bereaved by a death in custody should automatically qualify for non-means tested public funding to enable their legal representation at inquests.*
- *All coroners' Rule 43 recommendations and juries' narrative verdicts should be publicly accessible through a national database and analysed, audited and brought to the attention of Parliament to ensure responses from relevant Ministers.*
- *An Independent Review should be established, with the proper involvement of families, to examine the wider systemic and policy issues underlying the deaths of children and young people in prison. As a starting point the Ministerial Council on Deaths in Custody should commission a new working group of the Independent Advisory Panel to draw together the specific*

learning from recent deaths of children and young people and identify issues for an Independent Review to consider.

In March the EHRC expressed serious concerns over the process of investigating deaths of children in custody, stating, *'The system for investigating deaths of children in secure children's homes may not comply with Article 2 (ECHR).'*¹¹³

23 Treat Taser guns and AEPs [Attenuating Energy Projectiles] as weapons subject to applicable rules and restrictions

No specific rules or restrictions have been issued to police forces in relation to the use of Taser guns on or around children.

An article published in the Guardian in October 2012 revealed that Taser use in England has been dramatically increasing and rose by 45% in 2011.¹¹⁴ It predicted that Taser use will continue to increase as more weapons are being placed in the hands of rank-and-file officers. The article draws attention to concerns of campaigners who believe that these weapons should not be used on those who are vulnerable or suffer from medical conditions and should only be used in the strictest of circumstances.

In a response to a parliamentary question in December 2012, Lord Taylor (Parliamentary Under-Secretary of State, Home Office) gave figures for the use of Tasers on under-18s during the latest 12-month period for which figures were available. Between April 2009 and April 2010, Tasers were used on under-18s a total of **144** times. In the previous 12 month period, April 2008 to April 2009, Tasers were used **102** times on children.¹¹⁵

A new organisation, the Police Action Centre (launched in August 2012), has announced an investigation into Taser-use. According to the organisation's website:

*The Police Action Centre will be carrying out the first independent investigation into the use of Tasers by the British Police since the introduction of the Taser stun gun to non-firearms officers in 2008.*¹¹⁶

The investigation will seek to examine the ways in which the Taser gun has been used since 2008, the medical implications of this weapon and whether the guidelines for use of the Taser are compatible with Article 3 of the European Convention on Human Rights.

¹¹¹ INQUEST (26 January 2012) *Press release: INQUEST calls for action following second child death in custody in a week*

¹¹² Prison Reform Trust and INQUEST (October 2012) *Fatally Flawed: Has the state learned lessons from the deaths of children and young people in prison?*

¹¹³ Equality and Human Rights Commission (2012) *Human Rights Review 2012*

¹¹⁴ Carter, H. (21 October 2012) "Campaigners raise concern over increased police Taser use", *The Guardian*

¹¹⁵ HL, 12 December 2012, c. WA238

¹¹⁶ See: <http://policeactioncentre.org.uk/police-action-project/job-title-here-6/>

24 End the use of all harmful devices on children

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

A Ministry of Justice document published in July 2012 sets out the policy framework for the use of restraint in the under-18 secure estate. It includes the Government's position on the use of ratchet handcuffs. The document states:

The application of ratchet handcuffs is permissible, where it can be justified, as an alternative to physical restraint techniques. Careful consideration should be given prior to using ratchet handcuffs.

The application of ratchet handcuffs may be deemed to be preferable as an ethical and safer alternative to using physical restraint techniques. Ratchet handcuffs may be applied in order to prevent an incident of restraint accelerating or the continued need for physical restraint techniques. The application of ratchet handcuffs should be considered during procedures involving the movement and re-location of young people where their use may negate the continued need for physical restraint techniques.

*The application of ratchet handcuffs must always be reasonable and proportionate and with the aim of preventing harm occurring to the young person or others. Every application of ratchet handcuffs must be reported.*¹¹⁷

In response to a parliamentary question, Lord MacNally outlined the circumstances in which handcuffs can be used in the under-18 secure estate:

- by escort providers when transporting young people to custody
- in custody when managing an incident of restraint
- when young people are being escorted outside custody (such as attendance at a hospital appointment).¹¹⁸

According to Government figures, Hassockfield STC used handcuffs on children during restraint **21** times in 2011-12 – a huge increase on the previous year, when handcuffs were used **four** times during restraint. Oakhill, Medway and Rainsbrook STCs did not use handcuffs during restraint in 2011-12.¹¹⁹

Use of handcuffs during restraint in YOIs over three year period 2009-12¹²⁰

Under-18 YOI	Nov 2009-Oct 2010	Nov 2010-Oct 2011	Nov 2011-Oct 2012
Ashfield	35	47	33
Castington	33 (YJB decommissioned spaces in April 2010)		
Cookham Wood	153	106	136
Hindley	42 (data incomplete, two months not supplied)	94	70
Huntercombe	25 (YJB decommissioned spaces in July 2010)		
Warren Hill	61	20	38 (data incomplete, one month not supplied)
Werrington	47	81	70
Wetherby	56 (data incomplete, one month not supplied)	92 (data incomplete, two months not supplied)	83 (data incomplete, one month not supplied)

Handcuffs **are not** used in secure children's homes (SCHs) during restraint or when young people are being escorted outside of custody.

The Minister said that data on the use of handcuffs when children are being escorted outside Secure Training Centres (STCs) and young offender institutions (YOIs) is *'not collected by the Youth Justice Board and would not be available without disproportionate cost by looking at case files and therefore not reported here'*.

Information could not be provided on the use of handcuffs by the Prison Escort and Custody Service (PECS) when transporting young people from court to under-18 YOIs. Escort providers working for Reliance security firm used handcuffs when escorting children to and from courts and STCs and SCHs 207 times in 2010/11. This service was taken over by Serco in August 2012. Data was not available on the use of handcuffs by Serco staff.

Escort chains (lengths of chain used to attach two sets of handcuffs) are not used by SCHs or STCs and were not used by Reliance. The Minister revealed that the current company delivering this service, Serco:

...is permitted to use escort chains in certain risk assessed circumstances, such as for reasons of comfort or decency during a bedwatch (defined as the custody of a young person in hospital receiving in-patient treatment involving an overnight... stay).

¹¹⁷ Ministry of Justice (2012) *Use of restraint policy framework for the under-18 secure estate.*

¹¹⁸ HL, 4 December 2012, c.153W

¹¹⁹ HL, 4 December 2012, c.153W

¹²⁰ HL, 4 December 2012, c.153W

Since the beginning of the Serco contract in August 2012, there have been no uses of escort chains.

PECS and under-18 YOIs can use escort chains in limited circumstances. Data is not collected centrally on their use by PECS or National Offender Management Service (NOMS) and was not available.¹²¹

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



Health

The Health and Social Care Act 2012 received Royal Assent in March 2012, and includes several measures relating to patient involvement in decision-making. The Government continues to state that all people should have greater choice and involvement in decision-making on health care matters. However, at times it has been unclear how far the Government's thinking on decision-making applies to children and young people.

Healthwatch England and local Healthwatch organisations will be responsible for providing advice on the views of patients and members of the public and for promoting and supporting patient and public involvement in health and social care. Following debates in the Health and Social Care Bill, the Government agreed to review how well Healthwatch involves children in its work, suggesting that this might take place in three years' time. The Government did not agree with the proposal to have a children's champion at Healthwatch, or any other representative for a specific population group.¹²² Peers wrote to Ministers asking for confirmation that this review would take place. At the time of writing, no response had been received. A document setting out the key issues that arose from a consultation on local Healthwatch regulations makes clear that commissioners and providers of health and social care must listen to the views of children and young people and ensure that they are able to influence the strategic planning of health services and the way in which health and social care services work together.¹²³

A review of evidence on children and young people's views and experiences of health services and provision was published in June 2012.¹²⁴ One of the key themes from the review was a failure to involve children and young people in decisions about their care in a sustained manner. There was also evidence that where children and young people were listened to and actively involved in their care, there were positive outcomes. The key messages from the evidence from children and young people's engagement in consultations on health issues was that children and young people want to be listened to, to have their suggestions acted on, to be informed about what happens as a result of these recommendations, and to have the opportunity to meet with decision-makers.

In July 2012, The Children and Young People's Health Outcomes Forum published its proposals on how health-related care for children and young people can be improved.¹²⁵ The introduction to the Forum's report notes that children, young people and their families often struggle to get their voices heard and to be involved in decisions about their own health care. It calls for their voices *'to be heard throughout the health system'* and makes several recommendations that aim to ensure that this is achieved. The Forum calls for Healthwatch England and local Healthwatch bodies to give *'appropriate consideration'* to the voices of children and young people in their work and demonstrate this through reporting mechanisms. In addition, the Forum recommends that all health organisations demonstrate *'how they have listened to the voice of children and young people and how this will improve their health outcomes'*. The report calls on the healthcare system to ensure that it is in full compliance with the CRC, with a particular focus on Article 12 (participation in decision-making) and Article 24 (the right to the best possible healthcare). The Forum explicitly recommends that the Department of Health should bring together all partners to *'co-produce a children's health care charter based on the principles of the UNCRC Article 12 Principles...'*

The Department of Health issued a consultation document on detailed proposals to secure shared decision-making and choice for patients in the summer of 2012.¹²⁶

In the White Paper, *Equity in Excellence*,¹²⁷ it stated that patients should be at the heart of the NHS, *'shared decision-making would become the norm'*, patients would have increased access to information, greater choice over healthcare provider and

121 HL, 4 December 2012, c. 153W

122 HL, 8 March 2012, c. 196S

123 Department of Health (July 2012) *Summary Report: Issues relating to local Healthwatch regulations*

124 National Children's Bureau (June 2012) *Listening to children's views on health Provision: A rapid review of the evidence*

125 Children and Young People's Health Outcomes Forum (July 2012) *Report of the Children and Young People's Health Outcomes Forum*

126 Department of Health (May 2012) *No decision about me, without me*

127 Department of Health (2012) *Equity in Excellence*

would be engaged in the process of commissioning services and in gathering feedback on the quality and provision of services. The proposals in the Government's consultation on shared decision-making did not address children and young people's involvement in shared decision-making or the barriers and challenges that need to be overcome in order to ensure that children can participate in decision-making in health settings. The Government's response to the consultation states *'whenever we refer to involving patients in decisions and giving them more choice, it applies equally to adults and children who are patients...'*¹²⁸ The document also says *'we agree that the principles of patient involvement apply equally to all people, regardless of age, and acknowledge that children and young people may require additional support to be fully involved in decisions about their care'*. The document said that a new strategy for improving care for children and young people, based on the Children and Young People's Health Outcomes Forum report, would be published shortly.

The NHS Mandate, a document that sets out the ambitions for the health service for the next two years, was published in November 2012.¹²⁹ The Mandate sets out five key areas where the Government expects the new NHS Commissioning Board to make improvements in the health service. One of the five objectives of the Mandate relates to ensuring that patients have a positive experience of care and have opportunities to provide feedback on their care. The Mandate states *'We will work with the NHS Commissioning Board and Healthwatch England to consider how best to ensure that the views of children, especially those with specific healthcare needs, are listened to'*. However, the 'Friends and Families' test – one of the key methods identified in the Mandate for gathering the views of patients – will not include the views of patients under the age of 16.

Local Authorities

The Government published revised guidance for local authorities on services and activities for young people in July 2012. The guidance states that *'local authorities must take steps to ascertain the views of young people and to take them into account in making decisions about services and activities for them, in line with Article 12 of the United Nations Convention on the Rights of the Child...'*¹³⁰ Local authorities will have to set up and maintain arrangements for young people to express their views on local

services and activities and must be able to inspect and report on services at least once a year on the quality and accessibility of provision. The guidance says that young people should be *'involved actively in service design, delivery and governance'* and says that support must be given to enable young people to participate fully in these processes.¹³¹

Statutory guidance on the roles and responsibilities of the Director of Children's Services (DCS) and the Lead Member for Children's Services also states that the DCS *'should have regard to the General Principles of the United Nations Convention on the Rights of the Child (UNCRC) and ensure that children and young people are involved in the development and delivery of local services.'*¹³²

Education

Despite receiving Royal Assent four years ago, the part of the Education and Skills Act 2008 which supports children's rights to be heard and taken seriously has still not been brought into force.¹³³

Provisions in the Protection of Freedoms Act 2012 allow children of all ages to refuse to participate in the gathering of biometric data and require a parent's permission before a school can process this information. Draft advice for schools published in May 2012 stated that schools should take action to ensure that children and young people are aware that they can refuse to participate in fingerprinting and other biometric systems in schools.¹³⁴ Parents should also be told about the child's right to refuse consent.

In September 2012, the Government published draft legislation that will put the Government's plans for reforming provision for disabled children and young people and those with special educational needs into practice.¹³⁵ The legislation is based on the plans in the *Next Steps* document, which stated that the Government wants to give families more control over the support they receive and give *'parents, children and young people greater influence over both decision-making and policy development'*.¹³⁶ The draft legislation contains little detail about how children and young people will be able to express their views on matters that affect them, with many of the clauses stating that the detail will be set out in regulations. In addition, where opportunities for participating in decision-making are specified, they apply to parents and to young people above the age of 16 – excluding the majority of children from the opportunity to make decisions

128 Department of Health (December 2012) *No decision about me, without me: Government response*

129 Department of Health (November 2012) *NHS mandate*

130 Department for Education (June 2012) *Statutory Guidance for Local Authorities on Services and Activities to Improve Young People's Well-being*

131 Department for Education (June 2012) *Statutory Guidance for Local Authorities on Services and Activities to Improve Young People's Well-being*

132 Department for Education (April 2012) *Statutory Guidance on the Roles and Responsibilities of the Director of Children's Services and the Lead Member for Children's Services*

133 Section 157 of the Education and Skills Act 2008 introduced new section 29B of the Education Act 2002

134 Department for Education (May 2012) *Protection of Biometric Information of Children in Schools: Consultation on draft advice for Proprietors, Governing Bodies, Head Teachers, Principals and School Staff, Young people, Parents and Representative bodies*

135 Department for Education (September 2012) *Draft legislation on Reform of provision for children and young people with Special Educational Needs*

136 Department for Education (May 2012) *Support and aspiration: A new approach to special educational needs and disability – progress and next steps.*

about their own lives. The Education Select Committee, in its pre-legislative scrutiny report on the draft SEN provisions called for parents' and young people's roles in the development of the local offer to be given a clearer mandate in the legislation. More generally, the Committee expressed concern that *'the legislation lacks detail, without which a thorough evaluation of the likely success of the Government's proposals is impossible'*.¹³⁷

Criminal Justice

In October 2012, Ofsted published a new joint framework for the inspection of STCs, following consultation.¹³⁸ Under the framework, inspectors will be required to evaluate the extent to which young people have confidence in *'an effective complaints mechanism'*. In order to achieve a grade above adequate, STCs will have to demonstrate that:

All complaints and appeals are taken seriously and dealt with fairly, promptly and confidentially. Responses are understandable, courteous and clearly address the issues raised. The complaints process is quality assured. Monitoring includes the identification of patterns and trends that are acted on appropriately and lessons arising from complaints are used effectively to improve the service.

The framework will also examine the extent to which regard is given to children's views in developing policies and practices.

In November 2012, elections took place for the first Police and Crime Commissioners (PCCs). PCCs will oversee the work of local police services outside London. They will set out five-year police and crime plans that will determine local policing priorities, including how budgets will be spent. Several organisations (including CRAE) have expressed concerns that PCCs might overlook the views of children, especially where there is local intolerance of children and young people and wide-spread discourse linking children to anti-social behaviour. Both The Howard League for Penal Reform and NCVYS ran campaigns in the run-up to the elections calling for PCCs to consult and engage with children and young people when developing their local plans. The Home Office announced that PCCs would be required to pledge an oath to represent all sections of the public *'without fear or favour'*.¹³⁹ Secondary legislation has been laid to set the wording of the oath and make its swearing compulsory.¹⁴⁰

Votes at 16

There have been several positive developments relating to the campaign for *Votes at 16* in the UK in the last 12 months – particularly in Scotland. Following agreement between David Cameron and Alex Salmond, many 16 and 17 year-olds will have the right to vote in the forthcoming referendum on Scottish independence. Campaigners hope that voting rights will then be extended to 16 and 17 year-olds in all elections. There has also been support for lowering the voting age in Northern Ireland and Wales in the past year. In July 2012 Members of the Welsh Assembly voted in favour of reducing the voting age.¹⁴¹ In November 2012, the Northern Ireland Assembly passed a motion in favour of lowering the voting age to 16.¹⁴²

The Labour party has indicated that it may move its position from supporting an open debate on the issue to making a clear commitment to extending the franchise.¹⁴³

A Private Members' Bill in the House of Lords sponsored by Lord Tyler to *'extend the franchise for parliamentary and other elections, and for referendums, to all citizens over the age of 16 years'* had its first reading in October 2012.¹⁴⁴ Julie Elliot MP (Labour) secured a debate in Westminster Hall on 18 December 2012 on votes for 16 and 17 year-olds. She said that it was time to reconsider lowering the voting age:

...it seems the right time to reconsider lowering the voting age to 16 in all elections and referendums held in the UK. It would be wrong to send the message that it is right for some of the UK's 16 and 17 year-olds to be deemed capable of voting while others are not. In July 2012, the devolved Welsh Assembly, in a debate on the issue, voted on a motion expressing support for lowering the voting age to 16 that had cross-party support.

The Minister will know that constitutional reform, including lowering the voting age, is not devolved and, therefore, the responsibility for making that happen still rests with the UK Government. For the sake of a more equal, inclusive political system across the whole UK, the Government and the Electoral Commission must consider extending the right to vote to 16 and 17 year-olds across the country. With recent developments, this seems the opportune time to start revisiting the issue.

137 Education Committee (December 2012) *Pre-legislative scrutiny: Special Educational Needs* p. 3

138 Ofsted (October 2012) *Inspections of secure training centres. Evaluation schedule and grade descriptors*

139 See: <http://www.homeoffice.gov.uk/police/police-crime-commissioners/news/pcc-impartiality-oath>

140 The Police and Crime Commissioner Elections (Declaration of Acceptance of Office) Order 2012

141 See: <http://www.assemblywales.org/bus-home/bus-chamber-fourth-assembly-rop.htm?act=dis&id=236167&ds=7%2F2012#age>

142 See: <http://www.bbc.co.uk/news/uk-northern-ireland-20227808>

143 Malik, S. (16 July 2012) "Labour children's spokeswoman wants voting age lowered to 16", *The Guardian*

144 Voting Age (Comprehensive Reduction) Bill [HL] 2012-13

*In our society, we rightly demand respect from young people and often require them to act and behave like adults. At the same time, however, society should respect young people's views and aspirations.*¹⁴⁵

The Parliamentary Secretary for the Cabinet Office, Chloe Smith, responded on behalf of the Government, stating that there was no consensus within the Government on this issue and that there were no plans for a change to the voting age in the current Parliament.¹⁴⁶

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

In September 2012, the Government published draft legislation to implement its plans for reforming provision for those with special educational needs.¹⁴⁷ If the legislation is passed in its current form, pilot schemes are to be introduced that will give children in test areas the right to bring their own appeal in special educational needs matters and to bring their own disability discrimination claims. According to the Government document setting out the draft legislation in detail, this measure 'seeks to take on board Article 12 UNCRC and the child's right to express his or her views'. The draft legislation would also grant the Secretary of State a power to enable all children to bring appeals and make disability discrimination claims – this power would be used after the pilots have been run.

The final report of the Family Justice Review (published in November 2011) placed a strong emphasis on the principle of respect for the views of the child:

Children's interests are central to the operation of the family justice system. Decisions should take the wishes of children into account and children should know what is happening and why. People urged us to consider the need to take great care in consulting children, and for this to be handled sensitively and to take into account the child's age and understanding.

*Children and young people should be given age appropriate information to explain what is happening when they are involved in cases. They should as early as possible be supported to make their views known and older children should be offered a menu of options, to lay out the ways in which they could – if they wish – do this.*¹⁴⁸

The Government's response to the Family Justice Review (published in February 2012) set out which of the recommendations it accepted and outlined how these would be taken forward. The Government accepted the Review's recommendations relating to the voice of the child and stated that the Family Justice Board would take this work forward. In doing so it would, '...seek the views and ideas of children and young people...'.¹⁴⁹

As part of the Department for Education consultation on shared parenting, respondents were asked, 'How can children's views be taken into account more fully in the court process in a way that is in keeping with the focus on the best interests of the child?'.¹⁵⁰ Almost half of those who responded to the question (n=149) said that children's views could be taken into account more fully if their views were sought by appropriately trained adults, whom children trusted. A third of respondents were concerned about the ability of the Children and Family Court Advisory and Support Service (Cafcass) to represent the views of children due to lack of resource. The Government did not set out any plans for addressing these issues in its response to the consultation.¹⁵¹ Rather, there is a danger that the Government's intention to legislate to promote shared parenting post-separation will override the principle of respect for the views of the child.

The Children's Commissioner's inquiry into school exclusions concluded that the system is in breach of children's participation rights under Article 12 of the UN Convention on the Rights of the Child.¹⁵² The report stated that there is currently no effective way for children's views to be heard and taken account of. This was reflected in the experiences of many of the young people interviewed for the inquiry. One boy, when asked how his views had been taken into account said: 'They weren't. The school didn't listen to me – it just does what it likes.' One child, who had been permanently excluded said: 'I went to the school meeting but felt they had made up their minds already. If the head teacher makes his mind up you have no second chance'. This was confirmed by schools, with some saying that 'the views of the pupil and parent are not sought for a fixed-term exclusion' and that 'I can't think of a case where the views of parents/children have been included'. The Children's Commissioner called on the Government to amend statutory guidance to make it clear to schools that children and young people's views must be sought as part of the exclusions process, and that they must be taken into account when coming to

¹⁴⁵ HC, 18 Dec 2012, c. 222WH

¹⁴⁶ HC, 18 Dec 2012, c. 229WH

¹⁴⁷ Department for Education (September 2012) *Draft legislation on Reform of provision for children and young people with Special Educational Needs*

¹⁴⁸ Family Justice Review panel (November 2011) *Final Report*

¹⁴⁹ Ministry of Justice and Department for Education (February 2012) *The Government Response to the Family Justice Review: A system with children and families at its heart*

¹⁵⁰ Department for Education (June 2012) *Co-operative Parenting Following Family Separation: Proposed Legislation on the Involvement of Both Parents in a Child's Life*

¹⁵¹ Department for Education (November 2012) *Cooperative parenting following family separation: proposed legislation on the involvement of parents in a child's life Summary of consultation responses and the Government's response*

¹⁵² Office of the Children's Commissioner (March 2012) 'They never give up on you'. *School Exclusions Inquiry*

a decision. In June 2012, the Government published new guidance and regulations on school exclusions which does emphasise the participation of children.¹⁵³ This is described further in relation to concluding observation 87.

The Government set out its proposals for radically shrinking the size of safeguarding and child protection guidance in June 2012.¹⁵⁴ The draft guidance states that those responsible for safeguarding and promoting the welfare of children, should have some 'key arrangements' in place. These include 'a culture of listening to and engaging in dialogue with children and taking account of their wishes and feelings both in individual decisions and the establishment or development and improvement of services'. In contrast, the 2010 version of the *Working Together* guidance dedicated a section to *The child in focus*.¹⁵⁵ This emphasised the importance of placing the child and his or her perspectives and experiences at the centre of safeguarding work. It included a list of actions that would help to keep the child in focus during these processes including obtaining information from the child about his or her situation and needs, involving the child in key decision-making and inviting children to make recommendations about the services and assistance they need and/or are available to them.

A second document, *Managing Individual Cases: the Framework for the Assessment of Children in Need and their Families*, was also out for consultation.¹⁵⁶ Aimed at social workers and other professionals involved in carrying out assessments of children in need and their families under the Children Act 1989, the guidance provides that a social worker must lead an assessment, which 'must be informed by the child', among others. It states that 'emphasis is on face to face contact with children so that their needs can be properly understood'. The section setting out principles underpinning work with children in need states that work with children and families should be 'child centred' and 'involve children'. During an assessment, social workers will be required to ascertain the child's wishes and feelings and take these into account when deciding what services to provide, including by interviewing the child and family separately and together, as appropriate. In convening child protection conferences, the social worker should ensure that the child understands the purpose of the conference and help prepare the child if he or she is attending or making representations.

CRAE's response to the consultation on these documents expressed concern that both revised guidance documents now provide too little detail on the need to ascertain and take into account the wishes and feelings of children during safeguarding processes and called for further information to be provided to ensure that children and their needs and wishes are at the centre of the child protection system.¹⁵⁷ The response called for the *Working Together Guidance* to refer explicitly to the requirements of Article 12 of the UNCRC and to domestic legislation containing specific obligations requiring professionals in certain fields to act to elicit and take into account the wishes and feelings of children with which they come into contact. It also urged Government to include an over-arching principle in the guidance in relation to the need to prioritise direct communication and positive and respectful relationships with children, ensuring that the child's wishes and feelings underpin all assessments, reviews and any other safeguarding activities.

27 Support forums for children's participation



In December 2011, the Government set out its strategy for young people and youth services. *Positive for Youth* places a strong emphasis on respecting young people's right to be heard.¹⁵⁸ The document outlines a number of initiatives at central Government level for involving young people in decision-making and urges councils to involve young people in auditing the quality of local services. An annex to the strategy sets out how the Government believes that *Positive for Youth* meets its obligations under the CRC. It states:

[Positive for Youth] encourages continuing progress towards many of the Convention's Articles. In particular it: places a strong emphasis on consulting young people, involving them in local democratic processes and decision-making, and it recognises their positive contribution to society. This is consistent with Article 12 which gives children and young people the right to express their views on matters that affect them...

As reported in last year's State of Children's Rights report, the British Youth Council (BYC) has been awarded funding for programmes that support young people's participation in decision-making as part of the *Positive for Youth* programme:

¹⁵³ Department for Education (June 2012) *Statutory guidance and regulations on exclusion*

¹⁵⁴ Department for Education (June 2012) *Working Together to Safeguard Children: draft guidance on what is expected of organisations, individually and jointly, to safeguard and promote the welfare of children*

¹⁵⁵ Department for Children, Families and Schools (2010) *Working Together: A guide to inter-agency working to safeguard and promote the welfare of children*

¹⁵⁶ Department for Education (June 2012) *Managing Individual Cases: the Framework for the Assessment of children in need and their Families: draft guidance on procedures for undertaking assessments of all children in need*

¹⁵⁷ CRAE (2012) *Consultation response to consultation on revised safeguarding statutory guidance*

¹⁵⁸ Department for Education (December 2011) *Positive for Youth: A new approach to cross-government policy for young people aged 13 to 19*

- The Youth Select Committee gives young people an opportunity to scrutinise policies and hold inquiries on public matters that they determine are of importance. The Committee's first inquiry was on public transport, with a focus on 'safe, affordable and accessible transport for young people'.¹⁵⁹
- The National Scrutiny Group (NSG) of young people works with Government Departments and Ministers to make sure that young people's views and needs are taken into account when developing policies that affect them.¹⁶⁰ The group has held two meetings this year covering the Bailey Review, Key stage 4 curriculum reforms and Healthwatch.
- UK Youth Parliament (UKYP) continues to provide opportunities for young people aged 11-18 to express their views and campaign for change. It currently has almost 400 elected representatives. It recently held its (fourth) annual sitting in the House of Commons.¹⁶¹

These programmes are aimed at young people aged 11+.

There are no equivalent opportunities for younger children.

In July 2012, the Government revealed that the Department of Energy and Climate Change youth advisory panel was being scrapped. The panel was established in February 2010. In response to a parliamentary question, the Minister of State for Energy and Climate stated that the Department had reviewed its approach to youth engagement and was moving to a 'new model of youth engagement based on approaches to reach out to a wider audience. The work of the Panel will therefore draw to a conclusion'. According to the Minister, the new model of youth engagement aims to work more closely with youth organisations and encourage use of social media as a means of encouraging young people to communicate with the Department.¹⁶²

In December 2012, applications opened for a cross-government Youth Policy Advisor programme. According to the Department for Communities and Local Government (DCLG) website, the work experience programme is open to young people aged 17 and above and 'enables young people to shape policies that are in development across respective Departments ensuring policy is informed by young people's views and solutions are sought as a way of empowering communities'.¹⁶³

The Government's proposals on the reform of provision for children with special educational needs, stated:

*We want to give greater control to disabled children and young people themselves – to make them the 'authors of their own life stories'. Currently, across the country, participation for disabled young people or those with SEN is patchy. For some areas it is a real strength and is reflected in the quality of services and the levels of confidence that young people have in them. But that is not the case everywhere. We will work with existing successful groups to establish a Young People's Advisory Group to help shape the next stages of our reforms nationally and drive young people's participation at local level. The Group will make sure we address the issues that matter to children and young people and will be part of a broader National Advisory Group which will support us in implementing the Green Paper reforms.*¹⁶⁴

The Council for Disabled Children is coordinating and supporting the Young People's Advisory Group. Representatives of the advisory group will sit on the Department for Education's National Advisory Group, a group of experts and stakeholders who will advise the Government on the Children and Families Bill.¹⁶⁵

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

The Department for Education's national prospectus showing the activities it planned to fund through civil society organisations in 2013-15 emphasised the centrality of children's voices in the care planning process.¹⁶⁶ Prospective funders were invited to consider two issues relating to children's participation:

- *How can we improve corporate parenting and in particular promote the voice of the child through Children in Care Councils?*
- *How can we empower and skill up young people in care through activities such as media training and participation in the Parliamentary process?*

The Department for Education's prospectus outlining the funding for a Children, Young People and Families Voluntary, Community and Social Enterprise Strategic Partner 2013-15 stated that bids must 'Represent the views of children, young people and families and a diverse range of organisations'.¹⁶⁷

159 See: <http://www.byc.org.uk/uk-work/youth-select-committee.aspx>

160 See: <http://www.byc.org.uk/uk-work/national-scrutiny-group.aspx>

161 See: <http://www.ukyouthparliament.org.uk/>

162 HC, 16 July 2012, c. 535W

163 See: <http://www.youngadvisors.org.uk/latest-news/dclg-youth-policy-advisor-programme>.

164 Department for Education (May 2012) *Support and aspiration: A new approach to special educational needs and disability – Progress and next steps*

165 See: <http://www.councilfordisabledchildren.org.uk/youngpeoplesadvisorygroup>

166 Department for Education (2012) *The National Prospectus Grants Programme 2013-15*

167 Department for Education (2012) *Children, Young People and Families VCSE Strategic Partner 2013-15*

Officials from the Department for Education continue to attend the National Participation Forum, a group of influential organisations and individuals committed to strengthening children's participation.

As outlined in relation to the previous concluding observation, BYC receives Department for Education funding for youth voice activities aimed at young people aged 11+.

The Youth Justice Board (YJB) has continued its relationship with civil society organisations working with children and young people with experience of the criminal justice system. 23 young people with experience of the criminal justice system attended the YJB's Annual Youth Justice Convention in November 2012.¹⁶⁸ In December 2012, the Chief Executive of the YJB met with young people working with CRAE and User Voice to discuss their campaign activities in reducing violence in custody as part of CRAE's EU funded *Ending Violence against Children in Custody* project.¹⁶⁹

¹⁶⁸ See: <http://www.whatsyourstory.uservice.org/whats-your-story-2012/>

¹⁶⁹ CRAE (forthcoming) *Ending Violence against Children in Custody: Campaign Report*

Section 3

Civil Rights and Freedoms

“No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation. The child has the right to the protection of the law against such interference or attacks.”¹⁷⁰

“States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.”¹⁷¹

¹⁷⁰ UN Convention on the Rights of the Child. Article 16

¹⁷¹ UN Convention on the Rights of the Child. Article 15

29 Reconsider ASBOs as they may violate children's rights

In December 2012, the Home Office published draft legislation which would replace anti-social behaviour orders (ASBOs) with injunctions to prevent nuisance and annoyance.¹⁷² The new system will carry forward many of the flaws of ASBOs, and, in some respects, is worse for children's rights than the current system.

The draft legislation would allow a court to make an injunction against a child aged 10 or older, where satisfied that he or she has engaged or threatens to engage in conduct capable of causing nuisance or annoyance to any person. An injunction can prohibit a child from doing certain things, such as carrying spray paint, or require him or her to take active steps, such as attend a course, and can go as far as prohibiting a child from entering his or her home or a particular area. Injunctions can apply indefinitely. The threshold for making an injunction is very low. Rather than, as currently, targeting behaviour which ‘caused or was likely to cause harassment, alarm or distress’ the child need only have **threatened** to engage in conduct **capable** of causing **nuisance or annoyance** in order to be issued with an injunction (though certain injunctions, including one excluding a child from his or her home, have a higher threshold). Further, the court will apply a civil standard of proof in determining whether it is satisfied whether the threshold has been met (it must be satisfied on the balance of probabilities). Thus, the new regime would allow a court to issue a child with an intrusive injunction, with very weak procedural safeguards, and for behaviour which may not have caused **any** harm and only have been **capable** of causing **minor** harm.

Where a court is satisfied beyond reasonable doubt that a child has breached an injunction, it may order a supervision order lasting up to six months, which could impose a curfew for up to eight hours a day or a requirement to participate in particular activities, including residential courses, or (for those over 14) a detention order, under which a child could be detained for up to three months.

While breach of an order will not constitute a criminal offence, it will allow courts to impose highly punitive sanctions on children, even where the nature of the conduct which gave rise to the injunction would not warrant this, and the procedures for imposition of the injunction and the subsequent penalty do not satisfy criminal justice standards.

¹⁷² Home Office (December 2012) *Draft Anti-Social Behaviour Bill*

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

There were a range of negative developments in this area in 2012.

In December 2012, the Government confirmed that it has no plans to restrict the use of mosquitos, suggesting that it is for the police and Police and Crime Commissioners to decide on the most appropriate approach to anti-social behaviour in a particular area.¹⁷³

In January 2012 provisions came into force which allow "Gangbos" (prevention of gang-related violence injunctions) to be made against 14 – 17 year-olds.¹⁷⁴ Gangbos can be granted by the civil courts if they are satisfied on the balance of probabilities that a person has engaged in, encouraged or assisted gang-related violence.¹⁷⁵ "Violence" includes threat of violence and minor property damage. The conditions which can be imposed by way of a gangbo are highly restrictive on a person's civil liberties and breach can result in similar orders to those which can be imposed for breach of an injunction to present nuisance and annoyance (described above in relation to concluding observation 29), including the possibility of eight hour curfews.

Draft legislation published in December 2012 will also create a new dispersal power which will enable police officers to direct a person who has committed, or is likely to commit, anti-social behaviour to leave a specified area and not return for a specified period of up to 48 hours.¹⁷⁶ The test would be that the constable has reasonable grounds for suspecting that the person's presence or behaviour is contributing, or is likely to contribute to anti-social behaviour or crime or disorder in the area and that the direction is necessary. Failure to comply with the direction would be a criminal offence. If the constable believes the person is under the age of 16, he can take them home or to a place of safety.

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

The Protection of Freedoms Act 2012 brought in several positive developments for children's privacy rights.

The Act amended rules for retaining the biometric information of children who come into contact with the criminal justice system.¹⁷⁷ While these made some improvements to the system, it continues to violate children's rights. Pursuant to the new rules, children who are arrested or charged but not convicted of minor offences will have their biometrics removed from the database. If convicted of a minor offence for the first time, and sentenced to custody for less than five years, children's biometric data will be retained for five years after the end of any custodial sentence. However, the authorities will still be able to retain (for between 3 and 5 years) the biometric information of children who are arrested for an offence of a violent or sexual nature, but never charged or convicted of the offence. For children convicted of anything other than a minor offence for the first time, their biometric data can be retained indefinitely.

The Act introduced welcome safeguards in relation to the processing of a child's biometric data by schools, academies and further education institutions.¹⁷⁸ The Act provides that schools may only process a child's biometric data if they have the consent of one of the child's parents, and that they must refrain from doing so if the child or one of his or her parents objects to the processing of his or her data.

The Act also requires the Secretary of State to publish a code of practice in respect of CCTV surveillance,¹⁷⁹ and provides that certain public authorities must have regard to the code.¹⁸⁰ However, several key public bodies, such as schools, are not subject to these provisions.¹⁸¹

In April 2012, extended search powers granted to teachers under the Education Act 2011 came into force.¹⁸²

173 HC, 20 December 2012, c. 875W

174 Crime and Security Act 2010, s. 34

175 Policing and Crime Act 2009, s. 34(2)

176 Home Office (December 2012) *Draft Anti-Social Behaviour Bill*

177 Protection of Freedoms Act, ss.1-18, which amended the Police and Criminal Evidence Act 1984.

178 Protection of Freedoms Act, ss.26 and 27.

179 Protection of Freedoms Act, s.29.

180 Protection of Freedoms Act, s.33.

181 Protection of Freedoms Act, s.33.

182 Education Act 2011, s.2

183 Draft Communications Data Bill (June 2012) Cm 8359

32 Introduce stronger regulations for data protection in relation to children

The Government has not introduced stronger data protection rules in respect of children.

In its Draft Communications Data Bill published in June 2012, the Government published proposals to grant the Home Secretary the power to require private telecommunications companies to hold records about all communications for a minimum period of a year.¹⁸³ Police would not need external authorisation to access the data. In December 2012 the Parliamentary Committee carrying out pre-legislative scrutiny of the Bill concluded that *'the draft Bill pays insufficient attention to the duty to respect the right to privacy, and goes much further than it need or should for the purpose of providing necessary and justifiable official access to communications data'*.¹⁸⁴ The Parliamentary Committee also raised concerns that there remains *'debate about whether the legislation ensures that content [of communications] cannot be accessed'*.

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

There has been no progress in relation to this recommendation.

In November 2012 Lord Justice Leveson published his report on the culture, practices and ethics of the press.¹⁸⁵ In relation to the treatment of children, the report criticised the invasion of children's privacy, finding that parts of the press *'failed to abide by the requirement not to use the fame or notoriety of a parent as sole justification for publishing private details of a child'*. It went on to recognise that:

the Editors' Code continues to be breached in relation to children. The reason for the Editors' Code is obvious: to those whose children have been unjustifiably exposed to the public gaze, and to the children themselves, the damage caused can be significant.

The report's principal recommendation was for a better system of press self-regulation. It suggested that statutory incentives could be offered to publishers who choose to comply with a

more robust self-regulator. According to the report, the key requirements of an independent self-regulatory body include: independence of appointments and funding; a standards code; an arbitration service; and a fast and effective complaint-handling mechanism which can require prominent apologies and impose large fines. In its initial response to the report, the Government accepted the vast majority of the report's recommendations, including the set of key requirements for effective regulation of the press and statutory incentives to encourage participation. The Government also indicated its reluctance to require statutory recognition of a new regulatory body, as further recommended by Lord Justice Leveson's report. It has encouraged the press to adopt the majority of the report's recommendations.

Proposals to amend the law relating to anti-social behaviour fail to address those aspects which undermine children's privacy rights. Under draft legislation published by the Home Office in December 2012, reporting restrictions which normally apply to court proceedings involving children¹⁸⁶ would not apply to court proceedings relating to the new system of anti-social behaviour injunctions.¹⁸⁷

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

There has been no progress in relation to this recommendation. This year the Government consulted on proposals to reform the rules regulating child performances.¹⁸⁸ The consultation did not, however, include any proposals to address the concerns of the UN Committee on the Rights of the Child that children's involvement in reality shows could infringe their privacy rights. Rather, it started from the premise that existing regulations are too prescriptive.

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

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

¹⁸⁴ Joint Committee on the Draft Communications Data Bill (November 2012) *First Report: Draft Communications Bill*

¹⁸⁵ The Right Honourable Lord Justice Leveson (November 2012) *An Inquiry into the Culture, Practices and Ethics of the Press: Report*

¹⁸⁶ Children and Young Persons Act 1933, s. 49

¹⁸⁷ Home Office (December 2012) *Draft Anti-Social Behaviour Bill*, clause 17

¹⁸⁸ Department for Education (May 2012) *Consultation on the regulation of child performance*

Lawful reason for use of force and restraint in different settings

Setting	Lawful reason for restraint
Schools	<p>Use of force:</p> <p>for the purpose of preventing a pupil from doing (or continuing to do) any of the following, namely—</p> <p>(a) committing any offence,</p> <p>(b) causing personal injury to, or damage to the property of, any person (including the pupil himself), or</p> <p>(c) prejudicing the maintenance of good order and discipline at the school or among any pupils receiving education at the school, whether during a teaching session or otherwise¹⁸⁹</p>
NHS settings (mental health)	<p>Use of physical restraint, seclusion or rapid tranquillisation:</p> <p>The most common reasons for needing to consider such interventions are:</p> <ul style="list-style-type: none"> • physical assault; • dangerous, threatening or destructive behaviour; • self-harm or risk of physical injury by accident; • extreme and prolonged over-activity that is likely to lead to physical exhaustion; and • attempts to abscond (where the patient is detained under the Act)¹⁹⁰
Children's homes	<p>(a) preventing injury to any person (including the child who is being restrained);</p> <p>(b) preventing serious damage to the property of any person (including the child who is being restrained); and</p> <p>(c) in the case of a child accommodated in a secure children's home, preventing the child from absconding from the home, and then only where no alternative method of preventing the event specified in sub-paragraphs (a) to (c) is available¹⁹¹</p>
Secure children's homes	<p>(a) preventing injury to any person (including the child who is being restrained);</p> <p>(b) preventing serious damage to the property of any person (including the child who is being restrained); and</p> <p>(c) in the case of a child accommodated in a secure children's home, preventing the child from absconding from the home, and then only where no alternative method of preventing the event specified in sub-paragraphs (a) to (c) is available¹⁹²</p>
Prisons – young offender institutions	<p>Use of force:</p> <p>An officer in dealing with an inmate shall not use force unnecessarily...¹⁹³</p> <p>Put under restraint:</p> <p>where this is necessary to prevent the inmate from injuring himself or others, damaging property or creating a disturbance¹⁹⁴</p>
Child prisons – secure training centres	<p>Use of force:</p> <p>An officer in dealing with a trainee shall not use force unnecessarily...¹⁹⁵</p> <p>Physical restraint:</p> <p>for the purpose of preventing him from —</p> <p>(a) escaping from custody;</p> <p>(b) injuring himself or others;</p> <p>(c) damaging property; or</p> <p>(d) inciting another trainee to do anything specified in paragraph (b) or (c) above,</p> <p>and then only where no alternative method of preventing the event specified in any of paragraphs (a) to (d) above is available¹⁹⁶</p>
Immigration detention	<p>Use of force:</p> <p>A detainee custody officer dealing with a detained person shall not use force unnecessarily¹⁹⁷</p> <p>Special control or restraint:</p> <p>... necessary to prevent the detained person from injuring himself or others, damaging property or creating a disturbance¹⁹⁸</p>

189 Section 93 of Education and Skills Act 2006

190 Paragraph 15.17, page 116, of Mental Health Act 1983 code of practice (revised 2008)

191 Regulation 17A(1) of The Children's Homes Regulations 2001 (as amended)

192 Regulation 17A(1) of The Children's Homes Regulations 2001 (as amended)

193 Rule 50(1) of The Young Offender Institution Rules 2000

194 Rule 52(1) of The Young Offender Institution Rules 2000

195 Rule 37(1) of The Secure Training Centre Rules 1998

196 Rule 38(1) of The Secure Training Centre Rules 1998

197 Rule 40(1) of The Detention Centre Rules 2001

198 Rule 43(1) of The Detention Centre Rules 2001

Figures on the use of restraint in the secure estate call into question whether it is used only as a last resort. Overall, there is a lack of data on the level and reasons for restraint in the secure estate, and particularly in relation to the use of painful techniques.

Data provided to CRAE by the Youth Justice Board shows that the monthly average number of “restrictive physical interventions” (RPIs) has increased from 577 in 2009-10 to 599 in 2010-11, despite a dramatic decrease in the number of children in custody.¹⁹⁹ The monthly average number of RPIs involving injuries has increased from 92 in 2009-10 to 97 in 2010-11. On average, a child in custody was subjected to restraint resulting in an injury requiring hospital treatment once each month during 2010-11. Restrictive physical interventions are defined as ‘Any occasion when force is used with the intention of overpowering or to overpower a young person’.

The proportion of restraints in STCs carried out for the purposes of preventing damage to property increased from 11% to 13% in the same period. Data on the reasons for restraint is not collected in YOIs and SCHs.

In STCs, pain-inducing techniques were used on children 6 times in 2009-10 and 5 times in 2010-11. Data is not collected in YOIs and SCHs. In 2009-10, all instances of the application of pain-inducing techniques occurred in Medway STC and in 2010-11 four instances out of five took place in Medway.

	2009-10	2010-11
Monthly average of RPIs	577	599
Monthly average of RPIs involving injuries	92	97
Secure training centres: proportion of restraints carried out for the purposes of preventing damage to property	11%	13%
Secure training centres: number of times pain-inducing restraint techniques used on children	6	5

In July 2012 the Government announced a new system of restraint for use in under-18 YOIs and STCs – *Minimising and Managing Physical Restraint* (MMPR).²⁰⁰ While the new system of restraint focuses more on de-escalation than pre-existing systems, it includes techniques involving the deliberate infliction of pain on children. MMPR was subject to independent assessment by a panel of operational, child welfare, medical, physiotherapy

and other experts, the Restraint Advisory Board (now the Independent Restraint Advisory Panel). The Restraint Advisory Board report on MMPR recommended that the authorities should commission research into the feasibility of developing a restraint system which does not incorporate pain induction techniques. It also raised significant concerns about inclusion of the head hold technique, recommending:

*Approval for use of the head hold technique should be conditional upon the immediate establishment of an independent and rigorous research project tasked with seeking to identify a better alternative(s) and assessing comparative risks of any such alternative(s). This step is recommended as clear acknowledgement of the legitimate concerns about the risks associated with this technique and in recognition that it is used very extensively across the secure estate.*²⁰¹

The Government has refused to publish an unredacted version of the MMPR training manual in response to a request by CRAE and The Howard League for Penal Reform.²⁰² It has invited NGOs to observe the new system being taught to staff in the secure estate.

In October 2012, Ofsted published a new joint framework for the inspection of STCs, following consultation.²⁰³ Under the framework, inspectors are urged to ‘look closely at the use of restraint and in particular consider whether restraint is used as a last resort and, if applied, whether it is used legitimately, proportionately and safely by trained staff’. An STC will not be judged ‘adequate’ unless it can demonstrate that:

- Young people are only physically restrained as a last resort where there is a need to protect them or others from serious harm.
- When young people are physically restrained it is for the minimum amount of time necessary, by trained staff, using approved techniques.
- The use of physical restraint is proportionate to the circumstance.
- De-escalation techniques are used to good effect by staff who are properly trained in these approaches.²⁰⁴

However, an institution which uses restraint techniques involving the use of pain can be considered adequate.²⁰⁵

199 Email from YJB to CRAE dated 13 December 2012

200 See: <http://www.justice.gov.uk/youth-justice/custody/behaviour-management>

201 Restraint Advisory Board (August 2011) *Assessment of Minimising and Managing Physical Restraint (MMPR) For Children in the Secure Estate*

202 Letter from YJB, Ministry of Justice and National Offender Management Service to CRAE and The Howard League for Penal Reform, dated 7 August 2012

203 HMIP, Care Quality Commission and Ofsted (October 2012) *Conducting inspections of secure training centres: Guidance for the inspection of secure training centres*

204 HMIP, Care Quality Commission and Ofsted (October 2012) *Inspections of secure training centres. Evaluation schedule and grade descriptors*

205 HMIP, Care Quality Commission and Ofsted (October 2012) *Inspections of secure training centres. Evaluation schedule and grade descriptors*

The OCRD published a report in 2012 presenting the views of 94 children and young people in care about their views of restraint.²⁰⁶ The children and young people felt that restraint should be used in children's homes as a last resort to prevent injury to people or serious damage to property, and warned that the use of restraint by staff can sometimes make matters worse, create resentment, and can be inappropriate for some children, such as those who have experienced abuse by adults. They wanted to ensure that staff are well trained on when and how to use restraint techniques and that they know how to calm a situation down without having to resort to using restraint. Children and young people who participated in the consultation said that restraint should not be used as a punishment, and that staff must do everything they can to avoid inflicting pain or injury on children when restraining them. They also put forward a set of rules for the use of restraint by staff, including:

- don't hurt children during restraint, try to calm a child down first before using restraint;
- avoid being heavy-handed when restraining a child; and
- ensure that there are always witnesses when a child is being restrained.

The final message on restraint in the report was from a child who participated in the consultation: *'only do it carefully'*.

36 Abolish all methods of physical restraint for disciplinary purposes

The rules establishing the reasons for which physical restraint can be used have not changed during the reporting period.

In September 2012, the Government issued new guidance *'to help school staff feel more confident'*²⁰⁷ in exercising their power to use force against children in schools.²⁰⁸ The guidance stresses that *'[i]t is always unlawful to use force as a punishment'*, but states that a school might legitimately use force to *'prevent a pupil behaving in a way that disrupts a school event or a school trip or visit'*.

The *Code of Practice for Managing the Behaviour of Children and Young People in the Secure Estate*, issued by the Youth Justice Board to accompany the new system of restraint for use in YOIs and STCs makes clear that *'Restrictive physical interventions must not be used as a punishment, or merely to*

secure compliance with staff instructions'.²⁰⁹ This position is also reflected in the Ministry of Justice Policy Framework.²¹⁰ It does not, however, appear in the training manuals.

Research carried out by CRAE found that when asked whether violence is ever used as a punishment in custody, children in the secure estate said that while restraint is not used by staff as a punishment, it is used to secure compliance with staff instructions.²¹¹

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

There has been no progress in relation to this recommendation. Parents and those in *loco parentis* are still able to raise "reasonable punishment" as a defence to a charge of common assault against children. As part of the Universal Periodic Review of the UK in 2012, Sweden recommended that the UK should *'[r]econsider its position about the continued legality of corporal punishment of children'*.²¹² The UK Government's response stated that:

*The recommendation does not enjoy the support of the United Kingdom... The UK Government does not accept that it is in breach of the UNCRC with regard to physical punishment; and believes that UK is compliant with Articles 19 and 37 in relation to abuse and violence towards children.*²¹³

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

There has been no progress in relation to this recommendation. Physical punishment is prohibited in all maintained and full-time independent schools, in academies and free schools, in children's homes, in local authority foster homes and Early Years provision. However, the defence of reasonable punishment is still available for those working in part-time educational and learning settings, such as supplementary schools and in private tutoring, in leisure facilities and in evening and weekend faith schools.

In 2010 the last Government asked Sir Roger Singleton to advise on the use of physical punishment by adults in various education, learning and care settings not covered by existing bans. Sir Roger

206 Ofsted (December 2012) *Children's views on restraint*

207 Department for Education (September 2012) *Use of reasonable force: Advice for head teachers, staff and governing bodies*

208 Department for Education (September 2012) *Use of Reasonable Force: Advice for head teachers, staff and governing bodies*

209 Youth Justice Board (July 2012) *Managing the Behaviour of Children and Young People in the Secure Estate*

210 Ministry of Justice (July 2012) *Use of restraint policy framework for the under-18 secure estate*

211 CRAE (November 2012) *Ending Violence against Children in Custody: Findings from Research with Children and Young People*

212 UN Human Rights Council (2012) *Report of the Working Group on the Universal Periodic Review United Kingdom of Great Britain and Northern Ireland*

213 United Kingdom (September 2012) *UK's formal response to the Universal Periodic Review – Annex document*

Singleton's review recommended that the current ban on physical punishment in schools and other children's settings should be extended to include any form of advice, guidance, teaching, training, instruction, worship, treatment or therapy and to any form of care or supervision which is carried out other than by a parent or member of the child's own family or household.²¹⁴ When asked in November 2012 about its response to the Singleton review, the Government responded: *'There are no existing commitments to bring forward new proposals related to Sir Roger Singleton's report but we will continue to consider whether that would be appropriate'*.²¹⁵

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

Other than through support for new parents (see recommendation 40 below), there has been no progress in relation to this recommendation. The Government's response to Sweden's UPR recommendation that the UK should review its position on corporal punishment said that the Government *'encourage[s] the provision of evidence-based parenting programmes as they promote alternatives to physical punishment to manage children's behaviour'*.²¹⁶

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

The Government has introduced programmes which offer limited access to training in positive parenting.

In August 2012 The British Psychological Society warned that the current economic crisis increases the need for parenting programmes: *'financial distress will increasingly affect family functioning adversely... High stress levels and social isolation are known to lead to increased levels of child abuse and serious neglect (DePanfilis, 2006). In times of economic crisis, therefore, there is a heightened need for society to implement universal parenting programmes (Layard & Dunn, 2009)'*.²¹⁷

In May 2012, the Government launched *CANparent*, a trial programme whereby mothers and fathers of children aged 0-5

in three areas are offered vouchers which can be exchanged for parenting classes. The Government's stated purpose in carrying out the trial is to reduce the stigma associated with attending parenting classes and to test how a self-sustaining market in such classes can be established.²¹⁸ It has confirmed that it will collect data on take up of classes as part of the trial evaluation and that the evaluation interim report will be published in spring 2013.²¹⁹ The NHS Information Service for Parents was also launched on the same date, which includes a service which gives parenting advice via email and text message.²²⁰

The Government also launched a programme aimed at working with local authorities to turn the lives of 120,000 *'troubled families'* around by 2015. This includes family intervention with families identified as *'troubled'*.²²¹

When asked what steps they are taking to ensure that secondary school children learn about responsibilities of parenthood the Government responded that schools have the flexibility to include the teaching of parenting skills as part of personal, social, health and economic education and confirmed that its review of PSHE education is looking at how to support schools to improve the quality of PSHE teaching.²²²

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

There have been some developments to further the recommendation in the UN Study on Violence against Children that all forms of violence against children should be prohibited.

In June 2012, the Government announced plans to make forced marriage a specific criminal offence.²²³ In December 2012, the Government confirmed that it was drawing up legislative proposals for this purpose, which would be introduced when parliamentary time allows.²²⁴ The new law will be accompanied by a range of measures to increase protection and support for victims, with a continuing focus on prevention.

The Domestic Violence, Crime and Victims (Amendment) Act 2012, which came into effect on Monday 2 July 2012 extended the offence of causing or allowing the death of a child or vulnerable adult to cover causing or allowing serious physical harm.²²⁵

214 Sir Roger Singleton (March 2010) *Physical punishment: improving consistency and protection*

215 HC, 21 November 2012, c. 499W

216 United Kingdom (September 2012) *UK's formal response to the Universal Periodic Review – Annex document*

217 The British Psychological Society (August 2012) *Technique Is Not Enough: A framework for ensuring that evidence-based parenting programmes are socially inclusive*

218 HC, 13 September 2012, c. 387W

219 HC, 18 September 2012, c. 598W

220 See: <http://www.nhs.uk/news/2012/05may/Pages/launch-of-new-email-and-text-service-for-parents.aspx>

221 See: <https://www.gov.uk/government/policies/helping-troubled-families-turn-their-lives-around>

222 HL, 13 Nov 2012, c. 1395

223 See: <http://www.number10.gov.uk/news/forced-marriage-to-become-criminal-offence/>

224 HC, 20 December 2012, c. 876W

225 Domestic Violence, Crime and Victims (Amendment) Act 2012, s. 1

Despite legislation criminalising female genital mutilation, there have never been any prosecutions.²²⁶ The Crown Prosecution Service launched an action plan to improve prosecutions in November 2012.²²⁷

In 2004, the Government introduced a single definition of domestic violence, which is used by Government departments to inform policy development and, for example, by police, the Crown Prosecution Service and the UK Border Agency (UKBA), to inform the identification of domestic violence cases. In September 2012, the Government announced that this definition of domestic violence would be extended to include those aged 16-17 (currently only those over 18 are included) and include coercive control. However, it rejected suggestions that it should be extended to include violence against all those under the age of 18, a position which had been supported by Barnardo's and NSPCC.²²⁸ The new definition will be implemented by March 2013.

Government's new definition of domestic violence, September 2012:

Any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. The abuse can encompass but is not limited to:

- psychological
- physical
- sexual
- financial
- emotional

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

The Government has not set out a comprehensive plan for ending violence against children. In March 2012, the Home Office published an updated version of its Violence against Women and Girls Action plan.²²⁹ It did not refer to the UN Study on Violence against Children.

²²⁶ HC, 10 September 2012, c.45W

²²⁷ See: http://www.cps.gov.uk/news/press_statements/female_genital_mutilation_action_plan_launched/

²²⁸ Home Office (September 2012) *Cross-Government Definition of Domestic Violence – A Consultation: Summary Of Responses*

²²⁹ Home Office (March 2012) *Call to End Violence Against Women and Girls: Taking Action – The Next Chapter*

Section 4

Family and Alternative Care

“A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.”²³⁰

230 UN Convention on the Rights of the Child, Article 20

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

This year's report card from the Family and Parenting Institute (FPI) – on the extent to which the UK is “family friendly” – showed no improvement from last year's poor positioning and remained at D+.

The worst of four assessment categories related to the financial pressures facing families and the extent to which the UK is a fair society. FPI assessed this as E+, showing a small deterioration from last year's D-. The report stated that families are not only facing cuts to benefits and tax credits but are also experiencing rising costs of living and childcare.²³¹

While disadvantaged two year-olds will be entitled to 15 hours of free early education a week from September 2013,²³² the restructuring of support and the incorporation of Housing Benefit into Universal Credit, mean that the lowest-income families will lose support with childcare costs. According to The Children's Society, *'families could face a cut of up to £2,320 per year from their childcare support if they have one child or £3,980 a year if they have two or more children'*.²³³ Furthermore, the money to fund free places for two year-olds is to be diverted from existing funds allocated to early intervention – see concluding observations 58 and 80 for more detail.

Action for Children's analysis of the impact of Government spending decisions on vulnerable children and families found that family support services have been significantly affected by cuts to local authority spending. Out of 48 family support managers questioned:

- 13% of managers had seen a decrease in the number of hours that staff were able to spend with families and children in the last 12 months;
- More than a quarter of managers (27%) reported a decrease in funding. 4% of services reported a budget increase;
- 75% of managers reported less than 12 months remaining on their current contract;
- 44% of managers reported that the number of new referrals is rising, compared to the previous six months;
- According to almost two-thirds (62%) of the managers, families are facing increasingly severe problems.²³⁴

231 Family and Parenting Institute (2012) *The UK family friendly report card 2012. How family friendly is the UK?*

232 Department for Education (2012) *Early Education for 2 year olds*

233 The Children's Society (2012) *The Parent Trap: Childcare cuts under Universal Credit*

234 Action for Children (2012) *The Red Book 2012: The annual review of the impact of spending decisions on vulnerable children and families*

The majority of the spending cuts have still not come into force – so it is likely that family support services, and other services providing essential support for children and families, will be affected further over the coming months.

In June 2012, the Prime Minister announced that the Government was considering cutting housing benefits for under-25s as a means of cutting money from the welfare budget. He suggested that under-25s move back in with their parents. The proposals were widely criticised. According to the charity Crisis, of the 18-24 year-olds claiming housing benefits, the majority (204,000 households) have dependent children.²³⁵ The plans were not included in the Chancellor's autumn statement.

The IFS published a report commissioned by FPI that reveals the prospects for poverty rates and income for different families across the UK.²³⁶ The IFS claims that the median income of households with children is set to decrease by 4.2% between 2010-11 and 2015-16. This drop is equivalent to a decrease in income of £1,250 for a couple with two children. The report goes on to state that families are likely to lose more than working-age and pension households without children.

A study conducted on behalf of Action for Children, The Children's Society and the NSPCC, concluded that families with more vulnerabilities are likely to be disproportionately affected by tax, public services and benefit changes: *'Overall, the negative impact is perversely greater for families with more vulnerabilities'*.²³⁷ The study predicted that families would lose between £1,000 and £2,400 per year by 2015 and that by 2015, 100,000 more families will live on a low income and 120,000 more families will be workless.

In November 2012, Nick Clegg, the Deputy Prime Minister set out a *'range of new family-friendly policies to help working families'*.²³⁸ These included extending the right to request flexible working to all employees with 26 weeks continuous service and enabling both parents to share parental leave (from 2015). This will cover parents who adopt their children. Nick Clegg also announced that a new legal right would be created so that men can take unpaid leave to attend two antenatal appointments.

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

Over 93,000 children were looked after in England at any time during the year ending 31 March 2012. Of these, local authorities recorded "low income" as being the most applicable category of need for 220 children.²³⁹ This figure is down from 270 in the year ending March 2011.

In the year ending March 2008 – the year the UK was last examined by the UN Committee on the Rights of the Child – the number of children taken into care because of low income was 170.

Reasons for children being looked after, 2008 and 2012

Most applicable category of need – registered by local authority	2008 Number of children	2008 % of all children looked after	2012 Number of children	2012 % of all children looked after
Abuse or neglect	48,400	59 %	55,850	60%
Child's disability	2,980	4 %	2,990	3%
Parent's illness or disability	4,070	5 %	3,760	4%
Family in acute stress	7,260	9 %	8,560	9%
Family dysfunction	9,280	11 %	13,740	15%
Socially unacceptable behaviour	2,270	3 %	1,990	2%
Low income	170	0.2 %	220	0.2%
Absent parenting	8,100	10 %	5,910	6%
Total	82,530		93,020	

Parental income is likely to play a role in children being taken into care in cases other than where low income is recorded as the official reason. The proportion of children taken into care because of family dysfunction has increased (11% in 2008 to 15% in 2012). The Department for Education statistical release does not define family dysfunction, but poverty can be a driver of family stress and breakdown.²⁴⁰ In its report following a year-long inquiry into the child protection system, the Education Select Committee highlighted the links between child neglect and the current economic climate.²⁴¹ The report cited Professor Munro's views on this:

... although parents on low incomes can provide excellent care, it is well established that poverty correlates with neglect in particular and so there might be an increase in referrals because of this.

²³⁵ See: www.crisis.org.uk/pages/no-going-home

²³⁶ Institute for Fiscal Studies (2012) *Families in the Age of Austerity: January 2012*

²³⁷ Landman Economics (June 2012) *In the eye of the storm: Britain's forgotten children and families*

²³⁸ See: <http://www.dpm.cabinetoffice.gov.uk/news/greater-equality-stronger-economy-speech-deputy-prime-minister>

²³⁹ Department for Education (September 2012) *Children Looked After by Local Authorities in England (including adoption and care leavers) – year ending 31 March 2012 SFR 20/2012* <http://www.education.gov.uk/rsgateway/DB/SFR/s001084/index.shtml>

²⁴⁰ See, for example, the extract from The British Psychological Society (August 2012) *Technique Is Not Enough: A framework for ensuring that evidence-based parenting programmes are socially inclusive* referenced in relation to concluding observation 40.

²⁴¹ Education Committee (November 2012) *Children first: the child protection system in England*

It also cited the then Minister (Tim Loughton):

It is no great science to suggest that economic pressures at the moment are not making it easier for domestic situations, and that there is a greater likelihood that stress and frustration might manifest themselves in all forms of abuse within that family, including neglect of the children themselves.

The European Court on Human Rights has stressed that it is unlawful to take children into care on the grounds of poverty.²⁴²

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

The views of children are still not taken into account in all measures. Children continue to express dissatisfaction with the accessibility and effectiveness of complaints mechanisms. Looked after children and those in the youth justice system still do not have consistent access to high quality, independent advocacy.

Youth justice system and the secure estate

A report by User Voice on behalf of the OCC sought the views of children and young people on complaints processes in the youth justice system and secure estate. Participants in the research raised a number of issues relating to complaints mechanisms including a lack of confidence in formal complaints systems, a feeling that complaints systems lacked independence and tended to favour staff, concerns about possible breaches of confidentiality and reprisals when making a complaint and the view that complaints processes were too lengthy and slow.²⁴³ A report published by CRAE in November 2012, presented similar views from young people in custodial settings.²⁴⁴ Young people in the secure estate said that complaints were unlikely to be taken seriously unless more than one person complained. A submission by the EHRC to the UN Committee against Torture raised the issue of young people's lack of faith in complaints mechanisms in relation to the need to ensure that investigations of all allegations of abuse or mistreatment in the secure estate are adequately investigated.²⁴⁵

The YJB published an action plan on complaints processes in the secure estate in 2011.²⁴⁶ It includes 20 recommendations relating to

improving the complaints systems. An update on this action plan is yet to be published. However, in July 2012, the Youth Justice Board published its new restraint system for STCs and under-18 YOIs, known as MMPP (see also concluding observation 35). The Code of Practice on the new MMPP system states that one of the core principles of managing the behaviour of children and young people in the secure estate is that '*Consultation, complaints and advocacy systems should be in place*'.²⁴⁷ The Code of Practice sets out the key requirements for a complaints procedure, including:

*Information on the complaints procedure, written in child-friendly language, must be provided to children and young people, and followed up with explanations from staff during the induction process... Children and young people must have access to an independent advocacy service to support them through the complaints procedure... The establishment must have a monitoring system in place to review the operation of the complaints procedure in terms of the nature of the complaints made and their outcomes from the child or young person's perspective. Monitoring should take place at both an individual and aggregate level.*²⁴⁸

In October 2012, Ofsted published a new joint framework for the inspection of secure training centres.²⁴⁹ Under the framework, inspectors will be required to evaluate the extent to which young people have confidence in '*an effective complaints mechanism*'. In order to achieve a grade above adequate, secure training centres will have to demonstrate that:

*All complaints and appeals are taken seriously and dealt with fairly, promptly and confidentially. Responses are understandable, courteous and clearly address the issues raised. The complaints process is quality assured. Monitoring includes the identification of patterns and trends that are acted on appropriately and lessons arising from complaints are used effectively to improve the service.*²⁵⁰

Looked after children

Almost 1,900 looked after children gave their views on social care in England to the OCRD in 2011.²⁵¹ Their views concerned 168 different social care services. When asked how often they are

242 *Wallová and Walla v the Czech Republic* (2006) Application No. 23848/04: In 2006 the court found a violation of Article 8 (right to respect for private and family life) where children were removed from their parents due to inadequate housing, without any indication of neglect or abuse by the parents. The Court stated that the parents' insecure situation could be addressed by less radical means than splitting the family, such as monitoring their living conditions.

243 Office of the Children's Commissioner (July 2012) '*Why are they going to listen to me?*' – *Young people's perspectives on the complaints system in the youth justice system and secure estate*

244 Children's Rights Alliance for England (November 2012) *Ending Violence against Children in Custody: Findings from research with children and young people*

245 Equality and Human Rights Commission (2012) *EHRC Submission to the UN Committee Against Torture: list of issues on the UK's 5th periodic report*

246 Youth Justice Board (2011) *Review of the Complaints System in the Secure Estate for Children and Young People Summary and Action Plan*

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

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

249 Ofsted (October 2012) *Inspections of secure training centres: Framework for inspection*,

250 Ofsted (October 2012) *Inspections of secure training centres. Evaluation schedule and grade descriptors*

251 Ofsted (February 2012) *Children's care monitor 2011: Children on the state of social care in England. Reported by the Children's Rights Director for England*

asked their opinions on things that matter, 28% said 'always'. A similar number of children said 'usually' (29%) and 'sometimes' (29%); 10% said 'not usually' and 4% of children said 'never'.

Over half the children (57%) said their opinions were usually or always asked on things that mattered to them. Fourteen percent of children said their opinions were not usually or never asked on things that mattered to them. The OCRD reported that these figures were very close to those reported in 2008 (the year of the UK's last examination by the UN Committee on the Rights of the Child.)

When children were asked how often their views make a difference to decisions about their lives:

- 20% said children's views always make a difference;
- 34% said children's views usually make a difference;
- 31% said children's views sometimes make a difference;
- 10% said children's views do not usually make a difference;
- 5% said children's views never make a difference.

Almost 40% of children reported that they were always informed of major changes about to happen in their lives – a small increase from the previous year (35% in 2011). The OCRD noted a difference in age, with 77% of children aged under 14 reporting they were usually or always told when major changes were going to happen in their lives, compared with 65% of those aged over 14. In 2011, it was noted that care leavers were just as likely as children and young people generally to be told when major changes were going to happen in their lives. In previous years, care leavers had reported being much less likely to be told when major changes were going to happen. The three most common suggestions for matters children wished to have more of a say on were: placement decisions; decisions about their future; and decisions about contact with their families.

In its 2011 *Care Monitor*, the OCRD asked about children's experiences of making suggestions and complaints. A major observation was an ongoing reduction in children making complaints:

Over the past three years, there has been a big fall in the number of children telling us they have made a complaint at some time. In 2008, 43% of the children answering the same question told us they had made a complaint. In 2009 this had fallen to 37%, in 2010 it had fallen again to 25%, and this year it was 23%

The OCRD noted that whether a child is in care, and where they are living makes a significant difference to how they can make a complaint – children in children's homes were much more likely than those in foster care to make use of local authority complaints processes. Fifty-three per cent said their last complaint had been sorted fairly – this is a decrease from the previous year. Twenty five per cent of children said their complaint was not sorted fairly and a further 22% were not told the outcome of their complaint. A big age difference was reported in how fairly children who had made complaints thought their last complaint had been resolved. A much greater proportion of younger children (under 14) thought their last complaint had been sorted out fairly. Just over half (55%) of children in the latest survey knew how to access an advocate but nearly a third (30%) didn't know what an advocate is. Less than half (43%) knew how to contact Ofsted, which inspects social care services. Of those children who had made a suggestion to improve a service, a quarter said they weren't told the outcome of their advice.²⁵²

A report on complaints and advocacy was published in December 2012 by the OCRD.²⁵³ 118 children and young people in care shared their views and suggestions on all aspects of complaints processes. As part of the consultation, children and young people gave advice to those investigating, considering and dealing with complaints. They said that people dealing with complaints must take what children say seriously and respect their views. Other suggestions included:

- Read the complaints that children make properly;
- Help children make complaints;
- Don't stop until the issue is resolved;
- Keep children informed about what is happening with their complaint;
- Have independent people to sort out complaints;
- Never make a child feel guilty about making a complaint;
- Children need to be able to make complaints easily and safely.

In July 2012, the National Children's Advocacy Consortium published a report on the main barriers to effective advocacy provision in England.²⁵⁴ The main obstacles were identified as: a lack of national consistency in the level and quality of advocacy provision; the stability of provision – with short-term contracts on the increase providers are constantly changing; accessibility – children and young people need to know about advocacy

252 Ofsted (February 2012) *Children's care monitor 2011. Children on the state of social care in England. Reported by the Children's Rights Director for England. pages 21-28*

253 Ofsted (December 2012) *Young people's views on complaints and advocacy*

254 National Children's Advocacy Consortium Report (July 2012) *Listen to Me*

services and be supported to access advocacy; and the lack of a regulatory framework for monitoring the National Advocacy Standards. The Consortium set out four recommendations for ensuring that children in care, and care leavers can be heard effectively: the revision of the advocacy standards; the development of a regulatory framework to monitor; a change to statutory guidance to ensure that all children in care and care leavers have the right to advocacy for statutory reviews and child protection conferences; and greater awareness raising about advocacy services, effective monitoring and training of staff.

In August 2012, the National Institute for Health and Clinical Excellence (Nice) published a set of draft quality standards designed to promote the health and wellbeing of looked after children and young people for use in England.²⁵⁵ A quality standard dedicated to children and young people's involvement in decision-making stated *'looked after children and young people, and young people who are covered by leaving care arrangements are actively involved in decisions at every stage of their care'*. A series of measures were proposed to support the standard, requiring evidence of local arrangements to ensure that, in particular:

- Looked after children and young people and those covered by leaving care arrangements have access to advocacy services;
- Feedback is being collected from children and young people about the design and delivery of services and that systems are in place to act on, and respond to, this feedback.

The measure also stated that feedback should be collected to see if looked after children and young people feel that they are being listened to and understand all aspects of their care plan – including where their own wishes and feelings are not being followed. Other standards support the principle that looked after children and young people should be at the heart of decision-making about their own care. Draft quality standard three stated that children and young people entering care and moving between placements should be offered a choice of placements meeting *'their individual needs and preferences'*. Feedback will be sought from children and young people as to whether they had a choice of placement and their levels of satisfaction with it. Draft quality standard four required all looked after children and young people to have access to their personal health information and information about their health history. The final standards had not been published at the time of writing.

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

All children who are looked after or provided with accommodation by a local authority must have their care and circumstances reviewed within four weeks, three months and every six months thereafter.²⁵⁶ The Independent Reviewing Officer (IRO) is intended to play an important role in ensuring the effectiveness of the review process. His or her primary role is to ensure that a child's care plan and review process is implemented and followed up properly and that his or her current wishes and feelings are given full consideration in these processes. IROs are also required to ensure that the actions set out in the child's care plans are in line with the local authority's legal responsibilities towards the child. Within this general responsibility, IROs are tasked with ensuring that children understand how advocacy can help them:

*When meeting with the child before every review, the IRO is responsible for making sure that the child understands how an advocate could help and his/her entitlement to one. Advocacy is an option available to children whenever they want such support and not just when they want to make a formal complaint.*²⁵⁷

There are, however, concerns as to the effectiveness of IROs. The final report of the Family Justice Review raised concerns that IROs' heavy case loads can undermine their effectiveness.²⁵⁸ It noted concerns that the independence of IROs may be compromised by the fact that they are employed by local authorities, but recommended that the focus for change should be on improving the quality of the function, rather than moving them out of local authorities. The Review also concluded that the IRO should be more visible to senior figures in the local authority and the courts. The lack of visibility is also a problem amongst children. Almost 60% of children who took part in an OCRD's survey in 2011 knew they had an IRO; 21% said they did not know what an IRO is. Over two thirds of children who had an IRO said they could get in touch with them if needed. Disabled children reported being less likely to get in touch with their IRO than other children.²⁵⁹ The Government accepted *'the thrust'* of the Family Justice Review recommendations in respect of IROs.²⁶⁰

Regulations came into force in April 2011 requiring social worker visits to looked after children (excluding those in pre-adoption

255 National Institute for Health and Clinical Excellence (2012) *Draft quality standard – social care: Looked-after children and young people – the health and wellbeing of looked-after children*

256 Care Planning, Placement and Case Review (England) Regulations 2010, Regulation 33

257 Department for Education (2010) *IRO Handbook Statutory guidance for independent reviewing officers and local authorities on their functions in relation to case management and review for looked after children*

258 Family Justice Review panel (November 2011) *Final Report*

259 Ofsted (February 2012) *Children's care monitor 2011: Children on the state of social care in England. Reported by the Children's Rights Director for England*, pps 53-54

260 Department for Education (February 2012) *The Government Response to the Family Justice Review: A system with children and families at its heart*

placements) within a week of their placement and then at least every six weeks for the first 12 months and then at intervals of no more than three months.²⁶¹ Social workers are required to speak to the child in private (unless the child is of sufficient understanding and objects, or the social worker considers it inappropriate to do so)²⁶² – yet despite this, only 39% of children who took part in the OCRD survey in 2011 said that this happened on every visit. Five percent of children said that this never happens.²⁶³

The problem of children going missing from care has received significant attention this year. Research indicates that children in foster care or residential care are three times more likely than their peers to run away.²⁶⁴ While significant concerns have been raised as to the accuracy of the official data showing the number of children going missing from care,²⁶⁵ official statistics published in November 2012 reported that the number of children going missing from foster care had increased by 19% in the previous year.²⁶⁶ The figures estimate that more than 3,000 foster children went missing in the year up to March 2012. In children's homes, almost half of all children (46%) have been placed far away from home, which is a factor leading children to run away.²⁶⁷ ECPAT argues that trafficked children are particularly likely to go missing from care,²⁶⁸ and a parliamentary inquiry has concluded that '*[h]undreds of them disappear from care every year and the majority are never found again*'.²⁶⁹ Serious concerns have also been raised about the adequacy of the systems which are supposed to monitor and regulate the performance of services in respect of missing children. A report by APPG for Runaway and Missing Children and Adults and the APPG for Looked after Children and Care Leavers published in June 2012 recommended that:

*Ofsted's inspection framework should be revised to state that inspectors must always contact the local police for data on missing incidents relating to a children's home as part of their inspection, as well as local schools to ask for information on the number of absences recorded for children living in the home.*²⁷⁰

The OCRD published a report setting out the views of 98 children and young people from across England on running away from

care.²⁷¹ Children and young people said that they might run away from a place where they are unhappy, or to a place where they want to be. They said that children run away for many reasons including problems with relationships, wanting to be in a different placement, stress and wanting some time alone to think about things. Participants in the consultation said that children and young people sometimes run away to have fun and then return to their placement. When asked about the dangers and risks involved in running away, children and young people said that when they run away from a placement they are more likely to end up in a dangerous situation such as living on the street, getting involved in crime or gangs or being sexually exploited. Children and young people at the consultation event said that the best way to prevent children running away from a care placement where they are unhappy, is for staff to listen and try to solve any problems before the child gets to a point where they want to run away.

Length of time children going missing from foster care:²⁷²

More than half of the children reported missing went missing for less than 24 hours

34% went missing between 1 and 6 days;

9% (287) went missing between one week and 28 days;

and 4% went missing for more than 28 days.

As of 31 March 2012 there were a reported 1% still missing from care.

Concerns as to the effectiveness of systems set up to monitor the welfare of children are further exacerbated by reduced resources and increasing demand for children's social care. NSPCC research found that children's social care spending in England is expected to be reduced by an average of 24% in 2011–12, while adult social care spending was projected to fall in 2011–12 by less than 2%. It concluded that '*It is hard to imagine that mistakes won't be made in the face of cuts of 40% to some children's social care budgets*'.²⁷³

Under the LASPOA all children remanded to the secure estate will become "looked after" children under the Children Act 1989.²⁷⁴ This

261 Care Planning, Placement and Case Review (England) Regulations 2010, Regulation 28

262 Care Planning, Placement and Case Review (England) Regulations 2010, Regulation 29

263 Ofsted (February 2012) *Children's care monitor 2011: Children on the state of social care in England*. Reported by the Children's Rights Director for England, pp. 53–54

264 See for example: Office of the Children's Commissioner (July 2012) *Briefing for the Rt Hon Michael Gove MP, Secretary of State for Education, on the emerging findings of the Office of the Children's Commissioner's Inquiry into Child Sexual Exploitation in Gangs and Groups, with a special focus on children in care and APPG for Runaway and Missing Children and Adults and the APPG for Looked after Children and Care Leavers (June 2012) Report from the Joint Enquiry into Children who go Missing from Care*

265 The Children's Society (2011) *Make Runaways Safe*

266 Ofsted (November 2012) *Fostering quality assurance and data forms 2011–12 – key findings*

267 APPG for Runaway and Missing Children and Adults and the APPG for Looked after Children and Care Leavers (June 2012) *Report from the Joint Enquiry into Children who go Missing from Care*

268 Education Committee (November 2012) *Children first: the child protection system in England*

269 APPG for Runaway and Missing Children and Adults and the APPG for Looked after Children and Care Leavers (June 2012) *Report from the Joint Enquiry into Children who go Missing from Care*

270 APPG for Runaway and Missing Children and Adults and the APPG for Looked after Children and Care Leavers (June 2012) *Report from the Joint Enquiry into Children who go Missing from Care*

271 Ofsted (October 2012) *Running away: Young people's views on running away from care* Reported by the Children's Rights Director for England

272 Ofsted (November 2012) *Fostering quality assurance and data forms 2011–12 – key findings*

273 Chartered Institute of Public Finance and Accountancy (2011) *Smart Cuts? Public spending on children's social care*, NSPCC

274 Legal Aid Sentencing and Punishment of Offenders Act 2012, s. 104

is an extremely positive development. This provision came into force on 4 December 2012. The measure will require local authorities to provide extra support for these children. According to the Ministry of Justice and YJB an additional 2,300 children every financial year will have looked after status as a result of this change to the law.²⁷⁵ Commenting on the development, Andrew Webb, Association of Directors of Children's services (ADCS) vice president, said:

*The ADCS has supported in principle the objectives of giving looked after status to young people on remand. We acknowledge they are extremely vulnerable and a high correlation between looked after children and children in custody already exists. But we are concerned about adding bureaucracy and need to be sure that in dealing with one set of problems for vulnerable young people, we don't set up more problems for local authorities in administering a complicated system. Any additional financial burden on local authorities at this time will make the new system completely unworkable in tandem with the pressures we already have in the looked after children system.*²⁷⁶

Proposed changes to the function and powers of the OCC will, if implemented, mean that the OCRD will close down as an independent body in 2014 and the work of the OCRD will be incorporated into that of the OCC. The "new" Children's Commissioner will be required to have particular regard to the rights of children living away from home and in receipt of social care when discharging its primary function.²⁷⁷ The OCRD website states:

*It will of course be very important that future Children's Commissioners do always put the rights, views and welfare of children living away from home or getting social care services at the top of their priority list, and that this work never gets overtaken by all the other things that Commissioners do.*²⁷⁸

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

The UN Convention on the Rights of Persons with Disabilities, which the UK has ratified, provides:

*In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.*²⁷⁹

However, disabled children continue to be greatly overrepresented among children in care. A report by the Institute for Research and Innovations in Social Services (IRISS) suggests that most disabled children who are in foster care are looked after not because of their disability, but for reasons of abuse and neglect, as with other looked after children.²⁸⁰ It notes, however, that disability may be a contributing factor. It also reports poor outcomes for disabled children in care:

There is evidence that they are more likely to be looked after, remain in care for longer and have a higher risk of being placed inappropriately in comparison to non-disabled children. Whilst in care there may be particular barriers to achieving permanency and stability for disabled looked after children.

Similarly, a report by Every Child states that in the UK, a disproportionately high percentage of children awaiting permanent placements have disabilities and children with disabilities tend to wait much longer than other children before a long-term home can be found for them.²⁸¹ It states that only a minority of adopters will consider adopting children with disabilities.

The report by IRISS says that more remains to be done to identify all disabled looked after children to establish where such children are placed and how placements are working, especially in relation to contact and communication with disabled children.

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

The OCRD published a report on the views of care leavers and those about to leave care in March 2012.²⁸² Young people's views were sought on their preparation for leaving care, their lives after care and on the impact being in care has had on their lives. The *After Care* report found that nearly half (46%) of all care leavers thought they had had to leave care too early and that 49% thought they had not been sufficiently prepared for leaving care. These statistics are particularly concerning in the light of trends which show that other young adults are increasingly reliant on their parents: in 2011, nearly 3.0 million adults aged between 20 and 34 were living with one or more parent, an increase of 20% since 1997.²⁸³

²⁷⁵ Ministry of Justice and Youth Justice Board (September 2012) *The new remand framework for children: Allocation of new burdens funding to local authorities*

²⁷⁶ Email from Association of Directors of Children's Services to CRAE dated 30 November 2012

²⁷⁷ Department for Education (2012) *Reform of the Office of Children's Commissioner: draft legislation*

²⁷⁸ See: <https://www.rights4me.org/home/latest-news/news-2012-new-law-occe.aspx>

²⁷⁹ Article 23(4)

²⁸⁰ Baker, C. (2011) *Permanence and stability for disabled looked after children*, IRISS

²⁸¹ Every Child (March 2012) *Enabling Reform: Why supporting children with disabilities must be at the heart of successful child care reform*

²⁸² Ofsted (March 2012) *After care: Young people's views on leaving care* Reported by the Children's Rights Director

²⁸³ Office for National Statistics (May 2012) *Young adults living with parents in the UK, 2011*

In September 2012, the Catch 22 National Care Advisory Service (NCAS) revealed that up to a third of leaving care services were scaling back provision due to budget cuts – despite an increase in the numbers of children needing support.²⁸⁴

Of 34 leaving care service managers who responded to the NCAS survey:

- A third had seen budget cuts over the last 12 months;
- Two thirds were working with more children – on average an increase of 10% on the previous year;
- 64% reported the main impact of budget cuts being higher caseloads for workers;
- 38% reported that workers would be seeing young people less frequently; and
- 32% said that cuts would result in workers working more reactively in crisis situations.

The survey suggested that budget cuts were most likely to have an impact on services for older care leavers. The ability of young people to secure education, training and employment and appropriate accommodation was considered to be at risk as a result of cuts in support to young people:

*Out of the 27 respondents who reported on cuts in financial assistance for young people: 52% had cut some form of education, training or employment support for young people (e.g. interview and work related expenses, education materials and equipment, further education support, higher education support, incentives for employment and education) and 22% reported reductions in funding for deposits and rent in advance.*²⁸⁵

At the conclusion of its year-long examination of the child protection system, the Education Select Committee said that it was 'particularly concerned about the position of care-leavers and the accommodation and range of support provided for them'.²⁸⁶

Official figures published in November 2012 revealed that of 6,610 care leavers aged 19, 36% (2,390) were not in education, employment or training. This percentage is at its highest since 2008 (when it was 24%).

- 430 young people were in higher education
- 28% (1,880) were in other forms of education
- 23% (1,510) were in training or employment.

The data shows that the situation has deteriorated since 2011.²⁸⁷

In October 2012, Edward Timpson, Parliamentary Under Secretary of State, wrote to all local authorities asking them to take specific action to improve the outcomes of care leavers. In the letter he says:

*Unfortunately the latest figures show an overall reduction in the numbers of care leavers in employment, education and training, and that slightly fewer are living in suitable accommodation. But the wide variations between local authorities are very striking; we need all local authorities to learn from the best.*²⁸⁸

The letter refers to several actions planned by the Government in relation to improving outcomes for care leavers:

Data pack on care leavers	Analyses the attainment outcomes of care leavers when set against other aspects of their lives. It is intended that the information will help local authorities compare their performance with others and support them in reviewing and improving practice. ²⁸⁹ Similar data packs are already published on adoption, children's homes and the education of looked after children.
Care leavers charter	Produced by care leavers, 'The Charter for Care Leavers is designed to raise expectation, aspiration and understanding of what care leavers need and what the government and local authorities should do to be good Corporate Parents'. ²⁹⁰ The Minister called on local authorities to sign up to the Charter and work with local Children in Care councils to embed its principles in practice. ²⁹¹
Increasing employment opportunities	According to the Minister's letter, the Government plans to increase employment opportunities for care leavers, building on the current <i>From Care2 Work</i> programme.
Accommodation	The Minister's letter expressed concern over 'the numbers of care leavers who have told me they feel unsafe in their accommodation' and called for more to be done to ensure that care leavers are housed in suitable accommodation.
Financial support – Junior ISA	The Minister announced that the Government would open a Junior ISA for every child who had been in care for 12 months or more, on or after 3 January 2011: <i>I feel very strongly that local authorities... should pay young people leaving care adequate setting up home allowances... the amount paid by local authorities is simply too low for youngsters to buy the essentials they need.</i>
Care leavers grant	The Minister called for all local authorities to pay care leavers a minimum grant of £2,000 and committed to reviewing this annually. He stated that the Government was not going to set a national minimum amount, 'but will consider doing so in the future if some care leavers continue to receive an inadequate allowance.'

284 Catch 22 National Care Advisory Service (September 2012) *Funding leaving care. After care making the cut: One year on*

285 Catch 22 National Care Advisory Service (September 2012) *Funding leaving care. After care making the cut: One year on*

286 Education Committee (November 2012) *Children first: the child protection system in England*

287 Department for Education (September 2012) *Children Looked After by Local Authorities in England (including adoption and care leavers) – year ending 31 March 2012*

288 Letter from Edward Timpson dated 30 October 2012

289 Department for Education (October 2012) Care leavers in England data pack, see: <http://media.education.gov.uk/assets/files/pdf/c/care%20leavers%20data%20pack%20final%2029%20oct.pdf>

290 Department for Education (October 2012) Care leavers charter, see: <http://media.education.gov.uk/assets/files/pdf/c/cl%20charter%20final%2025%20oct%202012.pdf>

291 Letter from Edward Timpson dated 30 October 2012

The letter comes amid concerns that in practice young people leaving care do not always receive the support to which they are formally entitled, and that there is a lack of consistency in the way in which authorities exercise their discretion to decide whether care leavers are 'vulnerable' and thus entitled to additional support for vulnerable groups.²⁹² In this context, it is unclear what impact the letter will have. In December 2012 Barnardo's revealed that only eight local authorities had signed the *Care Leavers Charter* since it was launched in October 2012.²⁹³

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

In July 2012 the Government published two discussion papers relevant to this issue. The documents sought views on contact between children in care or who have been adopted and their birth parents,²⁹⁴ and about the placement of sibling groups for adoption.²⁹⁵

The Government's paper on placing children in sibling groups includes a foreword from Martin Narey (former Barnardo's Chief Exec and currently the Government's Adoption Adviser.) In the foreword he states:

...over the last year I have become troubled by the extent to which the strong presumption that sibling groups are kept intact may disadvantage children, at best delaying and sometimes preventing their adoption... I have learned... that even when there are adopters willing to take on the challenge, keeping siblings together may not always be in the interests of individual children. For example where, through a period of neglect, an older child has been effectively parenting a younger child, it can be vital for them to be separated so that each can develop a positive attachment with their new parents.²⁹⁶

A survey by The Who Cares? Trust found that children in care were more likely to want more contact with their siblings than any other member of their family. One child told The Who Cares? Trust: 'All of my siblings have different social workers. They should have kept us together. Every day I wake up wondering if they're ok'.²⁹⁷ The Who Cares? Trust notes that "[s]ibling relationships are often the longest of a child's life. They are frequently important to young people in care as they offer a point of stability in often rapidly changing lives'.

The document seeks views on how legislation and guidance could be reframed to make sure that sibling group placement for adoption is only sought when it is in each individual child's best interests. The preferred approach outlined in the paper is to qualify the current legislative presumption²⁹⁸ in favour of placing siblings together: 'We believe that the law should be explicit that the case for placing siblings together should be considered on the needs of each individual child'.

In its response to the discussion paper, The Who Cares? Trust criticised the Government for trying to fix the problem that too few adopters are willing to adopt sibling groups by cutting demand – by splitting up sibling groups – rather than by increasing efforts to find more appropriate adopters.²⁹⁹ It also argues that the current legislation and guidance already ensures that decisions are taken in the best interests of each child. It suggests that if decisions are being taken which are not in the best interests of children, efforts should be focused on improving practice – the assessment of a child's best interests – rather than changing the legislation.³⁰⁰ The BAAF said that its major concern was a lack of adoptive families ready and willing to adopt children in sibling groups: 'This problem is getting worse.'³⁰¹

The paper on arrangements for contact between looked after children and children who have been adopted and their birth parents states that the Government wants to ensure that the best interests of children are paramount when making decisions about contact arrangements – it is concerned that this is not always currently the case. A number of measures are suggested, including:

- For all children in care: Strengthening statutory guidance to ensure more consideration is given to the purpose of contact for infants; and looking again at the duties in primary legislation duties which require local authorities to promote contact for looked after children as long as it is in the child's best interests and promotes and safeguards the child's welfare. According to the paper '... this could remove the perceived presumption of contact in all cases and help local authorities to take a case-by-case decision about the best contact arrangements for the individual child.'
- Once adoption is the plan: Strengthening guidance and regulations to ensure that a review of contact arrangements is made at each stage of the process; introducing a presumption of "no placement" at the point of placement order; introducing a "permission filter" for parents wishing to apply for contact at this stage; requiring potential adopters' views to be sought in relation to contact at the point of contact order.

292 See, for example, Catch22 National Care Advisory Service (April 2012) *Access all Areas: Action for all Government Departments to Support Young People's Journey from Care to Adulthood*

293 Barnardo's press release (12 December 2012) *Foster children fend for themselves after 18th birthday*

294 Department for Education (July 2012) *Contact arrangements: A call for views*

295 Department for Education (August 2012) *Placing Children in Sibling Groups for Adoption: A Call for Views*

296 Department for Education (July 2012) *Placing Children in sibling groups for adoption: A call for views*

297 The Who Cares? Trust (2012) *Response to the Department for Education's call for views on placing children in sibling groups for adoption*

298 Children Act 1989, s. 22C (8)(c), which provides that where it is reasonably practicable and consistent with its duty to safeguard and promote the child's welfare, local authorities must place siblings together.

299 The Who Cares? Trust (2012) *Response to the Department for Education's call for views on placing children in sibling groups for adoption*

300 The Who Cares? Trust (2012) *Response to the Department for Education's call for views on placing children in sibling groups for adoption*

301 BAAF (20 July 2012) *Statement on Department for Education's consultations on placing children in sibling groups for adoption and contact arrangements for children*

- For adopted children: allowing the court to make an order for no contact on application for an adoption order; and making it more difficult for a birth parent to apply for a contact order by creating a more demanding “permission filter”.

In response to the Government's proposals for all children in care, the BAAF supported moves to change practice in relation to contact for babies and young children: *'daily contact sessions in some cases often accompanied by long journeys – this cannot be good for children and is contradicted by research. For this reason we particularly welcome the suggestion that statutory guidance should be strengthened to ensure that more consideration is given to the purpose of contact for infants.'* The Who Cares? Trust criticised the proposals for subordinating the wishes and feelings of the child to the views of those who care for them, arguing that *'Where contact is difficult, but is wanted by children and young people and is in their best interests, we should not prevent it from occurring'*. Its response also argued that the quality of contact should be improved and resources devoted to doing so. In relation to all children in care, it concludes: *'The duty of contact has played a role in protecting children's best interests and it should remain'*.³⁰² The Who Cares? Trust also expressed its disappointment that the discussion paper did not cover contact arrangements between children in care and their siblings. The Office of the Children's Commissioner for England stated that it considered the current legislation to enable sound decision-making and that any legislative changes must strengthen the focus on the best interests of the child.³⁰³

At the time of writing, the Government had not yet published its response to the discussion papers.

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

Analysis published by the Ministry of Justice in 2012 estimated that 200,000 children had a parent in prison at some point in 2009, with 54% of prisoners stating that they had children under the age of 18 at the time they entered prison.³⁰⁴ The report acknowledges that there is a lack of data exploring this issue, concluding:

In order to ensure that there are adequate services to support children experiencing parental imprisonment, it is necessary to have an agreed and accurate method as possible to gauge the extent of this issue.

The report highlights the adverse impact which parental imprisonment has on children's lives, citing disruption to care and living arrangements, and financial difficulties. It notes, however, that there is *'very limited research undertaken with children of prisoners themselves'*. Reviewing that research which does exist, the report finds that children have talked about *'a range of emotions relating to their situation, including being upset, angry, and shocked, as well as hoping that their father will return, with their biggest fear being that he may not'*. It refers to research indicating that *'children of prisoners have about twice the risk of anti-social behaviour and poor mental health outcomes compared to children without imprisoned parents'*. It also finds that children report being stigmatised: *'they often kept their parents imprisonment a secret from others around them'*.³⁰⁵

During the 2012 Universal Periodic Review of the UK Slovakia recommended that the UK Government should do more for the children of prisoners:

*Ensure that the best interests of the child are taken into account when arresting, detaining, sentencing or considering early release for a sole or primary carer of the child, bearing in mind that visits of a parent in prison are primarily a right of the child rather than a privilege of the prisoner that can be withdrawn as a disciplinary measure.*³⁰⁶

The UK's response said that: *'[t]here is an expectation that Probation Trust staff in courts, or when preparing reports, consider the parental or caring responsibilities of the offender and the impact of any sentencing proposals or advice given to the court'*. It stressed that the Prison Rules encourage the maintenance of relationships between prisoners and their families and that *'[u]n-convicted and convicted prisoners have a statutory right to a determined number of visits per month'*.³⁰⁷ It confirmed that visits with partners and children are seen as vital to upholding relationships and helping those convicted to stay in contact with the outside community.

The HM Chief Inspector of Prisons for England and Wales reported that prisoners were indeed encouraged and supported to maintain contact with their families.³⁰⁸ The report stated that

302 The Who Cares? Trust (2012) *Response to the Department for Education's Call for Views on Contact Arrangements for Children*

303 Office for Children's Commissioner for England (August 2012) *Office of the Children's Commissioner's Response to the Department for Education Consultation on Contact Arrangements for Children*

304 Ministry of Justice (2012) *Prisoners' childhood and family backgrounds*

305 Ministry of Justice (2012) *Prisoner's Childhood and family backgrounds*

306 Human Rights Council (July 2012) *Report of the Working Group on the Universal Periodic Review of the UK, A/HRC/21/9*

307 United Kingdom (September 2012) *UK's formal response to the Universal Periodic Review – Annex document*

308 Her Majesty's Inspectorate of Prisons (2012) *HM Chief Inspector of Prisons for England and Wales Annual Report 2011–12*

most establishments provided family support and that visiting halls were well-maintained with appropriate facilities. However it was noted that at times children's play spaces remained inadequate. There is no explicit funding allocated to prison governors to cover the costs of family visitor centres, supervised play areas, or family support work.³⁰⁹ Additionally, while there is support for travel expenses, there are practical obstacles to children maintaining contact with their parents because many prisoners are held far away from their home area.³¹⁰

Analysis published by the Ministry of Justice concludes that *'it is important that consideration is given to the adequacy of support and mechanisms available for allowing contact and involvement of families in prisoners' sentences'*.³¹¹

A Barnardo's report published in December 2012 notes that many support services available to young fathers in the community are not available in custody and that support that is available is vulnerable to spending cuts. Barnardo's makes several recommendations relating to monitoring and support of young fathers in custody including better data collection on the number of fathers in custody, tailored parenting programmes for all fathers in the secure estate, resettlement plans to include sign posting to relevant services for fathers at children's centres, reviewing the rules which prohibit mothers under the age of 18 from visiting a partner in prison without an adult present, the provision of information for prisoners on how to make and maintain contact with the mother and their child and the impact of not maintaining contact.³¹²

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

There is no indication that the recommendations from the Day of General Discussion on children without parental care are being considered in the Government's decision-making.³¹³

A report by the All-Party Parliamentary Group (APPG) for Runaway and Missing Children and Adults and the APPG for Looked After Children and Care Leavers in June 2012 raised significant concerns as to the quality of children's homes, and the way in which they are used.³¹⁴ It pointed to problems of high staff

turnover and inadequate staff training, and highlighted that not enough is done to make children's homes feel like a home. It also criticised the practice of placing children in homes far from family and friends, and using children's homes as a *'last resort'* to place children with significant problems:

The children placed in children's homes are generally older, vulnerable and more likely to have complex needs. They are also more likely to have been through many care placements.

Similar points have been made by the OCC, with its report stating: *'If residential care is to be used it must be the placement of choice, matched to the child's needs and not a last resort'*.³¹⁵ The Children's Commissioner recommended improvements to the system for inspecting private children's homes, and that:

Government should undertake a thorough examination of residential care, including the profile of children, location and type of homes, recruitment, qualification and training of staff, and analyses of how local authorities are meeting their duties under the sufficiency requirements.

On 3 July, Ministers announced urgent action to reform children's residential care in response to recommendations made by the Deputy Children's Commissioner and the APPG Joint Inquiry into Children who Go Missing from Care. Three groups have been set up:

- a *'Missing' Data Working Group* to consider how to safeguard looked after children who go missing, or are at risk of going missing, by developing improved local and national data collection arrangements, and strengthening practice among carers, children's homes, local authorities (LAs) and the police;
- an *Out of Area Placements Task and Finish Group* to consider how to improve arrangements, and the quality of care and support, for children placed out of area by their LAs; and
- a *Quality Expert Group*, to consider how to improve the overall quality of children's residential provision, including commissioning, the location and ownership of children's homes, and the qualifications and skills of the workforce.³¹⁶

A range of measures have also been put in place to bolster the role of foster carers. Following extensive consultation, the Government revised the statutory framework and National Minimum Standards for fostering. The revised framework came

309 Centre for Social Justice (2009) *Locked up potential: A strategy for reforming prisons and rehabilitating prisoners*

310 Prison Reform Trust (2012) *Bromley Briefings Prison Facility*

311 Ministry of Justice (2012) *Prisoners' childhood and family backgrounds*

312 Barnardo's (December 2012) *Are we nearly there yet, Dad? Supporting young dads' journeys through fatherhood*

313 Committee on the rights of the child (September 2005) *Day of general discussion: children without parental care*, see: <http://www2.ohchr.org/english/bodies/crc/docs/discussion/recommendations2005.doc>

314 APPG for Runaway and Missing Children and Adults and the APPG for Looked after Children and Care Leavers (June 2012) *Report from the Joint Enquiry into Children who go Missing from Care*

315 Office of the Children's Commissioner (July 2012) *Briefing for the Rt Hon Michael Gove MP, Secretary of State for Education, on the emerging findings of the Office of the Children's Commissioner's Inquiry into Child Sexual Exploitation in Gangs and Groups, with a special focus on children in care*

316 See: <http://www.education.gov.uk/a00213690/childrens-residential-care-reform>

into force in March 2011, alongside a Foster Carers Charter.³¹⁷ In November 2012, the Government launched the Fostering Information Exchange, an online group to enable those involved or interested in foster care to share ideas, learn about new developments and access resources.³¹⁸ In September 2012 the Government consulted on a package of changes to the assessment and approval process for foster carers 'to make the process clearer, more proportionate and responsive to the needs of children coming into the care system'; and to delegate greater authority to foster carers to take everyday decisions about the children in their care.³¹⁹

However, in spite of these measures, there are concerns that the Government's policy focus has been on facilitating adoption, at the expense of other forms of alternative care. The Education Select Committee, for example, endorsed the Government's emphasis on increasing the number of children adopted, speeding up the process and facilitating foster-to-adopt arrangements.³²⁰ But it noted:

the same goal of permanence and stability can be achieved by other means and it is vital that the Government and those in local authorities continue to concentrate effort and resources on prioritising stability in placements for all children. We would welcome greater debate on policies which might bring this about and greater encouragement from the Government for alternative solutions. In particular, there should be increased emphasis in central guidance aimed at limiting the disruption and damage caused to vulnerable children by frequent changes.

In its response to consultations on arrangements for contact for children in care and adopted children with their birth parents, the OCC echoed concerns of other organisations that adoption must not be the chief goal when planning where children will live, taking priority over other options that may work for the child:

*while it is important that planning for adoption is pursued in a timely manner, planning for contact for children who are looked after should not be led by the adoption agenda.*³²¹

In its response to the Government's consultation *Adoption and Fostering: tackling delay*, TACT said:

following the Government's emphasis on adoption some local authorities are seeing adoption as the only solution which can,

in some cases, ignore the welfare of the child and what is in their best interest. It could be in the child's best interest to remain in long-term foster care and maintain contact with birth family members.

It went on:

*We are concerned that the intense focus on adoption is diverting attention and resources at a national and local level from other routes to permanence i.e. kinship care, special guardianship and long-term foster care.*³²²

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

Official statistics show no progress between 2008 and 2012 in the speed at which children entering care are assessed as requiring adoption, adoptive parents found and the adoption secured.³²³

	2009	2010	2011	2012
Average time between entry into care and decision that should be placed for adoption	11 months	11 months	11 months	11 months
Average time between decision to place for adoption and matching of child and adopters	8 months	9 months	9 months	10 months
Average time between date of matching and date placed for adoption	1 month	1 month	1 month	1 month
Average time between date placed for adoption and date child adopted	10 months	10 months	10 months	9 months
Total average time between entry into care and adoption	2 years, 6 months	2 years, 7 months	2 years, 7 months	2 years, 7 months

In March 2012 the Department for Education released its *Action Plan for Adoption*, which set out a raft of proposals for speeding up the adoption process, including plans to legislate to require care proceedings to be completed within six months in all but exceptional cases and to reduce delays which occur because of efforts to match a child with adoptive parents of the same ethnicity.³²⁴ In September 2012, the Government published *Adoption and Fostering: tackling delay*, a consultation on further plans to facilitate and reduce delays to fostering and adoption. A

317 HM Government (2011) *The Children Act 1989 Guidance and regulations Volume 4: Fostering Services*

318 See: <http://www.fostering.net/>

319 Department for Education (September 2012) *Adoption and Fostering: tackling delay*

320 Education Committee (November 2012) *Children first: the child protection system in England*

321 Office for Children's Commissioner for England (August 2012) *Office of the Children's Commissioner's Response to the Department for Education Consultation on Contact Arrangements for Children*

322 TACT (2012) *Consultation Response to Adoption and Fostering: tackling delay*

323 Department for Education (September 2012) *Children Looked After by Local Authorities in England (including adoption and care leavers) – year ending 31 March 2012*

324 Department for Education (March 2012) *An Action Plan for Adoption: Tackling Delay*

shorter two stage approval process was proposed for prospective adopters, a fast-track procedure for approved foster carers and previous adopters, and changes to make it easier for prospective adopters to be approved as temporary foster carers.³²⁵

As part of its *Action Plan*, new adoption scorecards will be published annually for each local authority to ‘highlight key indicators for how swiftly local authorities place children in need of adoption and how swiftly they and adoption agencies deal with prospective adopters’.³²⁶ Commenting on the *Action Plan* as part of the ministerial expert group, Matt Dunkley, President of the Association of Directors of Children’s Services, stressed that the ‘focus on a single indicator, such as speed of decision-making, [...] can mask the challenges many of these children face in finding adoptive homes. Working with the Department, Directors of Children’s Services have made a strong case for more contextual information to be added to the scorecard to add balance and aid understanding of this complexity’.³²⁷

There are concerns that plans to speed up adoptions are over simplistic. Ultimately, in order to speed up adoptions, more people need to be encouraged to adopt. Adoption UK has said that “A quicker assessment process may not lead to more adopters”.³²⁸ It suggests that potential adopters are deterred not only by delays, but also by the lack of support services for adoptive families. TACT made similar points and raised concerns about ‘speed vs. robustness’ in decision-making.³²⁹ In November 2012, *The Guardian* reported that it had been told by high court judges that ‘local authorities are attempting to rush through inappropriate and premature adoptions’, as a result of pressure to achieve speedy adoptions.³³⁰

In November 2012 the Government published draft clauses which would remove the requirement on adoption agencies to give due consideration to the child’s religious persuasion, racial origin and cultural and linguistic background in placing the child for adoption.³³¹ In explaining its plans, the Government’s *Action Plan* stated:

The delay faced by black children during this process needs particular attention. They take around a year longer to be adopted after entering care than white and Asian children. One reason for this is that in some parts of the system, the belief persists that ensuring a perfect or near perfect match based on the child’s ethnicity is necessarily in the child’s best interests,

*and automatically outweighs other considerations, such as the need to find long-term stability for the child quickly.*³³²

The House of Lords Select Committee carrying out pre-legislative scrutiny of the draft legislation stated:

*We have heard evidence that delay is sometimes caused by the search for a perfect ethnic match, although it is unclear how widespread the problem is. Overall, the evidence we have received does not suggest that this is such a significant problem that legislative change is necessary.*³³³

A report by Ofsted exploring delays in the adoption process made similar findings:

*While local authorities paid due attention to ethnic or cultural needs, decisions to look for a ‘best fit’ were generally made promptly. In nearly all the cases seen by inspectors, ethnic and cultural issues did not cause delays.*³³⁴

Evidence submitted to the Select Committee raised concerns that the proposed legislative change would send the message that ethnicity should no longer be considered in placement decisions. The Select Committee concluded that:

We accept that it is important to ensure that appropriate weight is given to religion, race, language and culture when making adoption matches.

It proposed that matters of religion, race, culture and language should be added to the “welfare checklist” as one of the matters to be considered when courts and agencies are making decisions about adoption, rather than removed from legislation altogether.

The Select Committee also considered legislative proposals to encourage local authorities to take up the option of “fostering for adoption”, whereby, after it has been decided that a child should be placed for adoption with particular prospective adopters, the child is placed with those adopters under fostering arrangements before the court has made an adoption order. While evidence submitted to the Committee had raised concerns that the proposals may deter potential adopters, the Committee welcomed the intention behind the proposals, but recommended that the draft legislation should be strengthened to achieve this aim.

325 Department for Education (September 2012) *Adoption and Fostering: tackling delay*

326 Department for Education (March 2012) *An Action Plan for Adoption: Tackling Delay*

327 Association of Directors of Children’s Services Ltd (ADCS) press release (14 March 2012) *Adoption: Response to the Adoption Action Plan*

328 Adoption UK (2012) *Consultation Response to Adoption and Fostering: tackling delay*

329 TACT (December 2012) *Consultation Response to Adoption and Fostering: tackling delay*

330 Hill, A. “Adoption Process is being rushed by councils, say judges”, *The Guardian*

331 Department for Education (November 2012) *Draft Legislation on Adoption: Early Permanence through ‘Fostering for Adoption’ and Matching for Adoption*

332 Department for Education (March 2012) *An Action Plan for Adoption: Tackling Delay*

333 House of Lords Select Committee on Adoption (December 2012) *Adoption: Pre-legislative scrutiny*

334 Ofsted (April 2012) *Right on time: Exploring delays in adoption*

Ofsted's report found that the most significant cause of delay for children needing adoption is the length of time it takes for cases to be completed in court.³³⁵ In September 2012, the Government published draft legislation on family justice, which would establish a 26 week time limit for the completion of care and supervision proceedings, with the possibility of extension if necessary, and include provisions to encourage more child-focused decision-making in relation to the timetable for the case.³³⁶ In December 2012, the Justice Committee published its report on its pre-legislative scrutiny of the draft clauses.³³⁷ The Committee broadly welcomed the provisions and agreed with the notion of placing a time limit of 26 weeks on the completion of care and supervision proceedings. It did, however, question the feasibility of the proposals, and noted that the time limit may actually cause further delays as more complicated cases are repeatedly referred back to the courts in order to request extensions. The Committee recommended that the actual time limit and detail be set in secondary legislation rather than on the face of the Bill.

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

There is no central monitoring of the extent to which children in England are subject to violence, sexual abuse, neglect, maltreatment or exploitation in different settings. Data continues to be dispersed across child protection statistics, serious case review publications, criminal statistics and the British Crime Survey. The Home Office is working on a new data hub to collect more detailed information from police forces. Data will include gender and age information for victims of violent and sexual offences. However, delay of the first set of data is expected.³³⁸

There is particular lack of data in relation to certain types of abuse, and abuse occurring in certain environments.

Neglect

In November 2012, the Education Select Committee published its report on the child protection system, the result of a year-long inquiry.³³⁹ The Committee cited Government statistics showing

that '*neglect is the most common form of child abuse in England*' and made a number of recommendations relating to the need to understand the scale and extent of neglect and address it swiftly. The Committee was extremely concerned that definitions and figures on neglect are widely variable and called on the Government to commission research to explore whether similar situations are classified as neglect across local authorities.

Many of the Committee's recommendations addressed concerns raised by Action for Children in a report on child neglect published in December 2011.³⁴⁰ This annual review of child neglect found that:

- Neither Government nor local authorities know exactly how many children are being neglected: Of 47 local authorities surveyed for the report, only 21 collected data about the prevalence of neglect other than the data required on child protection plans;
- Too many children are recognised as experiencing neglect but not helped: Front line practitioners told Action for Children that there are not enough services for neglected children and 80% of social workers thought that cuts to services would make it more difficult to intervene in cases of child neglect;
- Social workers and other professionals feel powerless to help: Half of social workers (51%), and a third of police officers (36%) reported feeling "powerless" to intervene in suspected cases of child neglect.

An Action for Children report on the impact of spending cuts on vulnerable children and families reported an increase in the numbers of suspected cases of child neglect. Out of 48 managers of family support services, 67% reported seeing more cases of suspected child neglect than a year ago.³⁴¹

In December 2012, the Department of Health announced that a new database will be introduced in NHS hospitals in 2015 to help medical staff in the NHS identify children suffering from abuse or neglect. Doctors and nurses will be able to see if children have an existing child protection plan, or if they have frequently attended A & E or urgent care centres over a period of time, which may indicate abuse or neglect.³⁴²

335 Ofsted (April 2012) *Right on time: Exploring delays in adoption*.

336 Secretary of State for Education (September 2012) *Draft legislation on Family Justice*

337 Justice Committee (December 2012) *Pre-legislative scrutiny of the Children and Families Bill*

338 HC, 6 Nov 2012, c. 535W

339 Education Committee (November 2012) *Children first: the child protection system in England*

340 Action for Children (December 2011) *Child neglect in 2011 An annual review by Action for Children in partnership with the University of Stirling*

341 Action for Children (2012) *The Red Book 2012: The annual review of the impact of spending decisions on vulnerable children and families*

342 Department of Health (27 December 2012) *Press release: Doctors and nurses to help protect vulnerable children*

Abuse linked to faith or belief

The Department for Education issued a national action plan to tackle child abuse linked to faith or belief in August 2012.³⁴³ It does not include any specific monitoring requirements beyond those held by Local Safeguarding Children Boards in relation to abuse more generally.

Sexual Abuse and Exploitation

In November 2012, when asked what assessment the Government has made of the incidence of sexual abuse of children in England in each year since 2000 the Government replied:

The Department does not hold information on all incidences of child sexual abuse in England. However, the Department does have information available on the number of children who became the subject of child protection plans each year where the initial category of abuse was 'Sexual Abuse'.³⁴⁴

The interim report published in November 2012 by the Children's Commissioner for England as part of its Inquiry into Child Sexual Exploitation in Gangs and Groups, set out serious concerns in relation to the availability and accuracy of data highlighting child sexual exploitation. It pointed to gaps, inconsistencies, a lack of joined-up data and a lack of consistency in defining concepts and recording information. It concluded:

At local level this means that both data-sharing and the flagging-up of possible CSE cases are disjointed. At a national level this inconsistency forestalls the collation of accurate numbers of reported cases, the number of children affected, and their profile.³⁴⁵

See also concluding observation 99.

Female Genital Mutilation

There is very little data in relation to the prevalence of female genital mutilation. In a parliamentary question the Government confirmed:

The prevalence of female genital mutilation (FGM) in the UK is difficult to estimate because of the hidden nature of the crime and the Home Office has not made an estimate of the number of FGM operations in the last three years.³⁴⁶

Restraint in the Secure Estate

In its *Human Rights Review*, the EHRC stated that better data are needed on the use of restraint, especially as possible breaches of Article 3 (the right to freedom from torture, and inhumane, and degrading treatment or punishment) in these settings are not always effectively investigated.³⁴⁷ The EHRC goes on to state that since statistics on the number of injuries in each institution are not published, it is difficult to identify whether there are systemic problems in particular institutions. It also notes that *'There is no national database that records the number of times physical restraint was used, whether injuries were caused, or links this to whether an investigation was conducted. Neither is there a record of the outcome of any such investigation'*. New rules on the use of restraint in the secure estate (covering secure training centres and young offender institutions) were published in July 2012.³⁴⁸ They include proposals for better data collection in relation to the use of restraint. In October 2012 Ofsted issued a new framework for inspection of Secure Training Centres. To be graded adequate or above institutions will be required to show that

Following an incident of restraint, and when the young person is calm, they are given an appropriately early opportunity to talk about their experience with someone impartial, where possible with an advocate, and this is fully documented.³⁴⁹

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

In a study of 139 serious case reviews in England 2009-11, 63% of cases were found to have domestic abuse as a risk factor.³⁵⁰

The Government signed the Council of Europe's Convention on preventing and combating violence against women and domestic violence on 8 June 2012. The definition of women in the Convention includes girls under 18 and Article 15 of the Convention requires appropriate training of professionals. The UK Government has not yet ratified the Convention. When asked about the status of the Convention in Parliament, Jeremy Browne MP (Home Office Minister) said:

The UK already has some of the most robust protections in the world against violence towards women and we already comply

343 Department for Education (August 2012) *National action plan to tackle child abuse linked to faith or belief*

344 HC, 20 Nov 2012, c. 445W

345 Office of the Children's Commissioner for England (November 2012) *Inquiry into Child Sexual Exploitation in Gangs and Groups, Interim Report*

346 HC, 22 November 2012, c. 564W

347 Equality and Human Rights Commission (2012) *Human Rights Review*

348 See: <http://www.justice.gov.uk/youth-justice/custody/behaviour-management>

349 Ofsted (October 2012) *Inspections of secure training centres: evaluation schedule and grade descriptors*

350 Brandon, M. Sidebotham, P., Bailey, S., Belderson, P., Hawley, C., Ellis, C., & Megson, M., *New learning from serious case reviews: a two year report for 2009-2011*, Department for Education

with the vast majority of the articles of the Istanbul convention. We are currently working within Government and with the devolved Administrations to ensure that all articles are fully met before ratification.³⁵¹

In March 2012, the Government updated its action plan on violence against women and girls. Training featured very heavily in the original action plan (published in March 2011). The updated action plan includes several new proposals for training in relation to domestic violence, including:

- funding for up to 75 training places a year for independent domestic violence advisers until March 2015;
- developing training packages for chairpersons of Domestic Homicide Reviews;
- developing training packages for the voluntary and statutory sectors on supporting young people experiencing domestic violence;
- awareness raising amongst staff in the Department of Health on violence against women and girls;
- work on guidance for police on sexual and domestic violence;
- refresher training for prosecutors on violence against women and girls.³⁵²

The Government launched a pilot to test a domestic violence disclosure scheme in two police force areas. The scheme will let someone ask the police to check if a partner has a violent past. A pilot of the Domestic Violence Protection Order was also tested in three police force areas – this allows police and magistrates to prevent the perpetrator from contacting a victim for up to 28 days.

In practice support for victims of domestic violence is falling away. Women's Aid and Refuge have raised concerns that changes brought in under the Welfare Reform Act 2012 will adversely affect the support available to victims of domestic violence, leaving women with children more likely to remain in abusive relationships.³⁵³ In August 2012, Refuge warned that Universal Credit could result in it having to close all of its 297 units of refuge accommodation, having a massive impact on thousands of women and children.³⁵⁴ Thirty-one per cent of local authority funding for the domestic violence and sexual abuse sector was cut between 2010-11 and 2011-12.³⁵⁵

55 Strengthen support for victims of violence, abuse, neglect and maltreatment in order to ensure they are not victimised during legal proceedings

In January 2012, the Ministry of Justice ran a consultation on new proposals for supporting victims and witnesses. The consultation document included proposals on commissioning support services locally and revising the victim's code, including:

- Tailored support for victims;
- Reminding relevant parties that principle of open justice can be qualified in particular circumstances – such as where necessary to protect children;
- Reforming the compensation scheme to take into account public concern for vulnerable groups and those who have experienced distressing crimes, such as abuse of children.³⁵⁶

The consultation contains few specific proposals addressing the particular situation of children and young people as victims and witnesses in their own right. A joint consultation response by the NSPCC and Victim Support highlighted the deficiencies in the Government's proposals with regard to children and young people. The response noted that children as witnesses were not addressed in the consultation and called for a separate 'code' for children and young people as victims and witnesses. The two organisations also highlighted that there was no reference to safeguarding in the Government's consultation paper, called for consultation with children and young people about their needs and warned against the local commissioning of specialist services, calling instead for national commissioning of services to be delivered by 'appropriately trained local teams'.³⁵⁷ The Government response to the consultation published in July 2012 did not set out any additional proposals relating to children, although it did commit to looking at the consultation responses ahead of publishing a Victims Code in 2013 and to updating the Witness Charter.³⁵⁸

The Government's update on its own action plan to end violence against women and girls includes several new recommendations relating to victims of violence against women and girls:

- *Subject to consultation ("Getting it Right for Victims and Witnesses" published 30 January 2012), commit a proportion*

351 HC, 7 November 2012, c. 628W

352 Home Office (March 2012) *Call to End Violence against Women and Girls: Taking action – the next chapter*

353 Women's Aid (January 2012) *Social Fund Reform: Abolition Of Community Care Grants And Crisis Loans: Welfare Reform Bill Lords Report Stage Briefing*

354 Hawkins, R. (3 August 2012) 'Refugees 'under threat' from shake-up of benefit rules', BBC

355 Towers, J. and Walby, S. (January 2012) *Measuring the impact of cuts in public expenditure on the provision of services to prevent violence against women and girls*

356 Ministry of Justice (January 2012) *Getting it right for victims and witnesses*

357 NSPCC and Victim Support (April 2012) *Joint Response to Ministry of Justice consultation 'Getting it Right for Victims and Witnesses'*

358 Ministry of Justice (July 2012) *Government response to Getting it right for victims and witnesses consultation*

of up to £50m a year of additional income raised from offenders through the Victim Surcharge and other financial impositions to services for victims of domestic and sexual violence.

- Provide £125,000 to develop further initiatives to support male victims of domestic violence.
- Consider how victims in rural areas could be better supported.³⁵⁹

The EU Directive on sexual abuse of children was adopted by the Government in 2011.³⁶⁰ Member States have two years to transpose the Directive into law. The Directive includes measures to protect and support victims. It states that measures to protect child victims should:

...[B]e adopted in their best interest, taking into account an assessment of their needs. Child victims should have easy access to legal remedies and measures to address conflicts of interest where sexual abuse or sexual exploitation of a child occurs within the family. When a special representative should be appointed for a child during a criminal investigation or proceeding, this role may be also carried out by a legal person, an institution or an authority. Moreover, child victims should be protected from penalties, for example under national legislation on prostitution, if they bring their case to the attention of competent authorities. Furthermore, participation in criminal proceedings by child victims should not cause additional trauma to the extent possible, as a result of interviews or visual contact with offenders. A good understanding of children and how they behave when faced with traumatic experiences will help to ensure a high quality of evidence-taking and also reduce the stress placed on children when carrying out the necessary measures.

However, it is unclear whether the UK Government will decide to amend any domestic legislation as part of transposing the Directive into law.

The UK Government has decided to opt-in to the EU Victims Directive.³⁶¹ The Directive was adopted in October 2012. The Directive sets out minimum standards on the rights, support and protection of victims of crime. In relation to child victims, the Directive states:

In applying this Directive, children's best interests must be a primary consideration, in accordance with the Charter of

Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child adopted on 20 November 1989. Child victims should be considered and treated as the full bearers of rights set out in this Directive and should be entitled to exercise those rights in a manner that takes into account their capacity to form their own views.

See also concluding observation 112.

56 Provide access for child victims of abuse to adequate services for recovery, counselling and other forms of reintegration

The issue of child abuse has been the subject of much debate in the media and amongst politicians, following high profile allegations against Jimmy Savile during 2012. A number of historic abuse inquiries have been re-opened in the wake of the allegations.

There has been a massive increase in reporting cases of child abuse since the Jimmy Savile allegations were exposed. On 15 November 2012, the NSPCC reported that in the month following the allegations becoming public, the NSPCC Helpline experienced an increase of nearly 200% in contact from people reporting other incidents of child abuse. Over the same period, over 2,000 people downloaded NSPCC's leaflet *What can I do?* advising parents on how to protect their children against sexual abuse.³⁶² The NSPCC launched an advertising campaign in December 2012 encouraging people to come forward and report concerns about child abuse, and urging them not to think about sexual abuse as something that happened in historic cases.

However, concerns have been raised that the focus of this attention has been on the perpetrators, rather than on support for survivors.³⁶³ The Government has not said whether any provision will be made for counselling and support for those who experienced abuse in these cases.

In December 2012, child protection charity The Lucy Faithful Foundation revealed that calls to its helpline for adults to discuss concerns about sexual abuse were at a record high. In the last two years calls have risen 43% from 3,513 in 2009-10 to 5,034 in 2011-12.³⁶⁴ Along with three other children's charities (Children England, the National Association for People Abused as Children (NAPAC) and Action for Children) the Lucy Faithful Foundation

359 Home Office (March 2012) *Call to End Violence against Women and Girls: Taking action – the next chapter*

360 Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography

361 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime

362 NSPCC (15 November 2012) *NSPCC has received five calls a day about Jimmy Savile since first allegations made*

363 See, for example, Irwin Mitchell (August 2012) *Focus Needs to be on Helping Jimmy Savile Abuse Victims*

364 Lucy Faithful Foundation press release, see: <http://www.stopitnow.org.uk/files/121912%20Child%20sexual%20abuse%20helpline%20at%20its%20busiest%20after%20ten%20years.pdf>

wrote a letter to the Prime Minister stating that the Savile scandal has demonstrated that local strategies to prevent child abuse are not working and called for the Government to develop and implement a comprehensive strategy for the prevention of child sexual abuse and exploitation.³⁶⁵

In February 2012, the Deputy Prime Minister, Nick Clegg announced that £22 million would be spent on a special scheme to support young people with mental health problems.³⁶⁶ The Children and Young People's Improving Access to Psychological Therapies (IAPT) project will also help extend training for those working with young people in schools and youth groups. The money is an additional investment to the £32 million announced in October 2011 (see last year SOCR).

³⁶⁵ Children and Young People Now (December 2012) *Government urged to develop national child sexual abuse strategy*

³⁶⁶ See: <http://www.dpm.cabinetoffice.gov.uk/news/dpm-announces-extra-22-million-ground-breaking-children-s-mental-health-programme>

Section 5

Basic Health and Welfare

“Measures taken for the implementation of the rights contained in the Convention regarding children with disabilities, for example in the areas of education and health, should explicitly aim at the maximum inclusion of those children in society.”³⁶⁷

“States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.”³⁶⁸

³⁶⁷ UN Committee on the Rights of the Child (2006) *General Comment No. 6: The rights of children with disabilities Paragraph 10*

³⁶⁸ UN Convention on the Rights of the Child, Article 24 (1)

57 Develop a comprehensive national strategy for the inclusion of disabled children in society

There is no comprehensive national strategy for the inclusion of disabled children in society.

In December 2011, the Government published *Fulfilling Potential*, a discussion paper on enabling disabled people to play a full role in society,³⁶⁹ which was updated by a *Next Steps* document in September 2012.³⁷⁰ The strategy is not specifically targeted at disabled children, and save in relation to special educational needs, children are rarely mentioned in the document.

Some of the measures set out in the strategy roll back disabled children’s rights. Welfare reform, which is referred to in the *Next Steps* document as a measure to ‘reduce the risk of dependency’, is widely considered to have breached disabled people’s rights, including children. The Children’s Society, for example, raises concerns that many families with a disabled child receiving disability living allowance will see the disability element of child tax credit, currently worth £57 a week, cut to £28 under Universal Credit.³⁷¹ In relation to this change, the Children’s Commissioner stated:

We believe that the lowering of support rates for disabled children (other than the most disabled children) under UC is likely to be in breach of Article 3 UNCRC in that the best interests of the child are unlikely to have been a primary consideration in the application of this policy; and that the plans would discriminate against disabled children in this group in the enjoyment of their rights to an adequate standard of living under Article 27 UNCRC in breach of Article 2 UNCRC, in addition to being retrogressive in relation to their Article 27 rights.³⁷²

The Children’s Commissioner also raised concern about the benefits cap on disabled children:

The imposition of the household benefit cap, in our view, risks unjustified discrimination in the enjoyment of the right to social security by ... disabled children and children of disabled parents/carers.³⁷³

The *Next Steps* document refers to the Government’s plans to review the public sector equality duty, which was introduced in the Equality Act 2010.³⁷⁴ This duty, which goes beyond the

³⁶⁹ Department for Work and Pensions (December 2011) *Fulfilling Potential*

³⁷⁰ Department for Work and Pensions (September 2012) *Fulfilling Potential: Next Steps*

³⁷¹ See: <http://www.childrensociety.org.uk/news-views/press-release/autumn-statement-what-it-means-children>

³⁷² Office of the Children’s Commissioner (January 2012) *A Child Rights Impact Assessment of the Welfare Reform Bill*

³⁷³ Office of the Children’s Commissioner (January 2012) *A Child Rights Impact Assessment of the Welfare Reform Bill*

³⁷⁴ Equality Act 2010, s. 149

prohibition of discrimination, to require those carrying out public functions to consider how they can positively promote equality of opportunity, has the potential to be transformative for disabled children. Having only been in force since 5 April 2011, a review of its effectiveness is premature, if not impossible.

In September 2012, the Government published draft legislation setting out its proposals for reform of the system for identifying, assessing and making provision for children with special educational needs and disability.³⁷⁵ The Government plans to implement the draft clauses via the Children and Families Bill to be introduced in Parliament in 2013, although the Minister recently informed the Education Select Committee that the pilots for the new proposals would be extended until 2014.

The Bill would replace the existing system of “statements” with a single Education, Health and Care Plan (EHC Plan). It will introduce a requirement for local authorities and health services to jointly plan and commission services for children and young people with special educational needs and gives parents or young people the right to manage a personal budget for their support (this right is only likely to be available in situations where funds have not already been committed through block contracts).

The concept of a multi-agency plan covering a range of a child's needs has been broadly welcomed.³⁷⁶ However, there are concerns as to whether the new provisions will have any impact on ensuring that disabled children's non-educational needs are met. The draft legislation does not impose duties on health and social care bodies to deliver what is in an EHC Plan – only education bodies will be obliged to comply with the plan, replicating one of the flaws in the current statementing system. It is also unclear whether the new proposals will benefit those children with special educational needs who do not have a sufficient level of need to make them entitled to an EHC Plan. Concerns have also been raised that the draft legislation does not clearly cover those with disabilities other than a special educational need.³⁷⁷ Under the proposals, local authorities would be required to publish information on its “local offer” of education, health and care services. However, there is a lack of detail as to what services a local authority would be expected to provide, and a lack of compulsion to actually provide those services set out in the local offer for children without an EHC Plan.

The provisions would apply directly to mainstream schools, including academies (and free schools), maintained schools and colleges. This represents a welcome extension to academies of the duty to admit children with special educational needs, which was previously unclear. However, children in custody will not benefit from these proposals as they will remain excluded from the new system.

58 Develop early identification programmes for disabled children



The Nutbrown Review of early education and childcare qualifications was published in June 2012.³⁷⁸

It stated that no study of child development would be complete without a solid understanding of special educational needs and disability and stressed that qualifications should be improved to equip early years practitioners to identify special needs and disability:

Early years practitioners need to know what to look for, how to respond to it, and how to interact with parents and the range of other bodies, professionals and services that may play a part in supporting a child with special educational needs or who is disabled.

The Government's response had not been published at the time of writing.

The Government's Green Paper on children and young people with SEN and disabilities emphasised the need ‘to ensure high quality early identification and intervention for all children where they need it’.³⁷⁹ Draft legislation published in September 2012 would change the assessment process for the identification of SEN.³⁸⁰ SEN statements and separate learning difficulty assessments (for older children) are to be replaced with a single birth to 25 years assessment process from 2014. The threshold for an assessment leading to an EHC Plan is that a school is unable to meet a child or young person's special educational needs. Disabled children who do not have special educational needs, but have health and care needs, are, therefore, unable to access this process of assessment. Younger children, who have not yet started formal education, are not covered by these frameworks.

The Early Support Programme provides support for parents and carers of disabled children and young people in accessing health, education and social care and offers a key working practitioner who

375 Department for Education (Sept 2012) *Draft legislation on reform of provision for children and young people with special educational needs*

376 See: Education Committee (October 2012) *Written evidence from the Every Disabled Child Matters campaign and the Special Educational Consortium*

377 See: Education Committee (October 2012) *Written evidence from the Every Disabled Child Matters campaign and the Special Educational Consortium*

378 Nutbrown Review (June 2012) *Foundations for Quality: The independent review of early education and childcare qualifications – Final report*

379 Department for Education (March 2011). *Support and Aspiration: A new approach to special educational needs and disability – A consultation*

380 Department for Education (March 2011). *Support and Aspiration: A new approach to special educational needs and disability – A consultation*

acts as a single point of contact, coordination and support. The Early Support Programme has been widely praised for delivering integrated support to families with young disabled children, and for playing an important role in securing early intervention resources,³⁸¹ including the Early Support family pack which has important information to enable families to access services. However concerns have been raised that access to Early Support is patchy across local authorities. A report by Every Disabled Child Matters found that only 65% of local authorities stated that they provided key working in response to Freedom of Information requests, and found a lack of accessible information about those key working services which are offered.³⁸² Every Disabled Child Matters notes that this is particularly concerning given the important role envisaged for key workers in the new system of support for children with special educational needs and disability.

There are also concerns about how changes to the Early Intervention Grant (EIG) will impact upon early identification. The EIG replaced a number of centrally directed grants to support services for children, young people and families. The grant is not ring-fenced, and Government information indicates that it can support a full range of services for children, young people and families, which, subject to local decision making, may include Sure Start children's centres, free early education places for disadvantaged two-year-olds, short breaks for disabled children, targeted support for vulnerable young people, targeted mental health in schools and targeted support for families with multiple problems. While the Government has announced that the 2011-12 EIG of £2,222,555,697 will go up to £2,365,200,000 in 2012-13, concerns have been raised that because this funding will need to fund a new entitlement to early education for two-year-olds, and £150 million of the grant will be top-sliced, this will in fact constitute a loss of money available for other early intervention services.³⁸³ The Government has also announced that from April 2012 the Early Intervention Grant will be rolled into a business rates retention scheme. When asked what support it plans to provide to local authorities to enable them to maintain spending on early intervention at existing levels when the early intervention grant is rolled into the rate support grant, the Government replied:

*The Business Rates Retention Scheme will give local authorities the flexibility and freedom to direct resources to meet priority needs of their communities. We will be retaining visibility of the Early Intervention Grant resources being rolled into the scheme by publishing the funding profile for each local authority.*³⁸⁴

Moves have been made to improve identification of disabilities in the youth justice system. The Department of Health and Youth Justice Board has commissioned a Comprehensive Health Assessment Tool (CHAT) for the assessment of children entering custody, which includes screening for neurodevelopmental disorders. It is also being validated for use within community youth offending services. This is particularly welcome, given that a report published by the Children's Commissioner in October 2012 found that *'there are indeed likely to be large numbers of young people currently in secure settings in England who have undiagnosed neurodevelopment conditions'*.³⁸⁵ However, the Children's Commissioner made two recommendations indicating that more needs to be done to promote the early identification of neurological disorders amongst children outside of the youth justice system:

Department for Education and Public Health England should support the implementation of an assessment framework for schools and educational support services, so as to provide early and timely identification of potential underlying neurodisability amongst young people as soon as symptoms such as behavioural difficulties are apparent, with access to relevant specialist consultation and assessment.

All staff in education services, family intervention projects, social services and primary health care settings should be provided with the training and support needed to understand issues relating to neurodisability, recognise the problems as they emerge, and refer to relevant specialist services for further assessment and intervention.

59 Undertake awareness-raising campaigns on the rights and special needs of disabled children, encouraging their inclusion in society and preventing discrimination and institutionalisation

There has been no awareness-raising campaign on the rights and special needs of disabled children.

However, awareness of the rights and special needs of people with disabilities in general was raised to some extent by the Paralympic Games being held in London in August and September 2012. According to one poll, 81% of British adults believe that the Paralympics 2012 had a positive impact on the way disabled people are viewed by the public.³⁸⁶

381 Every Disabled Child Matters (September 2012) *Unlocking Key Working: Information and Transparency for Families with Disabled Children*

382 Every Disabled Child Matters, *Unlocking Key Working: Information and Transparency for Families with Disabled Children*, September 2012.

383 HC, 29 October 2012, c.7

384 HL, 17 December 2012, c.580W

385 Office of the Children's Commissioner (October 2012) *Nobody made the connection: The prevalence of neurodisability in young people who offend*

386 See <http://www.ipsos-mori.com/researchpublications/researcharchive/3038/Superhuman-Paralympians-change-view-of-disabled-people.aspx>

In September 2012, the Government's *Next Steps* document,³⁸⁷ which outlined areas for action to promote the inclusion of disabled people, proposed new ways to tackle disability hate crime. The number of incidents of disability hate crime reported to police in England, Wales and Northern Ireland rose significantly between 2010 and 2011, from 1,569 to 1,937 while the number of all reported hate crimes fell from just over 48,000 to just over 44,000.³⁸⁸

60 Provide training for professionals working with disabled children



The Nutbrown Review recommended that the Level 3 qualifications currently required for those managing early years group settings should be strengthened to include more child development and play, more on special educational needs and disability, and more on inclusivity and diversity, and also that qualifications focus on the birth to seven age range.³⁸⁹ The Government had not responded at the time of writing.

On 15 May 2012, the Department for Education published its response to the formal consultation on the Green Paper, *Support and Aspiration: a new approach to special educational needs and disability*, and set out the next steps to implement the measures set out in the Green Paper.³⁹⁰ The Department for Education stated that it is working with the Council for Disabled Children to develop the expertise needed to support the proposed reforms. The document states that progress has already been made in developing the knowledge and skills of teachers, lecturers and other staff to support children with special educational needs and disabilities through:

- Launching scholarship schemes for teachers and talented support staff to improve their knowledge and expertise;
- Increasing the number of special school placements available for trainees undertaking initial teacher training by around four hundred places;
- Providing funding for the mandatory training of up to nine thousand special educational needs coordinators (SENCOs); and
- Continuing professional development and developing a greater focus on special educational needs within standards for qualified teacher status and the new professional qualification for headship.³⁹¹

Since September 2009, every new SENCO in a mainstream school must gain Masters-level training, within three years of taking up the post. The Department for Education is funding 1,000 places for 2012-13.³⁹²

There are concerns as to whether GPs have had sufficient training to commission effectively for the complex needs of disabled children, following changes brought in by the Health and Social Care Act 2012.³⁹³

61 Take all necessary measures to ensure that protective legislation, programmes and services for disabled children are effectively implemented

The Equality Act 2010 contained a new public sector equality duty, which requires those carrying out public functions to consider how to promote equality of opportunity for disabled children and set equality objectives.³⁹⁴ In its disability strategy document, *Fulfilling Potential – Next Steps*, the Government stated it will review the public sector equality duty in general.³⁹⁵ The disability charity, Scope, commented that the review is too hasty as it is too soon to see what the impact of the new duties are and that any weakening of the duty would 'pose a significant risk of undermining the progress [made] towards disability equality to date.'³⁹⁶

A positive change under the Equality Act 2010 is the extension of the reasonable adjustment duty, which now requires schools to provide auxiliary aids and services to disabled pupils.³⁹⁷ This came into force on 1 September 2012.

Since 2011, local authorities have been under a duty to provide a range of short breaks services for disabled children, young people and their families, and also to publish a statement about the services they provide. In January 2012, Every Disabled Child Matters produced a report, *Short Breaks Services Statements: Commitment and Transparency*.³⁹⁸ The report found a high level of legal compliance with the duty, with 98% of local authorities providing all the services they needed to, and more local authorities were operating high quality eligibility criteria. Concerns included that some areas were limiting access to short breaks through legally questionable criteria and that some local authorities needed to make published information easier to navigate for families. The provision of

387 Department for Work and Pensions (September 2012) *Fulfilling Potential Next Steps: Working together to enable disabled people to fulfil their potential and have opportunities to play a full role in society*

388 See: [http://www.report-it.org.uk/files/final_acpo_hate_crime_data_2011_\(revised_oct_2011\)_1.pdf](http://www.report-it.org.uk/files/final_acpo_hate_crime_data_2011_(revised_oct_2011)_1.pdf)

389 Nutbrown Review (June 2012) *Foundations for Quality: The independent review of early education and childcare qualifications – Final report*

390 Department for Education (2012) *Support and Aspiration: A new approach to special educational needs and disability – Progress and Next Steps*

391 Department for Education (2012) *Support and Aspiration: A new approach to special educational needs and disability – Progress and Next Steps*

392 Department for Education (2012) *Support and Aspiration: A new approach to special educational needs and disability – Progress and Next Steps*

393 The Children's Trust Tadworth and Every Disabled Child Matters (October 2011) *Disabled Children and Health Reform: Questions, Challenges and Opportunities*

394 Equality Act, s.149

395 Department for Work and Pensions (September 2012) *Fulfilling Potential Next Steps: Working together to enable disabled people to fulfil their potential and have opportunities to play a full role in society*

396 See: <http://www.scope.org.uk/news/blogs/scope-blog/equality-duty>

397 Equality and Human Rights Commission (2012) *Reasonable adjustments for disabled pupils*

398 Every Disabled Child Matters (January 2012) *Short Breaks Services Statements: Commitment and Transparency*

key workers for families with disabled children has also been found to be patchy.

A 2012 Ofsted report on the effectiveness of child protection work for disabled children in 12 local authorities (LA) found that children in receipt of child in need services *'too often had child protection needs which went unidentified.'*³⁹⁹ The report found that when *'when child protection concerns were clear they were investigated promptly'*. However where concerns were less clearly defined, and especially where they related to neglect, the report found that there were *'delays in some disabled children getting the right level of support and intervention needed to protect them.'*⁴⁰⁰

62 Ratify the International Convention on the Rights of Persons with Disabilities and its Optional Protocol

This has been achieved. The UK ratified the UN CRPD and its Optional Protocol on 8th June 2009.

63 Address inequalities in access to health services through a co-ordinated approach across all Government departments

The 2010 report *Fair Society, Healthy Lives* (Marmot review) from the UCL Institute of Health Equity showed that health inequality is a major public health concern in England.⁴⁰¹ Two years after the Marmot review was published, updated data shows that *'health inequalities widen within most areas of England'*. While there is an overall increase of 3% for children achieving a good level of development at age five, geographical differences remain. The largest increase in the percentage of children achieving a good level of development at age 5 was seen in Slough (13%). In contrast there was an overall decrease of the proportion of children achieving a good level of development by age 5 in East Sussex of (nearly) 4%.⁴⁰² In commenting on these findings, Michael Marmot concludes:

*The task therefore remains to improve the health for the majority of the population if we are to level the social gradient – this must be the focus for the Coalition Government if they are to reduce health inequalities.*⁴⁰³

The Children and Young People's Health Outcomes Forum's (CYPHOF) Report published in July 2012 restated the view that outcomes for children and young people will be improved if the wider health system pays greater attention to inequalities.⁴⁰⁴ The report states that *'breaking the link between disadvantage and poor physical and mental health is crucial to narrowing the health gap and maximizing opportunities for children and young people and the generations to follow.'*

The Health and Social Care Act 2012 imposes a new duty on the Secretary of State, the NHS Commissioning Board and local authorities to have regard to the need to reduce inequalities between people in England,⁴⁰⁵ which was welcomed by the CYPHOF.⁴⁰⁶ This has the potential to address inequality of access to health services, though the impact is yet to be seen.

The Health and Social Care Act 2012 also transfers part of the responsibility for delivery of core public health services from the NHS to local authorities from April 2013. These changes may have a positive impact on inequalities in public health, because local authorities also control other key determinants of a child's health, such as housing. However, some have raised concerns that differences in funding for, and commitment to, public health across local authorities will lead to varying levels of service.⁴⁰⁷ Concerns have also been raised that the localisation of responsibility for public health may make it more difficult to gather data indicating whether inequalities exist and how services are resourced.⁴⁰⁸

There are concerns that the fragmentation of commissioning arrangements brought about as a result of changes to the health system may pose problems for certain groups with complex needs, such as children with long-term conditions and disabilities, and for looked after children.⁴⁰⁹ The removal of the public health function from the NHS has been said to diminish its ability to contribute to service planning and evaluation,⁴¹⁰ and thus its ability to guard against the fragmentation of health services.

There is still no Minister responsible for children's health in the Department for Education which may undermine the extent to which inequality in access to health services is addressed in a coordinated way across Government.

399 Ofsted press release (22 August 2012) *Protecting disabled children*

400 Ofsted (August 2012) *Protecting disabled children: thematic inspection*

401 UCL Institute of Health Equity (February 2010) *Fair Society, Healthy Lives: The Marmot Review*

402 UCL Institute of Health Equity (February 2012) *'Two Years On' Data*

403 UCL Institute of Health Equity (15 February 2012) *Health inequalities widen within most areas of England*

404 Children and Young People's Health Outcomes Forum (July 2012) *Report of the Children and Young People's Health Outcomes Forum*

405 Health and Social Care Act 2012

406 Children and Young People's Health Outcomes Forum (July 2012) *Report of the Children and Young People's Health Outcomes Forum*

407 Torjesen, I. (20 June 2012) "Public health reforms are a shot in the arm for localism: Councils will soon take responsibility for many aspects of public health. But how will this actually be working in partnership to deliver services?", *The Guardian*

408 British Medical Journal (BMJ) (26 April 2012) *Dismantling the signposts to public health? NHS data under the Health and Social Care Act 2012*

409 See: Office of the Children's Commissioner (March 2011) *Parliamentary Briefing: The Health and Social Care Bill 2011*

410 Wolfe, I. et al. (April 2011) "Improving child health services in the UK: insights from Europe and their implications for the NHS reforms", *British Medical Journal*, Vol. 342

64 Better co-ordinate health policies with those aiming to reduce income inequality and poverty

While there is significant read-across between policies and strategies seeking to address poverty and those relating to health, persistent links between health inequality and poverty remain strong in practice, and there are concerns that they may increase.

The Government's 2011 Child Poverty Strategy recognises the link between child poverty and both a parent's and child's health.⁴¹¹ It pledged an additional 4,200 health visitors by 2015 to extend coverage of the Healthy Child Programme (though see concluding observation 67 as to whether this target is likely to be met). The 2012 Social Justice strategy emphasises the link between social justice and the need to improve health inequalities.⁴¹² The Government's 2011 strategy for social mobility states that *'improving all children's health and development outcomes from conception to age five is central to this Government's vision of a fair and socially mobile society'*.⁴¹³ At the local level, the links between health policies and those policies aimed at reducing poverty are less obvious. The relationship between Health and Well-being Boards and existing children's partnership arrangements is unclear and is likely to vary,⁴¹⁴ meaning that the extent to which there is coordination between local child poverty strategies and health and wellbeing strategies is also likely to differ across different areas.

In practice, different groups enjoy unequal health outcomes. The UCL Institute of Health Equity notes, for example, that *'inequalities in the social determinants of health contribute significantly to inequalities in health: for example, the percentage of children achieving a good level of development by age five in 2011 ranged from 50.3 per cent in Tower Hamlets to 70.1 per cent in Richmond upon Thames'*.⁴¹⁵ The CYPHOF highlights that specific groups of children routinely experience poor health outcomes and high levels of disadvantage.⁴¹⁶

As a result of the current economic recession and cuts to welfare, health inequalities are likely to increase. A report by the UCL Institute of Health Equity studying the likely impact of recession and welfare cuts on health equity in London found that:

*Evidence from past recessions suggests that inequalities in health according to socioeconomic group, level of education and geographical area are likely to widen following an economic crisis.*⁴¹⁷

It also emphasises that while welfare provision can be used to guard against the impact of poverty on health, cuts to welfare mean that during this recession, health inequalities are likely to widen.

CYPHOF recommended that there should be increased collection and analysis of data indicating links between health inequality and other disadvantages:

Directors of Public Health, through their health and wellbeing board, should ensure that they include comprehensive data for all children and young people within their Joint Strategic Needs Assessment – including those requiring tailored provision, such as those who are looked after, those with disabilities and long term conditions and those in contact with the criminal justice system.

The CYPHOF report makes recommendations relating to the Public Health Outcomes Framework with regard to the need to monitor health inequalities. The Forum calls for indicators on public health to be analysed by specific risk factors, such as deprivation. *Improving outcomes and supporting transparency*,⁴¹⁸ the first part of the Public Health Outcomes Framework published in January 2012 includes an indicator on children in poverty. The document states that further work on indicators relating to children will be developed as a result of the work by the CYPHOF. The *NHS Outcomes Framework 2013/14*⁴¹⁹ published in November 2012 includes an indicator on the 'Potential Years of Life Lost from causes amenable to healthcare for children and young people' (this relates to issue of poverty and inequality as raised by the CYPHOF report). At the time of writing the Government has still not responded in full to the recommendations made by the CYPHOF.

65 Provide additional resources and support for children with mental health difficulties, including a focus on children deprived of parental care, children affected by conflict, those living in poverty and those in conflict with the law

In February 2012, the Deputy Prime Minister, Nick Clegg announced that £22 million would be spent on a special scheme to support young people with mental health problems.⁴²⁰ The Children and Young People's Improving Access to Psychological Therapies (IAPT) project will also extend training for those working

411 Department for Education (April 2011) *A New Approach to Child Poverty: Tackling the Causes of Disadvantage and Transforming Families' Lives*

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

413 Cabinet Office (April 2011) *Opening Doors, Breaking Barriers: A Strategy for Social Mobility*

414 The Kings Fund (April 2012) *Health and wellbeing boards: System leaders or talking shops?*

415 UCL Institute of Health Equity (June 2012) *The impact of the economic downturn and policy changes on health inequalities in London*

416 Children and Young People's Health Outcomes Forum (July 2012) *Report of the Children and Young People's Health Outcomes Forum*

417 UCL Institute of Health Equity (June 2012) *The impact of the economic downturn and policy changes on health inequalities in London*

418 Department of Health (January 2012) *Improving outcomes and supporting transparency*

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

420 Department of Health press release (29 February 2012) *Too many young people "suffering in silence" with mental health problems*

with young people in schools and youth groups. The money is an additional investment to the £32 million announced in October 2011 (see last year SOCR). According to the Children and Young People's IAPT website: '*Children and Young People's IAPT is a service transformation project for Child and Adolescent Mental Health Services (CAMHS) that focuses on extending training to staff and service managers in CAMHS and embedding evidence based practice across services, making sure that the whole services, not just the trainee therapists, use session-by-session outcome monitoring.*'⁴²¹

In schools, early intervention and preventative mental health services are funded via the 'Targeted Mental Health in Schools' funding, which has been included in the Early Intervention Grant. However, the extra pressure on this grant brought about as a result of the commitment to fund free childcare places for two year-olds, the top-slicing of the grant, and its future inclusion within the business rates retention scheme, may jeopardise the extent to which it can be spent on mental health services.⁴²²

However, concerns as to access and quality remain. In a survey of over 300 staff working in children and young people's mental health services carried out by YoungMinds, many reported that the services they provided were affected by cuts.⁴²³ 77% of CAMHS staff reported a cut in the 2012-13 budget and 74% reported a drop in staffing numbers. 68% said the threshold for accessing services had increased because of budget changes. Mental health services provided by the voluntary sector are also under pressure. Action for Children published research showing the impact of the poor economic climate and austerity measures on those providing specialist services to children, including mental health services. It found '*essential provision disappearing*', owing to funding cuts, as well as increasing demand, making services less accessible than previously. Twenty-seven per cent of the managers spoken to by Action for Children said they had seen a reduction in mental health services.⁴²⁴ A report published by YoungMinds in February 2012 found that '*some young people who had been involved with CAMHS said that they found the service helpful but wished they had received assessments earlier rather than waiting lengthy periods to get support*'.⁴²⁵ The Children and Young People's Health Outcomes Forum Report notes that many clinical staff working with children in relation to mental health have insufficient training to be able to do so effectively.⁴²⁶

Research by the Children's Commissioner found that children face significant barriers in making complaints about mental health services.⁴²⁷

There also needs to be more data in relation to mental health outcomes for children. The Children and Young People's Health Outcomes Forum Report (published in July 2012) made several recommendations relating to mental health. In order to better monitor children and young people's experience of health care the Forum recommends a survey '*to support measurement of outcomes for children with mental health problems*'. The Forum also calls on the Government to develop a population based survey of children and young people in order to monitor trends in health and wellbeing, this would include information gathered at a local level on the '*percentage of children and young people with mental health problems who experience stigma and discrimination*'.

The need for mental health services is overwhelming. According to YoungMinds, '*Children and young people are under pressure like never before. It is estimated at least 850,000 children and young people suffer from a diagnosable mental health problem in England, which equates to 3 children in every classroom.*'⁴²⁸ Research emphasises the needs of particular groups. Qualitative research conducted by YoungMinds in 2012 among 50 young people from residential homes, secure settings and foster placements found that looked after children are subject to mental stress that stems from stigmatisation in school, the experience of changing placements, and changes to the staff on which young people rely.⁴²⁹ The Children's Society published a report on young peoples' experiences with the UK asylum system in 2012. Interviews with 33 asylum-seekers aged between 13 and 20 showed that the young people perceive the asylum process as a 'confusing and emotionally distressing time'. A number of young people reported angry and aggressive behaviour towards them. One participant reported on his asylum interview:

*My interview was the worst experience that I have in my whole life. He was so angry with me and there was a part of my case that I need help for my health... and he asked 'why you didn't die!' Isn't it rude?*⁴³⁰

Recent research published by HMIP and the YJB found that 27% of all young men stated that they felt they had emotional or mental health problems, a significantly higher proportion than in 2010-11.⁴³¹

421 See: <http://www.iapt.nhs.uk/silo/files/cyp-iapt-key-facts-briefing-29-feb-2012.pdf>

422 HC, 23 October 2012, c. 825

423 YoungMinds (December 2012) *Survey reveals worrying state of CAMHS*

424 Action for Children (2012) *The Red Book 2012: The annual review of the impact of spending decisions on vulnerable children and families*

425 YoungMinds (February 2012) *Improving the Mental Health of Looked After Young People: an exploration of mental health stigma*

426 Children and Young People's Health Outcomes Forum (July 2012) *Report of the Children and Young People's Health Outcomes Forum*

427 Street, C., Anderson, Y., Allan, B., Katz, A., Webb, M., and Roberson, J. (July 2012) '*It takes a lot of courage*': Children and young people's experience of complaints procedures in services for mental health and sexual health including those provided by GPs

428 YoungMinds press release (19 June 2012) *Children's minister launches Initiative to Improve Mental Health*

429 YoungMinds (February 2012) *Improving the Mental Health of Looked After Young People: an exploration of mental health stigma*

430 YoungMinds press release (19 June 2012) *Children's minister launches Initiative to Improve Mental Health*

431 Murray, R. (2012) *Children and Young People in Custody 2011-12: An analysis of the experiences of 15-18-year-olds in prison*, Her Majesty's Inspectorate of Prisons and Youth Justice Board

Of those who said they experienced mental health problems, Only half reported that they were being helped with them by someone in the establishment. Thirty-nine per cent of young women (n=9) felt that they had emotional or mental health problems and, of those, 80% (n=7) said that they were receiving help with them.

The Government is devoting attention to the mental health needs of some groups with particular needs. The 2011 strategic paper on public mental health provision "No Health without Mental Health" refers specifically to the particular mental health needs of children in care and young asylum-seekers.⁴³² In its Implementation Framework⁴³³ for *No Health without Mental Health*, published in July 2012, the Government confirmed that it is considering including 'Emotional wellbeing of looked after children' as an indicator in its 'national mental health dashboard'. This tool will bring together data on outcomes from the three health Outcomes Frameworks to give a quick picture of mental health. It also referred to the Comprehensive Health Assessment Tool (CHAT), which the Department of Health and Youth Justice Board has commissioned for the assessment of children entering custody, which includes screening for mental health problems.

66 Fully implement the International Code of Marketing of Breastmilk Substitutes

The Government has not fully implemented the International Code of Marketing of Breastmilk substitutes.

Baby Milk Action, which analyses potential beaches for the Baby Feeding Law Group, has found examples of breastmilk substitutes, such as follow-on formula, being widely advertised and promoted using the same branding as infant formula. It has also seen examples of companies seeking direct and indirect contact with pregnant women and mothers of infants by promoting mother and baby clubs, distributing leaflets to health facilities and advertising on bedside media players in maternity wards. It reports that some companies target health workers with non-scientific information, offer them gifts and sponsor events. It suggests that the labelling of infant formula and other breastmilk substitutes contains idealising text and images, including shields, cuddly animals, a stylised breastfeeding image and other health and nutrition claims. Baby Milk Action also notes that the Department of Health has scrapped Infant Feeding Coordinators posts.⁴³⁴

432 Department of Health (2011) *No Health without Mental Health: Delivering better mental health outcomes for people of all ages*

433 Department of Health (July 2012) *No health without mental health: implementation framework*

434 Email from Baby Milk Action to CRAE dated 6 December 2012

Baby Milk Action reports a positive development from one region in England. NHS Blackpool and North Lancashire have established an Infant Feeding Information Team (IFIT).⁴³⁵ The IFIT is a multi-disciplinary team of experts who review information on breastmilk substitutes and provide a monthly update with required information to health workers in their region. Baby Milk Action notes that the 'operation of IFIT has been reviewed by the University of Central Lancashire and recommended as a model for other regions and nationally, but that has not yet been taken up by the Government'.⁴³⁶

The Infant Feeding Survey, published in November 2012 found that the use of follow-on formula had increased by Stage 3 of the survey (when babies are eight to 10 months old) from 53% of women surveyed in 2005 to 69% of women surveyed in 2010. The report considers this may reflect more active marketing of follow-on formula in recent years.⁴³⁷ In 2012, following 64 complaints, the Advertising Standards Authority (ASA) ruled that an advert for SMA Follow-on Milk had breached the Committee of Advertising Practice (CAP) code. The adjudication concluded that 'we did not see evidence that SMA Follow-on Milk was the best alternative to breast milk once breastfeeding had stopped, or that it was superior to other follow-on milk'.⁴³⁸

67 Encourage the inclusion of breastfeeding in nursery training

Breastfeeding initiation rates have stayed broadly the same since 2011-12. According to official figures the breastfeeding initiation rate was 73.9% in Quarter 2 of 2012-13, just less than the annual percentage for 2011-12 (74.1%), and slightly higher than rates in 2010-11 (73.7%), 2009-10 (72.8%) and 2008-09 (71.7%). The prevalence of breastfeeding at 6-8 weeks in 2012-13 in Quarter 2 was 47.4%, slightly less than the figure of 47.6% for Quarter 2 in 2011-12.⁴³⁹

The *2010 Infant Feeding Survey*, published in November 2012, shows an increase in exclusive breastfeeding. Figures show that at three months, the number of mothers breastfeeding exclusively was 17% (up from 13% in 2005) and at four months, 12% of mothers were breastfeeding exclusively (up from 7% in 2005). However, exclusive breastfeeding rates at six months, (the

435 Email from Baby Milk Action to CRAE dated 6 December 2012

436 Email from Baby Milk Action to CRAE dated 6 December 2012

437 Fiona McAndrew, F, Thompson, J., Fellows, L., Large, A., Speed M., and Renfrew M, J. (November 2012) *Infant Feeding Survey 2010*, Health and Social Care Information Centre

438 See: http://www.asa.org.uk/Rulings/Adjudications/2012/9/Pfizer-Ltd/SHP_ADJ_190812.aspx

439 Department of Health (2012) *Breastfeeding Initiation and Prevalence at 6 to 8 weeks Quarter 2, 2012/13* The Telegraph (2012) *Breastfeeding boom among older, affluent mothers*

recommendation from the World Health Organisation), remained low at around 1% of mothers.⁴⁴⁰

There are large discrepancies in breastfeeding rates between different regions and socio-economic groups. Women who hold professional jobs with higher levels of education are most likely to breastfeed. 90% of women in professional occupations began breastfeeding compared to 74% of those in routine occupation and 71% of those who had never worked.⁴⁴¹ 91% of women who left full-time education after the age of 18 breastfeed, while amongst those who left at or prior to the age of 16 only 63% were found to breastfeed.⁴⁴²

The Government has invested in professionals who have a role to play in encouraging breastfeeding. At the Royal College of Midwives (RCM) conference held on the 13 November 2012, Health Minister Dr. Dan Poulter said that there will be more qualified midwives in the coming years: *'Maternity services are my priority over the next two years ahead. We are committed to ensuring that we've got the right number of trained midwives in work.'*⁴⁴³

The Government has also allocated an extra £100 million in funding for NHS midwives and nurses to provide the most recent technology which, it is hoped, will allow midwives more time with their patients and an additional £40 million to help ward sisters and community team leaders develop leadership skills. The money will fund training for 1000 staff this year.⁴⁴⁴

The RCM has estimated that 4,700 more midwives are needed across England and has established an e-petition calling on the Government to recruit the equivalent of 5000 more full-time midwives.⁴⁴⁵

The Government has also pledged an additional 4,200 health visitors by 2015 to extend coverage of the Healthy Child Programme. There are, though, questions as to whether this target will be met – the number of full time equivalent (FTE) health visitors in May 2010 was 8,092. By May 2012 this had risen to only 8,431 FTE.⁴⁴⁶ The Government has said that these figures are in line with expectations.

68 Promote baby-friendly hospitals



There are currently 261 UK maternity hospitals and 109 Primary Care Trusts at various stages of “baby friendly” accreditation.⁴⁴⁷ In November 2011, there were 236 maternity hospitals and 98 Primary Care Trusts at various stages of accreditation. Stage 1 assesses hospital policies and procedures, Stage 2 assesses the staff education programme and Stage 3 assesses the care provided to women and new mothers.⁴⁴⁸

Out of all the countries in the UK, England still has considerably the lowest number of births in baby friendly hospitals. Currently England only has 21.1% of births in accredited hospitals, while Scotland has 78.8%, Wales 69.1% and Northern Ireland 57.8%.⁴⁴⁹

There continue to be stark regional variations in the percentage of children born in baby friendly hospitals in England: 53% of births were in baby friendly hospitals in the South West and 41% of births were in baby friendly hospitals in the North West, compared with none in the East of England.⁴⁵⁰

69 Provide appropriate reproductive health services for young people



The Government White Paper on public health, published in 2010 included a commitment to working towards *'an integrated model of service delivery to allow easy access to confidential, non-judgemental sexual health services (including for sexually transmitted infections, contraception, abortion, health promotion and prevention).'*⁴⁵¹ The White Paper stated that it would publish a number of policy documents setting out the Government's approach in more detail. One of these would be on sexual health. In response to a parliamentary question in October 2012, Earl Howe announced that the Government was planning to publish its sexual health policy document *'later this year'*.⁴⁵² At the time of writing, the policy document had not been published.

Figures from the National Chlamydia Screening Programme based on data from Primary Care Trusts indicated that between 1 April 2011 and 31 March 2012, 28.5% of 15-24 year-olds had been tested.⁴⁵³

440 Fiona McAndrew, F., Thompson, J., Fellows, L., Large, A., Speed M., and Renfrew M, J. (November 2012) *Infant Feeding Survey 2010*, Health and Social Care Information Centre

441 Fiona McAndrew, F., Thompson, J., Fellows, L., Large, A., Speed M., and Renfrew M, J. (November 2012) *Infant Feeding Survey 2010*, Health and Social Care Information Centre

442 Ibid.

443 Royal College of Midwives (2012) *More midwives says health minister*

444 Royal College of Midwives (2012) *Extra government funding announced*

445 Royal College of Midwives (2011) *Rocketing Birthrate Fuels English Regional Midwife Shortages*

446 Department of Health (October 2012) *Health Visitor Implementation Plan Quarterly Progress Report: July-September 2012*

447 See: http://progress.babyfriendly.org.uk/htables/all_awards_list.asp

448 See: <http://www.unicef.org.uk/BabyFriendly/About-Baby-Friendly/Awards/What-are-Baby-Friendly-awards/>

449 See: http://progress.babyfriendly.org.uk/htables/country_overview.asp

450 See: http://progress.babyfriendly.org.uk/htables/country_view.asp

451 Department for Health (2010) *Healthy lives, healthy people: our strategy for public health in England*

452 HL, 25 October 2012, c.75W

453 National Chlamydia Screening Programme (2012) *Chlamydia Testing Data 2011/12 Primary Care Trust (PCT) and Strategic Health Authority (SHA) specific tables 1st April 2011 to 31st March 2012*

70 Increase provision of appropriate sex and relationships education in schools

Sex and relationships education (SRE) is still not a compulsory subject in schools in England and section 405 of the Education Act 1996 still enables parents to withdraw their children from sex education (other than the sex education that is in the National Curriculum). Evidence suggests that many children miss out on high-quality sex and relationships education in schools.

Sex and relationship education currently forms part of personal, social and health education, which is not a statutory requirement. The Government carried out a review of PSHE in 2011. The Government is yet to publish a response to the review, but the review document made clear that the Government does not propose to change the law relating to sex and relationship education, and the Government has since said that *'We believe that teachers should be free to use their professional judgment to decide what to include in PSHE lessons, according to needs of their pupils'*.⁴⁵⁴ A report from a cross-party inquiry published in December 2012 recommended that the Government should make sex and relationship education compulsory.⁴⁵⁵

The quality of SRE has also been criticised. An overwhelming majority of respondents to an on-line survey carried out by a cross-party inquiry were not fully satisfied with the teaching, for themselves or their children. Forty-two per cent of participants felt *'the service was adequate but doesn't cover everything'* and another 40% felt *'it wasn't effective'* at all, with only 1.8% responding that *'it seems to be really good, and meets my/my children's needs'*.⁴⁵⁶

Some limited aspects of sex education, such as the biological aspects of human growth and reproduction are part of the science National Curriculum, and so must be taught. However, as an increasing proportion of schools become academies and free schools, which are not required to follow the National Curriculum, the extent to which these subjects are taught is uncertain.

In response to a parliamentary question on when the government plans to update the SRE guidance for PSHE lessons, the Government said that the existing guidance *'already provides schools with a sound set of principles to ensure that pupils receive age-appropriate support through their physical, emotional*

*and moral development...The Guidance is being considered as part of an internal review of personal, social, health and economic education. We have conducted a consultation and are considering its conclusions.'*⁴⁵⁷

A report in the Guardian highlighted the lack of sex education in schools for deaf children.⁴⁵⁸ The article cited research by national charity Deafax⁴⁵⁹ which found that 35% of deaf people received no sex education at all while at school. Two thirds of respondents said that information they did get was inaccessible. As a result, they often found out about sex through the media, friends, or direct sexual experience.

71 Strengthen mental health and counselling services and ensure they are both accessible for and sensitive to young people

In February 2012 YoungMinds launched its report, *Improving the Mental Health of Young People: an exploration of mental health stigma*.⁴⁶⁰ It shows that young people had a negative perception of mental health services with words such as "mad" and "mental" being used to describe those who use the service. YoungMinds recommended that CAMHS needed to be rebranded to reduce the stigma.

The Department of Health's strategy for school nurses recognised that *'School Nurses are well positioned to identify mental health issues and provide every support to ensure problems do not escalate to crisis point'*.⁴⁶¹ The strategy urges school nurses to *'consider the use of modern technology to assist young people to access the service more readily. For example, school nurses could offer a text or email service to allow young people to contact them confidentially'*. In addition, the strategy stresses the need for young people to be able to give feedback on their experiences of the school nursing service: *'They should be able to report whether or not they feel school nurses are visible, accessible and ensure confidentiality'*. YoungMinds welcomed the move, commenting that the measure may support children before problems spiral into mental illness.⁴⁶²

Children are not being offered a distinct child-friendly mental health service. Government statistics show those under-18 spent more than 24,000 days in adult specialist mental health facilities in 2011-12.⁴⁶³

454 HC Deb, 9 November 2012, c. 766W

455 Beer, G. and James, M. (December 2012) *The Morning After: A cross Party Inquiry into Unplanned Pregnancy*

456 Beer, G. and James, M. (December 2012) *The Morning After: A cross Party Inquiry into Unplanned Pregnancy*

457 HC Deb, 7 January 2013, c. s65W

458 Swinbourne, C. (5 December 2012) "Communication barriers in sex education put deaf people at risk", *The Guardian*

459 See: <http://www.deafax.org/facts.php>

460 YoungMinds (February 2012) *Improving the Mental Health of Looked After Young People: an exploration of mental health stigma*

461 Department of Health (March 2012) *Getting it right for children, young people and families*

462 See: http://www.youngminds.org.uk/news/news/631_better_access_to_school_nurses_will_lead_to_better_mental_health

	Bed days
North East	949
Northwest	6,686
Yorkshire and the Humber	490
East Midlands	5,939
West Midlands	1,071
East of England	4,336
London	2,562
South East Coast	192
South Central	1,564
South West	323
Total	24,112

72 Study the causes of substance misuse in order to provide targeted preventative measures

The annual review of the Government's Drug Strategy says that its top priorities for the next year include 'supporting the development of evidence-based solutions by local partners on what works in prevention...by developing a measure of young people's drug and alcohol use at a local level to help authorities identify priorities and inform effective commissioning; providing a framework of outcomes for youth services to measure their impact on reducing underlying risk factors for substance misuse'.⁴⁶⁴

However, a Home Affairs Select Committee report on drugs concluded that:

*There is no real understanding as to why the levels of drug use have fallen in the past sixteen years. As our predecessor Committee found, there is little research in to what constitutes effective prevention and education and it may even be the case that prevention measures are not behind the current decline in drug use.*⁴⁶⁵

73 Provide accurate and objective information on drugs and alcohol to young people

The CYPHOF has called for more to be done to raise awareness in relation to healthy behaviours:

Parents and carers, and ultimately children and young people themselves, are best placed to manage their own health and wellbeing. But they cannot do this unless they have good quality, definitive information about lifestyles, health behaviours,

preventative services, managing their particular condition and how to access support when it is required. Public campaigns need to have relevance to children and young people, as well as adults. Public Health England (PHE) should develop national campaigns specifically focused on children and young people, with their input.

In its Alcohol Strategy (published in 2012) the Government states that it aims to see a 'sustained reduction in both the numbers of 11-15 year olds drinking alcohol and the amounts consumed'.⁴⁶⁶ The Government said that it will work with the Advertising Standards Authority (ASA) and Ofcom to examine ways to ensure that adverts for alcohol are not shown during programmes of high appeal to young people and states that the ASA is working to reduce advertisements on social networking sites. It also stated:

We will ensure that young people know the risks associated with alcohol by making it a key feature of a new £2.6 million youth marketing programme aimed to drive further reductions in regular smoking, drinking, drug use and risky sexual behaviour during the teenage years.

However, the Home Affairs Select Committee raised significant concerns over drug and alcohol service for children and young people:

*[P]ublic expenditure on drugs education decreased from £5.4 million in 2006-07 to £0.5 million in 2010-11. In addition, central government support for the national Continual Professional Development training for drug education has been cut, and the Tellus Survey, which collected school-level data on young people's drug use amongst other health and well-being measures has been stopped.*⁴⁶⁷

Local spending on drug prevention has also been cut by 23% between 2010 and 2012.⁴⁶⁸ Councils receive this money as part of the Early Intervention Grant.

In relation to drugs and alcohol education in schools, Department for Education research seen by the Home Affairs Committee found that the majority of both primary and secondary schools deliver drug education once a year or less.⁴⁶⁹ Education on drugs and alcohol in maintained schools currently takes place as part of PSHE. This subject is currently under review with a view to providing schools with more flexibility.⁴⁷⁰ Fee-paying schools, academies and free schools are not obliged to teach drugs and alcohol education, though the Department for Education

463 HC, 27 November 2012, c. 230W

464 HM Government (May 2012) *Drug Strategy 2010: Reducing demand, restricting supply, building recovery: supporting people to live a drug free life Annual Review – May 2012*

465 Home Affairs Committee (December 2012) *Drugs: Breaking the Cycle*

466 Home Office (March 2012) *The Government's Alcohol Strategy*

467 Home Affairs Committee (December 2012) *Drugs: Breaking the Cycle*

468 Home Affairs Committee (December 2012) *Drugs: Breaking the Cycle*

469 Home Affairs Committee (December 2012) *Drugs: Breaking the Cycle*

470 Home Office (March 2012) *The Government's Alcohol Strategy*

maintains that they are 'expected to provide a broad and balanced curriculum and one that enables pupils to distinguish right from wrong and to respect the law'.⁴⁷¹

When providing evidence to the Home Affairs Select Committee, Mentor, a charity working to protect from the harms caused by drugs and alcohol, and the Angelus Foundation, which combats the use of legal highs and party drugs 'stated unequivocally that the Drugs Strategy's vision of high-quality drug and alcohol education for all young people was not happening'.⁴⁷²

74 Ensure support is given to those attempting to end dependency on toxic substances

The National Treatment Agency (NTA) reports that 20,688 young people accessed specialist substance misuse services in 2011-12. This is a decrease of 1,267 individuals (5.8%) since 2010-11. The National Treatment Agency suggests that these figures are likely to represent a genuine fall in demand rather than limited access to services. Figures also show a small improvement in the success of treatments. 13,187 individuals are recorded as having exited specialist substance misuse services in 2011-12. 10,118 (77%) of these individuals exited having 'completed their interventions at this service', a term defined as meaning they no longer require young people's specialist substance misuse interventions. This is a 2% improvement on last year.⁴⁷³

However, the Home Affairs Select Committee reported in December 2012 that according to the charity Mentor, local spending on drug and alcohol services for young people is set to fall by £7 million next year.⁴⁷⁴ It also reported that it had consistently been told that there is a shortage of provision of residential placements for recovery, particularly for teenagers.⁴⁷⁵

Research by Action for Children into the impact of austerity measures on services for vulnerable children suggests that substance abuse services run by the voluntary sector are being affected by spending cuts. Sixteen per cent of the managers interviewed as part of the research said they had seen a reduction in substance abuse services.⁴⁷⁶

A report by the Youth Justice Board and HM Inspectorate of Prisons found that 13% of young people in YOIs felt they had

alcohol problems when they first arrived in custody. Forty-two per cent of the young men who reported having alcohol problems felt they had received help for this. In Feltham and the Heron Unit, none of the young men felt they had been helped with their alcohol problems. Just over a third (36%) of young men reported that they had drug problems on arrival at their establishment and 9% reported having a drug problem at the time of the survey. Of those young men who reported drug problems, 58% felt they had received help while at their establishment, fewer than in 2010-11 (66%). Nineteen per cent of young women said they had alcohol problems on arrival and 80% of these said they had received help for this problem. Nineteen per cent also said they had drug problems when they arrived and 7% said they still had issues with drugs at the time of the survey. Of these young women, 60% reported having received help.⁴⁷⁷

75 Adopt and adequately implement legislation aimed at achieving the target of ending child poverty by 2020, including by establishing measurable indicators

Section 1 of the Child Poverty Act 2010 set a target to reduce the number of children living in relative income poverty by half by 2010-11 from a 1998-99 baseline. Section 1 of the Child Poverty Act 2010 requires the Government to produce a report on whether or not this target has been met. In June 2012, the Government published a report confirming that the 2010 target had not been met.⁴⁷⁸ The number of children living in relative income poverty in 2010-11 reduced to 2.3 million, which is 600,000 short of the number required to meet the target in the Child Poverty Act.

It seems clear that the Government's current policies will not allow it to meet the Child Poverty targets by 2020.⁴⁷⁹ Indeed, some 800,000 more children are expected to be in relative poverty by 2020.⁴⁸⁰

In April 2011 the Government published a Child Poverty Strategy,⁴⁸¹ as required by the Child Poverty Act. At the time the strategy was published, the Child Poverty Act required the Government to establish a Child Poverty Commission, and to consult the Commission in preparing its Child Poverty Strategy.⁴⁸² In 2012 the Government was found to have breached the Child Poverty Act

471 Home Affairs Committee (December 2012) *Drugs: Breaking the Cycle*

472 Home Affairs Committee (December 2012) *Drugs: Breaking the Cycle*

473 National Treatment Agency for Substance Misuse (November 2012) *Statistics from the National Drug Treatment Monitoring System (NDTMS) Statistics relating to young people England, 1 April 2011 – 31 March 2012*

474 Home Affairs Committee (December 2012) *Drugs: Breaking the Cycle*

475 Home Affairs Committee (December 2012) *Drugs: Breaking the Cycle*

476 Action for Children (2012) *The Red Book 2012: The annual review of the impact of spending decisions on vulnerable children and families*

477 Murray, R. (December 2012) *Children and Young People in Custody 2011-2012*, Her Majesty's Inspector of Prisons and Youth Justice Board

478 Department of Work and Pensions and Department for Education (June 2012) *Child Poverty in the UK: The Report on the 2010 Target*

479 Johnson, P., Joyce, R. and Phillips, D. (2012) *Measuring and addressing child poverty*, Institute for Fiscal Studies

480 Johnson, P., Joyce, R. and Phillips, D. (2012) *Measuring and addressing child poverty*, Institute for Fiscal Studies

481 Department of Work and Pensions and Department for Education (April 2011) *A New Approach to Child Poverty: Tackling the Causes of Disadvantage and Transforming Families' Lives*

2010, because it had decided not to establish a Child Poverty Commission and did not, therefore, consult such a body in preparing its strategy.⁴⁸³ Child Poverty Action Group (CPAG) also challenged the substance of the Child Poverty Strategy, arguing that it simply sets out a series of initiatives, rather than quantitative goals for the period under consideration. This aspect of the case was unsuccessful on the basis that the document published by the Government could fall within the definition of the term “strategy”.

The Child Poverty Act 2010 has since been amended by the Welfare Reform Act 2012. The requirement to establish a Child Poverty Commission has been replaced by a requirement for there to be a Social Mobility and Child Poverty Commission, and the Government's obligation to publish a Child Poverty Strategy setting out the progress it considers needs to be made in achieving the Child Poverty targets, has been replaced by an obligation to set out the measures that it considers need to be taken for that purpose.

At the time of writing, the Government was consulting on changing the way in which it measures child poverty. It criticises the fact that the Child Poverty Act measures focus too heavily on income and fail to ‘capture the full experience of growing up in poverty or the barriers to getting out of poverty’. The Child Poverty Act 2010 uses four measures:

- Relative income: household income less than 60% of current median income;
- Combined low income and material deprivation: children who experience material deprivation and live in households with incomes less than 70% of current median income;
- Absolute income: household income less than 60% of 2010-11 median income adjusted for prices; and
- Persistent poverty: household income less than 60% of current median income for at least three out of the previous four years.

The Government's criticism of these measures is illustrated in part by the child poverty figures published in June 2012, which showed a large reduction in the number of children living below the relative poverty threshold for 2010-11. This was largely due to a significant drop in the median income, rather than a rise in income for the poorest families. Absolute poverty remained unchanged. However, this must be considered in the light of the

longer term trend of significant falls in material deprivation, relative poverty and absolute poverty amongst children.

The Government is consulting on including the following dimensions of poverty in a measure of child poverty:

1. Income and material deprivation
2. Worklessness
3. Unmanageable debt
4. Poor housing
5. Parental skill level
6. Access to quality education
7. Family stability
8. Parental health

Commentary published by the Institute for Fiscal Studies points out that there will be disagreement about which things are taken to be constitutive of poverty, rather than causes or symptoms of it.⁴⁸⁴ It does, however, confirm that income does not perfectly capture even material living standards, which are based also on factors such as the availability and quality of public services.⁴⁸⁵ It confirms that a “broad approach” is sensible.⁴⁸⁶ However, it argues that while absolute living standards matter in the short term, relative income is important longer term, and thus both measures are important.

UNICEF UK argues that the measure of poverty based on relative income is important in order that it is updated in a regular and systematic way, so as to preserve its relationship with contemporary living standards.⁴⁸⁷ It decided to include a measure of deprivation in its *Report Card 10*, in addition to relative poverty, in order to account for those children who are deprived in households which are not income-poor, and to make international comparisons meaningful. Save the Children also stresses the importance of income in measuring child poverty.⁴⁸⁸

482 Child Poverty Act 2010, s. 10(1)

483 *The Queen on Application of Child Poverty Action Group v Secretary of State for Work and Pensions and Secretary of State for Education* [2012] EWHC 2579.

484 Johnson, P., Joyce, R. and Phillips, D. (2012) *Measuring and addressing child poverty*, Institute for Fiscal Studies

485 Johnson, P., Joyce, R. and Phillips, D. (2012) *Measuring and addressing child poverty*, Institute for Fiscal Studies

486 Joyce, R. (15 June 2012) *Child Poverty* [Presentation], Institute for Fiscal Studies

487 UNICEF UK (2012) *Report Card 10: Measuring Child Poverty*

488 Strelitz, J. and Lister, R. (2008) *Why Money Matters: Family Income, Poverty and Children's Lives*, Save the Children

76 In such measures, prioritise children and families in most need of support

In 2012, Action for Children, NSPCC and The Children's Society published research⁴⁸⁹ studying the effects of recession and the resulting austerity on families with the following vulnerabilities:

1. Worklessness – no parent in the family is in work;
2. Housing – the family lives in poor quality and/or overcrowded housing;
3. Qualifications – no parent in the family has any academic or vocational qualifications;
4. Mental health – the mother has mental health problems;
5. Illness/disability – at least one parent has a limiting long-standing illness, disability or infirmity;
6. Low income – the family has low income (below 60% of the median);
7. Material deprivation – the family cannot afford a number of food and clothing items.

It found that measures intended to help vulnerable families, such as the Universal Credit, pupil premium and free childcare for disadvantaged two year-olds, will not compensate for losses resulting from other changes to the benefit system and cuts in spending for public services (including health, social care, education, transport, housing, policing and welfare-to-work). The research shows that, on the contrary, families with five or more vulnerabilities will suffer a decrease in total living standards of around 7%. As a result of this, the number of children living in families with multiple vulnerabilities is set to increase dramatically.

77 Extend material assistance and support programmes for children living in poverty, particularly with regard to nutrition, clothing and housing

Material assistance to children living in poverty is reducing. The UCL Institute of Health Equity reports that when tax and benefit reforms are taken as a whole, *'poverty is expected to increase significantly more across the UK by 2015–16 than it would were the reforms not implemented'* and that the welfare changes

are likely to impact low income households, and in particular households with children.⁴⁹⁰ Cuts to benefits and services are affecting children's access to nutrition, clothing and housing.

Research by Save the Children found that 60% of the poorest families are cutting back on how much they spend on food, and 25.5% are making portions smaller.⁴⁹¹ Seventeen per cent of the poorest families say that their children go without new clothes when they have grown out of old ones. In November 2012 the Department for Education published a report presenting estimates of the numbers and proportions of pupils who are entitled to receive free school meals (FSM) but are not claiming. Among the key findings is that 14% of pupils entitled to FSM are not claiming them, this ranges from nearly one quarter of entitled pupils in the South East and East of England to 2 per cent of entitled pupils in the North East.⁴⁹² The Children's Society has found that 700,000 pupils – a third of the 2.2 million school-aged children living in poverty in England – are not entitled to free school meals. It found that another 500,000 pupils fail to take up their entitlement to FSM, either because of the quality of the meals or fear of bullying.⁴⁹³

Oxfam has found that the cost of housing has continued to rise, in spite of the recession, in both the private and social rented sectors, with average rents at record highs and homes unaffordable in more than half of English local authorities.⁴⁹⁴ Yet benefits which help with housing will be uprated by inflation, rather than in line with local rental costs. CPAG warns that this could have severe consequences for the ability of families to afford their homes.

At the same time, services provided by the voluntary sector, which might be expected to support vulnerable families, are facing funding cuts and increased demand, meaning that they have, in some cases, restricted access to services. Action for Children reports that in 2012 over half of managers were experiencing cuts to their services, with nine out of 10 reporting budget cuts of up to a third. While service providers interviewed in 2011 reported an increase in demand for their service (51%), in 2012 the proportion saying that demand had risen was greater (58%). Over a fifth of those delivering frontline services to children and young people had changed their eligibility criteria, in some cases to tighten criteria.⁴⁹⁵

489 Reed, H, *In the eye of the storm: Britain's forgotten children and families*, A research report for Action for Children, The Children's Society and NSPCC, 2012.

490 UCL Institute of Health Equity (June 2012) *The impact of the economic downturn and policy changes on health inequalities in London*

491 Save the Children (2012) *Poverty in 2012: It Shouldn't Happen Here*

492 Department for Education (November 2012) *Pupils not claiming school free meals*

493 The Children's Society (April 2012). *Fair and Square: A Policy Report on the Future of Free School Meals*.

494 Oxfam (June 2012) *The Perfect Storm: Economic stagnation, the rising cost of living, public spending cuts, and the impact on UK poverty*

495 Reed, H. (2012) *In the eye of the storm: Britain's forgotten children and families*, A research report for Action for Children, The Children's Society and NSPCC

Poverty amongst particular groups, including disabled children and asylum-seeking children, is particularly concerning. The impact of welfare reform on disabled children is discussed in relation to concluding observation 57, above. Research published by The Children's Society in February 2012 found severe levels of destitution among refugee, asylum-seeking and migrant children and young people in England.⁴⁹⁶ The report highlighted that young people are being left homeless and hungry, with some forced into sexual relationships in exchange for shelter or food. Subsequent analysis by The Children's Society suggested that asylum support levels for children and families is as little as half mainstream benefit levels in some cases, leaving around 10,000 children in severe poverty for long periods of time.⁴⁹⁷ It found that many families are not able to pay for the basics, including clothing, powdered milk and nappies. A report by the Education Committee on child protection found that:

*Children's charities and others have raised legitimate concerns about the correlation between Government policies on immigration and the incidence of destitution amongst asylum-seeking and migrant children. It would be outrageous if destitution were to be used as a weapon against children because of their immigration status. We call on the Government to review the impact of immigration policy upon child protection and children's rights to ensure that this is not the case. The evidence given strongly argued that there is tension or even conflict between legislation to protect children and immigration legislation.*⁴⁹⁸

In the OCRD *Care Monitor 2011* children talked about impact of budget cuts on their care and support.⁴⁹⁹ Fifteen percent of the children who responded to the survey reported being personally affected by local authority budget cuts. The main effects were reductions to personal educational expenditure, lower personal allowances (things like clothes and toiletries) and fewer activities available for them.

78 Re-introduce a statutory duty for local authorities to provide safe and adequate sites for travellers

There is still no statutory duty to provide safe and adequate sites for travellers.

Official statistics show that in July 2012 there were approximately

19, 400 Gypsy and Traveller caravans in England. This figure has increased by approximately 700 from July 2011. The July 2012 count indicates that 84% of Gypsy and Traveller caravans were on authorised land.⁵⁰⁰

In its 2012 Human Rights Review, the Equality and Human Rights Commission concluded that *'There continues to be a shortage of authorised Gypsy and Traveller sites, increasing the likelihood of further evictions from unauthorised sites'*.⁵⁰¹ The EHRC report suggests that the planning system treats Gypsies and Travellers unfairly, with only half of applications for new sites successful in England, compared with around 70% of residential applications. Furthermore, between 2006 and 2009, 40% of the applications for new sites in England were granted only on appeal, and half of 'successful' applications only received temporary, and thus unsustainable, permissions.

The Government published a *Planning policy for traveller sites* in March 2012⁵⁰² which should be read in conjunction with the National Planning Policy Framework which seeks to achieve sustainable development.⁵⁰³ This planning policy gives local authorities greater autonomy in providing sites for travellers and assessing their needs. The Government has said that it has moved away from *'top-down targets'* in favour of offering local authorities financial incentives to provide sites, such as the New Homes Bonus and dedicated funding for new pitches.⁵⁰⁴

Government has said that they plan to review this planning policy for travellers when its implementation can be properly assessed through practical results.⁵⁰⁵

496 The Children's Society (February 2012) *"I don't feel human": Experiences of destitution among young refugees and migrants*

497 The Children's Society (April 2012) *Highlighting the gap between asylum support and mainstream benefits*

498 Education Committee (October 2012) *Children first: the child protection system in England*

499 Ofsted (February 2012) *Children's care monitor 2011. Children on the state of social care in England. Reported by the Children's Rights Director for England*

500 Department for Communities and Local Government (November 2012) *Count of Gypsy and Traveller Caravans – July 2012*

501 Equality and Human Rights Commission (2012) *Human Rights Review 2012*

502 Department for Communities and Local Government (2012) *Planning policy for traveller sites*

503 Department for Communities and Local Government (2012) *National Planning Policy Framework*

504 Department for Communities and Local Government (April 2012) *Progress report by the ministerial working group on tackling inequalities experienced by Gypsies and Travellers*

505 Department for Communities and Local Government (2012) *Planning policy for traveller sites*

Section 6

Education, Leisure and Cultural Activities

“Education should be child-friendly, inspiring and motivating the individual child. Schools should foster a humane atmosphere and allow children to develop according to their evolving capacities.”⁵⁰⁶

“States Parties recognize 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.”⁵⁰⁷

“The Committee... is concerned that significant inequalities persist with regard to school achievement of children living with their parents in economic hardship. Several groups of children have problems being enrolled in school or continuing or reentering education, either in regular schools or alternative educational facilities, and cannot fully enjoy their right to education, notably children with disabilities, children of Travellers, Roma children, asylum-seeking children, dropouts and non-attendees for different reasons (sickness, family obligations etc.), and teenage mothers.”

506 UN Committee on the Rights of the Child (2001) *General Comment No. 1: The aims of education*.

507 UN Convention on the Rights of the Child, Article 31

79 Invest considerable additional resources to ensure the right of all children to a truly inclusive education, in particular children from disadvantaged, marginalised and school-distant groups

The Institute for Fiscal Studies estimates that public spending on education in the UK will fall by 3.5% per year in real terms between 2010–11 and 2014–15.⁵⁰⁸ It states that this would represent the largest cut in education spending over any four-year period since the 1950s. Spending cuts on the early years, youth services and 16–19 education are likely to be over 20% in real terms.

In practice, inequality continued in both access to a good education and in educational outcomes. In November 2012, Ofsted highlighted the ‘*great inequality of access to good or better schools across different areas*’. It reported that while a child of primary school age in England has on average a 69% chance of being in a good or outstanding school, some have a better than 90% and some worse than 50% chance of attending a good or better school, depending on where they live.⁵⁰⁹ Research by the Institute for Public Policy Research (IPPR) showed that pupils from high socio-economic backgrounds are highly likely to go to a school rated as ‘outstanding’ by Ofsted, just as pupils from low socio-economic backgrounds are highly likely to go to a school rated as ‘satisfactory’ and ‘inadequate’.⁵¹⁰ These findings are confirmed by an OECD report which states that disadvantaged children are too often concentrated together in schools. In the UK, ‘80% of students with an immigrant background attend schools with a high concentration of immigrant students – a proportion 12.4% higher than the OECD average (67.6%)’.⁵¹¹ In line with the IPPR findings, the OECD encourages the UK Government to focus on ‘*other areas of social policy besides education, such as housing policies that promote a more balanced social mix in schools at an early age*’.⁵¹²

Particularly disadvantaged and school-distant groups continue to face significant barriers to a good education. Concerns have been raised about the quality and quantity of education in custody (see concluding observation 110).

There remains a very significant attainment gap for those on free school meals.

508 Chowdry, H., and Sibieta, L. (October 2011) *Trends in Education and Schools Spending*, Institute for Fiscal Studies

509 Ofsted (November 2012) *Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills*

510 Institute for Public Policy Research (September 2012) *A long division: closing the attainment gap in England's secondary schools*

511 OECD (September 2012) *United Kingdom Country Note: Education at a glance 2012 – OECD Indicators*

512 OECD (September 2012) *United Kingdom Country Note: Education at a glance 2012 – OECD Indicators*

Percentage of pupils achieving good GCSE grades (A* to C) in English and mathematics GCSEs⁵¹³

	Children on Free School Meals	Children not on Free School Meals	Attainment gap
2010/11	35.1	62.5	27.4

Percentage of pupils achieving 5 good GCSE grades (A* to C)

	Children on Free School Meals	Children not on Free School Meals	Attainment gap
2010/11	64.6	83.0	18.1

Free School Meal attainment gaps 2006/7 to 2010/11⁵¹⁴

	2006/07	2007/08	2008/09	2009/10	2010/11	Shift in attainment gap 2006/7 to 2010/11
5 or more A*-C grades at GCSE and equivalent	27.1	26.7	24	20.3	18.4	-8.7
5 or more A*-C grades at GCSE and equivalent including English and mathematics GCSEs	27.9	27.8	27.7	27.6	27.4	-0.5

Proposals to reform provision for children and young people with SEN, which will impose the same duties on further education colleges and academies to provide educational support for children and young people with SEN as maintained schools, are welcome.⁵¹⁵ So too is the extension of support to all children with special educational needs, not just those with a statement.

There is evidence to suggest that mainstream education is not currently inclusive for children with SEN. The DfE Special Educational Needs statistics reported in July 2012 that there was a drop in the proportion of pupils with a statement of SEN attending mainstream schools, from 54.3% to 53.7%.⁵¹⁶ Persistent school absenteeism, a measure indicating educational inclusion, remains high for pupils with a statement of SEN. A pupil is classified as a persistent absentee in the case of around 15% overall absence.⁵¹⁷ Of all pupils with a statement of special educational needs, 14.5% were persistent absentees; this is 3.3 times the persistent absence rate for those pupils with no identified special educational need.⁵¹⁸

The educational outcome of children in care compared to all other children is alarming. In 2011 only 13.9% of children in care achieved good GCSE grades (A* to C) in both English and mathematics, compared to 58.6% of their peers.⁵¹⁹ Data published by the Department for Education in 2007 indicates that the proportion of children in care achieving this educational outcome has increased. But, taking into account the much faster increase in other pupils achieving good grades, children in care underperform their peers to a larger extent than in 2007: the already large attainment gap rose from 37.2 in 2007 to 44.7 in 2011.⁵²⁰ Looked after children are more likely than other children to have special educational needs and analysis carried out by The Who Cares? Trust shows that when looked after children with SEN are compared to other children with SEN they still do poorly.⁵²¹

Percentage of pupils achieving good GCSE grades (A* to C) in both English and mathematics⁵²²

	Children in care	All children	Attainment gap
2007/08	9.5	46.7	37.2
2010/11	13.9	58.6	44.7

Gypsy and Traveller children continue to be significantly disadvantaged in education. The percentage of persistent school absentees is highest among Travellers of Irish Heritage and Gypsies/Roma children: 45.7% of Traveller of Irish Heritage pupils and 37% of Gypsy/Roma pupils were persistent school absentees.⁵²³ In 2011, just 25% of Gypsy, Roma and Traveller pupils achieved national expectations in English and mathematics at the end of their primary education, compared with 74% of all pupils. At the end of secondary education, just 12% of Gypsy, Roma and Traveller pupils achieved five or more good GCSEs, including English and mathematics, compared with 58.2% of all pupils.⁵²⁴

In a report published in April 2012 the Department for Communities and Local Government made a number of commitments to address the marginalisation of Travellers of Irish Heritage and Gypsies/Roma children, including an assurance that Gypsy, Roma and Traveller pupils would be specifically highlighted as a vulnerable group in the revised Ofsted inspection framework, and a commitment to provide funding for local authorities to appoint a senior staff member to champion the interests of Gypsy, Roma and Traveller pupils and to monitor and respond to issues of low attainment and attendance.⁵²⁵ The Government also highlighted

513 Department for Education (February 2012) *Pupil attainment at GCSE and equivalent attainment by key pupil characteristics*

514 Department for Education (February 2012) *Pupil attainment at GCSE and equivalent attainment by key pupil characteristics*

515 Department for Education (September 2012) *Draft legislation on Reform of provision for children and young people with Special Educational Needs*

516 Department for Education (July 2012) *Special Educational Needs in England, January 2012*

517 Department for Education (March 2012) *Pupil absence in schools in England, including pupil characteristics, 2010/2011*

518 Department for Education (March 2012) *Pupil absence in schools in England, including pupil characteristics, 2010/2011*

519 Department for Education (December 2011) *Outcomes for Children Looked After by Local Authorities in England, as at 31 March 2011*

520 Department for Education (December 2011) *Outcomes for Children Looked After by Local Authorities in England, as at 31 March 2011*

521 The Who Cares? Trust (March 2012) *Open Doors, Open Minds: Is the care system helping looked-after children progress into further and higher education?*

522 Department for Education (December 2011) *Outcomes for Children Looked After by Local Authorities in England, as at 31 March 2011. Own application*

523 Department for Education (March 2012) *Pupil absence in schools in England, including pupil characteristics 2010/2011*

524 Department for Communities and Local Government (April 2012) *Progress report by the ministerial working group on tackling inequalities experienced by Gypsies and Travellers.*

525 Department for Communities and Local Government (April 2012) *Progress report by the ministerial working group on tackling inequalities experienced by Gypsies and Travellers.*

that it has allocated £201m for ethnic minority achievement via the Dedicated Schools Grant, to help schools improve the performance of ethnic minority and Gypsy, Roma and Traveller pupils, as well as those with English as an Additional Language.

80 Continue and strengthen efforts to reduce the impact of socio-economic background on children's achievement at school

There continues to be a strong correlation between socio-economic background and educational outcomes.

In 2011, 34.6% of disadvantaged pupils (pupils eligible for FSM or looked after children) achieved 5 or more A* to C grades at GCSE or equivalent including English and mathematics GCSEs, compared to 62% of all other pupils.⁵²⁶ In England, students from the highest social class groups are three times more likely to enter university than those from the lowest social class groups.⁵²⁷

The Government channels additional funding to the education of disadvantaged pupils through, in particular, free early years education for disadvantaged two year-olds, the pupil premium for school-aged children and the 16-19 Bursary. Barnardo's has raised concerns that this leaves a lack of dedicated financial support for disadvantaged three and four year-olds.⁵²⁸

In May 2012 the Government confirmed that two year-olds who live in households which meet the eligibility criteria for free school meals will be entitled to a free early education place, along with children who are looked after by the state.⁵²⁹ Around 20% of the least advantaged two year-olds will benefit from this provision from September 2013. This has been welcomed, but the decision to fund the scheme by top-slicing the Early Intervention Grant has faced severe criticism.⁵³⁰

The pupil premium is a central plank of the Government's policy to tackle inequality and social mobility and was introduced in April 2011 to target support for the most disadvantaged pupils. The payment has been raised to £600/pupil and extended to cover pupils known to be eligible for free school meals at any point in the past six years and children in care who have been continuously looked after for at least six months. The pupil premium was

worth £625 million in 2011-12 and will double to £1.25 billion in 2012-13. However, because there has been a freeze in other per-pupil school funding, the Institute for Fiscal Studies has said that only the most deprived schools saw a real-term funding increase in 2011-12.⁵³¹ Concerns have been raised about the way in which the pupil premium is used. Ofsted's Chief Inspector has said that most schools are subsuming money received as pupil premium, which is not ring-fenced, within their main budget, rather than spending it on the most disadvantaged pupils.⁵³² Only one in 10 school leaders told Ofsted that the pupil premium had significantly changed the way that they supported pupils from disadvantaged backgrounds. This accords with the findings of a 2012 survey of 1,686 practising teachers from 1,269 schools carried out by the Sutton Trust.⁵³³ It found that 8% of the surveyed teachers said they would offset budget cuts elsewhere with the pupil premium. Barnardo's has argued that there is a lack of accountability for how schools are spending the pupil premium, and that this should form a key component of Ofsted inspections.⁵³⁴

For children aged between 16 and 19, in addition to the uplift funding institutions receive in respect of disadvantaged pupils, the 16-19 Bursary Fund is devolved to providers of education to allocate to students on the basis of need. Research conducted by Barnardo's concluded that the 16-19 Bursary Fund is '*insufficient to meet the support needs of those in poverty*', and is not appropriately targeted. Barnardo's argued that the Bursary should cover all those who were previously on free school meals.⁵³⁵ The evidence suggests that those aged 16-19 have been deterred from continuing their education. Department for Education statistics published in June 2012 show that the proportion of 16 year-olds in full time further education fell for the first time since 2001, from 88% in 2010 to 86.2% in 2011.⁵³⁶

81 Ensure children without parental care have an advocate to actively defend their best interests in school

Currently statutory guidance suggests that schools should have a qualified, designated teacher to promote the educational achievement of children in care.⁵³⁷ This situation has not changed since September 2011.

526 Department for Education (February 2012) *GCSE and Equivalent Attainment by Pupil Characteristics in England, 2010/11*

527 The Sutton Trust (2012) *The Social Mobility Summit: Report of the Summit held at the Royal Society, London, 21-22 May 2012*

528 Evans, J., Mathers, I., Rallings, J. (August 2012) *Mind the gap: Ensuring all disadvantaged children benefit from the pupil premium*, Barnardo's

529 See: Department for Education (2012) *Government response to Supporting Families in the Foundation Years: Consultation on Proposed Changes to Free Early Education and Childcare Sufficiency and Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2012*

530 Butler, P. (27 September 2012) "Free nursery places for two-year-olds to be funded from Sure Start pot", *The Guardian*

531 Chowdry, H., and Sibieta, L. (2011) *School funding reform: an empirical analysis of options for a national funding formula* Institute of Fiscal Studies

532 Ofsted (September 2012) *The Pupil Premium: How schools are using the Pupil Premium funding to raise achievement for disadvantaged pupils*

533 The Sutton Trust (2012) *NFER Teacher Voice Omnibus Survey*

534 Evans, J., Mathers, I., Rallings, J. (August 2012) *Mind the gap: Ensuring all disadvantaged children benefit from the pupil premium*, Barnardo's

535 Evans, J. (February 2012) *Staying the course: Disadvantaged young people's experiences in the first term of the 16-19 Bursary Fund*, Barnardo's

536 Department for Education (June 2012) *Participation in Education, training and employment by 16-18 year olds in England, end 2011*

Where local authorities have appointed a virtual school head, these have been found to be effective in improving the educational achievement of looked after children. Research carried out by The Who Cares? Trust suggests that these positions have been vulnerable in the context of budget cuts. It is, therefore, particularly welcome that in December 2012, the Government announced plans to introduce legislation which will make the virtual school head a statutory position. They would be responsible for discharging the existing duty on schools to promote the educational achievement of looked after children.⁵³⁸

There are concerns as to the effectiveness of other measures designed to advance the educational achievement of looked after children. The Who Cares? Trust found that while both the pupil premium and the 16-19 Bursary deliver more money to support the education of these children, a lack of awareness of the new measures, and problems in how they are administered and used, undermine their potential to improve their education. The pupil premium has replaced the personal education allowance (PEA). The PEA was a sum of £500 which was available to local authorities to support the education needs of looked after children.⁵³⁹ Following a 2012 survey among children in care, leaving care teachers, virtual head teachers and other interested stakeholders, The Who Cares? Trust reports concerns that the pupil premium is not as effective as the PEA had been in promoting educational outcomes for children in care.⁵⁴⁰ Awareness of the pupil premium was low: only 50% of professionals responding to the survey had heard of it. The research also highlighted concerns as to the way in which the pupil premium is used. An education worker in a looked after children team who participated in the survey explained that in too many schools the pupil premium *'is being used for whatever project the school management team decide, with little or no direct impact on the young person. Whereas with PEA we were able to respond quickly and directly to the individual needs'*.⁵⁴¹ In contrast to the PEA, the pupil premium is not allocated to the individual child in care but to the school the looked after child attends. The 16-19 Bursary is guaranteed for looked after children and care leavers and worth £1,200 per child. The Who Cares? Trust found that a lack of information was reaching children and professionals about the Bursary, and that the way in which it is distributed varies widely between different institutions.

82 Intensify efforts to tackle bullying and violence in schools, including through teaching human rights, peace and tolerance

The two subjects taught in schools which cover issues relevant to this recommendation are under review. In December 2011, a report by the expert panel for the National Curriculum review⁵⁴² recommended that citizenship should change from a foundation subject, for which the Secretary of State is required to publish a Programme of Study and Attainment Target, to become part of the Basic Curriculum, meaning that it would continue to be a compulsory requirement, but schools would be able to determine for themselves the specific nature of this provision. The Government is also carrying out a review of PSHE.

Bullying continues to be a major issue in pupils' every-day lives. A 2012 Ofsted report surveying 1,357 pupils revealed that 50% of primary pupils and 38% of secondary school pupils when asked if they had been bullied at their current school replied *'yes but not now'*.⁵⁴³

The Ofsted report indicates that the persistence of bullying in schools is linked to staff's training on bullying. In spite of the positive effects training has on staff's confidence in tackling bullying, *'not all of the staff had received any training about bullying since they had been at their current school'*. Moreover, *'training that the schools had provided on bullying tended to be general'*, without addressing different types of bullying such as cyber bullying or homophobia. Staff showed little confidence in terms of tackling prejudiced-based language.⁵⁴⁴

The findings of the Ofsted report are in line with a study published by Stonewall in 2012.⁵⁴⁵ Out of 1,614 gay, lesbian and bisexual young people aged between 11 and 19 years, 55% experience homophobic bullying in school, while *'only ten per cent of the surveyed gay pupils report that teachers challenge homophobic language every time they hear it'*. The findings of the Stonewall study highlight the need to tackle prejudiced-based language: *'in schools where homophobic language is rarely or never heard, the incidence of homophobic bullying is just 37% compared with 68% in schools where homophobic language is heard more frequently'*.⁵⁴⁶

As well as negative impact on a child's emotional and psychological wellbeing, bullying can have a significant impact on children's participation in education and positive activities. Research published by the Anti-Bullying Alliance found that more than a

537 Children and Young Persons Act 2008 Department for children, schools and families (September 2011). The role and responsibilities of the designated teacher for looked after children: Statutory guidance for school governing bodies.

538 Letter to third sector organisations from Edward Timpson MP, Parliamentary Under Secretary of State for Schools and Families, 12 December 2012..

539 Department for Children, Schools and Families (April 2008). *Personal Education Allowances for Looked After Children: Statutory Guidance for Local Authorities*.

540 The Who Cares? Trust (March 2012) *Open Doors, Open Minds: Is the care system helping looked-after children progress into further and higher education?*

541 The Who Cares? Trust (March 2012) *Open Doors, Open Minds: Is the care system helping looked-after children progress into further and higher education?*

542 Department for Education (December 2011) *The Framework for the National Curriculum: A report by the Expert Panel for the National Curriculum review*

543 Ofsted (June 2012) *No place for bullying: How schools create a positive culture and prevent and tackle bullying*

544 Ofsted (June 2012) *No place for bullying: How schools create a positive culture and prevent and tackle bullying*

545 Stonewall (July 2012) *The School Report: The experiences of gay young people in Britain's schools in 2012*

546 Stonewall (July 2012) *The School Report: The experiences of gay young people in Britain's schools in 2012*

quarter of 11 to 16 year olds had given up a favourite activity because of bullying.⁵⁴⁷ More than 12% of children play down their ability in science and almost one in five girls and more than one in 10 boys deliberately underachieve in maths to evade bullying.

83 Use permanent or temporary exclusion from school only as a last resort, and reduce the number of exclusions

In 2010-11 there were 5,080 permanent exclusions from state-funded primary, secondary and "special schools". The number has decreased by 11.5% since 2009-10. In addition to permanent exclusions there were 324,110 fixed period exclusions. Since 2009-10 this number only decreased by 2.2%.⁵⁴⁸

	Permanent exclusions	Fixed term exclusions
2008/09	6,550	363,280
2009/10	5,740 (-12.4%)	331,380 (-9.8%)
2010/11	5,080 (-11.5%)	324,110 (-2.2%)

Source: Dept for Edu: SFR 17/2011 and Dept for Edu: SFR 17/2012. Own application.

Analysis published by the Department for Education showed that in 2009-10, academies had the highest rate of permanent exclusions of any school type, though the rate of exclusions is falling.⁵⁴⁹ Across all sponsored academies, the rate of permanent exclusions fell from 0.47% in 2007, to 0.30% in 2010. This compares to a fall in the rate of permanent exclusions from 0.23% in 2007 to 0.15% in 2010 across all state-funded secondary schools.⁵⁵⁰

Certain groups of pupils – these are pupils with a statement of special educational needs (SEN), pupils eligible for free school meals (FSM) and pupils of Black Caribbean ethnic origin – are disproportionately affected by permanent or fixed period exclusions. Pupils with a SEN are around seven times more likely to be permanently excluded than pupils without a SEN.⁵⁵¹ In 2009-10 pupils with a SEN were eight times more likely to be permanently excluded than other pupils.⁵⁵² The proportion of pupils eligible for FSM among permanent exclusions remained the same and Black Caribbean pupils were less likely to be permanently excluded in 2010-11 than in 2009-10.⁵⁵³ Those pupils who have more than one characteristic associated with disadvantage experience cumulative disadvantage. Analysis published by the

Children's Commissioner in 2012 showed that in 2009-10, a Black African-Caribbean boy with special needs and eligible for free school meals was 168 times more likely to be permanently excluded from a state-funded school before the age of 16 than a white girl without special needs from a middle class family.⁵⁵⁴

In a welcome move, new guidance and regulations on school exclusions which came into force in September 2012 acknowledges that looked after children have disproportionately high exclusion rates and are particularly vulnerable to the impacts of exclusions. The guidance states that '*Head teachers should, as far as possible, avoid excluding permanently any pupil with a statement of SEN or a looked after child*'.⁵⁵⁵

It has become more difficult to challenge inappropriate exclusions. Under the Education Act 2011, Independent Appeal Panels have been replaced by Independent Review Panels. Review panels will not be able to require a school to reinstate a pupil they judge was unfairly excluded.⁵⁵⁶ The Children's Commissioner for England has asserted that these changes are incompatible with the right to a fair trial, and has called for the law to be amended in this respect.⁵⁵⁷ There is no legal aid available for those seeking to challenge school exclusions.⁵⁵⁸ The Children's Commissioner also received evidence which suggested that the accountability of academies in respect of exclusions is unclear, because their responsibilities arise under contract with the Secretary of State, which cannot, therefore, be enforced by pupils, who are not a party to the contract.⁵⁵⁹

Significant concern has been expressed about the practice of unofficial exclusions. Findings from a 2012 report by the Children's Commissioner suggest that official school exclusion figures only shed light on part of the picture of school exclusions. The estimated number of unreported cases remains significant. Illegal school exclusions occur '*when a school requires a young person to leave the premises but does not record it as a formal exclusion. This might be for a fixed, usually short, period of time, or in the worst cases indefinitely. It also refers to instances when a young person or their family is "persuaded" to move school, a move usually sold to the family and the child as an alternative to a permanent exclusion going on the child's record*'.⁵⁶⁰ The Guardian, which had spoken anonymously to local authority education welfare officers and parents and children affected, reported similar

547 Anti-Bullying Alliance (November 2012) *Kids dreams stifled by bullying*

548 Department for Education (July 2012) *Permanent and fixed period exclusions from schools and exclusion appeals in England*

549 Department for Education (2012) *A profile of pupil exclusions in England*

550 Department for Education (2012) *Academies Annual Report 2010/11*

551 Department for Education (2012) *A profile of pupil exclusions in England*

552 Department for Education (February 2012) *A profile of pupil exclusions in England*

553 Department for Education (July 2011) *Permanent and fixed period exclusions from schools and exclusion appeals in England*

554 Office of the Children's Commissioner (March 2012) *"They never give up on you": School Exclusions Inquiry*

555 Department for Education (June 2012) *Statutory guidance and regulations on exclusion*

556 Education Act 2011

557 Office of the Children's Commissioner (March 2012) *"They never give up on you": School Exclusions Inquiry*

558 LASPOA 2012

559 Office of the Children's Commissioner (March 2012) *"They never give up on you": School Exclusions Inquiry*

560 Office of the Children's Commissioner (March 2012) *"They never give up on you": School Exclusions Inquiry*

concerns.⁵⁶¹ Such unofficial exclusions are particularly concerning because they are not subject to strict regulation and there is a lack of transparency about the practice.

The Children's Commissioner found that the system of exclusions is not compatible with the CRC and recommended that the new Statutory Guidance on exclusions should specify that the interests of the child concerned must be a primary consideration in exclusion decisions. Guidance published in June 2012 does not contain wording to this effect.⁵⁶²

The Government is piloting a new approach to exclusions, whereby funding to manage provision for excluded children is devolved to schools, rather than held by the local authority. If a school excludes a pupil, it remains responsible for the excluded child's education and must commission alternative education provision. The child's attendance and academic performance will count towards the school's performance data.⁵⁶³ Similar arrangements have been effective in promoting better educational outcomes for children vulnerable to exclusion.⁵⁶⁴

84 Place social workers and educational psychologists in schools to support children in conflict with their schools

There is no requirement to place social workers and educational psychologists in schools to support those in conflict with their schools. The Teaching Agency was established as an Executive Agency of the Department for Education on 1 April 2012.⁵⁶⁵ One of its areas of responsibilities is to support the recruitment and development of SENCOs and education psychologists. The Department is meeting the costs of tuition fees and first year bursaries for those training to become educational psychologists up to 2013-14 and establishing a national group to develop a new system for accrediting those providing placements for trainees.⁵⁶⁶ The Department for Education will fund tuition fees and first year bursaries up to 2015.

The Government intends to set up a new national steering group for the training of educational psychologists to manage the relationship between training and placement providers. The Teaching Agency will take overarching responsibility for the running of this group.

85 Ensure that all children out of school receive high quality education

The Department for Education (DfE) 2011 AP Census recorded 14,050 pupils in pupil referral units (PRU) and 23,020 in other alternative provision settings on full or part-time placements. 79% of those attending PRUs have special educational needs. Educational achievement is very low for children in PRUs. Only 1.4% of them achieve 5 or more GCSEs at grades A*-C including English and Maths compared to 53.4% of their peers in all schools⁵⁶⁷.

A review on alternative provision in England was published in 2012 (the Taylor Review). The review was critical of *'a flawed system that fails to provide suitable education and proper accountability for some of the most vulnerable children in the country'*.⁵⁶⁸ It reported:

*Providers have described schools sending them children and taking no interest in the pupil's progress or the success of the placement [...] Some AP providers do little more than keep their pupils off the streets; one PRU head described local AP that seemed to feel its main role was to produce good pool players.*⁵⁶⁹

The Children's Commissioner found that *'There is currently no guidance for schools on good practice in managing or commissioning provision for pupils with challenging behaviour. As a result, this provision differs markedly from place to place, and is of varying quality'*.⁵⁷⁰ Wide variations in the quality of alternative provision was also found by the Taylor Review.

The review criticised the lack of planning and care by schools in deciding where to place a child and found that *'PRUs describe a worrying lack of information about children who come onto their roll after a permanent exclusion'*, which can undermine their ability to support pupils' educational achievement.

There is also a lack of accountability for the system of alternative provision. The review of the system highlights the fact that there are many institutions providing alternative provision which are below the size threshold for registration and inspection, *'so some of the most vulnerable pupils are spending time in provision that is not monitored or quality assured'*.

The Government has agreed to implement many of the recommendations in the Taylor Review. It will allow new trainee teachers to do some of their teacher training in PRUs to develop

561 Domokos, K. (15 November 2012) "Illegal school exclusions: how pupils are slipping through the net", *The Guardian*

562 Department for Education (June 2012) *Exclusion from maintained schools, Academies and pupil referral units in England: A guide for those with legal responsibilities in relation to exclusion*

563 Department for Education (July 2012), Permanent and fixed period exclusions from schools and exclusion appeals in England

564 Lightfoot, L. (9 April 2012) "New scheme succeeds in keeping excluded children in mainstream school", *The Guardian*

565 See: <http://www.education.gov.uk/b0077806/teaching-agency/aboutteachingagency>

566 Department for Education (2012) *Support and aspiration: A new approach to special educational needs and disability - Progress and next steps*

567 Taylor, C. (March 2012) *Improving Alternative Provision* Charlie Taylor *The Government's Expert Adviser on Behaviour*, Department for Education

568 Taylor, C. (March 2012) *Improving Alternative Provision* Charlie Taylor *The Government's Expert Adviser on Behaviour*, Department for Education

569 Taylor, C. (March 2012) *Improving Alternative Provision* Charlie Taylor *The Government's Expert Adviser on Behaviour*, Department for Education

570 Office of the Children's Commissioner (March 2012) *"They never give up on you": School Exclusions Inquiry*

key skills in managing disruptive behaviour.⁵⁷¹ It has issued new guidance including safeguards that commissioners should put in place when commissioning alternative provision for their pupils.⁵⁷² Regulations have been introduced to make failing PRUs subject to intervention and the Department for Education is working with Ofsted to improve the inspection of schools' use of alternative provision. PRUs will also be able to become academies.⁵⁷³ Given the greater freedom associated with academy status, this reform has been controversial. The Association of Teachers and Lecturers for example questions how 'academies of any kind are held accountable' which is particularly inappropriate given that alternative provision is "already an unregulated area of education with too few providers subject to any kind of inspection".⁵⁷⁴

There are ongoing concerns that schools are not complying with their obligation to arrange suitable full-time education for pupils subject to a fixed-term exclusion from and including the sixth school day.⁵⁷⁵

As of September 2012, the criminal offence for parents who fail to secure their children's regular attendance at school is extended to include failure to attend at alternative provision.⁵⁷⁶

86 Strengthen children's participation in all matters of school, classroom and learning that affect them



The Government has still not implemented the duty on schools to invite and consider the views of students.

Draft legislation was published in September 2012 which would implement a complete change to the current system of support to children and young people with special educational needs.⁵⁷⁷ Aside from the right to bring appeals and disability discrimination claims, the draft legislation contains little further specific detail about how children and young people will be able to express their views on matters that affect them, with many of the clauses stating that the detail will be set out in regulations. In addition, where opportunities for participating in decision-making are specified in the draft clauses, they appear to extend to parents and to young people above the age of 16 – excluding the majority of children from the opportunity to make decisions about their own lives.

The draft clauses state that local authorities must work with local health and social care services to plan and commission support and services for children and young people with special educational needs. There is no detail in the draft legislation as to how children and young people are to be involved in the process of commissioning services. Local authorities will also be required to publish a 'local offer' setting out the provision that is available for children and young people with special educational needs. This should cover information relating to education, health and care, training and arrangements for travel to schools. Regulations may make provision about how local authorities are to 'involve children and young people with special educational needs, and the parents of children with special educational needs' in preparing the local offer.

The draft legislation, if passed in current form, will replace the existing statement and assessment systems with a single EHC Plan. When preparing an EHC Plan for a child, parents and young people are to be informed about their rights to express their views and provide evidence to the authority. They must also be given a draft version of the plan and be informed of their right to 'make representations about the content of the plan'. Local authorities will be required to prepare a personal budget for a child or young person with an EHC Plan if asked to do so by the parent or by the young person directly. Children under the age of 16 will not be able to request a personal budget directly. As with other provisions, the detail as to how personal budgets will work in practice will be made in regulations.

87 Ensure that children, and particularly children in care, have the right to appeal against their exclusion



A report by the Office of the Children's Commissioner called for action to be taken to ensure that the school exclusions system is compliant with Article 12 of the UNCRC:

*To make the exclusions process compliant with Article 12 of the UNCRC, Statutory Guidance on exclusions should be amended to make it clear to schools that children and young people's views must be sought as part of the process, and it must be taken into account when coming to a decision. Students should be able to appeal against exclusions on their own behalf.*⁵⁷⁸

571 Department for Education press release (26 April 2012). *Overhaul of alternative provision to fix 'broken system' and improve standards for vulnerable and disadvantaged children*

572 Letter from Charly Taylor to Rt Hon Michael Gove MP, Secretary of State for Education dated 27 June 2012

573 Department for Education press release (9 July 2012). *Alternative provision (AP) academies*.

574 Association of Teachers and Lecturers press release (8 March 2012). *ATL comment on the Taylor report on alternative provision*

575 See Centre for Social Justice, *No Excuses: A review of Educational Exclusion*, September 2011

576 See: Centre for Social Justice (September 2011) *No Excuses: A review of Educational Exclusion*

577 Department for Education (September 2012) *Draft legislation on Reform of provision for children and young people with Special Educational Needs*

578 Office of the Children's Commissioner (March 2012) *"They never give up on you": School Exclusions Inquiry*

579 Department for Education (June 2012) *Statutory guidance and regulations on exclusion*

New guidance and regulations on school exclusions which came into force in September 2012 do not permit students to appeal their own exclusions.⁵⁷⁹ There are several provisions that are positive with regard to the right of students to participate in the exclusions process. The regulations state that students *'may also be involved in the process of making representations'*. Information must be provided in writing as to the parent's right to make representations and how the student can be involved in the exclusion process. This information will go to parents (or a student if over the age of 18) – there is no requirement to provide it in an accessible format for students.

The final message in the 'key points' section of the guidance states that *'Excluded pupils should be enabled and encouraged to participate at all stages of the exclusion process, taking into account their age and understanding'*. Whilst the decision to exclude is for a head teacher to take, students should be given an opportunity to present their case before a final decision is made. In addition, governing bodies are required to identify the steps to be taken in order to enable excluded students to attend a review meeting and speak on their own behalf, or provide alternative means of students feeding in their views. Consideration should also be given to the participation of the student (either in person, through a representative, or in writing) in an independent review of the decision, where this is taking place.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 has made significant changes to the legal aid system. As a result of the Act, most cases concerning education, including exclusions, are now removed from scope. The Children's Society criticised these changes: *"Parents are often ill-equipped to understand the law, and apply the facts to effectively challenge exclusion decisions.. Legal aid funding in these situations is crucial to protect all children's right to education"*. The Children's Society also highlights the discriminatory impact that the changes will have on those from the most disadvantaged groups, who are most likely to be excluded, and least likely to be able to fund legal advice through private means.⁵⁸⁰

88 Ensure that children, and particularly children in care, have the right to appeal to a special educational needs tribunal

Children do not currently have the right to appeal to a special needs tribunal.

The Government has introduced draft legislation that will put the Government's plans for reforming provision for disabled children and young people and those with special needs into practice.⁵⁸¹ If the legislation is passed in its current form, pilot schemes are to be introduced that will give children in test areas the right to bring their own appeal in special educational needs matters and to bring their own disability discrimination claims. According to the Government document setting out the draft legislation in detail, this measure *'seeks to take on board Article 12 UNCRC and the child's right to express his or her views'*. The draft legislation also proposes to give a power to the Secretary of State to enable all children to bring appeals and make disability discrimination claims – this power would be used after the pilots have been run.

There are concerns that the section of the draft legislation which would require parents or young people to participate in mediation before they can appeal to the Tribunal, creates an additional, and inappropriate, barrier to appealing.⁵⁸²

89 Strengthen efforts to guarantee children's right to rest and leisure, to engage in play and recreational activities appropriate to their age, and to participate in cultural life and the arts

In response to a recent parliamentary question in relation to the Government's plans to ensure children have adequate opportunity to play, the Minister said:

*Play is a very important part of ensuring that all children get enough physical activity in their daily lives and helping to make sure that we "inspire a generation". From April 2013 we are putting local authorities in charge of improving the public's health and supporting this with a ring-fenced grant. Local authorities will be in a unique position to bring together and plan leisure, sport and public health services so every child has the opportunity to play.*⁵⁸³

A survey carried out by Fair Play for Children found that council spending on children's play and youth services was subject to cuts in 2011-12, which were disproportionate when compared with cuts in spending on other areas.⁵⁸⁴ In 2009-10 spending on children's play was 12.45% of spending on adult leisure. In 2010-11 this had fallen to 9.39% and in 2011-12 the figure was 7.99%. Fair Play for Children criticises a lack of national play policy. This echoes findings by London

580 The Children's Society (2012) *Memorandum submitted to the Public Bill Committee on the Legal Aid, Sentencing and Punishment of Offenders Bill*.

581 Department for Education (September 2012) *Draft legislation on Reform of provision for children and young people with Special Educational Needs*

582 Education Committee (December 2012) *Pre-legislative scrutiny: Special Educational Needs – Written evidence from the Every Disabled Child Matters campaign and the Special Educational Needs Consortium*

583 HC, 13 November 2012, c.193W

584 Fair Play for Children (September 2012) *Unfair Play for Children: Expenditure by English Local Authorities in 2009-10, 2010-11 and 2011-12*

Play, which found that in the past year over 70% of London's local authorities have either cut spending on play, or do not have a play budget. One council had reduced its play budget by 66%.⁵⁸⁵

90 Provide children, including those with disabilities, with adequate and accessible play spaces

There remains a lack of accessible play spaces, and space and time dedicated to play and sport in schools is reducing.

A survey of 10 to 15 year-olds in England and Wales found that 37% of this age group did not feel that there were enough activities for children in their local area.⁵⁸⁶ A survey among 419 parents with children aged 13 years and under found that 45% of parents wanted '*more local safe places to play*' as an incentive to allow their children to play freely outside.⁵⁸⁷

In a response to a freedom of information request, the Department for Education confirmed that it had approved the selling off of 19 school playing fields since May 2010 when the Government came into power.⁵⁸⁸ Changes to regulations mean that the number of playing fields being sold-off is expected to rise. According to the School Premises (England) Regulations 2012,⁵⁸⁹ schools' outdoor school space must be "suitable", whereas under the 1999 regulations schools were expected to provide pitches ranging from 5,000 sq metres for the smallest schools to 35,000 sq metres for schools with 600 pupils or more.⁵⁹⁰ There has also been a lack of investment in schools sports. A freedom of information request by Labour's Shadow Minister for the Olympics, Tessa Jowell MP found that local authorities throughout England reported that there is a 60% decline in the amount of time dedicated to organising school sport and a 37% decline in the number of School Sport Partnerships.⁵⁹¹ School Sport Partnerships are local networks of organised school sport which are also intended to address the drop off in sports participation when pupils leave school.⁵⁹²

585 London Play press release (3 May 2012) *Play takes a slide as it slips down London's priority list*

586 Office for National Statistics (October 2012) *Measuring National Well-being – Children's Well-being, 2012*

587 National Trust (April 2012) *Natural Childhood*

588 Department for Education (8 August 2012) *Freedom of Information Disclosure: School playing fields*

589 School Premises (England) Regulations 2012, SI No. 1943

590 Education (School Premises) Regulations 1999, SI No. 2.

591 Labour Party press release (18 July 2012) *Olympic and Paralympic Games are a once in a lifetime event that will get young people excited about sport*

592 Gibson, O. (18 July 2012) "Drop in school sport support blamed on funding cuts", *The Guardian*

Section 7

Special Measures of Protection

“Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age”⁵⁹³

“States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child”⁵⁹⁴

“States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee... receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.”⁵⁹⁵

593

594 UN Convention on the Rights of the Child. Article 39

595 UN Convention on the Rights of the Child. Article 22

91 Intensify efforts to ensure that the detention of asylum-seeking and migrant children is always used as a measure of last resort, and for the shortest appropriate period of time

Asylum-seeking and migrant children are still detained in the UK.

Children who are part of a family can be detained for up to a week immediately prior to removal at the new family detention facility, Cedars pre-departure accommodation, during their transfer to the port and at the port in short-term holding facilities. Where a family arrives in the UK and is refused entry, children may be detained with their adult relative(s) at Tinsley House Immigration Removal Centre if they cannot be removed on the day of arrival.

While the detention of migrant and asylum-seeking children decreased dramatically following the Government's 2010 pledge to end this breach of children's rights, more recent figures show that the number of children detained in families has been rising since the opening of the new pre-departure accommodation facility, Cedars. Between July and September 2012, 48 children entered detention.⁵⁹⁶ During the same period in 2011, 37 children were detained.⁵⁹⁷ In 2010 the figure was 48 and in 2009 it was 322.⁵⁹⁸

Thirty-five of the 54 children leaving detention between July and September 2012 were subsequently granted temporary admission to the UK or released into the community.⁵⁹⁹ Between April and June 2012, 31 of the 60 children detained were granted temporary admission into the UK following release. These figures indicate that the detention of these children for the purposes of removal was unnecessary, and therefore not a measure of last resort. A report by the Independent Family Returns Panel also showed that Cedars has been used to detain families who were later found to have a valid claim to remain in the UK. Of the 186 cases in the family returns process which had been concluded up to 31 March 2012, 77 were granted leave to remain in the UK.⁶⁰⁰

The report by the Family Returns Panel also suggests that Cedars is used out of convenience rather than as a last resort:

While Cedars is located in the south east of England, most of the families who have been returned have lived in northern England or Scotland. The availability of flights means that Heathrow or Gatwick are often the only option which adds to journey time. In a small

596 Home Office (November 2012) *Detention data tables Immigration Statistics July – September 2012*597 Home Office (November 2012) *Detention data tables Immigration Statistics July – September 2012*598 Home Office (November 2012) *Detention data tables Immigration Statistics July – September 2012*599 Home Office (November 2012) *Detention data tables Immigration Statistics July – September 2012*600 Independent Family Returns Panel (September 2012) *Annual Report 2011/2012*

*number of cases the Panel suspects that the LITs have proposed the use of Cedars in order to break the journey. This is done with the best of intentions but does not appear to be consistent with the concept of Cedars as a last resort. The Panel expects LITs to seek to remove families who do not require the use of Cedars from local airports where possible as part of a no further notice removal plan.*⁶⁰¹

Undocumented unaccompanied migrant children are routinely detained at ports of entry for questioning and to collect bio-data. In relation to the detention of children at ports, a report published by the Office of the Children's Commissioner for England in January 2012 found that '*children are in fact not currently being held for the 'shortest appropriate period of time'*'.⁶⁰² It considered that '*The length of time between being placed into detention and release into care is too long. This is due to both the numbers of interviews routinely undertaken and the waiting times between the interviews*'. It concluded that any interview beyond the gathering of basic identity data should be postponed until after a period of recovery in the care of the local authority. The Government does not collect data indicating the number of children being detained in holding facilities at ports.⁶⁰³ The Independent Family Returns Panel has criticised this lack of data:

*The Panel receives no information about the much larger number of families with children who are stopped at the border and held in nonresidential short-term holding facilities (holding rooms) at the port itself. The Panel expects this to be rectified in the year to come so that the Panel can fulfill its remit in respect of the border more effectively.*⁶⁰⁴

Unaccompanied children who are deemed to be adults by an immigration officer can be detained as adults in adult detention facilities. Organisations working with asylum-seeking children have raised concerns about the detention of children who are incorrectly treated as adults by immigration authorities.⁶⁰⁵ Data indicating the extent of this problem is not available, and the Government has indicated that it considers the collection of such data to be too expensive.⁶⁰⁶

Where an unaccompanied child has attempted entry using a forged document or a document not belonging to them they may be also detained under immigration powers while prosecution is considered and pending transfer to police custody.

92 Ensure there are adequate safeguards in place when children are returned to their originating country, including an independent assessment of the conditions upon return, and of the family environment awaiting the child

Guidance for UKBA staff dealing with voluntary departures⁶⁰⁷ and assisted voluntary return⁶⁰⁸ of families refers to section 55 of the Borders, Citizenship and Immigration Act 2009, which requires the UK Border Agency (UKBA) to carry out its functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It provides that officers must not apply the actions set out in the guidance with regard to children or to those with children without having due regard to the duty, which includes the need to demonstrate that '*The child's interests being made a primary, although not the only consideration*'. However, the practical implications of this duty for the removals process are not reflected in the remainder of the guidance documents, and concern has been expressed as to whether and how the child's best interests are assessed in practice.

In the case of "ensured return" of families, decisions on the "method of removal" (not the decision to return) are reviewed by a newly formed independent Family Returns Panel. The Panel can advise the UK Border Agency on its decision. The UKBA states, '*The advice provided by the panel will help to ensure that individual return plans take full account of the welfare of the children involved and that the UK Border Agency fulfils its responsibilities under section 55 of the Borders, Citizenship and Immigration Act 2009*'.⁶⁰⁹ In its first annual report,⁶¹⁰ the Panel explained that local immigration teams provide the panel with "family welfare forms", which contain information on the composition of the family, their immigration history, a description of any medical conditions, an account of the children's development including school records, the family's disposition at key contact events (including any assessment of risk to themselves, each other or officers) and whether the family are legally represented. As one of its "good practice principles", the Panel sets out its expectation that the forms should include information about members of the extended family both in the UK and in the country of return, together with information about the family's assets and skills '*to allow the Panel to assess the family's resilience and ability to adapt to their return*'. The Panel's report suggests that the quality of family welfare reforms has not been consistent, and recommended that a random

601 Independent Family Returns Panel (September 2012) *Annual Report 2011/2012*

602 Matthews, A. (January 2012) *Landing in Dover: The immigration process undergone by unaccompanied children arriving in Kent*, Office of the Children's Commissioner

603 HL, 25 June 2012, c. 28W

604 Independent Family Returns Panel (September 2012) *Annual Report 2011/2012*

605 Refugee Council (May 2012) *Not a minor offence: unaccompanied children locked up as part of the asylum system*

606 HL, 31 July 2012, c. 189A

607 UK Border Agency (2009) *Asylum Process Guidance: Voluntary Departures*

608 UK Border Agency (2009) *Asylum Process Guidance: Assisted Voluntary Return*

609 See: <http://www.ukba.homeoffice.gov.uk/aboutus/workingwithus/indbodies/04independent-family-returns/>

610 Independent Family Returns Panel (September 2012) *Annual Report 2011/2012*

sample should be subject to periodic independent audit, since neither the family nor their legal representatives are able to scrutinise the summary before the Panel sees it.

The Refugee Children's Consortium (RCC) has raised serious concerns about the fact that families and their legal representatives are unable to challenge the information presented to the Family Returns Panel. In a letter to the UK Border Agency, the Consortium wrote:

*we remain extremely concerned that families and their legal representatives do not have sight of the information about a family which is presented to the panel by the UK Border Agency... in our experience, it is not uncommon for enforcement decisions and plans to be made by the UK Border Agency on the basis of inadequate and/or inaccurate information. It is therefore absolutely vital that families and their legal representatives have the opportunity to see and, where necessary, challenge the information presented by the UK Border Agency to the panel. In our view, without this basic safeguard, the panel cannot operate independently or credibly.*⁶¹¹

The Consortium also rejected proposals for an audit to be carried out by the UK Border Agency: 'this safeguard is inadequate for a number of reasons, including the fact that an audit by the UK Border Agency will not reveal information which is not on the family's file but could have been provided to the panel by the family or their legal representatives.'

Guidance on immigration decision-making in relation to unaccompanied children,⁶¹² states that case owners should give 'full consideration' to the best-interests of the child in deciding whether to grant a child discretionary leave to remain in the UK. It provides that 'In some cases, it may be reasonably clear that the child's best interests may be served by returning to the country of origin – for example where the family has been traced and it is clear that the return arrangements can be made direct to parents'. This appears to preclude a detailed and individualised assessment in cases where a child can be returned to his or her parents. It goes on to say that 'The overall assessment of the child's best interests will generally be a matter of considering the child's individual circumstances and experiences in the United Kingdom alongside information about the conditions the child would face in the country of return'. The guidance sets out a non-exhaustive list of factors to be taken into account in carrying out such an assessment, including 'the availability of care arrangements, the safety and security of the living arrangements,

and the socio-economic conditions' and 'the availability of education, work or training opportunities in the country of return'. However, there are concerns about the quality of the way in which these assessments are carried out in practice. The guidance provides 'as a minimum case owners should discuss the case with social worker and ask him/her to complete the attached [best interests] pro forma within an agreed timeframe'. In its evidence to the JCHR, the Refugee Children's Consortium expressed concern that:

There are serious shortcomings with this approach and the form itself, and the RCC doubts that this is an appropriate method of ascertaining what is in the child's best interests. It is also unclear whether this is being done in every case, how assessments around best interests are being conducted and how much weight is given to them.

*...While in some cases it may be concluded that it is in the child's best interests to be returned to their country of origin, this cannot be assumed in all cases and needs careful exploration. This should be done through a multi-agency approach with a range of child protection experts as well as engagement from the young person, their advocates and legal representative.*⁶¹³

The UKBA is exploring the possibility of forcibly returning separated children aged 16 and 17 to Afghanistan and Iraq. The Netherlands, Norway, Sweden and United Kingdom are seeking to support facilities in countries of origin specifically for the purpose of creating possibilities for return, including via the European Return Platform for Unaccompanied Minors (ERPUM) project.⁶¹⁴ The UKBA informed the National Asylum Stakeholder Forum children's sub-group meeting in October 2012, that it is exploring the option of returning unaccompanied minors to Bangladesh, Pakistan and Vietnam. The Government visited Vietnam in May 2012 to explore whether Vietnamese unaccompanied minors could be returned.⁶¹⁵

93 Ensure that the UK Border Agency appoints specially-trained staff to conduct screening interviews of children

Unlike those carrying out substantive interviews, there is no rule requiring those who carry out screening interviews of children to be specially-trained. Research has shown the screening of children to be highly inadequate. Concerns have also been raised about

611 Letter from Refugee Children's Consortium to Family Returns Unit, UK Border Agency dated 6 December 2012

612 UK Border Agency (2009) *Asylum Process Guidance: Processing Asylum Applications from a Child*

613 Refugee Children's Consortium (October 2012) *Memorandum submitted to the Joint Committee on Human Rights Inquiry into the human rights of unaccompanied migrant children and young people*

614 See: http://www.migrationsverket.se/info/4597_en.html

615 HC, 3 September 2012, c. 207W

the training of other agents who come into contact with migrant and asylum seeking children during the immigration process.

A report by the Office of the Children's Commissioner raises serious concerns about the screening process at ports.⁶¹⁶ Its research in Dover found that children are interviewed when hungry, tired and/or ill, that there is rarely a Responsible Adult or a legal representative present at screening interviews, and that telephone interpreting which is not "fit for purpose" is widely used in interviews with children. The United Nations High Commissioner for Refugees (UNHCR) submission to the JCHR draws attention to the need for child-specific training for interpreters involved in interviews with children.⁶¹⁷

Paragraph 352 of the Immigration Rules requires that when a child is subject to a substantive asylum interview *'the interviewer should have specialist training in the interviewing of children and have particular regard to the possibility that the child feels inhibited or alarmed'* and Para 352ZB requires that the decision on the asylum claim must be taken by a person trained to deal with asylum claims from children. However, the UNHCR's submission to the JCHR states that training for decision-makers has been reduced from four days to three.⁶¹⁸

The Independent Family Returns Panel raised serious concerns in relation to Reliance, the organisation with which UKBA contracts to carry out the in-country escort of family members following arrest and to travel with the family to their country of return.⁶¹⁹ The Panel's annual report notes that staff at Cedars have observed that the level of awareness of Reliance staff with regard to safeguarding issues is in some cases very limited and that Reliance staff themselves have indicated that their training is limited and in a few cases that it has not taken place at all before staff have been deployed to a team of escorts. The Panel also reported having observed incidents during removals which were not managed in accordance with the best interests of children and safeguarding requirements.

94 Consider the appointment of guardians to unaccompanied asylum-seekers and migrant children

There is no requirement to appoint a guardian for unaccompanied asylum-seekers and migrant children. The vast majority of

unaccompanied asylum-seeking and migrant children are also denied access to a person with parental responsibility for them, because most of these children are accommodated by local authorities, rather than looked after by order of a court.

During a debate on the appointment of advocates for child trafficking victims, the Minister committed to invite the OCC to review the current practical arrangements for rescued child victims of trafficking and to provide advice to the Government.⁶²⁰ The Annual Report of the Ministerial Human Trafficking group confirmed:

*Working in partnership with the Office of the Children's Commissioner for England, the Home Office is currently commissioning a study to examine the practical care arrangements for trafficked children. The objective of this work is to develop a better understanding of the experiences of trafficked children who become looked after, and to explore practice amongst the professionals who work with this group of children. It is hoped that the review will highlight good practice and identify how improvements and greater consistency can be brought to the existing system.*⁶²¹

95 Provide disaggregated statistical data in the next periodic report on the number of children seeking asylum, including those subject to age disputes

The Home Office publishes statistics on the number of children seeking asylum, including those subject to age disputes. In 2011, there were 1,398 applications for asylum from unaccompanied asylum-seeking child, a decrease of 19%.⁶²² The UKBA disputed the ages of 374 of those claiming to be children, a decrease of 24% compared with 2010.⁶²³ This information is disaggregated by sex, age, and country of origin.

However, there is no data published showing the number of children that the Home Office has treated as adults because *'their physical appearance / demeanour very strongly suggests that they are significantly over 18 years of age'*. Where UKBA considers that an applicant for asylum satisfies this definition, it will treat the applicant as an adult without formerly disputing their age or referring them to a local authority for assessment.⁶²⁴

⁶¹⁶ Matthews, A (January 2012) *Landing in Dover: The immigration process undergone by unaccompanied children arriving in Kent Office of the Children's Commissioner*

⁶¹⁷ UNHCR (October 2012) *Submission to the UK Parliamentary Joint Committee on Human Rights Inquiry Into the human rights of unaccompanied migrant children and young people in the United Kingdom, with a particular focus on those who are seeking asylum or have been the victims of trafficking*

⁶¹⁸ UNHCR (October 2012) *Submission to the UK Parliamentary Joint Committee on Human Rights Inquiry Into the human rights of unaccompanied migrant children and young people in the United Kingdom, with a particular focus on those who are seeking asylum or have been the victims of trafficking*

⁶¹⁹ Independent Family Returns Panel (September 2012) *Annual Report 2011/2012*

⁶²⁰ HC, 15 February 2012, c. 849

⁶²¹ Home Office (October 2012) *First annual report of the Inter-Departmental Ministerial Group on Human Trafficking*

⁶²² Home Office (August 2012) *Immigration Statistics April-June 2012 Third edition: Asylum part 2: appeals, unaccompanied asylum-seeking children, age disputes and dependants*

⁶²³ Home Office (August 2012) *Immigration Statistics April-June 2012 Third edition: Asylum part 2: appeals, unaccompanied asylum-seeking children, age disputes and dependants,*

⁶²⁴ Refugee Council (May 2012) *Not a minor offence: unaccompanied children locked up as part of the asylum system*

There is only limited data available on the number of children seeking asylum as dependants, because the category of “dependants” is not disaggregated.⁶²⁵

96 Give the benefit of the doubt to children in age-dispute cases

UKBA guidance on assessing the age of asylum applicants states that applicants ‘*should be treated as an adult if their physical appearance / demeanour very strongly suggests that they are significantly over 18 years of age... All other applicants should be afforded the benefit of the doubt and treated as children... until a careful assessment of their age has been completed*’ (emphasis added).⁶²⁶ On the basis of this guidance, where UKBA’s staff consider that an applicant, who claims to be a child, has a demeanour which very strongly suggests that they are significantly over 18 years of age, that person will not be afforded the benefit of the doubt.

Research published by the OCC found that of 17 cases in which a local authority’s age assessment was challenged in the High Court through Judicial Review, five resulted in a declaration in favour of upholding the young person’s claimed age. In three the Court arrived at a date of birth somewhere between the assessed and the claimed date of birth. These figures suggest that children are not being given the benefit of the doubt in age-dispute cases.⁶²⁷

Research carried out by The Children’s Society found that children encountering UKBA officials met a “culture of disbelief”:

*Another factor that contributed greatly to young people’s anxieties about the asylum process was having their age disputed by the UKBA or local authorities. They did not understand why they were not being listened to about their age and why they were not believed.*⁶²⁸

In March 2012 the UK Border Agency announced that, with the London Borough of Croydon, it was trialing a system whereby young people who claimed to be children but who had been assessed by Croydon Social Services as over 18 would be offered a dental age assessment. This proposal was subject to significant criticism, on the basis that medical ethics demand that a person should only be subject to radiation if there is therapeutic

benefit to doing so and if the person gives free and informed consent.⁶²⁹ Since these conditions are not met in the case of dental x-rays for the purposes of establishing a person’s age for immigration purposes, concerns have been raised that the treatment constitutes the unlawful infliction of harm on children. The pilot has since been suspended pending ethical approval from the National Research Ethics Service.

97 Seek guidance from experts when determining age in disputed cases

In age disputed cases, a “careful assessment” of an applicant’s age is carried out by the relevant local authority. Research published by the OCC found that training provided to those social workers who carry out age assessments is inconsistent.⁶³⁰ The majority of social workers interviewed reported having been on training courses, but many said they carried out age assessments for one or two years before completing the training. Many felt that there are significant gaps in the content of training and guidance documents.

In a submission to the JCHR, the UNHCR expressed concern that the role of assessing age falls to local authorities, raising a potential conflict of interest as local authorities will carry the financial cost if the young person is found to be a child.⁶³¹ The UNHCR also recommended that the age assessment process should be kept separate from the asylum process, so that it does not impact on the credibility assessment for the asylum decision.

The court process for challenging a local authority’s age assessment has been described by a judicial source as ‘*simply an expensive lottery*’.⁶³² The OCC’s research found that while there is in principle no burden on the young person to prove his age, focus in court has shifted entirely onto what the young person can say about his age and whether that evidence can be believed, rather than whether the local authority’s decision-making can be criticised. In such proceedings, legal representatives do present evidence from experts, such as paediatricians, independent social workers, psychiatric and dental experts, for opinions on age and child development to counter the local authority’s assessment of age. However, the OCC’s research found that the court’s view of such expert evidence is mixed. The research attributes this to the fact that experts do not assist the court independently of the interests of the parties.

625 Home Office (August 2012) *Immigration Statistics April-June 2012 Third edition: Asylum part 2: appeals, unaccompanied asylum-seeking children, age disputes and dependants*

626 UK Border Agency (2011) *Asylum Process Guidance: Assessing Age*

627 Office of the Children’s Commissioner (July 2012) *The Fact of Age*

628 The Children’s Society (September 2012) *Into the Unknown: Children’s Journey through the Asylum Process*

629 See, for example, the Immigration Law Practitioners’ Association (April 2012) *Age Disputes (Dental X-Rays) Information Sheet*

630 Office of the Children’s Commissioner (July 2012) *The Fact of Age*

631 UNHCR (October 2012) *Submission to the UK Parliamentary Joint Committee on Human Rights Inquiry Into the human rights of unaccompanied migrant children and young people in the United Kingdom, with a particular focus on those who are seeking asylum or have been the victims of trafficking*

632 Office of the Children’s Commissioner for England (July 2012) *The Fact of Age*

The process also subjects the children involved to intrusive scrutiny, and a highly stressful experience. The Children's Commissioner found that in 10 out of 17 publicly available judgments from substantive age assessment trials the child was required to give evidence and face cross-examination without any apparent special measures in place. In many cases judges refused requests for special measures such as having the matter heard in an informal court room environment, allowing breaks in the evidence, dispensing with the need for formal court attire or making the room more child-friendly.

There are also concerns about the quality of judicial decision-making in relation to age-disputes. Of the 17 cases examined in research for the OCC, five have gone on to the Court of Appeal. Two of these had been heard by the Court of Appeal substantively and in both cases the Court of Appeal overturned the Administrative Court judge's determination of age. Three cases were awaiting a decision on permission to appeal.

98 Consider amending section 2 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 to allow for an absolute defence for unaccompanied minors entering the UK without valid immigration documents

There is no absolute defence for unaccompanied minors entering the UK without valid immigration documents.

The criminalisation of children for immigration offences continues to be a problem. Research by the University of Cambridge into the criminalisation of migrant women found that:

*In the context of interviews with 103 migrant women in the prison and immigration holding estate, detained or arrested on charges that are potentially linked with entry to or exit from the UK or work under the control of others, evidence gathered indicated that 43 were victims of trafficking, of whom two were formally re-assessed as children whilst in the adult estate.*⁶³³

633 Hales, L. and Gelsthorpe, L. (2012) *The Criminalisation of Migrant Women* Institute of Criminology, University of Cambridge

99 Do more to collect data on the extent of sexual exploitation and abuse of children, in order to prepare adequate responses to these issues

The Home Office publishes data recording the number of sexual offences which occurred in a given year.⁶³⁴ The Home Office is developing a new data hub system that will collect more detailed information from police forces.⁶³⁵ Police forces will have to provide gender and age information for victims of violent and sexual offences.

Data collected by the NSPCC⁶³⁶ shows that even on the basis of official data, children continue to experience high levels of sexual abuse.

Sexual offences against children

	2010/11	2011/12
Sexual assault on a male child under 13	1,125	1,011
Rape of a female child under 16	2,880	2,778
Rape of a female child under 13	2,235	2,210
Rape of a male child under 16	247	289
Rape of a male child under 13	671	599
Sexual assault on a female child under 13	4,301	3,985
Sexual activity involving a child under 13	1,773	1,810
Sexual activity involving a child under 16	4,033	3,968
Abuse of position of trust of a sexual nature	146	175
Abuse of children through prostitution and pornography	152	160
Sexual grooming	310	372
TOTAL OFFENCES	17,873	17,357

Interim findings of an inquiry conducted by the OCC confirmed that 2,409 children were victims of sexual exploitation in gangs and groups during the 14-month period from August 2010 to October 2011. Evidence to the inquiry indicated that in any given year the actual number of children being abused is far greater than the 2,409 confirmed. It also identified 16,500 children as being at high risk of child sexual exploitation during the period April 2010-March 2011. This figure is based on children who displayed three or more signs of behaviour indicating they were at risk of child sexual exploitation.⁶³⁷ The report highlighted the inadequacy of systems for monitoring child sexual exploitation (see concluding observation 53 for more detail).

634 Paul Taylor and Steve Bond (July 2012), *Crime Detected in England and Wales 2011/2012* Home Office

635 HC, 6 Nov 2012, c. 535W

636 Data provided to NSPCC in response to a Freedom of Information request. See also: http://www.nspcc.org.uk/news-and-views/media-centre/press-releases/2012/12-04-10-sixty-child-offences-a-day/sex-offences_wdn88682.html

637 Office of the Children's Commissioner (November 2012) *I thought I was the only one. The only one in the world: The Office of the Children's Commissioner's Inquiry into Child Sexual Exploitation In Gangs and Groups: Interim report*.

Many recent reports have highlighted the particular vulnerability to sexual exploitation of looked after children, and the link between children going missing from care and sexual exploitation.⁶³⁸ Yet in June 2012, the APPG for Runaway and Missing Children and Adults and the APPG for Looked after Children and Care Leavers argued that the Government was under-reporting the number of children going missing from care.⁶³⁹ The OCC has also raised concerns that local authorities do not have a common approach to recording data on children missing from care, with some local authorities logging details only of those children missing for a period of 24 hours or longer. Its report found that police forces also have different ways of recording instances where children repeatedly go missing.⁶⁴⁰

The Government's progress report on its Action Plan for tackling child sexual exploitation sets out measures it is taking to improve the collection of data on children who go missing from care, and to prevent children in care from going missing.⁶⁴¹

See also concluding observation 53.

100 Ensure that, in both legislation and practice, children involved in sexual exploitation and abuse (including as child prostitutes) are always considered as victims of crime in need of support, not as offenders

Children can still be criminalised for involvement in prostitution, and child victims of trafficking can also be criminalised for immigration and drugs-related offences.

In July 2012, the Government published its progress report on its Action Plan for tackling child sexual exploitation.⁶⁴² It sets out the measures the Government has taken to raise awareness in relation to sexual exploitation, including training for frontline police officers on the issue and changes to the Foundation Curriculum for new doctors, to include competences on meeting the needs of children who are victims of abuse.

However, concerns remain that in practice child victims of sexual exploitation are not treated appropriately by the professionals with whom they come into contact. Following the conviction of a group of men for the sexual exploitation of girls in Rochdale, a review of the circumstances surrounding the cases concluded that there had

been missed opportunities over five years to safeguard children and young people affected by sexual exploitation. The review found that in children's social care the focus was on younger children at risk of abuse from family and household members, rather than on vulnerable adolescents. It also found that the missed opportunities were due in part to staff attitudes: 'Case files state that the children were often considered to be "making their own choices" and to be "engaging in consensual sexual activity"'.⁶⁴³

This chimes with findings of the Office of the Children's Commissioner:

*the panel was presented with confused and inconsistent understanding on the part of both professionals and young people of the concept of consent to sexual activity. Children and young people who were being sexually exploited were frequently described by professionals in many localities as being "promiscuous", "liking the glamour", engaging in "risky behaviour" and being generally badly behaved. Some of the most common phrases used to describe the young person's behaviour were: "prostituting herself", "sexually available" and "asking for it". The Inquiry panel believes this labelling reflects a worrying perspective held by some professionals, namely that children are complicit in, and responsible for, their own abuse.*⁶⁴⁴

An inquiry by the APPG for Runaway and Missing Children and Adults and the APPG for Looked after Children and Care Leavers made similar findings:

*Professionals are failing some children by not picking up the signs of abuse or exploitation. The Inquiry heard that some professionals perceive these children as 'troublesome', 'promiscuous', 'criminals' or indeed 'slags who knew what they were getting themselves into' rather than extremely vulnerable young people in need of support.*⁶⁴⁵

Such attitudes amongst authorities charged with protecting children's rights give rise to serious concerns about their ability to do so.

Children who have been subjected to trafficking are at risk of criminalisation for behaviour linked to their exploitation, such as immigration offences, prostitution and drug offences. In July 2012, UKBA issued guidance for frontline staff on dealing with victims of human trafficking. It provides that any child who is recruited, transported or transferred for the purposes of exploitation will be considered to be a potential victim of trafficking, whether or not

638 See, for example, Office of the Children's Commissioner (July 2012) *Emerging Findings of the Inquiry into Child Sexual Exploitation in Gangs and Groups*, The Child Exploitation and Online Protection Centre (2011) *Out of Mind, Out of Sight: Breaking Down the Barriers to Understanding Child Sexual Exploitation*, University of Bedfordshire (October 2011) *What's going on to Safeguard Children and Young People from Sexual Exploitation? How Local Partnerships Respond to Child Sexual Exploitation*, Barnardo's (January 2011) *Puppet on a String: the Urgent Need to Cut Children Free from Sexual Exploitation*

639 APPG for Runaway and Missing Children and Adults and the APPG for Looked after Children and Care Leavers (June 2012) *Report from the Joint Enquiry into Children who go Missing from Care*

640 See, for example, Office of the Children's Commissioner (July 2012) *Emerging Findings of the Inquiry into Child Sexual Exploitation in Gangs and Groups*

641 Department for Education (July 2012) *Tackling Child Sexual Exploitation Action Plan: Progress report*

642 Department for Education (July 2012) *Tackling Child Sexual Exploitation Action Plan: Progress report*

643 Rochdale Borough Safeguarding Children Board (September 2012) *Review of Multi-agency Responses to the Sexual Exploitation of Children*

644 Office of the Children's Commissioner (November 2012) *"I thought I was the only one. The only one in the world": The Office of the Children's Commissioner's Inquiry into Child Sexual Exploitation in Gangs and Groups: Interim report*

645 APPG for Runaway and Missing Children and Adults and the APPG for Looked after Children and Care Leavers (June 2012) *Report from the Joint Enquiry into Children who go Missing from Care*

they have been forced or deceived, because it is not considered possible for children to give informed consent.⁶⁴⁶ Department for Education practice guidance on safeguarding children who may have been trafficked also stresses that officers investigating offences committed by children who may have been trafficked must be able to identify such cases and must take the child's welfare needs and safety into account and follow appropriate safeguarding processes.⁶⁴⁷

However, the US State Department's 2012 annual review of anti-trafficking policy pointed out that '*NGO and government reports published during the year noted that trafficked children in the prostitution sector, cannabis cultivation, or who commit petty crimes are often subjected to criminal proceedings instead of recovery and care*'.⁶⁴⁸ Its recommendations to the UK included that the UK should '*Ensure that trafficking victims, including children coerced into criminal activity, are not penalised for acts committed as a result of their trafficking*'. The Education Select Committee's report into child protection made similar findings in relation to child trafficking victims:

*We are also concerned by the treatment of children found in criminal settings. The police and the UKBA have a focus on detecting crime and implementing immigration policy which can lead to the criminalisation of abused and vulnerable children found in these situations. Such children must always be treated as victims—and children—first and not just as criminals. Training and guidance should be given to police and UKBA front-line staff to this effect.*⁶⁴⁹

In December 2011 the EU adopted a Directive on the sexual abuse and sexual exploitation of children which requires states to ensure that national authorities are entitled not to prosecute or impose penalties on child victims of sexual abuse and sexual exploitation for their involvement in criminal activities.⁶⁵⁰ It is not clear whether the UK will make legislative amendments in responding to the directive.

101 Ratify the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse

On 11 July 2012 the Government confirmed that '*discussions are taking place across Government to establish a clear picture of current levels of existing compliance. Subject to the successful progression of these discussions, we aim to reach a decision on the steps needed to ratify and implement the Convention before the conclusion of this Parliament*'.⁶⁵¹

102 Provide the necessary resources to effectively implement the Anti-Trafficking Action Plan

On 19 July 2011 the Government published *Human Trafficking: The Government's Strategy*.⁶⁵² There do not seem to be significant resources attached to delivery of the strategy.

The first Annual Report of the Inter-Departmental Ministerial Group on Human Trafficking published in October 2012 reported that in 2011, 234 children were referred to the National Referral Mechanism (NRM) as potential victims of human trafficking.⁶⁵³ The majority of potential child victims were reported to be in the 16–17 year old age category and the most prevalent type of exploitation reported for children was labour exploitation. It noted, however, that the recently published UK Human Trafficking Centre (UKHTC) Baseline Assessment suggests that there could be over 2,000 potential victims of human trafficking in the UK. It also reported significant activity dedicated to tackling the number of children who go missing from care.

The EHRC's Human Rights Review also concludes that '*it is likely that only a small proportion of trafficked individuals are referred to the NRM*'.⁶⁵⁴ It argues that the effectiveness of the NRM is undermined because solicitors and legal representatives of victims of trafficking cannot make a referral to the NRM and an individual cannot self-refer, except by attempting to claim asylum and hoping that he or she is identified as a victim of trafficking.

646 UKBA (July 2012) *Victims of human trafficking – guidance for frontline staff*

647 Department for Education (October 2011) *Safeguarding children who may have been trafficked*

648 US Department of State (2012) *Trafficking in Persons Report 2012*

649 Education Committee (October 2012) *Children first: the child protection system in England*

650 Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography

651 APPG for Runaway and Missing Children and Adults and the APPG for Lookedafter Children and Care Leavers (June 2012) *Report from the Joint Enquiry into Children who go Missing from Care*, pp. 9–10

652 Home Office (July 2011) *Human Trafficking: The Government's Strategy*

653 Home Office (October 2012) *First annual report of the Inter-Departmental Ministerial Group on Human Trafficking*

654 Equality and Human Rights Commission (2012) *Human Rights Review*

103 Ratify the Council of Europe Convention on Action Against Trafficking in Human Beings +

In addition to having ratified the Council of Europe Convention Against Trafficking, the UK opted in to the EU Directive on combating trafficking.⁶⁵⁵ It has until April 2013 to implement the Directive in its domestic legislation. The Directive encourages Member States not to prosecute victims that have committed offences as a direct result of trafficking (such as having false documents).

In order to comply with the Directive, the Government extended the existing offence of trafficking for the purposes of labour or other exploitation to cover trafficking that takes place entirely within the UK and to extend the territorial extent of current trafficking offences to cover trafficking by a UK national where the UK was not the country of arrival, entry, travel or departure.⁶⁵⁶ In February 2012, the Government confirmed that it was considering enshrining in legislation the right of a child to a representative during the investigation of child trafficking in order to comply with Article 15 of the Directive.⁶⁵⁷

In May 2012 the Home Office published a review of legislation on human trafficking. It confirmed that the Government was considering amending legislation to allow the Attorney General to refer to the Court of Appeal cases in which it appears to him or her that the Crown Court has passed an unduly lenient sentence for an offence of non-sexual exploitation.⁶⁵⁸

104 Ensure child protection standards for trafficked children meet international standards -

The Government consulted on draft child protection practice guidance in 2012 to replace similar guidance from 2010.⁶⁵⁹ The guidance had been dramatically reduced in volume, and provisions relating to the safeguarding of child victims of trafficking had been removed.

The US State Department's 2012 annual review of anti-trafficking policy ranked the UK in the top tier, but pointed out that anti-trafficking experts continue to report inadequate protections for child trafficking victims, with child trafficking victims going missing from local authority care.⁶⁶⁰ Reports by a joint parliamentary inquiry,

the Education Select Committee, and the Office of the Children's Commissioner have also drawn attention to this issue during 2012.⁶⁶¹

The Equality and Human Rights Commission, in its 2012 *Human Rights Review*, raises concerns that 'Authorities sometimes fail to identify child victims of trafficking and give them adequate protection'.⁶⁶² It finds that while 'there is now some local authority expertise on trafficking for sexual exploitation, other types of trafficking, for example for cannabis cultivation or domestic servitude, are often overlooked'. It notes that a lack of protection sometimes results from children being incorrectly classified as adults. The report also finds that older children can be less well protected, noting that while over half of the referrals to the NRM are aged 16 or 17, they are often allocated a key worker, who typically offers a lower level of intervention than the social workers who are allocated to younger children.

ECPAT argues that the NRM, staffed by immigration officials, is an unsuitable mechanism to protect child victims of trafficking.⁶⁶³ Organisations have called for the Department for Education to take responsibility for trafficked children.⁶⁶⁴

105 Fully implement international standards of juvenile justice, in particular articles 37, 39 and 40, and General Comment 10 on Children's rights in juvenile justice, the UN Standard Minimum Rules for the Administration of Juvenile Justice, the UN Guidelines for the Prevention of Juvenile Delinquency, and the UN Rules for the Protection of Juveniles Deprived of their Liberty =

The YJB's strategy for the secure estate sets out the principles which will guide the commissioning and delivery of services in custody.⁶⁶⁵ These include:

- The secure estate for children and young people should be distinct from adult provision and specialist in its focus on children and young people.
- Commissioned services should recognise diversity and promote equality proactively.
- Commissioned services should maintain the safety and wellbeing of children and young people placed in custody and actively incorporate the views of young people.

655 Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

656 Protection of Freedoms Act 2012

657 Lipscombe, S. (16 March 2012) *Human Trafficking: UK responses*

658 Home Office (May 2012) *Report on the Internal Review of Human Trafficking Legislation*

659 Department for Education (2012) *Working Together to Safeguard Children*

660 US Department of State (2012) *Trafficking in Persons Report 2012*

661 APPG for Runaway and Missing Children and Adults and the APPG for Lookedafter Children and Care Leavers (June 2012) *Report from the Joint Enquiry into Children who go Missing from Care*, Office of the Children's Commissioner (November 2012) "I thought I was the only one. The only one in the world": *The Office of the Children's Commissioner's Inquiry into Child Sexual Exploitation In Gangs and Groups: Interim report*, and Education Committee (October 2012) *Children first: the child protection system in England*

662 Equality and Human Rights Commission (2012) *Human Rights Review*

663 Education Committee (October 2012) *Children first: the child protection system in England*

664 Education Committee (October 2012) *Children first: the child protection system in England*

665 Ministry of Justice and YJB (2012) *Developing the Secure Estate for Children and Young People in England and Wales – Plans until 2015*

The strategy states:

We consider the principles to be an essential platform for protecting the rights of children and young people in custody, in line with the government's commitment to have due consideration to the United Nations Convention on the Rights of the Child (UN CRC) – including the presumption that custody should only be used as a last resort.

If these principles were indeed reflected throughout policy and practice in the secure estate, they would go some way towards ensuring that the juvenile system is compliant with international human rights standards.

However, from 2010-11 to 2011-12, the YJB's custodial budget decreased by 14.5% from £305.6m to £261.3m (this reflects, in part, a reduction in the number of children in custody). It is likely to decline to £202.3m in 2014-15.⁶⁶⁶ The YJB has confirmed that it will absorb these cuts, and reflect the fact that far fewer children are in custody, by decommissioning places in STCs and SCHs. This decision is at odds with children's rights. The YJB itself acknowledges that:

Both secure children's homes and STCs have specially trained staff and staffing ratios that allow for the delivery of regimes that address the holistic needs of children and young people. In addition, the size of secure children's homes and STCs is comparable – and a lot smaller than under-18 YOIs... Under current arrangements, the under-18 YOI sector can lack a distinct focus on service delivery for children and young people. In this sector there is potential for tensions to arise between the YJB's requirements for services with an exclusive focus on children's needs, and the various demands placed on its main provider NOMS, which mainly provides services to adults.

Children in custody share these views. When the YJB published the results of its consultation with young people on its strategy, it reported that young people had stressed that the most cost-effective institutions are not necessarily the ones where children feel safest and have the best chance of rehabilitation.⁶⁶⁷

Some aspects of children's treatment whilst in custody, including the use of full searches, the use of painful restraint techniques, the level of restraint, and the use of separation, breach children's right to be treated with humanity and respect for the inherent dignity of the human person

and in a manner which takes into account the needs of persons of his or her age.

106 Raise the minimum age of criminal responsibility

Over the year, a body of support grew for increasing the age of criminal responsibility. In December 2011 the Royal Society published a report which considered the role of neuroscience in determining an appropriate age of criminal responsibility. It concluded

...it is clear that at the age of ten the brain is developmentally immature, and continues to undergo important changes linked to regulating one's own behaviour. There is concern among some professionals in this field that the age of criminal responsibility in the UK is unreasonably low...⁶⁶⁸

In January 2012 the Centre for Social Justice called for the age of criminal responsibility to be raised from 10 to 12⁶⁶⁹ and in March 2012 the APPG on Women in the Penal System recommended that the age of criminal responsibility in England and Wales be raised in line with the European average age of 14 years.⁶⁷⁰ In December 2012, the National Association for Youth Justice (NAYJ) published a paper calling for the minimum age of criminal responsibility to be raised to 16, arguing that the continued criminalisation of children is unjust, counter-productive and a breach of international obligations.⁶⁷¹ This was accompanied by an open letter calling on the Government to review the minimum age of criminal responsibility, which was signed by more than 50 individuals and organisations with expertise in youth justice matters.⁶⁷²

However, in its response to the Universal Periodic Review, published in September 2012, the UK Government rejected the recommendation that it should consider raising the age of criminal responsibility.⁶⁷³ It stated:

The UK Government believes that children are old enough to differentiate between bad behaviour and serious wrong-doing at age 10. However we accept that prosecution is not always the most appropriate response to youth offending and the majority of offences committed by children (aged 10-14) are addressed using out of court disposals and robust intervention to prevent the re-offending. Setting the age of criminal responsibility at age 10 in

⁶⁶⁶ Ministry of Justice and YJB (2012) *Developing the Secure Estate for Children and Young People in England and Wales – Plans until 2015*

⁶⁶⁷ Participation Works (May 2012) *Young people's views on child custody plans published*

⁶⁶⁸ Royal Society (December 2011) *Brain Waves Module 4: Neuroscience and the law*

⁶⁶⁹ Centre for Social Justice (January 2012) *Rules of Engagement: Changing the heart of youth justice*

⁶⁷⁰ All Party Parliamentary Group on Women in the Penal System (March 2012) *Keeping girls out of the penal system*

⁶⁷¹ National Association for Youth Justice (December 2012) *Criminalising children for no good purpose: the age of criminal responsibility in England and Wales*

⁶⁷² See: <http://thenayj.org.uk/news-events-and-information/>

⁶⁷³ United Kingdom (September 2012) *UK's formal response to the Universal Periodic Review – Annex document*

England and Wales allows frontline services to intervene early and robustly, preventing further offending and helping young people develop a sense of personal responsibility for their behaviour.

In December 2012, the Government confirmed its position in Parliament.⁶⁷⁴

107 Develop a broad range of alternative measures to detention for children in conflict with the law

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 introduced a more flexible approach to out-of-court disposals. For example, a child can be given a conditional discharge if they plead guilty to a first offence and provision was made to allow repeated use of referral orders.⁶⁷⁵ The National Association for Youth Justice concludes that this approach ‘*provides the opportunity to deliver a proportionate response to troublesome behaviour*’.⁶⁷⁶

However, the legislation also makes changes to the operation of alternatives to detention to make them more onerous. The maximum daily length of a curfew has increased from 12 to 16 hours, making it more difficult to reconcile with other commitments such as school and work, and the maximum period for which they can be imposed has been increased from six to twelve months.⁶⁷⁷ The maximum fine for breach of a YRO has increased dramatically to £2,500.⁶⁷⁸

Under Section 34 of the Offender Management Act 2007, children subject to a Detention and Training Order could be held in other forms of accommodation outside of the secure estate to serve the custodial period of their sentence. In the Government's consultation on the use of this power they specified that it would allow the YJB to:

- place a young person with exceptional health, welfare or behavioural issues into a more appropriate facility outside the secure estate, and
- develop a limited number of smaller, satellite sites that aid resettlement back into the community, some of which may be open or semi-independent living accommodation

In its response to the consultation exercise the Government announced that despite the use of the provision being ‘*widely supported by respondents*’ it no longer intended to implement this provision.⁶⁷⁹

108 Establish the principle that detention should be used as a measure of last resort and for the shortest period of time as a statutory principle

The principle that detention should be used as a measure of last resort and for the shortest period of time is not enshrined in domestic law.

The number of children in custody has fallen significantly. In October 2012, the number of children in the secure estate was 1,595, 426 fewer children than the 2,021 children in custody in October 2011.⁶⁸⁰ The fall in the number of children in custody has not benefited all groups. Black and minority ethnic (BME) children remain significantly over-represented, and the number of such children in custody has not fallen in line with the decrease in overall numbers.⁶⁸¹ In October 2012, there were 597 children from black and minority ethnic communities in custody, 37% of all children in custody. There were 578 BME children in custody in October 2011, making up 29% of all children in custody. While the number of children in custody has fallen by 21% since October 2011, the number of BME children in custody has increased by 3%.⁶⁸²

Children are not diverted out of the criminal justice system at its earliest stages. Statistics published by the Home Office in April 2012 show that while the number of 10 to 17 year-olds arrested in 2010-11 decreased by 13%, it remained very high, at 210,660.⁶⁸³ The Howard League for Penal Reform reports that in 2011 2,117 children aged 10 and 11 were arrested, meaning that on average six primary school children were arrested every day.⁶⁸⁴

Far too many children are in custody on remand. While the overall number of children in custody fell 33% between 2007-08 and 2011-12, the number of remands into secure accommodation has fallen by only 24%.⁶⁸⁵ Many of the children on remand will not subsequently receive a custodial sentence. For those young people remanded to custody in 2010-11, only 39% were given a custodial sentence.⁶⁸⁶ Under the Legal Aid Sentencing and Punishment of Offenders Act 2012, a single custodial remand order will replace the existing range of orders, and all children remanded to the secure estate will become “looked after” children under the Children Act 1989.⁶⁸⁷ Under these arrangements, 17 year-olds are, for the first time, treated as children by remand

674 HC, 18 December 2012, c. 686

675 Section 79

676 Hart, D. (November 2012) *Legal Aid, Sentencing and Punishment of Offenders Act 2012: Implications for Children*

677 Section 81

678 Section 84

679 Ministry of Justice/Youth Justice Board (March 2012) *Developing the secure estate for children and young people in England and Wales: government response to the consultation*

680 Ministry of Justice (December 2012) *Youth Custody*

681 Allen, R. (2011) *Last Resort? Exploring the reduction in child imprisonment 2008-2011*, Prison Reform Trust

682 Ministry of Justice (December 2012) *Youth Custody Data*

683 Home Office, *Police Powers and Procedures – England and Wales 2010-11, April 2012*

684 See: <http://www.howardleague.org/police-child-arrests/>

685 Youth Justice Board (2012) *The new remand framework for children: Allocation of new burdens funding to local authorities*

686 Ministry of Justice Home Office and Youth Justice Board (2012) *Youth Justice Statistics 2010/2011 England and Wales*

687 Legal Aid Sentencing and Punishment of Offenders Act 2012, s. 104

legislation,⁶⁸⁸ a move expressly motivated by a desire to comply with the UN Convention on the Rights of the Child.⁶⁸⁹ The legislation also raised the threshold for remanding a child into a secure setting.⁶⁹⁰ YJB has consulted on plans to make local authorities gradually more responsible for the full cost of remands to secure children's homes and secure training centres.⁶⁹¹ The YJB explained that its objective in doing so is to see a reduction in the use of unnecessary secure remand. However, the Prison Reform Trust (PRT) has raised concerns that this will discourage local authorities from identifying vulnerabilities which might lead to a child being placed in a secure training centre or secure children's home, and lead to placement decisions being driven by financial considerations rather than the needs of the child.⁶⁹²

Pursuant to changes brought in by LASPOA, children can no longer be given indeterminate sentences.⁶⁹³ However, the possibility of a discretionary life sentence remains,⁶⁹⁴ and the Government states that it expects greater use of this sentence following the abolition of indeterminate sentences.⁶⁹⁵ The court will also be able to sentence children to extended sentences,⁶⁹⁶ and children will not be released on licence until they have served two thirds of their sentence, rather than, as currently, after having served half of the sentence.⁶⁹⁷ The Act has also introduced longer licence periods.

Many children are in custody for minor offences. The Prison Reform Trust reports that in 2010-11 around half (45%) of children were in prison for non-violent crimes.⁶⁹⁸

The Mental Health Act 1983 lets police take anyone they suspect of being mentally ill and in 'need of care or control' to a safe place for assessment. Freedom of Information requests showed that in 2011 there were 347 such detentions, with children as young as 11 held in police cells because officers thought they were mentally ill.⁶⁹⁹ In response to a parliamentary question on this practice, the Government said:

The Home Office is working with the Department of Health, ACPO and others to develop better local protocols between police and mental health services so that all individuals, including children and young people, who are found by

the police in immediate need of care and control can get a response from the most appropriate service and, where needed, prompt access to a health-based place of safety.

109 Ensure that, unless in his or her best interests, every child deprived of liberty is separated from adults in all places of deprivation of liberty

A report published by the Youth Justice Board and HM Inspector of Prisons based on interviews with children in YOIs found that over a quarter (26%) of young men surveyed reported they had been transported from court to prison with an adult or someone of a different gender.⁷⁰⁰

Children aged 17 years old are treated as adults when in police detention.⁷⁰¹ This means that they are denied essential protections, including access to an appropriate adult. When reviewing PACE Code C, the Government was urged to amend the code to ensure that 17 year olds are treated as children, in line with changes to the remand framework brought in under LASPOA.⁷⁰² The Government rejected this in July 2012.⁷⁰³

110 Provide a statutory right to education for all children deprived of their liberty

While in custody, all children have the right to some education, but their educational rights are not equal to those enjoyed by other children.

A thematic report in relation to children in custody published by HM Inspectorate of Prison and the Youth Justice Board in December 2012 found that the proportion of young men reporting that they were involved in education had risen to 80% in 2011-12.⁷⁰⁴ This was an improvement on the 74% who reported this in 2010-11. However, of the young men who had taken part in education at some point, only 63% felt it would help them on release. Almost all young women who were surveyed said they were taking part in education at the time of the survey. Half said they were going to school or college on release.

688 Legal Aid Sentencing and Punishment of Offenders Act 2012, s. 91(6)

689 Ministry of Justice (December 2012) *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*

690 Legal Aid Sentencing and Punishment of Offenders Act 2012, s.98 and 99

691 Youth Justice Board (2012) *The new remand framework for children: Allocation of new burdens funding to local authorities*

692 Prison Reform Trust (November 2012) *Prison Reform Trust Submission: The new remand framework for children: Allocation of new burdens funding to local authorities*

693 Legal Aid Sentencing and Punishment of Offenders Act 2012, s.123

694 Under section 91 of the Power of Criminal Courts (Sentencing) Act 2000

695 Youth Justice Board (December 2012) *Legal Aid, Sentencing and Punishment of Offenders Act 2012: How the Act affects Youth Justice*

696 Legal Aid Sentencing and Punishment of Offenders Act 2012, s.124

697 Legal Aid Sentencing and Punishment of Offenders Act 2012, s.125

698 Prison Reform Trust, Factfile (November 2012) *Bromley Briefings Prison Factfile*

699 Bechford, N. (2012) "Children held in police cells under Mental Health ACT", *BBC*

700 Murray, R. (December 2012) *Children and Young People in Custody 2011-2012*, Her Majesty's Inspector of Prisons and Youth Justice Board

701 See, for example: Police and Criminal Evidence Act, s.37.

702 The Prison Reform Trust and The Children's Society (January 2012) *Response to revisions to PACE Code C*

703 HC, 16 July 2012, c.548W

704 Murray, R. (December 2012) *Children and Young People in Custody 2011-2012*, Her Majesty's Inspector of Prisons and Youth Justice Board

Figures show that children in YOIs do not spend as much time in education as their peers who are not in custody:

Table: Education and training: average hours per prisoner per week in young offender institutions in England and Wales⁷⁰⁵

	Public Sector Under 18 YOI	Private Sector ⁷⁰⁶ Under 18 YOI
2003-04	14.6	15.3
2004-05	14.2	18.3
2005-06	16.1	17.1
2006-07	15.8	18.3
2007-08	18.0	20.6
2008-09	19.2	23.8
2009-10	19.9	23.0
2010-11	17.0	18.5
2011-12	17.7	18.7

Government points out that these figures do not include time spent in vocational training.

The quality of educational provision for children in custody remains inadequate. Ofsted prison inspections in 2010-11 showed a slight improvement from the previous year, but none of the 24 prisons inspected (including adult prisons) received an overall outstanding judgement for the quality of teaching, and 15 (63%) were rated no better than satisfactory.⁷⁰⁷ Research by The Howard League for Penal Reform in one YOI found that overall, the young people taking part in the research found their education in the YOI to be a valuable way of spending their time, but raised concern as to the skills and attitudes of teachers and the cancellation of classes.⁷⁰⁸ Figures show that 119 GCSE passes in public sector young offender institutions in 2010-11, the latest year for which figures are available.⁷⁰⁹ This represents a drop of 49% from the number of passes for 2009-10, when there were 232 GCSEs passed. This decrease is far greater than the drop in the number of children in custody.

Educational provision in the secure estate fails to meet the needs of children in custody. The Prison Reform Trust reports that 25% of children in the youth justice system have special educational needs, 23% have learning difficulties (IQ below 70) and 36% borderline learning difficulties (IQ 70-80%).⁷¹⁰ Despite this, draft legislation published in 2012, which would reform provision for children and young people with special educational needs, does

not apply to those in custody.⁷¹¹ The Howard League for Penal Reform has found a lack of appropriate education for those who already have GCSEs.⁷¹² Its report also highlighted the need for an individualised approach to education, and found that choice of course was limited by the availability of appropriate teachers, the child's risk assessment, and the length of their sentence. Access to education was particularly limited for those taught "on unit" owing to their vulnerability.

On 20 November 2012, the Justice Secretary, Chris Grayling, set out the next steps in the Government's 'rehabilitation revolution'. In his speech, he confirmed plans to review the secure estate and to place a strong emphasis on education in youth custody settings:

I have begun a review of our youth custody estate, with a view to building a much stronger educational heart to what we do with those young people. I will want to listen to organisations that know how to teach problem teenagers and not just to those who know how to detain them. People in the education world, not just the security world. And I will bring forward a strategy for change in the near future.⁷¹³

111 Ensure that children in conflict with the law are always dealt with in the juvenile justice system and never tried as adults in ordinary courts, irrespective of the gravity of the crime they are charged with

Children are still tried in ordinary courts. The number of children remanded to custody from the crown court and magistrates' courts fell slightly between 2010 and 2011.⁷¹⁴

The number of children sentenced to immediate custody at the crown court and the magistrates' court also fell slightly.⁷¹⁵

705 HL, 19 November 2012, c.331W

706 The private sector under-18 YOI figures relate to only one establishment, Ashfield.

707 Ofsted (2011) *The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2010/11*

708 The Howard League for Penal Reform (December 2012) *U R Boss: Education in HMYOI Warren Hill*

709 HL, 13 November 2012, c. 288W

710 Prison Reform Trust (November 2012) *Bromley Briefings Prison Factfile*

711 Department for Education (September 2012) *Draft legislation on Reform of provision for children and young people with Special Educational Needs*

712 The Howard League for Penal Reform (December 2012) *U R Boss: Education in HMYOI Warren Hill*

713 See: <http://www.justice.gov.uk/news/speeches/chris-grayling/speech-to-the-centre-of-social-justice>

714 HL, 4 December 2012, c.151W

715 HL, 4 December 2012, c.151W

Juvenile defendants remanded in custody and sentenced to immediate custody at magistrates' courts and Crown Court in England and Wales in 2010 and 2011

	Magistrates' courts		The Crown Court	
	2010	2011	2010	2011
Remanded in custody	2,918	2,567	1,255	1,236
Sentenced to immediate custody	2,936	2,836	1,181	1,170

In its 2012 *Human Rights Review* the Equality and Human Rights Commission found that children with additional needs, including those with disabilities and/or communication difficulties are not always identified, and when identified, are not always provided with the special measures they need to ensure a fair trial. Analysis carried out by the EHRC concluded that conditions in the Crown Court do not always uphold a child's right to a fair trial 'as insufficient consideration is given to their age and maturity'. While approving of guidance which aims to make Crown Court less intimidating, the Commission concluded that:

Amended trial rules are guidance only, not statutory provisions. There is consequently a risk that guidance to support vulnerable defendants may not always be followed, particularly as lawyers and judges may have received little, if any, training in youth justice or child-welfare legislation.

An amendment to the Criminal Procedure Rules (which will come into force on 1 April 2013), states 'In order to prepare for the trial, the court must take every reasonable step to facilitate the participation of... the defendant'.⁷¹⁶ According to the Guide to the Rules, this amendment clarifies the courts' powers and duties under the Rules to take reasonable steps to ensure the effective participation of a defendant, 'especially someone affected by a learning disability or communication difficulty'.⁷¹⁷

112 Adopt appropriate measures to protect the rights and interests of child victims or witnesses of crime at all stages of the criminal justice process

The Ministry of Justice consulted on proposals to support victims and witnesses, including proposals to revise the victim's code. The proposals failed to address the specific needs of children.

A joint response⁷¹⁸ to the consultation from the NSPCC and Victim Support stressed that:

The minimum standards set out in 'Getting it Right for Victims and Witnesses', fall far below the requirements set out in other guidance for young witnesses

The Government's response to the consultation⁷¹⁹ did not address calls for children to be treated as a group of victims and witnesses in their own right, for a children's code to be developed, for the Government's proposals to address safeguarding, and for children to be consulted on their needs.⁷²⁰

The Youth Justice and Criminal Evidence Act 1999 ('YJCEA 1999') provides that all child witnesses are 'vulnerable' and sets out a range of special measures which the court can direct in order to assist 'vulnerable and intimidated' witnesses to give their best evidence in court. Research carried out for the Crown Prosecution Service in 2012 showed serious flaws in the operation of the "special measures" system.⁷²¹ It found that of 55 cases in which applications for special measures were made, in eight cases the police had not carried out an initial assessment of witness' needs, and of the 12 instances where the police had indicated that special measures were necessary, in 5 the prosecutor had not acknowledged this in its charging decision. Concerns were raised about the way in which prosecutors communicate with vulnerable witnesses, and one in five of the applications made for special measures were found to be poor or very poor.

Changes to the Criminal Procedure Rules described above in relation to concluding observation 111 will also require the court to facilitate the participation of child witnesses.⁷²² Changes will come into affect in 2013.

In 2012, the Government set out plans to allow judgments and sentencing decisions in cases before the Court of Appeal and, in due course, sentencing remarks in the Crown Court, to be broadcast. The proposals will not allow full trials to be filmed. The Crime and Courts Bill will give the Government the power to make the necessary changes in secondary legislation.⁷²³ Explaining its proposals, the Government said:

It would be highly inappropriate to expose VIWs [vulnerable or intimidated witnesses] to the additional stress and anxiety that

⁷¹⁶ Criminal Procedure Rule 3.8 (4)(b)

⁷¹⁷ The Criminal Procedure Rules 2012, SI 2012/1726, Rule 3.8.

⁷¹⁸ NSPCC & Victim Support (April 2012) *Joint Response to Ministry of Justice Consultation "Getting it Right for Victims and Witnesses"*

⁷¹⁹ Ministry of Justice (July 2012) *Getting it Right for Victims and Witnesses: the Government Response*

⁷²⁰ NSPCC & Victim Support (April 2012) *Joint Response to Ministry of Justice Consultation "Getting it Right for Victims and Witnesses"*

⁷²¹ Charles, C. (April 2012) *Special measures for vulnerable and intimidated witnesses: research exploring the decisions and actions taken by prosecutors in a sample of CPS case files*, CPS

⁷²² The Criminal Procedure Rules 2012, SI 2012/1726, Rule 3.8.

⁷²³ Crime and Courts Bill, clause 28.

*the mere possibility that their testimony or identity might be broadcast would cause. They need to be reassured from the outset that this will not be the case... we are not considering allowing any filming or recording of victims and witnesses... the identities of young people involved in proceedings and victims of rape will continue to be protected.*⁷²⁴

The Government also announced plans to review the courts powers in respect of reporting restrictions, and how they are used.⁷²⁵

The Government opted in to the EU's Victims Directive, adopted in November 2012, which contains strong provisions regarding children's rights as victims of crime.⁷²⁶ It requires Member States to ensure that:

- victims are heard during criminal proceedings and that where a child victim is to be heard, due account is taken of the child's age and maturity;⁷²⁷
- competent authorities prevent public dissemination of any information that could lead to the identification of a child victim;⁷²⁸
- child victims are presumed to have specific protection needs and are subject to an individual assessment;⁷²⁹
- in criminal investigations, all interviews with the child victim may be audiovisually recorded and recorded interviews may be used as evidence in criminal proceedings;⁷³⁰
- child victims are appointed a special representative where appropriate;⁷³¹
- where the age of a victim is uncertain and there are reasons to believe that the victim is a child, the victim is presumed to be a child.⁷³²

See also concluding observation 55.

113 Review the application of the Counter Terrorism Bill to children

This has not been done.

114 Conduct an independent review of ASBOs with a view to abolishing their application to children

The Government has published draft legislation to reform the law regulating anti-social behaviour.⁷³³ This would introduce a new system of injunctions, which will carry forward, and exacerbate, many of the flaws associated with ASBOs. They will apply to children. For more information, see comments in relation to recommendation 29.

115 Ratify all international human rights instruments it is not yet party to, including the International Convention on the Protection of the Rights of All Migrant Workers and members of their Families, the Convention on the Rights of Persons with Disabilities, and the International Convention for the protection of all Persons from Enforced Disappearance

The UK has not ratified the Migrant Worker's Convention and the International Convention for the Protection of all Persons from Enforced Disappearance.

In April 2012, the Government confirmed that the UK would not ratify the Convention No.189 on Decent Work for Domestic Workers. It stated that whilst it supports the principles behind the Convention, ratification is inappropriate for the UK because of the burdens it would impose on business and citizens.⁷³⁴ On 12 December 2012, Anti-Slavery International, Kalayaan, Justice for Domestic Workers and the Trade Union Congress wrote to the Government urging it to ratify the Convention.⁷³⁵

116 Ratify the Optional Protocol on the Sale of Children, Child Prostitution and Child pornography.

The UK ratified the treaty in 2009.

⁷²⁴ Ministry of Justice (May 2012) Proposals to allow the broadcasting, filming, and recording of selected court proceedings

⁷²⁵ Ministry of Justice (January 2012) *Getting it Right for Victims and Witnesses*

⁷²⁶ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.

⁷²⁷ Article 10

⁷²⁸ Article 21(1)

⁷²⁹ Article 22(4)

⁷³⁰ Article 24(1)(a)

⁷³¹ Article 24(1)(b)

⁷³² Article 24(2)

⁷³³ Draft Anti-Social Behaviour Bill

⁷³⁴ Explanatory memorandum accompanying Command Paper 8338

⁷³⁵ Available at: <http://www.tuc.org.uk/international/tuc-21755-f0.cfm>

117 Take all appropriate measures to ensure the full implementation of the UN's recommendations by submitting them to Parliament, relevant Government departments and the devolved administrations for consideration and action

There has been no action on this concluding observation in the last 12 months.

118 Make widely available, in relevant languages and also online, the Government report and the UN's concluding observations to the public at large, civil society, youth groups and children in order to generate debate and awareness of the UNCRC

There has been no action on this concluding observation in the last 12 months.

Children's Rights Alliance for England

94 White Lion Street
London, United Kingdom
N1 9PF

T: 00 44 (0) 207 278 8222
E: info@crae.org.uk

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