

**Children's Rights Alliance**  
for England

# **State of Children's Rights in England** 2010

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



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

**CRAE has produced an annual 'state of children's rights in England' report since 2003. The timing of our report coincides with the anniversary of the United Nations adopting the Convention on the Rights of the Child (November 1989).**

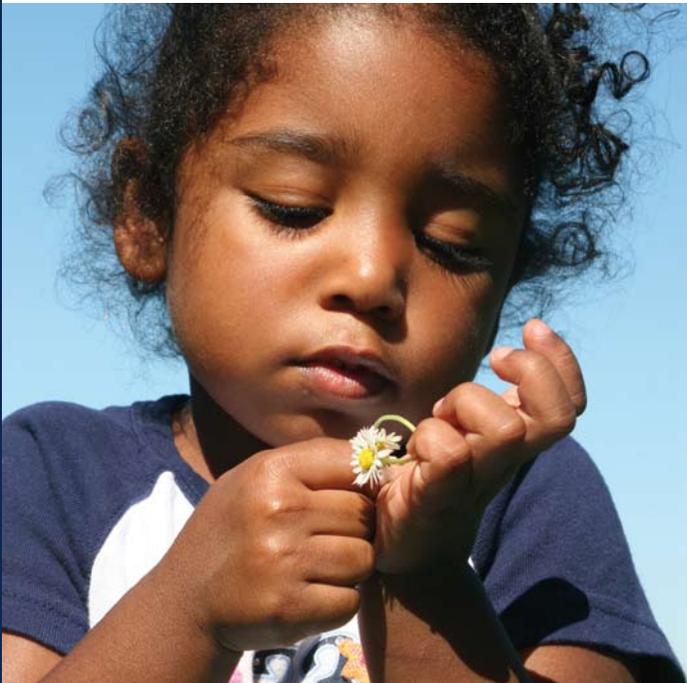
**This report is the eighth in the series. It summarises children's rights developments from November 2009 to November 2010.**

**“ Every treaty in force is binding upon the parties to it and must be performed by them in good faith. ”**

**Article 26, Vienna Convention on the Law of Treaties 1969**

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# Children's wrongs in numbers

Number of children in poverty, UK, 2008/9	<b>3.9 million</b>
Infant mortality rate, England and Wales, 2008	<b>4.5 per 1,000 live births</b>
Infant mortality rate, Pakistani babies, Britain, 2006/08	<b>9.8 per 1,000 live births</b>
Number of preventable child deaths, England, 2009/10	<b>150</b>
Child deaths from deliberately inflicted injury, abuse or neglect, England, 2009/10	<b>30</b>
Child deaths in penal custody since 1990, England and Wales	<b>30</b>
Number of public inquiries into child deaths in custody	<b>0</b>
Number of children referred to Medical Foundation for the Care of Victims of Torture, England, 2009	<b>185</b>
Life expectancy of baby girl born in Kensington and Chelsea, 2007/09	<b>89 years</b>
Life expectancy of baby boy born in Blackpool, 2007/09	<b>73.7 years</b>
Children admitted to hospital primarily because of malnutrition, England, 2007/08	<b>25</b>
Children admitted to care primarily because of low income, England, 2009/10	<b>110</b>
Child victims of sexual offences, England and Wales, 2008/09	<b>21,618</b>
Number of times Tasers used on children, England and Wales, 2007/09	<b>223</b>
Number of locked up children, England, September 2010	<b>2,146</b>
Percentage of children in young offender institutions who have been restrained, England, 2008/09	<b>29%</b>
Number of child injuries following restraint in four secure training centres, England, 2009/10	<b>111</b>
Amount of time children in Hassockfield secure training centre allowed to speak to parents on phone each day if on lower level of incentive scheme, 2009	<b>7 minutes</b>
Longest time child detained in immigration removal centre, past five years	<b>190 days</b>
Longest time baby detained in immigration removal centre, 2009	<b>100 days</b>
Number of children refusing food in immigration detention, England, 2004/10	<b>23</b>
Number of children deported with less than three days notice, England, 2007/10	<b>72</b>
Number of children imprisoned for breach of an ASBO, England and Wales, 2000/08	<b>1,253</b>
Average rate of school exclusions, England, 2008/09	<b>3 in every 10,000</b>
Exclusion rate for children with SEN statements, England, 2008/09	<b>24 in every 10,000</b>
Group of children most likely to be excluded from school, England, 2008/09	<b>Gypsy and Roma children</b>
Proportion of children worried about being bullied in school, England, 2010	<b>25%</b>
Proportion of disabled children worried about being bullied in school, England, 2010	<b>38%</b>
Proportion of children in care who have lost all contact with their siblings, England, 2009	<b>12%</b>
Proportion of girls in custody that never receive visits, England and Wales, 2008/09	<b>30%</b>
Proportion of boys in custody that never receive visits, England and Wales, 2008/09	<b>14%</b>
Number of Acts of Parliament that specifically refer to the Convention on the Rights of the Child, England, 2010	<b>1</b>

# Introduction

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

There are 118 recommendations applying to children's rights in England. In preparing this report, CRAE examined all significant developments in law and policy over the past 12 months; we analysed official data relating to children's well-being; scrutinised information made available through Freedom of Information (FOI) requests and parliamentary questions; and read relevant research and consultation documents reporting children's own views and testimony. Where there were gaps in information, we asked parliamentarians to probe Ministers and we also submitted a number of FOI requests. To kickstart the drafting process, this year we held our first children's rights symposium, in July 2010, attended by 25+ NGOs and representatives from the Office of the Children's Commissioner and the EHRC. We also received written evidence from a variety of NGOs – particularly from those working with and for children suffering rights violations.

This report summarises key developments – positive as well as negative – in children's human rights in England in the 12 months leading to November 2010. The review follows our comprehensive submission to the Committee on the Rights of the Child in 2008, which was supported by over 100 NGOs including all the major children's charities. Not all our member organisations will necessarily agree with all the assessments in this report.

We have shortened each concluding observation, and sometimes paraphrased them; we have not included those observations specifically relating to Scotland, Northern Ireland or Wales. The order of the recommendations in this report does not completely follow the order they appear in the UN Committee's concluding observations, as we have tried to group them to make easier reading.

As well as providing a written summary of the most important developments over the past year, we have

signposted each assessment of progress using the following symbols:



This indicates significant improvement in law or policy in the past year



This indicates significant deterioration in law or policy in the past year



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



This indicates significant potential that this recommendation will be met shortly



This indicates that children's rights in this particular context are at risk



This indicates that the recommendation has already been achieved

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

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

Article 4 of the Convention on the Rights of the Child requires states to 'undertake all appropriate legislative, administrative, and other measures for the implementation of the rights' in the Convention.

In relation to children's economic, social and cultural rights, states are legally bound as a party to the Convention to use the 'maximum extent of their available resources'.

# Overview

Thomas Hammarberg, the Council of Europe's Commissioner for Human Rights has observed that *'When political issues are divided into "soft" and "hard", those relating to children are dealt with as "soft-soft"'*. That debates about children's rights are so often preceded by questions about whether children can, indeed, be holders of rights; or are undercut by paternalistic views that children should only be "given" rights as part of a programme of education or socialisation (to make them better citizens) shows how far we still have to go. When the United Nations Declaration of Human Rights, now 62 years old, recognises the *'inherent dignity and the equal and inalienable rights of all members of the human family'*, 'all' really does mean everyone. A Government that does not take children's rights seriously is not a Government committed to human rights.

Likewise, the Convention on the Rights of the Child requires sustained action across all rights – civil and political, as well as economic, social and cultural. Here, questions about whether the state should be big or small misses the point that children's rights can simultaneously be breached because of the actions of the state *and because of the state's failure to act*. Furthermore, as this report shows, when children's rights to an adequate standard of living or to health care are violated, their civil rights are also frequently breached.

The right to life, the pinnacle of all civil rights, is not enjoyed equally by children in our (still) rich country – a baby boy born in Blackpool will live, on average, 15 years less than a baby girl born in Kensington and Chelsea; and Pakistani and Black Caribbean babies are more than twice as likely to die in their first year than other babies. 25 children were admitted to hospital in England for malnutrition in 2007/08; 110 children entered care primarily because of low income in 2009/10; and 19% of families with a disabled child are going without enough bedding this year. Nearly 1 in 10 of this country's poorest families cannot afford to celebrate children's birthdays or Christmas.

The new coalition Government says it will protect the most vulnerable in society, and has consistently made strong declarations of its commitment to the Convention. Yet only 20% of local councils have given *'solid commitments'* to the British Association of Social Workers that they will protect children's services in the face of massive public spending cuts. The Institute for Fiscal Studies' analysis of the October 2010 Spending Review concluded that public spending is now being shifted from children and families towards pensioners. Official poverty statistics show a reduction in pensioner poverty between 1991 and 2008 from 36% to 16%. The reduction in children living in poverty across the same period was just one per cent – 31% to 30%. This is not to deny the rights of older people; it is to show that successive governments have

been disgracefully less successful in protecting the rights of children compared with older people. Why? Whilst we are being constantly reminded of the UK's financial "crisis", it's worth reflecting that the UK has the sixth largest economy in the world. And there has been absolutely no reduction in the obligations Ministers have to honour the full range of rights in the Convention on the Rights of the Child. Indeed, rights exist precisely because they protect in good times and bad. Accordingly, we have used a new "risk" symbol to indicate where we believe public spending cuts or recent policy announcements threaten progress in meeting the UN's recommendations, or worsen existing violations.

At the same time, there have been many positive indications that several of the Committee's recommendations could be achieved very soon, so we have introduced a "potential" symbol in this year's report. The letter from Education Secretary Michael Gove setting out the terms of reference of the review of the Children's Commissioner was a breath of fresh air in its affirmation of the Convention and the need for children to have a strong, independent champion of their rights. The former administration only really appeared comfortable with the language and ideology of children's rights a short time before leaving office; that an incoming Government can show such commitment within weeks of coming to power is considerable progress. Promises to reinstate lost civil rights, particularly relating to children's privacy, the review of ASBOs and the pledge to reduce the impact of socio-economic disadvantage in children's right to education are all extremely positive potential developments.

Other advances this year were led by the former administration though had the strong support of all political parties – the passing of the Child Poverty Act, the Equality Act and a whole raft of legislation and policy enhancing the rights of children to be heard and taken seriously in a variety of settings (although, notably, very little progress in schools). The coalition Government's pledge to end the immigration detention of children is a fantastic commitment, though the ever-shifting timescale means we have been forced to categorise this response to the UN recommendation as "no significant change".

Let's not forget that, other than suspected terrorists, detainees in immigration removal centres are the only people who can be locked up in our country on the say-so of Government Ministers. The upper limit for detaining suspected terrorists without charge – 28 days – has, rightly, been subject to heated debate. There is absolutely no limit for how long individuals can be detained for immigration purposes. The longest time a child has been detained at Yarl's Wood immigration removal centre is 190 days; the Chief Inspector this year reported a baby being detained for 100 days.

There are other areas of law and policy that, superficially, appear to have progressed. Closer examination reveals the violations have not stopped.

Although the UK adopted an action plan on human trafficking in 2007, a report published by ECPAT UK in October 2010 shows that protection for trafficked children is still desperately inadequate. This year, Refugee and Migrant Justice published powerful testimonies of children undergoing immigration interviews in states of exhaustion, fear and panic. One child described being interviewed in soaking wet clothes, having travelled to the UK underneath a refrigerated lorry. After the interview she was allowed to go to the toilet and tried to dry her clothes using the hand dryer. Another recalled sleeping on a concrete floor: *'I wasn't given a blanket or anything for my arms'*. A third child described *being 'starving, but even more than that I wanted to sleep'*, yet immigration officers continued with their interviews. These state employees are all subject to new safeguarding duties under Section 55 of the Borders, Citizenship and Immigration Act 2009 (in force since November 2009). How can they be allowed to treat children this way?

In 2008, the law was changed to require school governing bodies to invite and consider children's views: the former Government failed to bring this into force, citing one of the reasons as children being disinterested in the very narrow list of issues to which it planned to apply the duty. What is so controversial about children simply being asked their views, and then having these considered?

Last year, education law was amended to require schools to record when they had used significant force on children, and to notify parents – basic safeguards especially necessary for young children and some disabled children, including those attending residential schools. They were meant to come into force this September but, days before the summer parliamentary recess, the Schools Minister laid regulations postponing the new duties (with no guarantee that they will ever be introduced).

The Youth Justice Board and successive Ministers have been promising a more humane approach to restraint in custody for many years, yet we now learn techniques under consideration rely even more on the deliberate infliction of pain. The Justice Secretary Kenneth Clarke's statement in Parliament that, regretfully, very brutal self defence techniques are necessary because many children in custody are bigger and stronger than him shows we still have a very long way to go before children's rights properly permeate the criminal justice system. We continue to question whether Ministers are being adequately briefed on what is really going on in child custody. This year

CRAE made a FOI request for the report into the use of restraint in Castington young offender institution. This followed a highly critical report from the Prisons Inspectorate in 2009, pointing out that 10 children and young adults had suffered fractures as the result of restraint. The Ministry of Justice has refused to give us the name of the person conducting the review. But the report itself reveals that six children suffered wrist fractures during restraint; none of these injuries was independently investigated; there were previous reports of staff "winding up" children; and none of the restraint incidents arose because a child was attacking someone. The report notes that most of the fractures occurred in children's cells or in 'interview situations', rather than in public areas.

In many respects, it is too early to judge where the coalition Government is going with children's rights. It has not published a national strategy, nor has it given its own response to the UN Committee's extensive recommendations. We do not know whether it plans to bring an end to rights violations which the former Government refused to acknowledge as necessary to fulfil its international obligations – the persistence of the "reasonable punishment" defence available to parents and others acting *in loco parentis* who have been charged with assaulting a child; the aberration of children abused through prostitution being at risk of criminal prosecution; and the lack of a statutory safeguard to ensure that children are genuinely only ever held in custody as a very last resort and for the shortest time possible.

That we now have a coalition Government formed of one political party which, when last in power, ratified the Convention and another political party that pledged in its general election manifesto to incorporate the treaty into UK law, should be a cause for considerable optimism. But there is an awful lot of catching up to do as we approach the twentieth anniversary of ratification in December 2011. By the time the UK is examined again by the UN Committee on the Rights of the Child, in 2014, the coalition Government will have had plenty of time to act on its recommendations. As ever, CRAE looks forward to working with Government and others to bring about positive changes in children's lives – underpinned, always, by an unwavering commitment to every child's entitlement to a happy and fulfilling childhood where their status as human beings with their own feelings, views and dignity is beyond question.

**Children's Rights Alliance for England  
November 2010**

**Progress at a glance** *Numbers add to 120, rather than 118, because the assessment was split in two recommendations (pages 19 and 21).*

 4 recommendations (3%)	 9 recommendations (8%)	 1 recommendation (1%)
 70 recommendations (58%)	 19 recommendations (16%)	 17 recommendations (14%)

# General measures of implementation



“ The UN Convention on the Rights of the Child (CRC) sets the international standard for protecting and promoting the rights of children. The CRC celebrated its 20th anniversary in November [2009]. The fact that over these 20 years almost every country in the world has ratified the CRC is a clear demonstration of the value it has added to the international human rights framework ... But there is still much to be done to improve the daily lives of children around the world. The UK works hard to encourage countries to fulfil their obligations under the CRC to protect and empower children. ”

**Foreign and Commonwealth Office, March 2010**

“ 73% of adults living in Britain believe we need a written constitution, providing clear legal rules within which Government Ministers and civil servants are forced to operate. ”

**Joseph Rowntree Reform Trust, February 2010**

“ I have always made it clear that I believe a society must be judged on how it treats its children. ”

**Nick Clegg, Deputy Prime Minister, June 2010**

## Key to progress in meeting the recommendations of the UN Committee on the Rights of the Child



Significant improvement in past 12 months



Significant deterioration in past 12 months



No significant change (ongoing violation and/or failure to adhere to Convention on the Rights of the Child)



Already achieved



At risk of significant deterioration



Potential that this recommendation will be met shortly

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



Coinciding with the 20<sup>th</sup> anniversary of the United Nations Convention on the Rights of the Child (CRC) in November 2009, the former Government published its ‘priorities for action’ for implementing children’s rights in England. In relation to incorporating the CRC’s principles and provisions into UK law, the former Government said:

*The Government continues to keep under review the mechanisms for the protection of children’s rights in the UK, but it is not persuaded that the incorporation of the UNCRC into domestic law is appropriate or necessary.*<sup>1</sup>

This action plan was followed by a comprehensive report showing the Government’s view of the extent to which the CRC is reflected in UK law and implemented in England. Drafted within the then Department for Children, Schools and Families, the document was prepared for the parliamentary Joint Committee on Human Rights and opens with an optimistic statement that it ‘demonstrates how England complies with each article in the UNCRC through our legislation and case law, administration and other processes’.<sup>1a</sup> CRAE strongly welcomed the report insofar as this was the first time since ratification that the UK Government had brought together in one document the majority of relevant law and policy affecting children’s rights, as well as references to some significant case law. What the 240-page document did not do, however, was point to any changes in the law or policy being considered or planned by the former Government to ensure compliance with the CRC and action on the UN Committee’s recommendations. References to case law lacked any reflection on the positions adopted by former Ministers that were subsequently deemed by the courts to breach children’s human rights. Notwithstanding this, the report provided a very useful springboard for the incoming Government to make its own plans for bringing UK law, policy and practice fully into line with the CRC.

On 19 November 2009, Baroness Walmsley’s Children’s Rights Bill was introduced into Parliament. This would have the effect of fully incorporating the Convention into UK law. It is hoped that the Bill will be reintroduced and that the new Parliament will be able to debate the proposals before the end of 2011. Baroness Walmsley is the Co-Chair of the Liberal Democrat Parliamentary Policy Committee on Education, Families and Young People; she is also a CRAE Patron.

In March 2010, the Ministry of Justice noted the former Government’s Green Paper consultation on a Bill of Rights and Responsibilities elicited ‘most support for including rights relating

to children and children’s wellbeing’. That same month, Dominic Grieve MP – now Attorney General – chaired a British Academy Forum event on a British Bill of Rights and said that ‘issues around [the] rights of children may merit consideration’.<sup>2</sup>

The coalition’s programme for Government, published in May 2010, promises: *We will establish a Commission to investigate the creation of a British Bill of Rights that incorporates and builds on all our obligations under the European Convention on Human Rights, ensures that these rights continue to be enshrined in British law, and protects and extends British liberties...*<sup>2a</sup>

The Equality Act 2010, which gained Royal Assent on 8 April 2010, introduces a new public sector equality duty encompassing all of the protected characteristics in the Act. The duty is expected to come into force in April 2011 and should sharpen the role and effectiveness of public authorities in tackling prejudice and disadvantage. The socio-economic strategic duty in the Equality Act 2010 could considerably strengthen existing duties on local authorities under the Childcare Act 2006 to reduce inequalities between young children. However, the Conservatives fiercely opposed this aspect of the Act when it was passing through Parliament, and there is uncertainty about it coming into force. Moreover, none of these measures are any substitute for properly entrenched economic and social rights. In June 2010, Justice Secretary Kenneth Clarke evaded a direct question in Parliament about whether the Commission on a Bill of Rights would include provision for the protection of economic and social rights. He noted that ‘The Government will make a statement to Parliament on the terms of reference and appointment of the Commission on a Bill of Rights in due course’.<sup>3</sup> At the end of October 2010, when asked whether the Commission would consider the extent to which children’s rights are protected in UK law, the Justice Secretary’s response was the same.<sup>4</sup>

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



The coalition Government has not yet published any strategic document relating specifically to the CRC, or made any announcement of how it plans to co-ordinate the implementation of the CRC across the UK.

A Children’s Rights and Participation Team continues to exist within the Department for Education (DfE). At the end of October 2010, in response to a parliamentary question, Children’s Minister Sarah Teather described the team’s remit:

*The Children’s Rights and Participation team currently consists of three full-time and one part-time staff. Its current remit is to promote and support the implementation of the United Nations Convention on the Rights of the Child in England through*

Incorporate the UN Convention on the Rights of the Child into UK law ...

**Liberal Democrat election manifesto pledge, April 2010**

*government policy, and to coordinate UK-wide reports on progress to the UN Committee. It oversees activity to support the involvement of children and young people in decision-making centrally and locally, and is the policy sponsor for the Office of the Children's Commissioner for England.*<sup>5</sup>

At a local level, new regulations came into force on 1 April 2010 requiring Children's Trust Boards to have regard to the CRC when preparing, reviewing or revising their Children and Young People's Plan.<sup>6</sup> This would have been the first explicit CRC legal duty on service providers in England since the UK ratified the CRC in 1991. However, these regulations were revoked on 31 October 2010 because the coalition Government wants local authorities to be free to determine their own arrangements for planning and delivering services.<sup>7</sup> CRAE wrote to the Children's Minister Sarah Teather in September 2010 (when the revoking regulations were laid before Parliament) urging her to take this opportunity to introduce stronger CRC duties on public authorities in England. Meanwhile, the Welsh Assembly Government (WAG) is making steady progress towards the introduction of a Rights of Children and Young People (Wales) Measure. This Measure is by no means perfect though it stands as strong evidence of the WAG's commitment to children's rights.

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



The Children's Rights and Participation Team within the DfE continues to co-ordinate the implementation of the CRC across the UK. However, as it stands, this is not a high-profile mechanism either within or outside Government.

There is no information about the CRC, and the coalition Government's plans for its implementation, on any Government departmental website (there is information on the Directgov site). Some information remains on the website of the former Department for Children, Schools and Families: the webpage includes the standard statement that, 'A new UK Government took office on 11 May. As a result the content on this site may not reflect current Government policy ...'.

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



The coalition Government has not, to date, adopted a comprehensive rights-based action plan to implement the CRC in England and across the UK, nor has it joined forces with public and private organisations involved in promoting and protecting

children's rights. In November 2009, the four administrations of the UK published a short 'joint commitment' document focusing on four 'common issues': tackling child poverty; addressing the negative portrayal of young people in the media; enabling children and young people to participate in decision-making; and CRC awareness raising. No public consultation had occurred in advance and there was no rationale provided for why only four areas of children's rights were selected. Nonetheless, it was welcomed as a very first step towards developing a coherent, co-ordinated strategy.<sup>7a</sup>

When the Education Secretary commissioned a review of the role, mandate and powers of the Children's Commissioner, he explicitly grounded it in the UK's obligations under the CRC. This is a most welcome development, demonstrating respect towards the CRC from the coalition Government and also raising the possibility that the Review, being carried out by John Dunford, may lead to the creation of a Children's (Rights) Commissioner that can genuinely champion and protect the rights of children – see page 10.

The DfE's website communicates the coalition Government's broad priorities concerning children and many of these, although they have not been explicitly cross-referenced to the CRC, could have a positive effect on the realisation of children's rights. These include: increasing spending on the education of the poorest children through the "pupil premium" and the Government's determination to narrow the "achievement gap" between fee-paying schools and state schools; a cross-Government priority to end child poverty over the next 10 years; improving the effectiveness of social workers, particularly by increasing the time they have to spend with children and families; and the reform of the National Curriculum so it properly reflects how children learn. At the same time there are priorities that risk interfering with – and even violating – children's rights: encouraging autonomy for schools without imbuing a culture of respect for children and their rights; improving parental choice if this further obscures children's views and wishes; the lengthening of the school day should this be compulsory and interfere with children's right to rest, leisure and play, and to family life; and the goal that '*pupils respect adult authority at all times*' insofar as this may fuel outdated notions of children being empty vessels that should always defer to adult "superiors".<sup>8</sup>

#### Spending Review; Convention on the Rights of the Child

**Natascha Engel, Labour MP:** To ask the Chancellor of the Exchequer what plans the Public Expenditure Committee has to take into account the UK's obligations under the UN Convention on the Rights of the Child in its deliberations on public spending.

**Danny Alexander, Chief Secretary to the Treasury:** The Public Expenditure Committee takes account of all the United Kingdom's international treaty obligations, including the United Nations Convention on the Rights of the Child (UNCRC). The education, health and well-being of children are vitally important for our society. The Government are committed to the UNCRC and believe it is vital that children and young people have a strong, independent advocate to champion their interests and views and to promote their rights.

**Parliamentary question, 28 October 2010**



to power in May 2010; however, of these, only one specifically refers to the CRC (the Children’s Commissioner review); one to human rights obligations (the immigration detention review); and another to privacy rights (data protection review).

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

The coalition Government has not agreed an action plan for implementing the CRC in England or across the UK and, accordingly, no budget has been allocated to this task.

In proposing a dedicated, transparent central budget for the health and healthcare of children, Sir Ian Kennedy in September 2010 explained: *‘Being clear about what we are spending on children and young people’s care, and on how we are spending it, is vital in ensuring that they get the deal to which they are entitled’*.<sup>9</sup>

Section 251 of the Apprenticeships, Skills, Children and Learning Act 2009 came into force on 12 January 2010. This requires local authorities to provide information to central Government about their planned expenditure on education and children’s services. Data supplied so far shows some marked variation in per capita expenditure in 2010/11.<sup>10</sup>

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

There are no CRC implementation action plans for particularly vulnerable groups of children. A large number of reviews have been established by the new coalition Government since it came

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

In 1991, the year the UK ratified the CRC, 31% of British children lived in poverty (measured as below 60% of median income after housing costs). By 2008/09 this had reduced by just one percentage point to 30% of UK children (from 1998/99 official data relates to UK rather than Britain).<sup>11</sup> This is a fall from 4.1 million children living in poverty in the UK to 3.9 million children. Over the same period, there was a welcome fall in pensioner poverty from 36% of pensioners living in poverty in 1991 to 16% in 2008.<sup>12</sup>

Government statistics illustrate the unequal chances children have to enjoy their childhood:<sup>13</sup>

	Poorest 20% of children	Richest 20% of children
Enough bedrooms so children aged 10 or over of a different sex don't have to share	28% don't have this	2% don't have this
Has leisure equipment, for example a bicycle	16% cannot afford this	0% cannot afford this
Go on school trip at least once a term	13% cannot afford this	0% cannot afford this
Celebrations on special occasions like birthdays or Christmas	8% cannot afford this	0% cannot afford this

Save the Children reports a rise in the number of UK children living in severe poverty between 2004/05 and 2007/08 – from 11% to 13%. The definition of severe poverty is a household living on less than 50% of the median income (after housing costs) and lacking one or more basic necessities. For a household of two parents and one child, this equates to living on less than £12,220 a year.<sup>14</sup>

The *Millennium Cohort Study*, which is tracking children born between 2000 and 2002, reported in October 2010 that 18.3% of seven year-olds lived in “deep poverty” in 2008. Nearly three-quarters (71.2%) of children with a lone parent not in work were living in deep poverty.<sup>15</sup>

The *OECD Factbook 2010* shows that the UK continues to be among the most unequal societies in relation to income and poverty, ranking 23<sup>rd</sup> out of 30 countries (with Denmark the most equal and Mexico the least equal).<sup>16</sup> (See also page 16 about the Child Poverty Act 2010).

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



There is no history of the UK Government conducting children's rights impact assessments of legislative, policy or budget proposals. Neither is this function currently explicitly within the statutory remit of the Children's Commissioner. It is notable that the Treasury's Green Book, governing the development of all new policies, programmes and projects, makes no reference to the CRC though it purports to list 'the more important conventions'.<sup>17</sup>

Section 7 of the Children and Young Persons Act 2008 introduced a new duty on the Secretary of State to promote the well-being of children in England. Lord Adonis said at the time:

*We believe that the time is now right to recognise in statute the broader responsibilities of the Secretary of State for the well-being of children.*<sup>18</sup>

In June 2010, the Equality and Human Rights Commission (EHRC) wrote to Government departments, including the Treasury, to remind them of their duties under equality legislation and the Human Rights Act. The then Director-General, Neil Kinghan, said:

*It is for the Treasury to demonstrate that it has complied with the legislation and assessed the impact of its decisions on vulnerable groups. If it cannot do so, then the Commission will have to consider appropriate enforcement action.*<sup>19</sup>

At the time of writing, no information is available as to how Ministers have discharged their duties under equality, human rights and child well-being legislation when making decisions about public spending. Meanwhile, many have voiced grave concerns about cuts in public expenditure falling unfairly on children, young people and families – see Table 1 on page 11.

In April 2010, the coalition Government announced tax breaks for married couples, which financially disadvantages children whose parents are single or unmarried. The Parenting Institute pointed out this would cost taxpayers over half a billion pounds with 'little, if any, evidence that this policy will deliver what families need'.<sup>30</sup>

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



The English Children's Commissioner is the least compliant with the UN Paris Principles<sup>31</sup> and the UN Committee on the Rights of the Child's requirements for national human rights institutions for children.<sup>32</sup> It is the only Children's Commissioner in the UK barred from full membership of the European Network of Ombudspople for Children. However, the Dunford Review of the Children's

Commissioner, established in July 2010, has been specifically asked by the Education Secretary Michael Gove to consider: 'What changes would be desirable to bring the role into line with the United Nations "Paris Principles" for human rights organisations'.<sup>33</sup> Dunford must report to the Minister by the end of November 2010: there is enormous potential for the coalition Government to meet this particular UN recommendation very soon.

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



Two of the UK's four Children's Commissioners – in England and Scotland – are prohibited in law from undertaking individual investigations. The Office of the Children's Commissioner in England does not support its role being extended to investigating individual complaints, telling the Dunford Review:

*We do not believe that the international Paris Principles require a children's human rights institution to be an ombudsman. While many international colleagues have assumed this role, it is our firm belief that it is neither required nor in fact desirable for an organisation representing such a large population of children to be diverted from its strategic role.*<sup>34</sup>

The NGO submission to the Dunford Review, co-ordinated by CRAE, took a different approach, advocating a new Office of the Children's Rights Commissioner with the power:

*... to investigate individual cases where all other available domestic complaints mechanisms have been exhausted, or where in the view of the Commissioner there is no adequate mechanism to remedy an alleged breach of children's rights, or where a general principle is at stake.*<sup>35</sup>

This investigatory power was included in a comprehensive set of minimum requirements submitted to the Dunford Review, endorsed by nearly 70 NGOs. There is great potential for the coalition Government to implement this recommendation from the UN Committee on the Rights of the Child very soon.

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



At the end of March 2010, the then Department for Children, Schools and Families returned a questionnaire to the UN as part of a global evaluation of its World Programme for Human Rights

**Table 1: Major public spending cuts specifically affecting children, young people and families****Building Schools for the Future (BSF) – funds frozen then withdrawn  
Announced mid-May 2010**

735 schools in English local authorities who had not completed the application process for BSF funding by 1 January 2010 were told their school building improvements would no longer be publicly funded.

Christine Blower, General Secretary of the teacher union **NUT**, responded: *‘Cutting the budget to rebuild schools, particularly primary schools, will be a huge blow to those that have been promised the sort of facilities you would expect in a modern school’*.<sup>20</sup>

Chris Keates, General Secretary of the teacher union **NASUWT**, predicted the funding withdrawal would take education back to Victorian times: *‘The coalition Government’s announcement to scale back the BSF programme will devastate parents and schools and condemn thousands of children and young people to a future of Dickensian education’*.<sup>21</sup>

**Child Trust Fund to be phased out by January 2011  
Announced in coalition agreement, May 2010**

Regulations were laid in Parliament in June 2010 reducing the money children receive at birth from £250 to £50 from August 2010. Children from low income households will now receive £100, down from £500 previously. The additional payment at the age of seven has been axed. The regulations will stop the annual payment to disabled children (of between £100 and £200), only introduced in April 2010, from April 2011. The Government will continue to fund an additional £100 for children being looked after by local authorities who were born on or after 2 August 2010.

A Bill is now being debated in Parliament (Savings Accounts and Health in Pregnancy Grant Bill, introduced into the Commons in September 2010) which aims to abolish the whole scheme for children born from January 2011 onwards.

Anne Longfield, Chief Executive of **4Children** told Parliamentarians that her organisation had recently undertaken a survey of 10,000 families and a quarter (24%) *‘said that one of the things that kept them awake at night was their children’s future’*. Another 38% said that finances *‘kept them awake’*. Longfield described the Child Trust Fund as *‘a really important step to help families plan for their future’*, particularly stressing the positive value for the poorest families.<sup>22</sup>

**VAT to rise to 20% from January 2011  
Announced in coalition Government’s first budget, June 2010**

**Save the Children** described the announcement as its *‘most feared headline’* explaining that VAT is *‘One of the most regressive taxes, [hitting] the poorest families hardest’*. The organisation explained that the bottom 20% of households pay twice as much of their disposable income on VAT as the richest 20% of households (12% compared to 6%).<sup>23</sup>

**Housing Benefit changes  
Announced in coalition Government’s first budget, June 2010**

Reductions in the amount of Housing Benefit given to low-income families, including a decrease of 10% Housing Benefit paid to claimants of Jobseeker’s Allowance after 12 months; maximum number of bedrooms will be set at four (with large families having to pay the difference); and nationwide caps on the weekly Housing Benefit that will be paid (£250 for a one bedroom property; £290 for a two bedroom property; £340 for a three bedroom property; and £400 for a four bedroom property).

**Shelter** has calculated that nearly a third of councils outside London will have households losing at least £50 a month once the new rules come into effect in April 2011. It warns that these benefit losses will *‘change the face of cities and rural areas alike, as those claiming LHA [Local Housing Allowance] are pushed into concentrations of poverty and deprivation in areas with the cheapest housing’*.<sup>24</sup>

**Child Benefit withdrawn for higher-income taxpayers from 2013  
Announced October 2010**

Child Benefit will continue to be paid to all, but higher-rate taxpayers will have to make additional payments through income tax self-assessment equal to the amount of Child Benefit they receive.

The **Institute for Fiscal Studies** said the decision *‘seriously distorts incentives for some families with children’* as a small increase in income could result in the loss of all Child Benefit. It also points to the unfairness of the planned measure: *‘To give an extreme example, the Government’s proposed reform implies that a one-earner couple with an income of £45,000 would lose all their child benefit, but a much better-off couple where each has an income of £40,000 would keep all their child benefit’*.<sup>25</sup>

The **Child Poverty Action Group** said: *‘Children don’t have the broadest shoulders, so this disastrous idea needs to be replaced by a policy targeted at those who do’*.<sup>26</sup>

**Relaxation of course fee limit for university students  
Announced October 2010**

Following Lord Browne’s independent review (initiated by the Labour Government), the coalition Government has almost tripled the current cap of £3,290 per year for tuition fees – the cap will now be £9,000 (if approved by Parliament). Institutions charging above £6,000 will be expected to put in place a range of measures – such as bursaries – to encourage students from disadvantaged backgrounds to apply.

The **National Union of Students** responded to the news by warning that access to higher education would now be governed by cost rather than academic ability or ambition. It said the budget decision would *‘force the next generation to pick up the tab for devastating cuts to higher education’*.<sup>27</sup>

**Education Maintenance Allowances ‘to be replaced with targeted support’  
Announced in Spending Review, October 2010**

The **Children’s Legal Centre** said it was *‘extremely concerned that the disappearance of [EMA] could reduce the number of children staying in education post-16. We urge the government to act carefully in designing EMA’s replacement to ensure disadvantaged young people are not forced to leave education’*.<sup>28</sup> This will be particularly vital given the new Government has announced it plans to implement the new duty to stay in education to age 18. The **Save EMA** website includes this statement from a young person: *‘Without EMA I wouldn’t be able to go to college and become what I have always dreamed of being’*.<sup>29</sup>

Education (established in 2005). The returned questionnaires from Scotland and Northern Ireland referred to children's rights, the CRC and the Human Rights Act; the English response made no explicit mention of any of these.<sup>36</sup>

In December 2009, the former Government asserted in *The Children's Plan Two Years On* that:

*All our policies for children, young people and families continue to be underpinned by the United Nations Convention on the Rights of the Child, which recognises the rights of all children. Our ambitions set out in the Children's Plan embody the Convention and our desire to make it a reality for children and young people.*<sup>37</sup>

This was a very welcome and bold statement. Yet, the former Department for Children, Schools and Families made only tentative steps towards disseminating information about the CRC, and took no specific action following this recommendation from the UN Committee.

The coalition Government plans to review the National Curriculum. This could raise the profile of the CRC, although announcements to date point to only "traditional" subjects being included in the revised curriculum.<sup>38</sup>

Personal, social, health and economic (PSHE) education almost became a statutory subject early in 2010, but measures to achieve this were removed during the final stages of the Children, Schools and Families Bill in a heated disagreement between Labour and the Conservatives about parents being able to remove their children from sex education up to the age of 15 or 16. A statutory basis for PSHE could have paved the way for the CRC to be routinely taught in all schools. However, the former Education Secretary Ed Balls said retaining it in the Bill risked time-consuming debates on sex education and the threat that the Bill would not complete its parliamentary passage in time. Sarah Smart, the chief executive of the PSHE Association called the removal a '*tragic betrayal of children*'<sup>39</sup>; the British Humanist Association said it was '*catastrophic*'.<sup>39a</sup> An announcement of the coalition Government's plans for PSHE was promised '*in due course*' by the Schools Minister Nick Gibb in July 2010.<sup>40</sup>

It could be argued the UK has a more confident approach to disseminating information about children's rights internationally. The latest human rights report from the Foreign and Commonwealth Office describes its work in South America:

*... using an exhibition produced by the British Council, our Embassy in Ecuador has worked to raise awareness about children's rights among local authorities, teachers, children and the general public through an innovative educational programme that includes art, reading and activity. This has so far been implemented in five Ecuadorean cities: Quito, Manta, Cuenca, Loja and Riobamba.*<sup>41</sup>

There is no information about the CRC on the DfE website, other than the listing of the CRC in the portfolio of the Children's Minister Sarah Teather.

No new Government funds have been invested into CRC dissemination since the 2008 concluding observations, with the exception of £30,000 spent by the Office of the Children's Commissioner on a celebratory event at Lancaster House in London on 20 November 2009.<sup>41a</sup>

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



The latest published annual report from Ofsted only refers to children's rights in relation to regulated services that are not schools.<sup>42</sup> The Tellus4 Survey, completed by nearly 254,000 Year 6, 8 and 10 students in autumn 2009, asked 33 questions about children's feelings and worries; whether they feel safe in school, in their area and on public transport; eating habits and exercise; recreational activities; whether they drink alcohol, smoke cigarettes or take drugs; attitudes towards learning and the future; and their contribution to decision-making.

Children were asked if they treated others with respect (they were not asked whether other students or teachers treat them with respect). Very positively, only 2% of children said they did not treat others with respect; and only 4% said they did not do things to help other people. Other responses relevant to children's rights culture and practice in schools include:

- School work and exams were the things children most worried about (51%)
- More than three-quarters (76%) of children agreed that their school is giving them useful skills and knowledge
- Less than half (46%) of children agree that their teachers make lessons fun and interesting
- More than half (58%) of children felt 'very safe' at school (2% felt 'very unsafe')
- Only 10% of children reported that their school listened to their ideas 'a lot'.<sup>43</sup>

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



There has been very limited progress across these past 12 months in ensuring systematic training on the CRC for a wide range of professional groups. However, CRAE was very pleased that our proposals to include the CRC and a greater emphasis on children's participation in the Director of Children's Services leadership programme were accepted in early 2010 (though

the future of the National College for Leadership of Schools and Children's Services is now uncertain).

At the beginning of October 2010, Professor Eileen Munro published her first report from her review of child protection. This includes in an appendix the view of the Assistant Directors of Children's Services in London that:

*Social workers act as advocates and at the core is the preservation of human rights for children, and their families, when these are not in conflict.*<sup>44</sup>

If this view becomes influential, the future of child protection could be truly child-centred. The development of the College of Social Work is another significant opportunity to widen respect and understanding for children's rights; the initial consultation on the purpose and functions of the new College was very clear about the values of social work being underpinned by partnerships that empower people who use services.<sup>45</sup> This ethos is already very prominent in the General Social Care Council's Code of Practice, updated in April 2010 (though this is one of the organisations due to be abolished).<sup>46</sup>

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



Arrangements were in place for CRAE to have regular dialogue with the former lead Minister for the CRC and civil servants about the broad implementation of children's rights in England. We are waiting to hear about the coalition Government's plans.

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



At the end of September 2010, the coalition Government was asked when it would submit its next report to the UN Committee on the Rights of the Child, and how it would take account of 'the evidence of non-governmental organisations'. The Minister replied:

*The UK Government are next due to report to the United Nations Committee on the Rights of the Child in January 2014. The Department for Education is working with key stakeholders including non-government organisations, the devolved Administrations and children and young people in taking forward the UN Committee's concluding observations published in October 2008.*<sup>47</sup>

At the time of writing, CRAE has not had any dialogue with new Ministers about their plans to respond to the UN Committee's 2008 concluding observations though this is scheduled to start in December 2010.

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



There is no evidence that previous recommendations of the UN Committee are guiding legislation and policy, though the Convention is now mentioned more often in Government documents.

Government itself does not monitor action on the concluding observations, which makes these annual reports from CRAE even more important. In November 2009, the parliamentary Joint Committee on Human Rights recommended 'that the Government publishes annual reports in order to monitor progress on implementation more regularly than is required by the UN monitoring process'.<sup>48</sup>

# General principles



## Key to progress in meeting the recommendations of the UN Committee on the Rights of the Child



Significant improvement in past 12 months



Significant deterioration in past 12 months



No significant change (ongoing violation and/or failure to adhere to Convention on the Rights of the Child)



Already achieved



At risk of significant deterioration



Potential that this recommendation will be met shortly

“ Children from low income families are five times more likely to be killed in road accidents as those from high income families. ”

**Equality and Human Rights Commission, October 2010**

“ We are not asking for more rights, just the right to equality. ”

**Young disabled person, October 2009**

“ He has probably suffered more than any adult who has gone through this process, simply because of his age. A ten-year-old boy being taken to a police station for 24 hours is a terrifying experience for them. ”

**Defence barrister of child being sentenced for attempted rape, August 2010**

“ Children’s voices are powerful, if we listen well. ”

**Maggie Atkinson, Children’s Commissioner for England, March 2010**

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



The deliberate exclusion of age discrimination protection for under-18s in the Equality Act 2010 stands as a historic lost opportunity to acknowledge and then tackle society's intolerance of children as *children*.

In January 2010, the former Government issued a policy statement on ending age discrimination in public services and functions. Its executive summary aimed to explain why protection from age discrimination was to be made available only to adults:

*Of course, treating people differently based on their age is sometimes beneficial or otherwise justified, as people's needs, expectations and circumstances change with their age. This is particularly true in the case of children, so the new ban on age discrimination will apply only to those who are 18 or over. Even in relation to adults, age-based treatment is often appropriate. That is why the age discrimination provisions in the Equality Bill differ from all the other protected characteristics in that it is possible to justify even what would otherwise be direct age discrimination on the basis that it is a proportionate means of attaining a legitimate aim. This is known as "objective justification".<sup>49</sup>*

The objective justification provision in the Act could have also been applied to children – a population of 11 million compared to almost 50 million adults. There are sharp differences in the health, social care and leisure needs of 19 and 90 year-olds, and all the ages in-between, yet this did not deter policy-makers from protecting this wide spectrum of people from age discrimination. New protection by association means that children could be in the bizarre situation of being accepted as victims of age discrimination because of their association with older parents, relatives or friends, but never because of unfair treatment arising from their own age.

CRAE believes the exclusion of children from age discrimination protection:

- Ignores their experience of intolerance and prejudice as children
- Entrenches a hierarchy of inequality
- Confirms adults as the prime beneficiaries of equality legislation, only offering children protection when they share a characteristic with adults
- Feeds popular social attitudes that children are fundamentally different from adults
- Gives the green light for even greater social intolerance towards children.

Notwithstanding this part of the legislation being extremely discriminatory, there are other very positive measures in the Act – particularly the public sector equality duty – see page 16.

70% of Londoners believe the media portrays teenagers negatively.  
99% campaign, launched July 2010: [www.99percent.org.uk](http://www.99percent.org.uk)

## “Very young children do not belong in adult criminal courts. They rarely belong in criminal courts at all.”

Former Director of Public Prosecutions, Sir Ken MacDonald QC, quoted in the Daily Mail, 26 May 2010

The publicly funded *Shine* initiative – established in 2008 to celebrate young people's achievements and counterbalance negative media coverage – was axed in June 2010. CRAE supported *Shine Week* but stressed it was no substitute for proper legal safeguards for abusive media reporting, especially surrounding anti-social behaviour orders (ASBOs). CRAE was therefore delighted in July 2010 when Home Secretary Theresa May said that sanctions for unacceptable behaviour 'should be rehabilitating and restorative, rather than criminalising and coercive' (see page 25).<sup>50</sup>

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



Although the UK Government has never developed a national strategy to combat discrimination faced by children, over the past 12 months there have been some very significant advances in law and policy relating to ending discrimination against children. Despite our overall positive assessment, it is deeply regrettable that these positive measures stand next to significant failures, mostly relating to discrimination that children alone suffer – see Table 2 on page 16.

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



Notwithstanding the recent advances in protection from discrimination introduced through the Equality Act 2010, the refusal of the former Government to provide legal protection from age discrimination in public services and functions for under-18s was a retrograde step and in direct opposition to this recommendation from the UN Committee. Furthermore, the UK's insistence that the Equal Treatment Directive being developed by the European Union should also exclude under-18s from age discrimination protection<sup>62</sup> is an attack on the rights of children right across Europe. Requests by CRAE and its members for dialogue with Ministers about the EU Directive have so far been unsuccessful.

Table 2: Positive and negative developments in combating discrimination, 2009/10

Positive developments in combating discrimination	Negative developments in combating discrimination
<ul style="list-style-type: none"> <li>● The Child Poverty Act (passed March 2010) places a duty on the Secretary of State to meet child poverty targets and to introduce a UK child poverty strategy, giving particular consideration to groups of children who disproportionately experience socio-economic disadvantage.</li> <li>● The Child Poverty Act 2010 places a duty on local authorities to make arrangements to co-operate with other agencies to reduce, and mitigate the effects of, child poverty in their area.</li> <li>● The Equality Act (passed April 2010) places a duty on public authorities to exercise their strategic functions with a view to reducing inequalities of outcome which result from socio-economic disadvantage (this duty has not yet come into force and is under threat from the Conservatives who voted against it during the Act's Parliamentary passage).</li> <li>● The Equality Act 2010 strengthens protection for disabled people of all ages.</li> <li>● The Equality Act 2010 introduces protection for breastfeeding mothers and strengthens protection relating to pregnancy and maternity (including for girls in school).</li> <li>● The Equality Act 2010 introduces a public sector equality duty (in force from April 2011) requiring public authorities, and those exercising public functions, to proactively challenge inequality and discrimination.</li> <li>● The Equality Act 2010 introduces protection relating to marriage and civil partnership (people can marry or enter into a civil partnership from the age of 16 with parental consent).</li> <li>● In January 2010, changes to the British Nationality Act 1981 came into force finally removing the distinction between children born to married and unmarried mothers.<sup>51</sup></li> <li>● In March 2010, the criminal offence of hatred against persons for religious grounds was extended to include grounds of sexual orientation.<sup>52</sup></li> <li>● In May 2010, the coalition Government pledged to end the detention of children for immigration purposes.<sup>53</sup></li> <li>● In May 2010, the coalition Government pledged to help schools tackle bullying – especially homophobic bullying.<sup>54</sup></li> <li>● In August 2010, former Labour Minister Alan Milburn MP was appointed to provide an annual review of the effectiveness of the Government's approach to increasing social mobility.</li> <li>● A minimum wage for apprentices was introduced in October 2010 (though, at £2.50 an hour, this is just 42% of the minimum wage for workers aged 21 years and over).</li> <li>● Funding of £2.5 billion to operate a "pupil premium" in English schools was confirmed by the Chancellor on 20 October 2010.<sup>55</sup> We have tentatively categorised this as a positive development to combat discrimination (poverty and inequality), but we are aware that many organisations including the Institute for Fiscal Studies<sup>56</sup> are not convinced the premium will have the desired effect and also aware that the money allocated to the premium accounts for 69% of the 0.1% real term increase in funding for schools over the next four years.<sup>57</sup></li> <li>● New tenancy rights for Gypsies and Travellers were announced in October 2010 (through commencement of Section 318 of the Housing and Regeneration Act 2008).</li> <li>● The Low Pay Commission has been asked by the Government to include in its 2011 review <i>'the effect on the pay structures and employment of different groups of workers, including in particular different age groups'</i>.<sup>57a</sup></li> </ul>	<ul style="list-style-type: none"> <li>● The Equality Act 2010 gained Royal Assent in April 2010. As the Explanatory Notes to the Act explain: <i>'[The prohibition of] discrimination, harassment and victimisation by people who supply services (which includes goods and facilities) or perform public functions does not apply to discrimination or harassment of people in those circumstances because of age if they are under 18' (our emphasis).</i><sup>58</sup></li> <li>● In May 2010, the coalition Government's programme promised to <i>'remove the bias towards inclusion'</i> in the education system<sup>59</sup> – less than 12 months after the UK ratified the UN Convention on the Rights of Persons with Disabilities.</li> <li>● The future of independent appeal panels for school exclusions is uncertain. These panels are a vital safeguard for children, and protect children's rights to due process, to be heard and to have an effective remedy, as well as their right to an education. Sir Alan Steer, former government adviser on school behaviour, said in evidence to the parliamentary Education Committee in the Commons that removing this safeguard would be <i>'morally wrong'</i>.<sup>60</sup></li> <li>● Targets for local authorities on providing pitches for Gypsy, Roma and Traveller families were abolished in July 2010. This followed a research report published by the EHRC recommending <i>'greater leadership at national level, including by the Equality and Human Rights Commission, not only signalling commitment to increasing site provision but also seeking to tackle the prejudice and racist stereotypes which underlie much of the resistance to site development'</i>.<sup>61</sup></li> <li>● In July 2010, Ministers announced even greater powers for teachers to confiscate children's personal property. This wide power would not be tolerable in any workplace and is clearly discriminatory against young people. Furthermore, all liability for school staff damaging or losing property was removed in 2006 – putting children in an even worse position than prisoners and police detainees.</li> </ul>

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



### Immigration detention

The most significant positive development during the last 12 months relating to the best interests of children concerns Ministerial promises to end the practice of detaining children for immigration purposes. But so far the progress has been confined to words and promises: there has been no change in the law and children are still being detained (115 children entered detention in April, May and June 2010 – more recent statistics are not available at the time of writing).<sup>63</sup>

The timetable for ending the detention of children for immigration purposes is ever-shifting:

- On 20 May 2010, the coalition programme for Government included an unequivocal commitment to end the detention of children for immigration purposes
- On 21 July 2010, Immigration Minister Damian Green told Parliament: *'I recently announced a review into the detention of children for asylum purposes so it can be brought to an end this summer...'*<sup>64</sup>
- Nearly three months later, Baroness Neville-Jones, Security Minister, refused to give a date for when the practice will end: *'I wish I could give a date. We cannot do that because, as things stand, we are taking seriously the whole business of how we bring about a situation whereby it is no longer necessary to detain children...'*<sup>65</sup>
- Then, at the beginning of November 2010, the Home Office recorded a deadline of end March 2011 in its business plan for 2011/15.<sup>66</sup>

### Family courts

Part 2 of the Children, Schools and Families Act 2010, which gained Royal Assent in April 2010, provides for authorised judgments from family proceedings to be made publicly available. This followed a relaxation of the rules of disclosure and reporting at the end of April 2009.<sup>67</sup> The parliamentary Joint Committee on Human Rights recommended the former Government introduce a provision in the legislation restricting publication where this would not be in the best interests of the child.<sup>68</sup> This was rejected because it would have prioritised the rights of children:

*Such a provision would have the effect of making the best interests of the child the paramount consideration ... This would represent a considerable restriction compared to the existing position which recognises the need to balance competing interests.*<sup>69</sup>

In any case, in October 2010, Ministers announced that they would not be making a decision about whether to bring Part 2 of the Act into force until after completion of the Family Justice Review in autumn 2011. The Office of the Children's Commissioner warmly welcomed the news: *'Any change to the current rules on reporting must put the best interests of the child first'*.<sup>69a</sup> In March 2010, the organisation

published its research of 51 children's views and experiences of judicial (private and public law) proceedings. This found that:

- 91% of children with experience of *private* law proceedings opposed the press being able to attend court and listen to children's cases
- 79% of children with experience of *public* law proceedings opposed the press being able to attend court and listen to children's cases
- 90% of children said being told a reporter might be able to read a doctor's report about them would affect their willingness to talk to a doctor.

When children considered vignettes based on real judgments, 33% of those with experience of public law proceedings thought that affected children might have been willing for information to be made public so long as it showed clear empathy with the child. They suggested acceptable statements such as: 'The children needed better care and some stability'; 'They had tried to help their mother...'; and 'It was not their fault they were removed'.<sup>70</sup>

### Criminal justice

May 2010 saw the conviction of two young boys (aged 10 and 11) for the attempted rape of an eight year-old girl. The trial lasted two weeks at the Old Bailey, which deals with the country's most serious criminal trials. The proceedings were timed to mimic a primary school day. Both boys gave innocent pleas and were acquitted of rape. Having been found guilty of attempted rape, they were made subject to a Supervision Order for three years and each child placed on the Sex Offenders' Register for two and a half years. The case provoked much public and parliamentary debate and brought the question of the age of criminal responsibility back into sharp focus. Had the UK followed recommendations made by the UN Committee in 1995, 2002 or 2008, none of these three young children would have had to endure an adversarial court system or now have the official labels of "sex offender" or "attempted rape victim" attached to them for years to come.

In June 2010, the coalition Government indicated it has no plans to increase the age of criminal responsibility. Its reasons were almost identical to those put forward by former Labour Ministers in 2007:

#### Lord McNally, Justice Minister, House of Lords debate, 10 June 2010

My Lords, the Government have no plans to raise the age of criminal responsibility. They believe that setting the age of criminal responsibility at 10 allows front-line services to intervene early and robustly. This helps to prevent further offending, and it helps young people to develop a sense of personal responsibility for their behaviour.<sup>71</sup>

#### UK Government 3<sup>rd</sup> and 4<sup>th</sup> periodic report to the UN Committee on the Rights of the Child, July 2007

The UK Government, in relation to England and Wales, believes that children of this age generally can differentiate between bad behaviour and serious wrongdoing, and that it is not in the interests of justice, of victims or the children themselves to prevent offending from being challenged through formal criminal justice processes. The Government ... believes that commencing criminal responsibility from the age of 10 helps children develop a sense of personal responsibility for their behaviour.<sup>72</sup>

Following the publication in September 2010 of Barnardo's *From Playground to Prison* report<sup>73</sup>, which advocates a small increase in the age of criminal responsibility from 10 to 12 years of age (though not for very serious offences), the *Daily Telegraph* reported the Ministry of Justice saying the age of criminal responsibility would be part of its wider review of sentencing and rehabilitation.<sup>74</sup>

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



Official data shows there were 150 preventable child deaths in England in 2009/10. The age breakdown of these preventable deaths is as follows:

- Children aged 1-4 years accounted for 27% of preventable child deaths
- Children aged 15-17 accounted for 26% of preventable child deaths
- Infants aged under one accounted for 20% of preventable child deaths
- Children aged 10-14 years accounted for 19% of preventable child deaths
- Children aged 5-9 years accounted for 8% of preventable child deaths.<sup>75</sup>

Of the 30 children that died in 2009/10 as a result of deliberately inflicted injury, abuse or neglect, 20 deaths were deemed preventable.<sup>76</sup> The majority of preventable child deaths (54%) arose from trauma, including drowning, road traffic accidents and fires.<sup>77</sup> Ofsted continues to report that the failure to focus on the child is a dominant feature of serious case review findings.<sup>78</sup>

Infant mortality rates (death under one year) in England and Wales continue to reduce – from 7.2 per 1,000 live deaths in 1991, to 5.2 in 2002, and then 4.5 in 2008. However, sharp differences remain

**Table 3: Infant mortality rate according to socio-economic classification, 2008<sup>79</sup>**

Socio-economic classification of father	Infant mortality rate, per 1,000 live births
All	4.5
Large employers and higher managerial occupations	2.8
Higher professional occupations	3.2
Lower managerial and professional occupations	3.2
Intermediate occupations	4.9
Small employers and own-account workers	3.7
Lower supervisory and technical occupations	3.7
Semi-routine occupations	5.7
Routine occupations	5.5
Never worked and long-term unemployed	6.3

according to infants' socio-economic background. Figures from the Office for National Statistics (ONS) show that in 2008 infants from the poorest households in England and Wales were more than twice as likely to die as infants with parents whose fathers were in higher managerial and professional occupations.

Using UK data provided by the ONS, the EHRC reported this year that Pakistani and Black Caribbean babies are the most likely to die in their first year – with infant mortality rates of 9.8 and 9.6 respectively.<sup>80</sup> UNICEF gives an average infant mortality rate of 5 for industrialised countries.<sup>81</sup>

A baby girl born in Kensington and Chelsea can expect to live more than 15 years longer than a baby boy born in Blackpool, according to ONS statistics for 2007/09 (89 years compared with 73.7 years).<sup>82</sup> Information released to Parliament last year shows an increase in under-10s in England being admitted to hospital primarily as a result of malnutrition, from 14 children in 2003/04 to 25 children in 2007/08.<sup>83</sup>

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



The duty on Local Safeguarding Children Boards to review any unexpected death<sup>84</sup> (in force from 1 April 2008) is very welcome but not strong enough to meet the investigative duties under the European Court of Human Rights' interpretation of Articles 2 or 3 of the European Convention on Human Rights. Professor Eileen Munro has been asked to come up with alternatives to the publication of serious case reviews by January 2011<sup>85</sup> though this will not necessarily lead to genuinely independent and public reviews of child deaths.

The announcement by the coalition Government in mid-October of its plan to abolish the post of Chief Coroner before it even starts was met with dismay by INQUEST. It described the decision as a betrayal of bereaved families which would '*frustrate the opportunity to create a system which saves lives*'.<sup>86</sup>

## 23 Treat Taser guns and AEPs as weapons subject to applicable rules and restrictions



In October 2009, the Liberal Democrats reported that:

- Police in England and Wales fired 50,000 volt Tasers at children 18 times in the 12 months to March 2009
- A further 82 children were '*exposed to the use of Taser*'.<sup>87</sup>

The *HMP Britain* blog shares statistics obtained in April 2010 from the Home Office on the use of Tasers on children between July 2007 and December 2009:<sup>88</sup>

**“Given the serious concerns about the safety of Tasers, which have killed more than 300 people in the US, they should not be used on children.”**

Chris Huhne MP, October 2009  
(now Secretary of State for Energy and Climate Change)

**Table 4: Taser use on children (13 to 17 year-olds), 2007/09**

Taser use on children	Number of times
Fired at children	47
Drive stun (Taser is pressed against a child and cycled — this imparts a shock without firing the probes/barbs)	12
Arced (Taser is sparked without a cartridge being fired)	9
Red dot laser sight is activated and placed on a child, but the Taser is not fired	126
Taser aimed at a child	7
Taser is drawn	22
<b>Total use</b>	<b>223</b>

Also in October 2009, Labour MP Natascha Engel asked the then Home Secretary what safety assessment the Government had conducted on the use of Tasers and attenuating energy projectiles in relation to children. The Minister said the Home Office Scientific Development Branch had produced three reports evaluating Taser devices, but he did not say whether these specifically addressed the risks for children. He referred to a statement from DOMILL (Defence Scientific Advisory Council's Sub-Committee on the Medical Implications of Less Lethal Weapons) identifying ‘*children and adults of smaller stature as being at potentially greater risk from the cardiac effects of Taser currents than normal adults of average or large stature*’. The Minister stated that ACPO guidance ‘*highlights this point*’.<sup>89</sup>

In December 2009, the recommendations of the European Committee for the Prevention of Torture (CPT) following a visit to the UK in 2008 were published, together with the Government's response. On Tasers, the CPT said:

*The CPT considers that the criteria for any use of electro-shock weapons by police officers at least closely correspond those governing the use of firearms; their use must therefore be thoroughly regulated and monitored. Furthermore, only specially selected and trained police officers should be allowed to use such electro-shock weapons and all necessary precautions should be taken when such weapons are used...<sup>90</sup>*

The former Government responded by saying only authorised firearms officers are permitted to use Tasers in circumstances where ‘*violence or threats of violence of such severity that its deployment will limit the incidence of serious injury (or death) to the public*’. It rejected the need to prescribe the circumstances in which Tasers can be used because of ‘*the diverse nature of policing operations*’.<sup>91</sup>



## 24 End the use of all [other] harmful devices on children



Police, prison and immigration staff are permitted to use ratchet handcuffs on children. A parliamentary question revealed that handcuffs were used 64 times on children in the country's privately run child prisons over the past four years, the majority (89%) occurring in Hassockfield secure training centre.

**Table 5: Use of handcuffs in privately run child prisons, 2006/10<sup>93</sup>**

Year	No. times handcuffs used on children
2006	43 times in two establishments
2007	9 times in one establishment
2008	7 times in one establishment
2009	1 time in one establishment
2010	4 times in one establishment

The Detention Centre Rules 2001 permit individuals in immigration detention to be put under “special control or restraint”, yet there are no particular safeguards for infants and children. Ministers report that no child has been subject to special restraint (such as Velcro leg straps) in the last five years.<sup>94</sup> The Chief Inspector of Prisons has criticised the lack of any ‘*specialist and detailed UKBA guidance on use of force on children*’.<sup>94a</sup>

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



### Legislation – schools

In January 2010, the former Government launched a consultation on the matters on which school governing bodies should be required to invite and consider children's views.

**“... I am sure that the whole House will agree that the voice of pupils and young people is extremely important ... The new duty in these amendments sends a clear message about the importance that we place on the involvement of pupils, which the Children’s Rights Alliance for England also eloquently advocates, in matters that affect their education and school life. Through regulations, we intend to require governing bodies to invite views on a core set of policy matters. As a minimum, schools should seek and take account of pupils’ views on policies on the delivery of the curriculum, behaviour, the uniform, school food, health and safety, equalities and sustainability, not simply on what colour to paint the walls.”**

**Baroness Delyth Morgan, former Children’s Minister with responsibility for the CRC, 11 November 2008, House of Lords**

Following strong lobbying by CRAE over many years, and the persistence of Liberal Democrat Peer Baroness Walmsley and others in the Lords, Section 157 of the Education and Skills Act 2008 gave the Secretary of State the power to issue regulations prescribing the matters about which school governing bodies must invite and consider children’s views. However, by the time the Government consulted on the prescribed matters, the proposals had become very limited. We assume this was influenced by the reaction of parts of the media and strong lobbying by some members of the teaching profession.

Even before the consultation document was issued, the former Government’s action plan on the CRC, published in November 2009, disingenuously presented the delay in bringing these new rights into force as arising from lack of interest from children in the narrow and specific functions being considered by Ministers.<sup>95</sup> Clearly, former Ministers could have opted to prescribe functions that truly engaged children – along the lines of the promises made in the House of Lords by the former Children’s Minister when the legislation was debated.

The coalition Government’s plans for bringing into force the “invite and consider” duties are not yet known. What is in the public domain are Ministers’ priorities for the forthcoming education White Paper. There is no mention of enhancing children’s influence in the education system, but parental participation is given priority:

*We expect the guiding principles ... to be ... increased involvement of parents in decision-making, not just about their child’s education but about the design and delivery of services – so they feel that they are partners in the system...<sup>9</sup>*

Section 54 of the Apprenticeships, Skills, Children and Learning Act 2009 (which gained Royal Assent in November 2009) requires

local authorities to consult 16 and 17 year-olds when preparing transport policy statements for persons of sixth form age in England.<sup>97</sup> No commencement date has yet been set, and there is a strong risk that this new right will be lost in the coalition Government’s move to “light touch” regulation.

#### **Legislation – other contexts and settings**

- On 12 November 2009, the Health Act 2009 was passed requiring, among other things, NHS bodies and those providing health services to have regard to the NHS Constitution. The Constitution itself was published by the Department of Health in March 2010. It states one of the four guiding principles of the NHS is for services to:

*... reflect the needs and preferences of patients, their families and their carers. Patients, with their families and carers, where appropriate, will be involved in and consulted on all decisions about their care and treatment.<sup>98</sup>*

- The Policing and Crime Act 2009 gained Royal Assent on 12 November 2009. It amends the Police Act 1996 by placing a duty on police authorities to have regard to the views of people in the local authority about policing in that local area.
- On 25 March 2010, the Child Poverty Act 2010 gained Royal Assent. Section 10(4)(c) of the Act requires the Secretary of State when developing a UK child poverty strategy to ‘*consult such children, and organisations working with or representing children, as the Secretary of State thinks fit*’. A parallel duty applies to local authorities and their partners when developing local child poverty strategies (Section 23(6)(a)).
- On 15 June 2010, the duty for local authorities to respond to petitions came into force.<sup>99</sup> There is no minimum age for making petitions – the only criteria is that the person lives, works or studies in the area.
- Section 218 of the Apprenticeships, Skills, Children and Learning Act 2009, which gained Royal Assent on 12 November 2009, places a duty on the Local Government Ombudsman to publish information about the procedures for making complaints about schools, including the assistance available to students who are or have been in care; disabled children and their parents; and children with special educational needs. The new duties are being phased in – across four local authorities from April 2010 and then a further eight from September 2010. National rollout is planned for September 2011.
- The Equality Act 2010 was passed in April 2010: its public sector equality duty applies to public authorities and those exercising public functions, and will come into effect in April 2011. Included in the duty is the need to encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low. Age is a relevant protected characteristic: this particular duty spans all age groups and contexts apart from schools and children’s homes which are specifically excluded in Schedule 18 of the Act from the age aspects of the duty.



- Specific new local authority consultation duties in relation to children in care will come into force in April 2011.<sup>100</sup> Regulations require that the child's wishes and feelings be included in their placement plan, health plan, personal education plan and care plan.
- April 2010 saw the passing of the Anti-Slavery Act 2010 which aims, among other things, to 'encourage [young people] to be proactive in the fight against' trafficking.
- In March 2010, the Co-operative and Community Benefit Societies and Credit Unions Act 2010 was passed, providing for the expansion of co-operative and community benefit societies (individuals can become members of both from the age of 16<sup>101</sup>).

There have been other very positive developments in statutory guidance:

- The revised statutory guidance *Working Together to Safeguard Children* was published in March 2010 and, following detailed advice from CRAE, has a much stronger focus on professionals forming positive relationships with children and respecting their wishes and feelings. This includes a revision of the definition of emotional abuse to include not giving the child opportunities to express their views or deliberately silencing them; and a requirement for social workers to record children's wishes and feelings.
- The IRO (Independent Reviewing Officer) Handbook was also published in March 2010. This consistently stresses the role of the IRO in making sure children's wishes and feelings are given due consideration – across all aspects of the child's care. The IRO must monitor the extent to which the child's social worker is giving due consideration to his or her wishes and feelings;

and ensure that children are informed about and provided with independent advocacy.

The health White Paper published in July 2010 set out plans for the creation of a new health consumer champion HealthWatch England, replacing structures introduced after the abolition of community health councils in 2003. Ministers promise this new body will 'provide a vehicle for ensuring that families' and young people's voices are fed into local commissioning so that ... services can take full account of the needs and experiences of children ...'<sup>102</sup>, though it is too early to assess whether this means progress for children's rights.

Less positively, in June 2010, the coalition Government made the following announcement about the national TellUs Survey of children's views:

*The Government has decided to stop the delivery of the Tellus Survey as part of its commitment to reduce the burdens which data collection imposes on schools and local authorities. The decision is with immediate effect, which means the Tellus5 survey will not be delivered as planned in the autumn term.*<sup>50a</sup>

This was the only survey undertaken for Government which asked children about the extent to which their right to be heard is respected in school.

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



### Administrative proceedings – education School exclusion appeals

Parents have the legal right to appeal school exclusions; children do not. In April 2010, former Ministers agreed that secondary school students would be given the right to appeal their special educational needs (SEN) assessment and statement decisions made by local authorities to the First-tier Tribunal; and that disabled secondary school students in maintained schools would be able to make disability discrimination claims about permanent exclusions and admissions to the Independent Appeals Panel. Former Ministers also agreed that disabled secondary students from independent and non-maintained "special" schools would be able to make claims to the Tribunal relating to admissions and permanent exclusions; and disabled secondary age students from all types of schools would be able to make claims to the Tribunal

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

**IRO Handbook, March 2010**

about fixed period exclusions. A working group was said to be necessary before these new rights for young disabled people would be introduced, so no actual changes to the law or policy were achieved.

Unfortunately, there was no movement on extending the right to appeal exclusions to children generally (the former Government had consulted on whether this right should be granted at the age of 16<sup>103</sup>). One of the reasons given was concern expressed by some professional teaching associations that this would 'undermine the legitimate disciplinary authority of schools'. There was also the view that 'parents have the best interests of their children at heart and are their strongest advocates [and] will seek their children's views and opinions on matters that affect them, including deciding whether or not to bring an appeal'. That children in Scotland and Wales apparently do not routinely exercise their right to appeal exclusions was an additional reason given for continuing to withhold this right from children in England.<sup>104</sup>

### **Withdrawal from sex education**

Parents have the right to withdraw their children from sex education that is not part of the National Curriculum – effectively to the age of 19 as there is no upper age limit.<sup>105</sup> This year, the former Government planned to impose an age limit of 15 (above which parents would not be able to exercise the right to withdraw) but the Conservatives opposed this and wanted the age to be 16. The former Children's Secretary Ed Balls said in a letter to Michael Gove:

*Your insistence that the age limit must be increased to 16 would have made the entire Bill non-compliant with UK and European law and, therefore, our lawyers advised me that, as Secretary of State, I had no choice but to remove all the PSHE provisions.*<sup>106</sup>

CRAE's Freedom of Information Act request for a copy of the legal advice to the former Minister was refused: in September 2010 we appealed to the Information Commissioner.

In January 2010, the former Chair of the parliamentary Joint Committee on Human Rights wrote to Ed Balls highlighting the Gillick principle that children under 16 of sufficient understanding can access and make their own decisions in health care.<sup>107</sup> The former Government's principal legal adviser on the Bill replied:

*The Department is of course, conscious that the rights of children themselves must be of paramount concern ... Whereas it is no doubt convenient and straight-forward for a GP or other medical practitioner to assess the competence of a young patient, and take appropriate action on that assessment, the Department does not consider that schools and teachers will want, or should be given, the responsibility of making such decisions in respect of their pupils. Such a responsibility would also open the school up to ... a significant litigation risk from parents who did not accept the school's assessment of a child's competence, and the Department cannot see that it would be in anyone's interests for there to be such uncertainty, or such risk ...*<sup>108</sup>

### **Administrative proceedings – children in need and children in care**

In June 2010, *Children and Young People Now* magazine reported that 9 out of 10 local authorities had established a local Children in Care Council – consultative mechanisms first promised in the *Care Matters* White Paper in June 2007.<sup>109</sup> In November 2009, the former Children's Secretary took the very welcome and unprecedented step of writing to every child in care in the country. His letter told children:

*We are changing the law so that you must be asked for your views before any major change takes place in your life, for example, before you are moved from a foster carer or children's home, as well as on day to day issues like pocket money, bedtimes and food...*

*I promise you that improving the support you get is extremely important for the Government. We will listen to your views before we make our decisions. We want to make sure you have the same chances as other children to fulfil your dreams and to be happy.*<sup>110</sup>

In a further positive move, in October 2010, Children's Minister Tim Loughton told Parliament that he had 'asked the Children's Rights Director to set up quarterly meetings with groups of looked after children and care leavers, so that I can have an ongoing dialogue with them and take their views into account when making decisions about how to improve the outcomes of children in care'.<sup>111</sup>

### **Judicial proceedings – criminal**

In August 2010, Mr Justice Saunders noted in his sentencing remarks on the attempted rape case involving three primary school children that he would be writing to the Lord Chief Justice on what lessons could be drawn from the case. It was reported in the press that the Justice Secretary had ordered a review of the way children are treated in criminal courts in May 2010. CRAE wrote to the Justice Secretary explaining:

*It is imperative that the review you have established is singularly focused on what the UK must do to meet its obligations to children under international human rights law. We hope the review will be independent of government and that you will strongly encourage the review team to come up with progressive, child-centred proposals.*

### **Judicial proceedings – civil**

The Family Justice Review's terms of reference have no mention of the importance of eliciting and considering the child's wishes and feelings<sup>112</sup>, though the Review Panel held a dedicated session on this subject in September 2010 (in which CRAE participated). There are growing concerns about the inadequate representation of children in public and private law proceedings, with many organisations judging CAFCASS to be ineffective in ensuring children's wishes and feelings are consistently and properly represented to the court.<sup>112a</sup> Furthermore, there has been no progress in bringing into force Section 122 of the Adoption and Children Act 2002: this extended the proceedings listed in Section 41 of the Children Act 1989 where children should be separately represented.

## 27 Support forums for children's participation



In October 2010, the coalition Government was asked in Parliament whether it would encourage more political participation among young people. The Children's Minister replied:

*... Ministers, MPs and officials provide opportunities for young people to shadow them and learn more about politics. Local government also provides opportunities, including youth councils who work with all levels of local government and give young people a voice in their local area. The British Youth Council reports that there are currently over 620 youth councils active across the UK. Other opportunities for young people to participate in politics include the UK Youth Parliament ... and departmental advisory groups. We will continue to encourage these activities where we can.*<sup>113</sup>

Earlier in the year, the National Participation Forum (NPF) published several "stocktaking" reports showing the extent to which children are able to participate in and influence decision-making. A survey of 280 participation workers in different parts of England revealed:

- 75% of participation workers say they involve children in decisions affecting them as individuals; 69% involve children in collective decision-making
- Children currently or formerly in care were reported to be the largest constituency of children engaged in decision-making (65% of participation workers said their organisations involve them). The group given the least opportunities was young Travellers (17%)
- Just 18% (less than one in five) of participation workers believe children have a great deal of influence on decisions made by their organisation or department; this becomes only 14% for those working in the statutory sector.<sup>114</sup>

A survey of 229 senior or strategic managers working in the statutory and voluntary sectors revealed:

- The age group most involved in decision-making is 16 to 18 year-olds (83% of organisations); the group least involved is under 5s (21% of organisations)
- The vast majority of organisations have a dedicated participation worker (74%) but less than half (44%) offer administrative support and 18% of organisations never allow children to control resources
- 86% of senior or strategic managers strongly agreed that children have the right to be involved in decision-making, though only 55% said participation is integral to the work of their organisation.<sup>115</sup>

An ICM representative poll of 1,001 7 to 17 year-olds carried out for the NPF found that:

- 42% of children said adults most of the time listen to what children their age have to say
- Over a third (36%) of children felt that adults sometimes listen to what children their age have to say

- Only 4% of children felt that adults hardly ever listen to what children their age have to say; and 1% that they never listen
- The younger the child, the more likely they were to report that adults always listen (but only children aged 7 to 11 said that adults never listen)
- Only a quarter (25%) of children felt their parents always took their views seriously; this reduced to 19% for teachers; 4% for the government; and 3% for their local MP
- Less than a third (29%) of children felt they had a lot of influence over decisions within their family; just over 1 in 5 (21%) felt they had a lot of influence within school
- Almost 9 out of 10 (88%) of children had been told by their parents/carers that they have a right to be listened to; and 8 out of 10 (81%) had been told this by their teachers.<sup>116</sup>

Focus groups with 86 children cast a shadow over the view that children in England are enjoying their right to be heard and taken seriously. The report from discussions with 3 to 20 year-olds sums up:

*... most children in our sample were generally dissatisfied with their level of input into decision making processes in school, in the home, and in relation to the area where they lived. Although there were some excellent examples of where school councils, youth forums and individual parents/carers had proactively engaged children in decision-making processes, in general, these opportunities were not the norm.*<sup>117</sup>

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



The coalition Government might argue that its National Citizen Service for 16 to 18 year-olds, to be piloted in 2011, is an innovative example of the state and civil society coming together to support participation. At the time of writing it is very unclear what the new Service will entail, although CRAE's emerging concerns include:

- The scheme will not necessarily be free at the point of use
- It is being established at a time when universal children's and youth services, which increasingly support children's participation, are being drastically reduced
- The scheme could encourage false ideas about citizenship, such as that it is acquired at a particular age, and that young people have to prove or earn their place in society
- There is no dedicated state funding for children's own groups and initiatives (e.g. school councils, youth councils and child-led NGOs)
- A seven to eight week programme aiming to 'promote a more cohesive society by mixing participants of different backgrounds'<sup>118a</sup> will appear naïve if not underpinned by robust economic and social policies aimed at ending structural inequalities.

# Civil rights and freedoms



## Key to progress in meeting the recommendations of the UN Committee on the Rights of the Child



Significant improvement in past 12 months



Significant deterioration in past 12 months



No significant change (ongoing violation and/or failure to adhere to Convention on the Rights of the Child)



Already achieved



At risk of significant deterioration



Potential that this recommendation will be met shortly

“ It’s just wrong. If they really wanted, then they could have a teacher there at break and dinner time to make sure everyone is behaving. The thing is, if someone is watching a screen to watch us in the toilets, well then they might as well just be in the toilets. At least then you know that you’re being watched. It’s like being spied on I think... ”

**Girl talking about CCTV in school toilets, 2010**

“ If you hit your child, then they’ll hit their children, and it’ll go on forever. ”

**9 year-old boy, 2010**

“ It seems extraordinary that [Ofsted] inspectors could be so complacent about the use of physical restraint on children when it has been such a controversial topic following the deaths of two children. Inspectors seemed to be unaware of the review of restraint, several Parliamentary debates, and the death of Gareth Myatt whilst exactly this form of restraint was being used, and that many children’s charities and experts consider the use of physical restraint in Medway and other STCs to be abusive. ”

**Frances Crook, Director of the Howard League for Penal Reform, December 2009**

## 29 Reconsider ASBOs as they may violate children's rights



In March 2010, an ASBO which prohibited a 13 year-old boy from riding his bike was amended as the judge agreed this condition breached the child's human rights.

In May 2010, a 14 year-old girl was imprisoned for three months for breaching her two year ASBO which banned her from possessing or consuming alcohol in a public place.

The coalition Government is currently reviewing ASBOs: this is very welcome but there is a risk the orders will be replaced by a greater emphasis on criminal sanctions for unacceptable behaviour. Without a completely different approach for children (as required by international law), this could maintain the high level of rights violations the UN Committee was so concerned about. Home Office Minister James Brokenshire told Parliament in October that:

*... [The] review of ASB tools and powers [will] ensure that, in future, the police and their partners at local level have a simpler toolkit that is less bureaucratic and provides a real deterrent...<sup>118</sup>*

In July 2010, the Ministry of Justice published statistics which show that ASBOs have been applied disproportionately against children:

- Between 1 April 1999 and 31 December 2008, 6,747 children in England and Wales were issued with an ASBO (including 35 10 year-olds and 98 11 year-olds). This accounted for 40% of all ASBOs even though 10 to 17 year-olds make up just 10% of the population
- The average custodial sentence for children breaching an ASBO was 6.4 months; for adults this was 4.9 months.<sup>119</sup>

The same statistics revealed that, between 1 June 2000 and 31 December 2008, 1,253 children in England and Wales were sent to custody for breach of an ASBO – 41% of all children that appeared in court for breach. (See page 69 for more detail).

It has always been our view that it was disproportionate and unjustifiable to hold records on every child in the country ... we are exploring the practicality of a new national signposting service [to replace ContactPoint] which would focus on helping practitioners find out whether another practitioner is working, or has previously worked, in another authority area with the same vulnerable child.

**Children's Minister Tim Loughton MP, Written Ministerial Statement to Parliament, 22 July 2010**

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



The Council of Europe's Parliamentary Assembly unanimously agreed in June 2010 that governments and local authorities in member

states should ban electronic devices designed to emit a high-pitched noise to stop under-25s from using public spaces and facilities. CRAE wrote to the Deputy Prime Minister Nick Clegg urging him not to wait for a decision from the Committee of Ministers before acting to protect children's rights. In September 2010, we received a response from Home Office Minister James Brokenshire stating that the Government has no plans to ban these devices but would reconsider its position '*should evidence be produced that these devices are harmful to hearing or health in the longer term*'.<sup>120</sup> At the beginning of November 2010, *Children and Young People Now* magazine reported the details of a letter from Children's Minister Tim Loughton to Kirklees Youth Forum. The Forum had campaigned successfully for the local authority to stop using the devices on any of its buildings. The Minister was reported as saying in his letter to young people: '*I am keen to hear and act on the views of young people and I do take concerns about mosquito devices very seriously. I shall be seeking an opportunity to discuss the use of mosquitos with other ministerial colleagues with a view to reviewing the government position*'.<sup>121</sup>

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



There have been some very positive developments in protecting children's privacy rights since the coalition Government took power:

- ContactPoint, the Government database of every child in England (with provision to retain information until a person's 25<sup>th</sup> birthday), was shut down on 6 August 2010. The Conservative Peer Lord Forsyth of Drumlean had dubbed the database '*the nationalisation of childhood*'<sup>122</sup>
- The coalition programme for Government promised Ministers would '*adopt the protections of the Scottish model for the DNA database*': individuals' DNA is only stored if they have been convicted of serious sexual and violent offences, and for a maximum period of five years (requiring a judicial decision to extend from three to five years). Repeal of Sections 14 to 20 of the Crime and Security Act 2010 (which permits the retention of innocent children's and adults' DNA for up to six years) has been promised in the forthcoming Freedom Bill. While this move is very welcome – and necessary in light of the *S and Marper v UK* European Court Grand Chamber judgment<sup>123</sup> – there remain questions about the retention of information on the Police National Computer.<sup>124</sup> Also, the new Government has failed to issue interim instructions to counteract ACPO guidance instructing Chief Constables that, until there has been a change in the law, they can effectively ignore the Grand Chamber decision. As the parliamentary Joint Committee on Human Rights informed the Home Secretary in a letter in September 2010:

*Until the Government introduces its proposals to adopt the safeguards of the "Scottish Model", the violation identified by the Grand Chamber continues and the DNA of innocent people and children continues to be retained indefinitely.*<sup>125</sup>

- The national eCAF [Common Assessment Framework] system is under review: like ContactPoint, this scheme was labelled “red” by a team of privacy experts that undertook an examination of 46 Government databases for the Joseph Rowntree Reform Trust in 2009. Those databases categorised as red were seen to be ‘almost certainly illegal under human rights or data protection law and should be scrapped or substantially redesigned’.<sup>126</sup> The former Government strongly rejected this assessment.<sup>127</sup>
- In May 2010, the coalition Government committed to outlawing the fingerprinting of children at school without parental permission.<sup>128</sup> This is to be included in the Freedom Bill, expected to come into force by end November 2011.<sup>129</sup> In June 2010, the *Daily Mail* estimated that one in three secondary schools take children’s fingerprints as part of the class register, to use the school library or to purchase items from the school canteen. Using the Freedom of Information Act, the newspaper also found 84 primary schools using biometric technology.<sup>130</sup> CRAE was delighted to read in the DfE business plan 2011-15 that the Government will no longer ‘continue with programmes that should never have started, because they were the wrong thing to do, such as ... the use of fingerprinting in schools’.<sup>131a</sup>

Alongside these positive developments, new Ministers are set to give schools extensive powers to interfere with children’s privacy rights. In a written Ministerial statement in July 2010, Schools Minister Nick Gibb promised to introduce regulations extending the list of items for which teachers have the power to search children without their consent. The list will include: personal electronic devices (mobile phones, iPods and personal music players);



All pupils should show respect and courtesy towards teachers, towards other staff and towards each other. Head teachers help to create that culture of respect by supporting their staff’s authority to discipline pupils. The role of the Government is to give schools the freedom they need to provide a safe and structured environment in which teachers can teach and children can learn.

**Schools Minister Nick Gibb, Written Ministerial Statement to Parliament, 7 July 2010**

pornography; fireworks; cigarettes and other tobacco; and “legal highs”. The Minister stated the forthcoming Education Bill would extend these powers even further ‘to give teachers a more general search power covering any item which may cause disorder or pose a threat to safety’.<sup>131</sup> This adds to existing search powers covering knives, blades, offensive weapons, alcohol, illegal drugs and stolen items (the latter three categories were included in 2009 legislation, which came into force on 1 September 2010<sup>132</sup>). The power to extend the list of search items without full parliamentary debate was included in the 2009 Act.

Given the Schools Minister pledged to increase search powers months before the new powers introduced by the 2009 Act even came into force, it is highly questionable whether the additional powers would be seen to be proportionate and legitimate were they to be challenged in court under the Human Rights Act. It speaks volumes that Ministers have not felt it necessary to publish evidence setting out why they believe schools require more powers to interfere with children’s privacy rights; nor have they indicated what safeguards will be put in place to prevent rights violations. Indeed, in August 2010 the coalition Government quietly dropped a duty on schools to record when staff use force on children and to report the incident to the child’s parents, doing so just days before Parliament went into recess. (CRAE wrote to the Minister Nick Gibb and received a response in October 2010 stating that the Government is reviewing requirements on schools and has ‘delayed bringing this requirement into force pending the outcome of the review’). The parliamentary Joint Committee on Human Rights had welcomed the protective measures in the 2009 Act but also stressed that Ministers must justify to Parliament why more search powers were then needed.<sup>133</sup>

In July 2010, the BBC reported that there had been 1,700 complaints from students about the conduct of teachers. A Freedom of Information request revealed that more than half of these allegations related to ‘physical assault or “inappropriate restraint”’.<sup>134</sup>

There are continuing grave concerns about the use of CCTV surveillance in schools. A survey of 249 primary and secondary school teachers by the Association of Teachers and Lecturers (ATL) in 2008 found that 85% of teachers worked in schools with CCTV cameras. Other findings included:

- While 98% of teachers believed CCTV cameras were there for security purposes and to monitor vandalism, over half said they are also there to monitor the behaviour of children in school

- More than three-quarters (77%) of teachers reported CCTV cameras being used at entrances, 49% in corridors, 34% in children's communal leisure areas and 7% in classrooms. 10% of teachers said cameras are located in school toilets
- Over half of teachers were concerned about the use of CCTV in schools.<sup>135</sup>

Statistics obtained from the Information Commissioner's Office show that, 'as an absolute minimum', 22% of all schools in the UK are now operating CCTV.<sup>136</sup>

### 32 Introduce stronger regulations for data protection in relation to children



The data protection regulations have not been amended to strengthen children's rights in particular, though a Government review is presently underway ahead of reform of EU laws. Current regulations clearly do not protect children from intrusive CCTV cameras in schools,<sup>137</sup> though we note the coalition Government's intention to further regulate CCTV.<sup>138</sup> More positively, the Information Commissioner has been given considerable new enforcement powers, and is now able to impose a civil penalty of up to £500,000 for breach of the Data Protection Act 1998 (effective from 6 April 2010).<sup>139</sup> The future of the Information Commissioner is uncertain as the role has been included in a deeply controversial Public Bodies Bill, currently in the Lords: this gives Ministers extensive powers to axe, merge and change almost 200 public bodies with very little parliamentary scrutiny.

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



There has been no legislative or policy change since the UN Committee made this recommendation in 2008. The dismantling of ASBO legislation could significantly increase the protection of children's privacy rights *but only if replacement measures*

The British Psychological Society told me that gaining valid (informed, freely given, renewed) consent and assent should be considered potentially achievable with children of any age, but should not replace parental consent. Valid parental consent should also be sought for children of all ages up to 16 years. But we also found evidence that there can be coercion from some parents (and other sources) which may compromise the child's interest. For children of all ages, consent should be an on going process during the production. And for infants (from 0-18 months) there should be constant monitoring for signs of distress. For younger children consent might be recorded on camera or by audio means.

**Sarah Thane review of child performances regulations, March 2010**

*are compatible with children's human rights.* The coalition Government's newly published strategy for tackling benefit and tax credit fraud shows heavy reliance on ASBO tactics (with no proposed safeguards for children):

*We will particularly focus on targeting the 'shame' element of deterrence by undertaking 'naming and shaming' in local areas. This will target those fraudsters who don't fear the financial or judicial consequences of being caught as much as they do the disgrace of their crime being revealed to their local community.*<sup>140</sup>

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



The coalition Government announced in May 2010 that it would 'crack down on irresponsible advertising and marketing, especially to children. We will also take steps to tackle the commercialisation and sexualisation of childhood'.<sup>141</sup> This was a strong indication that new Ministers planned to continue the work started by Labour Ministers relating to children's TV appearances and broader media and marketing protection.

At the end of December 2009, the former Government had announced a review of child performance laws, to be undertaken by Sarah Thane, former Chair of the Royal Television Society and former adviser to Ofcom. Former Ministers published their initial response to the Thane Review in March 2010. In relation to safeguards for children's television appearances – which particularly concerned the UN Committee – former Ministers accepted 'the importance of risk assessments covering physical and emotional well being, securing valid consent, the pre-screening of individual children and parents to ensure suitability, and the use of appropriately skilled and qualified child experts'.<sup>142</sup>

At the beginning of September 2010, Children's Minister Tim Loughton announced a review of child performance laws in a speech to psychologists attending the International Association of the Study of Attachment's conference in Cambridge.<sup>143</sup> The following month it was announced that Ministers were meeting with broadcasters and television industry experts to discuss Sarah Thane's report for the previous Government.

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



There have been two recent positive developments concerning restraint law and policy. First, in August 2010 the DfE published revised regulations relating to children's homes which make it absolutely clear that restraint must be a last resort and only for the purpose of preventing harm to a person or serious damage to property. Second, in September 2010 the Ministry of Justice published the 2010 version of the *Physical*

*Control in Care* (PCC) manual which stresses throughout that restraint must only be used as a last resort. While the revised PCC manual was very welcome, it must be noted that its publication came **six years** after two children died in restraint-related incidents in secure training centres (STCs); **two and a half years** after the Smallridge and Williamson restraint report was submitted to former Ministers;<sup>144</sup> and **more than three years after** CRAE submitted a Freedom of Information request for a copy of the manual. The former Government and the YJB protested that release of the full PCC manual would threaten security in child custody, in adult prisons and the wider community. They claimed political prisoners and animal rights activists would develop counter-techniques. This level of alarmism had been seen before during legal proceedings challenging the use of restraint for good order and discipline. There the director of Hassockfield STC said the country's four privately-run child prisons '*would descend into anarchy*' were staff not allowed wide powers to restrain. The Court of Appeal dismissed this view as '*pure assertion*', stating the director had '*every incentive to stress the necessity of the practices ... , and the aggressively justificatory tone of his statement does nothing to deflect those concerns*'.<sup>145</sup>

Despite the positive developments described above, the law still does not meet the UN Committee's criteria that restraint only be permissible to prevent harm to the child or others. In STCs and children's homes, restraint is also permitted to prevent damage to property; and in young offender institutions (YOIs), where the majority of children in custody are held, restraint can be used to prevent a child '*injuring himself or others, damaging property or creating a disturbance*'.<sup>146</sup> CRAE has also been warned by several sources that new restraint methods under consideration for children in custody rely even more on the infliction of pain.

In schools the use of force (including restraint) is permitted to stop a child '*prejudicing the maintenance of good order and discipline at the school or among any pupils receiving education at the school, whether during a teaching session or otherwise*'.<sup>147</sup> Furthermore, education law does not require the use of force to be a last resort, unlike the law relating to restraint in custody and children's homes (although, of course, children are still protected by the Human Rights Act and the CRC in these settings).

Statistics continue to show very high levels of restraint and injury in child custody:

- 29% of children held in YOIs in 2008/09 had personal experience of being restrained (34% of children from Black and minority ethnic communities had been restrained compared with 25% of White children). In one establishment, nearly half (47%) of the children had been restrained<sup>148</sup>
- Between April 2008 and May 2009, restraint was used 2,176 times in just four privately run child prisons (STCs); 26 times for good order and discipline in clear breach of the STC Rules
- Between June 2009 and May 2010, there were 111 child injuries following restraint in four STCs – six injuries to the child's face; 13

Mr Z, a young offender, complained about an incident during which a 'nose distraction technique' had been used. This had led to his nose being broken. Mr Z said he had been misbehaving with others during an education session and three officers had asked him to return to his cell. The officers accompanied him, one on either side and one behind. Mr Z alleged that one of the members of staff prodded him in the back several times. He said that, when he turned to protest, one officer held his nose and face, pushing his head to the floor, while the others held his arms and legs. Mr Z described this as an extremely painful experience.

... in the circumstances of this case the Ombudsman could not be certain that the use of force was not justified. For that reason, Mr Z's complaint could not be upheld in full. **But to say the least, any situation in which a boy has his nose broken as a result of being restrained (our emphasis)** by three adult prison staff must be a cause for great concern – all the more so when, as in Mr Z's case, there was no violent struggle prior to the injury and no previous history of violence by Mr Z towards staff.

#### Prisons and Probation Ombudsman for England and Wales Annual Report 2009/10, July 2010

to the child's neck; eight to the child's shoulders; two to the child's thumbs; three to the child's wrists; and 79 other child injuries.<sup>148a</sup>

- Between July 2009 and June 2010, restraint was stopped three times in STCs because a child complained of not being able to breathe<sup>148b</sup>
- Between 2006 and 2010, 28 staff were subject to disciplinary proceedings following restraint incidents (14 disciplined, 13 suspended and 1 dismissed).<sup>148c</sup>

CRAE continues to push the Ministry of Justice to identify all former "inmates" of STCs who are likely to have been restrained unlawfully and notify them of their right to redress. We totally reject the argument that children in STCs could have accessed advice and representation while locked up: as time goes by, more and more revelations come out into the open about the extent of unlawful conduct in these centres, and the failure of external agencies like the YJB and Ofsted to protect children. Indeed, Ofsted inspection reports make no reference to children's views about restraint and the lack of probing does not instil confidence that frightened or aggrieved children have an independent mechanism to raise concerns. The director of the Howard League for Penal Reform, commenting on the September 2009 Ofsted inspection report on Medway STC, said:

*The report reads like an apologia for the private company running the institution and is so superficial as to be almost meaningless.*<sup>149</sup>

Furthermore, it is not at all clear whether independent advocates have any proactive role in providing children with information about their rights and assisting them to exercise these rights. The Prisons and Probation Ombudsman this year reported that the YJB '*expressed concerns that any system prompting young people to request an advocate [to help with adjudications] could be seen as 'leading the service' rather than allowing it to be shaped by the needs of young people themselves*'.<sup>150</sup> This institutionalised



response shows at best a half-hearted commitment to children having access to outside sources of help.

That one centre (Hassockfield) uses telephone calls to parents as part of its “incentive scheme” – with Ofsted inspectors reporting that children on the “lower level” are only allowed to talk with their parents for several minutes before the line is disconnected – is another major safeguarding concern. Restricting children’s telephone contact in this way is very probably in breach of the STC Rules (if children are paying themselves for the calls) – though this has never been pointed out in inspection reports. The latest inspection report refers to children and parents being surveyed about phone contact and the

majority supporting the incentive scheme but asking for an increase in the minimum permitted time (it appears to have then been raised from five to seven minutes).<sup>151</sup> It is disgraceful that inspectors regurgitate this information so uncritically without any reference to the law. The October 2009 Hassockfield inspection report notes the ‘[p]ractice in relation to the use of telephones has not changed since the centre opened ten years ago’.<sup>152</sup> This begs the question: how many children have had telephone calls to parents abruptly and illegally cut short over the past decade?

At the end of October 2010, the Ministry of Justice released its updated report on the action taken in response to the coroner’s recommendations following the inquests into the restraint-related deaths of 15 year-old Gareth Myatt and 14 year-old Adam Rickwood. This shows that, more than six years after two children died following restraint, there is still no requirement on privately run child prisons to record the child’s version of events when they have been restrained. The YJB’s role is apparently confined to publicising ‘emerging good practice’ – see below.<sup>153</sup>

In June 2010, CRAE asked the Ministry of Justice for information relating to the independent review on the use of restraint at Castington YOI in Northumberland. The previous year the Chief Inspector of Prisons had reported that 10 children and young adults had suffered broken bones following restraint: she had called for an independent inquiry into how the injuries had occurred. The Ministry of Justice treated CRAE’s enquiry as a Freedom of Information request; refused to name the individual leading the review; said it had no plans to publish the report; and noted without any regret that children had not been interviewed as part of the review, or given assistance to seek legal representation.

Following an appeal, we received a redacted copy of the report at the end of September 2010 (the name of the person leading the review blanked out throughout). This reveals that:

- Six children sustained wrist fractures following restraint in Castington YOI between 2007 and 2009

#### Extract from the Government’s (updated) response to coroners’ recommendations following the inquests of Gareth Myatt and Adam Rickwood

Coroner’s recommendation	Action taken
<p>Every Statutory Incident report involving the use of PCC should contain full details of what happened, statements by those involved, any injury to a trainee or to staff, reasons for the use of PCC and reasons why other means of dealing with the situation were not used or had proved unsuccessful.</p> <p><b>Such reports must also include a statement by the trainee, in their own hand where possible, and the form should provide the opportunity for a trainee to report any injury (our emphasis).</b></p>	<p>A significant number of young people that are placed in any secure establishment have low literacy and numeracy skills. Many cannot read or write on admission. In addition, for a number of young people English is not their first language. On that basis, a system which relies heavily on the young person writing on a form may not be the best way to ensure that the experience of a young person is recorded.</p> <p>Rainsbrook [where Gareth Myatt died following restraint] has adopted Restorative Justice Interventions which are undertaken following every physical intervention with the young person ... This process ensures the young person’s voice and view of what happened is taken into account.</p> <p>The Youth Justice Board have [sic] disseminated this as an example of emerging good practice in the secure estate.</p>

## CRAE's request for information about the Castington Review

## What CRAE asked

The name and position of the person leading the inquiry.

The anticipated date on which the inquiry will publish its report.

Whether any of the young people who suffered fractures or suspected fractures during the use of control and restraint techniques, as referred to in the Chief Inspector's report, have their own legal representation at the independent inquiry.

## Ministry of Justice initial response

The name of the person leading the review is exempt under Section 40 (Personal Information) of the Freedom of Information Act. Section 40(2) of the FOIA states that personal data relating to third parties (i.e. a party other than the person requesting the information) is exempt information if one of the conditions in Section 40(3) is satisfied. It is my view that disclosure of this information would breach one or more of the Data Protection Principles in the Data Protection Act 1998 (DPA). For example, disclosure would breach the fair processing principle, as it would be unfair on the person who the personal data relates to, and they have a reasonable expectation that the Department would hold that information in confidence.

There are no plans to publish the report.

The review included consideration of previous reports and recommendations; the circumstances surrounding such incidents including procedures in place for maintaining order such as Incentives and Earned Privileges reviews and strategies for conflict resolution; the application of control and restraint policy locally; debriefing arrangements; stakeholder engagement and; a comparative analysis of similar establishments. **As the review's focus was on the processes rather than the incidents themselves, the young people referred to in the inspection report did not form part of the review and therefore did not require legal representation (our emphasis).**

- Not one of these injuries resulted in an independent investigation
- Previous surveys had reported staff winding up children and young adults held at Castington, and complaints not being properly investigated
- *'[N]one of the wrist fractures were in incidents where staff had to restrain trainees who were fighting and most of the fractures occurred in either cells or interview situations not in public areas'*. The review explained: *'assaults on staff were well below some of the comparator prisons so we were surprised to see so many of the injuries were after incidents where staff stated they were at risk of assault'*
- The role of the YJB in protecting children was unclear
- The review's recommendations included: all incidents involving a child being seriously injured or making allegations should lead to a child protection investigation; advocates should be routinely invited to attend debriefs with children who have been restrained; and staff should be trained in de-escalation techniques.<sup>154</sup>

21.5 – total number of social worker posts in 16 young offender institutions

10.5 – number of social worker posts vacant

## Parliamentary question, March 2010

In February 2010, the same month the Castington review reported, it was announced that children's places at Castington were to be decommissioned. There was no reference to children having suffered broken bones following restraint: the reason given was *'considerable spare capacity'*.<sup>155</sup>

### 36 Abolish all methods of physical restraint for disciplinary purposes



Education law permits the use of force for good order and discipline and in YOIs staff have wide powers to restrain children. It is not at all clear whether restraint for good order and discipline has ceased in STCs, and for how long this occurred in breach of the STC Rules. CRAE continues to push the Ministry of Justice to establish an independent judicial inquiry to establish the truth (see above for more detail).

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



The "reasonable punishment" defence, which under the Children Act 2004 still allows parents and those acting *in loco parentis* to justify common assault on children, continues to deny children's equal right to respect for their human dignity and physical integrity. The Children are Unbeatable! (CAUI) alliance of over 600 organisations, and more than 200 parliamentarians, continues to campaign for equal protection.

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



Corporal punishment is explicitly prohibited in state and private schools, care settings including day care and childminding but it continues to be permitted in a range of settings where adults are acting *in loco parentis* – including in madrassahs and Sunday schools and by sports coaches, babysitters and nannies.

In January 2010, former Children's Secretary Ed Balls asked the then Chief Adviser on the Safety of Children, Roger Singleton, to provide advice on amending the law relating to the "reasonable punishment" of children. While CRAE, CAU! and many others argued that the UK should fulfil its human rights obligations by removing the "reasonable punishment" defence completely, Singleton reported in March 2010 and recommended that the "reasonable punishment" defence be removed from everyone outside the child's family (but kept for family members).<sup>156</sup>

The former Children's Secretary accepted Singleton's recommendations (he made three in total) and indicated the Government would consult on necessary legislative changes (it wasn't clear whether this would be public). The general election was announced less than a week later, so no further progress was made. It is not yet known whether the coalition Government plans to make any changes to the law relating to "reasonable punishment".

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



The revised *Working Together to Safeguard Children* statutory guidance, published in March 2010, does not even mention physical punishment, let alone advise on how professionals may discourage it.

There are just two references to violence being a human rights abuse in the 390-page document – in relation to forced marriage and honour-based violence, and trafficking. While fundamentally important, it is notable that these abuses happen to adults as well as children; they have been "discovered" in recent years; and both adult and children's lobby groups are campaigning for change. By contrast, physical punishment is engrained in our culture and its victims are children alone.

The guidance only contains two references to children's dignity – one in relation to children living away from home, the other in relation to children in hospital.

While there has not been any Government led or sponsored awareness campaigns about children's right to mental and physical integrity, the Home Office in November 2009 announced it would be running a campaign early in 2010 to encourage young people not to use or tolerate any form of violence from their peers.<sup>157</sup>

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



The Families and Relationships Green Paper, published by the former Government in January 2010, stressed the importance of children learning at school the value of 'respect and consent within

*relationships of all kinds, including within intimate relationships*'.

The focus here was on children rejecting adult-to-adult violence (or children being the unintended victims of domestic violence); there was no mention of the importance of non-violent parenting in the Green Paper.<sup>158</sup> Guidance to local authorities on parenting and family support similarly did not include any reference to non-violent parenting.<sup>159</sup>

In June 2010, the Deputy Prime Minister announced a new Ministerial task force on children and families. He asserted the coalition Government's view of the family's position *vis-a-vis* the state as '*independent but supported*'. Clegg explained that the task force would focus on five aspects of family life: this did not include encouraging non-violent relationships.<sup>160</sup>

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



The revised *Working Together to Safeguard Children* guidance makes no reference to the UN Violence Study, and the UK still does not have a national strategy to end violence against children (one of the overarching recommendation of the UN Study). However, the former Government did make a series of commitments to end violence against women and girls, the former Children's Minister noting in March 2010 that '*Violence against women and girls has a devastating impact and we are committed to doing all we can to increase protection, raise awareness and punish offenders*'.<sup>161</sup>

The coalition Government has announced its intention to draft a cross-government strategy to prevent violence against women by the end of April 2011.<sup>162</sup> There has been no similar announcement in relation to violence against children.

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



The UN Violence Study reported in 2006, and the majority of the recommendations should have been acted on by member states by 2009. The former Government never engaged professionals or the public (including children) in taking action to implement the Study's recommendations. At the time of writing, it is not known whether the coalition Government will continue this strategy of silence.

# Family and alternative care



## Key to progress in meeting the recommendations of the UN Committee on the Rights of the Child



Significant improvement in past 12 months



Significant deterioration in past 12 months



No significant change (ongoing violation and/or failure to adhere to Convention on the Rights of the Child)



Already achieved



At risk of significant deterioration



Potential that this recommendation will be met shortly

“ Nearly a quarter of families with a disabled child are going without heating; more than 40% have applied for a charity grant; and almost three-quarters (73%) are going without days out and family leisure time. ”

**Contact a Family, July 2010**

“ Try their hardest to keep [siblings] together but if they don't, make sure they don't drift apart and become more like distant relatives than brothers and sisters. ”

**Child in care, 2009**

“ Whilst other young people their age are out celebrating, young people leaving care in further education must spend their 18th birthday putting in their claims for income support and housing benefit/local housing allowance. ”

**Leaving care manager, March 2010**

“ The number of children that you have is a choice. And what we're saying is that if people are living on benefits then they make choices but they also have to have responsibility for those choices. It's not going to be the role of the state to finance those choices. ”

**Jeremy Hunt MP, Secretary of State for Culture, October 2010**

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



In July 2010, the Family and Parenting Institute (FPI) issued a report card on the extent to which the UK is “family friendly” – the overall grading was C minus, dropping to D for the cost of raising a child; D for affordable housing; and D for the way in which the country’s most vulnerable children are treated. The best measure – B – was awarded to work/life balance: the FPI welcomed in particular the coalition Government’s promise to extend the right to request flexible working.<sup>163</sup>

The Institute for Fiscal Studies examined the impact of the October 2010 Spending Review on different groups within the population and concluded: *‘[The] Government has refocused benefit spending away from families with children and towards pensioners’*.<sup>164</sup> The Daycare Trust’s analysis reports some gains but mostly losses, including:

- 15 hours free educational entitlement for three and four year-olds protected
- Poorest two year-olds will receive 15 hours free educational entitlement from 2012
- Sure Start budget protected in cash terms but real term decrease of 9%
- The ending of most ring-fenced funding to local authorities could jeopardise Sure Start, as might moving away from a universal service
- Changes in tax credits will make childcare costs even more unaffordable
- The increase in the working hours requirement (from 16 to 24) for couples with children *‘may have a disproportionate effect on black and ethnic minority families’*.<sup>165</sup>

The coalition Government announced in June 2010 that it would remove the new Health in Pregnancy grant in January 2011.<sup>166</sup> This was worth £190 to any pregnant women receiving health advice from a doctor or midwife during pregnancy. Also in June 2010, Ministers announced the restriction of the Sure Start maternity grant of £500 for pregnant women on low incomes to the first child only.<sup>167</sup>

Ahead of the announcement that Child Benefit would be recovered from a parent that pays the higher income tax threshold, the Child Poverty Action Group warned Ministers against retrenchment (at the time, restricting the payment for children under 16 was being considered):

It is because Sure Start Children’s Centres are open to all that they have been so effective at reaching the parents who would not normally use such services but who stand to gain the most from them, and this must not be put at risk.

Daycare Trust, October 2010

*Universal child benefit reaches more poor families than any means-tested forms of support. It recognises the importance of children, supports families in and out of work and in times of family transition.*<sup>168</sup>

In the context of “appropriate assistance”, an interesting case was reported in the Local Government Ombudsman’s (LGO) digest 2008/09 concerning a grandmother caring for her step-granddaughter. The local authority had failed to tell her that the support they were providing would cease once she had successfully applied to the court for a residence order. The LGO upheld the complaint and ordered the council to pay the grandmother £7,500 compensation and £90 per week while it reconsidered her entitlement to a residence order allowance.<sup>169</sup>

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



As at 31 March 2009 there were 140 children in care who were primarily there because of low income; this had increased to 170 children by end March 2010. During 2008/09 70 children entered care primarily because of low income, rising to 110 children during 2009/10, a 57% increase.<sup>170</sup>

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



In January 2010, the Children’s Rights Director published a report about accessing advice following consultation with 351 children in care and leaving care. The findings included:

- 76% get advice and information from social workers, 71% from friends and 63% from parents
- Only 27% get advice and information from an advocate
- 60% say they get all the advice they need, 27% get nearly all the advice they need, 12% don’t get much of the advice they need and 1% don’t get any of the advice they need
- 12% of children want advice about their emotional, physical and sexual well-being, 8% how to look after themselves, 6% information about their families and 5% about children’s rights.<sup>171</sup>

In 2008 and 2009, 921 and 1,195 children respectively took part in the Children’s Rights Director’s care monitor – all were in receipt of social care services. Of the children that took part in the 2009 survey:

- 73% knew how to make a complaint (75% in 2008)
- Children in children’s homes were the most likely to know how to make a complaint; students attending residential FE colleges were the least likely

## 95% of social workers believe they should be spending more time working with children and less time on the bureaucratic paperwork imposed by central and local government.

BASW poll, October 2010

- One in three that responded to the question about making a complaint said they had actually made a complaint (43% in 2008)
- Just one in six (16%) who had made a complaint had used the council's official complaints procedure – just one in 10 (11%) with the assistance of an advocate. The majority of children (30%) had made a complaint through a social worker
- 65% of children said their complaint had been sorted out fairly but 15% said they had never been told what had happened to their complaint
- 50% knew how to get an advocate (58% in 2008); 31% did not know what an advocate is (up from 26% in 2008).<sup>172</sup>

A survey of 44 local authorities by The Children's Society found that 22 authorities were able to access independent advocacy for children with complex communication needs, but only 12 (27%) had sufficient provision to meet demand.<sup>173</sup>

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



All children who are looked after or provided with accommodation by a local authority must have their care and circumstances reviewed within four weeks and every six months thereafter.<sup>174</sup> The independent reviewing officer must ensure the child's views are understood and taken into account; and provide assistance to a child who wishes to bring proceedings under the Children Act 1989 in order to obtain legal advice and appropriate representation.<sup>175</sup>

Government statistics released in November 2009 show that of 58,800 children required to have a review during 2008/09:

- Less than half (48%) attended the review and spoke for themselves
- 17% were aged under four and so discounted from the data collection (the former Government considered these children too young to participate in their own review)
- 16% did not attend but were represented by an advocate (55% of these children were aged 10 and over)

**“I've still got questions, such as where am I going to live. I'll find it strange sleeping in a place alone”.**

Care leaver quoted in Ofsted report, 2009

- 11% did not attend but conveyed their feelings through a “facilitative medium”
- 4% (2,100 children) did not attend and their views were not conveyed to the review (860 four to nine year-olds; 720 10 to 15 year-olds; and 520 aged 16 and over)
- 180 children attended their review, didn't speak or communicate their views nonverbally and didn't ask for an advocate to assist them (80 children aged 4 to 9; 60 aged 10 to 15; and 40 aged 16 and over).<sup>176</sup>

Regulations coming into force in April 2011 will require social worker visits to children in care (though not those in pre-adoption placements) to take place within a week of their placement and then at least every six weeks for the first 12 months, and then at intervals of no more than three months.<sup>177</sup> These visiting duties also apply to children on care orders in custody (less frequent visits are required for care leavers and those looked after under Section 20 of the Children Act 1989). The local authority representative must ordinarily speak with the child in private.<sup>178</sup> Similar requirements already exist for children who are being privately fostered.<sup>179</sup> Children who were consulted by the Children's Rights Director about the frequency of social worker visits said they should occur at least once a month, with extra visits if the child ‘has problems, needs to talk or is unhappy’.<sup>180</sup> The former Government reported that three-monthly visits after children had been looked after for 12 months were considered to be insufficient by respondents to its public consultation.<sup>181</sup>

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



There has not been a specific Government-led investigation into why so many disabled children remain in long-term institutional care, as recommended by the UN Committee. Indeed, when asked in October 2009 what plans it had ‘to estimate the number of children with disabilities in long-term institutional care’, the former Government replied:

*There are no plans to estimate the number of disabled children who are in residential settings.*<sup>182</sup>

Between July and November 2009, a national survey was conducted for the Government of the views of parents of disabled children about the support provided to them from education, health and social services. This showed that satisfaction had increased from an average score of 59 in 2008/09 to 61 in 2009/10 (the highest score is 100). Health services scored highest for parental participation (average 61); education the lowest (average score 48); and care and family support an average rating of 53.<sup>183</sup>

Care planning regulations (effective from April 2011) require that disabled children who have short breaks (placements lasting no more than 17 days or a total of 75 days in a 12 month period) must be visited by the local authority within three months of the



first placement and then at intervals of no more than six months; and must have their care and circumstances reviewed within three months of their first placement and every six months thereafter.<sup>184</sup>

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



The National Care Advisory Service reported in March 2010 that 'The benefits system is a poor replacement for the financial support that most people receive from their families'. It recommended that all financial support for care leavers be provided by local authorities under Section 24 of the Children Act 1989 (and then recouped by the local authorities from the benefits budget).<sup>185</sup>

The last Ofsted review of leaving care services (in six local authorities, three secure children's homes and one STC) took place in 2008. Its findings were published in 2009 and included:

- Of 30 care leavers surveyed about being ready for leaving care, only five felt 'totally prepared'. 18 rated themselves at level five or under (where 10 is fully ready); and eight reported they were 'not at all ready to go'
- Just two of the six local authorities showed 'strong commitment to care leavers through policies to retain their looked after status to 18 years of age'

Disabled children are three to four times more likely than non-disabled children to be abused or neglected. They are more susceptible to bullying and to mental health disorders. Their families are more susceptible to higher levels of stress, lower levels of parental wellbeing and poverty. It is therefore particularly important that good services are available to these families and that the services are provided with appropriate safeguards.

**Short breaks statutory guidance, March 2010**

- Three of the "secure" establishments provided 'good' preparation for leaving care while the fourth was just 'satisfactory'. However, the "locked" environment often worked against young people developing the necessary skills and confidence for living independently:

*Routines in the secure settings visited (for example, set times for young people to be locked in their rooms) offered restricted opportunities for care leavers to learn how to make daily choices or regularly practise their independent living skills.<sup>186</sup>*

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



Section 22C of the Children Act 1989 (as amended by the Children and Young Persons Act 2008) sets out priorities for making care placements. However, at the time of writing this part of the Act has not come into force. The Act states that local authorities must give preference to placing a child with a relative, friend or other person connected with the child who is a local authority foster parent. In making any placement, the local authority must ensure that: it allows the child to live near their home; does not disrupt the child's education or training; if the child has a sibling for whom the local authority are also providing accommodation, it enables the child and the sibling to live together; and, if the child is disabled, the accommodation provided is suitable to his or her particular needs.

Of 370 children in care consulted by the Children's Rights Director:

- 46% had lost all contact with their birth father
- 18% had lost all contact with their birth mother
- 12% had lost all contact with their siblings
- 35% had lost all contact with all the friends they had before coming into care.

**Keeping in touch report, December 2009**

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



A Government review of children of offenders reported in 2007 that:

*...there are around 160,000 children with a parent in prison a year. This is around two and a half times the number of children in care, and over six times the number of children on the Child Protection Register.<sup>187</sup>*

"The minute my colleague spoke to me about the importance of the three teenage children of Mrs M, I started to see them not as three small citizens who had the right to grow up into big citizens but as three threatened, worrying, precarious, conflicted young boys who had a claim on the court, a claim on our society as individuals, as children, and a claim not to be treated solely as extensions of the rights of the mother, but in their own terms."

**South African judge Albie Sachs reflecting on why he ordered that a mother not be imprisoned because of her children's rights (*S v M*), Guardian newspaper, July 2009**

Action for Prisoners' Families reported in September 2010 that, while the majority of prison visitor services are considered to be excellent, problems remain:

- Visitors are often prohibited from taking buggies into the visits' hall. The charity asks: *'Where do you put a sleeping baby or tired toddler when the tables and chairs are all screwed to the floor?'*
- The provision of food and refreshments varies from prison to prison, with some only offering vending machines: families will have often travelled many hours on public transport to get to the prison
- Some prisons do not have nappy changing facilities.<sup>188</sup>

Kids VIP, a national charity that promotes the rights of children to maintain contact with imprisoned relatives, undertook a review this year of prison-visiting facilities for children. Following interviews with 111 prison visits teams and play and visitor centre providers, they found that only a third provided lockers for visiting families and only 15% had purpose-built play areas.<sup>189</sup> Following a visit to the UK in 2008, the European Committee for the Prevention of Torture urged the Government to make improvements to the facilities and arrangements for family prison visits.<sup>190</sup>

A recent report by Barnardo's looking at the impact of parental imprisonment on children made several recommendations to improve support for children, including ensuring that the courts are able to consider the impact on the child of a defendant *'of any sentence they may make'*.<sup>191</sup> In 2007 (the latest figures available), 17 parents were imprisoned as a consequence of their child not attending school; 76% (13) of these were mothers.<sup>192</sup> CRAE asked children with a relative in prison about their experiences in order to influence new Council of Europe child-friendly justice guidelines. Children said they were made to *'feel like they were prisoners as well'* as a result of the security (including search) procedures.<sup>193</sup>

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



There is no evidence of Government having regard to the recommendations of the Day of General Discussion in developing law, policy and services for children without parental care. Adherence to these recommendations could have the positive



effect of ensuring equal protection no matter where children are placed (e.g. the same rights protection in children's homes, residential schools, immigration detention and custody).

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



Official statistics show no progress between 2008 and 2010 in the speed at which children entering care are assessed as requiring adoption, adoptive parents are found, and the adoption secured.

**Table 6: Time children have to wait for adoption, 2008 and 2010**

	2008	2010
Average time between entry into care and decision that child should be placed for adoption	11 months	11 months
Average time between decision to place child for adoption and matching of child and adopters	8 months	9 months
Average time between date of matching and date child placed for adoption	1 month	1 month
Average time between date child placed for adoption and the date child adopted	10 months	10 months
<b>Total average time between entry into care and adoption</b>	<b>2 years, 6 months</b>	<b>2 years, 7 months</b>

For infants under one year, the time period between entry into care and adoption was the same in 2010 as it was in 2008 – two years, two months. For children aged seven or over, there was a two-month increase in average waiting time – to three years, eight months.<sup>194</sup>

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



There is no central monitoring – within or outside Government – of the extent to which children in England are subject to violence, sexual abuse, neglect, maltreatment or exploitation. Data is dispersed across child protection statistics, serious case reviews, criminal statistics and the British Crime Survey (which itself only adequately collects violence information from those aged 16 and above).

In July 2010, Prisons Minister Crispin Blunt reported to Parliament that figures are not available showing the number of prosecutions or convictions for cruelty to or neglect of children by foster parents.<sup>195</sup> This information is also unavailable for children in children's homes and other residential settings. More positively, the Prisons Inspectorate and Youth Justice Board's annual survey of children in YOIs reports on their experiences of violence and the extent to which they feel safe.

Over half of young people who commit an offence have been a victim of crime – twice the rate for non-offenders.

**Healthy Children, Safer Communities Government strategy, December 2009**

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



In March 2010, the former Government was asked what training was available to help staff better support children affected by domestic abuse. The then Schools Minister, Diana Johnson MP, replied:

*The Government are providing over £170 million for 2009-11 for local authorities, working with partners, to implement Think Family reforms and projects to secure better outcomes for children and families with additional needs, including those affected by domestic violence.*<sup>196</sup>

On 24 May 2010, the coalition Government announced the removal of ring-fenced funding to local authorities, therefore jeopardising expenditure on domestic violence training.<sup>197</sup>

### 55 Strengthen support for victims of violence, abuse, neglect and maltreatment in order to ensure they are not victimised during legal proceedings



Last year, the NSPCC published the results of its study into the experiences of young witnesses in legal proceedings (undertaken between May 2007 and October 2008). Children's experiences did not match up to the policy goals of government departments and public agencies.<sup>198</sup> In February 2009, the Ministry of Justice summarised the Government's plan for improving the criminal trial process for young witnesses. This included:

- The retention of Section 28 of the Youth Justice and Criminal Evidence Act 1999 (providing for video-recorded cross examination and re-examination), to be implemented following the publication of guidance
- Increasing the availability of live link facilities
- More flexibility for young witnesses to decide how they want to give evidence (this was subsequently included in the Coroners and Justice Act 2009)
- New guidance from the Crown Prosecution Service reminding prosecutors of the special measures in Section 25 of the 1999 Act pertaining to young witnesses and their parents/guardians
- Greater consideration to concealing the images of children giving evidence by live link (the NSPCC and other organisations had strongly advocated anonymity, but the Criminal Bar Association said it could breach the defendant's right to a fair trial)
- Providing an intermediary to vulnerable child defendants, as well as a national information leaflet about appearing in court (with no immediate plans to produce a Young Defendants Pack seven years after this was first proposed by the Home Office<sup>199</sup>)
- Extending to age 18 eligibility for special measures (this was subsequently included in the Coroners and Justice Act 2009)
- Revision of guidance on pre-trial therapy for child witnesses
- Making provision for children to have a supporter in the live link room (this was subsequently included in the Coroners and Justice Act 2009).<sup>200</sup>

Two very welcome further amendments were made to the 1999 Act by the Coroners and Justice Act 2009 – provision for a child defendant to be cross-examined by an intermediary; and extension to age 18 of children being protected from cross-examination by the accused in person (previously aged 17).

The Criminal Procedure Rules have been updated to include the new special measures directions for witnesses<sup>201</sup> and a circular from the Ministry of Justice emphasises the importance of ascertaining the views of each witness about any special measures.<sup>202</sup>

## 56 Provide access for child victims of abuse to adequate services for recovery, counselling and other forms of reintegration



The Association of Directors of Children's Services has reported increased demand for child protection and looked after services at a time of severe budget constraints. Some of this has been attributed to the impact of the death of Baby Peter Connolly, but there are other contributing factors such as increased public and professional awareness; a growing child population; the effects of the *Southwark* judgment<sup>203</sup> (the increase in child protection investigations concerning 16 and 17 year-olds is notable); and 'more complex cases where parental factors are affecting the children such as domestic violence, substance misuse and mental health'.<sup>204</sup> Meanwhile, just 20% of all English local authorities have given 'solid commitments' to the British Association of Social Workers that they will protect frontline social work services for children and vulnerable adults in the face of cuts.<sup>205</sup>

A three-year study about safeguarding 11 to 17 year-olds was published this year. It found that the needs of this age group are not always met by a child protection system that gives priority to younger children. The attitude of professionals was seen as a barrier preventing children from gaining support. A 15 year-old girl explained:

*I suppose they need to be sort of not as dismissive ... when we first went into the [police] station I got the feeling we were looked down on ... I suppose they should be more welcoming and have more people on hand at police stations and things like that specifically for young people cos when I first went and I spoke to someone who I don't think had anything to do with child protection or anything like that ... if there was more people, people who were aimed at talking to younger people then people would feel more able to sort of speak out and come forward ...*<sup>206</sup>

# Basic health and welfare



## Key to progress in meeting the recommendations of the UN Committee on the Rights of the Child



Significant improvement in past 12 months



Significant deterioration in past 12 months



No significant change (ongoing violation and/or failure to adhere to Convention on the Rights of the Child)



Already achieved



At risk of significant deterioration



Potential that this recommendation will be met shortly

“ In England, people living in the poorest neighbourhoods will, on average, die seven years earlier than people living in the richest neighbourhoods ... Even more disturbing, the average difference in disability-free life expectancy is 17 years ... Social and economic differences in health status reflect, and are caused by, social and economic inequalities in society. ”

**The Marmot Review, February 2010**

“ It will come as little surprise that we on these [Conservative] Benches still feel very strongly that the public sector duty regarding socio-economic inequalities should be removed from the Equality Bill ... It will not create a new equality strand; or a justiciable right for individuals; or address discrimination against individuals on account of socio-economic factors; or affect or determine operational decisions; or require public bodies to use their resources to remove unequal outcomes in every case that is identified. I am troubled by the fact that people may receive false hope ... ”

**Baroness Warsi, March 2010**

“ Within [Department of Health], children and young people must compete for priority and attention against powerful other interests and needs, not least of older people, who have significant political clout. ”

**Sir Ian Kennedy, September 2010**

“ I'm very depressed. I don't know how to feel happy any more. Everything has gone bad and no one wants to listen to me. ”

**ChildLine caller, 2008/09**

## 57 Develop a comprehensive national strategy for the inclusion of disabled children in society



The UK Government has not yet developed a comprehensive national strategy for the inclusion of disabled children in society, though the former Government's *Aiming High for Disabled Children* programme went some way towards this.<sup>207</sup>

In July 2010, Children's Minister Sarah Teather announced:

*Disabled children are at the heart of this coalition Government. We want to make sure that the most vulnerable children get the best quality of support and care. Children with special educational needs and disabilities should have the same opportunities as their peers. The system needs to be more family friendly so that parents don't feel they have to battle to get the support their child needs.*<sup>208</sup>

The Minister said a Green Paper on SEN and the lives of disabled children, together with regulations on the local authority duty to provide short breaks under the Children and Young Persons Act 2008, would be published in autumn 2010.

In September 2010, the coalition Government invited views to inform its Green Paper, stating that '*...each [child] deserves the best possible chance to fulfil their potential. The right opportunities – in and outside of school – are really important to their happiness and future wellbeing*'<sup>209</sup> The guiding principles of the Green Paper will include greater transparency; increased involvement of parents (children not mentioned) in decision-making; more effective use of resources; and '*high expectations of participation in society and the economy for young people with special educational needs and disabilities*'. One part of the document asks how children and young people can be supported to develop skills for employment and their '*future potential and contribution to society*' – possibly implying they are not full members of society today. The question on involvement in decision-making concentrates on parents.

Based on the content of the call for evidence it seems highly unlikely the Green Paper will represent a comprehensive strategy for the inclusion of disabled children in society. As with previous Government strategies, it looks like the coalition will continue to focus on service provision and the experiences of parents.<sup>210</sup>

## 58 Develop early identification programmes for disabled children



The *Early Support* programme developed by the Labour Government aimed to improve how services for disabled children work together and engage with families.<sup>211</sup> Last year, it was announced that the programme would merge with the *Aiming High for Disabled Children* programme. The coalition Government's

SEN plans are not yet clear. Nevertheless, the precursor document to the Green Paper asks '*How can we identify children's special educational needs earlier, and make sure that they get the support they need as quickly as possible*' raising hope that this will be a priority for the coalition Government.<sup>212</sup>

One of the current research priorities of the Centre for Excellence and Outcomes in Children and Young People's Services is to improve the well-being of disabled children (up to the age of eight) and their families through increasing the quality and range of early interventions.<sup>213</sup> A full "knowledge report" on this topic was published in June 2010. It argues for effective, well-timed and appropriate interventions that anticipate problems as well as respond to them. The report notes that at present there is little information publicly available about the impact of early interventions on young disabled people and their families.<sup>214</sup>

## 59 Undertake awareness-raising campaigns on the rights and special needs of disabled children, encouraging their inclusion in society and preventing discrimination and institutionalisation



There has been no public awareness-raising campaign specifically on the rights of disabled children. However, the EHRC launched an inquiry in December 2009 on disability-related harassment and how well public authorities are addressing this.<sup>215</sup> A report with recommendations is expected in spring 2011. In September 2010, the EHRC published a guide on the Convention on the Rights of Persons with Disabilities (CRPD).

## 60 Provide training for professionals working with disabled children



The former Government's response to the review of Child Adolescent and Mental Health Services (CAMHS) committed to '*a programme of action to support the workforce, including support in relation to children with learning disabilities and children at risk of self harming*'.<sup>216</sup>

In December 2009, the former Government issued its response to Lord Bradley's review of the treatment of people with mental health problems and learning disabilities in the criminal justice system: this set out a number of plans to improve workforce training.<sup>217</sup>

Deep cuts in public services inevitably threaten training and support budgets. The Every Disabled Child Matters campaign has warned of "panic cuts" to local authority services to disabled children and their families, some introduced with only a week's notice to families.<sup>218</sup> Mirroring the Chancellor's public consultation on the Spending Review, many local authorities are asking local people to decide where the cuts should fall: Bolton council, for

example, is consulting on proposals to save £150,000 in services to disabled children and their families. This includes reducing an already tiny carer training budget from £4,700 to £2,400.<sup>219</sup>

## 61 Take all necessary measures to ensure that protective legislation, programmes and services for disabled children are effectively implemented



The Equality Act 2010 completely replaces the Disability Discrimination Act, though the protection relating to disability mainly stays the same. Additional provisions that could have a very positive effect on young disabled people include:

- Protection from discrimination on the basis of association and separate protection from harassment relating to disability (came into force on 1 October 2010)
- Extension of the reasonable adjustment duty to require schools to provide auxiliary aids and services to disabled students (no date has yet been given for its commencement: a Government consultation is expected)
- A public sector equality duty (PSED) replacing the existing disability equality duty (expected to come into force in spring 2011). The PSED changes the terminology to ‘discrimination arising from a disability’ (as a result of the Malcolm judgment<sup>220</sup>) and extends reasonable adjustment requirements to include making information available in accessible formats.

These advances in legal protection have to be stood next to the withdrawal of services for disabled children as a result of public expenditure cuts. The Every Disabled Child Matters campaign investigated the impact of funding cuts on local services for disabled children. Parents, professionals and young people provided information about cuts across a wide range of services including play and leisure, education, transport, health, training and short breaks. Particular concerns were expressed over funding for frontline services and the potential loss of skilled staff through redundancies. Parents and professionals reported a lack of information about how the funding cuts might affect services and called for greater consultation and involvement by local authorities. They warned that cutting services now could lead to more expensive care in the long-term.<sup>221</sup>

A survey by Contact a Family between February and April 2010 found that families with disabled children are incurring high levels of debt and are going without basic essentials:<sup>222</sup>

Many [young disabled people] will lose their only opportunity to interact with other young people their own age [as a result of public spending cuts]. Many parents and professionals were worried about how this would affect the children at a later age.

Every Disabled Child Matters campaign, 2010

Table 7: Families with disabled children missing out on basic essentials

In the last 12 months, have you had to go without any of the following because of a lack of money	Yes	%
Leisure/days out	807	73%
Holidays	754	68%
Clothes	493	51%
Toys	267	28%
Adaptations	277	25%
Heating	251	23%
Childcare	243	22%
Bedding	187	19%
Food	158	14%

### UK's declaration on the right to inclusive education (Article 24, Convention on the Rights of Persons with Disabilities)

The United Kingdom Government is committed to continuing to develop an inclusive system where parents of disabled children have increasing access to mainstream schools and staff, which have the capacity to meet the needs of disabled children.

The General Education System in the United Kingdom includes mainstream and special schools, which the UK Government understands is allowed under the Convention.

## 62 Ratify the International Convention on the Rights of Persons with Disabilities and its Optional Protocol



The UK ratified the CRPD and its Optional Protocol on 8 June 2009. The former Government made an interpretative declaration to permit the long-term continuation of “special” schools.<sup>223</sup> It also entered four reservations, including for children to be educated away from their local community – potentially weakening children’s right to family life and disregarding the concerns expressed by the UN Committee in 2008 about the high number of children living away from home (see page 34).

The Office for Disability Issues (ODI) co-ordinates Government implementation of the CRPD. It is currently consulting on the three main areas the Government should be working on, which has the potential to considerably narrow implementation of the treaty right from the start.<sup>224</sup> Furthermore, it is not clear from the ODI website whether any engagement is taking place with disabled children or those working with them.

In July 2010, in a parliamentary debate on the treaty, the Welfare Reform Minister Lord Freud said the Government is ‘using [the Convention] as a driver to achieve equality for disabled people’. He confirmed that the ODI is co-ordinating implementation, monitoring and reporting across Government and is aware of the need to take



the CRPD into account when developing policies and engaging disabled people in decision-making.<sup>225</sup>

The Minister said the coalition Government intends to remove two of the four reservations (although he did not specify which).<sup>226</sup> When asked whether the treaty would be brought into UK law, the Minister replied that the CRPD ‘...is not a matter of law in this country or in Europe. It is a convention that holds us to account on our performance, and on which we report back to the UN. We will do that in July [2011].’<sup>227</sup>

In December 2009, the EHRC announced it would be conducting awareness-raising activities, and would also consider undertaking an inquiry on the CRPD’s implementation in Britain. It is not clear whether the planned work will particularly consider the rights of disabled children.<sup>228</sup>

### 63 Address inequalities in access to health services through a co-ordinated approach across all Government departments



There is no cross-Government strategy for addressing inequalities in children’s access to health services, and major changes in the operation of the NHS make this even more unlikely to happen.

One of the first main announcements made by the coalition Government was a complete re-organisation of the NHS. The White Paper, *Equity and Excellence: Liberating the NHS*, states that patients will figure at the heart of the NHS: shared decision-making will become ‘*the norm*’; patients will have a choice of provider; the system will focus on personalised care; and ‘... *everyone, whatever their need or background [will benefit] from these arrangements*’.<sup>229</sup>

A new “health premium” is promised ‘*to promote action to reduce health inequalities*’. The equality impact assessment accompanying the White Paper describes in some detail how different groups (including children) struggle to access high quality health services.<sup>230</sup>

The White Paper states that children’s health, education and social care services will work together, though there is little detail about how this will happen in practice. Increased power for GPs is central to NHS reform; Primary Care Trusts are to be abolished (with health improvement responsibilities transferring to local authorities); and new bodies established to ascertain and champion the views of patients and carers.<sup>231</sup>

The Royal College of Paediatrics and Child Health has raised doubts over what “patient choice” really means for people in rural areas, for children with learning disabilities, and for those with mental health problems. It expresses concern over the future of those services that GP consortia choose not to commission.<sup>232</sup> Serious questions remain about the health rights of specific groups such as asylum-seeking children or Gypsy and Traveller children, who already face significant difficulties in accessing GP services.

Sir Ian Kennedy’s review of children’s health services was published two months after the health White Paper. This charts the cultural barriers preventing children from receiving high quality care from the NHS. Problems includes the lack of specialist paediatric training for GPs; poor co-ordination between services; and the low priority given to children within the NHS. Kennedy describes how the fight for space, time and resources for children’s health is further complicated by the fact that one government department does not co-ordinate policy on children. He calls for responsibility for policy relating to children’s health care and wider well-being to be brought together ‘*under one administrative and governmental roof*’.<sup>233</sup>

Kennedy recommends ring-fenced funding for children’s health services and the establishment of a Local Partnership – an organisation dedicated to meeting the needs of children and co-ordinating public services to achieve this goal. He emphasises the importance of children being actively engaged in designing and evaluating services.

The coalition Government’s response is set out in *Achieving Equity and Excellence for Children*.<sup>234</sup> This commits to engaging children and families in designing the best possible health services and acknowledges that greater support for families navigating the health care system is necessary. However, it rejects Kennedy’s proposal

that there should be a 'single organisation with responsibility for all of the public services that support children and young people...'. In a section on "national responsibility", the coalition Government points to the Inter-Ministerial Taskforce on Childhood and Families as evidence that the overall impact of Government policy on children is being considered. It also notes that the Cabinet sub-committee on public health will consider the impact of new policies on public health, including on the health of children.<sup>235</sup>

## 64 Better co-ordinate health policies with those aiming to reduce income inequality and poverty



The Marmot Review of health inequalities, published in February 2010, presents compelling evidence of the link between inequalities in health and socio-economic status. In its opening pages, it states:

*... people with higher socioeconomic position in society have a greater array of life chances and more opportunities to lead a flourishing life. They also have better health ...*<sup>236</sup>

Of the six key policy objectives governing the Review, Marmot gives highest priority to 'giving every child the best start in life'. As such, a significant proportion of the report is devoted to children.

The National Equality Panel's 460-page report, published in January 2010, gives similar messages to the Marmot Review. It shows that life expectancy and educational outcomes are closely linked to socio-economic status; and that inequalities early on in childhood have a major impact throughout a person's life.<sup>237</sup>

The coalition Government has not yet published full responses to either the National Equality Panel or the Marmot Review, so it is not evident how – and if – it plans to tackle health inequalities and whether this fits within a broader drive to combat income inequality and poverty.

## 65 Provide additional resources and support for children with mental health difficulties, including a focus on children deprived of parental care, children affected by conflict, those living in poverty and those in conflict with the law



According to NSPCC casenotes, ChildLine counselled 164 children in care about loneliness in 2008/09. Frequent placement moves; previous abuse and neglect; and finding it hard to trust others contributed to children in care's feeling of loneliness and isolation.<sup>238</sup>

Chapter 2 of the former Government's response to the independent review of CAMHS described its plans for targeted mental health services for vulnerable children.<sup>239</sup> In March 2010, the National Advisory Council reported on how well the CAMHS Review recommendations were being met, as well as

the "stumbling blocks".<sup>240</sup> Although the National Advisory Council identifies some good practice, it concludes that:

*The needs of some children and young people who are vulnerable to poor outcomes are still not being addressed, for example those with learning disabilities; those with an illness or disability; those from black and other minority ethnic communities; asylum seekers; those with conduct disorder or emerging borderline personality disorder; those requiring emergency mental health care; looked after children in particular those placed out of authority, and those making the transition to adult services.*<sup>241</sup>

In December 2009, the former Government published *Healthy Children, Safer Communities*, acknowledging the importance of taking action because '[children and young people in the youth justice system] have far more unmet health needs than other children of their age'. In a very welcome move, the introduction states 'we are determined to satisfy the requirement of the [CRC] that every child and young person should enjoy the best possible health and health services'.<sup>242</sup> The coalition Government's plans for improving the emotional and mental health of children in conflict with the law are not yet clear.

A report from the National Autistic Society (NAS) this year points out that high numbers of children with autism have mental health problems such as anxiety, depression and obsessive compulsive disorder and in many cases they have multiple mental health problems. It describes major problems for children with autism in accessing CAMHS and staff not being able to communicate effectively with children. NAS urges greater Government focus on children with autism in relation to mental health provision; better training; increased specialist autism advice and expertise in CAMHS; and improved planning and commissioning of services to reflect the needs of children with autism.<sup>243</sup>

## 66 Fully implement the International Code of Marketing of Breastmilk Substitutes



The Government has not yet fully implemented the International Code of Marketing of Breastmilk Substitutes. Follow-on formula is still not regulated in the same way as infant formula. Guidance notes were introduced in 2008 but Baby Milk Action reports that '*Trading Standards have found it impossible to apply the Guidance Notes where they go further than the Regulations*'.<sup>244</sup>

In 2008, the then Minister for Public Health Dawn Primarolo commissioned an independent review to investigate the operation of the regulations and guidance notes. The initial report was widely criticised, and subsequently revised. The updated report was published in March 2010: it acknowledges the concerns of Trading Standards and others and recommends '*steps [be] taken to address these*'.<sup>245</sup>

In the run up to the general election, the Liberal Democrats, Green Party and Scottish Green Party signed Baby Milk Action's pledge to work to bring the UK law into line with World Health Assembly requirements.<sup>246</sup> However, the Liberal Democrat commitment to compliance with international law did not feature in the coalition agreement. Despite this, in September 2010 Earl Howe stated:

*The Government fully support the principles of the World Health Organisation (WHO) International Code of the Marketing of Breast-milk Substitutes. The Government also note the United Nations Committee on the Rights of the Child recommendation to implement the code fully...<sup>247</sup>*

## 67 Encourage the inclusion of breastfeeding in nursery training



Little specific action has been taken to encourage the inclusion of breastfeeding in nursery training. However, there have been some positive developments which may contribute to increased take-up of breastfeeding.

The Equality Act 2010, which came into force on 1 October, gives a partial right to breastfeed in public.<sup>248</sup> It is now against the law for a woman to be treated less favourably by service providers because she is breastfeeding. Disappointingly, the former Government failed to give women a legal right to breastfeed in public places<sup>249</sup>, and limited the timeframe within which women are protected from discrimination in relation to breastfeeding to six months.<sup>250</sup>

In March 2010, the former Government launched its strategic vision for the further transformation of maternity and early years services. This said breastfeeding increases '*children's future life chances*' and that positive attitudes towards breastfeeding on the part of fathers increase the likelihood that mothers will breastfeed. The former Government said that information would be circulated both during pregnancy and after birth about breastfeeding; and new mothers would be offered support.<sup>251</sup> It is not yet clear what action the coalition Government will take with regard to the promotion of breastfeeding.

## 68 Promote baby-friendly hospitals



Health Minister Earl Howe reports that the Department of Health promotes UNICEF UK's baby friendly initiative in the NHS.<sup>252</sup> UNICEF UK itself states there are currently 196 maternity hospitals and 73 Primary Care Trusts at various stages of baby friendly accreditation in the UK.<sup>253</sup> This is a significant increase from last year, where the respective figures were 160 and 45. However, there is a stark regional difference in the numbers of children born in baby-friendly hospitals across the country, with 27% of babies in the North-east born in baby-friendly hospitals compared with none in the East of England.<sup>254</sup>

## 69 Provide appropriate reproductive health services for young people



There is still a lack of high quality, accessible and appropriate reproductive health services for young people in England.

The parliamentary Public Accounts Committee notes that, since the National Chlamydia Screening Programme for under-25s was launched in 2008, approximately £100 million has been spent '*but the Government does not yet know what effect, if any, this has had on reducing the prevalence of the infection*'. In 2007/08 only 5% of 15 to 24 year-olds were being tested (the target was 15%), which increased to 16% in 2008/09 (following an increase in the target to 17%). The Committee said the Department for Health showed a '*lack of urgency*' in requiring Primary Care Trusts to test young women, as a result of which '*more young people than necessary are still being infected*'.<sup>255</sup>

Information on sexually transmitted infections (STIs) among children is not disaggregated by age though information released to Parliament shows that 714 under 15 year-olds were diagnosed as having an STI in England in 2009 (720 in 2008).<sup>256</sup>

In October 2010, the coalition Government announced that the Independent Advisory Group on Teenage Pregnancy would be abolished.<sup>257</sup> It is not yet clear what impact this will have on reproductive health services for young people.

## 70 Increase provision of appropriate sex and relationships education in schools



An Ofsted report published in July 2010 on standards of PSHE teaching in primary and secondary schools in England includes SRE in its list of '*weaker areas of provision*'.<sup>258</sup> Ofsted identified several reasons for poor teaching in these areas including: a lack of time in the curriculum for PSHE; low confidence among teachers in dealing with sensitive issues; and insufficient availability of good quality staff training and development. The timing of SRE was also found to be an issue – many students said that it should start in primary school. Some students told inspectors that good SRE in schools was important because they were too embarrassed to talk to their parents about these matters.

In September 2010, a Ten Minute Rule Bill was introduced to Parliament by Labour MP Chris Bryant to make SRE compulsory in all schools. CRAE welcomed the Bill's proposal to introduce a *Gillick* competence test enabling children of sufficient maturity and understanding to decide for themselves whether to opt out of SRE. The Bill was debated in the House of Commons on 8 September but is unlikely to proceed any further.<sup>259</sup> (See also page 22).

In January 2010, the former Government launched a consultation on revised SRE guidance.<sup>260</sup> The intention was for the guidance

to be circulated to schools by September 2010, but this was not issued. Ministers were asked in Parliament whether the coalition Government plans to publish this guidance, and whether their own proposals will be compatible with guidance recently published by the National Institute for Health and Clinical Excellence (NICE) on SRE. The initial response was non-committal<sup>261</sup> but a more reassuring statement followed a few months later from the Children's Minister Sarah Teather:

*We believe that it is vital that all children receive high-quality sex and relationships education ... to ensure that they have the knowledge and skills they need to make the right decisions about relationships and sexual health later in life. We are currently considering how best to facilitate that, within the context of a slimmed down National Curriculum...*<sup>262</sup>



**71 Strengthen mental health and counselling services and ensure they are both accessible for and sensitive to young people**



An NSPCC survey of 1,200 11 to 16 year-olds in the UK found that one in three children feel some emotional distress most of the time and that a significant number do not have anyone to talk to if they are feeling sad.<sup>263</sup> 5,525 children contacted ChildLine in 2008/09 about 'loneliness, sadness and isolation' as their main problem, including 80 children under five. A further 4,399 children raised loneliness as a problem when speaking about other matters to ChildLine. The numbers of children contacting the organisation about loneliness has tripled in the last five years from 1,835 to 5,525.<sup>264</sup>

In January 2010, Ministers pledged that all under-18s receiving specialist mental health services 'will be treated in an environment which is suitable, having regard to their age subject to their needs' by April 2010. More mental health support in schools was also promised.<sup>265</sup> A parliamentary question in February 2010 revealed that children are still being treated in adult psychiatric wards, though the numbers have fallen considerably since 2006/07.<sup>266</sup> (The Mental Health Act 2007 introduced a duty on hospitals to provide age-appropriate accommodation for children – this came into force in April 2010).

**Table 8: Children in age-appropriate mental health settings**

1 <sup>st</sup> quarter 2009/10	
Children on CAMHS ward	37,041
Under 16s on adult ward	23
16 and 17 year-olds on adult wards	2,415
2 <sup>nd</sup> quarter 2009/10	
Children on CAMHS ward	43,389
Under 16s on adult ward	9
16 and 17 year-olds on adult wards	1,624

The National Advisory Council for children's mental health and emotional well-being, established by the former Government in response to the CAMHS Review, issued a report in March 2010 setting out progress towards improving children's mental health services. The report warns against any reduction in funding for services, noting that 'the progress that has been made year on year now needs to be sustained, for the benefit of individuals and society'.<sup>267</sup> The Council's remit has recently been changed to 'act as a sounding board for officials and Ministers' rather than to track progress against the recommendations of the CAMHS Review.<sup>268</sup>

Government guidance for Children's Trusts' commissioners on promoting children's emotional health was published in January 2010.<sup>269</sup> It is unclear whether local councils will be required in the future to collect data related to children's emotional health. National indicators (including the one on children's emotional health) are to be axed and replaced with a single list.<sup>270</sup>

**72 Study the causes of substance misuse in order to provide targeted preventative measures**



There has not been a dedicated study into the causes of substance misuse since this recommendation was made.

Society needs to accept that anyone can have mental health problems and that it is part of life. Our friends, teachers and other adults are scared of our illnesses and that makes us feel we can't speak out. We have been called 'attention seeking', 'drama queens', 'mental', 'weird' ... We all need to talk about how we feel inside.

**Young Minds Children and Young People's Manifesto, 2010**

### 73 Provide accurate and objective information on drug and alcohol to young people



Data from the national Tellus4 Survey revealed that half of all respondents had never had an alcoholic drink. Just over two-thirds of the children who took part said that they had not had an alcoholic drink in the previous four weeks; 4% had been drunk twice in the last four weeks; and 5% reported being drunk three or more times in the previous four weeks.

The likelihood of children reporting being drunk increased with age: 4% percent of those in Year 6, 11% in Year 8 and 28% in Year 10 reported being drunk at least once recently.<sup>271</sup>

The same survey sought information on drug use (but excluded students in Year 6 from these questions). 88% of children said they had never taken drugs – a slight increase on the previous year. However, 11% confirmed that they had taken drugs in 2008, while 9% answered yes in 2009. The data suggests a relationship between receiving advice about drugs and use of drugs:

- The proportion of children in Years 8 and 10 who had taken drugs was greater among those who had not received advice about drugs – 11%
- This proportion was even greater among children who had received advice which they felt was unhelpful – 14%
- Among students in Year 10, drug use was higher amongst those who had not received information on drugs – 21%.

Ofsted's report into the teaching of PSHE, based on inspections of 165 schools between 2006 and 2009, found that students only had a '*rudimentary knowledge*' of the social and physical impacts of alcohol in approximately half of the secondary schools visited. Knowledge about the long-term effects of drug and alcohol misuse was poor. In 15 of the schools inspected, factual knowledge about drugs, including alcohol and tobacco, was deemed to be '*inadequate*' and in '*...a third of the primary schools visited, knowledge and understanding of drugs, including alcohol and tobacco, were two of the weakest aspects of PSHE*'.<sup>272</sup>

A survey carried out for the NHS in 2009 gives valuable information on how children access information about smoking, drinking and drugs.<sup>273</sup> Children said television (71%), parents (63%) and teachers (63%) were their main sources of information. Helplines were the least mentioned source of information (18%). Just over half (59%) said they remembered '*lessons, videos or discussions*' in the previous 12 months. Of these:

- 96% of those who remembered lessons said they helped them think about the risks of drug-taking
- 85% said that these lessons made them realise that taking drugs was illegal

- 76% reported that the lessons made them consider what to do if offered drugs
- 72% said the lessons helped them find out how to get advice or information about drugs.

In January 2010, the parliamentary Health Select Committee called for major reforms to better protect children from alcohol related harm. The Committee described the former Government's response to increasing alcohol consumption as ranging from the '*non-existent to the ineffectual*'. It was particularly critical of the lack of regulation of alcohol advertising and urged the involvement of children in this.<sup>274</sup>

### 74 Ensure support is given to those attempting to end dependency on toxic substances



The National Treatment Agency for Substance Misuse (NTA) says that increasing numbers of under-18s are receiving support for drug and alcohol problems and that provision of support has markedly improved. The NTA's report on substance misuse data from 2008/09 states there has been a significant expansion of specialist substance misuse services for young people and a "levelling-off" of young people needing this support. In 2008/09, 24,053 young people accessed specialist misuse service – an increase of 150 on the previous year.<sup>275</sup> The majority of young people (almost 90%) received support for misuse of cannabis (12,642) and / or alcohol (8,799).

The NTA figures show those accessing:

- Support for problem drug use associated with heroin and crack has fallen more than a third since 2005/06, from 1,081 to 657 in 2008/09
- Services for ecstasy has fallen by a third to 210
- Services for cocaine has increased by more than half to 745.

The report claims that '*treatment and support services are now widely available and anyone in England who needs help can get it quickly*'.<sup>276</sup>

In December 2009, joint guidance by the NTA and the former Government described how drug and alcohol workers can better work with child protection and safeguarding services.<sup>277</sup> In the same month, information and advice for parents and carers on children and young people's use of alcohol was published.<sup>278</sup>

### 75 Adopt and adequately implement legislation aimed at achieving the target of ending child poverty by 2020, including by establishing measurable indicators



The Child Poverty Act 2010, passed in March 2010, introduces four legal targets relating to relative low income, absolute low income, persistent low income and material deprivation. The Act places

a duty on the Secretary of State to meet these targets by the financial year beginning 1 April 2020. It was very widely welcomed. Moving forward, the challenge on Government and others will be to adequately implement the legislation: a national child poverty strategy is expected by spring 2011 (following public consultation). (See also Table 2 on page 16 which summarises the new socio-economic duty on public authorities).

## 76 In such measures, prioritise children and families in most need of support



Children and young people living in absolute poverty and those living in persistent poverty have been given particular protection in the Child Poverty Act 2010. However, there are grave concerns that public spending cuts will lead to further violations of children's economic and social rights. The Institute for Fiscal Studies described October 2010's Spending Review as 'regressive' and changes in Housing Benefit entitlement and pregnancy-related grants, the rise in VAT from January 2011, the removal of Education Maintenance Allowance together with the ending of ring-fenced funding seriously threaten the rights of those children and families in greatest need – see Table 1 on page 11. Nevertheless, given Ministers' ongoing assurances that they will protect those children and families most in need, we judge this recommendation as being potentially achievable very soon.

In July 2010, Labour MP Frank Field was asked to lead an independent review into poverty and life chances.<sup>278a</sup> The Review's remit includes recommending potential Government action to reduce poverty and enhance life chances in line with the Government's financial strategy; and to explore the impact of a child's home environment on their ability to reach their full potential at school. Children are included in the list of people who will be consulted as part of the Review. Findings are expected to be reported at the end of 2010. Given Field has been explicitly told to situate his Review within the context of the coalition Government's financial strategy, it is difficult to be optimistic that its conclusions will bring about the changes necessary to protect the rights of the most vulnerable.

## 77 Extend material assistance and support programmes for children living in poverty, particularly with regard to nutrition, clothing and housing



The coalition Government has not made any announcement that it will increase material assistance for children living in poverty, though the measures relating to "pupil premium", extra hours of early years child care and changes to working tax credit *could* have a positive impact on children living in poverty.

In June 2010, the coalition Government decided not to extend free school meals' entitlement to young children with working parents on low income, earning the Education Secretary the title of "meal snatcher". Children's Minister Tim Loughton sought to reassure Members of Parliament that the coalition Government values, and is very committed to, school meals though claimed the country cannot afford to honour promises made by the former Government.<sup>278b</sup>

Parents from these families told inspectors that they often could not afford to pay for a school lunch, especially if they had more than one child. One family .. had to arrange for the two children to take turns and eat a school meal on alternate weeks.

### Ofsted report on food in schools, June 2010

It is too soon to tell what impact the coalition Government's proposed welfare reforms will have on children living in poverty. The coalition Government says its plans for the new "universal credit" will take 350,000 children out of poverty. The Child Poverty Action Group (CPAG) responds that this must be '*a guarantee not an aspiration*' and urges greater clarity about how the benefit will work in practice. CPAG believes the "universal credit" will fail unless action is taken in relation to the '*lack of jobs, the lack of affordable childcare, employer discrimination [and] poverty pay*'. It is also concerned that the removal of Child Benefit entitlement from higher (male) earners could take resources away from children in the family, as there is no guarantee that fathers will replace the lost benefit (which is paid to the mother).

A variety of measures are available to Ministers wishing to energetically pursue this recommendation from the UN Committee, including:

- Increase tax credits paid when at least one parent is working
- Increase universal Child Benefit
- Introduce universal free school meals
- Substantially increase the minimum wage
- Ensure benefits adequately cover basic family necessities such as bedding, household equipment, clothing and shoes (currently families on benefits have to apply for Social Fund loans).

These measures address the economic and social rights of children whose parents are not in work, as well as those in work, bearing in mind that 53% of children who have one or both parents working live in relative poverty.<sup>278c</sup>

## 78 Re-introduce a statutory duty for local authorities to provide safe and adequate sites for travellers



There is still no statutory duty to provide safe and adequate sites.

The most recent count of Gypsy and Traveller caravans in England shows a decrease from 17,813 in January 2009 to 17,437 in July 2009. The vast majority of these caravans (79%) were on

authorised sites. However, the number of caravans on sites not owned by Gypsies and defined as “not tolerated” rose by almost 50% between January and July 2009 (545 to 958 caravans).<sup>279</sup>

The Criminal Justice and Public Order Act 1994 repealed Part II of the Caravan Sites Act 1968 which placed a statutory duty on local authorities to provide adequate accommodation for Gypsy and Traveller communities. Some legal protection was afforded by the Housing and Regeneration Act 2008, which amended the Mobile Homes Act 1983 to provide security of tenure for tenants of Gypsy and Traveller pitches on public sites.<sup>280</sup> The former Government said it would implement these changes through regulations in 2009, though this never happened. At the end of August 2010, the coalition Government said it would implement the duties. Communities Secretary Eric Pickles said:

*Like the rest of the population, the majority of travellers are law-abiding citizens and they should have the same chance of having a safe place to live and bring up their children.*<sup>281</sup>

Cuts to the Homes and Communities Agency in May 2010 ended the Gypsy and Traveller Programme grants for new sites, reportedly saving £30 million in 2010/11.<sup>282</sup> Baroness Whittaker asked whether the Government felt this would impact on the human rights of Gypsies and Travellers, including on children's right to an education. Lord McNally, Justice Minister, responded:

*We are trying to operate the policies towards Gypsies in the context that they live among us and are protected by our laws and human rights. As with other expenditures, there will be cuts and difficulties, but ... we are looking at those cuts and policies with a strong emphasis on trying to protect the most vulnerable.*<sup>283</sup>

Pickles pledged more stringent action against Gypsies and Travellers parked on unauthorised land (including land which they have purchased):

*... we will not sit back and allow people to bypass the planning rules that everyone else has to abide by. That's why we will strengthen the powers that councils have to enforce against breaches of planning rules ...*<sup>284</sup>

In October 2010, Communities Minister Andrew Stunell told Parliament that Ministers plan to revoke a 2006 planning circular relating to local authority provision of pitches. He said ‘*the Circular will be replaced with a short policy statement and light-touch guidance*’.<sup>285</sup>

# Education, leisure and cultural activities



## Key to progress in meeting the recommendations of the UN Committee on the Rights of the Child



Significant improvement in past 12 months



Significant deterioration in past 12 months



No significant change (ongoing violation and/or failure to adhere to Convention on the Rights of the Child)



Already achieved



At risk of significant deterioration



Potential that this recommendation will be met shortly

“ In terms of what my overall vision for education is, I’ve used the phrase before: I want children to become authors of their own life story. The reason I use that phrase is that I think that education is a process of emancipation, of liberation. ”

**Michael Gove, July 2010**

“ [Academies] are the product of hasty, emergency legislation procedures previously used to deal with Acts of Terrorism or dangerous dogs. ”

**NASUWT, September 2010**

“ I do not approve of the proposal to abolish independent appeal panels ... It is morally wrong to have a decision made by the state about an individual without having the right of appeal. ”

**Sir Alan Steer, October 2010**

“ There’s not just an assumption that we know [the Articles in the CRC], we now understand them and everyone is aware of them. ”

**Child in Rights Respecting School, 2010**

“ Over a quarter of children (29%) believe that adults generally disapprove of children playing, or hanging out, outside where they live. ”

**Play England, July 2010**

## 79 Invest considerable additional resources to ensure the right of all children to a truly inclusive education, in particular children from disadvantaged, marginalised and school-distant groups



Legislation now requires inspections to take account of 'how far the education provided in a mainstream school meets the needs of the range of pupils at the school',<sup>286</sup> in particular those with a disability and those with SEN. The Children, Schools and Families Act 2010 also permits parents to appeal against local authorities over reviews of SEN statements.<sup>287</sup> The provisions followed an inquiry into parental confidence in the SEN system, conducted by the Chair of the Special Educational Needs Consortium Brian Lamb.<sup>288</sup> In response, the former Government set out various plans to address the concerns of parents in addition to the measures in the 2010 Act.<sup>289</sup> It is not yet clear how much of this work will be taken forward by the coalition Government – a Green Paper on SEN is due to be published in autumn 2010.

Just three weeks after taking office, the new Education Secretary Michael Gove unveiled the coalition Government's flagship education policy – the Academies programme – publicly offering all schools 'greater freedom and independence'. The former Prime Minister, Tony Blair, said in 2006 he hoped there would be 400 Academies in place by 2010 (restricted to secondary education);<sup>290</sup> the new Government wants these independent state schools to become 'the norm' in primary and secondary education.<sup>291</sup>

There are serious doubts that Academies can adequately serve students from marginalised, vulnerable and school-distant groups, with evidence of higher rates of exclusions.<sup>291a</sup> Questions have also been raised over Academy admissions policies (particularly relating to religious selection); the ability of Academies to support the rights of disabled children to an inclusive education; and the knock-on effect on other schools in the local area.<sup>292</sup> Many of these concerns were vociferously expressed during parliamentary debates on the Academies Bill – a Bill that was rushed through Parliament using powers normally reserved for emergency legislation.

In July 2010, the coalition Government set out its plans for a "pupil premium" which would ensure disadvantaged children benefit from '...the same opportunities as [those] from richer families'.<sup>293</sup> A consultation on funding arrangements for the premium states that the money will not come from the schools budget but will 'not be ring fenced at school level', giving schools control over how the funding is spent.<sup>294</sup> The Spending Review allocated £2.5 billion to the "pupil premium", although it now appears that some of this funding will be taken from the core schools budget.

Local authorities will be able to apply for additional funding for home educated children where services are provided to them (such as accessing school facilities). Looked after children will be covered by the premium, although there will be a different method

of fund allocation. No information is currently available on whether the premium will apply to children in custody, or to refugee and asylum-seeking children.

Spending cuts inevitably threaten the ability of schools to have the resources and staffing in place to ensure that all children, particularly those from disadvantaged, marginalised and school-distant groups, are able to enjoy a truly inclusive education. One of the first announcements made by Education Secretary Michael Gove was the axing of the Building Schools for the Future (BSF) programme,<sup>295</sup> introduced by the former Government to 'rebuild or renew nearly every secondary school in England'.<sup>296</sup> BSF had been criticised for excessive bureaucracy and wasteful use of resources but there is no doubt that this investment in school buildings was necessary.

More positively, the DfE's business plan has narrowing the gap in educational attainment for children in care as one of its impact indicators.<sup>296a</sup>

Certain groups of children continue to be effectively missing from the education system. Figures published in March 2010 show that school absence is highest for Travellers of Irish Heritage (24.4% of overall absence) and Gypsy Roma children (19.05% of overall absence). Children from Asian and mixed ethnic origin were found to have rates of overall absence above the national average, while children of Black and Chinese origin have absence rates significantly below the average. The statistical release also reveals higher rates of absence (both authorised and unauthorised) in the most deprived areas as compared to the least deprived.<sup>297</sup>

A report published by Ofsted in August 2010 on children 'becoming lost to the system' highlights several challenges for local authorities in ensuring that all children are known about, safe from harm, and receiving an education – these include knowing about all children in the area; maintaining information on children who might be at risk of "going missing" in areas with Academies; and schools not keeping children on the roll when they should be (a significant issue for Gypsy and Traveller children).<sup>298</sup>

A thoughtful, creative, wide ranging curriculum is essential for ensuring that all children are able to receive a fully inclusive education that supports them to develop to their full potential, in line with the requirements of the CRC. Yet, in late 2009, the former Government dismissed the Cambridge Primary Review's proposals for a new approach to primary education. The Review, developed over six years and based on evidence from over 4,000 publications, set out 75 recommendations for transforming primary education, including:

- Instilling respect for children's experiences, voices and rights, and adopting the CRC as the framework for policy
- Developing a new set of aims, values and principles for primary education, to drive the curriculum, teaching and assessment
- Considering raising the school starting age to six

- Giving the highest priority to eliminating child poverty
- Greater use of teacher assessment and use of sample testing.<sup>299</sup>

The coalition Government has indicated its intention to reform the National Curriculum, with less prescription and more “traditional” academic subjects.<sup>300</sup> A curriculum review is expected in late 2010. There are strong fears that traditional subjects will be prioritised over subjects such as PSHE and citizenship. The curriculum only applies to maintained schools.

## 80 Continue and strengthen efforts to reduce the impact of socio-economic background on children’s achievement at school



In 2008/09, 70% of children achieved five or more GCSEs at grade A\* to C, an increase of 4.7% on 2007/08.<sup>301</sup> In the same year, 50.7% of children achieved five or more GCSEs at grade A\* to C including English and Maths – an increase of 2.2% on the previous year. However, the same figures show the gap between the educational attainment of children in the 10% most and least deprived areas has increased by almost 4%.<sup>302</sup>

Further figures reveal that, in 2008/09, 54.2% of students not eligible for free school meals achieved five or more A\* to C grade GCSEs or equivalent including English and mathematics, compared to 26.6% of those eligible for free school meals – a gap of 27.6% (slightly less than in 2006).<sup>303</sup>

Two major reports published this year highlight the negative and long-lasting impact of socio-economic status on children’s educational achievement. The National Equality Panel report concludes that ‘*social background really matters*’, pointing out that differences in socio-economic background both entrench and widen throughout childhood.<sup>304</sup> In relation to education, the report found:

- A significantly higher proportion of boys in receipt of free school meals (FSM) in England achieve lower Key Stage 4 results at age 16 in comparison to those not in receipt of FSM.<sup>305</sup> A similar pattern is revealed among girls in England, although the gap is smaller
- In the least deprived areas, almost 70% of boys achieve results in the top half of the overall range of results yet, in the most deprived areas, only 30% of boys achieve these higher marks.<sup>306</sup>

The EHRC published its first Triennial Review, *How Fair is Britain?*, in October 2010, exploring the state of equality in Britain. It notes that ‘... educational attainment continues to be strongly associated with socio-economic background ...’<sup>307</sup> The Review shows that the negative impact of socio-economic factors on children’s development and educational achievement is striking even at a very young age. Children who are not eligible for FSM are more likely to achieve good levels of development at the age of five than those who are in receipt of FSM. Socio-economic factors also play a role in exclusions, with children eligible for FSM

showing higher rates of permanent exclusion from school.<sup>308</sup>

Since the coalition Government has come into power the future of the FSM programme has been shrouded in uncertainty. In an answer to a parliamentary question, Schools Minister Nick Gibb noted that, as of January 2010, more than a million children of compulsory school age were eligible for FSMs. He stated: ‘*We [the Government] have committed to maintaining spending on free school meals this year. Further announcements will be made after the spending review*’.<sup>309</sup>

On 15 October 2010, Deputy Prime Minister Nick Clegg announced £7 billion for a “fairness premium”, including 15 hours of pre-school education for disadvantaged two-year olds and the £2.5 billion “pupil premium”. The Minister promised: ‘*schools will receive additional funds to offer targeted help to every pupil eligible for free school meals and reduce educational inequalities*’.<sup>310</sup>

## 81 Ensure children without parental care have an advocate to actively defend their best interests in school



New rules came into force in September 2009 requiring all schools to appoint a qualified, designated teacher for children in care.<sup>311</sup> According to statutory guidance, the role and responsibilities of the designated teacher are to:

- Promote a culture of high expectation and aspiration
- Make sure the child has a voice in setting learning targets
- Be a source of advice for other staff
- Make sure that looked after children are prioritised in one-to-one tuition arrangements and that carers understand the importance of supporting learning at home
- Have lead responsibility for the development and implementation of the child’s personal education plan.<sup>312</sup>

The guidance says that, as a minimum, the designed teacher must provide an annual report to the governing body on the education being provided to children in care in the school. The governing body is expected to respond to any issues raised in the report.<sup>313</sup> This is a very positive development though the designated teacher is not an independent advocate, but part of the school system.

## 82 Intensify efforts to tackle bullying and violence in schools, including through teaching human rights, peace and tolerance



Bullying and violence remain significant problems in schools.

Results from the national Tellus4 Survey, representing the views of almost 254,000 children in Years 6, 8 and 10 reveal that a quarter frequently worry about being bullied. Almost 20% of respondents

said that less bullying 'was one of the most important issues that would improve their lives overall'. Almost a third (29%) had been bullied in the last year.<sup>314 315</sup>

The report shows wide variations in children's experiences depending on their age, gender and whether they have a disability:

- Children in Year 6 were more likely to worry about being bullied (32%) than those in Year 10 (17%)
- Girls were more likely to worry about being bullied (28%) than boys (22%)
- Disabled children were more likely to worry about being bullied (38%) compared to other children (25%).<sup>316</sup>

The report suggests that significantly more children feel their schools are responding to incidences of bullying effectively (59% of children compared to 35% in 2008). However, children who had been bullied were more likely to have negative perceptions of their school's ability to deal with bullying.

The EHRC *Triennial Review* sought to measure levels of dignity and respect within the education system and noted significant gaps in the data available on the extent of bullying based on religion, sexual orientation or transgender status, making it difficult to gain an accurate picture of these children's experiences.<sup>317</sup> It commissioned the NFER Teacher Voice Omnibus survey to ask 1,750 primary and secondary teachers about bullying in schools and the levels of support received by children from different ethnicities, religious groups, and lesbian, gay, bisexual or transgender (LGBT) children. In primary schools, teachers identified children from ethnic minority groups (11%) and disabled children (11%) as being the prime targets for bullying. At secondary school level, LGBT students are perceived as being the major target for bullying (46%), followed by disabled students (25%).

81% of teachers said that their schools were actively promoting respect for disabled students, with only 16% of teachers feeling that their schools were actively promoting respect for LGBT children. Teachers felt that very little was being done to actively promote respect for transgender children and believed these students would be the least likely to feel supported at school.<sup>318</sup>

The former Government published guidance in 2009 which makes it clear that 'sexist, sexual and transphobic bullying and views in all their manifestations are not acceptable and should not be tolerated'.<sup>319</sup> The document highlights the importance of developing anti-bullying policies which engage the whole school community. It points to the role of the school curriculum in reducing bullying and says that PSHE and citizenship classes are the most obvious settings to address these issues.

In April 2010, Government guidance was issued to schools to explain how and when force should be used.<sup>320</sup> This revised guidance followed a new statutory duty to record and report to parents where there has been a significant incident in which

force has been used. The duty was meant to come into force in September 2010 but was postponed.

A review of the Ministry of Justice-funded *Right Here Right Now* Key Stage 3 teaching resource on human rights revealed this year that teachers find human rights a challenging subject to teach. Several teachers involved in the review 'openly admitted that they often did not understand the Human Rights Act and human rights more generally, and so prior learning on the part of the teacher was usually necessary'.<sup>321</sup>

The World Programme for Human Rights Education (WPHRE) is a UN programme aimed at advancing the implementation of human rights education across all member states. The Plan of Action for the first phase of the WPHRE (which ended in 2009) urges states to review the current state of human rights education, and then implement a national plan. The former Government completed an evaluation questionnaire in March 2010.<sup>322</sup> Much of the questionnaire was left blank and the answers that were given reveal a dispiriting lack of engagement, encapsulated by the conclusion that the WPHRE 'has not influenced [the] approach to human rights education in schools'<sup>323</sup> – see pages 10 and 12.

### 83 Use permanent or temporary exclusion from school only as a last resort, and reduce the number of exclusions



In 2008/09 there were 6,550 permanent exclusions from primary, secondary and "special" schools, a decrease of 19.4% on the previous year.<sup>324</sup> In the same period, there were 307,840 fixed term exclusions from secondary schools (39,510 from primary schools, and 15,930 from "special" schools):

- Exclusion rates for students with SEN remain disproportionately high, with 24 in every 10,000 students with SEN statements, and 30 in every 10,000 students with SEN but without statements being permanently excluded – this compares to 3 in every 10,000 students without SEN
- Rates of permanent exclusions are highest for Gypsy and Roma children, despite making up only 0.38% of the school population
- Black Caribbean children are 3 times more likely to be permanently excluded than other children
- In 2008/09, there were 640 appeals against permanent exclusions, of which 25% were determined in favour of the student. In 39% of these cases, the student was reinstated.<sup>325</sup>

In 2010, Runnymede, a race equality think tank, brought together a number of prominent thinkers to address the disproportionate exclusion rates of Black children. It subsequently called for more to be done to address the 'exclusion gap' in schools, and offers a range of potential solutions, including the need for teachers to challenge their own assumptions about, and behaviour towards, Black children.<sup>326</sup>



Schools Minister Nick Gibb has indicated that headteachers will be given greater powers to exclude children, thus making it even more unlikely that this recommendation will be achieved.<sup>326a</sup>

#### 84 Place social workers and educational psychologists in schools to support children in conflict with their schools



The Tellus4 Survey found that, while most children report being happy and well-supported, many do not have a trusted adult to talk to when they are unhappy: 3% percent of children said they do not have anyone to talk to when worried, and 20% were not sure if they could discuss their problems with a parent or carer.

In January 2010, the former Government published its response to the independent review of CAMHS. Although it did not make a commitment to placing social workers or educational psychologists in schools, it promised that:

- Every student would go to a school that promotes their health and well-being as part of the pupil and parent guarantees
- PSHE would be made compulsory in schools from September 2011.<sup>327</sup>

Neither of these measures came into force prior to the general election, and the coalition Government has not yet announced how it will support emotional well-being in schools.

Criticism of the testing and examination regime in England, with its negative impact on children's mental health, has continued this year. In April 2010, the General Secretary of the National Union of Teachers (NUT), Christine Blower, criticised the constant testing of 11 year-old students as being a breach of the CRC. Along with the National Association of Head Teachers, the NUT balloted members to boycott the tests, emphasising that the pressure to compile league tables undermines teaching. Blower said of the CRC:

*Some of the Articles are about basic human rights. These include the right to be educated in the round not only to pass exams.*<sup>328</sup>

Research published this year by the Institute of Education suggests that children actually do better in exams when teachers focus on learning rather than test results. The research called on schools to recognise that '*passing tests is not the goal of education, but a by-product of effective learning*'.<sup>329</sup>

Research undertaken by children working with CRAE sought to discover children's views about counselling services in schools. An online survey of 248 children highlighted the need for good counselling and mental health services for children both in, and outside of, schools. The majority of children reported feeling stressed, with exams and school work being the most common cause (82%). Other major sources of worry were family problems (69%) and being under pressure to look good (36%). Although around half of respondents did have some counselling services available in their schools, they reported that they were often difficult to access:

*[The counsellor] is in school 6 hours a week so will only see up to 6 people a week, yet there are over 2,000 students in our school and I know a lot more than 6 could do with the help.*

Children valued having someone to talk to that was not going to judge them. They were particularly positive when schools did not make it obvious to other students when children were seeing a counsellor. Problems identified with school counselling services included children feeling patronised; challenges with actually accessing the service; the stigma attached to seeing a counsellor; the lack of awareness about the service itself; and the need for teachers to be better trained to identify when children need support. A major issue for children was feeling that confidentiality had been breached by school counsellors. One child described how this felt:

*I felt awful. I wasn't ready for it at all. She made the situation worse and then told me that I was rude because I didn't want to see her anymore. I was not threatening to commit suicide but I was self-harming. She knew the extent of this and still went against me. That wasn't confidential. She rang my parents up and told them I was depressed and needed to see a doctor.*<sup>330</sup>

## 85 Ensure that all children out of school receive high quality education



The former Government committed to running 12 pilots to test alternative education for children out of school. An initial report published in March 2010 showed some positive results, including a reduction in exclusions; a decrease in persistent absence; and improved behaviour.<sup>331</sup> The coalition Government has not yet made any statements on provision of alternative education for children not in school.

The Apprenticeships, Skills, Children and Learning Act 2009 amended the Education Act 1996 to require local authorities to ensure that *'enough suitable education is provided to meet the reasonable needs of children subject to youth detention in their area'*. In determining whether education or training is suitable to meet a child's needs, a local authority must have regard to the child's age, ability and aptitude and any special needs or learning difficulties. Local authorities must try to ensure that children can continue any training programmes or educational courses they have already started and are also required to ensure that the curriculum in custody is comparable to that in schools.<sup>332</sup>

It is not yet clear whether these measures will have an impact on the quality and consistency of education that children in custody receive (it also remains unclear why former Ministers didn't simply repeal legislation that excluded children in custody from the universal right to education).

Many refugee and asylum-seeking children continue to struggle to have their right to education fully realised. This is a particular challenge for separated children. Child-led research supported by CRAE found that many asylum-seeking children can wait for up to a year to be able to access education.<sup>333</sup> For many, trying to access education was frustrated by their involvement in an age dispute – see page 61. This frequently caused a delay in enrolling in school or college. Other significant barriers included a lack of money to get to school, not being able to afford books and school meals, and being offered the wrong level of education for their age and ability. One child described trying to get educational support from social services:

*I get enough support from the teachers just to get on and stuff but I don't get enough support from Social Services. For example, I asked them for a dictionary and I never got it ...*

In November 2009, the former Government responded in full to the Badman Review of Home Education. It accepted most of Badman's recommendations in principle, and subsequently consulted on proposed measures to register and monitor home education. The former Government announced what it described as *'a new support package for home educating families'*, and committed to changing regulations to allow children to be "flexi-

schooled" (spending part of their time in school and part at home), and to exploring how to improve access to educational support in libraries and support centres.<sup>334</sup>

In December 2009, the parliamentary Children, Schools and Families Committee published a report on elective home education, in which it expressed concern about the lack of information about home-educated children and called for more research into their educational outcomes.<sup>335</sup> The Committee also called for a voluntary annual registration scheme for home-educating families, to be reviewed after two years. It criticised both the Badman Review and the Children, Schools and Families Bill for conflating education and safeguarding concerns.<sup>336</sup>

In March 2010, the former Government responded to the Committee's report, disagreeing with its proposals for a voluntary registration system and restating its own commitment to a mandatory scheme.<sup>337</sup> The plans relating to home education were dropped in legislative negotiations prior to the general election. The coalition Government has not yet made a clear statement in relation to the rights of children who are home educated.

We are considering a section of the [Children, Schools and Families] Bill which will cost £20 million per annum, which is about £1,000 per home-educated child. These children receive no money to help pay the costs of examinations; no money to buy textbooks; no money to buy materials; no money and no tuition to help them over difficulties in education.

Now the Government can find £1,000 for each of these children – and will spend it on auditing them. Not one penny will go to help the children; it will all go on auditing them. What have these people done to deserve that?

**Conservative Peer, Lord Lucas, 26 November 2009**

## 86 Strengthen children's participation in all matters of school, classroom and learning that affect them



The consultation rights of students were strongly advocated during parliamentary debates on the Academies legislation this year. Following pressure from Peers, at Report Stage in the Lords, the Government tabled an amendment for school governing bodies to consult *'such persons as they think appropriate'*. However, Peers expressed concern that this amendment would not give students, parents and other members of the community a full say before an application to convert to an Academy was made, only before the funding agreement was finalised.

Debates about consultation rights continued in the House of Commons. During Second Reading, Labour MP Barry Sheerman, former Chair of the Children, Schools and Families Committee, called the consultation measures *'weak'*, while Graham Stuart MP, Chair of the new Education Select Committee, advocated a legal requirement on schools to consult before applying to become an

Academy. At Committee Stage, Green MP Caroline Lucas said that ‘*children, parents, teachers, trade unions and members of the wider community are surely entitled to have their voices heard*’ before schools leave local authority control.<sup>338</sup> It was therefore deeply regrettable that Ministers refused to add any further consultation requirements to the Bill, claiming that ‘*an inflexible checklist ... would not, in itself, ensure that consultation was any more meaningful*’.<sup>339</sup>

Notwithstanding this, the Government confirmed in Parliament its expectation that schools wishing to become Academies would ‘discuss’ this with students:

*We certainly expect schools, in deciding whether to make an application to convert, to discuss their intention with students, their parents and the local community..*<sup>340</sup>

A stronger statement about consultation seems to have been removed from the DfE website.

CRAE contacted DfE officials to request that the guidance for Academies include examples of how schools might consult students: this was agreed though at the time of writing the guidance has still not been amended.<sup>341</sup>

The duty on schools to “invite and consider” the views of students, introduced in law in 2008, has still not come into force – see page 20.

## 87 Ensure that children, and particularly children in care, have the right to appeal against their exclusion



In 2009, the former Government consulted on whether to give children a direct right to appeal exclusions from school, SEN decisions, and to lay disability discrimination claims.<sup>342</sup> Disappointingly, this did not result in any positive changes – see page 21. Many of the respondents to the consultation felt strongly that children in care require additional support from skilled, independent adults when being considered for permanent exclusion from school. The former Government did not make any specific comments in relation to children in care in its response to the consultation. However, it did commit to developing ‘*alternative ways for ensuring that young people are able to participate more effectively in the decision-making and appeal processes relating to permanent exclusion*’ and to publishing accessible information for parents and children on exclusions.<sup>343</sup> This did not happen before the general election and it is unclear whether this will now be pursued.

The UN Committee was concerned that children themselves have no right to appeal school exclusion. The parental right to appeal exclusions is under threat as the Conservatives said before the general election that they plan to abolish independent appeal panels.

## 88 Ensure that children, and particularly children in care, have the right to appeal to a special educational needs tribunal



As noted above, the former Government consulted on whether to give children a direct right to appeal exclusions from school, SEN decisions, and to lay disability discrimination claims.<sup>344</sup> Although former Ministers came out in support of extending children’s rights in this area, no progress was made before the general election (a working party was said to be necessary) – see page 21.

## 89 Strengthen efforts to guarantee children’s right to rest and leisure, to engage in play and recreational activities appropriate to their age, and to participate in cultural life and the arts



The former Government made huge investments in children’s play and play facilities.

The Tellus4 Survey asked nearly 254,000 children their views on the parks and play areas in their local communities. Satisfaction levels with parks and play areas were almost 10% higher than the previous year. Younger children were more likely to report being satisfied with parks than older respondents. The survey showed that 73% of children had visited a local park or playground in the last four weeks; 66% had attended a sports club or class; and 27% had participated in art, craft or drama classes. However, these high figures mask significant differences in the ethnic origin of children participating in such activities. Asian children were least likely to participate in the listed activities, while Black children reported high levels of participation. Disabled children were least likely overall to have been to a local park or playground.<sup>345</sup>

The removal of £5 million from the national play strategy in 2010/11 poses a serious threat to children’s right to play.<sup>346</sup> A letter from Michael Gove to Directors of Children’s Services on 20 October 2010 confirmed revised local authority allocations for play capital funding.<sup>347</sup> A second letter published on the same day revealed that the coalition Government is scrapping the *PE and Sports Strategy*, and will no longer provide ring-fenced funding for school sport partnerships. Schools will no longer be required to implement the “five-hour offer”, nor to collect information as part of an annual survey.<sup>348</sup>

Stopping investment in play will result in long-term financial costs to society, according to Play England. It estimates that the economic benefit derived from one adventure playground equals about £2.8 million.<sup>349</sup>

The future of the country’s youth services are also very uncertain. The National Council for Voluntary Youth Services surveyed 100+ voluntary organisations and found:

- Nearly 70% had experienced a drop in income in the previous 12 months

- Almost 10% had already lost half of their income
- Almost 90% reported young people they work with being negatively affected by the cuts and predicted a reduction in the loss of opportunities, support and advice.<sup>350</sup>

In September 2010, BBC News reported that students at a primary school in Selby, North Yorkshire, had their afternoon playtime cancelled after neighbours complained to the local authority about the noise. This came after the school had erected a soundproof fence and banned games with hard balls.<sup>351</sup> Play England's director observed that *'children are losing the freedom to simply be children'*.<sup>352</sup> Following widespread media coverage, the school lifted the playtime ban.<sup>353</sup>

### Children have the right to be noisy in Germany

A law was passed in Berlin earlier this year exempting children from strict rules on noise pollution. An amendment to the city law means that it is now *'fundamentally and socially tolerable'* for children to make a noise. According to media reports, some child care facilities had been forced to close down because of complaints over noise levels.<sup>354</sup> In August 2010, the Guardian newspaper reported that amendments to Germany's emissions protection law would allow kindergartens and playgrounds to be established in residential areas across the country. Hermann Kues, state secretary for the family ministry, was quoted as saying *'Tolerance and acceptance towards the laughing, screeching, singing and cries of children must be considered an absolute normality'*.<sup>355</sup>

The coalition Government has retained the former Government's policy of free entry to museums and galleries.

## 90 Provide children, including those with disabilities, with adequate and accessible play spaces



Disabled children and their families are reporting valuable play and leisure facilities being lost through cuts in public spending. The Every Disabled Child Matters campaign has called on the coalition Government to *'give a clear, unambiguous message to local authorities, and to disabled children and their families, about the funding that will be available for disabled children's services over the next five years'*.<sup>356</sup> The charity KIDS undertook a survey of play pathfinder authorities. Of the 19 that responded, 14 (74%) were using *Aiming High* funding to increase accessible play facilities, including:

- Building accessible pathways, ramps and a gardening area
- Installing a sensory room and outdoor trampoline
- Including accessible slides, swings, net structures and hammocks, and sand and water play in a new adventure playground.

There is no certainty that this funding will continue beyond March 2011.<sup>357</sup>

# Special measures of protection



## Key to progress in meeting the recommendations of the UN Committee on the Rights of the Child



Significant improvement in past 12 months



Significant deterioration in past 12 months



No significant change (ongoing violation and/or failure to adhere to Convention on the Rights of the Child)



Already achieved



At risk of significant deterioration



Potential that this recommendation will be met shortly

“As a consequence of being assessed as an adult ... a child of 15 [seeking asylum] suffered the injustice of being denied for more than 15 months the local authority care and support that she needed.”

**Local Government Ombudsman, April 2010**

“It is clear that many [asylum-seeking and refugee] families are met with a lack of compassion when they seek help. Rather than being the focus for front line professionals, the children appear to be virtually invisible.”

**The Children’s Society, May 2010**

“Our understanding from the plain words of the Government’s coalition agreement is that this Government is firmly decided that the detention of children must end. Our understanding, moreover, is that the Minister is personally determined that this must be so ... Why then is the UK Border Agency continuing to detain children?”

**Immigration Law Practitioners’ Association, July 2010**

“The idea that children are ... sexually exploited in brothels and private homes, forced to work as slaves in houses, restaurants or in drug cultivation and made to work as criminals on the street, seems hard to believe in the modern world and yet it does happen and is happening in the UK.”

**Baroness Butler-Sloss, October 2010**

“Over the past 25 years, a period during which the current leaders of the coalition Government have progressed from school to the front benches, other children have been less fortunate, and the use of custody for these neglected, deprived and sad children has grown.”

**Norman Tutt, September 2010**

## 91 Intensify efforts to ensure that the detention of asylum-seeking and migrant children is always used as a measure of last resort, and for the shortest appropriate period of time



The detention of children for immigration purposes is set to continue until at least the end of March 2011 – see page 17.

In September 2010, Medical Justice released *State Sponsored Cruelty*, a report describing the impact of immigration detention on 141 children locked up between 2004 and April 2010:

- 48 children reported they had witnessed violence against other detainees, the vast majority of that violence allegedly inflicted by individuals working for or employed by the UK Government
- 74 children were assessed as having been psychologically harmed by detention: *'Symptoms included bed-wetting and loss of bowel control, heightened anxiety, food refusal, withdrawal and disinterest, and persistent crying. 34 children exhibited signs of developmental regression, and six children expressed suicidal ideation either whilst or after they were detained. Three girls attempted to end their own lives'*
- 92 children were reported as having physical health problems exacerbated or caused by detention: *'These problems included fever, vomiting, abdominal pains, diarrhoea, musculoskeletal pain, coughing up blood, and injuries as a result of violence'*
- There were 23 cases of children refusing food in detention.

Of the 141 children studied, 71% were of primary school age and 52% (74 children) were aged five or under. 48% of the children were born in the UK.

*"There is now concrete evidence that the very young children who find themselves locked up even though they've done nothing wrong are suffering weight loss, post traumatic stress disorder and long lasting mental distress.*

*How on earth can your Government justify what is in effect state sponsored cruelty?"*

**Open letter to former Prime Minister Gordon Brown from Nick Clegg, Daily Mail, 15 December 2009**

Like many other organisations concerned with the rights of asylum-seeking children, the Immigration Law Practitioners' Association berates the coalition Government's failure to date to bring an end to detention. It condemns as deplorable the continuation of detention as a deterrent to others considering applying for international protection in the UK.<sup>358</sup>

This year, the Chief Inspector of Prisons repeated her strong concerns about babies and children being unnecessarily detained in immigration removal centres (IRCs). Her unannounced inspection of Yarl's Wood IRC in November 2009 revealed:

*Over the past six months, 420 children had been detained, of whom half had been released back into the community,*

*calling into question the need for their detention and the disruption and distress this caused. Some children and babies had been detained for considerable periods – 68 for over a month and one, a baby, for 100 days – in some cases even after social workers had indicated concerns about their and their family's welfare.<sup>359a</sup>*

In January 2009, force had been used to split a family of six so that the father and two children could be removed. The youngest child had been removed by force from his father's grip and a 10 year-old child was taken by force into the departure area after refusing to leave his mother. In the same month, force was used on a pregnant woman. Her three year-old son had been kept in the family care suite while she was taken to the legal offices to be given removal directions. On leaving the offices, she had refused to move further and called repeatedly for her son. She had been forcibly placed in, and held in, a wheelchair and taken to the family care suite where she was reunited with her son. She became calm and was subsequently removed ...

### Chief Inspector of Prisons, 2010 report on unannounced inspection of Yarl's Wood immigration removal centre

Bail for Immigration Detainees (BID) provided CRAE with information about families they had worked with where children had been separated from their primary carer in detention: 21 families since November 2008 (18 of these were single parent families). All of the parents had been convicted of criminal offences and were awaiting removal from the UK. During the period BID worked with the families, 13 parents were released, having been detained for an average of 326 days. BID and The Children's Society have worked with mothers separated by immigration detention from children as young as three years old. Examples of abusive practice include:

- A mother was in immigration detention for five months before Social Services negotiated for her to have a 30 minute telephone call each week with her six year-old child
- Two children, aged nine and three, were placed in a private fostering arrangement whilst their mother was held in immigration detention for two years. The older child said they were physically abused in foster care; and the younger child was referred to CAMHS (though they were unable to work with him because of his unstable care arrangements)
- A mother escaping domestic violence obtained a court injunction protecting her and her son from her violent ex-husband. Whilst she was held in immigration her son was placed with her ex-husband: the child told his mother he kept a bag packed in his room waiting for her to come and collect him.

The longest period for which a child has been detained by the UK Border Agency at an immigration removal centre in the last five years is 190 days. The child was detained at Yarl's Wood.

**Parliamentary written answer, 30 March 2010**

## 92 Ensure there are adequate safeguards in place when children are returned to their originating country, including an independent assessment of the conditions upon return, and of the family environment awaiting the child



In July 2010, Medical Justice successfully challenged the Home Office's "zero notice" policy whereby immigration officials snatched foreign nationals, including unaccompanied children, from their homes and forced them onto flights within hours. This particular policy was introduced in January 2010 (replacing the 2007 policy which allowed the removal of children to another EU country) and permitted immigration staff to remove children without notice if this was deemed to be in their best interests because of an "abscond risk". Local children's services were involved in the assessment process (via a case conference), as were social workers seconded to the UK Border Agency (UKBA) from local authorities.<sup>359</sup> Mr Justice Silber quashed the policy because it prevented individuals from 'enjoying the basic right of access to justice'.<sup>360</sup> The barrister acting in the case summed up the practice:

*The taking of people from their beds in the middle of the night for removal is something one would associate with totalitarian regimes, not with a country which prides itself on its legal institutions ... It is particularly shameful that this policy was being applied to particularly vulnerable groups such as those at risk of suicide and self-harm, and unaccompanied children – i.e. persons in need of special care and attention, not less.*<sup>361</sup>

Between 2007 and 2010, 72 children were deported at less than 72 hours' notice.<sup>362</sup>

In March 2010, the former Government issued a tender document for the provision of "reintegration assistance" in Kabul. The aim was to establish accommodation and other services for up to 12 Afghan children per month who have unsuccessfully applied for

asylum in the UK. The Refugee Council explains that:

*... for the first time, the UK Government is not simply enquiring as to the existence of reception arrangements for children in the country of origin, but contributing towards such arrangements by providing funding from the UK...*<sup>363</sup>

The Medical Foundation for the Care of Victims of Torture warns:

*Unless it can be established that return to Afghanistan is clearly in each child's best interests and respects their human rights, the UKBA should take extreme caution in pressing ahead with such a plan and think about investing further in UK services to support them...*<sup>364</sup>

The coalition Government denies that this development in Kabul could result in a breach of children's human rights:

*If [the] tender process identifies suitable provision for some Afghans in the 16 to 17 age bracket, then indeed it might be possible to return them. Children under that age will not be returned, but even in that age group that will depend on individual cases and the assistance that can be provided. We doubt that there will be big numbers ... As to whether we are conforming to the provisions of the Convention on the Rights of the Child, I suggest that it is precisely in order to make assistance available to young people that we are instituting these arrangements and the tender is going out ... when they are in this country, these children are in the care of local authorities, which is an extremely costly process for us ... Unless this country is prepared to take every single individual who arrives on our shores as a result of having been trafficked through the system and to keep them indefinitely ... we have to find a humane way of returning people...*<sup>365</sup>

## 93 Ensure that the UK Border Agency appoints specially-trained staff to conduct screening interviews of children



Between June 2009 and March 2010, Refugee and Migrant Justice held correspondence with the UKBA over "Illegal Entrant Interviews" being held with children. The organisation had extensive evidence of exhausted, hungry and frightened children being interviewed in the absence of a responsible adult or legal representative. Senior UKBA officials claimed the purpose of these interviews was to assess the welfare needs of children, yet the reality was that they were being used to gather evidence of illegal entry. Refugee and Migrant Justice published powerful testimonies from children showing their first contact with immigration officials to be deeply abusive and the antipathy of child-centred practice:

*When I arrived in the UK I was arrested and handcuffed ... I was feeling very ill and I was tired and hungry. I told the police officers that I was tired and needed to sleep but they said I could not. I was interviewed that night and I don't know what time it was,*

### Legal challenge to "zero notice" from two teenage children, February 2010

I have no doubt whatever that the manner of removal, done as it was on the same day without any opportunity for the minor to contact any lawyer or indeed any social worker or anyone else who may be able to assist, was unlawful ... I can see no conceivable justification for same day removals in the sort of the circumstances that we have seen in these two cases. So far as M is concerned, fortunately she managed to prevent her removal taking place, albeit in the course of trying to remove her she was handcuffed and suffered some physical injury. That is to be thoroughly deprecated. It is quite appalling to think that a child is dealt with in that sort of harsh manner. The guidelines issued by the Secretary of State very properly make the point, and it is now contained in section 55 of the 2009 Act, that the welfare of a child is an important consideration and must be taken into account. How it could conceivably be suggested that it was in the interests and welfare of a child to act in the way that was done in this case is entirely beyond me.

**Mr Justice Collins, R (M & T) v Secretary of State for the Home Department [2010] EWHC 435 (Admin)**

maybe 11pm or midnight. I was asked how old I was and I told them I was 13. During the interview I said I felt ill. I had a pain in my genital area and I could not hold my bladder ... They just wrote something down and asked the next question. I found it difficult to concentrate as my mind was on this pain. I was also very hungry because I had not eaten anything ... About five minutes after the interview finished I was given the opportunity to eat some food but then they locked me up for the night. They did not explain why. It was very cold. I had a short-sleeved t-shirt on.

**The floor was like concrete and it was freezing. I wasn't given a blanket or anything for my arms.**

The escape and journey was frightening and painful ... At times I was in agony. The agents beat me and the other boys a lot. We were passed from one agent to another like animals ... Because of my injuries I was too slow and could not move at the speed they wanted, so they would beat me. They used to hit me with belts and sticks ... I had not had a shower for about one and a half months. I had a rash all over my body. I kept itching and itching but then I started to get big lumps on my body that also had pus in them. My thighs were the worst but I couldn't stop scratching them ... The agent finally forced me to hide in a refrigerated lorry. It was very cold ... the UK officials found us not long before sunrise the next day. It was so cramped and I was so cold. I was also in a lot of pain ... the government here does not want me. I am scared that that they want to return me to Afghanistan. I am scared that if I return I will be killed like my brother. When I look on the TV I see that British soldiers and government ministers are being killed in Afghanistan and they have all this protection around them. How would I protect myself? I can barely walk for more than 15 minutes without pain.

Before I arrived in the UK [aged 14] the agent stuffed me into the back of a lorry. I was so cramped that when we finally arrived and were found by the UK authorities I could not walk ... When I was in Dover I was taken into a room by a female official. I was just slouching on the chair and I was so tired. I was not looking at her face and she asked me why. She then asked me why I was staring at her chest. She asked if it was because I was not used to seeing a woman without a hijab. I was so embarrassed because I swear that I was not looking at the lady's chest, honestly I wasn't. I was so ashamed with what was said and I was so nervous about speaking. After this I felt uncomfortable being around women in the UK, including social services. I didn't want them to think I was a bad person. I did not mean to look at her chest, honestly. I didn't want anyone else to think I was.

**I am not an animal, I am an Afghan.**

We spent the whole night underneath the lorry ... I was so scared. I tried my best to sleep. It was raining and so cold. My brother tried to make me feel safe and told me not to be scared ...

**some people came to our lorry and looked underneath with a torch. They found us and shone the torch on us. They poked us with a stick**

... we were taken inside the back of a car, which had a metal guard on the windows ... I was cold from my journey, my teeth were chattering and our clothes were soaking wet, but we weren't given anything warm to wear. We were driven to somewhere where our pictures and fingerprints were taken. We were taken to a room with some other boys and given a cup of tea. I was really hungry and I wanted to ask for some food but I was too scared, and I didn't speak a word of English ... After the interview I went to the toilet and used the hand dryer to dry my clothes. I couldn't get them completely dry though, just a little bit better. After the interview I was offered a waterproof plastic coat, but I didn't take it because it wouldn't have made me any warmer or dryer. A long time afterwards, I was given a plate of rice ... I was told the Home Office believed my brother was an adult so the authorities took him away. I didn't understand what was happening. I was 13 at the time and my brother was 15, so I don't know why they thought he was an adult. They took my brother away. I have not seen my brother since that day.

At the place the authorities asked how we'd come here and why. I told them that I had a headache and was exhausted because I hadn't slept all night. They told me that later on they'd give me some medication, but for now I needed to answer the questions. I was taken to four or five different rooms and in every one somebody asked me questions ... I had a telephone interpreter to help me understand the questions ... I told him that I didn't understand everything he was saying but he told me to just answer the questions and he would tell the officers later on. I don't know how long the questions lasted but I spent the whole night there and was interviewed by a few different people

**... I wasn't given a bed, and that night I only managed sleep for a few moments on a chair ...**

The next day I was driven to a place in Dover by the authorities and I was given another interview soon after arriving. I kept saying I was sleepy, but the officers kept asking me questions and didn't listen to me. I felt powerless and unable to do anything ... They told me that another day I would meet a lawyer ... I was starving, but even more than that I wanted to sleep. When I went to my asylum interview I was told that I'd said this in Dover and that I'd said that, but I couldn't even remember what I'd said. I remember just trying to end it as soon as possible because I was so exhausted. On that day I lost all sense of what I was talking about. I'd no idea that my answers would be held against me like this, or I would have given more detailed answers. The immigration officer made me feel like a liar.



In November 2009, the Home Office and the then Department for Children, Schools and Families issued joint guidance on the implementation of Section 55 of the Borders, Citizenship and Immigration Act 2009, which requires the UKBA to make arrangements to safeguard and promote the welfare of children it comes into contact with. The guidance states:

*When speaking to a child or dealing with a case involving their welfare, staff must be sensitive to each child's needs. Staff must respond to them in a way that communicates respect, taking into account their needs, and their responsibilities to safeguard and promote their welfare.*<sup>365a</sup>

In October 2010, Immigration Minister Damian Green was asked in Parliament about parents having asylum interviews with their children present. This followed revelations that many parents, particularly mothers, are reluctant to give immigration officials full details of the persecution they have suffered for fear of distressing their children. The Minister explained:

*We are committed to ensuring that parents who are being interviewed about their reasons for seeking protection are not placed in the position of having to give an account of personal victimisation or humiliation in the presence of their children. In general, applicants are advised in their letter of invitation not to bring their children to the interview but to make alternative arrangements ... At present, the only UK Border Agency building that provides child care facilities when a parent is being interviewed about their asylum claim is in the North West.*

The Minister explained that The Children's Society was assisting the UKBA in the West Midlands to develop supervised play facilities. He added that, *'if these facilities prove successful and cost effective, we will consider extending this approach to other offices'*.<sup>366</sup>

It is difficult to see how the cost-effectiveness of providing play facilities for children in these circumstances will be measured.

## 94 Consider the appointment of guardians to unaccompanied asylum-seekers and migrant children



UNICEF UK makes the point that guardians for unaccompanied children are *'particularly important if an unaccompanied or separated migrant child had a social worker allocated to them who was not sympathetic to their needs, due to his or her belief that they had come here to obtain a free education and access to a larger job market'*.<sup>367</sup> In 2009 the Children, Schools and Families Committee in Parliament declared support for guardians for unaccompanied asylum-seeking children, though the former Government rejected this (even for trafficked children).<sup>368</sup>

The coalition Government's views on guardianship for unaccompanied asylum-seeking and migrant children are not yet known, though its decision *'not to opt in at this stage'* to the EU Directive on protecting the victims of human trafficking is ominous.<sup>369</sup> Article 14 of the Directive requires that every child suspected of being trafficked be provided with a representative, appointed by the court, during the investigation and throughout any judicial proceedings.

## 95 Provide disaggregated statistical data in the next periodic report on the number of children seeking asylum, including those subject to age disputes



The Home Office publishes very limited data on the number of children seeking asylum, giving only their age and country of nationality. The latest figures show that there were 270 age-disputed applicants for asylum in the first two quarters of 2010. The August 2010 statistical summary promises that further information about unaccompanied asylum-seeking children and age-disputed applicants will be included from next quarter onwards.<sup>370</sup> This is a very welcome development.

## 96 Give the benefit of the doubt to children in age-dispute cases



The parliamentary Joint Committee on Human Rights criticised the *'poor treatment'* of age-disputed children in its 2009 children's rights inquiry report. The former Government rejected the Committee's conclusion.<sup>371</sup>

The UKBA policy was further criticised this year by the UN Special Rapporteur on the human rights of migrants, following his mission to the UK in June 2009. The Special Rapporteur was dismayed by UKBA guidance which *'relies excessively on subjective criteria'*. Echoing the recommendation of the UN Committee on the Rights of the Child in 2008, the Special Rapporteur urged the Government to:

*Recognize the benefit of the doubt in disputed cases of allegedly separated and unaccompanied children who seek asylum and, accordingly [ensure] the burden of proof is on the Government.*<sup>372</sup>

The UN Committee was particularly concerned about age-disputed children spending time in detention. The Independent Monitoring Board for Harmondsworth immigration removal centre states in its 2009 annual report that 'a small handful' of children are detained as adults in the centre each year. It observes, '[The] UKBA's attitude to age disputes is not primarily defined by a desire to protect children, and there is a culture of disbelief when a detainee claims to be under 18, which compounds the distress of genuine children'.<sup>373</sup>

### 97 Seek guidance from experts when determining age in disputed cases



In November 2009, the Supreme Court held that the question of whether or not an asylum applicant is a child is a question of fact that can only be determined by a court where there is a dispute.<sup>374</sup> The Children's Legal Centre reported in January 2010 that about 100 cases were awaiting determination by the courts.<sup>375</sup> ECPAT UK recommended in October 2010 that age disputed individuals should be 'assessed by an independent panel of experts who have expertise in child and adolescent development and who have been trained in appropriate interview techniques'.<sup>376</sup> No significant progress has been made to date.

### 98 Consider amending section 2 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 to allow for an absolute defence for unaccompanied minors entering the UK without valid immigration documents



There is no absolute defence for unaccompanied minors entering the UK without valid immigration documents. Criminal prosecution can proceed on the same basis for children (aged 10 and above) and adults, though case law has widened the statutory defences to the offences in the Act for all age groups.<sup>377</sup>

### 99 Do more to collect data on the extent of sexual exploitation and abuse of children, in order to prepare adequate responses to these issues



In January 2010, the NSPCC published the results of Freedom of Information requests to all 43 police forces across England and Wales. This revealed that police recorded an average of 60 sexual offences against children every day between 2008 and 2009, and children were victims of sexual offences on 21,618 occasions. One in seven children were under 10 and 1,000 were under five. In 79% of cases, the child was aged between 10 and 17 years. Girls were six times more likely than boys to be the victim of a sex offence; and in the vast majority of cases the child knew the offender.<sup>378</sup>

The NSPCC emphasises that these figures relate only to crimes that have been reported to the police, noting the severe difficulties faced by infants and young children in reporting crimes as

well as older children afraid of the stigma and other possible consequences of disclosure. Information like this is not routinely available in Government publications because the published data is only disaggregated into victims under and over the age of 13. Furthermore, although the British Crime Survey has begun to experiment with the collection of data from 10 to 16 year-olds, this does not include sexual offences.

The UK Human Trafficking Centre (UKHTC), now part of the Serious Organised Crime Agency, began collecting trafficking data from April 2009. Public authorities – police, social services and health workers for example – are expected to notify the Centre of potentially trafficked individuals coming to their attention. Decisions about whether an individual has been trafficked are made either by the UKBA or the UKHTC.

Between April 2009 and end March 2010, the Centre received the following referrals:

- 706 individuals were believed to have been trafficked into the UK
- Nearly one in five people (17%) were believed to have been trafficked from Nigeria
- 74% were female
- 25.4% (179) were children
- Of the children believed to have been trafficked, 17 were aged under 10; 6 were aged 10 to 11; 61 were 12 to 15; and 95 aged 16 to 17
- 56 of the children were believed to be subject to labour exploitation; 55 to sexual exploitation; and 27 to domestic slavery. The specific form of exploitation was either not known or not recorded for 41 children.<sup>379</sup>

ECPAT UK reports that these figures are 'just the tip of the iceberg'. It describes confusion among social workers and others about what to do and how to refer their suspicions about a trafficked child. The organisation calls for training and support on referring suspected cases of trafficking.<sup>380</sup> In a House of Lords debate on human trafficking in October 2010, the coalition Government agreed that data collection continues to be inadequate.<sup>381</sup>

### 100 Ensure that, in both legislation and practice, children involved in sexual exploitation and abuse (including as child prostitutes) are always considered as victims of crime in need of support, not as offenders



Citing the arrest and prosecution of trafficked children working in cannabis factories, and the fact that trafficked children can be charged with false document crimes or other offences committed while under the control of traffickers, ECPAT UK reports that, 'perversely, rather than cases of child trafficking being investigated, some victims of trafficking are prosecuted themselves'.<sup>382</sup>



In April 2009, the parliamentary Joint Committee on Human Rights criticised the former Government's refusal to accept an amendment to the Policing and Crime Bill to decriminalise child prostitution.<sup>383</sup> The Committee rejected the former Government's plea that guidance on the matter would be sufficient to protect children's rights and urged an amendment to the Bill (both the CPS<sup>384</sup> and the Home Office<sup>385</sup> subsequently issued revised guidance). It said the former Government's intransigence '*flies in the face of international standards and the strong observations of the UN Committee; and also breaches the principle that victims of crime should not be criminalised*'.<sup>386</sup>

### 101 Ratify the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse



The UK Government signed the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse on 5 May 2008, but has not yet ratified it. European countries that have already ratified the Convention are Albania, Denmark, France, Greece, Malta, Netherlands, San Marino, Serbia and Spain.<sup>387</sup>

### 102 Provide the necessary resources to effectively implement the Anti-Trafficking Action Plan



On the UK's first Anti-Slavery Day – 18 October 2010 – ECPAT UK released a scathing critique of the state of protection for children trafficked into the UK. Chief concerns include:

- Although the UK action plan on trafficking has 62 objectives across different Government departments, there is no central mechanism for monitoring and co-ordinating action

- The UKHTC and UKBA staff within it have an operational bias towards immigration control; so much so that local authority staff have actively chosen not to make an official referral for fear a child's immigration status and access to services may be jeopardised
- There is a lack of realistic, reliable and comprehensive figures for trafficked children
- There are not enough police officers trained in child protection and combating human trafficking
- Children continue to go missing in large numbers from local authority care
- Continuing inadequate provision by local authorities and health providers
- Child victims of trafficking are themselves being charged and prosecuted (see page 63), yet prosecution of human traffickers remains very rare.<sup>388</sup>

### 103 Ratify the Council of Europe Convention on Action Against Trafficking in Human Beings



The UK Government ratified the Council of Europe Convention on Action Against Trafficking in Human Beings on 17 December 2008. It came into force on 1 April 2009.<sup>389</sup>

### 104 Ensure child protection standards for trafficked children meet international standards



ECPAT UK warns about '*the conflict of interest as decision-makers in the NRM [National Referral Mechanism] process are asylum case owners who have to balance the different priorities of immigration control and child protection*'. Its recent overview of law, policy and practice in relation to trafficked children concludes that '*the UK needs a comprehensive plan of action to safeguard child victims of trafficking, covering protection, prosecution and prevention*'. Of particular concern is the failure to appoint guardians for trafficked children who can help children access services to which they are entitled under domestic and international law and '*who can speak up on their behalf*'. It points out that responsibility for child trafficking legislation and policy within Government is held by the Immigration Minister and the Parliamentary Under-Secretary of State for Crime Prevention. The organisation recommends a move to the Minister for responsibility with child protection; it also recommends that each local authority have a designated lead manager on child trafficking.<sup>390</sup>

Overall we believe there is a failure to properly care for, protect and uphold the rights of these [trafficked] children.

ECPAT UK, October 2010

**105 Fully implement international standards of juvenile justice, in particular articles 37, 39 and 40, and General Comment 10 on Children's rights in juvenile justice, the UN Standard Minimum Rules for the Administration of Juvenile Justice, the UN Guidelines for the Prevention of Juvenile Delinquency, and the UN Rules for the Protection of Juveniles Deprived of their Liberty**



**Reform of the juvenile justice system in England**

There continues to be many initiatives to improve certain aspects of the juvenile justice system, such as preventing offending and extending the educational entitlement of children in custody. The former Government's strategy to promote the health and well-being of children in contact with the criminal justice system was particularly impressive, with its rights-compliant principles. But there is still no indication that Ministers properly understand the scale of reform needed to comply with international human rights standards.<sup>390a</sup>

The inquest into the death of 13 year-old Liam McManus at Lancaster Farms YOI in 2007, which reported its verdict in November 2009, identified serious failings by practitioners and managers from the local authority and the YOI, poor staffing levels, insufficient training, and bullying from his peers as contributing to Liam's death.<sup>391</sup> The inquest was particularly critical of the YJB, highlighting the *'target driven and top-down approach ... rather than a caring culture that addressed the individual needs of vulnerable children'*.<sup>392</sup>

The parliamentary Joint Committee on Human Rights raised serious concerns about the former Government's approach to juvenile justice in its children's rights inquiry published in November 2009.<sup>393</sup> A review of the YJB, jointly led by the Chair of the organisation, called in March 2010 for stronger links between the YJB and the Home Office (given its lead responsibility for youth crime and policing) as well as more emphasis on co-ordinated local services to meet children's needs.<sup>394</sup> Former Ministers agreed with the review's conclusion that the YJB *'should build on its strengths and reinvigorate its role'*<sup>395</sup> but the coalition Government announced in mid-October that the organisation would be abolished. Whilst the new Chief Inspector of Prisons, Nick Hardwick, has defended the *'crucial role'* of the YJB<sup>396</sup>, Rod Morgan, former Chair of the organisation, says he is not in mourning and *'if ministers are courageous then the YJB's abolition could be part of a radical, positive change of policy direction'*.<sup>397</sup> Frances Crook, the director of the Howard League for Penal Reform pointed out *'The track record of the YJB has been pretty poor in that it has failed to protect children in custody, reduce the unnecessary use of custody and influence practitioner and public attitudes to children in conflict with the criminal law'* but questioned whether the Ministry of Justice would keep a distinct focus on the needs and rights of children.<sup>398</sup>

The coalition Government's "rehabilitation revolution" has great potential, but the Ministry of Justice's structural reform plan contains scant detail on how such reforms might apply to children.

**Treatment of children in custody**

The March 2010 revision of the *Working Together to Safeguard Children* statutory guidance repeats previous requirements about dealing with child protection concerns in custody and ensuring all children living away from home, including those in custody, are treated with dignity and respect.<sup>399</sup> CRAE's proposal to list in the guidance *'safeguarding children in custody and other institutional settings'* under the Local Safeguarding Children Board general functions was not accepted. Furthermore, when CRAE obtained the full details of restraint and self defence techniques approved for use on children as young as 12, the Youth Justice Minister Crispin Blunt was asked in Parliament whether additional legislative safeguards would be introduced for children in custody. He replied that Section 11 of the Children Act 2004 is sufficient protection: this requires directors of custodial establishments to make arrangements to ensure their functions are discharged having regard to the need to safeguard and promote the welfare of children.<sup>400</sup>

Consultation with children this year to inform the Council of Europe's child-friendly justice guidelines revealed a number of serious concerns including a lack of breaks on the journey to custody; the use of strip-searching in admissions procedures (which children had not been prepared for); and stays in police cells.<sup>401</sup> The European Committee for the Prevention of Torture (CPT) highlighted rights violations in many areas of juvenile justice including reception arrangements, family contact, the provision of education, time for association and physical exercise, and the use of force and restraint. Little action has been taken to date to address the CPT's substantial concerns. The CPT considered the routine practice of strip-searching children on their arrival in custody to be a disproportionate and degrading measure, and recommended that the Government end this practice and undertake *'risk-assessed strip searches'* only.<sup>402</sup> However, the former Government stated in its response to the CPT that it had no plans to revise the policy and that it did not consider routine strip-searching disproportionate, but a necessity.<sup>403</sup>

The CPT also condemned the use of pain-compliant restraint techniques, yet the Justice Secretary, Kenneth Clarke, told Parliament that, while he regretted that such measures were needed, unnamed staff need instructions on how to control "out of control" young people, *'some of whom are much bigger than I am and who probably have a problem with drug abuse and a history of violent crime'*.<sup>404</sup> The Minister did not give any explanation for the dramatic reduction in the use of painful "distraction" techniques, between 2004 and 2010 – a period of great pressure from families and NGOs on institutions and state agencies to release information following the restraint-related deaths of Gareth Myatt and Adam Rickwood.

Figures published recently by the Ministry of Justice show that 25% of prisoner assaults in 2009 were against children aged 15 to 17 years (1,748 assaults in total).<sup>405</sup> In December 2009, the Prisons Inspectorate and YJB published the results of its surveys of 1,110 children held in YOIs in 2008/09, showing that 27% of girls had been victimised in custody, the majority by other prisoners. Nine girls (18%)

reported being victimised by staff, four citing insulting remarks and two reporting physical abuse. Nearly a quarter of boys (23%) reported being victimised by their peers and 1 in 5 (20%) reported being victimised by staff (12% through insulting remarks and 3% physical abuse). Whilst no female reported sexual abuse by staff, 1% of boys did.

This year the Howard League for Penal Reform published its report of the experiences of 15 to 17 year-old boys in custody. Among the boys' recommendations was the 'entitlement to a daily shower should never be restricted'.<sup>406</sup>

### **Training for staff in the juvenile justice system**

Children want staff to 'only work in secure environments with children if they have chosen to help those children'.<sup>407</sup> The Council of Europe found that children 'mistrust and have little faith in those in authority', and are 'critical of many officials – police, lawyers and others – for not respecting them, for not appreciating their special needs as children and for not showing them empathy'.<sup>408</sup> A report by the parliamentary Justice Committee in November 2009 raised concerns about the level of training for prison officers working with children (a matter also raised by the CPT). The YJB, the Prison Officers Association, the Magistrates Association and the Chief Inspector of Prisons have all deemed the current level of training inadequate, with a seven-day mandatory course the only qualification needed to work with children in a custodial setting.<sup>409</sup> Despite this, the former Government stated in its response to the CPT report on the UK that the training has been assessed by the YJB as 'fit for purpose'.<sup>410</sup>

### **Child's voice and influence in the juvenile justice system**

Research undertaken by the National Children's Bureau (NCB) found 'a lack of strategic direction' for ensuring children have their voices heard, and poor levels of children's involvement in actual decision-making.<sup>411</sup> The CPT felt in its visit to the UK that staff shortages were 'a contributing factor to the overly security-oriented approach' towards children.<sup>412</sup>

When interviewing young people in Huntercombe YOI, the CPT found that most 'saw no purpose in making a complaint as it would not affect their situation'.<sup>413</sup> Young people participating in research undertaken by the Howard League for Penal Reform felt similarly reluctant to use complaints procedures, particularly when they did not regard them as independent.<sup>414</sup> The YJB reports that the organisation Voice is helping it review complaints procedures for children in custody.<sup>415</sup>

NCB found that young people were concerned about the inclusion of family contact in incentive schemes for good behaviour, noting:

*Visits are a right not a privilege. The number of visits a young person is entitled to should not be linked to a scheme of punishment and rewards.*<sup>416</sup>

The Prisons Inspectorate continued to highlight this year that many children in custody go without visits from family and friends, also noting that institutions sometimes withhold these visits as punishment:

*Almost a third (30%) of young women surveyed said they had never received visits and a further 19% reported that they had not received one in the previous month. For young men, 14% said they had never received visits and 12% had not had one in the previous month ... At Warren Hill, family days took place every six weeks, although young men on the basic level of the incentives and earned privileges (IEP) scheme were not eligible.*<sup>417</sup>

The CPT has called for improvements to be made to both the facilities and arrangements for family visits.<sup>418</sup> Notwithstanding the important role parents can play in monitoring children's treatment in custody, ongoing contact is also vital for effective rehabilitation.<sup>419</sup>

## **106 Raise the minimum age of criminal responsibility**



In July 2010, the Criminal Justice and Licensing (Scotland) Act received Royal Assent. The Act, among other things, will raise the age of criminal prosecution in Scotland from 8 to 12 years, and creates a presumption against short sentences. The Council of Europe's Human Rights Commissioner Thomas Hammarberg has been clear about his expectations of states in relation to the age of criminal responsibility:

*It is crucial to separate the concepts of "responsibility" and "criminalisation"... governments should not focus on establishing an arbitrary age of criminal responsibility, but instead should look for holistic solutions to juvenile justice offences that do not criminalise children for their conduct.*<sup>449</sup>

The age of criminal responsibility in England remains shamefully low, though there are indications that at least a small increase is being considered (though this would still not meet the requirements of international law) – see page 18. This year, the Law Society publicly called for the age of criminal responsibility to be raised.<sup>450</sup>

## **107 Develop a broad range of alternative measures to detention for children in conflict with the law**



The Youth Rehabilitation Order (YRO) came into effect on 30 November 2009 and is now the main court disposal for use with children along with the Referral Order.<sup>420</sup> The YRO provides 18 different interventions that can be used alone or in combination to form a community sentence for children, and includes curfews, education requirements, residence requirements, treatment requirements, supervision and monitoring requirements and, for more serious offences, intensive fostering or intensive supervision and surveillance. The Independent Commission on Youth Crime and Antisocial Behaviour has broadly welcomed the YRO as 'a step in the right direction', while echoing the concerns of many NGOs that the use of the "scaled approach" may bring children unnecessarily into contact with the criminal justice system.<sup>421</sup> The Commission calls for a 'clearer distinction' to be made between the

different aspects of the YRO in order to ensure a proportionate response for each individual child, and registers concerns that the use of the ASSET assessment tool may lead to the '*...disproportionate treatment of children and young people from poorer neighbourhoods*'.<sup>422</sup>

The Standing Committee for Youth Justice (SCYJ) has serious concerns that the effectiveness of the YRO will be fundamentally undermined by a lack of dedicated resources, meaning that '*... children serving the orders [will be] more likely to fail and the capacity of community based sanctions to prevent further offending will be seriously undermined*'.<sup>423</sup> In an evaluation of the costs and benefits of the juvenile justice system, the New Economics Foundation emphasises the role of YOTs in building the confidence of the courts in community sentencing, and urges them to work closely with the police to divert children from the courts wherever possible.<sup>424</sup>

Following calls this year from the parliamentary Justice Committee to put in place a '*fully funded strategy to facilitate national access*' to restorative justice<sup>425</sup>, the Independent Commission on Youth Crime and Antisocial Behaviour recommended restorative justice as the default approach for responding to child crime (based on the model used in Northern Ireland). This would involve the child, a parent or appropriate adult, a trained police officer and, if possible, the victim of the crime in a "youth conference". An evaluation report from an NSPCC pilot of restorative justice methods in children's residential units found that it was a '*cost-effective, innovative and just way to deal with child welfare and criminal behaviour... [which] reduces recidivism rates and allows the person who has been harmed to have a greater voice in the criminal justice system*'.<sup>426</sup>

The Ministry of Justice's structural reform plan prioritises sentencing reform, which includes exploring the use of restorative justice with children – new sentencing proposals are expected in late 2010, leading to criminal justice legislation in the 2011/12 parliamentary session.<sup>427</sup> However, these pilots and the YRO do not, in themselves, aim to keep children away from the criminal justice system. The coalition Government has promised a '*new approach to youth crime*' that ensures sentences '*...not only punish, but also involve education, hard work and change*'.<sup>428</sup>

The SCYJ, in reviewing findings from "alternatives to custody" pilots, including intensive fostering and multi-systemic therapy, has found that some show '*great potential for reducing reoffending and the use of custody*'.<sup>429</sup> The ACPO strategy for dealing with children notes as one of its priorities '*reducing the unnecessary criminalisation of children and young people through using effective enforcement when justified, necessary and proportionate*' and its commitment to engaging children in the development of services.<sup>430</sup>

The parliamentary Justice Committee advocates a much bigger role for local authorities and mainstream agencies in keeping children who commit low level offences '*outside the criminal justice system altogether*'.<sup>431</sup> The former Government did not agree that placing responsibility on mainstream services was the right way forward<sup>432</sup>

though the review of the YJB has subsequently recommended similar action.<sup>433</sup>

## 108 Establish the principle that detention should be used as a measure of last resort and for the shortest period of time as a statutory principle



Monthly custody figures show that 2,146 children were held in custody in England and Wales in September 2010 (with 80% of children held in YOIs, 13% in privately-run STCs and 7% in local authority secure children's homes).<sup>434</sup>

In 2008/09, 6,720 children were sentenced to custody with an average of 2,881 children in custody at any one time (a slight fall from 2,932 in 2007/08). Although there has been a very small reduction in the numbers in custody, custodial sentences still make up 6% of all sentences imposed by a court, a figure stable since 2005/06 despite a fall of 19% in proven offences resulting in a court disposal. The average sentence length has also increased by four days to 81 days.<sup>435</sup>

Successive Ministers continue to claim that children are only detained as a measure of last resort in line with the CRC and other international standards. But no progress has been made to enshrine this in law, as recommended by both the UN Committee and the Council of Europe Commissioner for Human Rights in October 2008.<sup>436</sup>

The Sentencing Guidelines Council has published rules on sentencing children which make it clear that judges and magistrates must take into consideration both the prevention of offending and the child's welfare in sentencing, and remain aware of '*obligations under a range of international conventions which emphasise the importance of avoiding criminalisation of young people whilst ensuring that they are held responsible for their actions*'.<sup>437</sup>

In welcoming the sentencing guidelines, the parliamentary Justice Committee emphasises that this approach '*needs to be followed consistently*' given the limited effectiveness of custody for children. It also criticises the fact that punishment remains '*the paramount purpose of sentencing*'.<sup>438</sup>

The SCYJ has developed a detailed custody threshold following lobbying by CRAE and others for a statutory threshold in 2006 and 2008. There is now significant cross-party parliamentary support for implementing this recommendation from the UN Committee. A conservative estimate by the SCYJ calculates that implementing the proposed threshold might reduce the number of children in prison by around 55%.<sup>439</sup> The Council of Europe's Human Rights Commissioner Thomas Hammarberg says the only justification for locking up children is '*if they pose a continuing and serious threat to public safety*'. He recommends this determination requires '*frequent periodic reviews by a judge to determine, on a case-by-case basis, whether detention is the appropriate option*'.<sup>440</sup>

In the current economic climate, much attention has been given by Government and others to the financial cost of incarceration, with a report by the New Economics Foundation denoting custody *'the most expensive and inhumane option for society'*.<sup>441</sup> When asked for their views on the types of secure settings that should be available, children felt that *'large prison wings are harmful for young people and small units are the only appropriate form of custody'*.<sup>442</sup> Changes to the composition of the "secure estate" must not result in larger institutions further and further from a child's home and family.

### 109 Ensure that, unless in his or her best interests, every child deprived of liberty is separated from adults in all places of deprivation of liberty



Children are still detained with adults in police custody and in immigration removal centres.

Following a visit to the UK, the European Committee on the Prevention of Torture registered concern about the *'unacceptable'* and *'persistent practice'* of children spending significant amounts of time in prison vans after sentencing, and that children were often transported together with adults.<sup>443</sup> The former Government said this only takes place in *'exceptional circumstances'* and children are segregated from adults in the vans. It described standards for transporting children as *'child-centred'*, contrary to anecdotal evidence from children.<sup>444</sup>

Under-18s continue to be detained with adults in military custody, where there is still no separate system for dealing with children, although the Army in particular received praise from the former Chief Inspector of Prisons Anne Owers for its voluntary agreement to be subject to the prison inspection regime.<sup>445</sup>

### 110 Provide a statutory right to education for all children deprived of liberty



Provisions in the Apprenticeships, Skills, Children and Learning Act 2009 transferring responsibility for the education of children in custody to local authorities were welcomed by NGOs and the parliamentary Joint Committee on Human Rights, and were due to come into force on 1 September 2010. However, the Youth Justice Policy Unit confirmed in August 2010 that the commencement of the legislation would be delayed until 1 April 2011 (and then only applying to YOIs), in order to *'allow more time for awareness-raising and capacity building...'*<sup>446</sup>

Children in custody have asked for a fuller timetable, shorter lessons and fewer temporary teachers. They also want to be motivated and pushed.<sup>447</sup> The Independent Commission on Youth Crime and Antisocial Behaviour has called for statutory education plans to be in place for every child in custody.<sup>448</sup>

### 111 Ensure that children in conflict with the law are always dealt with in the juvenile justice system and never tried as adults in ordinary courts, irrespective of the gravity of the crime they are charged with



New guidelines on sentencing children, which came into force on 30 November 2009, make it clear that *'it is the general policy of Parliament that those under 18 should be tried in the youth court wherever possible'*.<sup>451</sup> This does not meet the UN Committee's recommendation.

Research undertaken by the Council of Europe found that children are not fully engaged in court processes, with criminal justice systems across Europe being insufficiently adapted for children. Children interviewed in England raised concerns about *'the meaning and consequences of the measures being imposed on them ... and the uncertainty about their sentence, and what would happen afterwards'*.<sup>452</sup> These accounts were echoed by the Prison Reform Trust which reported at the end of 2009 that *'a lack of planning and support ... means [children] are routinely unable to understand and participate effectively in criminal proceedings, which is crucial to the right to a fair trial enshrined in the Human Rights Act'*.<sup>453</sup>

The Justice Secretary Kenneth Clarke ordered a review of the treatment of children in criminal courts<sup>454</sup> following a case in May 2010 where two boys aged 10 and 11 were convicted in the Old Bailey of the attempted rape of an eight year-old girl.<sup>455</sup> The Metropolitan Police Commissioner, Sir Paul Stephenson, said:

*We need to look at how we deal with children of such a tender age through the court process. Whatever the outcome of the court process, the impact on young minds – I think we should all have concerns about that.*<sup>456</sup>

### 112 Adopt appropriate measures to protect the rights and interests of child victims or witnesses of crime at all stages of the criminal justice process



The Court of Appeal this year upheld a rape conviction based on the evidence of the four and a half year-old victim, who was describing events that took place when she was two years old.

In the first judgment (reported in *State of children's rights in England 2009*), the court commented that, while chronological age will help to inform a decision, the decision itself will always be

Lord Low of Dalston: Can the Minister say whether the Government will accept the commission's recommendation that prosecutions of all young people under the age of 18 should be heard in the youth court?

Lord McNally: I am afraid I cannot give that guarantee because certain crimes that are committed by people under the age of 18 should go to the Crown Court.

**House of Lords debate on the Independent Commission on Youth Crime and Antisocial Behaviour, 19 July 2010**

based on the competency of the individual child to give evidence in a particular trial. The Court of Appeal upheld the first court's determination that the child concerned was a compelling and competent witness. Lord Justice Hallett said:

*Unless we simply resuscitate the tired and outdated misconceptions about the evidence of children, there is no justifiable basis for interfering with the verdict.*<sup>457</sup>

The Children's Commissioner for England has criticised the failure of the adversarial court system to provide adequate protection or support for child victims and witnesses<sup>458</sup> though the Coroners and Justice Act 2009 includes several positive measures to assist children to give evidence – see page 37. The newly appointed (March 2010; first promised in 2004 legislation) Victims Commissioner, Louise Casey, has included children in her advocacy of the rights of victims of crime.

## 113 Review the application of the Counter Terrorism Bill to children



The Counter-Terrorism Act gained Royal Assent on 26 November 2008, and its provisions apply as equally to children (aged 10 and above) as they do to adults.

In July 2010, the Home Secretary announced a review of counter-terrorism powers to *'ensure that the powers and measures covered by the review are necessary, effective and proportionate and meet the UK's international and domestic human rights obligations'*.<sup>459</sup> However, there does not appear to be any special consideration of the impact of the powers on children. The terms of reference for the review include control orders, Section 44 stop and search powers, the use of the Regulation of Investigatory Powers Act 2000 by local authorities, and pre-charge detention. The review is due to report to Parliament shortly. Meanwhile, the coalition Government has extended the 28-day maximum period for pre-charge detention for another six months (from July 2010) pending the outcome of the review.<sup>460</sup>

Following a Freedom of Information request revealing an invalid authorisation for the use of stop and search powers under Section 44 of the Terrorism Act 2000, the Office for Security and Counter Terrorism in the Home Office reviewed all Ministerial authorisations since the legislation came into force in 2001 (Ministers must confirm senior police authorisation within 48 hours). It found 40 instances in 14 police forces where stop and search powers had been used unlawfully – potentially affecting thousands of individuals.<sup>461</sup> Policing Minister Nick Herbert told Parliament police forces that had acted unlawfully *'will do their best to contact those involved'*.<sup>462</sup> Disaggregated data on the use of Section 44 powers on children is not collected centrally. However, the *Guardian* newspaper reported last summer that the Metropolitan Police used terrorism legislation to stop and search 58 children aged under 10 (10 girls and 48 boys) in 2008. Officers using terrorism powers stopped a total of 2,331 children aged under 16.<sup>463</sup>

In his annual report on the operation of the Terrorism Act 2000, Lord Carlile judged that such powers were being used *'far too often on a*

*random basis without any reasoning behind their use'*, and said Section 44 gives rise to *'most assertions of excessive and disproportionate police action'*. He called for the provisions to be replaced.<sup>464</sup> The former Chair of the Joint Committee on Human Rights, Andrew Dismore, also criticised the use of Section 44 powers as *'a public order tool when there is no question of any terrorist threat at all...'*<sup>465</sup>

In January 2010, the European Court of Human Rights ruled that the UK's blanket stop and search powers under counter-terrorism laws violate Article 8 of the European Convention on Human Rights. The Court refused the UK Government permission to appeal against the judgment. In its legislative scrutiny of the Crime and Security Bill, published in March 2010, the parliamentary Joint Committee on Human Rights recommended that the Government amend sections 44 and 45 of the Terrorism Act 2000 to *'circumscribe the powers to stop and search'* in line with the European Court's judgment.<sup>466</sup>

The coalition Government has committed to considering the judgment as part of its wider review of counter-terrorism law and policy, and has introduced interim police guidelines applying a stricter test of "necessary" rather than "expedient" for the purposes of preventing terrorism. In a statement to the House of Commons in July, Home Secretary Theresa May said *'The first duty of the Government is to protect the public. But that duty must never be used as a reason to ride roughshod over our civil liberties'*.<sup>467</sup>

Statistics published in November 2009 following a Freedom of Information request revealed almost 310,000 police searches of children aged 10 to 17 took place between April 2007 and March 2009, and that 40% of those searched were Black children. Metropolitan police figures released in August 2009 show that, in the three months between July and September 2008, 84,104 children aged between 10 and 17 were stopped and searched by the police in London. A further 608 children under 10 years were stopped and searched. Searches for children accounted for 26% of the total searches undertaken by the Metropolitan police in that three-month period.<sup>468</sup>

In its scrutiny of the Crime and Security Bill during the 2009/10 parliamentary session, the Joint Committee on Human Rights expressed concern about the Government's plans, subsequently enacted, to reduce bureaucracy around the use of stop and search. It called for the routine collection of data on the age of individuals stopped and searched and specific guidance for police relating to stopping and searching children. The Committee said children and their representatives should be consulted on draft guidance and recommended the document make *'full reference to relevant human rights standards, including the UN Convention on the Rights of the Child'*.<sup>469</sup>

Changes to stop and search powers in the Crime and Security Act 2010 did include a requirement for the police to record the ethnicity of individuals who are stopped and searched, a positive move.

Between April 2005 and end March 2010, 31 children in Britain were arrested for terrorism. Of these, 5 (16%) were subsequently charged.

**Home Office statistics, 28 October 2010**

## 114 Conduct an independent review of ASBOs with a view to abolishing their application to children



In July 2010, the Home Office established a review of anti-social behaviour powers available to the police, with the Home Secretary announcing it is 'time to move beyond' ASBOs.<sup>470</sup> This is not an independent review as recommended by the UN Committee and it remains doubtful in any case whether the coalition Government will introduce non-punitive measures – see page 25. Nick Herbert, Minister for Policing and Criminal Justice, noted in relation to children that 'we need to become comfortable again with the notion of punishment as a consequence of anti-social behaviour ... the criminal justice system must reinforce responsibility and ensure that offending always has consequences which are visible to the law-abiding majority'.<sup>471</sup>

No systematic work has been done to research the characteristics of children who breach ASBOs and community orders. The NCB points out that anti-social behaviour units sit outside 'the normal monitoring and inspection arrangements for other children's services'.<sup>472</sup>

the consultation undertaken by the Scottish Government on the 2008 concluding observations and urged greater action by the UK Government. The Committee recommended:

*... that the UK Government devise a comprehensive and detailed plan for implementation of the UNCRC recommendations across the UK. This should be completed in conjunction with the devolved administrations and the Children's Commissioners, and be subject to widespread consultation. Crucially, the participation of children and young people should be actively sought and facilitated at all stages in the process...<sup>473</sup>*

## 115 Ratify all international human rights instruments it is not yet party to, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the Convention on the Rights of Persons with Disabilities, and the International Convention for the Protection of all Persons from Enforced Disappearance



The UK has ratified three more human rights instruments since October 2008 – the Council of Europe Convention on Action Against Trafficking in Human Beings (17 December 2008), the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (20 February 2009) and the Convention on the Rights of Persons with Disabilities (8 June 2009).

## 116 Ratify the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography



See recommendation above.

## 117 Take all appropriate measures to ensure the full implementation of the UN's recommendations by submitting them to Parliament, relevant Government departments and the devolved administrations for consideration and action



The parliamentary Joint Committee on Human Rights published its latest children's rights report in November 2009. This praised

## 118 Make widely available, in relevant languages and also online, the Government report and the UN's concluding observations to the public at large, civil society, youth groups and children in order to generate debate and awareness of the UNCRC



The UN Committee's 2008 concluding observations on the UK are not available on any current UK Government departmental website, though they do still appear on the website of the former Department for Children, Schools and Families.

### Optional Protocols to the UNCRC

There are two Optional Protocols to the CRC:

- The Optional Protocol on the involvement of children in armed conflict was ratified by the UK Government in 2003. The concluding observations relating to this Optional Protocol can be accessed at [www.ohchr.org/english/bodies/UNCRC/index.htm](http://www.ohchr.org/english/bodies/UNCRC/index.htm)
- The Optional Protocol on the sale of children, child prostitution and child pornography was ratified by the UK Government in 2009. The UN Committee on the Rights of the Child has not yet issued any concluding observations to the UK Government on this Optional Protocol

A third Optional Protocol on a communications procedure which would enable individual children and those working on their behalf to make complaints to the UN Committee on the Rights of the Child is currently under discussion and should be ready for member states countries to sign up to by the end of 2011.

The following organisations monitor the UK Government's progress on the two Optional Protocols:

The Coalition to Stop the Use of Child Soldiers  
<http://www.child-soldiers.org/home>

ECPAT UK  
<http://www.ecpat.org.uk/>

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