

# **CHAPTER TWO**

## **Family Life and Alternative Care**

## **INTRODUCTION**

The UN Convention on the Rights of the Child (CRC) makes extensive provision for the rights of children and young people to a family, in the family, on family breakdown or if alternative care is needed to ensure the child's care and protection. Every child's rights in these areas, as in others, must be secured in full compliance with the Convention's fundamental provisions of non-discrimination (Art. 2), best interests of the child (Art. 3) and the right to be involved in decision making which concerns the child (Art. 12). The European Convention on Human Rights (ECHR), incorporated into domestic law via the Human Rights Act, 1998, also provides for the rights of children, their parents/guardians and the state. Moreover, the European Court of Human Rights has supplemented this protection in a detailed manner in numerous judgments on the right to respect for private and family life protected by Article 8 ECHR. Together, the CRC and the ECHR not only set out the individual rights of children and young people within the family, but also promote an active partnership between them, their carers (generally parents) and the state.

This partnership approach is supported in Northern Ireland law by the Children (NI) Order 1995 (the Children Order) and its guidance and regulations. The Children Order represented a root and branch reform of the existing law relating to children between private individuals, usually parents/carers (the *private* provisions) and between parents and the State (the *public* provisions). It was intended to be a comprehensive legislative basis to guide decision-making about disputed family affairs and state intervention in family life.

The CRC approach is also supported by Children's Services Plans (CSPs), which have been developed in all four Boards to implement the Children's Services Planning Order 1998<sup>1</sup>. These CSPs are explicitly committed to promoting children's rights and family support through integrated approaches to planning (McTernan and Godfrey, 2004). A similar position is anticipated in the Department of Health, Social Services and Public Safety (DHSSPS) Strategy for Children in Need and the overarching children's strategy issued for consultation in November 2004 by OFMDFM (See Chapter 1). It is also likely to be reflected in the work of the Standards Development Task Group of DHSSPS, which is developing, focused, minimum standards for a range of care services, including those for children. The partnership approach and the balance between the child or young person, their carer and the State has been welcomed by most child care professionals (Pinkerton, 2003). However, there have been reservations as to how effective the Children Order is in achieving its aims due to areas that it does not cover, where it is inconsistent, or at variance with other legislation (e.g. adoption, mental health, education), where there are limitations in the practices that have been developed to implement it, and the adequacy of resources that have been committed to its implementation. How supportive, or indeed aware, children and young people and their carers are of the aspiration to active partnership between them and the state is not known (Higgins et al., 1997).

This chapter analyses the delivery of children's rights as laid down in the CRC and the ECHR in relation to family life and alternative care. The analysis draws on documentary evidence combined with the perceptions of the participants in the research. It is informed by, and located in, local research wherever possible but where relevant studies have not been identified national research has been drawn on. It is divided into four main sections as follows: Everyday Family Life of Children, Children at Risk, Children as Victims/Vulnerable Witnesses and Children in Alternative Care with sub-sections under each. The structure of each section follows that described in the Introduction (page xv)<sup>2</sup> and issues identified in each section are based on the common themes that emerged from the data with selected quotes being used to illustrate these common themes.

## **EVERYDAY FAMILY LIFE**

*The Convention on the Rights of the Child recognises that the family is the fundamental unit of society and that it is in the best interests of every child to grow up in a safe, secure family environment. For this reason, several of the Convention's provisions require the state to support the family so that it can undertake its responsibilities to their children (Art. 18). However, the Convention also requires the state to balance the right of the child to grow up in a family with the child's right to be protected from*

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<sup>1</sup> Full title: The Children Order 1995 (Amendment) Children's Services Planning Order (NI) 1998

<sup>2</sup> The reader is urged to read this introductory chapter in order to set the research in the broader context.

*harm. Thus, the CRC provides that children who are deprived of their family environment have the right to alternative care, and that where they are separated from their parents and it is not contrary to the child's best interests, they have the right to maintain regular direct contact with their parents (Art. 9 CRC; Art. 8 ECHR).*

*The CRC does not define family life although the case law on Article 8 ECHR, which requires the state to respect family life (in both abstaining from arbitrary interferences in the family and taking positive action to support the integration of children into the family) makes it clear that family life is an autonomous concept which includes all relationships between parents and their children, married or unmarried, cohabiting or living apart, as well as those bound by close personal ties. It is a flexible concept which has not yet been found to include same sex relationships, but it has been found to include the relationship between a woman, her partner who was a female to male transsexual and the child born to them by donor sperm, (i.e. those involving social rather than biological ties), (X, Y & Z v UK, 1996<sup>3</sup>).*

*There is no doubt that children's rights must be protected and promoted within, as much as outside, the family. According to the Committee on the Rights of the Child, Article 12 requires that children who are capable of expressing their views have the right to do so and have those views taken into account in decisions made about them. This applies to decisions made in the family, while Article 5 provides for the principle of evolving capacity. This requires that the extent to which parents exercise the rights of very young children on their behalf should diminish as the child grows in maturity and understanding and is able therefore to exercise their own rights. Additionally, Article 16 protects the child's right to privacy within the family and home.*

### **Everyday Family Life**

Social, economic and political change has impacted on all aspects of family life. Such changes invariably lead to differing demands being made of the family alongside changing expectations regarding the quality of personal relationships within it. In Northern Ireland (NI), the vast proportion of children grow up within a family whilst also living against a backdrop of the political conflict which is experienced in a variety of ways. Despite the interest of local and international researchers, the direct impact of this political violence on family life has not been well documented. There is some indication that children who live in interface areas do not feel safe in their homes because of community tension (Leonard, forthcoming), that some children and young people support the notion of cross-community marriages but believe that this would involve the making of difficult choices (Leitch and Kilpatrick, 1999); and that negative attitudes towards 'the other community' are passed on from one generation to another at an early age (Connolly, 2004; See also Chapter 1).

If little research has focused on the impact of 'The Troubles' on family life, even less has explored the quality of family life in general in NI. Figures such as the fact that one in ten young people will run away or be forced to leave home overnight before they are sixteen because of problems at home (Raws, 2001) and the difficulty that gay and lesbian young people have in 'coming out' to their parents (Carolan & Redmond, 2003; Youth Action NI, 2003; YouthNet, 2003) suggests that family relations are not always harmonious. This dearth of information on family life in NI means that it is primarily from the school research carried out for this study that we are able to get a glimpse into what everyday family life is like for children and young people living in NI today.

It is most probably significant that, in this research, a small percentage of children felt it important to state that their family 'was fine' (5% of all those who gave responses relating to family/home life), despite being asked specifically about aspects of home life that were unfair. Of the comments that were made about unfairness in the home just under a third (29%) concerned not having a say in family matters. This included personal matters such as how free time or pocket money was spent, what time children had to go to bed, deciding what programmes to watch on television (it was invariably an adult who had control of the remote control) and involvement in household chores (including babysitting). Additionally, not having a say in more general family decisions such as decorating the home, buying new cars, family holidays, financial decisions and moving house was also raised. These issues are illustrated in the poster and in the quotes below:

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<sup>3</sup> X, Y & Z v UK no 21830/93, Reports 1997-II no 35,p619,24EHRR 143



"Kids are not asked if they want to move house, they are just told. Children have no say in where they move to. Children have no say in how the house is wallpapered and which colour" (Boy, aged 15).

"I get annoyed about my bed time because all of my friends get to go to bed later than me even if they are the same age as me. Also in the summer months I have to go to bed in daylight" (Boy, aged 11).

However, the biggest issue raised by children and young people when asked about unfairness in the family related to difficulties living with siblings. Here children complained about being treated differently to their brothers or sisters or compared to them and/or that their siblings annoyed/picked on them. One third (33%) of responses received in relation to the home raised the issue of sibling rivalry with children aged 9-11 years being amongst the most likely age group of children to comment on this matter. Typical statements made by these children included:

"I am the oldest child in my family so if I fight with my sister I get in the most trouble even if my sister start it " (Boy, aged 11);

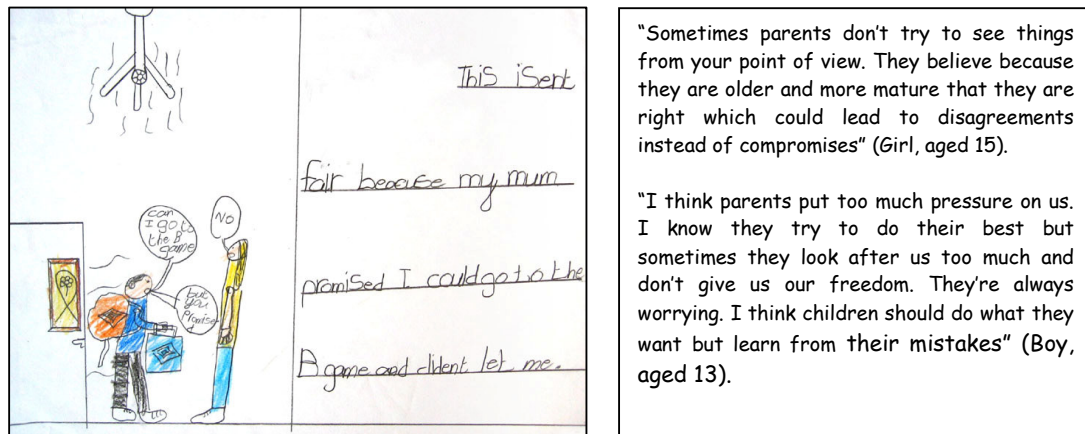
"It 's unfair because my twins come in to me and my brother 's playroom and mess it up. Then my dad says that me and my brother have to tidy it up and I am the only one ends up tidying up" (Boy, aged 9);

"Sometimes I feel that because I am the youngest so much is expected of me. For example, I have to be as smart as my brother and as good at drama as my sister is" (Girl, aged 11).



When asked about the things they considered unfair in the home, one in five children (19%) raised the issue of parents/guardians being over-protective in relation to not giving children enough freedom of

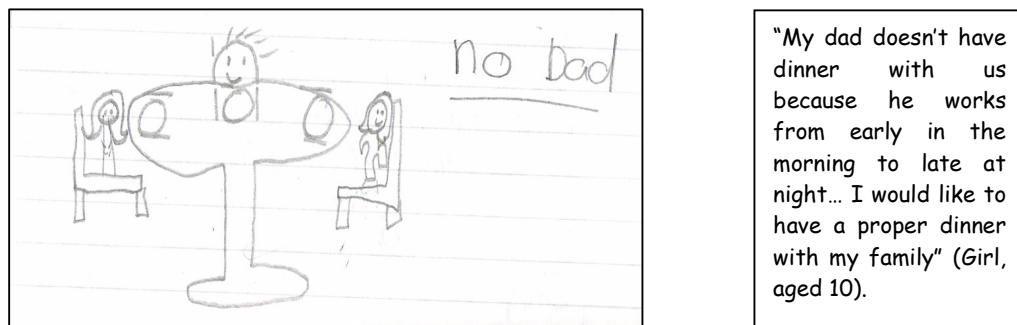
choice. Because of their young age, many children felt that their view was either not sought, or simply ignored or over-ruled in decisions taken by their parents. As illustrated in the following picture and quotes, children were sometimes frustrated at the lack of independence afforded to them by their parents/guardians:



"Sometimes parents don't try to see things from your point of view. They believe because they are older and more mature that they are right which could lead to disagreements instead of compromises" (Girl, aged 15).

"I think parents put too much pressure on us. I know they try to do their best but sometimes they look after us too much and don't give us our freedom. They're always worrying. I think children should do what they want but learn from their mistakes" (Boy, aged 13).

One other issue raised in relation to parents concerned the lack of time quality family time one or both parents spent with their children. Although the issue of parents working too much was only referred to by a very small number of children, the fact that it was mentioned at all suggests the importance of family life to children and young people:



"My dad doesn't have dinner with us because he works from early in the morning to late at night... I would like to have a proper dinner with my family" (Girl, aged 10).

The fourth main concern, which children raised in their submissions about what was unfair in the home related to the issue of privacy. Although only 8% of children raised this point it was clear that the manner in which their private space was invaded was important to them (Art. 16 CRC; Art. 8 ECHR). This included parents or siblings going into their bedrooms, looking at their mobile phones and/or reading their diaries. One young girl, for example, talked of the personal (and emotional) importance of writing her thoughts down in a diary but felt that she could no longer do so because as she stated:

"I love writing in school because that 's the only time I can really write what I feel and I once kept a diary but I was betrayed when someone intruded on it. So I scrapped that idea. I think if I got more chances to write I could say what I feel more" (Girl, aged 11).

The picture below illustrates another way in which young people felt that their privacy was encroached upon. It also highlights the tensions families face in attempting to maintain their child's safety in using

the fairly new communication tool of the internet, whilst also giving them some degree of freedom and privacy:



While the views of parents were not directly sought regarding family life many of the professionals involved in the focus groups referred to the possible impact that the changing structure of family life has on parents, the following being a typical quote:

"Families are getting busier, there's more stresses, there's more expectations, there's more independence of children, children are growing up physically and emotionally more rapidly so those things get to parents and contribute to relationships difficulties" (Professional Working with Parents).

Additionally, the impact of long working hours as mentioned by some of the children in our schools sample was also highlighted as a factor by the professionals:

"Parents with children under 11 years of age work the longest working hours in Europe - if parents are being pushed more and more to work longer hours ... that 's bound to have a huge impact upon family stability and in a way undermines the child's right to be part of a stable family and have contact with parents" (NGO Worker).

### Issues

- The children and young people in our schools-based research raised a variety of issues that they were concerned about within the home/family, particularly in relation to Articles 2, 12 and 16 of the CRC, though how much they share these thoughts and feelings with their parents remains unknown.
- How much children, young people and their parents or carers know about the CRC and children's rights within the family was unclear from our research and there is little knowledge regarding the extent of this in NI as a whole. (See Chapter 1).

### Comment

There is an extremely large gap in our knowledge regarding the extent of parents/carers and children's knowledge of their rights. Additionally we know little about what daily family life is like in NI for the vast majority of children and young people. It is important that large-scale research into these questions be commissioned in order to have a baseline from which to explore the strengths and difficulties of everyday family life. Without such information it will be difficult to assess the impact of any wide-scale children's rights awareness raising campaign such as has been recommended by the Committee on the Rights of the Child Concluding Observations in 2002 (UNCRC: 21).

## **PARENTING: GUIDANCE AND RESPONSIBILITIES**

*State parties are required to provide appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and take all appropriate measures to ensure that children of working parents have the right to benefit from child care services and facilities for which they are eligible (Art. 18(2) and (3)).*

### **Context**

The state has a duty to respect the rights and responsibilities of carers and support them in exercising these. This includes provision such as maternity rights, paternal leave and early years provision, as well as support for meeting the challenge of parenting in socially and economically deprived areas, which are often also areas of sectarian conflict (Muldoon, Trew and Kilpatrick, 2000). Law, policy and practice recognises the need to strike an appropriate balance between respecting the integrity of the family and providing services and interventions for family support and child protection. This is achieved through combining universal services such as health and education with selective services such as family support for 'children in need' and protection for those 'at risk of significant harm'. There is also a balance to be struck between family support and investigative child protection, which at present continues to be weighted towards the latter. Responsibility for the development and delivery of universal services lies with a number of Government Departments. Developing focused family policy is the responsibility of the Family Policy Unit, DHSSPS, as is responsibility for policy in relation to private law provisions such as domestic violence. Responsibility for children with disabilities or mental health problems rests with the Disability and Mental Health Unit of DHSSPS.

### **Practice**

Support for parents of children of pre-school age and after school provision has been expanded significantly by the voluntary and community sector following an increasing emphasis on this area by Government. For example, Sure Start is a government initiative, which operates across Northern Ireland. The programme aims to achieve better outcomes for children, parents and communities by: increasing the availability of childcare for all children; improving the emotional development for young children; and supporting parents as parents and in their aspirations towards employment. (Sure Start website, 2004). There are 23 Sure Start schemes operating in NI with approximately one-third of these being in rural settings. The numbers of parents accessing the schemes varies according to location. The schemes are multi-disciplinary and while they are based in disadvantaged areas they are aimed at all families living in the catchment area; and their emphasis is on early prevention. In addition to Sure Start there are many other family support projects which are being offered by the voluntary sector and community groups including, Barnardo's, Home Start, NCH, NIPPA, and Playboard to name but a few. On occasions these NGOs work together as part of a Sure Start project. It is interesting to note that Family Centres also provide a range of support services and resources to parents and children, but in 2000 had not increased in numbers (Higgins and Pinkerton 2000). Additionally, day care facilities for children including registered child minders, playgroups, day nurseries and out-of-school clubs also provide family support of one type or another. The majority of these are provided through voluntary organisations, private companies or individuals as a business, community groups as co-operate enterprise, or any of these bodies on a partnership basis. (Mooney et al., 2004).

Under Article 20 of the Children Order each Board has to undertake a triennial review of daycare and child minding in its area and publish the results. Additionally, at Trust level there is a register of all daycare and child minding providers but it remains difficult to get a comprehensive picture of the early years provision since there is no centrally held directory. In light of this a much needed parenting audit was conducted by the Parents Advice Centre (PAC), which identified that parenting services are

extremely patchy in NI. Recently, NGOs have been particularly active in promoting and developing parenting courses and PAC, in particular, provide a range of support for parents, including training on alternatives to physical punishment. Other developments driven by PAC include the establishment of a Parenting Forum. Furthermore, it is thanks to research conducted by PAC, in collaboration with Save the Children (SC) that we have some insight into how parents and children perceive the job of parenting, the range of essential skills needed and the type and level of support that they require. This report highlights amongst other things: the various limitations of statutory support for parents, stigmatisation and statutory workers' fixed ideas about parents; professionals not listening, lack of information and lack of access; and problems with coordination and consistency in services. The unevenness in provision of support for parents from the voluntary sector was also raised. (SC and PAC, 2003).

Despite the fact that family life in NI is lived against a background of political conflict support for families living in areas most affected by that conflict has been extremely sparse, though the provision of funding by the Victims Unit of OFMDFM has led to some developments in this area primarily by NGOs. Most notable in relation to family life has been Barnardo's *Parenting in a Divided Society* project. This project has developed a comprehensive resource pack, '*We' ll never be the same*', which is relevant to a 'wide range of organisations concerned with children, young people families, community and society'. (Barnardo's, 2004). Additionally, the DHSS in collaboration with the four Area Child Protection Committees have developed a Safe Parenting Handbook, which is to be launched shortly

### **Issues**

- There is a lack of access to and evaluation of, early years preventive work, including out of school provision, especially in rural areas. Associated with this is the need to raise awareness among government and society at large as to the importance of an early intervention strategy "... that 's one of the most pressing issues, ..... it's about getting the wider public to say we accept that there needs to be this preventative early intervention work, it needs to be supported" (Statutory Sector Representative).
- There needs to be greater promotion of family and community-based anti-discriminatory practices to enable NI families and society to move beyond sectarian divisions and political violence.
- In relation to positive parenting, a concern consistently raised by many of the interviewees was the lack of awareness raising programmes from Government, or any real lead on the issue of physical punishment (see further below).
- While there are schemes to support parents, concern was expressed that access to these was not evenly distributed across NI. Furthermore, support for certain parents was seen as inadequate, especially parents who work, young single parents and those with a child with a disability.

### **Comment**

Currently, there is no one over-arching family strategy, though the Family Policy Unit has informed the research team that work has commenced on its development. Support for the family will also have to be central to the overarching Children's Strategy and the Strategy for Children in Need, which are also currently being drafted (See Chapter 1). Policy commitment in this area must be matched with increased resource allocation and appropriate development in service delivery structures and practices. In addition, particular attention needs to be given to gaining the active support of children and young people, along with their parents and carers, based on an informed understanding of parents' responsibilities in providing direction and guidance to children and young people in the exercise of their rights under the CRC. The principle of evolving capacity is key here.



## **CHILDREN AND YOUNG PEOPLE WITH ADDITIONAL NEEDS**

*In addition to non-discrimination in the enjoyment of rights, Article 23 CRC recognises that children with disabilities and special needs have the right to special care to help them enjoy a full and decent life in dignity and achieve the greatest degree of self-reliance and social integration possible. In advance of the long-awaited UN treaty on people with disabilities, attention is drawn to the more detailed standards as set out in UN Standard Rules on the Equalisation of Opportunities for the Disabled.*

While the majority of children and young people will not face major difficulties in family life some will have exceptional adversities to overcome. These can come in a range of forms which make children particularly vulnerable and may place them at risk of discrimination in the enjoyment of their rights, such as children and young people with mental ill-health needs, those with a disability, or young carers. Some of these young people, including minority ethnic communities, Traveller children, or stigmatised social groups such as lesbian, gay, bisexual and transgendered (LGBT) young people, face multiple and long term problems. In such instances, these young people require additional support to help them overcome disadvantage, discrimination and racism. In other cases, the difficulties may not be so complex and may represent once-off difficulties (for example, the death of parent) but nonetheless these young people and their families may need appropriate support to come through difficult periods in their lives.

Given the wide range of groups of children and young people who are vulnerable and at risk of not enjoying their rights on an equal basis, especially in relation to family life, it is impossible within the confines of this report to cover all instances and therefore three key groups have been selected; young carers, children who are bereaved and children with disabilities. These were identified on the basis of exploratory discussions with NGO and statutory representatives who were asked to highlight particular groups of children and young people whom they felt had difficulty in accessing their rights especially in relation to family life.

### **Young Carers**

Young carers can be defined as children and young people who are the main carers of a sick or disabled parent or sibling. They therefore take on a role not usually assigned to young people, which immediately make their life experiences different to their same-aged peers. There are no official figures on the number of young carers and it is difficult to estimate this particularly since families often keep silent about the problem for fear of separation, guilt or pride (NCH website). In the absence of official figures the Carers National Association has estimated there to be between 15,000-40,000 young carers across the UK with the average age being 12 years, though the range is from as young as three years. Most of the available research has been conducted in England though there has been a recent study in the Republic of Ireland (Gilligan and Halpenny, 2004) and a small small-scale qualitative study in NI (Leonard and Davey, 2001b). When the findings from these studies are combined the picture that emerges is one of a young person who has to grow up fast, but who often report that this experience can be a rewarding one. Many young carers take pride in the fact that they are able to give support to a parent in need. However, being a young carer can make serious physical and emotional demands on the individual who will take on tasks such as housework, cooking and bathing their sick and/or disabled relative. The physical and emotional strain is sometimes too much; many suffer depression and report feeling lonely and isolated. Missing school is also common and 25% of young carers leave school with no GCSEs, as a result they are more likely to be unskilled and do not obtain vocational qualifications, which has serious consequences for their work and life opportunities as they mature (Eley, 2004).

The lack of support was also an issue for the young people in the aforementioned research, and there is clearly a need for services such as respite care, counselling, advice, and social and leisure pursuits for these young people.

The NCH is one of the main providers of projects for young carers in Great Britain and these offer:

- a break from caring and an opportunity to meet and make friends with others in the same situation;

- organised activities and outings (such as trips to the cinema or football games);
- professional help with one-to-one sessions with project staff;
- advice on accessing practical support, grants and funds from social service departments, health authorities and other agencies

In NI there are three HSSTs based young carers projects in the SHSSB, one of which is run by NCH. These are designed to support young people in their caring role, help them enjoy life like any other child and ultimately help keep families together. Based on experience in other areas and on research it is estimated that around 23% of the under 18 population in the SHSSB live in households where one or more family members is hampered in daily activities by chronic physical or mental health problems, illness or disability. The value of such projects can clearly be seen by the comments of the young people who attend them and the staff who facilitate them.<sup>4</sup>

"Here I can just relax without having to explain anything - everyone here understands what being a young carer means." (Young carer, aged 11);

"I wouldn't have coped at all without the project and I don't know where I'd be without them." (Young carer, aged 16).

The submission (2001d) by the Children's Law Centre (CLC) to the proposal for a Carer's and Disabled Children's Bill proposes that a multi-disciplinary approach should be taken in relation to the development of clear protocols between agencies so that children's rights in this area can be protected. Furthermore, it highlights many additional needs and raises the key issues in relation to young carers. Such proposals need to be moved forward urgently so that progress can be made on supporting all young carers and not just an isolated few. If these young people are to enjoy their right to family life then they must be seen as a priority:

"The most important thing we can do here is give young carers the time and space to be children again" (Young Carers Project Manager).

### **Children who are Bereaved**

The death of someone close to a child or young person can have a profound and devastating impact, particularly where the death of a parent or sibling is concerned. If not handled sensitively, grief of this nature can have traumatic ramifications in the making and maintaining of relationships in adulthood (Ryan, 2000). The experiences of children who are bereaved are best told through their own words and the following is based on quotes from children who were attending Barnardo's Service for Bereaved Children<sup>5</sup> and the NICCY schools research:

Children often blame themselves for the death of someone close: 'It is my fault my mummy died...I was messing about and she told me to keep quiet. I was cheeky to her... the next night she died' (Girl, aged 12);

Changes in the family home are also extremely difficult for children to cope with or understand: " Our home used to be a happy one, now we fight all the time. My mummy doesn't make dinners anymore and goes to bed at 8 o' clock" (Girl, aged 13).

Additionally, because the entire family may find it difficult to cope with the grief the child's distress may go unnoticed or unattended to: "My mum and dad argue all the time since my brother John killed himself. They blame each other and I blame myself" (Boy, aged 14). Sometimes adults may decide not to tell children the truth about a death feeling that it is too painful, and frequently the views of children are not sought with regard to funeral arrangements and events subsequent to the death. The hurt, anger and distress that this causes for the child in question is very real "I can cope with the truth

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<sup>4</sup> Quotes taken from research with young carers who attend NCH provision and the providers of this provision

<sup>5</sup> Consent from the children to use the quotes was sought and granted.

- I wish they hadn't lied to me" (Boy, aged 9). A small but significant number of children raised this issue in the NICCY schools research. For example, one child (aged 11) drew a picture of an angel with a question mark over the face and wrote beside it, "My baby brother died when he was born and I don't even know what he looks like..."



An NGO worker summarised these concerns regarding children who experience bereavement as follows:

"Children who are bereaved are frequently ignored, not seen and forgotten about and people do not realise that they have very specific needs. Social services and health authorities feel that they are not high risk enough to be given priority but they end up as this - there is a great need for more preventative work so that we don't end up with young people who have serious mental health problems as a result of childhood bereavement".

The need for early preventative work is clearly key to allowing the child who has been bereaved to have a voice in matters affecting them and to prevent long term problems. Such preventative work can take a variety of forms, including information leaflets on the grieving process (which is sometimes all that is needed), telephone advice and one-to-one counselling. To be effective, however, this needs to be child appropriate and accessible to children in these situations.

### **Children with Disabilities**

Unlike the previous two categories of children with additional needs, detailed legislative and policy provision regulate and guide the provision of services for children with disabilities, much of which is directed towards the social inclusion of these young people. However, the implementation of some of this policy has been fragmented and lacks a coordinated approach. A review of Mental Health and Learning Disability has recently been completed and the final report is awaited. In relation to access to family life for children with disabilities, the research is said to be skewed towards seeking the parent's perception of this, rather than the child's. This is perhaps understandable given the communication difficulties that might be encountered with children with learning disabilities. However, the use of creative techniques, and especially artwork, is a means of communication, which can allow such difficulties to be overcome, as demonstrated in the current research.

The issues raised regarding family and home life by the young people with learning disabilities in the research were similar to those raised by all children and included concerns around unfairness in the home in terms of lack of say in personal decisions such as bedtime, coming in from playing and household chores. Similarly, the same points as were raised in the mainstream schools regarding siblings "picking on" or "bossing them" or using their things without asking permission and parents shouting at them and giving them orders were also mentioned. However, one issue, which appeared to concern a small number of young people with learning disabilities, as opposed to those in mainstream schools, was the level of noise in the home, which, they said, kept them awake.

When teachers working with these children were asked about areas in which they felt children's rights may be ignored one person, in particular, raised the question of parents being over-protective (a point made by children themselves in mainstream schools) and how this in many ways infringed upon their rights (especially Art. 12). "Special children seem to be the most vulnerable because sometimes even their parents don't respect their rights!" (Educational Professional). This raises a question about the issues of independence and evolving capacity as the children approach adulthood. Many of these young people tend to socialise with their peers from special schools and thus have few friends close to home and little access to social networks. This results in them being excluded from social activities with their same-aged peers outside school and there is a danger of them becoming increasingly isolated socially once they leave school (Kilpatrick and McClinton, 2004).

Monteith et al., (2002) and Kelly (2002a) explored the views of children with disabilities and parents in NI. Findings from these studies indicate that parents often do not appreciate the extent of their children's awareness of being different to others. Furthermore, it was rare for families to discuss a child's disability with them. Small scale unpublished research by McCann (1998) describes the family experiences of brothers and sisters of children who are learning disabled, which are primarily positive, though some frustrations are expressed. On the basis of such findings, and as recommended by Monteith and Kelly practical support and information on how to guide children through the experience of growing up with a disability should be provided to appropriate families. Additional support should be offered to help overcome the barriers to inclusion that may be encountered.

Given the difficulties in communicating with children with learning disabilities it would seem important that those working with this group of young people should have specialist training focused on the ways in which it is possible to ensure that the voice of children with disabilities are heard. As one educational professional put it: "all children need to be listened to and [have their] concerns acted on in an appropriate way" (their emphasis). (See also Chapter 5: Education)

#### **Comment**

Due to a lack of systematically gathered and collated information on the extent and effectiveness of both existing services and need, it is impossible to determine whether the rights of vulnerable children and their parents are being met and whether these rights are enjoyed without discrimination. Planners at all levels are increasingly aware of this problem and the Children's Services Planners, in particular, are working to find solutions to the conceptual and technical problems involved, (for example there is ongoing work to create a register of children with disabilities to inform the service planning process), but there is no room for complacency. There is an urgent need for this issue to be addressed in a holistic manner so that a comprehensive picture of the situation faced by all vulnerable children and their families in NI can be drawn. Only then can those groups for whom access to family life is problematic be identified with a degree of certainty.

#### **CHILDREN AT RISK**

While many children grow up in safe and secure family environments unfortunately this is not always the case. Some children face violence, abuse or neglect and in such cases the State has a duty to intervene to safeguard and promote the best interests of the child. Sometimes this interference requires HSS Trusts to acquire parental responsibility for children and court proceedings ensue between the Trust and the parents. Despite the extremely wide range of issues that arise in this area, extensive interviews conducted for this research with statutory and NGO representatives and workers requires that the issues of physical punishment and child protection procedures are worthy of special attention.

*Article 19 CRC provides that:*

*"State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."*

*Under Article 8 ECHR, any intervention in the family to protect the child must be proportionate to the aim to protect the child's interests and well-being and must also be carried out without discrimination and with due attention to procedural safeguards. Considerable ECHR case law exists on where the delicate balance lies between respecting the integrity of the family (and the child's right to grow up in it) and protecting the child's rights and interests (Kilkelly, 1999, 2004). Adherence to procedural safeguards are paramount and require, inter alia, that the parents enjoy effective involvement in decision-making processes at all levels (Art. 8 ECHR), and that due process applies throughout (Art. 6). Cases involving children must be expedited with due care and decisions must be taken based on evidence compiled by competent authorities. Children must be heard as part of this process (Art. 12 CRC). The state also has obligations to provide victims of abuse and neglect with support and treatment, and has a duty to identify and punish those responsible for the abuse. (Art. 39 CRC).*

### **Physical Punishment**

The Committee on the Rights of the Child has expressed the firm view that the physical punishment of children is contrary to Art. 19 and recommended in the Concluding Observations of both 1995 (31) and 2002 (36-38) that the UK abolish the physical punishment of children including in the family. **Both** the Committee and the European Commission on Human Rights (*A v UK*, 1998)<sup>6</sup> have criticised the vague nature and inconsistent application of the defence to assault, i.e. where the punishment complained of is argued to constitute 'moderate and reasonable chastisement'.

Physical punishment remains an issue in NI despite several publications and calls for action by NGOs who have already raised the issue with the Commissioner for Children. A public consultation was carried out by the Office of Law Reform (OLR) in 2003, but no clear consensus on the issue of legal reform emerged and the majority of individual respondents remained unconvinced of the need for change. However, there was consensus about the need to develop measures to support parents and parenting (OLR, 2004). Several of those interviewed for the current research questioned whether the general public was sufficiently aware of the damaging and detrimental effect that such punishment can have on the lives of children to enable them to make an informed judgment on the issue. The current awareness raising work that NGOs such as PAC, Save the Children and Positive Parenting are doing in this area will, it is hoped, have a significant impact. The unequivocal view expressed by the vast majority of children, young people and adults spoken to for this research was that all forms of physical punishment should cease.

### **Child Protection**

There are primarily two types of referrals to social services in respect of children in need: firstly 'children in need' under Article 17 of the Children Order where extra family support or the provision of services is required to meet their needs and, secondly 'children in need of safeguarding' referrals under Article 66 of the Children Order where the child is suffering or likely to suffer significant harm. Children in need referrals accounted for 54.9% of all referrals to social services in 2001/02, while children in need of safeguarding referrals accounted for 25.5% of all referrals in the same year (Mooney et al., 2003).

The duty of child protection agencies to intervene where a child is suffering or likely to suffer significant harm and the range of legal orders available to safeguard children are set out in Parts V and VI of the Children (NI) Order. Guidance on managing child protection cases is provided in *Co-operating to Safeguard Children* (2003) and in November 2003, Draft Standards for the Inspection of Child Protection Services were issued by SSI (2003c) to establish criteria against which the inspection of a range of child protection services could be measured. Each Trust is expected to adhere to the guidance set out in *Cooperating to Safeguard Children*, including carrying out an initial assessment within seven days of a referral being made. Regional Area Child Protection Committee (ACPC) procedures, which develop the guidance in *Co-operating to Safeguard Children*, will be launched in April 2005. Additionally, each Trust has a range of policies and procedures with regard to assessment, case planning, case management and recording of cases, which are disseminated as guidance to their family and childcare social workers. There are also a number of bodies, which have been established with a remit to assess and promote better child protection services including the Child Protection Panel

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<sup>6</sup> *A v UK*, no 25599/94, Reports 1998-VI no 90, para 21

(CPP) within each Trust and the ACPC within each Board. In 2002 in response to a Private Members Bill to regulate ACPCs (which fell due to the Assembly suspension), DHSSPS established the Child Protection Advisory Group (CPAG) comprised of key agencies and professionals to act as a high level advisory body on regional child protection issues. These various committees, panels and agencies are generally keen to re-focus the service delivery culture from one, which is crisis driven and proceduralised to one, which is outcomes focused with an emphasis on quality. (WELB, Children's Services Plan 2002-05) The fact that so many boards and committees have a remit for child protection highlights the seriousness with which the issue is viewed<sup>7</sup>

## Practice

There has been a steady increase in the number of children and young people who are dealt with through the child protection system. According to the Children Order Statistical Bulletin 2003, the number of children whose names are on the child protection register rose by 16% (1,386-1,608) between 1998 and 2003. Three out of four of these children are aged under 12 years and 40% have been on the register for a year or more. The reasons for inclusion on the register in 2003 ranged from neglect (40.5%), physical abuse (23.5%), sexual abuse (11%) and emotional abuse (14%) to a combination of these reasons (11%). There are many factors that may play a part in the increase in the number of children whose names are included on the Child Protection Register but it is important to note that this is more likely to indicate a growing awareness and concern of the issues surrounding child protection and continually improving guidance, and procedures rather than necessarily an indicator of an increase in child abuse.

There is no overarching regional policy regarding the management of child protection issues and structural arrangements vary across Trusts. However, within each Trust all child protection referrals will be screened and prioritized in one way or another, though there are variations across Trusts in the models used. Furthermore, concern (supported by other research e.g. Spratt, 2000) was expressed by several of the interviewees that the perception of significant harm differs from one case worker to another and can vary with personal prejudices. It was argued that this lack of consensus might contribute to regional variations:

"There are differentiations across the different Trusts. North Belfast might deal with a majority of neglect cases whereas another Trust might deal with mostly emotional abuse so the criterion for significant harm could well differ based on regional circumstances like the level of social deprivation" (Child Protection Professional)

Where the case reveals or suggests significant harm to a child then there is an obligation under *Co-operating to Safeguard Children* for that child to be seen and spoken to within 24 hours of the referral having been made. There is not this requirement for cases deemed non-urgent at the point of initial referral and while not considered appropriate practice there is some anecdotal evidence that some of these cases due to pressures at a local level are classed as 'family support' and placed on a waiting list. In relation to this point some concerns were raised by NGOs about the possibility of what may be in fact some unallocated child protection cases. None of the Boards has raised this issue with the Department and there are no published statistics to determine whether or not there is a problem. One possible way of addressing this issue is the New Beginnings Initiative of the Western Board, which has a heavy focus on multi-disciplinary training and co-operation in terms of the appropriate referral of child protection cases. While this may be a promising approach the model is in its infancy and needs to be carefully and rigorously evaluated before being more fully implemented. Another alternative, which was put forward by some interviewees, was for ACPCs to establish mechanisms to ascertain if there were unallocated cases, which could be reframed as family support and thus downgraded. However, this suggestion does not take cognizance of the Laming Report in which it is stated:

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<sup>7</sup> A range of professionals work in child protection including those from PSNI, Social Services and NGOs. The generic term 'child protection professional' therefore is used to refer to those interviewed in respect of their work in this field.

“I also have evidence that the downgrading of cases to the status of Section 17, and afterwards closure, was becoming an attractive option to childcare teams struggling to deal with what they perceived to be an ever-increasing number of child protection referrals,.....” (para 17.102)

“this approach to the use of Sections 17 and 47 (*Articles 17 and 66 of the Children Order*) can only be described as dangerous... sections 17 and 47 of the Children Act 1989 are used simply to identify the part of the Act which is used and is not a justification for inactivity” (para 17.108).

Clearly a thorough reading of the Laming Report would be essential before any decisions were taken regarding this issue.

Referrals confirmed as being of a child protection nature are generally subject to case conferences, which are attended by the social workers, the child’s parents, a police officer and any other involved professional including doctors, health visitors and teachers. Young people also have a right to attend their case conferences but this is not advised for children under 12 years of age. In such instances the guidance suggests that the Chair of the case conference should make a decision based on the best interests of the child. Though this is not open to individual interpretation differing opinions as to its value were expressed by interviewees in this research, for example:

“Personally I don’t support the presence of children at case conferences. This is not that they should be denied this right but on the basis that these meetings are not therapeutic and can often be unpleasant and traumatic for the child” (Child Protection Professional).

In order to address such problems it is important to ensure that children and young people, as well as professionals, receive adequate support and training to ensure that the situation is dealt with in an appropriate manner and that children feel involved.

Depending on the outcome of the investigation, a decision may be made to make application to the court for one of a number of court orders though this occurs in the minority of cases. McAlister, Toal and McCrea (2004) explored young people’s views and perceptions of their involvement in the child protection process with a small group of eight young people between the ages of 12-16 who were subject to registration in the Western HSS Board’s area. Findings indicated that these young people did not know that their names were on the Child Protection Register and those who were in care did not separate child protection arrangements from those associated with being looked after. Furthermore, they saw child protection as something that was outside the family and they understood social workers to be associated with brothers and sisters or parents rather than with themselves:

“ some people have them (social workers) because of their brothers and sisters, if they’ re disabled”;  
“X (a brother) has a social worker cause he goes to a special needs school ”;  
“we’ve always had one cause Mummy had one”;

The young people also had much to say with regard to what would make a difference for them including:

“ employ people who listen to children and don’t disregard what they say”;  
“ don’t write everything you say down, be more relaxed and easy going”;  
“ talk about other things – not just my life”.

Additionally, though all the young people had heard of Childline and knew the telephone number they were less than confident about using it because of concerns as to how they would communicate what they wanted to say. While this is a small scale study it is one of the very few that has examined this sensitive issue and has been published. The findings highlight important misperceptions and/or misunderstandings as well as ways in which the process might be improved for the young person. It would seem that larger scale similar research to elaborate on these findings would be extremely valuable and help ensure that the child protection procedures encourage children to be involved in a process, which they understood and are able to benefit from more fully.

Many of the participants were keen to make the point that the numbers of newly qualified social workers attracted to work in the area of child protection and family and childcare teams are not always

sufficient to meet staffing needs and this, accompanied by the heavy workload and high turnover of staff, was highlighted as a serious cause for concern:

*"They are over loaded with work from the start. They don't get a chance to learn and expand their skills"* (Child Protection Professional).

These staffing difficulties can have a knock on effect on the time between referral and the child/family being seen by a social worker, and thus have implications for individual cases and may affect the quality of care afforded to the children and families. Additionally, the young people themselves commented on this as a particular difficulty for them as reflected in the comment, *'social workers shouldn't always change'*.

#### **Other Concerns:**

##### **(i) Vetting/ sex offenders and violent offenders**

Several other concerns were raised relating to safeguarding children including the operation of the Pre-Employment Consultancy Service (PECS) with particular emphasis being placed on Schedule 1 offenders and the gaps in vetting procedures across jurisdictional boundaries especially in relation to the interface with the Republic of Ireland

*"Alleged or convicted Schedule 1 offenders who commute across jurisdiction boundaries pose a problem regarding monitoring. Whilst working relationships between the PSNI, Gardai and the relevant social work teams are excellent differences in statutory duties associated with variations in legislation, operations and services have been apparent "* (Child Protection Professional).

The lack of a statutory basis for the assessment and risk management of sex offenders was also highlighted as a problem and widespread concern was expressed in relation to the guidance and legislative framework for the management of violent offenders, which was seen as being much more limited in NI (compared to England and Wales). It should be noted that the new Multi Agency Sex Offences Risk Assessment and Management (MASRAM) arrangements were described as working well and these are currently subject to the first thematic inspection by the Criminal Justice Inspectorate (NI).

Some of the current gaps in this area may be addressed under the Protection of Children and Vulnerable Adults (NI) Order 2003 (POCVA) as it is enabled in stages through 2004 and 2005 and accreditation provisions have the potential to ensure vetting and safeguarding practices are extended to a huge range of community and voluntary groups (VDA, 2004). Additionally, implementation of Part V of the Police Act 1997 and new structural arrangements established by the NIO Employment, Checking, Reform and Implementation Team (ECRIT) have the potential to improve the delivery and efficiency of vetting arrangements though it is too early to assess the impact of these changes.

##### **(ii) Child Deaths**

There is a worrying absence of detailed figures on child death through abuse and neglect, (an issue which was raised in the Concluding Observations of the Reporting Committee para 40 a, b, d). This situation should be improved by the DHSSPS regional key indicators. Additionally, revised procedures on the conduct of Case Management Reviews (CMRs) and the establishment of a sub-group of CPAG, the Child Management Review Group, to consider the wider implications of CMR Overview Reports should ensure that there is better dissemination of lessons learned, with regional implications, from serious cases. In response to the Lewis Inquiry (Implementation Team, 2003) a regional Child Death Review Protocol has been developed under the auspices of the SACPC and this will be formally consulted on by DHSSPS<sup>8</sup>

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<sup>8</sup> In view of the O'Hara Inquiry (Human Organs Inquiry 2002) the Department is seeking legal advice on such consultation



"In previous years this information remained within Boards. Now the aim is to learn lessons and disseminate information across all the Boards and trusts in Northern Ireland" (Child Protection Professional).

### (iii) Children with Disabilities

As with child deaths there is a concerning absence of figures on cases involving the abuse or neglect of disabled children despite the fact that ... " disabled children are more vulnerable to abuse or neglect by virtue of the fact that they may not be able to communicate the abuse" (Child Protection Professional).

### Issues

The following identifies the main issues, which emerged from the research including the consultation with statutory, and NGO representatives and workers, the comments from young people, and relevant reports in the area, including the Lewis Review, (Implementation Team, 2003) the Laming Inquiry (DH, 2003) and other related policy documentation.

- The absence of a common, regional assessment framework is highly problematic in that it leads to a lack of consistency in assessment and establishing thresholds across Board areas. Similarly, the absence of precise criteria in terms of significant harm and differing interpretations regarding thresholds can have an enormous effect on how cases are treated and prioritized.
- Concerns were raised around insufficient levels of multi-agency and inter-Board communication (both within NI and on a cross-Border basis) in addition to the accompanying lack of clear lines of accountability or understanding of individual roles. The need to re-clarify lines of accountability between Trusts, Boards and DHSSPS was raised as a key issue in the Lewis Inquiry (Implementation Team, 2003). These concerns have been addressed in *Co-operating to Safeguard Children* but only careful monitoring of the situation will establish how effective they have been.
- There is a need for more effective multi-disciplinary training firstly to emphasise the basic principles of child protection in terms of assessment and reporting procedures whilst also addressing emerging areas such as the effects of domestic violence or sexual exploitation. "A multidisciplinary approach is the key to asserting and delivering children's rights so that we understand these things better " (Legal Professional)
- Issues around the assessment and management of sex and/or violent offenders were raised. While several initiatives have been introduced to address these issues further progress still needs to be made. In particular the need to place arrangements onto a statutory footing and the need to ensure that the legislative and procedural framework for the management of violent offenders is sufficiently robust.
- There is a need to ensure that child deaths and child protection issues related to children and young people with disabilities and physical punishment are all kept high on the child protection agenda.

### Comment

There is a need to invest in structural improvements to child protection system and in particular the need to strengthen the functions of ACPCs in Northern Ireland. While there have been a number of welcome policy developments, overall the procedural and legislative framework for child protection can be regarded as light and under developed in Northern Ireland.

Government in England have ensured considerable investment and policy development in child protection following the Laming Inquiry and the Children Act (2004) will see the replacement of ACPCs in England and Wales with statutory Safeguarding Boards. The legislation also introduces

clearer lines of accountability in child protection and new provisions on co-operation and information sharing. Many of these initiatives will have relevance to child protection in Northern Ireland.

The Department have indicated that they are considering the implications of the Children Act in Northern Ireland by placing ACPCs onto a statutory basis as well as dealing with a number of child protection matters that may need a legislative basis such as information sharing. *This*, combined with other proposed arrangements such as the Child Death Review Protocol, and the establishment of the DHSSPS Child Protection Advisory Group may well assist in improving child protection structures, interagency working at all levels of the system and policy development, thereby enhancing the safeguards available to children.

The Social Services Inspectorate is currently undertaking an inspection of child protection arrangements in four HSS Trusts and the PSNI has recently published a force order and guidance in relation to officers and staff dealing with child protection issues. Furthermore, MASRAM have developed cross-agency training involving social workers, police and probation officers at a regional level and the Criminal Justice Inspectorate are examining the current framework for the management of violent offenders with a view to bringing Northern Ireland into line with England (see also Chapter 6).

Other developments include the launch of the revised fourth edition of the Joint Protocol for the investigation of Abuse by Police and Social Workers and the launch of regional ACPC procedures in April 2005. The latter is a key step since it will result in regionally agreed procedures as opposed to one for each Board. These initiatives are also likely to have implications for voluntary organisations that are delivering services for Boards and Trusts on a contractual basis (4 Nations Child Policy Network, 2004). The success of these programmes is dependent not only on policy or procedure but also individual commitment, communication and cooperation and additionally, careful monitoring is required to determine the level of their impact.

Finally, the issue of physical punishment within the family is still a significant concern. While the Minister Ian Pearson has indicated that he intends to bring NI legislation on physical punishment into line with the position in the Children Act (2004) there is a major challenge for government to mainstream and promote the use of alternative forms of positive parenting. High priority needs to be given to this and the other issues raised above in order to ensure effective implementation of the right of all children and young people to be protected from all forms of abuse, violence, harm and maltreatment under Art. 19 of the CRC and Art. 3 of the ECHR.

### **CHILDREN AS VICTIMS/ VULNERABLE WITNESSES**

For a child, being the victim of abuse is highly likely to have a significant emotional and psychological impact. Having to undertake the role of a witness in court proceedings may also add to the trauma already experienced and needs to be handled with understanding and sensitivity. Unfortunately, this is not always the case and children are often left open to, "unacceptable levels of harassment in court" (Legal Professional). It is vital therefore that those professionals who are involved in court proceedings involving children and young people are fully aware of the emotional turmoil and vulnerability of the young person concerned.

The Children Order provides the statutory framework for public and private family law proceedings, which had previously operated separately and the courts are responsible for delivering the range of court orders. The Children Order Advisory Committee (COAC) plays a major role here and publishes annual reports as well as support documents for professionals and others working in this area such as The Best Practice Guidance. (COAC, 2003a, 2003b)

#### **Court Proceedings: Public Law**

Public law proceedings are those that occur where the authorities intervene to acquire parental responsibility for children (DHSSPS, 2001). In public law cases, the HSS Trust usually commences the proceedings and cases may be heard in one of two specialist classes of courts namely, Family Care

Centres or Family Proceedings Courts, although all cases must commence at a Family Proceedings Court. The complexity of a case or the potential to join it to another hearing involving the family may require that it be transferred up to either a Family Care Centre or the High Court.

Despite the Children Order establishing the 'no-delay' principle the determination of children's future in cases within the Courts has become an increasingly lengthy and expensive process. (COAC, 2003c, Kelly and McSherry 2003, McSherry, Iwaniec and Larkin, 2004). Some of the key findings from these reports were also raised by those interviewed for the current research and included: continued delays, lack of expert witnesses, the role of the social worker combined with a failure to recognize the expertise of social workers and the absence of a review mechanism to ensure Care Plans are implemented once an order has been granted.

Continued delays have implications for all concerned but especially the children and young people. The impact of the delays has been increasingly well documented (ibid.). Delays remain, however, a matter of concern for most of those we interviewed, though several people did note that the recent directives aimed at improving the system such as the COAC Best Practice Guide ((2003a) may not have had time to have made an impact. Additionally, legal professionals and social workers in the McSherry et al. study suggested that a major source of delay can be the process of trying to balance the parent's right to a fair trial and family life as set out by Article 8 of the Human Rights Act (1998) with the no-delay principle of the Children Order.

A second point raised by those working with children and young people in the current study was the lack of expert witnesses, particularly in the field of assessing parenting capacity and mental health. There was a strong suggestion that better use could be made of the expertise that exists in NI and it was argued that more senior and experienced social workers could fulfill this role though this would require the negative attitude sometimes displayed towards them by the legal professions to be overcome.

Another issue, which was raised by many interviewees and which is linked to the above point is that of the multi-faceted role that the social worker is expected to play and the fact that preventative services have their limitations (Cleaver et al., 1999; Quinton, 2004). The move into the courts and the child protection nature of the work was seen by several participants to lead to changing roles and relationships for social workers:

"There is a mismatch between what social workers expect to do and what they actually end up doing; they come into family work to do preventative work and end up in court doing child protection and court work. They aren't in the courts in an adversarial role they're there to support the welfare of children but they are treated as if they are part of the adversarial system" (Senior Social Worker).

Concern was also expressed by some legal professionals regarding the outcome of cases once an Order had been issued and court involvement is finished. Currently there is no opportunity for courts to follow-up how care plans are implemented. In response to this concern it had been proposed that some cases should be 'starred'. These cases would then be reviewed by the court at a later date to ensure that the care plan had been implemented and was continuing to meet the child's needs. The suggestion of 'starred cases' has previously been put forward in England but was overturned by the House of Lords in 2002<sup>9</sup>. A possible alternative to this is the approach taken in England and Wales where, as a result of Article 118 of the Adoption and Children Act (2002), which amended the Children Act (1989), there is now provision for reviewing officers to be appointed in these jurisdictions. The reviewing officers monitor the performance of authorities and it was suggested by some interviewees that NI should consider the value of a parallel initiative.

### **The NI Guardian Ad Litem Agency**

The NI Guardian ad Litem Agency (NIGALA) was established by DHSS in accordance with Article 60(7) of the Children Order and the associated Guardian Ad Litem (Panels) Regulations (Northern Ireland), 1996. The function of the Agency is to safeguard and promote the interests of children by

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<sup>9</sup> *In Re S (Minors); Re W (Minors)* 2002 UKHL 10.

providing independent social work investigation and advice in care and adoption proceedings. The court must consider appointing a Guardian ad Litem (GAL) in proceedings specified in the Children Order and associated court rules. This includes care or supervision orders, child assessment or emergency protection orders, contact orders relating to children in care, residence orders for children already in care or proceedings concerning the placement of young people in secure accommodation. In relation to children's rights, one of the principal purposes of the GAL, who is an independent officer of the court, is to ensure the provision of independent representation of the wishes and feelings of the child who is the subject of specified public law proceedings, (or adoption proceedings), and also to ensure the safeguarding and promotion of the child's best interests. Thus, in all instances the GAL has a duty not only to make the child's wishes and feelings known to the court but also to advise the court as to what is in the child's best interests, notwithstanding that this may not accord with what the child wants. A distinction therefore needs to be made:

"between the best interest of the child which the Guardian Ad Litem and the public bodies represent and the views of the child which don't necessarily coincide" (Guardian ad Litem).

For example, if a child wants to live with an abusing parent where they continue to be at serious risk the GAL will, in analyzing and assessing the information, advise the court whether or not this is in the child's best interests.

In all Children Order cases the Guardian will appoint a solicitor. However, if a young person is deemed competent they may appoint their own legal representative. This may occur where the views of the young person differ from those of the Guardian.

### **Court Proceedings: Private Law**

Private law proceedings are those that arise in the course of domestic proceedings and matrimonial cases, or where dispute arises regarding children. They thus relate primarily to situations where the child may be separated from his/her parents.

*Where a child does not live with his/her parents, he/she has the right to maintain contact with both parents unless it is deemed by the competent authorities to be contrary to his/her best interests. (Art. 9 CRC) and under Art. 8 of the ECHR parents and children have a mutual right to contact. Article 12 CRC provides that children have the right to legal representation in legal proceedings, which affect them.*

### **Context**

In cases where parental dispute causes family breakdown, the state has a duty to ensure that the children are adequately protected in the arrangements made regarding their residence and contact with the non-residential parent. The state is not a party to these proceedings, which are principally about the private family law interests relating to the parents. Where parents cannot agree on arrangements regarding their children's upbringing following separation, Article 8 of the Children Order provides for the court's determination of these issues.

The two key orders here concern arrangements regarding with whom the child will live (residence order), and the contact the non-residential parent will have with the child (contact order). The 'no order principle' means that an order will only be made where the court decides it is better to make an order, than no order. In residence/contact proceedings in the family proceedings courts provision does not exist for children to have independent legal representation, or a Guardian Ad Litem (see public law proceedings). Courts can, however, seek welfare reports, (which include ascertaining the wishes and feelings of children), from HSS Trusts under Article 4 of the Children Order. Additionally, where the courts have concerns about a child's welfare a request under Article 56 of the Children Order can be made for a HSS Trust to investigate the child's situation. A number of Trusts employ court welfare officers to provide dedicated services to courts in their areas, and although this is not available across all courts a sub-committee of the Children Order Advisory Committee is currently preparing a report on such provision.

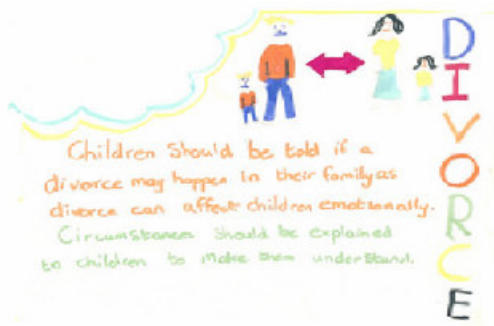
In the case of domestic violence, Article 28 of the Family Homes and Domestic Violence Order (1998) amended Article 11 of the Children Order. This requires the court to consider whether children have suffered or are at risk of suffering any harm through either seeing or hearing someone being ill-treated by a prohibited person when deciding whether to make residence or contact orders. Furthermore, the COAC fourth annual report (2003b) draws attention to domestic violence as a key issue in relation to the child's right to protection.

### Practice

Within NI, one in three first marriages and one in two second marriages end in divorce. Each year some 2,500 children in NI under the age of 16 are affected by their parents' divorce with the average age being seven. Furthermore, research suggests that, within three years of divorce 50% of non-resident parents lose all contact with their children (Relate NI, 2003). Of the total number of private law orders made in the financial year 2002/2003, 49% were contact orders, (of which the vast majority were permission) and 34% were residence orders. Of all private law orders, the applicants tended to be mothers (64%) with 29% being fathers (COAC, 2003b). Family breakdown often ends up in court and disputes over residence and contact issues were frequently referred to by many of the legal professionals interviewed:

"One of the greatest problems I have is where mum or dad refuses to let the other partner see the children" (Legal Professional).

Family break-up is often characterised by anger, conflict and disagreement over parenting arrangements such as where the children will live and how often they will see the non-resident parent. Frequently the child is: "just seen as a pawn in this battle between mum and dad" (Legal professional) and the trauma that they experience may often be forgotten about (NGO worker). In the NICCY schools research some children expressed concern about family breakdown (3% of all responses relating to family/home). Although this figure may appear small, the fact that some pupils raised this issue in an environment not wholly conducive to exploring sensitive information is insightful in itself. For the most part, these children raised the issues of the importance of having a say in contact issues and the decision making process (Article 12). This is illustrated in the picture and quotes below:



"When my parents split up I decided to stay with my mum and see my dad at the weekends. Other children should be able to decide what they want to do" (Girl, aged 11).

Echoing this request was a plea from one child who was part of a custody battle to decide whether he would live with his father or grandparents after the death of his mother. The extract taken from the story below clearly highlights the emotional impact that such custody proceedings can have on a child. His use of the words 'fight' and 'own me' would suggest that he felt very much like he had no part to play in these proceedings:

"On Saturdays I visit my Granny and Granda. Years ago my Mummy died and there was a fight to see who would own me but Daddy won the fight ... but now I want to live with my Granny and Granda" (Boy, aged 11 years).

A few other children who had not been through parental separation also mentioned the difficulties this posed for other children, if not themselves, for example:

"My family is fine. If they decide to split up children should decide who they stay with" (Girl, aged 11).

Domestic violence may also accompany family conflict and in NI there are, on average, six people killed by a current or former partner each year and domestic violence affects the lives of thousands more. Additionally, research indicates that at least 11,000 children in NI live in environments where domestic violence occurs (SSI, 2003). The effects of family conflict and breakdown and some of the circumstances leading to it, unquestionably have an impact upon children. However, there is a dearth of information in this area both in terms of actual statistics and research, especially in relation the impact this has on the young person themselves. Despite this children and young people are not unaware of domestic violence and its negative impact as reflected in one young man's comment.

"I would like dads to stop hitting their wives and their kids" (Boy, aged 15).

However, we were told that the Department's policy *Tackling Violence at Home* "Doesn't highlight children, and there is a big gap - children's choices aren't being heard". Having said this,

"These are difficult to get at - kids aren't going to talk ...this was like it was with children protection years ago ... we are still in a situation where people don't talk about it and children are afraid that they will get mum in trouble if they say anything" (NGO Representative).

The need to support children who have experienced domestic violence has been addressed by Women's Aid who have developed a 'helping hands for children' strategy, which allows children to talk about feeling safe and unsafe.

The issue of the child's contact with parents from who they are separated is also one that needs to be addressed, especially in cases of domestic violence. It was suggested by some interviewees that there were occasions where children may be afraid to say that they do not want to have contact with one or other parent and that a thorough assessment of the situation might allow for a clearer picture in such instances. Such an assessment might also have helped avoid the following situation as well as ensuring greater clarity from the young person's perspective.

"They [social workers] were always on my back, when I was younger me Da moved to England and they gave me Ma custody and what ever ... When I turned 16 then I had the legal right to my own choice to go and see me Da and I was going to see him and the fuckin social workers were still on me back, 'What are ye at going to see him?'" (Young man, aged 16, at risk of homelessness).

Where children are separated from their parents there is a possibility of maintaining regular supervised contact in one of the four established Child Contact Centres in NI. These Centres provide a neutral meeting place where children of separated families can enjoy contact with one or both parents and occasionally other family members in a safe comfortable setting, should there be no other alternative. However, while these Centres provide a valuable and important service, statutory resources are primarily directed towards public law cases. The COAC sub-committee on Child Contact Centres, following a thorough consideration of the provision, made several recommendations, including the need for a cohesive formal structure combined with mainstream funding and a protocol for the operation of the centres common across NI (COAC, 2003b).

Frequent mention was made as to how the emotional trauma that children and young people experience when their parents separate is lost sight of, especially when the parents do not manage the separation well. Attention was drawn to the fact that this may have longer-term repercussions and this may be particularly notable in cases of domestic violence. (see chapter 1). The comments made by the young people in our school-based research are supported by adults working with children and young people and other small scale studies in NI (e.g. Fawcett, 2000). These suggest a need for greater awareness around children and young people's needs and concerns when they experience domestic violence and/or parents separate. Women's Aid projects supporting children and Relate's counselling and mediation services are welcome but these services must be made more widely available if the needs of children are to be met and Contact Centres should be supported by mainstream funding. Additionally, the introduction of court welfare officers in some HSS Trusts is a start to the independent and separate

representation for children in private law cases but the provision of such a service across Northern Ireland must be addressed as a matter of urgency.

Many interviewees raised as a matter of serious concern the absence of a legislative basis or mechanism providing separate representation for such children in private family law cases in the family proceedings courts and divorce proceedings. In their concluding observations the Committee on the Rights of the Child expressed serious concern in 2002 (29) that the obligations of Article 12 had not been consistently incorporated in legislation, for example in private law procedures. It went on to recommend that the UK take further steps to consistently reflect the obligations of both paragraphs of Article 12 in legislation, and that legislation governing court and administrative proceedings ensure that a child capable of forming his/her views has the right to express those views and have them given due weight. In England and Wales steps have been taken in this direction with Section 122 of the Adoption and Children Act (2002) which amends the Children Act (1989) to allow for separate representation in private law proceedings, though this still is not mandatory.

### **Court Related Family Mediation**

Family mediation has been demonstrated to be helpful in resolving parental disputes. Unfortunately there has been little opportunity to access such provision in NI though one NGO (Relate NI), in conjunction with two family proceedings courts (Ballymena and Belfast), has established a family mediation pilot project. This project takes steps towards upholding the 'no order principle' by seeking to resolve family disputes through negotiation, cooperation and agreement. It is currently being evaluated by the Office of Law Reform who also highlight this approach in their rolling review of family law. (OLR, 2004). A form of support for the young people themselves is a counselling service offered by Relate Teen. The majority of young people who use this service are referred to it by their parents but referrals are also made by other individuals such as GPs, teachers and social workers. The support provided varies according to individual need but is frequently directed towards:

'helping the young person make sense of what is happening, helping them explore how they can have their say in the process without taking sides, and ensuring that they understand where their responsibilities lie' (NGO representative)

### **Criminal proceedings**

Children who have been victims and/or witnesses of various crimes including sexual assault may have to appear in court in criminal cases. In recognition that children may be particularly vulnerable as witnesses a range of special protection measures was introduced by the Criminal Evidence (Northern Ireland) Order 1999 for witnesses who meet one of the following criteria (i) under 17 years of age<sup>10</sup>; (ii) Incapacity<sup>11</sup> (iii) Fear or distress<sup>12</sup>; (iv) Complainants in sexual cases<sup>13</sup>. Though children as witnesses in the criminal courts are dealt with in Chapter 6, it is noted here because professionals suggested that a similar service to that of the Child Witness Service funded by NIO and operated by the NSPCC, which provides important support for child witnesses, would also be of value in family court proceedings.

### **Issues**

The following are issues that emerged from both public and private law proceedings.

- Almost all those working within the court system identified the need for multi-disciplinary training which, it was argued: " is a key element, judges, lawyers, social workers, doctors need to be trained in this multidisciplinary approach. That is the key to children's rights" (Legal Professional).

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<sup>10</sup> Article 4(1) (a)

<sup>11</sup> Article 4(1) (b)

<sup>12</sup> Article 5(1-3)

<sup>13</sup> Article 5(4)

- Concern regarding delays in courts and the lack of expert witnesses in Northern Ireland has been well documented in other research but was again highlighted in this study and both issues need to be addressed as a matter of urgency. A possible way of beginning to alleviate such problems could be the promoting of experienced social workers as experts in this area. .
- Understanding the impact that a disrupted family life may have on the child was also seen as key to understanding children's rights and this requires additional training - "It is very easy to say that children's rights...are simply about ... having their voice heard. Understanding children is as important a right as any. Children have the right to be understood in the problems they face" (Legal Professional).
- A further concern raised was the danger that the Children Order was interpreted in too paternalistic a manner within the courts thereby tipping the balance in favour of parents over the child. Related to this point was the concern that the child's perspective could get lost given the intimidating nature of the courts, "There is no point in having a child there if they are completely intimidated by the situation because they just shut off " (Legal Professional), although it was believed that this would be countered to some degree by the GALs.
- The question of separate representation in private law proceedings and the need to ensure that the views and wishes of children and young people in divorce or domestic violence proceedings were both mentioned frequently and were the subject of widespread concern. (see also Chapter 1). While separate welfare reports can be requested, and court welfare officers are available in certain courts there needs to be a much more concerted effort to address these issues and it is to be hoped that the OLR review into separate representation will lead to some movement in this area.
- There are several innovative proposals, which are designed to explore alternative ways of resolving disputes about the care of children between Social Services and parents and between parents themselves, (sometimes referred to as Alternative Dispute Resolution) The general aim of such programmes is to preserve the positive aspects of relationships between parties and negotiate parental consent to engage in a programme of support, which would maintain the family unit while also ensuring the welfare of the child. Similar projects within the field of private law proceedings have also been described.

### **Comment**

One of the most resounding messages that emanated from the material, which focused on court proceedings, was the need for ongoing inter-disciplinary training. This would allow for awareness raising around the roles and duties of the different professionals involved in court proceedings and enhance inter-disciplinary cooperation and partnership. Such training could also explore many of the concerns raised above and should include awareness raising regarding the emotional and psychological effects of abuse on children. It could further open up the debates on issues such as the age at which children can take part in the decision-making process, which tends to be somewhat conservatively judged on the basis of outdated theories in NI. It may be that the Guardian Ad Litem could also play a role here given the wealth of their experience and knowledge regarding looked after children. Another issue worthy of further consideration is the possibility of establishing a panel of specially trained lawyers for children, similar to that which already exists for specified public law proceedings but with a much wider brief, (See also Chapter 1). Finally, attention should be paid to exploring innovative ways in which the range of issues raised regarding court procedures and separate representation for children in private law proceedings could be addressed.

### **ALTERNATIVE CARE**

Key principles of the Children Order relate to the paramountcy of the best interest of the child, working in partnership with parents and supporting parents in the exercise of their parental responsibilities. Where a child is judged by the court to be suffering or likely to suffer significant harm, it may give an HSS



Trust parental responsibility for the child through a care, or interim care order, or an emergency child protection order. In such situations, the Trust can decide to what degree parents will exercise their parental responsibility over their child, even when the HSS Trust decides to remove the child from the care of the family and place him/her in alternative care. Placement options available to HSS Trusts are foster care, including placement with kinship carers, a residential children's home or secure care accommodation. In a small number of cases, adoption may be sought for children who can no longer be cared for by their birth families; this is the only means by which parental responsibility is permanently removed from birth parents. This section will commence by examining the general area of alternative care before examining, in greater detail, the following issues:

- foster care;
- residential care;
- secure accommodation;
- leaving care;
- adoption.

*A child temporarily or permanently deprived of his or her family environment or, in whose best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the state (Art. 20(1) CRC). Such placements in Northern Ireland include both alternative family-based care and institutional care.*

*When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic religious, cultural and linguistic background (Art. 20(3) CRC) and respect for the family life of the child and his/her parents and siblings must inform the choice of placement and its implementation (Art. 8 ECHR) bearing in mind that in most cases alternative care is intended as a temporary measure*

*Every child in care is entitled to a periodic review of his/her treatment and all other relevant circumstances (Art. 25 CRC) and must be protected from all forms of abuse, ill-treatment and neglect. (Art. 19 CRC)*

## **Context**

Legislation allowing children or young people to be removed from their family is found in the Children Order, which is underpinned, by associated regulations and guidance. When an HSS Trust accommodates a child through a care order, this may be on a voluntary or a compulsory basis. In the case of the former parental responsibility remains exclusively with the parents while in the latter it is the Trust that acquires parental responsibility for the child. This can be shared with the child's parents, although the Trust has the right to decide to what degree parents may exercise their parental responsibilities for the child and effectively the HSS Trusts have corporate responsibilities for children whom they accommodate.

Policies, legislation, both primary and secondary, and priorities for looked after children are set by the Child Care Policy Directorate of the DHSSPS. The four HSS Boards are each required to develop Children's Services Plans based on an assessment of needs of its resident population and commissioning services to meet these. For looked after children, the four HSS Boards commission services from their eleven Health and Social Services Trusts and others, usually NGOs, to deliver essential services to meet assessed needs.

Services provided are informed by a range of policies to guide their provision e.g. child protection policy (*Cooperating to Safeguard Children*), leaving and aftercare policy (Volume 4 of Children Order series of regulation and guidance), residential care policy (Volume 4 of Children Order and *Children Matter*) Both the pending Children's Strategy (OFMDFM) and the pending Children in Need Strategy (DHSSPS) are also expected to be of direct relevance once finalised. The DHSSPS Human Rights Working Group on Restraint and Seclusion recently issued draft guidance on the use of these procedures across the HPSS for Consultation and the closing date for responses was 3rd September 2004.

In contrast, in England and Wales the *Choice Protects* programme is designed to improve outcomes for looked after children through providing better placement stability, matching and choice, particularly through the expansion and strengthening of fostering services, was launched in 2002 (Choice Protects website).

### **Practice**

The number of looked after children in NI has remained relatively stable over the last decade at around 2,500 children (2446 on 31st March 2003), representing approximately 0.5% of the population of children aged under 18. The majority of children are placed with foster carers (64.5%,) and a small proportion (12.1%) are in residential care. There is also a significant proportion of looked after children who are placed with their family of origin as foster carers, though there is little information available regarding the needs and support that this group of children and their carers are receiving.

Reasons for removal into care can vary though it is most commonly sought for child protection reasons. Other factors include concerns around parental misuse of drugs and/or parenting deficits. Factors influencing the decision to apply for a care order include the availability of suitable placements and the age of the child, (Mooney and Fitzpatrick, 2003).

There is less information available on placement stability and the last comprehensive review here was that of the Social Services Inspectorate in 1997 (SSI, 1998). This report makes two points in relation to the figures. Firstly, there was considerable variation in placement stability between Trusts and secondly, the overall level of instability was higher than that reported for England and Wales. A more recent study (Cousins et al., 2003) examined the care careers of young children under five years of age over a two year period and reported that 68% of the children had high stability (less than three placements) and 32% had low stability (more than three placements). While these findings are more encouraging, the study did not include older children and adolescents whose placements are known to disrupt most frequently (see for example Sneddon et al. forthcoming). That variation in placement provision and stability still gives rise for concern is highlighted by the fact that it was raised by a number of policy makers during this research.

The Children Order requires HSS Trusts, voluntary organisations and privately run children's home to establish procedures for considering representations and complaints about children's services. Research by Cousins, Milner and McLaughlin (2001) reports that 104 Children Order complaints were made in the year 2000/01. Fifty-four of these were made by children themselves and of these 50 were from children in residential care and four from children in foster care. The majority of these complaints were about rules and regulations of the accommodation. Of the 50 complaints that were made by adults on behalf of children the majority concerned professional practice and judgment in the decision making process

### **Key Issues**

Some of the general concerns expressed by statutory and NGO representatives and workers, which spread across the various types of alternative care provision, can be identified as follows:

- The fragmented nature of policies and lack of cross-departmental strategies to the extent that one interviewee from the statutory sector commented that: " ...the system is awash with guidance but that doesn't necessarily lead to good practice";
- The wide variation in the range of options available in the Trusts and the fact that, sometimes, placement may depend on what is available at the time rather than what is best suited to meet the needs of the child. This may raise an issue of equal treatment;
- Worrying gaps in knowledge on the needs, support and protection being provided to looked after children, the subject of care orders who are placed with either family carers or who their parents under the Placement of Children with Parents etc Regulations 1996

- Descriptive statistical data are available on placement data for children in alternative care but this needs to be used to a much greater extent to inform the debate around placement issues such as stability and permanence at both local and regional level.
- Placement issues are one of most common types of enquiries and requests for support made by young people to VOYPIC's (Voice of Young People in Care) Advocacy Service, raising issues over a lack of information and support in this area.

### **Comment**

There is evidence to indicate that a substantial number of looked after children experience instability of placement and carer, with multiple placements occurring in both foster and residential care. Placement instability appears to have become an accepted feature of provision for looked after children yet it is not accurately recorded and is not the subject of regular enquiry. This is despite widespread recognition that this is a principal cause of the very poor outcomes reported for looked after children. Additionally, policy advice does exist (Circular 3/02 on the Roles and Responsibilities of Board and Trust Directors for Looked After Children and Child Protection) which provides quite detailed information on monitoring children's services, including placements. There is a gap, therefore, between the policy documentation, which states the need to provide continuity of upbringing for children, and young people who are looked after and the reality of what happens in practice.

Regardless of policy, the inadequate supply of places in the system ultimately determines the lack of placement choice resulting in instability. Additionally, the European Court of Human Rights has made it clear that administrative problems, such as the lack of available foster families, can play only a secondary role in decisions made about the child's alternative care. The child's best interests must be the paramount consideration (*Olsson v Sweden* 1988)<sup>14</sup>.

### **FOSTER CARE**

The standards that have been outlined above in relation to 'Alternative Care' apply also to foster care and so are not repeated. However, attention is drawn to the fact that the Committee on the Rights of the Child expressed concern in 2002 (39) over the lack of consistent safeguards for children who are privately fostered (REF). In this regard, the Department issued guidance to HSS Boards and Trusts on private fostering in 2002, ("Private Fostering: Including Children from Overseas" CC1/02).

### **Context**

Guidance on fostering is provided in Volume 3, Family Placements and Private Fostering, of the Regulations and Guidance to the Children Order. In terms of monitoring the delivery of fostering services across the UK, there is a Code of Practice for the Recruitment, Selection, Training and Support of Foster Carers (1999) and the UK National Minimum Standards for Fostering Services (Department of Health 2002). Though HSS Trusts are guided by UK wide measures on-going regional plans are also being developed. These include a forthcoming Regional Fostering Strategy produced by the four HSSBs and the Fostering Network of NI (Fostering Network 2004), and the Fostering Standards, which are currently being developed by the Standards Development Task Group within DHSSPS (DHSSPS 2004b). The latter are designed to support and monitor fostering services and foster carers and do not apply to the services provided directly by foster carers themselves. The HSS Trusts were asked in 2001 to audit fostering services against the UK standards. These were subsequently reported to the Department, which, in turn, used the data to inform the 2002/03 Priorities for Action.

### **Practice**

The percentage of looked after children who are fostered has grown steadily over the last 30 years, it remains, therefore, the dominant form of placement. In 2003, 65% of all looked after children were cared for in foster care compared to 12% in residential care and 22% placed with their parents. The percentage of children placed in foster care is a result of consistent Government policy since the 1940s,

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<sup>14</sup> *Olsson v Sweden*, No. 10465/83, Series A, No. 130, 11 EHRR 259

and a strong foster care culture in child care in NI. A higher proportion of girls (66.6%) than boys (62.5%) are placed in foster care with the average length of a foster placement being 2.2 years.

However, the number of foster carers has not grown in parallel with the increased demand for places. In a survey conducted for the development of the Fostering Strategy (2004) 257 children were found to be waiting for foster placements. Social workers reported that long-term placements were non-existent and that access to placements in an emergency was difficult. Furthermore, it was almost impossible to place adolescents in foster care. This shortage of placements was also reflected in Mooney and Fitzpatrick's study (2003) where 93% of the social workers reported 'insufficient' placement availability. Sixty four per cent also reported that the lack of availability of suitable placements:

"...affected decisions they made about admitting a child to public care or on the type of placement chosen for the child".

Taken together, these two reports reflect a general concern regarding the prospects of recruiting carers to meet the current needs. The Fostering Network Northern Ireland describes this as a:

"crippling shortage (which) will only begin to be fully tackled when all carers receive an allowance that covers the entire costs of fostering."

This shortage means that the young person's ideal foster placement is not always possible. Drawing on research by VOYPIC (2003c) with young people who were, or had been in foster care the ideal foster placement should be, amongst other things:

"Near your school and near your friends and the community you are used to" and "Match the setting to the individual" (VOYPIC, 2003c: 15).

With better understanding of social networks, attachment, separation and loss the value of kinship care is increasingly recognised and acknowledged (Broad, 2001), and the number of family and friends carers has slowly increased from 14.1% in 1996 to 17.1% in 2000 in England (Department of Health 2001) while the estimated figure for NI is 13% (SOSCARE download). Research in the UK (e.g. Wheal, 1999) and Northern Ireland (Lernihan, 2003) has confirmed the findings from the US that family and friends placements are more stable than other forms of foster care though it should be noted that the findings from one recent study in the UK (Sinclair et al., 2004) do not support this earlier research.

Some insight into these conflicting research findings might be drawn from the VOYPIC research, (2003c). This small-scale study reported that young people felt fostering placements with family and friends could either be a positive or negative experience. On the positive side there was an obvious desire by the young people to have an existing, strong relationship with someone in the foster family:

"They understand what your circumstances was so that they could help you work it out" (VOYPIC, 2003c: 22);

But on the other hand it was stated that:

"If you're in foster care you're there for a reason and then that reason might continue" [if placed with family]. (VOYPIC, 2003c: 22).

On the other hand it was clear that the young people felt that if a family placement was to be suitable, there would have to be a clear assessment of family carers concerned to ensure that they did not feel obliged or pressurised into offering a placement. It was further suggested that if this happened it might cause significant difficulties and eventual breakdown of the placement.

Such conflicting research findings do not detract from the fact that increasing the number of family and friends placements would give effect to the guidance of the Children Order to first consider placement with family.

Traditionally, foster carers in the UK are predominantly volunteers (73%). They are paid a boarding-out allowance to cover the cost of caring for their foster children, but this does not include a wage or fee element for their labour. It has been argued that one possible means of increasing the number of foster carers is by remuneration. Research examining this issue has indicated that foster care is increasingly seen as employment and payment to carers can increase their efficiency and is thus an effective incentive for recruitment and retention. However, remuneration alone is not enough and a range of supports and relationships between agency and carers is equally important (Kirton, 2002; Triseliotis, 2000).

Again, turning to the young people's perspective on remuneration of foster carers there were various views on the topic. Some young people expressed concern that people might become carers for the money rather than a genuine willingness to help though this, it was suggested, could be resolved by a form of screening:

"You need some sort of screening you know so as people know that they're not in it for the money" (VOYPIC, 2003c: 15).

There was however, general agreement amongst the young people that foster carers should have training, especially those who did not have children of their own. Additionally, they suggested that a range of other help and support could benefit carers. Thus, for example it was proposed that social workers could be a means of support by:

"Come out to actually talk to the foster parents and help them get stuff off their chest and other stuff like that" (VOYPIC, 2003c: 16).

It was particularly interesting to note that some of the points that young people who were (or who had been) in foster care made about foster parents were similar to those made by the children and young people in our school-based sample including: 'making sure the rules are fair'; 'keeping business private'; 'decorate your own surroundings' and 'treated like a normal child- stay at friends houses and go to discos!'

### **Issues**

- There is concern that the traditional model of foster placements is no longer appropriate for the increasingly specialised roles foster carers must fulfill under current legislation.
- The volunteer nature of the service is an impediment to the recruitment of the number and range of carers needed to meet the needs of the looked after children population.
- The scarcity of foster placements, especially long-term, short-term emergency placements and kinship carers, results in lack of choice for children when being placed and thus the child's wishes and/or needs may not be met.
- Lack of places also leads to difficulties in ensuring that the child's ethnic, religious, cultural and linguistic backgrounds are appropriately taken into account. Representatives from NGOs working with vulnerable groups particularly mentioned the great difficulty in placing children with learning and/or physical disabilities and Traveller children with foster carers. These professionals also indicated that kinship foster placements may be difficult within the Traveller community for a variety of reasons including their geographical mobility, and other factors, which might impact on the assessment of a relative as a Trust foster carer in such situations.

### **Comment**

The provision of an adequate foster care service is clearly a positive and beneficial means of providing for children who cannot be cared for by their own families as it provides them with the experience of family life necessary for their future development. The failure to provide a fully resourced foster care service in NI where there is relative prosperity raises concern with respect to the Government's duty to

meet the best interests of such children under both the CRC (Art. 20) and the ECHR (Art. 8). In this respect the draft Priorities and Budget issued for consultation is to be welcomed. The lack of places means that there is little scope for placement choice either on the part of the social worker or the child and this also raises concerns as to whether foster care is implemented in a manner consistent with the child's best interests and may well result in the child's wishes on such matters being meaningless. (CRDU 1994).

## **RESIDENTIAL CARE**

*In addition to the rights to which all children in alternative care are entitled, children in residential care are particularly vulnerable and thus additional safeguards may need to be put in place to ensure their rights are adequately protected. In particular, their right to have their voices heard (under Art. 12 CRC) means that they have a right to be involved in decisions made regarding their care, they have a right to independent representation in both administrative and legal proceedings and they have a particular right to access relevant information on their rights as well as independent advocacy services to realise those rights, (See Chapter 1).*

*Children in secure care have a right not to be deprived of their liberty arbitrarily and have a right both to challenge the lawfulness of their detention at reasonable periods and to regular review of their situation (Art. 5 ECHR; Art. 20 CRC).*

### **Context**

Volume 4 of the Children Order, *Residential Care* sets out the guidance and regulations for the children's residential sector. There have been several recent developments in this area prompted primarily by the review of residential child care, which gave rise to the *Children Matter* report (DHSS 1998). This identified the then stock of children's homes as out-dated and often institutionalised, and recommended the development of small domestic homes located within the community. Since June 2000, a Ministerial Taskforce has been in place to secure delivery of the *Children Matter* agenda and its main aims including: an increase in the supply of places, the development of more specialist residential services and the replacement of residential units which are no longer functional (Report of the Children Matter Taskforce Phase I: 2001 to 2003, DHSSPS 2001). A regional plan to create specialist units for children with emotional and psychological needs is also expected to be rolled out as Phase 2 of the Taskforce's work.

As part of the ongoing development of minimum standards for services, the Standards Development Task Group has issued Draft Children's Homes Registration and Inspection Standards (DHSSPS 2004a). The Standards are being finalised following a period of consultation and it is intended that they will be used by the HPSS Regulation and Improvement Authority responsible for regulating children's homes in NI. Currently, children's homes are inspected by the Registration and Inspection (R & I) Units of each of the four HSS Boards which apply the Quality Living Standards for children who live away from home (SSI, 1996a 1996b).

### **Practice**

At the 31st March 2003, 12% (296) of all children who were looked after in NI lived in a residential child care setting. These residential care places are provided for in one of 40 children's homes. The vast majority (80%) of these children were in children's homes provided by a Health and Social Services Trust, a voluntary child care agency or a private provider. Fifteen per cent were accommodated at the Regional Care Centres based at Lakewood and Glenmona and 5% in Secure Accommodation<sup>15</sup>. For a number of children residential care is provided by specialist units outside NI such as specialist therapeutic communities in England. For some children residential care is the preferred placement choice, while for others, they are placed in residential care because there is no suitable alternative placement, such as fostering, adoption or living with family members.

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<sup>15</sup> Secure accommodation refers to accommodation provided for the purpose of 'restricting liberty'.

Children in residential care tend to be older than those placed in foster care with almost half of them being over 12 years of age. They are also the children who present the looked after system with the greatest challenges as they frequently have complex social, behavioural, psychological needs (Sneddon et al, forthcoming) and are also likely to have had difficulties with their educational careers, (see Chapter 4 for further details).

An additional concern was also raised by NGO professionals working with commercially exploited young people who argued that children in residential care may be especially vulnerable to this type of abuse. Other interviewees suggested that the lack of placement choice in residential provision, combined with the challenging nature of the behaviour of the young people themselves made it difficult for residential establishments to deliver good outcomes for children, particularly where admissions are not in keeping with the unit's 'statement of purpose and function'. Related to this point is the concern that was expressed by a few interviewees that children in residential units were being criminalised by Trusts who sought to have them charged with criminal damage offences when property was damaged, an approach which was viewed as being reactive rather than proactive. These factors, when combined, are likely to impact on the ability of children's homes to offer stable caring environments and may also have the potential to contribute adversely to the behaviour of young people within the units. (Murray, 2003).

Drawing on the perspective of the young people themselves who had experienced residential care a range of views was expressed and these seemed to depend to some extent on the relationship with key workers and social workers. Additionally, comments were made regarding the rules and regulations in different homes with some young people feeling that these were too restrictive and reporting that they frequently did not have a say in establishing the rules while others reported that they were too lax! Typical of such comments were:

'I couldn't even make myself a cup of tea if I wanted it - the kitchen was closed and we were just told those were the rules and that was that' (young woman, leaving care)

'We just ran around ..... like I just went out when I wanted - they couldn't stop me - I did what I wanted ' (young woman, leaving care)

NGOs such as Extern, VOYPIC and Include Youth (particularly in the form of LACE<sup>16</sup>) provide additional support for young people in residential care through mentoring and befriending schemes. However, it is the residential care staff who have to manage the type of challenging behaviour that is reflected in the above comment, thus highlighting the need for adequate training and support to work in such settings. Given the range and number of potentially stressful factors it might be envisaged that staff would experience 'burn-out' but recent research (Sinclair, 2003) has reported that both staff qualifications and morale are remarkably high in residential care in NI and better than that of residential care staff in England.

## Issues

- The difficulty recruiting and retaining appropriately qualified and experienced staff makes it hard for relationships between young people and their key workers to be established and consistent. It is vital that staff in residential units are suitably qualified and have received both child protection and children's rights training (See also Chapter 1).
- Young people in residential care present with a wide range of difficulties and the specialist and therapeutic provision necessary to support their needs is not always available. In some cases the young people themselves are unwilling to avail of these services, which are generally provided by outside agencies. It is hoped that this will be addressed by the regional plan to create specialist units for children with emotional and psychological needs which is to be rolled out as Phase 2 of the Task Force's work alongside the development of more specialist provision within each of the Boards.

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<sup>16</sup> Looked After Children and Education

- The inappropriate mix of young people placed in residential settings was raised by several of the interviewees and the negative impact that this can have on the entire group sometimes leading to placement disruptions and bullying. This was especially difficult when staff, despite their clear concern for the young people, were inexperienced and lacked sufficient specialist training to manage difficult situations.
- A further issue that was raised by several of the professionals and policy makers was society's, "very negative attitude towards young people in care. They seem to them undesirable and so don't want them. You talk about rights ... these young people have the right to live in communities, they have a right to be themselves and not be judged and they do not get that right ... society doesn't want them" (NGO Representative).

### Comment

The state has a duty to ensure that all Convention rights, including the right to education and health care, are fully implemented within residential care settings. Given the above concerns, it is clear that in residential care children face particular challenges to the protection and promotion of their rights. The recent developments in the form of an increase in residential provision and the updating of current standards for residential care are encouraging. However, there is a danger of not addressing current concerns simply because it is believed that the proposed developments will improve the situation. This is no reason for failing to address issues such as those outlined above more urgently. Furthermore, given the concerns regarding the lack of specialist and experienced staff attention should be given to ensuring that there are enough people with the therapeutic skills to staff the new support units that are being proposed.

### SECURE ACCOMMODATION

*While the CRC does not contain specific provisions on the rights of children detained for their own protection, it is clear from Art. 37 that detention should only be imposed as a measure of last resort and that every child deprived of liberty must be treated with humanity and respect for the inherent dignity of the human person and in a manner, which takes into account the needs of persons of his or her age.*

*Art. 5(1)(d) ECHR provides that children and young people may be detained, in the non-criminal context, in order to provide them with educational supervision. According to the European Court of Human Rights educational supervision must not be equated rigidly with notions of classroom teaching: in the context of a young person in local authority care, it must embrace many aspects of the exercise by the local authority of parental rights for the benefit and protection of the person concerned (Koniarska v UK, 200014<sup>17</sup>).*

*Art. 5(1)(d) ECHR also provides that everyone deprived of their liberty has the right to have its legality reviewed on a periodic basis and the right to be released from custody if it is found to be unlawful.*

### Context

Under the Human Rights Act, 1998 liberty can only be deprived where it is compatible with Art. 5 ECHR. The relevant legislative provision for restricting a child's liberty is found in Article 44 Children Order. Secure accommodation is defined in the legislation as "accommodation for restricting liberty". Higgins in the *Re AK* judgment (T20/98/OCP) ruled that secure accommodation was defined by its purpose rather than being a place. Article 44 provides that restriction of liberty cannot be justified unless: the child or young person has a history of absconding and is likely to abscond from any other form of accommodation **AND** if they abscond they are likely to suffer significant harm; **OR** if they are kept in any other description of accommodation they are likely to injure themselves or others. Trusts have a duty to remove a child from the secure setting as soon as these criteria cease to apply. Further provisos are found in the Children (Secure Accommodation) Regulations (NI) 1996 including

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<sup>17</sup> *Koniarska v UK*, no. 33670/96, Dec of 12 Oct 2000, unreported



additional safeguards in respect of the restrictions on placement in secure care of those under the age of 13.

### **Practice**

Currently, there are two secure units in NI providing accommodation for 15 young people at any one time. During 2002/03, 51 young people were admitted, approximately half boys and half girls with the average age being 14 and 15 years old respectively. In total, there were 58 placements since some of the young people were admitted more than once. The demand for secure accommodation places at the regional centre always exceeds supply. For every young person who is offered a place by the Secure Accommodation Admissions Panel, three young people who meet the criteria are refused a regional place. The fact that all beds at the regional centre are full does not remove from a Trust the duty to restrict the child's liberty in some other way when it has been determined that the child's requires such an intervention.

The question remains, however, what do Trusts do for the young people who are not placed in one of the 15 available regional places; little is known about those young people, with the exception of the secure care inspection, which considered eight cases of children who were not admitted. However, there has been no long-term follow-up undertaken to compare the outcomes for those young people admitted or not admitted to secure care.

Problems of inconsistency with the ECHR have also been highlighted particularly by the Social Services Inspectorate (SSI) and Education and Training Inspectorate Report (ETI) in 2002. With regard to Article 5(4) ECHR, the Report called for the need to review Regulation 10 of the Children (Secure Accommodation) Regulations, which provide for the independent review process. Particular concerns were expressed about the remit and structure of the Independent Review and recommendations were made to enhance its independence (para 7.17). While the panel has a duty to review whether the criteria for keeping the child in secure accommodation continue to apply and whether the placement in such accommodation continues to be necessary, there is concern that the lack of availability of an alternative placement is influencing the outcome of the process. As it stands, concern that this procedure is not ECHR compliant is clearly justified. In addition, the Report recommended that Trusts ensure that the Independent Review take place within the statutory time limits, and that children, their parents and relevant others are facilitated to participate in the process, receiving written confirmation of the decisions reached in line with the Regulations (para 7.19).

The secure units are based within Ulster Community and Hospital Trust although admissions are on a regional basis. The Children Matter Taskforce identified the need to replace the existing secure accommodation following an inspection in October 2001, which found the existing facilities in the Lakewood Centre inadequate to support the work of either the social work or the teaching staff team. Some £6m has been set aside to replace the existing provision and increase occupancy. The new building is due to be complete in December 2005.

A young person in secure accommodation also has the opportunity to speak to an independent representative, a service provided by NGOs such as NIACRO, who can advocate on their behalf and offer them support. Generally, the issues raised by the young people with these volunteers were reported to be everyday practical issues such as the quality and choice of food, and the no-smoking policy. Additionally, the independent representatives felt that the young people had little say in most things that affected their daily lives '**they just have to fit into the regime**'. In contrast an extremely innovative way in which young people have been involved in decision-making in Lakewood has been the invitation to VOYPIC to assist in the design and development of the new secure unit. A consultation with young people was carried out by VOYPIC (Toal, 2003) and a young person trained to participate in the discussions with the planners and architects, including involvement in their appointment.

In addition to the deprivation of liberty, a young person placed in secure accommodation also risks being denied the enjoyment of additional rights such as: the right to play and leisure, the right to health and health services, the right to education and the right to family life. On these matters, the Social Service Inspectorate and the Education and Training Inspectorate (SSI & ETI, 2002) in their report on secure accommodation stated that the facilities for play and leisure in the current facilities were

inappropriate, particularly for those young people who had to spend lengthy periods in secure accommodation. The report also suggests that proper health assessments were not carried out on residents and that the inspectors were concerned about the young people's access to Child and Adolescent Mental Health Services (CAMHS). In relation to education, the inspectors found that the curriculum was limited and that there was no training available to those young people who were over the compulsory school age. Furthermore, the Inspection Report raised concerns around the length of time taken to acquire secure accommodation orders and the use of interim orders, which meant it was unlikely that meaningful work could be undertaken with the young person concerned.

The independent representatives who participated in this research similarly reported that they felt there was an increase in mental health issues, especially amongst the younger groups (i.e. 13-14 year olds) and that staff did not always have the skills or experience to deal with this (see also Chapters 3 and 6). They were similarly concerned about the restricted leisure facilities and associated health issues, limited provision for females and concern regarding education provision especially for those who were past school-leaving age.

## Issues

- The issues identified for residential care above also apply to secure accommodation. Further concerns have been expressed about the rights of children in secure accommodation, particularly in the Independent Review and with regard to the rights to health care and education. Attempts have been made to address these where possible though some, which are perhaps outside the control of the Unit itself, remain a problem. One of the main challenges here is how to provide a programme of work based on a thorough assessment of need and aimed at continuity of care where short placements/interim orders are used.
- A widely recognised concern is the high level of cross-over between secure care and juvenile custody, (See Chapters 1 and 6). Indeed, it was suggested that some young people might prefer the finite duration of a custodial placement, which contrasts with the uncertainty, which sometimes prevails in the care system. Greater insight into such issues will be gained through the current research exploring the interface between secure care and juvenile justice, which has been commissioned, by DHSSPS and NIO.

## Comment

Secure accommodation raises significant issues in relation to the CRC. To deny a young person of their right to liberty is one of the most serious penalties that can be imposed yet there is little knowledge as to how effective this is in meeting their needs. The demand for secure accommodation always exceeds supply yet there has been no long-term follow-up research undertaken to compare the outcomes for those young people admitted to secure care and those who were refused. This opportunity to assess the effectiveness of secure accommodation, which presents itself, would clearly inform the children's right debate and provide valuable information on the impact of the denial of liberty. A further issue in this context is that Schedule 2 of the Children Order requires HSS Trusts to develop other services to obviate the need for secure accommodation, and the *Children Matter* Report notes also that the lack of a proper infrastructure of services places increased demands on the secure care sector

## LEAVING CARE

*International standards contain little express provision regarding the rights of young people leaving care. However, it is clear that the rights to which every child are entitled – to have contact with parents and family (Art. 9 CRC), to be involved in decisions made (Art. 12 CRC), to health care including preventive care (Art. 24 CRC), to social security (Art. 26 CRC), to access educational and vocational information and guidance (Art. 28 CRC) and to be protected from exploitation including economic and sexual exploitation (Arts 19, 32-36 CRC) - are even more important for this vulnerable category of*

*young people. The principle of non-discrimination requires that these young people should not suffer disadvantage by virtue of their time being looked after.*

### **Context**

Provision within the Children Order for those leaving care will be enhanced by the implementation of the Children (Leaving Care) Act (NI) 2002. The new legislation aims to improve the life chances of looked after children in the transition to independent living. Provisions within the 2002 Act do not apply to all young people who have had experience of care in NI but accord differing levels of assistance depending on whether a young person can be classed as an “eligible”, “relevant” or “former relevant” child. For those who meet the qualifying criteria as detailed in the legislation, measures to assist will include the development of a “pathway plan” before the young person leaves care and the allocation of a “personal adviser” to assist with help and advice after they leave care. Responsibility for financial support will be transferred from Department of Social Development to the four HSSB and through them to each of the eleven Trusts. Where a young person qualifies they will receive support and assistance up to the age of 21 or up to the age of 25 where they are in full time education or training. In August 2004 consultation was completed on provisions to be included within the regulations and guidance to accompany the new legislation (DHSSPS 2004c). A regional implementation group has also been established to develop an implementation plan to oversee the operation of the personal adviser role, pathway plans and new financial arrangements.

### **Practice**

Evidence of how successful the HSS Trusts has been in providing “special care and assistance” to children and young people in alternative care can be gleaned from their circumstances on leaving that care. In NI each year, about 200 young people leave care and, as elsewhere in the UK, the message from research is that, whilst they are very mixed group containing a range of needs, the outcomes for them are likely to be poor. VOYPIC find this is one of the main areas of enquiry to services. Compared to their peers, care leavers are likely to be less qualified, to be unemployed and on low income, to experience difficulties in finding suitable accommodation, to have difficulties in relationships and being young parents (SSI 2000 Hannan 2002; Mooney et al., 2003; Pinkerton & McCrea, 1999).

That said, a significant proportion do manage to negotiate a successful transition and the Children (Leaving Care) Act (NI), 2002 aims to ensure that more care leavers are supported in joining that group through: ensuring that young people do not leave care until they are ready to do so; improving the assessment, preparation and planning for young people leaving care; providing better personal support for young people after they leave care and improving the financial support available to care leavers.

### **Issues**

Ensuring that the potential of the Act is realised on implementation will require:

- greater engagement of young people in the development of policy and provision, including their own pathway planning and review;
- a significant increase in resources; a greater number and variety of specialist services, from supported accommodation to community drop-in facilities;
- sustained specialist training and skills development; and
- effective co-ordination at all levels from the planned young people’s personal advisors through to the policy makers in the DHSSPS.

### **Comment**

The new legislation is a welcome and positive step, which must be accompanied by the necessary resources to support its full and effective implementation. Ongoing monitoring of its implementation will also be essential to assess its impact. It is positive that in the draft guidance for the Act provision is

made for access to advocacy for young people though this is limited to complaints. It is important that if advocacy services are to be available they must cover all matters concerning leaving care for the individual young person. It is also essential that there are sufficient trained staff available to support the service. (See Chapter 1).

"They [social workers] wouldn't leave me alone and then when I was 16 I was left on my own and I couldn't get nothing ... cos I have a foster ma who is good to me they give me nothing. That 's just when you need them (when you are 16) you don't need them when you are assessed whenever you need them they aren't there"(Young woman, aged 17 in foster care).

## **ADOPTION**

*Adoption is an irreversible step, which permanently severs the legal relationship between a child and his/her birth parents. In recognition of this, international standards require that the best interests of the child must be the paramount consideration in this process (Art. 21 CRC). There is considerable support in international standards for a system of open adoption, which respects the child's right to maintain contact with his/her birth family unless that is contrary to the child's best interests (Art. 9 CRC). There is also significant weight in the argument (based on Arts 8 and 9 CRC) that the adopted child has the right to access information about his/her origins. This has some support also in the case law of the European Court of Human Rights (Kilkelly, 2004). Article 21 (CRC) further recognizes that inter-country adoption may be considered as an alternative means of the child's care in certain instances (Art. 21:b,c, d, e).*

### **Context**

The primary piece of legislation on adoption in NI is the Adoption (NI) Order 1987 as amended by various enactments, including the Health and Personal Social Services (NI) Order, 1994, the Children Order 1995 and the Adoption (Inter-country Aspects) Act (NI) 2001. The 1987 Order imposes on each Health and Social Services Board the duty to provide an adoption service for its area; makes provision for children who are, have been or may be adopted and for the parents and/or guardians of such children; and allows for the introduction of schemes for the payment of allowances to adopters and prospective adopters in certain circumstances. In 2000, the Social Services Inspectorate (SSI) undertook a regional inspection of the statutory adoption service in NI. The overview report, *Adopting Best Care* (SSI, 2002) noted the lack of a coherent framework for the delivery of adoption services by each of the four HSS Boards and eleven Trusts. The report also proposed the need for a regional adoption strategy and new primary legislation more suited to the needs of a modern adoption service. The Department is currently developing both a strategy for children in need and a regional adoption strategy (DHSSPS 2003a). The latter will primarily address matters relating to the adoption of looked after children but will also make proposals that acknowledge current issues in family adoptions and the life long implications of adoption for birth families, adoptive families and adults who have been adopted. The strategy, which will be subject to wide consultation, will contain proposals for major new legislative measures which, if implemented will result in a radical overhaul of the adoption service for children and families in Northern Ireland.

### **Practice<sup>18</sup>**

Adoption is one of the most controversial placement decisions made for looked after children. For most of its history it has been seen primarily "as a service for adults wanting a child rather than one promoting the rights of children" (CRDU, 1994). However, in more recent years in Northern Ireland there has been a clear drive to provide looked after children with a safe, stable and permanent family home and an "unprecedented emphasis on achieving 'permanency' and positive life opportunities for children in a care system that has traditionally failed them" (SSI, 2003). This has resulted in adoption "becoming the optimum care plan for greater numbers of children" (SSI, 2003: 60). In all adoptions it is accepted practice that children should be aware of their family of origin and at 18 years adoptees

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<sup>18</sup> In light of the comprehensive review conducted by SSI (2002) the following only briefly summaries the key points relating to adoption in Northern Ireland.

have the right to information about the circumstances surrounding their adoption. The acknowledgement that adoption, particularly at an early age, will provide an environment that enables children who have experienced early adversity to achieve their potential is based on strong evidence (e.g. Rutter et al, 1998; Duyme et al., 1999). Additionally, it has also been demonstrated that children adopted from care do better than those who are raised in foster or residential care (Triseliotis & Hill, 1990). Such research suggests that the drive to increase adoption is well founded, though Rushton (2004) gave voice to a growing concern that “to favour adoption, may turn alternatives like long-term foster care and residential care into second-class options, although good quality placements of this kind may be the first choice for some children” (p 91)

The emphasis on adoption described above is reflected in the increase in its use across Northern Ireland as a whole (Kelly and McSherry, 2003), with a peak in the numbers of children adopted in 2000/2001 and 2002/03 (NIGALA, 2002 & 2004). However, the policy could not be said to be operating consistently across Northern Ireland with rates varying considerably between HSS Trusts, (McSherry, Larkin & Iwaniec, ongoing research). Furthermore there are several other challenges facing adoption services which are identified in the SSI report including “how to identify children early and enable them to be placed quickly with an adoptive family without compromising the quality of professional considerations about the potential of the birth family to provide their own child with a loving, safe and permanently secure home, or the due process of the legal system” (SSI, 2003: 63). The current research by McSherry et al. is likely to provide information to help address such challenges and further inform the adoption debate, though further research may be required to explore this and other issues raised in the SSI (2002 & 2003) reports.

Despite the fact that in Northern Ireland interest in intercountry adoption has grown rapidly, the time constraints on this study have meant that it has not been possible to cover this topic. Further information on it may be found in the draft DHSSPS guidance ‘Implementing the Adoption (Intercountry Aspects) Act (NI) 2001- A Summary of the Regulations and Procedures (June 2003) which informs the current provision of intercountry adoption services. The topic is also dealt with in the SSI Report (2003): *A Better Future: 50 years of Child Care in Northern Ireland* (particularly pages 66-67) in which a key action point identified is: “The development of specialist expertise in intercountry adoption and structured post placement/adoption support for children adopted abroad” (SSI, 2003: 74)

### **Issues**

- In terms of practice, adoption is a very fraught area since it often requires social workers to enter conflictual relationships with parents they have been working to support under the Children Order.
- There is a need for a more consistent practice across HSS Trusts in relation to the development of adoption as a placement.
- Concerns exist around a range of contact issues especially contact with siblings and the need to discuss the issues around more flexible forms of adoption which allow varying levels of both direct and indirect contact between birth families and adopted children.

### **Comment**

Adoption legally provides a child with a new family and contact with the birth family is rarely regular and often not face to face, thus making it unlikely that the child will preserve his or her original family identity (Art. 9 CRC) or “personal relations and direct contact with both parents” (Article 10 CRC). However, the fact that before it takes place, the adoption must be determined to be in the best interests of the child means that this right to contact must be balanced with the child’s right to alternative family provision (Art. 20 CRC) where the circumstances demand it. The best interests of the child must be paramount in such decisions (Art. 21) and must take into account the views of the child who is old and mature enough to express them. (Art. 3 and 12 CRC). Consideration needs to be given to making domestic adoption legislation consistent with the Children Order with the paramourcy of the welfare of the child being clearly and unequivocally the principle on which all decisions are made. This must also be underpinned by the fundamental principle governing all child care policy and practice that

children should be cared for by their birth families unless it is determined not to be in their best interests, and that, by remaining with their family, they are, in the words of the Children Order, suffering or are likely to suffer significant harm

### **PRIORITIES**

This chapter has identified major areas where children and young people's rights to a family, in the family, on family breakdown or when they are in alternative care provision are being ignored or underplayed. The priority areas, which emerged from the research, are listed below and are underpinned by the cross-cutting themes outlined in Chapter One.

- An overarching family policy with a focus on positive parenting and preventative strategies, particularly in the early years, needs to be developed and implemented in collaboration with the voluntary and community sector.
- A programme of multi-disciplinary training at all levels, combined with a co-ordinated approach to interagency working at practice level should be put in place.
- The issue of recruitment and retention of social work staff in all areas of family and child care and the lack of specialist staff, particularly in the area of therapeutic work and child and adolescent mental health needs to be addressed.
- There needs to be a continuing, high profile drive for the removal of physical punishment in the family.
- Within the area of child protection the overall procedural and legislative framework is light and under-developed in Northern Ireland. There is a need to invest in structural improvements and to strengthen the functions of Area Child Protection Committees. Such improvements should include a regional assessment framework and clearer criteria for establishing thresholds to determine significant harm.
- Continued efforts need to be made to address issues specifically associated with the progress of Children Order cases through the court system. These include, addressing the problem with continued delays, the lack of separate representation in private law proceedings for children and young people and greater use of family mediation and/or alternative dispute resolution projects.
- The scarcity of foster placements results in lack of choice for children when being placed. This scarcity must be remedied if the child's wishes and/or needs are to be met.
- The proposals for the development and restructuring of residential care are welcome but issues regarding current provision in this area remain to be addressed in the interim period.
- In secure accommodation urgent steps should be taken to bring the operation of the Independent Review mechanism into line with international standards specifically Article 5 ECHR.

Within the area of family life and alternative care there are a number of areas where existing provision from a children right's perspective is under review, consultation or in the process of reform. These various changes, some of which are associated with the above priorities and have been identified in the chapter, should result in significant improvements in children's rights and welfare. The Commissioner may wish to monitor these changes to ensure that they are implemented effectively and are accompanied by the anticipated raising of standards as outlined in the CRC and elsewhere.