

Report of the UK Children's Commissioners

UN Committee on the Rights of the Child
Examination of the Fifth Periodic Report of the
United Kingdom of Great Britain and Northern
Ireland



NICCY
PROMOTING THE RIGHTS OF
CHILDREN & YOUNG PEOPLE

**Children's
Commissioner**
Promoting and protecting children's rights

SCCYP
Scotland's Commissioner
for Children & Young People

1. Introduction

1.1 This is the joint report of the four United Kingdom Children’s Commissioners for the UN Committee on the Rights of the Child’s examination of the UK’s Fifth Periodic Report under the UN Convention on the Rights of the Child (UNCRC). Our collaborative effort evidences our commitment to work together to improve the lives of children and young people in England, Northern Ireland, Scotland and Wales.

1.2 The Commissioners are independent holders of public office whose respective remits extend to England, Northern Ireland, Scotland and Wales but do not include Crown Dependencies or Overseas Territories. The statutory functions of the Commissioners differ but all centre upon the promotion and protection of the rights of children within their jurisdiction, in particular under the UN Convention on the Rights of the Child. The views and experiences of children¹ inform the work of all the Commissioners.

1.3 Within the United Kingdom a range of functions of central government are now devolved to the Northern Irish, Scottish and Welsh administrations, all of which have their own executives and legislatures. The level of devolution varies for each nation. The devolved and reserved policy areas are set out in Appendix 3 of the State Party report.² While some important children’s rights issues - notably child poverty and immigration - are common across the UK, the approach taken by government differs on a number of children’s rights issues across the four UK nations. For example, the status of incorporation of the UNCRC itself is very different. For this reason we include nation-specific information and recommendations in this report, while recognising that it is the UK State Party that remains ultimately responsible for the implementation of the UNCRC across all its territory. We also encourage the Committee to hear from the devolved governments during the UK examination since it can be difficult for them to feed in to the reporting process.

Overall assessment of the UK’s record

1.4 The Children’s Commissioners are concerned that the UK State Party’s response to the global economic downturn, including the imposition of austerity measures and changes to the welfare system, has resulted in a failure to protect the most disadvantaged children and those in especially vulnerable groups from child poverty, preventing the realisation of their rights under Articles 26 and 27 UNCRC. The best interests of children were not central to the development of these policies and children’s views were not sought. Reductions to household income for poorer children as a result of tax, transfer and social security benefit changes have led to food and fuel poverty, and the sharply increased use of crisis food bank provision by families. In some parts of the UK there is insufficient affordable decent housing which has led to poorer children living in inadequate

¹ In this report, as in the Convention itself, ‘children’ refers to all those under the age of 18.

² See table at p64.

housing and in temporary accommodation. Austerity measures have reduced provision of a range of services that protect and fulfil children's rights including health and child and adolescent mental health services; education; early years; preventive and early intervention services; and youth services.

1.5 The Commissioners are also seriously concerned at the impact of systematic reductions to legal advice, assistance and representation for children and their parents/carers in important areas such as prison law; immigration; private family law; and education. This means that children are denied access to remedies where their rights have been breached.

1.6 The Commissioners are also concerned at the future of the human rights settlement in the United Kingdom due to the UK Government's intention to repeal the Human Rights Act 1998 (HRA) which incorporates the European Convention on Human Rights (ECHR) into domestic law; replace it with a British Bill of Rights (the contents of which are yet to be announced), and 'break the formal link between British courts and the European Court of Human Rights'. The HRA has been vital in promoting and protecting the rights of children in the United Kingdom and the European Court of Human Rights has had an important role in developing the protection offered to children by the ECHR. The Commissioners are concerned that any amendment or replacement of the HRA is likely to be regressive.

1.7 The Commissioners believe that the State Party and devolved administrations should invest the required level of funding in child and adolescent mental health services to meet the needs of children in need of such support, with particular attention to those at greatest risk, including disabled children, children deprived of parental care, children affected by conflict, trauma, abuse and neglect, those living in poverty and those in conflict with the law. The State Party should invest in universal preventative and early intervention children's services, to prevent an increase in mental ill health among children.

2. General measures of implementation (Articles 4, 42, 44(6))

Status of incorporation of the Convention

2.1 The UNCRC is now ratified by the United Kingdom without reservations. The UK has two declarations, one that interprets the Convention as applying only after a live birth, and the other interpreting the Convention's references to 'parents' as applying only to those who are regarded as parents in national law. The UK has ratified the First and Second Optional Protocols to the UNCRC but has not signed the Optional Protocol on a Communication Procedure.

Recommendations

The UK should sign and ratify the Third Optional Protocol to the UNCRC on a Communication Procedure.

A formal UK mechanism should be put in place to ensure that all the devolved nations are routinely and comprehensively involved in international human rights reporting mechanisms, including active participation in UK delegations to international human rights bodies.

2.2 The UNCRC is not incorporated into domestic law in the United Kingdom. However, in Scotland and Wales there has been some progress towards incorporation since 2008. The Children and Young People (Scotland) Act 2014 places duties on Ministers and public authorities to keep under consideration steps to further children's rights and if they consider it appropriate to do so, to take any of the steps identified.³ Scottish Ministers are also placed under a duty to promote awareness and understanding of the rights of children (including appropriate awareness and understanding among children).⁴ They must further report on progress made in relation to those duties every three years, which includes their plans for the next three year period.⁵

2.3 The Scottish Government, however, did not support proposals for the full incorporation of the Convention into Scottish law, or otherwise advance enforceable legal protections for children's rights. Their UNCRC action plans: *Do the Right Thing*⁶ and *Update Report*⁷ are both welcome in principle but suffer from a lack of tangible and measurable commitments and progress measures.

2.4 The Rights of Children and Young Persons (Wales) Measure 2011 places a duty on the Welsh Ministers to have due regard to the UNCRC when exercising their functions. The Measure requires a Children's Rights Scheme which sets out the arrangements by which the Government will comply with their duty. The Scheme however, does not contain a timetable, quantifiable goals or an implementation

³ Children and Young People (Scotland) Act 2014, s. 1 (1).

⁴ Children and Young People (Scotland) Act 2014, s. 1 (3).

⁵ Children and Young People (Scotland) Act 2014, s. 1 (4).

⁶ Scottish Government (2009) *Do the right thing*. Available at: <http://www.gov.scot/resource/doc/282927/0085645.pdf>

⁷ Scottish Government (2012) *Update Report*. Available at: <http://www.gov.scot/Publications/2012/05/3593/downloads>

and monitoring mechanism.⁸ Child Rights Impact Assessment (CRIA) is fundamental to realising due regard; whilst a number of CRIAs have been carried out by the Welsh Government, their quality and transparency has been inconsistent.

2.5 While these are positive developments, they fall well short of incorporation of the Convention and they have not been mirrored in England or Northern Ireland. In Northern Ireland there has been little progress since 2008. Few policies or pieces of legislation refer to the UNCRC, and only a very limited number of Child Rights Impact Assessments have been conducted. However, the development of a new Children’s Strategy from 2016, alongside child rights indicators, offers the opportunity to consider incorporation of the UNCRC and implementation of the general measures.

2.6 In England there has been no legislative movement towards incorporation of the Convention, only a Ministerial commitment under the 2010–15 government to ‘give due consideration to the UNCRC Articles when making new policy and legislation’.⁹

2.7 The recent UK Supreme Court decision in *SG v Secretary of State for Work and Pensions* [2015] UKSC 16 highlighted the need for legislative incorporation of the Convention. While the Court found that the imposition of a ‘cap’ on the amount of benefits payable to families without consideration of the best interests of children was contrary to Article 3 UNCRC, this did not render it unlawful in domestic law: there was therefore no legal remedy for this finding of a violation of the UNCRC by the UK’s highest court. The case had to be argued on the grounds of discrimination against women as there was no specific protection for children’s rights in this context in UK law.

2.8 The Children’s Commissioners are concerned at the lack of political commitment by the UK Government to domestic guarantees for human rights. The current UK government was elected with a manifesto commitment to repeal the Human Rights Act 1998 (HRA) which incorporates the European Convention on Human Rights into UK law, and replace it with a British Bill of Rights which, we believe, would be very likely substantially to dilute the protection that the HRA provides for children’s rights in the UK.¹⁰ In Northern Ireland the Bill of Rights process, which is a key element of the 1998 peace agreement, has stalled, and there is no clarity on how this commitment will be implemented in the future.

2.9 The roles of the Children’s Commissioner for England (CCE) and Scotland’s Commissioner for Children and Young People (SCCYP) have been strengthened since 2008: the remit of CCE now centres upon the promotion and protection of children’s rights with particular regard to the UNCRC.¹¹ SCCYP has been given additional powers by the Children and Young People (Scotland) Act 2014, which introduces an individual investigations mechanism through which children can seek an investigation into alleged violations of their rights. The ability of the

⁸ Croke, R. (ed.) (2013) *Rights here, right now: What is the reality of children’s rights in Wales?* London: Save the Children

⁹ Written Ministerial Statement, *Publication of the independent review of the Children’s Commissioner*, CM-7981-WMS.

¹⁰ Conservative Party (2015) *Manifesto*. Available at <https://www.conservatives.com/manifesto>

¹¹ Section 2 Children Act 2004, as amended by the Children and Families Act 2014.

Commissioners to carry out their remits, however, is constrained by their institutional arrangements. CCE, Children’s Commissioner for Wales (CCfW) and Northern Ireland Commissioner for Children and Young People (NICCY) are sponsored by government departments rather than being directly accountable to their legislatures. In contrast, SCCYP is funded by and accountable to the Scottish Parliament.

2.10 In Northern Ireland there have been two reviews of the Commissioner’s legislation (2006; 2013) and both recommended that to be Paris Principles compliant NICCY should be independent of government and report to the Northern Ireland Assembly rather than a government department. Moreover, these reports identified critical constraints in the NICCY legislation that impact on the ability of the Commissioner to fully exercise her legal powers. The NI Executive has not implemented any of these recommendations or required changes. Further, NICCY’s budget was cut by 23% between 2007–8 and 2013–14 with further cuts announced for 15–16 onwards. Welsh Government commissioned an independent review into the current legislative and governance frameworks supporting the CCfW, which reported its findings in December 2014.¹² CCfW concurs with the recommendation for the consolidation and updating of the existing legislation to enable the Commissioner to act on all matters which relate to or affect children in Wales.

Recommendations

The State Party and the devolved governments should fully and expressly incorporate the Convention and its Protocols in their legislation.

There should be no diminution of children’s rights protection in UK law. Any new Bill of Rights should build upon, rather than reduce, the protection of the fundamental rights of all children in the jurisdiction without discrimination, as well as providing effective judicial remedies including through the European Court of Human Rights, and should be developed through a consultative and democratic process in which children’s Article 12 rights are respected.

The UK and the devolved Governments should be required by legislation to routinely and comprehensively carry out child rights impact assessment of proposed policies and legislation and regular child rights impact analysis of policies and legislation already in effect.

In line with the Paris Principles, the Children’s Commissioners should be mandated by their legislatures rather than governments and be equipped with the necessary human and financial resources in order to carry out their mandate in an effective and coordinated manner so that the rights of all children in all parts of the State party are safeguarded.

The NI Executive should consider the 2006 and 2013 reports on the NI Commissioner for Children and Young People and amend the legislation accordingly.

¹² See: <http://gov.wales/docs/dsjlg/publications/cyp/141210-childrens-commissioner-reportv3-en.pdf>

Allocation of resources

2.11 In the 2008 Concluding Observations the Committee stated that it was difficult to identify how much expenditure is allocated to children across the State party due to a lack of consistent budgetary analysis. This remains a major omission, as the UK governments do not report on how much they are spending on services for children.¹³

2.12 Since 2008, the devolved governments have seen a significant overall reduction in funding received from the UK Government and this is in turn having a significant impact on their ability to deliver services. The Welsh Government's all-age inclusive approach to many policies has substantially reduced visibility surrounding children's budgets.

2.13 There has also been a significant reduction in funding to statutory authorities across the UK. It is feared that reduced access to local universal services for children will put further pressure on services for those most in need; the Commissioners are very concerned that, due to budget cuts, statutory services are only focussing on delivery of their statutory duties. In practice, this means that funding is being withdrawn from many critical preventative and early intervention services that play an important role in the lives of vulnerable children.

Recommendations

The UK and devolved governments should routinely carry out child rights-based analyses of both budget and economic decision-making and processes and outcomes. Information on public finances should be made accessible and understandable, to enable scrutiny and wider engagement of civil society, including children.

As a matter of priority, the UK State Party should maximise the amount of resources available to protect children, especially those most in need, from the impacts of economic recession and austerity measures. The State Party and devolved governments should ensure that arrangements are in place to clearly set out how resources are allocated to progressing children's rights and the eradication of child poverty.

All national and sub-national public spending and other resource decision-making must be carried out so as to prioritise the needs, rights and best interests of children, with a particular emphasis on children experiencing or at risk of poverty or social exclusion.¹⁴

¹³ However, the Northern Ireland Executive has cooperated with a 'fund mapping' project commissioned by NICCY and Atlantic Philanthropies which is due to be published in October 2015.

¹⁴ In line with the European Network of Ombudspersons for Children, Position Statement on 'Children and Austerity', adopted at the 18th ENOC General Assembly, Edinburgh, 24 October 2014.

Legal aid and access to justice

2.14 In England and Wales civil and prison law legal aid has been drastically cut since April 2013 by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and subsequent measures meaning that children and their parents are no longer able to obtain free advice and assistance, or representation in appropriate cases, in a number of areas of law. Areas affected include immigration, education (except special educational needs cases), prison law, welfare benefits and debt, and for parents, private family law. This comes at a time when the advice sector has also lost funding as a result of austerity measures. Research for CCE has highlighted the impact of legal aid changes since April 2013 on children and young people's rights.¹⁵ CCE found that a wide range of rights were likely to have been negatively impacted by changes including those protected by Articles 2, 3 and 12 UNCRC as well as substantive rights engaged by the legal problem in question. CCE concluded that urgent reform was needed to ensure the legal aid system was able adequately to protect children's Convention rights.¹⁶

2.15 In Northern Ireland the Executive is similarly proposing to restrict or remove legal aid from private family law disputes which will restrict or inhibit parental access to the Courts in relation to private law family matters. This is contrary to the 2008 Concluding Observation where the Committee recommended that the State Party intensify its efforts to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities, and facilitate the initiation of contact proceedings for all children separated from their parents and siblings.

2.16 In Scotland, the way a child is assessed for civil and children's legal assistance was altered in January 2011.¹⁷ A solicitor assessing a child or young person who applies for any civil or children's legal assistance must now take into account the financial circumstances of anyone who owes an obligation of aliment¹⁸ to that child or young person. This has an impact on their access to independent legal advice.

Recommendation

Children and families without sufficient means should be able to obtain legal advice, assistance, and where litigation is contemplated, legal representation free of charge in any case where a child's best interests are engaged.

¹⁵ Office of the Children's Commissioner (2014) *Legal Aid Changes since April 2013: Child Rights Impact Assessment*. London: Office of the Children's Commissioner.

¹⁶ *Ibid.* pp9–10.

¹⁷ Advice and Assistance (Scotland) Amendment Regulations 2010 and the Civil Legal Aid (Scotland) Amendment Regulations 2010

¹⁸ An obligation of 'aliment' is the duty owed to the child by their parents and those who have accepted the child as a child of the family, to support the child in kind or by way of financial assistance up to age 18 (and, in some circumstances, 25), regardless of whether the parent has parental responsibilities and parental rights. When applying for legal aid, the income and other resources of every person who owes the child an obligation of aliment must be taken into account in the calculation of the child's means, unless it would be unjust or inequitable to do so.

3. Definition of the child (Article 1)

3.1 The Joint Committee on Human Rights of the UK Parliament has recently highlighted that they have come across ‘a series of issues in a variety of contexts raising the wider question of the lack of a consistent legal definition of the age of a child in the UK’. For example, the Serious Crime Act 2015 failed to include 16 and 17 year olds within the definition of children for the purposes of the offence of cruelty to children. In Scotland, 16 and 17 year olds cannot enter the children’s hearing system (unless they are already on statutory supervision) and criminal cases against them are heard in adult courts.

Recommendation

Legislation should be aligned across the UK State Party to include all children under 18 within the legal definition of a child, while appropriately recognising their evolving capacity.

4. General principles (Articles 2, 3, 6 and 12)

Non-discrimination

4.1 Children are not fully protected in UK law from discrimination in the enjoyment of their rights either due to their status as children or due to their parent/legal guardian's membership of a particular group or status. In England, Wales and Scotland the Equality Act 2010, which provides legislative protection for protected groups in a range of areas of life including employment, goods, facilities and service provision, exempts children from the majority of its age discrimination provisions. In Northern Ireland it was announced in February 2015 that proposed age discrimination legislation to include goods, facilities and services would apply only to persons aged 16 and over.

4.2 The failure to protect children from age discrimination is contrary to the wishes of children expressed in engagement with NICCY and other sectoral bodies in Northern Ireland. Similarly, more than half (52%) of 11–16 year olds responding to a recent survey in Scotland believed they were treated unfairly because of their age, demonstrating the need for this protection.¹⁹

4.3 Public bodies across the UK carry out equality impact assessments (EIAs) in relation to new or amended policies or legislation, to determine whether they will have an adverse impact on a range of equality categories, including 'age'.²⁰ However, in practice, these equality impact assessments are often very poor in terms of their assessment of the impact on children, often due to a lack of disaggregated data, or because the impact – while significant – will be indirect.

4.4 Older children are also impacted significantly throughout the UK by negative stereotyping. This was one of four critical priorities agreed by the UK Government and devolved governments in response to the 2008 Concluding Observations on which they would work together; it has been repeatedly raised by children with the Children's Commissioners. A 2010 survey of 16 year olds in Northern Ireland, commissioned by NICCY, illustrates the extent of the issue. Almost nine in ten (85%) believed that young people were judged negatively because of their age, with a similar proportion (87%) having been treated with disrespect because they were a young person. Eight in ten (79%) felt that the portrayal of young people in the media was mostly negative.²¹ Despite this, it is the view of the Commissioners that this recommendation has been largely ignored.

¹⁹ SCCYP (2014) (unpublished).

²⁰ In England, EIAs are no longer a legal requirement. For further information see: http://www.eversheds.com/global/en/what/articles/index.page?ArticleID=en/Discrimination_and_equal_pay/DLR_Equality_Impact_Assessments_Feb13.

²¹ NICCY (2010) *Young people's thoughts about, and experiences of, age-related negative stereotyping: an analysis of questions from the Young Life and Times Survey 2010 Belfast*: NICCY.

Recommendations

The State Party and devolved governments should provide equal legislative protection for children against age discrimination and remove all exemptions relating to children under their equality legislation, unless these can be objectively justified.

Public bodies carrying out equality impact assessments should specifically include and assess children in their consideration of 'age' equality.

The State Party and devolved governments should take action adequately to address the negative stereotyping of older children.

Best interests of the child

4.5 In 2008 the Committee recommended that the UK State Party 'ensure that the principle of the best interests of the child is adequately integrated in all legislation and policies, which have an impact on children...'. Progress regarding this recommendation has been patchy. There are examples of statutory obligations that echo the requirements of Article 3: for instance the Borders, Immigration and Citizenship Act 2009 requires that the UK Government's immigration functions are 'discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom'. In Northern Ireland, Article 84 of the Justice Bill 2015 requires that the best interests of children are a primary consideration in the exercise of authorities' functions.

4.6 The UK government has not always been committed to ensuring the implementation of Article 3 in decision-making. For example, the best interests of the child in immigration decisions were considered by the UK Supreme Court in 2011 in *ZH (Tanzania) v Secretary of State for the Home Department*.²² The Court affirmed the principle that the 'spirit' if not the letter of Article 3 of the UNCRC had been incorporated into decisions concerning children subject to or affected by immigration control through section 55 of the Borders Citizenship and Immigration Act 2009. In response to the case-law development represented by *ZH (Tanzania)*, the Home Office introduced new Immigration Rules on 9 July 2012 which attempted to codify the best interests of the child in immigration decisions by reference in particular to length of a child's residence.²³

4.7 In Scotland, the Children's Hearings (Scotland) Act 2011 requires children's hearings, pre-hearings panels, and the courts in proceedings relating to children's hearings to treat the child's welfare as a paramount consideration.²⁴ Every

²² See: https://www.supremecourt.uk/decided-cases/docs/UKSC_2010_0002_Judgment.pdf

²³ Details at: <https://www.gov.uk/government/collections/family-and-private-life-rule-changes-9-july-2012>. See letter from the Children's Commissioners expressing concern at this change to the Rules at http://www.childrenscommissioner.gov.uk/content/publications/content_925.

²⁴ This mirrors longstanding provisions of the Children (Scotland) Act 1995 which apply to decisions of the courts, including such matters as parental responsibilities and rights, and decisions of local authorities relating to looked after children. The Adoption and Children (Scotland) Act 2007 applies the same principle.

children's hearing must consider appointing a safeguarder, i.e. an independent person to safeguard the interests of the child to whom the children's hearing relates. SCCYP continues to advocate for an extension of the best interest principle to all areas of law, policy and practice that affect children. In 2013, SCCYP proposed amendments to the Children and Young People (Scotland) Bill that would have incorporated Articles 3 and 12 of the UNCRC, thereby requiring children's best interests to be treated as a primary consideration across all governmental and other public authority decision-making (except where a higher standard, i.e. paramountcy applies). This was not supported by the Scottish Government, and the Scottish Parliament rejected the amendments.

4.8 There are opportunities to make progress on a sectoral basis. For example, the inclusion of a duty on police constables to consider the best interests of the child before making the decision to arrest, detain in custody, interview or charge a child in s. 42 of the Criminal Justice (Scotland) Bill is welcome and should be passed, and replicated in other areas of policy and public services practice.

4.9 The Social Services and Well-being (Wales) Act 2014 has integrated social care provision for both children and adults into a single Act. Following significant scrutiny through the passage of the Act, due regard to the UNCRC has become an overarching duty to all those exercising functions under it, and recognition of the distinct needs of children have been incorporated into the eligibility criteria²⁵ giving a greater impetus for the best interests of the child to be paramount in the assessment and delivery of care and support.

Recommendations

The State Party must ensure that the best interests of the child is a primary consideration in all legislation and administrative and judicial decisions concerning the child, except where a higher standard already applies. Best interests should be determined by an individual assessment of the child and his or her needs and circumstances, which gives due weight to the child's views.

All children who are without the care of a parent/guardian (including children for whom the local authority has parental responsibility) should have a named independent representative with statutory authority who actively defends their best interests.

Survival and development

4.10 In January 2013 the Serious Case Review process was replaced in Wales by a new Child Practice Review framework. This new process is designed to promote learning and improve practice following child deaths and serious incidents.²⁶

²⁵ See: <http://gov.wales/newsroom/healthandsocialcare/2015/150511care/?lang=en>

²⁶ See: <http://gov.wales/docs/dhss/publications/121221guidanceen.pdf>

4.11 The Safeguarding Board for Northern Ireland (SBNI) was established in 2012 in accordance with the Safeguarding Board Act (2011). Under article 3(5) of the Act, SBNI is required to establish processes to review child deaths in Northern Ireland. While all other parts of the UK have similar mechanisms in place, this function has still to be enacted 4 years after the legislation was passed. NICCY continues to raise concerns about the impact of this delay on ensuring there is proper learning from child deaths to effectively reduce preventable deaths of children.

Recommendation

The Northern Ireland Executive should ensure that processes to review child deaths in Northern Ireland are put in place forthwith.

Right to be heard

4.12 The realisation of children’s Article 12 UNCRC rights in UK law and practice is highly variable. There are specific statutory obligations for local authorities in England to take account of the views of children in discharging their duties, for example in the Childcare Act 2006 in relation to early childhood services, and in relation to special educational needs services in the Children and Families Act 2014. Statutory guidance issued in 2012 to local authorities to have due regard to the Convention also provides impetus for the fulfilment of Article 12.

4.13 The State Party report (pp14–15) focuses in this section on ‘youth’ participation and does not deal with the Article 12 rights of younger children nor of groups who may be less heard or particularly vulnerable, including children with disabilities.²⁷ While there is activity in these areas by Children’s Commissioners and non-governmental organisations²⁸, more needs to be done by national and local governments to engage and involve these groups of children in decision-making. Further participation work should make a difference to outcomes for children²⁹ and they should have a say in decisions about their own lives, rather than only at the policy or strategic level.

4.14 Despite initial developments on children’s participation since 2008, progress and infrastructure to support this has been reduced in Wales. The Welsh Government has removed support for Funky Dragon, the Children and Young People’s Assembly for Wales, and failed to reinstate its support for Wales’s Participation Unit and the National Children and Young People’s Participation Consortium for Wales since it dissolved in 2013. This means that Wales is without a peer-led, democratic mechanism at a national level. Funding however has been allocated in 2014 to another NGO to develop the Young Wales project, which aims

²⁷ Details at: http://www.childrenscommissioner.gov.uk/content/publications/content_910

²⁸ For example the CCE’s Young Amplify group, and CCE’s child poverty work that engaged families and children under 5 years of age

²⁹ See: http://ncb.org.uk/media/914734/we_would_like_to_make_a_change_-_participation_in_health_decisions_-_final2.pdf

to widen the governmental engagement with children and young people across Wales. Despite the monitoring and intervention efforts of CCfW, clarity and detail as to how the devolved government will fulfil its obligations under Article 12 is still to emerge. The National Assembly for Wales has progressed with its own efforts to engage children and young people in its work, and an opportunity exists for them to establish a democratic framework to involve children and young people in its legislative functions. Additionally, there has been some progress on school participation and pupil voice in Wales, but national inconsistency surrounding the quality and impact of provision continues to exist.

4.15 In Northern Ireland the absence of an overarching participation policy or strategy has seen several failed or severely delayed initiatives that would have improved the participation of children and young people in the decision-making process. Recent research identified that there is no established mechanism for engaging with children and young people and evaluating the impact of this engagement.³⁰ Since 2011 efforts have been made to establish a Youth Assembly in NI. However, these have faltered on several occasions and in January 2015 it was confirmed that the Assembly Commission would not be establishing a NI Youth Assembly in the immediate future. In 2005, plans to establish a ‘Network for Youth’ were announced. The purpose of the network was to strengthen the direct voice of children and young people in all relevant aspects of government provision. Although planning is ongoing, this is yet to be established.

4.16 In Scotland, whilst law and policy requires children to be enabled to participate in decision making relating to their care, education and in decisions that affect them, there is inconsistent practice across Scotland. Elsley³¹ found that whilst there is a significant commitment to engaging with children and young people, the evidence base is poor across the 8 UNCRC ‘cluster areas’. Two areas of note are the need to listen to the views of children in families where there is a history of domestic abuse³² and the views of children with disabilities.³³

Recommendation

The State Party and devolved governments should renew their commitment to implement Article 12 and ensure that they provide the resources and mechanisms to enable all children, including younger children and those whose voices are less likely to be heard, to have their experiences understood and their voices heard and so to participate in strategic and individual decision-making processes at the local and national levels. Children should be expressly told and be able to recognise how their views and experiences have influenced the decisions that are made about them.

³⁰ ‘Walking or Talking Participation?’; Evidencing the impact of direct participation with children and young people in the development of departmental policies, strategies, legislation and Services; Paula Keenan, 2014 (commissioned by the Northern Ireland Commissioner for Children and Young People)

³¹ Elsley et al (2013), *Children and young people’s experiences of, and issues relating to the implementation of the United Nations Convention on the Rights of the Child, Social Research*

³² SCCYP(2013) *The treatment of the views of children in private law child contact disputes where there is a history of domestic abuse (Mackay K)*

³³ National Review of Services for Disabled Young People, <http://dera.ioe.ac.uk/2190/1/0114135.pdf>

5. Civil rights and freedoms

5.1 The Commissioners believe that 16 and 17 year olds should be enabled to vote in elections. The recommendations from Professor Graham Donaldson's Independent Review into the National Curriculum and Assessment Framework for Wales³⁴ should be adopted in Wales to ensure that the Welsh education system enables 16 and 17 year olds to be confident in casting their vote; to be knowledgeable about politics and to understand what their vote stands for. The Scottish Government has already done work on this with Education Scotland, prior to the Independence Referendum. Similar efforts should be made in England and Northern Ireland.

5.2 The voting age was lowered to 16 for the Scottish Independence Referendum in 2014. The turnout in this age group is thought to have been high, at around 75%.³⁵ This compared to the overall turnout of 84.6%. The Scottish Elections (Reduction of Voting Age) Bill, if passed, would reduce the voting age to 16 in all elections to the Scottish Parliament and local government elections in Scotland, starting with the 2016 Scottish Parliamentary election.

Recommendation

16 and 17 year olds should be given the vote in all elections and referenda in the UK. The State Party and its devolved governments must seek to improve participation in schools and ensure that robust measures of democratic education are incorporated throughout the statutory education curriculum.

³⁴ See <http://gov.wales/docs/dcells/publications/150317-successful-futures-en.pdf>

³⁵ Electoral Commission (2014) *Scottish Independence Referendum: Report on the Referendum held on 18 September 2014*. Available at http://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/179812/Scottish-independence-referendum-report.pdf p. 64.

6. Violence against children (Articles 19, 39, 37(a) and 28(2))

Child sexual abuse (CSA) and child sexual exploitation (CSE)

6.1 This section focuses on developments since the UK's 2013 examination under the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

6.2 Public and Government attention on child sexual exploitation (CSE), particularly in the context of gangs and groups, has been concentrated in recent years by high profile cases of grooming and CSE of girls, for example in Rotherham and Oxford, and subsequent investigations where authorities have found to be at fault in failing to prevent the abuse.³⁶ In particular, reports have found that children were not believed or taken seriously, and were blamed for their own abuse. The Scottish Government has developed a National Action Plan to address CSE but there are concerns that it has not gathered pace as quickly as it should have. In Northern Ireland, following a major police investigation, two key reviews on CSE have been undertaken on the instruction of Government Ministers since 2013: a thematic review of the compliance and effectiveness of professionals in relation to children who went missing from care carried out by the Safeguarding Board which is due to report in June 2015, and a Child Sexual Exploitation Independent Inquiry which published its recommendations in November 2014.³⁷ A number of mechanisms, including an inter-departmental oversight group, have since been established to implement the recommendations from the Inquiry and to provide progress reports.

6.3 CCE's two year inquiry into CSE in gangs and groups found that just under half of local authorities identified 2,092 victims of CSE in 2013.³⁸ In 2012 CCE identified that 16,500 children were at risk of sexual exploitation in a 12 month period.³⁹ CCE is concerned that too many victims of sexual exploitation are still not being identified, and are not receiving the help that they need.

6.4 In Wales some progress has been made, for example through the publication of an All Wales Child Protection Procedures multiagency protocol on CSE, revised in 2013.⁴⁰ The Welsh Government published Safeguarding Children and Young People from Sexual Exploitation guidance in 2010.⁴¹ Barnardo's Cymru were commissioned to deliver training in 2011 at a national level by Welsh Government to support the implementation of the guidance. Further training on safeguarding guidance has been rolled out across Wales in 2015. The Welsh Government has

³⁶ Independent Inquiry into Child Sexual Exploitation in Rotherham by Alexis Jay OBE, published August 2014. Available at: http://www.rotherham.gov.uk/downloads/file/1407/independent_inquiry_cse_in_rotherham; Oxfordshire LSCB (2015) *Serious Case Review into CSE in Oxfordshire: from the experiences of Children A, B, C, D, E and F*. Available at <http://www.oscb.org.uk/wp-content/uploads/SCR-into-CSE-in-Oxfordshire-FINAL-FOR-WEBSITE.pdf>

³⁷ See: http://www.rgia.org.uk/cms_resources/CSE%20Inquiry%20Report%20Final_for_Publication.pdf

³⁸ Berelowitz et al (2013) *If it's not better, it's not the end*. London: Office of the Children's Commissioner

³⁹ Berelowitz et al (2012) *I thought I was the only one, the only one in the world*. London: Office of the Children's Commissioner

⁴⁰ See: <http://www.awcpp.org.uk/wp-content/uploads/2014/03/CSE-Protocol-Review-FINAL-REVISION-October-2013.pdf>

⁴¹ See: <http://wales.gov.uk/docs/dhss/publications/policy/110107guidanceen.pdf>

convened a task and finish group to develop an All Wales Action Plan for tackling CSE in Wales and to ensure consistency in data collection.

6.5 Children are not being involved in the design and development of local measures to protect them from sexual exploitation. Only 31% of Local Safeguarding Children Boards (LSCBs) in England have involved children in the design of CSE strategies. There is little evidence on the views and experiences of children regarding child sexual exploitation in Scotland.⁴² However, children were involved in an advisory group by the NI Independent Inquiry and were key respondents/stakeholders. The Commissioners hope that similar participatory practices will inform the UK and devolved nations' ongoing response to CSE, and all forms of abuse.

6.6 In many parts of England police forces and LSCBs have put in place strategies for responding to CSE – 92% of LSCBs have now produced a CSE strategy, compared with only 57% of LSCBs which had a strategy in 2013. However, CCE evidence is that progress at a strategic level has not yet filtered down to frontline practice. LSCBs, police forces and voluntary sector organisations have all stated that strong CSE strategies do not necessarily lead to effective frontline practice.

6.7 Both the CCE Inquiry and the NI Inquiry identified that joined-up working and information sharing are vital for protecting children from sexual exploitation. Of 38 police forces in England, 31 have a full information sharing protocol in place with children's services, and 81% of LSCBs report that an information sharing agreement is in place in their area. However, over half of police forces report that they have experienced barriers to multi-agency information sharing.

6.8 In the June 2014 examination of the UK State Party report on the Optional Protocol on the Sale of Children, the Committee referred to Northern Irish legislation and the need to make changes to ensure that it meets international standards; this included urging State Parties to revise all legislation to ensure that all children up to the age of 18 are protected from all types of offences covered by the Optional Protocol. This has been repeated in recommendations made in the Independent Expert-Led Inquiry report in relation to CSE.⁴³

6.9 The essential focus on CSE however should not displace strategies to address CSA in all its forms. Further, current attention paid to historic CSA cases through prosecutions and inquiries should not displace the prevention of ongoing/current CSA, including CSE. In November 2012, an independent investigation, Operation Pallial, was set up to examine specific allegations of past child abuse in north Wales. In January 2015 CCfW published a report on the outcomes of the investigation.⁴⁴ This report was concerned with listening to survivors' voices, and drawing out lessons for institutions and social services departments to ensure that children in care today can be kept safe.

⁴² Brodie and Pearce (2012), *Exploring the Scale and Nature of Child Sexual Exploitation in Scotland*. Scotland: Scottish Government Social Research.

⁴³ For details, see: http://www.rqia.org.uk/publications/rqia_reviews.cfm

⁴⁴ CCfW (2015) *Learning the Lessons: Operation Pallial*. Available at: <http://www.childcomwales.org.uk/uploads/publications/528.pdf>

6.10 The UK has still not ratified the Council of Europe Convention on the Protection on Children against Sexual Exploitation and Sexual Abuse.

Recommendations

The UK State Party and devolved governments must ensure that children who experience any form of child sexual abuse receive appropriate counselling and therapy as a priority.

Agencies must establish adequate information sharing and multi-agency working practices to protect children from child sexual abuse including child sexual exploitation.

Children's views and experiences should be heard and taken into account in development of all measures to combat child sexual abuse including child sexual exploitation.

The State Party should ratify the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. The State Party should legislate to ensure that in all parts of the United Kingdom, all children up to the age of 18 are protected from all types of offences covered by the Optional Protocol on the Sale of Children.

Child trafficking

6.11 In 2008 the Committee recommended that '[c]hild protection standards for trafficked children [should] meet international standards.' Some progress has been made against this Concluding Observation. Legislation has been brought forward across the UK to address the phenomenon of human trafficking, including the Trafficking and Exploitation (Scotland) Bill, the Modern Slavery Act 2015 and Human Trafficking and Exploitation (Further Provisions and Support for Victims) Act 2015 in Northern Ireland.

6.12 The NI legislation provides greater support for victims of human trafficking and exploitation and meets obligations set out in the Council of Europe Convention on Action against Trafficking in Human Beings. Of particular significance is the provision of an independent guardian with legal powers for all separated children subject to immigration control. The new Independent Guardian will contribute to a plan to safeguard and promote the future welfare of the child and assist in establishing contact with members of the child's family, where the child so wishes and it is in the child's best interests. It is intended that the provision will be in operation by the end of 2015 though regulations for the Act are yet to be introduced.

6.13 The recently passed Modern Slavery Act 2015 also makes provision for independent child trafficking advocates in England and Wales to represent and support children who there are reasonable grounds to believe may have been

victims of human trafficking. It has also established an Anti-Slavery Commissioner with a UK-wide remit.

6.14 In 2011, SCCYP published *Scotland: A safe place for child traffickers?* which described significant weaknesses in the identification and support of child victims of trafficking, and in the apprehension and prosecution of perpetrators. There has been progress against a number of the report's recommendations, and there are opportunities to make further improvements through the Trafficking and Exploitation (Scotland) Bill, currently before the Scottish Parliament, including by putting the existing Scottish Guardianship Service on a statutory footing.

6.15 In Wales there is now an Anti-Slavery Coordinator appointed by the Welsh Government. Safeguarding Children who may have been Trafficked, Welsh Government, 2008, imposed a responsibility on LSCBs to take account of the needs of children who may have been trafficked. The All Wales Child Protection Procedure Group produced a revised protocol 2011 to guide action where there are concerns that a child has been trafficked.⁴⁵

Recommendation

Statutory independent guardians for all unaccompanied and separated children should be established throughout the State Party.

Corporal punishment/equal protection from violence

6.16 Corporal punishment remains legal as a matter of domestic law in the UK in the family environment, and in some part-time educational settings in England and Wales. The 2010–15 UK Government stated that it had no intention of repealing Section 58 of the Children Act 2004 which in England and Wales provides a 'reasonable punishment' defence to parents, grandparents, nannies, babysitters etc to a charge of common assault/battery. Similarly, while section 51 of the Criminal Justice (Scotland) Act 2003 prohibits adults from delivering blows to the head, shaking and using an implement to 'punish' children, this Act provides the defence of 'justifiable assault' to a charge of assault of a child. In Northern Ireland there are no plans to repeal Article 2 of the Law Reform (Miscellaneous Provisions) (NI) Order 2006 which provides for a defence of reasonable chastisement of a child to a charge of assault. Despite previous commitments in principle to legislate for children to be provided with equal protection from harm the Welsh Government has failed to introduce such a measure.

⁴⁵ See: <http://www.awcpp.org.uk/wp-content/uploads/2014/03/All-Wales-Practice-Guidance-for-Safeguarding-Children-Who-May-Have-Been-Trafficked.pdf>

Recommendation

The State Party and the devolved governments should immediately prohibit all corporal punishment in the family and in all other institutions and forms of alternative care, including through the repeal of legal defences, and actively promote positive and non-violent forms of childrearing and behaviour management.

Violence against women and children

6.17 Domestic abuse remains prevalent in the UK, with severe impacts on children. 25% of children in the UK are exposed to domestic abuse between adults in their homes at some point in childhood (up to age 18) and 6% of all children in the same study had been exposed to severe domestic abuse at some point in their childhood.⁴⁶ Two thirds (62%) of the children in a major study who had been exposed to domestic abuse were also directly harmed, most often physically or emotionally abused, or neglected. Children were suffering multiple physical and mental health consequences as a result of exposure to domestic abuse. Amongst other effects, over half (52%) had behavioural problems, over a third (39%) had difficulties adjusting at school and nearly two thirds (60%) felt responsible or to blame for negative events. One quarter of children exposed to domestic abuse exhibited abusive behaviour themselves.⁴⁷

6.18 The Commissioners welcome the recent development of legal and agency domestic violence definitions to address more patterns of abuse. In 2013 the English definition of domestic violence was amended to (a) include 16 and 17 year olds; and (b) include emotional abuse (coercive and controlling behaviour); a wider definition is already in place in Scotland. The Government has also introduced a new offence of “controlling or coercive behaviour in an intimate or family relationship” in England and Wales in 2015⁴⁸ and a similar offence is being considered in Scotland. In Northern Ireland the Executive has proposed to extend the Offence in the Domestic Violence, Crime and Victims Act (2004) to include ‘causing or allowing serious physical harm to a child or vulnerable adult’.

6.19 The Parliamentary Joint Committee on Human Rights found in 2015 that much more could be done in schools to address the prevention agenda. It also raised concerns about the impact that localising decision-making about support for victims has had – and suggests those affected most have been the most vulnerable, and those requiring specialist services (including refuges). In our view, this is likely to include 16 and 17 year olds: services may not always reflect their needs, or the particular circumstances of the abuse they face. We are concerned at the level of peer on peer domestic abuse in this age group; there is a need for strategic coordination at a central government and agency level around domestic violence, sexually harmful behaviour of children and child sexual exploitation (CSE).

⁴⁶ Radford et al (2011) *Child abuse and neglect in the UK today*. London: NSPCC.

⁴⁷ CAADA (2014) *In plain sight: The evidence from children exposed to domestic abuse*. Bristol: CAADA.

⁴⁸ Section 76 Serious Crime Act 2015.

6.20 Research commissioned by SCCYP has highlighted the importance of ascertaining the views of children in family law proceedings. It reviewed the treatment of 155 children from 97 contact cases in which there were allegations of abuse. The research found that courts make efforts to ascertain the views of children and their views are more likely to be taken in cases in which domestic abuse is alleged, but where no background reports are undertaken, children's views were not taken and the assumption that contact will be in the child's best interests is likely to determine the outcome of the case. Many of the youngest and most vulnerable children are currently not heard and the assumption of contact has the greatest impact upon them.

Recommendations

The UK should ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (the 'Istanbul Convention').

The State Party and the devolved governments should acknowledge and address the problems set out in CRC General Comment No 18 on harmful practices within its domestic legislation and ensure that appropriate mechanisms are in place to implement these provisions in practice.

Domestic abuse should be seen as a children's rights issue and children's experiences must be made more visible. All those who take children's views should be trained in the benefits of and methods for participation for children (with specialist input available for very young children) and given materials to support participation in practice.

7. Family environment and alternative care (Articles 5, 9, 10, 11, 18, 20, 21, 25, 27(4))

Family reunification

7.1 In July 2012 the Home Office changed the rules for people who want to come to or stay in the UK based on family life with a British citizen, settled person or refugee in the Family Migration Rules.⁴⁹ The introduction of a much higher minimum income requirement on non-EEA spouses and partners has meant the enforced separation of families including children from their non-EEA parent. The Commissioners believe that the Rules should support children to live with their families in the UK where their best interests require it.⁵⁰ The Government has not yet reviewed the operation of the Family Migration Rules and in particular the minimum income requirement, as promised when they were introduced. The Commissioners are concerned that these Rules have led to routine violations of Articles 9 and 10 of the Convention.

Recommendation

The State Party should review the operation of the Family Migration Rules and in particular, the minimum income requirement and the impact of these Rules on the rights of children under the Convention. Decisions affecting children made under the Rules should always include the best interests of the child as a primary consideration.

Looked after children

7.2 The Commissioners believe that early intervention is essential to avoid the admission of children to state care where possible. We are therefore concerned at the consequences of austerity measures which have seen the loss of early parenting support services.⁵¹

7.3 Supporting looked after children and young people leaving care to achieve their potential is a shared aim for the UK Children's Commissioners. The Commissioners are concerned at the lack of progress on improving outcomes for looked after and care experienced children in a number of areas, including health; education; and involvement in the criminal justice system. It is the shared view of the Commissioners that the looked after system should be helping all children and

⁴⁹Details at: <https://www.gov.uk/government/publications/immigration-rules-appendix-fm>.

⁵⁰Details at: http://www.appgmigration.org.uk/sites/default/files/APPG_family_migration_inquiry_report-Jun-2013.pdf ; see also letter from CCE at http://www.childrenscommissioner.gov.uk/content/publications/content_721

⁵¹ Reported at: <http://www.bbc.co.uk/news/education-32831331>

young people to achieve their potential, by facilitating greater placement stability, permanency and security so that they can move into healthy adulthood.⁵² In order to reduce outcome differentials for looked after children, longer term support must be made available for those who are dealing with the consequences of past abuse or neglect. Recovery in line with Article 39 UNCRC and building resilience for the future should be an important focus of the care system, through appropriate placements and additional support.

7.4 The Children and Young People (Scotland) Act 2014 will require that the looked after child's plan is fully integrated with the holistic Child's Plan and will ensure that a looked after child has the right to remain in care if they are in kinship, foster or residential care until they are 21 years old, and are entitled to aftercare provisions up to the age of 26. The Act provides a clear definition of corporate parenting, and defines which public bodies have corporate parenting duties. Although the new legislation contains a wide range of provisions for children who are looked after, it is important that the accompanying guidance is rights-based and the implementation is fully resourced and properly monitored.

7.5 In March 2014 there were 5,756 looked after children in Wales, an increase of 23% since 2009 to 5,755.⁵³ A statutory review undertaken by CCfW found that looked after children are not always afforded the right to be heard in decisions that impact upon their futures.⁵⁴ Regulations and guidance made under the Social Services and Well-being (Wales) Act offer the necessary imperative to ensure looked after children and young people access the care and support services that they are entitled to, as well as improved coordination of education, health, other support services.

7.6 In March 2015 there were 2,858 looked after children in Northern Ireland. This is the highest number since the introduction of the Children Order 1995. These children experience similar difficulties as looked after children in other parts of the UK, particularly in relation to stability and continuity of care, the need for further transition support to adulthood, and their participation in care planning. A recent survey of looked after children in Northern Ireland found that only 39% of 8 to 11 year olds said someone had talked to them about what was in their care plan and 62% of 12 to 15 year olds did not have, or did not know if they had, a copy of their care plan.⁵⁵ As with looked after children in other parts of the UK, many looked after children in Northern Ireland significantly underachieve in education. Of the children recorded as in care, who left school in 2012/13, only 27% achieved 5 GCSE/GNVQs at Grades A* to C including English and maths compared with 80% of general school leavers. They were five times more likely to be suspended from school than children in the general school population.⁵⁶

⁵² Jones, R., Everson-Hock, ES, Papaioannou, D., Guillaume, I., Goyder, E., Chilcott, J., Cooke, J., Payne, N., Duernas, A., Sheppard, L.M., Swann, C. (2011) *Factors associated with outcomes for looked-after children and young people: a correlates review of the literature*. Child: Care, Health and Development, 37, 5 pp.613-622.

⁵³ <https://statswales.wales.gov.uk/Catalogue/Health-and-Social-Care/Social-Services/Childrens-Services/Children-Looked-After>.

⁵⁴ See: <https://childcom.org.uk/uploads/publications/467.pdf>

⁵⁵ VOYPIC (2014) *Our Life in Care 2013: Young people's report*, VOYPIC's third CASI survey, VOYPIC, August 2014.

⁵⁶ DHSSPS (2014), *Children in Care in Northern Ireland 2012-13*. Statistical Bulletin.

7.7 In England the cross-government Care Leavers Charter and strategy is an important development and CCE hope that its aims will be successfully pursued. CCfW welcome the devolved Government's provision for allowing children in foster care in Wales to extend their post-18 living arrangements until their 21st birthday. In Scotland, this also applies to children in residential children's homes; however, there is no equivalent provision for children's homes elsewhere in the UK. Many children face plans to move them once they become 18 even when this would interrupt further education. In Wales, no additional funding has been made available for local authorities to implement the post-18 living arrangements scheme, limiting the capacity of local authorities and fostering providers to arrange suitable homes, and consequently restricting the opportunities of young people to benefit from these schemes.

7.8 The Commissioners underline the need for services which support children who return to their families from care.⁵⁷ Further, while the option of staying put in placement should be supported as a choice, there are many for whom this will not be an option. It is important to address the quality and range of options for accommodation for care leavers and other vulnerable young people between 16 and 25. This requires improved regulation and inspection. In addition, local authorities should have a consistent approach to meeting the accommodation and support needs of over-16s in line with relevant case law.⁵⁸

7.9 There has been a substantial focus in recent government policy in England and Wales on adoption and on achieving earlier resolution in the administrative and court process. While the Commissioners welcome a focus on children and care and believe it is very important to maximise children's opportunity for permanence through this route and to provide essential support post adoption, adoption is neither an appropriate plan nor an option for many children in care. There is a need to recruit, train, support and develop foster carers and to ensure that recent efforts to improve the quality of residential care are sustained. There is a need too to ensure that services for children in care work to support their connections with their wider family and supportive adults who can remain in touch through care and into adulthood.

7.10 In spite of draft proposals in 2006 to revise Northern Ireland's adoption legislation, there have been no further developments, with the result that the adoption system in Northern Ireland is outdated and no longer fit for purpose.

⁵⁷ Details in: <http://www.nspcc.org.uk/globalassets/documents/research-reports/supporting-children-families-returning-home-from-care.pdf>

⁵⁸ *R (G) v London Borough of Southwark* [2009] UKHL 26.

Recommendations

All children leaving care should have adequately funded living and support services in accordance with their assessed need. Children in residential children's homes should be entitled to access the schemes.

The State party should provide the necessary strategic leadership to ensure the provision of high quality independent advocacy provision for all relevant children and young people, to ensure their participation in care planning and in other decisions affecting them.

The State party should provide clear evidence that all decisions regarding the care for a looked after child should be made in accordance with the UNCRC particularly Articles 3 and 12. In addition, as corporate parents, relevant authorities should ensure adequate services for looked after children, including education support and CAMHS.

8. Disability, basic health and welfare (Articles 6(2), 18(3), 24, 24(3), 26, 27(1)-(3), 33

Mental health

8.1 In 2008, the Committee's Concluding Observations recommended that 'additional resources and improved capacities be employed to meet the needs of children with mental health problems throughout the country, with particular attention to those at greater risk, including children deprived of parental care, children affected by conflict, those living in poverty and those in conflict with the law'.

8.2 Although the UK Government's March 2015 Budget announced that an extra £1.25 billion will be spent on mental health services for children and new mothers in England, child and adolescent mental health services (CAMHS) across the State Party are vastly underfunded⁵⁹ and this has affected the availability of services for children with mental health needs across the State Party. New funding in England and its proportionate share in the devolved administrations must be spent appropriately and meet the needs of children and young people with mental health problems.

8.3 In Wales, the level of spend has remained at 0.8% of National Health Service spending from 2006-7 until 2013, despite an increase in demand and the expansion of some service requirements as a result of the Mental Health (Wales) Measure 2010.⁶⁰ A recent announcement by the Welsh Government of £7.6 million extra funding for CAMHS every year is welcome.⁶¹ However, the impact of this on delivery has yet to be realised.

8.4 Historically, Northern Ireland has been estimated as having a 25% higher rate of overall mental illness prevalence than England, possibly due to the legacy of the conflict, and transgenerational trauma.⁶² In 2012, the five-year average rates of suicide in Northern Ireland were 4 times higher than England and Wales for 15-19 year olds and 17 times more for 10-14 year olds.⁶³ However, in 2013-14, only 7.8% of the total planned mental health expenditure was allocated to child and adolescent mental health services in Northern Ireland.⁶⁴ Recent austerity measures are likely to affect the already inadequate financing and investment in all tiers of Northern Ireland CAMHS.⁶⁵

⁵⁹ Prior to 2015, there had been a 6% real-terms reduction in budgets in England for child mental health services since 2010 - the equivalent of about £50 million.

⁶⁰ Details at: <http://gov.wales/docs/statistics/2014/140611-nhs-expenditure-programme-budgets-2012-13-en.pdf>

⁶¹ See: <http://gov.wales/newsroom/healthandsocialcare/2015/10182787/?lang=en>

⁶² DHSSPSNI (2007) *The Bamford Review of Mental Health and Learning Disability: A Vision of a Comprehensive Child and Adolescent Mental Health Service*. Available at <http://www.dhsspsni.gov.uk/camh-vision-comprehensive-service.pdf>

⁶³ Safeguarding Board for Northern Ireland (2014) *Annual Report for the Period 31 March 2014*. Available at <http://www.safeguardingni.org/sites/default/files/sites/default/files/imce/Annual%20report%20v2.0.pdf>

⁶⁴ See http://www.mediafire.com/view/m7ut7demwwk2qz9/Age_GFS_Press_Release.docx

⁶⁵ Details at <http://www.dhsspsni.gov.uk/showconsultations?txtid=75128>.

8.5 In May 2015, the Scottish Government announced an extra £85 million over the next five years to be spent on mental health in Scotland. This will partly be used to improve CAMHS and extend access to psychological therapies and other services. As such it is welcome. However, further investment is needed. Across the State Party, there has been a significant negative impact on services due to reduction in resources, including a lack of crisis access, long waiting times, inappropriate treatments, inadequate workforce, lack of specialist facilities and lack of service integration.^{66,67}

8.6 There are particular concerns for children who commit or are at risk of committing serious crime, and those with a history of prior abuse and neglect including CSA. Children who offend are in need of specialist teams providing intensive intervention for them, their parents/carers, and for staff in youth justice settings. However, there is a lack of CAMHS provision for this group; for example there is only one CAMHS forensic team in Scotland and the local service in the area of Scotland's largest Young Offenders Institution (YOI) is understaffed. Children who have been sexually abused should be offered early intervention via CAMHS to decrease their trajectory into adult services. Services are struggling due to increased referrals and few staff which can result in some children being placed at increased mental health risk when earlier intervention could have prevented this.

8.7 Cuts to universal, preventative services⁶⁸ and to youth service provision, will result in a greater need for more significant CAMHS interventions. In Wales despite a national all-age government strategy of 2012 emphasising this as a priority⁶⁹, evidence continues to suggest that early intervention mental health services remain very limited for children and young people.⁷⁰

8.8 Meanwhile, demand for these services continues to increase: an increase in demand of 100% has been seen in Wales over the last four years resulting in significant increases in the number of young people being held on waiting lists and an increasing level of unmet need.⁷¹ Epidemiological evidence from Northern Ireland suggests that 20% of children will develop significant mental health problems.⁷² Service providers across the State Party report an increase in the complexity and severity of problems amongst children and young people seeking support.⁷³

⁶⁶ See: <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmhealth/342/342.pdf>

⁶⁷ See: <http://gov.wales/topics/health/nhswales/healthservice/mental-health-services/strategy/?lang=en>

⁶⁸ For example in Northern Ireland it has been announced that there will be a £2 million cut to the DE Early Years Fund and Sure Start Funding reductions of £1million in the 15/16 budget.

⁶⁹ See: <http://gov.wales/topics/health/nhswales/healthservice/mental-health-services/strategy/?lang=en>

⁷⁰ National Assembly for Wales (2014) *Inquiry into CAMHS*. Available at: <http://www.senedd.assembly.wales/documents/s34408/Report%20November%202014.pdf>

⁷¹ Ibid.

⁷² See http://www.rqia.org.uk/publications/rqia_reviews/rqia_reviews_2010.cfm

⁷³ FN2, above; NSPCC, *Childline Review What's affected children in April 2013-March 2014*, 2014; <http://www.bbc.co.uk/news/uk-scotland-31310407>.

Recommendation

The State Party and devolved administrations should invest the required level of funding in child and adolescent mental health services to meet the needs of children in need of such support, with particular attention to those at greatest risk, including disabled children, children deprived of parental care, children affected by conflict, trauma, abuse and neglect, those living in poverty and those in conflict with the law.

The State Party should invest in universal preventative and early intervention children's services, to prevent an increase in mental ill health among children.

8.9 Children with mental health needs are frequently being cared for in non-specialist settings. For example in Scotland, admissions to non-specialist inpatient settings have risen for a second year in 2013–14 (202 admissions involving 179 children). 28 admissions were to paediatric wards, which are still non-specialist wards for treatment of mental illness. Only 50% of children had a Resident Medical Officer who was a CAMHS psychiatrist.⁷⁴

8.10 Of serious concern is the continued use of adult psychiatric wards for children. In Wales, whilst there is a requirement to report such incidents as serious, this practice is inconsistent and there now appears to be a divergence between policy and its implementation.⁷⁵ In England, Government statistics show that the number of children with mental illness requiring emergency mental health assessment and age-appropriate inpatient treatment are now being placed on adult psychiatric wards due to lack of capacity in the children's sector. This is in contravention to the Mental Health Act 1983 (revised 2007) Code of Practice. Although NHS England recommended that Case Managers should be appointed to prevent such admissions, and to manage the flow of patient care to children, the impact of these appointments has yet to be realised. The issue goes wider than case-management and is directly affected by bed availability, lack of and geographically dispersed local age-appropriate inpatient provision and proactive commissioning in this regard.

8.11 Children with mental health problems also continue to be inappropriately detained in police cells, and in Northern Ireland in the Juvenile Justice Centre. In England the Government has recently announced (May 2015) that it would be made unlawful to detain mentally ill children in police cells as a 'place of safety'. Age appropriate 24-hour community based services are needed for children to replace the use of police cells across the State Party. Careful consideration should be given

⁷⁴ Mental Welfare Commission for Scotland (2014) *Young Person monitoring 2013–14*. Available at: http://www.mwscot.org.uk/media/203515/young_person_monitoring_2013_2014.pdf

⁷⁵ WAO & HIW (2013) *Child and Adolescent Mental Health Services: Follow-up Review of Safety Issues*. Available at: https://www.wao.gov.uk/system/files/publications/CAMHS_English_2013.pdf

to the potential risk that a decline in the use of police cells could have on an increase in the use of adult mental health wards.

Recommendations

Children with mental health needs should only be admitted onto adult mental health wards in exceptional circumstances. The State Party and devolved governments should be recording and monitoring such incidents to identify the required action, including the appropriate level of investment in age-appropriate inpatient services.

Children with mental health needs should not be held in police custody or pre-charge in youth justice custody. The State Party and devolved governments should legislate to prevent this and should simultaneously prioritise the urgent funding of timely assessments and age appropriate, 24 hour community-based services to replace the use of police custody.

Child Poverty

8.12 There are now 3.7 million children living in relative poverty in the UK (27%).⁷⁶ Under current government policies, child poverty is projected to rise from 2012–13 with an expected 600,000 more children living in poverty by 2015/16. This upward trend is expected to continue with 4.7 million children projected to be living in poverty by 2020.⁷⁷ The Children’s Commissioners consider this to be one of the most critical concerns for children’s rights across the UK at the current time, requiring urgent attention from the UK and devolved governments.

8.13 Having committed in 1999 to eradicating child poverty across the UK, in 2010 the State party set a number of legally binding targets to reduce child poverty by 2020–21. These included reducing the proportion of children in households in relative low income to below 10%, and those living in households in absolute low income to below 5%. The Child Poverty Act 2010 also required the UK and each devolved government to publish strategies outlining the actions that would be taken to reach the targets, and annual reports on delivery, with the UK-wide strategy relating in the devolved nations to reserved matters. However, the Social Mobility and Child Poverty Commission found in 2014 that the statutory targets were now unattainable and that this was likely to be the first decade since records began in which absolute child poverty had not fallen.⁷⁸ This is a result of insufficient action on the part of the UK and devolved governments to tackle child poverty, as well as the introduction of ‘welfare reforms’ which are, as they are progressively rolled out, impacting detrimentally on low income families across the UK. Whilst CCfW recognises the impact of economic recession and welfare reform,

⁷⁶ Unless stated otherwise, this report uses the UK Government Relative Poverty measure (After Housing Costs). DWP (2014) *Households Below Average Income: An analysis of the income distribution 1994/95 - 2012/13*. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325416/households-below-average-income-1994-1995-2012-2013.pdf pp53-54.

⁷⁷ IFS (2011) *Child and Working-Age Poverty from 2010 to 2020*. Available at: <http://www.ifs.org.uk/comms/comm121.pdf>

⁷⁸ Social Mobility and Child Poverty Commission (2014) *State of the Nation 2014*. Available at: <https://www.gov.uk/government/organisations/social-mobility-and-child-poverty-commission>

Wales has been disproportionately impacted and has the highest percent of disadvantaged children in UK.⁷⁹ Greater efforts are needed to ensure Wales intensifies its efforts to tackling poverty.

8.14 A majority (61%) of children growing up in poverty in the UK live in a family where at least one parent is working.⁸⁰ This reflects the UK's low wage economy and insecure and part-time work including the rise in 'zero hours contracts', where people are required to make themselves available to work exclusively for an employer without the guarantee of being given any work. The UK State Party enacted legislation to remove employment exclusivity terms within zero-hour contracts. However, further regulation is needed to ensure these legislative provisions are implemented and applied.

8.15 Despite the welcome introduction of free school lunches for children in the first three years of primary school in England and Scotland, and free school breakfasts in Wales, food poverty remains a serious problem for children. The Commissioners are concerned about the scope of entitlement and implementation. Portion sizes of school meals in Wales mean that, in a study by CCfW, only 38% of children reported that they consistently feel full after a school lunch.⁸¹ A recent All-Party Inquiry into Hunger in the UK took evidence on the increasing reliance of people on low incomes on charitable food banks, finding that the rising costs of housing, food and fuel is having an impact on the ability of households to buy and cook food.⁸² The Trussell Trust, the UK's leading food bank provider, has provided a record number of food packages over the 2014–15 financial year, more than a million, around a third of which were going to children. This has tripled in the past three years.⁸³

8.16 Fuel poverty is also a significant problem for families on low incomes. Almost one million children are in families in energy debt which can result in unheated homes and danger to their health.⁸⁴

8.17 The UK, Welsh and Scottish governments are complying with the Child Poverty Act 2010 in terms of publishing strategies and action plans (the Northern Ireland Executive being the exception in not having published a 2014–17 strategy), each outlining commitments to tackle child poverty, but there has generally been a lack of tangible measures and actions, or resources to deliver on the scale required.

8.18 The Scottish Child Poverty Strategy focuses on devolved matters. The understanding of child poverty and an outcomes and measurement framework in the Strategy are welcome, but a clear delivery plan is needed setting out responsibilities, leadership and accountability roles. There is also no mechanism

⁷⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325416/households-below-average-income-1994-1995-2012-2013.pdf

⁸⁰ DWP (2014) *Households Below Average Income: An analysis of the income distribution 1994/95 - 2012/13*. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325416/households-below-average-income-1994-1995-2012-2013.pdf

⁸¹ See: <http://www.childcomwales.org.uk/uploads/publications/526.pdf>

⁸² See: <https://foodpovertyinquiry.files.wordpress.com/2014/12/food-poverty-feeding-britain-final.pdf>

⁸³ Details at: <http://www.trusselltrust.org/resources/documents/Press/Trussell-Trust-foodbank-use-tops-one-million.pdf>

⁸⁴ See: www.childrensociety.org.uk/what-you-can-do/campaign-for-change/show-some-warmth-fuel-debt-and-families

for the Scottish Government to ensure that local authorities and partners deliver on the child poverty strategy. This is important as in Scotland there is no legislative duty on local authorities in relation to child poverty. A number of Scottish Government measures have been put in place to address child poverty including: investment in advice and information services to support families to access financial support; rollout of free school lunches for children in the first three years of primary school; commitment to focus on tackling the education gap between low income pupils and their better off peers; and guidance that child poverty should be taken into consideration in local children's services planning and when wellbeing is being discussed under the Children and Young People (Scotland) Act 2014.

Recommendations

The UK government and devolved governments must make child poverty a key focus as a matter of urgency, and fully comply with the Child Poverty Act 2010. Sufficient resources must be provided to meaningfully tackle child poverty and prevent the predicted rise by 2020. The impact of all new policies on families on low incomes must be assessed, and measures put in place to prevent them from having a detrimental impact.

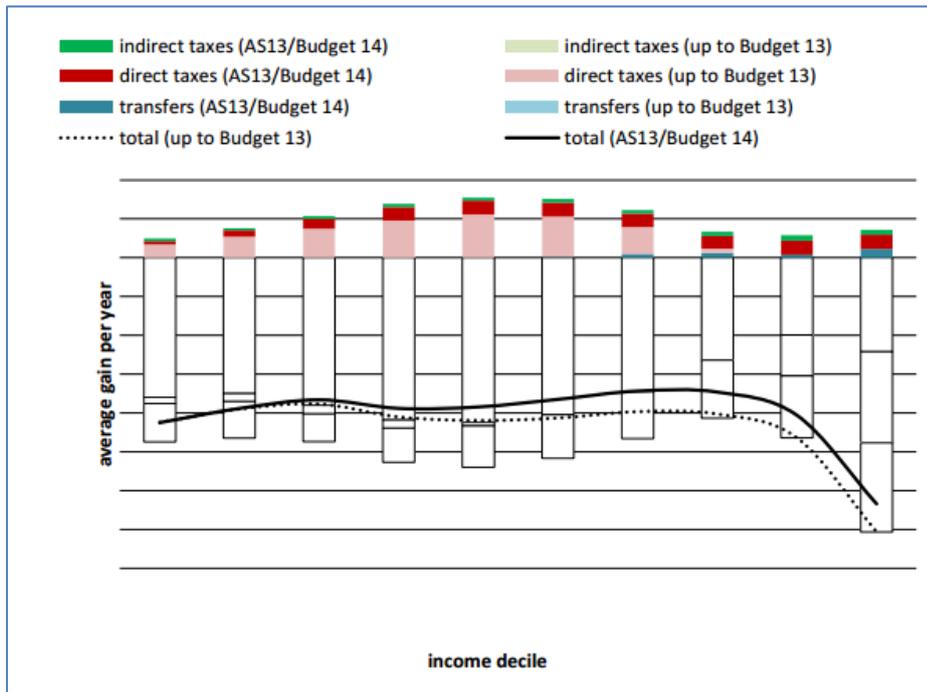
Taxation and social security

8.19 Research carried out for CCE on the cumulative impact of taxation and social security measures in England from 2010 until the Budget in 2014 found that for households with children, the greatest losses overall as a percentage of household income were experienced by households in the poorest income deciles (7–9% of net income) and the smallest losses were experienced in the richest deciles.⁸⁵ When looked at by household type, the impact of all measures from 2010–2014 resulted in lone parents – an already disadvantaged group – being one of the biggest losing groups as a percentage of net income. See diagrams below.⁸⁶

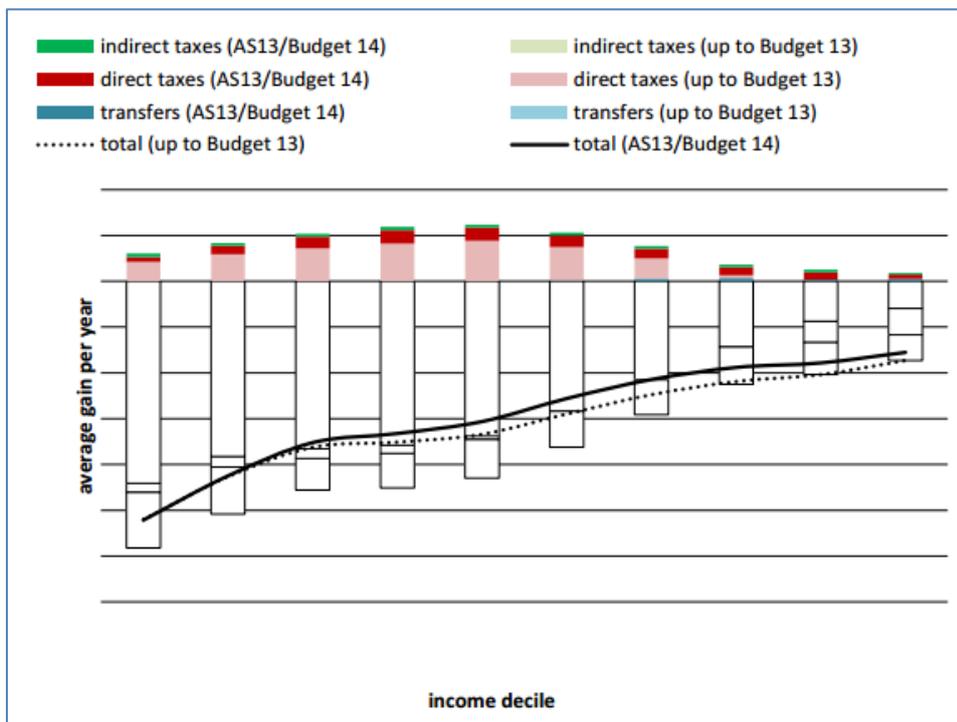
⁸⁵ H Reed and D Elson (2014), *An adequate standard of living* (CCE: London)

⁸⁶ *Ibid.*

Cumulative impact of tax, benefit and tax credit measures (including Universal Credit) in cash terms by household net income decile: households with children



Cumulative impact of all announced tax and welfare measures as a percentage of net income: all households with children



8.20 Research for the Welsh Government found that welfare changes have disproportionately impacted children and families – particularly those most vulnerable.⁸⁷ CCE’s Child Rights Impact Assessment of the Welfare Reform Bill, carried out before it was brought into force in 2012, warned that ‘[b]enefit levels have for some years been consistently below the poverty line (60% of median income)’ and warned of likely violations of children’s rights under Articles 2, 3, 26 and 27 of the Convention, amongst others, as a result of the Bill’s measures.⁸⁸ One such measure, the ‘benefit cap’ (a cap on the maximum level of welfare benefit that can be paid to a household whatever the size, which disproportionately affects families with children and particularly those with a larger number of children), has recently been found by the UK Supreme Court to be in breach of Article 3 of the Convention in the case of *R (SG and others) v Secretary of State for Work and Pensions* [2015] UKSC 16. The Court was however unable to give relief to the claimants because the Convention has not been incorporated into UK law. The UK Government has recently announced plans to lower the benefit cap to £23,000 per annum per household.⁸⁹

8.21 Aside from the ‘benefit cap’ there have also been significant concerns about the ‘bedroom tax’ or ‘spare room subsidy’ whereby tenants in social housing lose part of their housing benefit if one or more bedrooms in their property is unoccupied. To date this measure has not been implemented in Northern Ireland and has been mitigated in Scotland through discretionary housing payments.⁹⁰ Benefits sanctions have also led to severe losses in household income for families already living in poverty.⁹¹

8.22 In Northern Ireland, in recognition of the detrimental impact on children and vulnerable adults, there have been significant delays in progressing equivalent legislation to the Welfare Reform Act 2012. This is due to a lack of political agreement and the power-sharing nature of the devolved government. As a result of these delays, the UK government has imposed cuts to the Northern Ireland budget, and to date the devolved Ministers have yet to reach agreement on a set of measures to moderate some of the worst welfare reform impacts. Thus the budget for public services, already reduced due to austerity, will be further adversely impacted as a result of additional cuts.

8.24 In Scotland there have been welcome initiatives to mitigate some of the effects of welfare changes including: the Scottish Welfare Fund and the protection of families facing exceptional pressure as a priority group for support; and investment by the Scottish Government and local authorities in the council tax reduction scheme, ensuring that unlike in the rest of the UK, low income families have not been hit by the abolition of council tax benefits.

⁸⁷ Details at: <http://wales.gov.uk/topics/people-and-communities/welfare-reform-in-wales/analysing-reforms/?lang=en>

⁸⁸ Figures at: <http://www.trusselltrust.org/resources/documents/Press/Trussell-Trust-foodbank-use-tops-one-million.pdf> (some of the users will be repeat users)

⁸⁹ See: <http://www.telegraph.co.uk/news/politics/queens-speech/11632708/Queens-Speech-David-Cameron-says-Britain-a-golden-opportunity-to-back-hard-working-people.html>

⁹⁰ Report of the UN Special Rapporteur on the Right to Adequate Housing (2013) Available at: <http://www.ohchr.org/EN/Issues/Housing/Pages/HousingIndex.aspx>

⁹¹ More details at: <http://www.cpag.org.uk/content/latest-reports-impact-benefit-sanctions>

8.25 The situation is likely to be worsened by the UK Government's announced emergency Budget on 8 July 2015, which is likely to include £12 billion of welfare spending cuts, many of which the Children's Commissioners expect to fall upon families with children. Although the Government has committed to protecting pensions from these cuts, the same commitment has not been made to protecting benefits to children.

Recommendations

Children's rights to social security and to an adequate standard of living should be fulfilled by the welfare system: children and their families should be protected from welfare cuts; and measures should not discriminate against children from particular groups for example children of lone parents, children with disabilities or children from large families.

Benefits sanctions should not be applied in violation of children's Convention rights. Families with children to whom benefits sanctions are applied should be passported directly to hardship payments at a level sufficient to fulfil their rights to social security and an adequate standard of living.

Adequate housing

8.27 In her visit to the UK in 2013, the UN Special Rapporteur on the right to adequate housing summarised the effects of the housing market, provision and welfare changes on lower-income families.⁹² Rising private rental costs (particularly in London), inadequate investment in social housing and welfare changes have led to the increased use of inappropriate bed and breakfast accommodation for families, from 630 families in England in March 2010 to 2080 in September 2014.⁹³

8.28 Local authorities in England are often reluctant to meet their child protection and support obligations towards 16 and 17 year olds, who may be inappropriately accommodated in bed and breakfast accommodation, not assessed or not offered any accommodation despite existing legal protections.⁹⁴

⁹²Details at: <http://www.ohchr.org/EN/Issues/Housing/Pages/CountryVisits.aspx>

⁹³ See: www.parliament.uk/briefing-papers/sn02110.pdf

⁹⁴ The Children's Society (2015) *Getting the House in Order*. London: Children's Society.

Recommendations

The UK State Party should urgently address the need for adequate housing for lower-income families and end the use of inappropriate bed-and-breakfast style accommodation for families with children.

The UK State Party should provide guidance to local authorities in England and Wales on meeting the needs of 16 and 17 year olds with a statutory entitlement to support.

Children with disabilities

8.29 Across the UK, changes to welfare benefits have had a disproportionate impact on children with disabilities. These children are already much more likely to be living in poverty.⁹⁵ As a result of tax and benefit reforms announced in 2010, CCE has highlighted retrogression in the realisation of disabled children's rights. Government spending decisions made since 2010 have had a disproportionate impact on children with disabilities and their families.⁹⁶

8.30 CCE's work looking at child poverty and disability found accounts of families with children with disabilities who could not afford to heat their homes properly. In addition the research found that some older children with disabilities living independently did not have enough food or were regularly missing meals, and there were accounts of a child not having adequate clothing.⁹⁷ Children with disabilities also experienced financial disadvantage as a direct result of their higher living costs. This is because of the specialist support services and goods needed to meet their needs. Many suggested that benefit levels are inadequate and do not cover these costs.

8.31 The overall UK childhood mortality rate is higher than in some other European countries. The key areas where the UK rates appear to be relatively high are infant deaths and deaths among children who have chronic conditions.⁹⁸ Research for CCE on residential special schools for disabled children highlighted the importance of early and integrated support for children with complex needs and their families, enabling them to remain within their family and community wherever possible, and for children's wishes and interests to be considered in important decisions about their support and future, including at the time of transition out of school.⁹⁹ A number of children with learning disabilities and challenging behaviour are still in in-patient units, despite the post- Winterbourne

⁹⁵ Children's Society (2011) *4 in 10*. Available at:

http://www.childrenssociety.org.uk/sites/default/files/tcs/4_in_10_reportfinal.pdf

⁹⁶ Office of the Children's Commissioner (2014) *Child Rights Impact Assessment of the Autumn Statement 2013 and Budget 2014*. London: Office of the Children's Commissioner.

⁹⁷ Larkins, C., Thomas, N., Judd, D., et al (2013) '*We Want to Help People See Things Our Way*': A Rights-Based Analysis of Disabled Children's Experience Living with Low Income. London, Office of the Children's Commissioner

⁹⁸ Wolfe, I. et al (2014) *Why children die*. Available at: http://www.ncb.org.uk/media/1130496/rcpch_ncb_may_2014_-_why_children_die_part_a.pdf

⁹⁹ Pellicano, E. et al (2014) *My life at school*. London: Office of the Children's Commissioner.

View commitments. Many are a long way from home and their families, and many do not have a transition plan.

8.32 In Scotland, issues for children transitioning to adulthood with additional support and/or medical needs include that: children are waiting too long for appropriate packages of care to be put in place; those whose life expectancy, due to medical advances, is expanding are finding that there is a lack of service provision for them; and children feel that their voices are not listened to. The transitions process is often not explained to them in an accessible way and the jump to adult services is too steep; children are being treated in inappropriate places such as adult wards due to a lack of service provision; and transition planning does not start early enough. A recent study by CCfW into short breaks provision for disabled children and their parents/carers¹⁰⁰ highlighted the difficulties that arise when universal services are not accessible to disabled children and the need for seamless transition to adult services. Having published a review of transitions to adult services for young people in 2012¹⁰¹ NICCY has called for stronger duties to be placed on government and statutory agencies to ensure that children with learning disabilities have access to one integrated and child centred transitions planning process which requires statutory agencies to cooperate and which takes proper account of the views of children.

8.33 In November 2014 CCfW highlighted a concern that schools are not under the same duties as other public buildings in their requirements under the Equality Act 2010 to make their buildings physically accessible, and inadequacies in the current system for increasing access to school for disabled pupils.¹⁰²

Recommendations

The State Party should ensure that the additional costs of disability are met by welfare provision for children with disabilities.

The State Party should ensure that planning for transition to adult services starts early, and conforms with Articles 3, 12 and 23 of the Convention.

The State Party should amend the Equality Act 2010 to ensure that schools are under the same duty to ensure access for people with disabilities as other public buildings.

¹⁰⁰ Hurrell, S. (2014) *Full lives*. Available at: <http://www.childcomwales.org.uk/uploads/publications/524.pdf>

¹⁰¹ Lundy L., Byrne, B. and McKeown, P. (2012) *Review of transitions to Adult Services for Young People with Learning Disabilities*. Belfast: NICCY.

¹⁰² Hurrell, S. (2014) *Full lives*. Available at: <http://www.childcomwales.org.uk/uploads/publications/524.pdf>

9. Education, leisure and cultural activities (Articles 28, 29, 30 and 31)

School exclusions

9.1 CCE's school exclusions inquiry found that in 2009–10, 5,740 children were permanently excluded from state-funded schools in England (0.08 per cent of the school population). In 2009–10, however, 179,800 children (2.4 per cent of the school population) were excluded on a fixed-term basis at least once. Almost all fixed-term exclusions (97 per cent) were for periods of less than a week. New exclusions guidance in England (Nov 2013) which lowered the threshold for exclusions has been withdrawn following a legal challenge. A review is underway.¹⁰³

9.2 CCE's School Exclusions Inquiry (2010–12) highlighted the disproportionate exclusion (fixed term and permanent) from school of children from certain demographic groups: in particular children from Gypsy and Roma Traveller backgrounds, Irish Travellers, Black Caribbean, Mixed White/Black Caribbean children; boys; children from low income families (in receipt of free school meals) and children with special educational needs. For example, Black Caribbean boys were 11 times more likely than white girls of the same age in similar schools to be permanently excluded.¹⁰⁴ In addition to the disproportionate use of exclusion against children from particular groups we are also concerned at unlawful exclusion practices affecting a small but significant minority of schools.¹⁰⁵

9.3 In England there is no right at all to appeal against fixed term exclusions, nor any independent binding appeal process for permanent exclusions, other than for children with special educational needs or disability, through the SEND tribunal. Parents (not children) can request an independent review of a permanent exclusion. However, the review panel cannot insist on reinstatement. The State Party report does not make this clear.

9.4 In Scotland, in 2012–13 there were 21,955 cases of exclusion from local authority schools, a decrease of 18 per cent from 2010–11 (26,844 exclusions).¹⁰⁶ Guidance¹⁰⁷ ('Included, Engaged and Involved, Part 2') is clear that there is no such thing as a lawful 'informal' exclusion but these still occur. Further, while official exclusion figures have been decreasing markedly since 2006–7, they have gone up in some special schools¹⁰⁸ and there are huge disparities in which children

¹⁰³See: <http://www.justforkidslaw.org/news-events/press-coverage/just-for-kids-law-welcomes-withdrawal-of-department-for-education-guidance-making-it-easier-for-schools-to-permanently-exclude-pupils-2>

¹⁰⁴ Office of the Children's Commissioner (2013) *They go the extra mile: reducing inequality in school exclusions*. London: Office of the Children's Commissioner. p26.

¹⁰⁵ Office of the Children's Commissioner (2012) *Always someone else's problem: Year 2 report of inquiry into school exclusions*. London: Office of the Children's Commissioner.

¹⁰⁶See: <http://www.gov.scot/Resource/0044/00443414.pdf>

¹⁰⁷ Scottish Government (2011) *Included, Engaged and Involved, Part 2: A Positive Approach to Managing School Exclusions*. Available at: <http://www.gov.scot/Publications/2011/03/17095258/0>

¹⁰⁸ Scottish Parliament, *Official Report, Justice Committee*, 11 December 2012, Col. 2201.

are excluded: looked after children and those with additional support needs are several times more likely to be excluded.¹⁰⁹

9.5 In Wales, the rate of permanent school exclusions has been steadily decreasing since 2004. The rate of fixed term school exclusions has remained steady, although Wales has seen a fall over 2012–13.¹¹⁰ In April 2015, the Welsh Government issued new guidance¹¹¹. Although the guidance does not provide children and those who care for them with the right of independent appeal on fixed term exclusion, it does for permanent exclusions.

9.6 In Northern Ireland, NICCY is concerned at the use of ‘informal exclusions’ to manage children with a diagnosis of ASD or ADHD or with behavioural issues out of school wherein their parent or carer is asked to take them home early from school and bring them back the next day. Generally these exclusions are not recorded on the child’s records as an exclusion and don’t follow the formal procedures around suspensions.

Recommendations

The State Party should:

- Use the disciplinary measure of permanent or temporary exclusion as a means of last resort only, and ensure that ‘informal’ and illegal exclusions do not occur. Mediation, restorative justice and input from professionals including educational psychologists and social workers should be used to reduce exclusions.
- Ensure that children who are able to express their views have the right to appeal, with legal advice and assistance and where appropriate representation provided for those without means, against their exclusion as well as the right, in particular for those in alternative care, to appeal to special educational needs tribunals.
- Ensure that alternative educational provision for excluded pupils begins promptly after exclusion and is of a high quality.

Segregated education and academic selection

9.7 In the 2008 Concluding Observations, the UN Committee recommended that the State Party take measures to address the segregation of education in Northern Ireland and to abolish academic selection i.e. the 11+ transfer test and ensure that

¹⁰⁹ See summary in SCCYP (2012), *Connection between school exclusions and offending*,

Written submission from Scotland’s Commissioner for Children and Young People, Scottish Parliament, Justice Committee.

¹¹⁰ Details in <http://gov.wales/docs/statistics/2014/140305-exclusions-schools-2012-13-revised-en.pdf>

¹¹¹ See: <http://gov.wales/docs/dcells/publications/150423-exclusion-guide-en.pdf>

all children are included in admission arrangements in post-primary schools. In 2015, the majority of pupils continue to attend schools which are regarded as being in the Protestant ‘controlled’ sector or the Catholic ‘maintained’ sector. Only 7 per cent of pupils attend integrated schools.¹¹² In recent years, the Department of Education has focused on promoting shared education, which means that pupils continue to attend their own schools but are given the opportunity to participate in joint classes and activities with pupils from other types of schools. The Department recently launched a shared education bill seeking to provide a statutory definition of shared education and a power to encourage and facilitate shared education.¹¹³ Moreover, considerable funding has been provided to develop new shared education campuses.

9.8 However, there are concerns about the quality of some shared education initiatives, the opportunity for all pupils to be involved and the sustainability of shared education. Ultimately, while shared education may facilitate more collaboration between schools, the overwhelming majority of pupils in Northern Ireland continue to attend ‘separate’ schools.

Recommendation

The NI Executive should actively support, promote and develop a fully integrated education system. The provision of shared education should be carefully monitored and evaluated to ensure that it is delivered appropriately and that it fulfils its objectives. Direct engagement with children should be an integral component of this evaluation.

9.9 Two thirds of 10 and 11 year old pupils in Northern Ireland still sit a form of the transfer tests which will determine which post-primary school they will then attend. Two separate tests are in place: one used mainly by ‘Catholic’ grammar schools and a second by state (non-denominational) grammar schools. Despite opposition from the Department of Education to the tests, there does not appear to be any plans to end their use, although within the last 12 months some Catholic grammar schools have indicated they will no longer use academic selection as part of their entrance criteria.

¹¹²Details at: http://www.deni.gov.uk/index/85-schools/10-types_of_school-nischools_pg/16-schools-integratedschools_pg.htm

¹¹³ DE (2014) *Sharing Works: A Policy for Shared Education*. Bangor: DE

Recommendation

The NI Executive must end the use of academic selection and replace it with a system that ends educational inequalities. Such a system can only be achieved through the full engagement of the whole of society, particularly children and their parents.

Bullying (including cyber bullying)

9.10 Bullying within education provision remains a serious and widespread problem across the State Party and is damaging children's successful engagement in learning. Research commissioned by CCfW in 2013 found that bullying on the basis of gender identity, sexuality and role conformity continues to blight the lives of children. CCfW also published research which found that many children receiving education in Pupil Referral Units were there because they had been unable to cope with bullying in mainstream education and unable to access support. The Life in Scotland for LGBT Young People report¹¹⁴ highlighted that discrimination and harassment remain a significant problem for LGBT children, particularly in schools. Around 70% of LGBT pupils had experienced homophobic bullying at school, with transgender children's experiences being even worse.

9.11 Since the last examination of the UK by the Committee, cyber-bullying has been identified as an important emerging children's rights issue. E-safety is being championed by a variety of charities and agencies who have identified it as essential;¹¹⁵ media reports of cyber bullying incidents have increased;¹¹⁶ the NI Independent Public Inquiry on CSE highlighted the increased risk to disabled children online, especially at risk of bullying;¹¹⁷ and online grooming and radicalisation have been identified as concerns.¹¹⁸

9.12 Surveys report high levels of cyber bullying experienced by children in the UK. A 2011 survey in Northern Ireland found that 15.5% of pupils in Year 6 and 17% of pupils in Year 9 have experienced cyber bullying in the last two months.¹¹⁹ A survey of over 2,000 UK teenagers in 2013 found that 37% of children are experiencing cyber bullying on a highly frequent basis; cyber bullying had catastrophic effects upon the self-esteem and social lives of up to 70%; and 7 in 10 children are victims of cyber bullying.¹²⁰

¹¹⁴ LGBT Youth Scotland (2012) *Life in Scotland for LGBT Young People: Education Report*. Available at: https://www.lgbtyouth.org.uk/files/documents/Life_in_Scotland_for_LGBT_Young_People_-_Education_Report_NEW.pdf

¹¹⁵ See: <http://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/bullying-and-cyberbullying/>

¹¹⁶ See: <http://www.bbc.co.uk/news/uk-northern-ireland-26864342>

¹¹⁷ Details at: <http://www.dhsspsni.gov.uk/csereport181114.pdf>

¹¹⁸ Beckett, H. (2011) *Not a world away*. Available at:

http://www.barnardos.org.uk/13932_not_a_world_away_full_report.pdf; and UK Government (2011) **Prevent Strategy**. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97976/prevent-strategy-review.pdf

¹¹⁹ Details at: http://www.deni.gov.uk/no_56_appendices_final_2011.pdf

¹²⁰ See Annual Bullying Survey taken from over 2,000 British teens, available at <http://www.ditchthelabel.org/downloads/the-annual-cyberbullying-survey-2013.pdf>

9.13 In 2008, Wales introduced the teaching of safe and responsible use of the internet in both the primary and secondary school curriculum. There is also an e-safety zone for pupils, children and parents on HWB (the digital learning platform for Wales).¹²¹ However, only 40% of children report having lessons on newer platforms like Snapchat, Instagram, Kik and Twitter, which have been adopted by more than half of all the children.¹²²

9.14 The Scottish Anti-Bullying Steering Group, of which SCCYP is a member, takes the view that the attitudes and behaviours that characterise online bullying are essentially the same as other types of bullying. While the reach and pervasiveness of online bullying presents particular challenges, the same focus on the impact on the child and similar prevention methods are required to tackle it.¹²³

9.15 The Department of Education in Northern Ireland recently issued a consultation which is seeking to address bullying in schools by bringing forward legislation which will, amongst other things provide a legal definition of bullying. This will ‘encompass all forms of cyber-bullying between pupils occurring whilst they are ‘under the care, control or lawful authority’ of the school. While this is a positive step, challenges remain in relation to identifying occurrences, encouraging pupils to report these and determining precisely where the responsibility lies with regard to intervention. The Northern Ireland Executive has established an E-Safety Forum with the key aim of keeping children safe when they are in the digital world. However it has not yet implemented a cross-departmental e-safety strategy.

Recommendations

The UK State party and devolved governments should intensify their efforts to tackle bullying and violence in schools, including through teaching human rights, peace and tolerance and strengthen children’s participation in all matters of school, classroom and learning which affects them.

The UK State Party and devolved governments should ensure that digital competence and online safety is reinforced across the school curriculum as a whole.

Human rights education

9.16 Despite a number of calls from CCfW for a central focus to be placed on child wellbeing through the development of a rights-based curriculum in schools, the Welsh Government has yet to implement such an approach. Although Welsh Government has invested in training packages and resources to promote knowledge and understanding of the UNCRC amongst professionals working with children,

¹²¹See: <http://hwb.wales.gov.uk/pages/eSafety-Index>

¹²² Based on a survey of 2081 13 and 14 year olds in Wales. See: <http://wisekids.org.uk/wk/wp-content/uploads/2014/12/EnglishFinal.pdf>

¹²³ Scottish Anti-Bullying Steering Group (2010) *A national approach to anti-bullying for Scotland’s children and young people*. Edinburgh: Scottish Government.

there is little evidence to suggest that a systematic approach has been undertaken to raise awareness, knowledge and understanding of the UNCRC amongst professionals working with children. Similar problems exist in Northern Ireland and England.

Recommendation

The State Party and devolved governments should intensify their efforts to ensure that all schools include the Convention in their curriculum (including where applicable through its inclusion in statutory curriculums), and ensure that its principles and values are integrated into the structures and practices of all schools.

Relationships and sexuality education

9.17 Children should be equipped with the knowledge and skills to protect themselves from sexual abuse and exploitation and to support the development of healthy sexual relationships as they approach adulthood. Younger children may not have the words to describe abuse or understand that it is wrong. Relationships and sexuality education is an effective means of building resilience of children and young people, ensuring that they have the knowledge to understand exploitation and know how to access help and advice. It is also important in helping children understand their own and others' sexual orientation and to address discrimination and bullying against LGBT children. Despite this, across the UK schools are not obliged to provide teaching on relationships and sexuality. Research undertaken by CCfW recommended that developments in relation to improving classroom teaching and learning, strengthening school leadership, organising school improvement and promoting best practice must include a clear focus on measures to support pupil wellbeing, children's rights, equality and diversity issues and sexual health and wellbeing.¹²⁴

Recommendation

Relationships and sexuality education must be provided by trained practitioners in every educational setting for all children, using a standard curriculum. This must be part of a holistic/whole-school approach that includes internet safety, abuse within the family, all forms of bullying and harassment, child protection and the getting and giving of consent.

¹²⁴Renold, E. et al (2013) *BOYS AND GIRLS SPEAK OUT A Qualitative Study of Children's Gender and Sexual Cultures (age 10-12)*. Available at: <http://www.childcom.org.uk/uploads/publications/411.pdf>

10. Special protection measures (Articles 22, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40)

Juvenile justice

10.1 The minimum age of criminal responsibility (MACR) remains very low across the United Kingdom, despite the Committee's recommendations in its Concluding Observations of 1995, 2002 and 2008, and the statement in General Comment No 10 (para 32). In England, Wales and Northern Ireland the MACR is unchanged at 10, in Scotland it remains at 8 (despite a welcome step forward in 2010, when legislation was passed that renders a prosecution of a child under 12 incompetent).¹²⁵ The low age of MACR represents an infringement of Articles 37 and 40 UNCRC as it exposes children to a system that is inappropriate for their age and development.

Recommendation

The State Party should as a matter of urgency implement the Committee's 2008 recommendation that it '[r]aise the minimum age of criminal responsibility in accordance with the Committee's general comment No. 10, and notably its paragraphs 32 and 33'.

10.2 While most criminal cases against children in England, Wales and Northern Ireland are heard in the youth court, children continue to be tried in Crown Courts (adult courts) for serious crimes in England, Wales and Northern Ireland. In Scotland children under 16 who offend are dealt with in the Children's Hearings system (with a very small and declining number of exceptions in the 12–15 age group), but 16 and 17 year olds who are not already in the system are routinely tried in the adult courts. This raises concerns about children's ability to participate effectively in the proceedings¹²⁶ particularly in light of the known prevalence of neurodisability in children in custody and is contrary to Article 40 of the Convention and General Comment No 10. There has been a steep decline in the number of children entering Scotland's children's hearings system or the courts as a result of their offending (from 11,554 in 2008–9 to 2,764 in 2013–14)¹²⁷ and the number of young people convicted by the courts continues to fall at a faster rate than all other age groups.

¹²⁵ Criminal Justice and Licensing (Scotland) Act 2010, s. 52.

¹²⁶ See the jurisprudence of the European Court of Human Rights in *T v UK*; *V v UK* ([citation]) and *SC v UK* ([]).

¹²⁷ See http://www.scra.gov.uk/cms_resources/Annual%20Dashboard%202013-14.swf

Recommendation

Children in conflict with the law should always be dealt with within the juvenile justice system and never tried as adults in ordinary courts, irrespective of the gravity of the crime they are charged with.

10.3 Children in England and Wales often do not enjoy their right to privacy at all stages of the criminal process. In the adult (Crown) Court an order for reporting restrictions is only available on application at the discretion of the judge and only then until the child reaches the age of 18;¹²⁸ in the Youth Court privacy is presumed but this order can be lifted by the court.¹²⁹ This position was clarified following the Court of Appeal's judgment in *JC and RT v Central Criminal Court* [2014] EWCA Civ 1777; calls to retain the possibility of lifelong reporting restrictions in the Crown Court were rejected by the Government, though they remain possible for child victims and witnesses. Similarly in Northern Ireland a statutory mechanism exists whereby 'reporting restrictions' can be lifted, thereby identifying child offenders, where a Judge determines it to be in the 'interest of justice' or 'in the public interest.' Applications for the removal of reporting restrictions have been made in 'high profile' cases where a serious offence has been committed.¹³⁰ The lack of privacy for children in the criminal justice system has particularly serious consequences in cases of particular notoriety for the safety, custodial regime and rehabilitation of the children concerned and therefore their rights under Articles 37 and 40 of the Convention.¹³¹

10.4 In the UK criminal records, including spent convictions and diversionary disposals including those administered to young offenders, are subject to disclosure for employment, volunteering etc. In Northern Ireland in 2014 a filtering scheme took effect whereby some convictions and disposals would not be subject to disclosure. However, this scheme does not fully address the concerns due to the number of exceptions to the scheme such as a conviction resulting in a custodial sentence or a conviction or diversionary disposal for a 'specified offence'. The list of specified offences sits just short of 1200. In Scotland, reforms to the system of Disclosure of convictions obtained by children through the children's hearings system which were agreed in 2011 have been delayed for some considerable time. Once in force, this will limit disclosure of such 'convictions'. Although this measure does not go far enough, it is welcome. This position is at odds with the Committee's recommendation in General Comment No. 10, the Havana Rules and the YJR.

¹²⁸ S 45 Youth Justice and Criminal Evidence Act 1999.

¹²⁹ S 49 Children and Young Persons Act 1933.

¹³⁰ *The Queen v. Ryan McGreechan*, 2014 NICA 5.

¹³¹ See for example the case of *R v William Cornick* k[2014] EWHC 3623 (QB) concerning a 16 year old boy convicted of the murder of his schoolteacher.

Recommendations

Children in contact with the penal system should be entitled to privacy at all stages of the criminal process including following conviction and sentence.

Children's life chances must not be curtailed by requirements to disclose convictions for lengthy periods, except in exceptional circumstances where this is absolutely necessary for the protection of the public. Young people should be allowed to apply to have their records cleared on their 18th birthday and this should be granted unless it is assessed to be in their or the public's best interests not to do so.

10.5 The number of children in youth justice custody in England and Wales (i.e. sentenced or remanded) has declined substantially since the last periodic review of the United Kingdom and, despite a small recent increase, is now 981.¹³² In Scotland the figure is upwards of 65¹³³ and in Northern Ireland it is 196 (2013–14). The UK figure remains very high by Western European standards. In Scotland, the detention of children under 16 who were deemed 'unruly' in prisons or YOIs was prohibited by the Scottish Parliament in 2010¹³⁴ which is welcome.

10.6 There are a disproportionate number of Black and Minority Ethnic children in custody in England and Wales (38% of the current total). There are also a disproportionate number of looked after children and care leavers (children who are or have been in the care of the State) in custody. Fewer than 1% of all children in England are in care, but in 2012 looked after children made up 30% of boys and 44% of girls in custody.¹³⁵ In Northern Ireland the number of looked after children admissions in the Juvenile Justice Centre has increased by 114% from 146 in 2011 to 313 in 2013. Research carried out for CCE in 2012 also found high levels of neurodisability amongst children in custody.¹³⁶

10.7 Despite the overall decline in custody numbers since the last Periodic Review, it remains the case that custody is not always used only as a last resort and for the shortest appropriate period of time. For example, presumptive custodial sentences have been introduced in 2014 for knife crime offences by children aged 16 and 17 in England and Wales. The Northern Ireland Youth Justice Review has highlighted the need for a range of alternative measures and/ or accommodation as alternatives to custody. In Northern Ireland there has been a continuing increase in the detention of children either as a 'place of safety' or on remand and at any given time approximately 80% of children in custody are unsentenced.

¹³² See the YJB's monthly custody report at: <https://www.gov.uk/government/statistics/youth-custody-data>

¹³³ Scottish Prison Service, Daily Prison Population, 17 May 2015. On 19 May 2015, an additional 83 children were in secure accommodation, 7 of whom had been sentenced to detention there by the courts; it is likely that a proportion of the remaining secure population entered secure accommodation for reasons related to offending, such as remand or by authorisation of a children's hearing.

¹³⁴ Criminal Justice and Licensing (Scotland) Act 2010,

¹³⁵ See: https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/10/HMIP-AR_2013-14.pdf

¹³⁶ Hughes, N. et al (2012) *Nobody made the connection: The prevalence of neurodisability in young people who offend*. Available at: <http://5.198.140.47/sites/default/files/publications/Nobody%20made%20the%20connection.pdf>

Recommendation

The State Party should protect investment in early intervention and preventive services in order further to reduce the number of children in the juvenile justice system, and should introduce statutory presumptions against detention for children except when necessary to protect the public against serious harm.

The State Party should carry out a review of the reasons for the disproportionate number of BME children, looked after children/care leavers and children with neurodisability in custody.

10.8 As the numbers of children in custody have declined some units have been decommissioned meaning that children are at risk of being held even further from home. The England and Wales Youth Justice Board's target that children should be held within 50 miles of their home has been abandoned. This is contrary to the principle in Article 40 of the Convention that the system should 'take into account the child's age and the desirability of promoting the child's reintegration' and in particular the Committee's recommendation in General Comment No. 10 that (para 87) '[i]n order to facilitate visits, the child should be placed in a facility that is as close as possible to the place of residence of his/her family.'

Recommendation

In line with General Comment No 10, and in order to facilitate visits, children in detention should be placed as close as possible to the place of residence of their families, provided it is otherwise appropriate for them. Custodial facilities should be appropriate to the age and needs of the children detained there. Adult prison-like facilities such as Young Offender Institutions should not be used for children.

10.9 The requirement of Article 37(c) of the Convention that children be separated from adults in all places of detention, except in their best interests, has not been fully implemented in custodial settings. Children transported to and from Young Offenders Institutions are moved in cellular vehicles which are inappropriate for children's age and development and where adults may be transported on the same vehicle. There remain concerns that in Scotland girls under 18 are not separated from adult women (except in that they do not share cells with them). In some Young Offenders Institutions there is an adult prison on the same/adjoining site and total separation is very difficult to achieve. The detention of children in settings where adult prisons exist on the same site can also result in limited access to outdoor space and leisure activity in the interests of maintaining separation. In Northern Ireland all children in custody are held at the Juvenile Justice Centre; however, this is a matter of policy and the separation of children and adults is not guaranteed in legislation.

Recommendation

In accordance with Article 37(c) of the Convention, the State Party should ensure that children are separated from adults in detention except in their best interests. Children should not be escorted in cellular vehicles, and should not be escorted with or detained on the same site as adults except where it is in their best interests.

10.10 In England and Wales the educational entitlement in custody has recently been increased to 30 hours per week for children; this is welcome, but its full implementation remains pending. However, a substantial number of children will not be receiving this provision due to being – officially or unofficially – isolated from their peers and in a number of cases subject to solitary confinement which is prohibited for children by Article 37 of the Convention, Article 16 of the UN Convention Against Torture and General Comment No 10 (paragraph 89). Young Offenders Institutions have segregation units like those in adult prisons where cellular confinement – for example in order to maintain ‘good order and discipline’ – can exceed 22 hours per day and last for prolonged periods; some children are also confined in their own cells either for behavioural/risk management purposes or because of staff shortages.

Recommendation

No child should be subject to solitary confinement under any circumstances. All children in detention should be provided with education, health and child protection provision equivalent to that available in the community. Children in detention should enjoy all the rights under the Convention not necessarily abridged by the fact of their detention.

10.11 Restraint in children’s custodial settings is not confined to circumstances ‘where the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted.’ In England and Wales it is also available to prevent non-imminent threats of injury, damage to property or escape and, in Young Offenders’ Institutions, to promote ‘good order and discipline.’ The new system of restraint for Young Offenders Institutions and Secure Training Centres (Managing and Minimising Physical Restraint) includes ‘pain distraction’ techniques which involve the deliberate infliction of pain on a child. A completed independent review of MMPR has not yet been published by the Ministry of Justice.

Recommendation

Restraint should only be used where the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted. Only techniques proven to be safe for children should be used and pain should never be deliberately inflicted in order to restrain a child.

Children subject to immigration control

10.12 Following a widely supported campaign against the indefinite detention of children in immigration facilities, the May 2010 coalition agreement included a commitment to end the detention of children for immigration purposes. Following a public review, the new process for enforcing family removals was announced in December 2010. The new approach aimed to encourage families to comply with instructions to depart at an earlier stage.

10.13 Children are no longer detained at Yarl's Wood or Dungavel Immigration Removal Centres but can be detained as part of the family removals process at Cedars for short periods and also in entry refusal cases Tinsley House or for a variety of reasons in short-term holding facilities in ports and airports on arrival in the UK. Further, children whose age is subject to dispute may be detained in adult immigration removal facilities and may be held in isolation until their age is determined. Children are therefore still not detained only as a last resort or for the shortest appropriate period of time.

Recommendation

The State Party should refrain, as a matter of policy, from detaining unaccompanied children in all circumstances and ensure the right to speedily challenge the legality of detention, in compliance with Article 37 of the Convention. In any case, detention must always be a measure of last resort and for the shortest appropriate period of time.

10.14 While the new family removals process has reduced the number of families subject to detention and enforced removal from the UK, we are concerned that children's best interests are not always considered by an independent decision-maker before removal takes place, in particular where their interests may not be the same as those of their family members. The removal of legal aid in England and Wales in non-asylum immigration proceedings has exacerbated this. We also remain concerned that children are not always provided with appropriate medication, medical records and/or identity documentation before removal.

Recommendation

The State Party should ensure that the best interests of all children are independently and individually considered as a primary consideration before their enforced removal or deportation from the UK.

Any removal or deportation of a child from the UK should take place with adequate safeguards, including an independent assessment of the conditions upon their arrival to ensure they are able to survive and develop. They should always be supplied with their identity documents and any medication/vaccinations which are medically indicated.

10.15 In January 2013 solicitors applied for Judicial Review of the Home Secretary's policy/lack of a policy in relation to the use of force against children and pregnant women by immigration custody officers (including contracted-out service providers) during the removal process. Prior to the hearing, the Home Secretary accepted that it was not justified on the basis of the present wording of the policy to use force against children under the age of eighteen where there was no risk of harm. Also in the statement of reasons, the Home Secretary stated that she was in the process of redrafting the policy.

Recommendation

Restraint should only be used for children and pregnant women where the child or woman poses an imminent threat of injury to him or herself or others, and not to enforce immigration control. Only techniques proven to be safe for children/pregnant women should be used and pain should never be deliberately inflicted in order to restrain a child/pregnant woman.

10.16 The long standing practice of immigration officials obtaining information from unaccompanied children on entry and before they had access to a lawyer or had been referred to children's services came under scrutiny in the Court of Appeal in R [on the application of AN [A child] and FA [A child] v Secretary of State for the Home Department with the judgment finding that little weight should be attached to information thus gained for the purpose of any substantive decision.

10.17 Shortly before the judgment in AN & FA, CCE had published Landing in Dover which considered the same issue in the context of screening interviews conducted at ports of entry. Following publication, the Minister wrote to the Commissioner in February 2012 accepting the report's central recommendation and providing for a period of recovery and the opportunity to instruct a legal representative prior to the screening interview. This is one of the few positive developments for unaccompanied children to have occurred during this UNCRC reporting period.

Recommendation

Local arrangements in areas with ports of entry must ensure that unaccompanied children have access to a legal representative prior to screening and are accompanied by both a legal representative and an appropriate adult to the screening interview.

10.18 Children seeking asylum alone continue to have their age disputed by both UK Visas and Immigration (UKVI) officials and by Local Authorities whose children's services are responsible for providing them with accommodation and support. Age disputes may take the form of either refusing to accept the applicant's minority or by accepting minority but not the claimed age. Where decisions are incorrect, children have their rights under the UNCRC entirely or partially negated. Age disputed children continue to be detained in facilities holding adults, dispersed to adult accommodation and denied the procedural safeguards applied to children making an asylum claim. National statistics are published on the numbers of cases

disputed by UKVI but these continue to exclude cases where the applicant claims to be a child but is treated as an adult on the ground that their appearance and demeanour very strongly suggest that they are significantly over 18. The Department for Education does not require local authorities to provide returns on the numbers of age disputed asylum applicants requesting their services and local authorities have inconsistent methods of recording age disputes.

10.19 In England, under the auspices of the Association of Directors of Children's Services, a multi-agency group comprising of Central Government, Local Government and non-governmental organisations has been meeting to review current age assessment arrangements. The forum has produced revised 'joint working guidance' between the Home Office and Local Authorities setting out how disputes over age between these authorities are to be resolved. The forum has also produced non-statutory practice guidance for local authorities to assist them in delivering fair and consistent age assessments where there is doubt. Attempts to broaden the base of professionals contributing to local authority age assessment by establishing guidance for paediatricians have not so far been successful through a lack of Government funding.

Recommendations

UK Visas and Immigration should report on those claiming to be children but treated as adults as a new category in national migration statistics
The UK State Party should require statutory authorities to submit returns on the numbers of unaccompanied young people a) claiming to be children but refused services on the basis that they are believed to be adult and b) believed to be children but not believed to be the age claimed.

The UK State Party should fund the Royal College of Paediatrics and Child Health to produce guidance for paediatricians on how they can contribute to age assessments conducted by local authorities.

10.20 In England and Wales, migrant children are likely to be disproportionately affected by restrictions on in-year admissions to school; a recent report has found that 20,000 children remained unplaced after a full school term.¹³⁷ We are also concerned about the implications for the rights of migrant children to life and optimal development, and to the highest possible standard of health, the Immigration Act 2014's provisions for a health surcharge of £150-£200 per year payable by non-EEA visitors to the UK staying for more than 6 months¹³⁸ and proposals from the Department of Health for non-EEA visitors to charge visitors 150% of the costs of their medical treatment.

10.21 In Scotland, asylum seeking families continue to live on very low incomes and are forced to move accommodation regularly. This can prevent children from

¹³⁷ Rodda, M., Hallgarten J., and Freeman, J. (2013) *Between the Cracks: Exploring in-year admissions in schools in England*. Available at: <https://www.thersa.org/about-us/media/2013/07/devastating-impact-of-moving-school-revealed/>

¹³⁸For more details see:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/415129/Surcharge_customer_info_web_v1.2.pdf There are exemptions for example for asylum-seekers, victims of human trafficking and looked after children.

settling into their local school and community or may necessitate long commutes which are unaffordable for asylum seeking families. Refused asylum seeking women are not normally entitled to receive any financial support during the first 34 weeks of their pregnancy. This places them at greater risk of destitution.¹³⁹ In Northern Ireland there are ongoing concerns about barriers to health services, education provision and welfare support faced by asylum seeking, migrant and refugee children and families.

10.22 The death of Child EG in London in 2010 from lack of food and fluid highlighted the problems in moving from National Asylum Support Service to mainstream welfare benefits.¹⁴⁰ Recent research by the University of Oxford in England and Wales has highlighted that an estimated 5,900 children were supported by local authorities under section 17 Children Act 1989 duties in 2012/13 due to destitution, without specific central government funding. Subsistence rates paid could be as little as just over £1 per person, per day.¹⁴¹

Recommendation

The State Party should ensure that migrant, refugee and asylum-seeking children have access to basic services such as education and health, and that there is no discrimination in benefit entitlements for these families that could affect children or be contrary to their rights under Articles 2, 22, 26 or 27 UNCRC.

10.23 There has been no progress to our knowledge since the last Periodic Report on the following recommendations and we therefore believe they should be repeated.

Recommendation

The State Party should provide the Committee with disaggregated statistical data on the number of children seeking asylum, including those whose age is disputed.

The State Party should amend section 2 of the 2004 Asylum and Immigration (Treatment of Claimants etc.) Act to allow for a guaranteed defence for children who enter the United Kingdom without valid immigration documents.

¹³⁹ Da Lomba & Murray (2014) *Women and Children First? Refused asylum seekers' access to and experiences of maternity care in Glasgow*. Glasgow: University of Strathclyde and Scottish Refugee Council, p. 15f.

¹⁴⁰ See: <https://www.westminster.gov.uk/sites/default/files/uploads/workspace/assets/publications/EG-Executive-Summary-April-2012-1336483036.doc>.

¹⁴¹ See: <http://www.ox.ac.uk/news/2015-06-03-children-poverty-due-uk-government%E2%80%99s-%E2%80%98dysfunctional-system%E2%80%99>

11. Conclusion

11.1 The Children's Commissioners are happy to assist the Committee with any requests for further information arising from this report and look forward to engaging with the Committee at the pre-sessional working group in October 2015.



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