Developing a Manifesto for Youth Justice in Northern Ireland

Background Paper

“You walk past people in the street and they just look at you and shake their head. You know what they’re thinking - they think that they’re better than you, like they’re better educated or they’ve got more money.”
Developing a Manifesto for Youth Justice in Northern Ireland

Background Paper

Deena Haydon

March 2009

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Prevention of Offending and Public Protection versus Promotion of Children’s Well-being

‘Justice’ versus ‘Welfare’ Approaches
ACKNOWLEDGMENTS

Include Youth is a children’s rights organisation working to protect and promote the rights of the most marginalised and challenging children and young people across Northern Ireland. As an organisation, we are often required to provide evidence of our assertions that children’s rights and “justice” are not mutually exclusive – in turn we have challenged government, the media, communities, organisations and practitioners to meet their responsibilities to all children, regardless of their behaviour. The Manifesto for Youth Justice in Northern Ireland (published in October 2008) and this Background Paper represent Include Youth’s position regarding the development of an effective response to young people’s offending behaviour in Northern Ireland. Every effort has been made to provide the most up-to-date, reliable and relevant statistical evidence and research.

The Manifesto and Background Paper have been the work of Include Youth as an organisation, with all staff, volunteers and young people having made significant contributions. The young people of Young Voices (Hydebank Wood Young Offenders’ Centre, Woodlands Juvenile Justice Centre, Impact Project, North Belfast and the Give and Take Scheme) were generous of their time, experiences and views. For that we are incredibly grateful.

Edel Quinn, Policy Manager, and her team had the belief that our vision could be realised. The Board of Include Youth, and particularly the Chair, Professor Phil Scraton, guided the work ensuring that it remained manageable.

Of course the greatest thanks must go to our author, Deena Haydon, whose work-rate, commitment and professionalism have been commendable.

Koulla Yiasouma
Director
Include Youth
March 2009
ABOUT THE AUTHOR

Following primary teaching, Deena Haydon was Senior Lecturer in Education and Early Childhood Studies, and Head of Research, in the School of Education at Edge Hill University. For the last eight years, she has carried out and managed research in the children’s sector – as a Principal Officer for Research and Development at Barnardo’s and, more recently, as an independent consultant.

Deena is currently a postgraduate researcher working within the ‘Childhood, Transition and Social Justice Initiative’ at Queen’s University Belfast. Her doctorate focuses on a critical analysis of approaches to children identified as ‘at risk of offending’ and the potential of a rights-based agenda to address the issues they experience.

Her main research interests are: anti-discriminatory policy and practice; sex/sexuality education; PSE and Citizenship; parenting and family support; youth justice; and children’s rights. Based on a commitment to linking research, theory and practice, Deena has produced a range of publications - reports, journal articles, book chapters, resources for children and practitioners, consultation responses, and submissions to the UN Committee on the Rights of the Child.
INTRODUCTION

Include Youth

Established in 1979, Include Youth is an independent organisation actively promoting the best interests of, and best practice with, young people in need or at risk. These aims are achieved through the development and promotion of resources; provision of training, information and support to practitioners and organisations; activities to influence policy-making and public opinion concerning young people.

Based on children’s rights principles, the work of Include Youth includes:

• **Policy Advocacy** which seeks to engage directly with those most affected by policy initiatives and, in turn, influence policy and service developers with well-researched and carefully prepared submissions

• The **Give and Take Scheme**, which works to enhance the employment and training skills of young people – building on self-esteem and enabling them to access mainstream opportunities

• The **Young Voices Project**, which supports excluded and at risk young people (aged 16-21) with experience of the criminal justice system to become involved in decision-making processes impacting on their lives

• The **Practitioners’ Forum**, which supports practitioners working with young people to engage with policy initiatives as well as share experiences

• The **Training and Information Service**, which meets requests for information, provides tailored training and relevant workshops, seminars and conferences

• The **Looked After Children in Education (LACE) Project**, which works to improve the education experiences and outcomes of young people in the care of the State.

Developing a **Manifesto for Youth Justice in Northern Ireland**

Include Youth has developed a Manifesto for Youth Justice in Northern Ireland which is “intended to inform and prepare the people of Northern Ireland and its elected representatives for the administration of youth justice during, and beyond, the challenges of transition”.¹ Focusing on both ‘early intervention’ and the ‘formal youth justice system’, it:

• identifies core values and principles that should underpin youth justice policy and practice

• promotes the safety of all people in communities

• proposes involvement of non-governmental organisations and the active participation of children and young people in planning and developing services to identify needs, protect and promote rights

• establishes priorities for action based on early intervention, prevention and the provision of services necessary to support children and young people in need and/or at risk

¹ Include Youth, Manifesto for Youth Justice in Northern Ireland, Belfast: Include Youth, 2008, p4
• promotes effective alternatives to custody in response to offending behaviour emphasising commitment to international standards that establish deprivation of children's liberty as a last resort.

The Manifesto was developed through analysis of policy documents, research reports and international human rights standards concerning youth justice. A range of people were directly and indirectly consulted, including: young people in conflict with the law and who have experienced the youth justice system; practitioners working with young people; civil servants and policy makers from government departments, NGOs, human rights institutions and youth justice services.

In developing the Manifesto, two key issues were central:

1) reflecting the views and experiences of children and young people who have been in conflict with the law and/or had experience of the youth justice system in Northern Ireland;

2) ensuring the protection and promotion of the rights of children and young people.

This Background Paper provides the evidence underpinning the Preamble to the Manifesto and its recommendations. Throughout the document, quotes from young people involved in Include Youth’s ‘Young Voices’ Project illustrate their experiences and views.

Each section draws on analysis of international standards and their implications for developing rights-based policy and practice. These recommendations have been paraphrased – for full details see the referenced standards. Following an overview of relevant standards, each section then summarises the issues affecting children and young people in Northern Ireland and the current barriers to enjoyment of their rights.
CHILDHOOD, RIGHTS AND REPRESENTATIONS OF CHILDREN AND YOUNG PEOPLE

Promoting and Protecting Children’s Rights

Children as vulnerable and in need of adult protection

Within the UK and Ireland children tend to be viewed as vulnerable, passive and dependent on adults to care for and look after them:

“Adults think ‘Kids should be seen and not heard’ – in politics, the community, everywhere.”

“They should be seen, and heard. But you have to be seen first to be heard.”

“Young people shouldn’t be treated like kids. They shouldn’t be humiliated – people make you feel stupid.”

“Young people don’t have any rights.”

It is assumed that adults know what is best for children and young people as they move through the stages of childhood and adolescence to become adults. As they ‘grow up’, children and young people are expected to learn what is acceptable in terms of dress, language and behaviour. If they do not conform to societal norms young people are defined as ‘mad’, ‘bad’, or ‘misunderstood’ depending on the services to which they are referred.²

Children and young people as people in their own right

Recently, these views about childhood have been challenged and children/young people have been seen as people in their own right – with ideas, interests and concerns which should be listened to and acted on by adults. Their experiences and views may be different from those of adults, but are of equal value – they are ‘human beings’, not just ‘human becomings’.³ In this perspective, it is important to understand the contexts of children’s lives and how they negotiate behaviour or actions with different people, at different times and in different places:

“What we need is a bit of support and understanding – what we get told is we’re bad and end up on the receiving end of police and paramilitaries.”

“Young people aren’t all the same. We have different interests… all you have to do is ask us!”


The UNCRC and its implementation

The United Nations Convention on the Rights of the Child (UNCRC) establishes the rights that all children under 18 should enjoy. Ratified by the UK Government in 1991, the UNCRC general principles include: respecting children’s rights without discrimination of any kind (Article 2); making sure that the best interests of the child are the main consideration in all actions (Article 3); and making sure that children/young people are able to express their views and have these taken into account in all matters affecting them (Article 12). Other UNCRC Articles focus on specific areas, such as: Civil Rights and Freedoms; Education, Leisure and Cultural Activities; Family Environment and Alternative Care; Basic Health and Welfare; Special Protection Measures, including youth justice. These will be explored in more detail in the following sections.

Having submitted an initial report two years after ratification, the Government has to submit a periodic report to the UN Committee on the Rights of the Child every five years describing how it is implementing the UNCRC. The UN Committee also receives alternative reports from NGOs (non-government organisations) and independent human rights institutions; meets groups of children/young people, NGOs, Children’s Commissioners, politicians; and cross-examines Government representatives. The Committee publishes ‘Concluding Observations’, explaining: areas of progress, issues of concern, and recommendations for change or improvement. Concluding Observations were produced by the UN Committee in October 2002.4 The 3rd and 4th consolidated periodic reports were submitted by the UK Government in July 2007.5 The UN Committee examined the Government on 23rd and 24th September 2008, producing its Concluding Observations in October 2008.6

In its 2008 Concluding Observations, the UN Committee on the Rights of the Child made a series of recommendations relating to implementation of the UNCRC, including:

- continuing to take measures to bring legislation in line with the Convention, using the opportunity provided by development of a Bill of Rights in Northern Ireland and a British Bill of Rights7

- allocating responsibility for co-ordination and evaluation of the Convention across the State party to a single, high-profile mechanism in addition to ensuring that each of the jurisdictions has a well resourced and functioning co-ordinating body8

- adopting comprehensive plans of action for the implementation of the Convention in all parts of the State party, in co-operation with the public and private sectors involved in the promotion and protection of children’s rights and based on a child right approach – ensuring adequate budget allocations and follow-up/evaluation mechanisms for full implementation of the plans of action to regularly assess progress achieved and identify possible deficiencies. These plans should pay special attention to children belonging to the most vulnerable groups9

- ensuring that all four established Children’s Commissioners are independent (in compliance

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4 UN Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland, Consideration of reports submitted by States Parties under Article 44 of the Convention, CRC/C/15/Add.188, 9 October 2002
7 Ibid, para 11
8 Ibid, para 13
9 Ibid, para 15
with the Paris Principles) and mandated to receive and investigate complaints from, or on behalf of, children concerning violation of their rights. These bodies should be equipped with the necessary resources to carry out their mandate in an effective and co-ordinated manner so that the rights of all children are safeguarded.

- allocating the maximum extent of available resources for the implementation of children’s rights, with a special focus on eradicating poverty and reducing inequalities across all jurisdictions.
- ensuring that all the provisions of the Convention are widely known and understood by adults and children - including the Convention in the statutory curriculum and ensuring that its principles and values are integrated into the structures and practices of all schools, and reinforcing adequate, systematic training of all professional groups working for/with children (particularly law enforcement officials, immigration officials, media, teachers, health personnel, social workers and personnel in childcare institutions).
- encouraging the active and systematic involvement of civil society (including NGOs and associations of children) in the promotion and implementation of children’s rights – including their participation in the planning stage of policies and projects as well as in the follow-up to the Committee’s concluding observations and preparation of the next periodic report.

At the time of writing, no single body co-ordinates implementation of the UNCRC in the UK. Responsibility for overall co-ordination of the UK Government’s latest report to the UN Committee on the Rights of the Child was taken by the Department for Children, Schools and Families (DCSF). Each devolved administration has its own arrangements and specific policy responsibilities often fall to separate government departments. In Northern Ireland, the Children and Young People’s Unit (CYPU) in the Office of the First Minister and Deputy First Minister (OFMDFM) was established “to ensure that the rights and needs of children and young people living in Northern Ireland are given a high priority”, although co-ordination of the implementation of the UNCRC is not listed as one of its main responsibilities on the CYPU website. Northern Ireland does not have a Minister for Children - children and young people are included within the portfolios of two Junior Ministers in the Executive, and they jointly Chair a Ministerial Sub-Committee for Children and Young People established in 2008. Concern has been expressed with regards to the ability of these Junior Ministers to hold full Ministers to account on children’s rights and the fact that different government departments adopt different approaches regarding the status of UNCRC rights in domestic legislation.

The Commissioner for Children and Young People (Northern Ireland) Order 2003 led to the appointment of the first Northern Ireland Commissioner for Children and Young People (NICCY). Article 6 of this legislation states that the Commissioner’s principal aim is to safeguard and promote the rights and best interests of children and young people. Although the Commissioner has a range of powers, two independent reviews have argued that the legislation is not compliant with the Paris Principles (which outline principles relating to the status and functioning of national institutions for the protection and promotion of human rights), or with

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10 Ibid, para 17
11 Ibid, para 19
12 Ibid, para 21
13 Ibid, para 23
14 www.allchildrenni.gov.uk
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the UN Committee on the Rights of the Child’s General Comment No. 2 about the role of national independent human rights institutions in the protection and promotion of the rights of the child.16

Despite some positive developments, the UK Government has still not incorporated the rights and principles of the UNCRCP into domestic law to ensure that all legislation complies with the Convention. There is a general lack of awareness about, and understanding of, children’s rights. In a 2007 survey of 16 year olds in Northern Ireland, 70% responded ‘No’ to the question ‘Have you ever heard anything about the UN Convention on the Rights of the Child?’17 Although The Education (Curriculum Minimum Content) Order (Northern Ireland) 2007 includes references to ‘human rights’ and ‘social responsibility’, the UNCRCP and education about children’s rights are not explicitly included. Professional training about human rights, children’s rights and the UNCRCP is not mandatory.

Non-discrimination (UNCRC Article 2)

In 2002, the UN Committee on the Rights of the Child raised concern about unequal enjoyment of economic, social, cultural, civil and political rights for some children and young people in the UK (including children with disabilities, children from poor families, children belonging to minority groups, children in care, detained children, and children aged between 16 and 18 years – identified by the Committee as ‘vulnerable’ groups).18 Equality law in Northern Ireland is piecemeal; legislation generally adopts a non-discrimination approach (prohibiting direct and non-direct discrimination) but provides individual-based remedies which do not address the historical disadvantage suffered by many groups, including children and young people as a social group and those within ‘vulnerable’ groups.19

The Committee’s 2008 Concluding Observations welcomed plans to consolidate and strengthen equality legislation, but noted its concern that, in practice, certain groups of children: “continue to experience discrimination and social stigmatization”.20 The Committee recommended the strengthening of awareness-raising and other preventive activities against discrimination, with affirmative actions for the benefit of vulnerable groups if necessary.21 It also recommended taking measures to ensure that cases of discrimination against children in all sectors of society are addressed effectively, including with disciplinary, administrative or penal sanctions.22

Best interests of the child (UNCRC Article 3)

In 2002 the Committee noted its concern that, while the ‘welfare’ of the child is included in child care and protection legislation in the UK, “the principle of primary consideration for the best interests of the child is not consistently reflected in legislation and policies affecting children… notably in the juvenile justice system” and re-affirmed its previous recommendation that this should be addressed.23 Generally, legislation in Northern Ireland operates the ‘welfare’ rather than ‘best interests’ standard. Although there has been judicial recognition in the High Court of the importance of the court giving due weight to the wishes and feelings of children in the

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18 UN Committee on the Rights of the Child, Op Cit, 2002, para 22
19 See: Haydon, D., Op Cit, forthcoming, p45-53
20 UN Committee on the Rights of the Child, Op Cit, 2008, para 24
21 Ibid, para 25b
22 Ibid, para 25c
23 UN Committee on the Rights of the Child, Op Cit, 2002, para 25
context of decisions about what is in their best interests, this is not uniform in all tribunals and courts dealing with children’s cases. In its 2008 Concluding Observations, the Committee stated regret “that the principle of the best interests of the child is still not reflected as a primary consideration in all legislative and policy matters affecting children”, especially in the areas of juvenile justice, immigration, freedom of movement and peaceful assembly.

In addition to ‘best interests’ not being the primary consideration in legislation or policy, young people feel that the adults working with them do not always act in their best interests:

“Social workers make the quickest choice – whatever’s easiest for them.”

“I wasn’t allowed to join Amnesty International when I was in the children’s home – they didn’t think it was right for my needs!”

**Participation (UNCRC Article 12)**

In 2002, the UN Committee recommended that further steps should be taken “to promote, facilitate and monitor systematic, meaningful and effective participation of all groups of children in society” and “to consistently reflect the obligations of both paragraphs of Article 12 in legislation” (ie assuring that any child capable of forming his or her own views has the right to express these views freely in all matters affecting them, and that these views are given due weight in accordance with the child’s age and maturity; and providing the child with the opportunity to be heard in any judicial and administrative proceedings affecting her or him – either directly or through a representative or appropriate body). It also recommended that procedures be established to allow the views expressed by children to be taken into account in, and to have an impact on, development of programmes and policies affecting them.

In 2008, the Committee recommended that the State party: “promote, facilitate and implement, in legislation as well as in practice, within the family, schools, and the community as well as in institutions and in administrative and judicial proceedings, the principle of respect for the views of the child”; “support forums for children’s participation”; and “continue to collaborate with civil society organisations to increase opportunities for children’s meaningful participation, including in the media.”

Northern Ireland has an established culture of consultation, largely as a result of Section 75(1) of the 1998 Northern Ireland Act. This places a duty on public bodies to have due regard to the need to promote equality of opportunity between members of nine categories, one of which is age. Equality impact assessments, including a requirement to consult, are intended to identify the actual or potential impact of policies. However, Children’s Law Centre monitoring of consultation exercises - carried out by public bodies in relation to matters which impacted on the lives of children and young people between December 2004 and May 2007 - found that direct consultations with children and young people happened in just 6 out of 60 exercises, with child-friendly documentation made available in only 4 of the 60 exercises. When children and young people are involved in such processes, this does not always include the most marginalised groups.

24 Haydon, D., Op Cit, forthcoming, p34-38
25 UN Committee on the Rights of the Child, Op Cit, 2008, para 26
26 UN Committee on the Rights of the Child, Op Cit, 2002, para 30
27 Ibid
28 UN Committee on the Rights of the Child, Op Cit, 2008, para 33a-c
29 Haydon, D., Op Cit, forthcoming, p59
Lack of participation is the most important issue raised by children and young people in research about their rights - the fact that they are not heard, not involved in decisions made about them, and not consulted about changes to their lives. Young people have clearly articulated lack of participation in every aspect of their lives:

“People think ones like us are just hoods. Nobody ever asks us what we think, or what we want.”

“Social workers don’t give you choices – they make choices for you.”

“When I was 16 I was living in a hostel and I just got told ‘Your room’s been changed because there’s a new person coming in.’ They took all my stuff and put it in a different room, just on the floor – all my personal stuff – without even telling me or asking me.”

The Children and Young People’s Unit has established a Participation Network, intended to integrate existing and emerging structures promoting and facilitating children and young people’s participation in public decision-making processes. The Children and Young People’s Committees of the four Areas are keen to involve children and young people in children’s services planning and many organisations are developing initiatives in this field (see Children in Northern Ireland’s Participation Directory on www.ci-ni.org). Such initiatives provide structural support for participation, and contribute to a cultural shift in relationships between adults and the children/young people with whom they work. But they require long-term commitment and considerable resourcing to ensure meaningful involvement.

**Media and Political Debate**

**Negative representation of children and young people**

Following its recent examination of the UK Government, the UN Committee on the Rights of the Child raised concerns about “the general climate of intolerance and negative public attitudes towards children, especially adolescents, which appears to exist in the State party, including in the media, and may be often the underlying cause of further infringement of their rights.”

The Committee recommended that the Government take: “urgent measures to address the intolerance and inappropriate characterisation of children, especially adolescents, within the society, including the media”. This reinforces the need to challenge negative stereotypes and assumptions about young people, and the recommendation in international standards that the mass media “should be encouraged to portray the positive contribution of young persons to society”.

As a social group, children and young people are often presented negatively in media reports or political debates – as a threat, a nuisance, or anti-social. The challenging or disrespectful language and actions of a few are associated with all children and young people:

31 UN Committee on the Rights of the Child, Op Cit, 2008, para 24
32 Ibid, para 25a
“No adults treat young people with respect – I wear a hood, I am a hood.”

“Automatically think you’re up to no good because of your appearance – clothes and age.”

“Young people are not valued in our society. We are all labelled as bad news, as trouble, nagged at.”

**Representations of young people in conflict with the law**

In its 2008 Concluding Observations, the UN Committee on the Rights of the Child recommended that the Government: “intensify its efforts, in cooperation with the media, to respect the privacy of children in the media, especially by avoiding messages publicly exposing them to shame, which is against the best interests of the child”.

Media representation of young people in conflict with the law is particularly detrimental. They are defined as ‘trouble-makers’ and labelled ‘delinquent’ or ‘criminal’. In Northern Ireland, high profile incidents of serious violence have been represented by politicians and in the media as inevitable outcomes of an escalating ‘crisis’ in the criminal and anti-social behaviour of children and young people. Internal community conflicts, claimed breakdown in parental responsibility and control, marginalised young people with increased access to alcohol and drugs, and communities which are unable to self-regulate in the context of a deficit in official policing are “portrayed as evidence of individual and social pathology with families labelled ‘inherently evil’, their children as ‘scum’.”

Young people have articulated the long-term consequences of negative reputations for individuals:

“People treat you unfairly because you’ve been in trouble, because of the reputation you have where you live.”

“All my life people have had a bad opinion of me. People’s Ma’s were always saying: ‘Don’t go near him, he’s bad!’ All you have to do is get in trouble once or twice and that’s you for life – you’re stuck with a bad reputation.”

“Once you’re labelled a trouble-maker, it’s really hard to shift that image – even if you’re trying not to get into trouble. The police will always come to you first if something has gone on in your area.”

“If you or your family have a bad name, the PSNI keep at you – until you snap.”

“If you’re looking for part-time jobs and you’ve got a criminal record, you won’t get one. That’s happened to me 3 or 4 times.”

“You need to get a placement – have someone give it to you, give you a chance. No one wants to ‘cos you’ve done crime.”

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34 UN Committee on the Rights of the Child, Op Cit, 2008, para 37b
In 2003, Children's Ombudspersons in 21 European states recorded that they were “very concerned at the tone of political and media debate and the direction of public policy and legal changes concerning juvenile offenders in many of our countries”. Negative media coverage and political condemnation of young people has also informed reaction towards those in conflict with the law, with calls for more punitive responses to ‘offending’ or ‘anti-social’ behaviour. This has led to extension of criminal law and increased regulation of young people’s behaviour in communities, including through use of civil injunctions (eg Anti-Social Behaviour Orders - ASBOs - and curfews).

Young people in the criminal justice system in Northern Ireland suggest that politicians should listen to young people in trouble because:

“They don’t know what we’re at and what we do. They just make out that we’re hoody wee ******** and wee thugs and that we’re always just doing shite. They don’t know anything about us.”

“They don’t know why we get into trouble, they just know that we do.”

“They don’t know what’s going on in our lives.”

Asked what single thing they thought politicians should know about young people, these young people responded:

“Give young people more to do in communities. Make them better.”

“About education, about schools. About not throwing kids out so quick – giving them more of a chance.”

**Prevention of offending as a social responsibility**

International standards focus on prevention of offending as a social responsibility: “The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.” A “child-centred orientation” is recommended, in which young people “should have an active role and partnership within society and should not be considered as mere objects of socialisation or control”.

When young people offend, the media should “be utilised to help create a constructive public attitude, leading to activities conducive to a broader application of non-custodial treatment and the social integration of offenders”. Recognising the influence of the media, and reinforcing the need to avoid use of custody, the Riyadh Guidelines stipulate that: “Every effort should be

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37 Riyadh Guidelines, Op Cit, Guideline 2
38 Ibid, Guideline 3
made to inform the public of the importance of its role in the implementation of non-custodial measures.”\(^\text{40}\) The public are also expected to be involved in the reintegration of young offenders who have been in custody: “The competent authorities should constantly seek to increase awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.”\(^\text{41}\)

Asked what they would like to tell people who have a bad opinion of them, the responses of young people illustrate the range of issues and assumptions they face:

“\(\text{That we’re not as dangerous as you think we are.}\)

“You don’t give us a chance – you think that we’re going to kick your door in, rob you or steal your car. That’s not true of young people.”

“Do something about crimes that are directed at young people – not just adults or rich people.”

“Stop picking on kids. Just ‘cos you’re from a children’s home doesn’t mean you are a trouble maker.”

“You walk past people in the street and they just look at you and shake their head. You know what they’re thinking – they think that they’re better than you, like they’re better educated or they’ve got more money.”

“Listen to young people more about anti-social behaviour and what goes on in their communities.”

The effects of negative responses were generally internalised, or directed into angry reactions:

“It makes you feel bad ‘cos they think they’re better than you – you feel crap, ‘cos they’ve got better education, a better future, a better life.”

“It makes you feel angry and crap and sad and depressed and down. Then you get a few drinks in you and you go mad.”

“It makes you angry – it makes you want to do things [offences] again – to put one over on them, to prove they weren’t going to beat you. Like you’d go out and shoplift.”

“It can make you violent – it makes you want to just lash out.”

“It makes you slabber [argue] back. Or do something on them - like wreck their car, or their windows.”

Young people who have been in conflict with the law rarely have the opportunity to challenge negative assumptions about them, but would often like to let people know about positive changes in their lives:

\(^\text{40}\) Ibid, Rule 18.4

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“That I’ve changed.”
“That I’ve got help – I’ve stopped offending.”
“That I’m just as good as you, or him, or her, or anyone.”
“I’d want to show them that I’ve wised up – got a job or done an exam – prove them wrong. Show them that you’re with your family and you want to help your district.”

The Contexts and Causes of ‘Offending’ Behaviour

‘Anti-social’ behaviour and ‘offending’ are not committed solely by young people. In fact, young people aged 16-24 are more likely to be the victims of crime (including violent crime) than any other age group.\(^{42}\) However, the behaviour of some children and young people can cause offence, fear, intimidation and suffering in communities, and all members of the community need to be protected from such behaviour. This requires understanding, and informed debate, about the issues leading to these behaviours and long-term, constructive responses that reduce the likelihood of repeat offending.

Understanding the broader contexts of children’s lives

Responses to young people in conflict with the law cannot be considered without recognising the broader contexts of their lives.\(^{43}\)

“Young people like us already get the blame for near enough everything. I suppose it’s easy to do that – blame it on the teenagers. But people just don’t know the lives we lead, the problems a lot of us have.”

These children and young people, particularly those in custody, are “routinely drawn from some of the most disadvantaged, damaged and distressed families, neighbourhoods and communities”.\(^{44}\) They have often experienced living in poverty, truancy or exclusion from school, limited educational attainment, neglect or abuse within their families, placement in residential care, drug or alcohol misuse, physical and mental ill-health. For example, of the 30 children in the Juvenile Justice Centre on 30 November 2007: 20 had a diagnosed mental health disorder, 17 had a history of self harm, 8 had at least one suicide attempt on record, 8 were on the child protection register, and 14 had a statement of educational needs.\(^{45}\)

Factors which may increase the likelihood of children becoming involved in crime

Recent approaches to youth offending have focused on reducing the ‘risk’ factors and strengthening the ‘protective’ factors in children’s lives, drawing on the work of Farrington.\(^{46}\)

\(^{45}\) Criminal Justice Inspection Northern Ireland, Inspection of Woodlands Juvenile Justice Centre, Belfast: CJINI, May 2008, p 32
When asked to consider the factors in a child’s life which may increase the likelihood that they will become involved in crime (using Farrington’s headings), young people in the Juvenile Justice Centre provided the following examples:

**Individual factors:**

“Addictive personalities – you do crime and you get addicted to it.”

“Depression, being fed up with life.”

“You don’t care what happens to you – so you might as well do crime and earn some money – ‘cos you don’t care about what’ll happen if you get caught.”

“If you can’t take authority – you do the opposite of what people tell you.”

“It depends who your authority comes from and how you feel about them. Like, some people are happy with their parents’ point of view. Some can’t take it and just disagree with them - so if they tell them not to do crime, they’ll go out and do it, ‘cos they want to do the opposite.”

**Family factors:**

“If your whole family’s doing crime. So you get used to it, it becomes a way of life for you. That just influences you.”

“Domestic violence.”

“Death in the family.”

**School factors:**

“If you feel you’re not very smart in school. That makes you mess about, to take the notice off you not being smart. It takes the focus off it – you can say it’s ‘cos you’ve been messing about, that’s why you’re not doing well. It’s not really to do with crime, but it can start that way, with messing about in school.”

“If you’ve been bullied.”

**Peer-related factors:**

“If your mates have better stuff than you, but you can’t afford it – you go out and do crime so you can get the stuff like they have.”

“If your mates are doing crime – they shoplift on the way home from school, you see them doing it and getting stuff for nothing, so you start it too.”

**Community and neighbourhood factors:**

“Everything – crime in the community.”

“If there’s drugs in the area.”

“People start stealing, mugging people and doing robberies, to get money to pay for drugs.”
Reasons for ‘getting into trouble’

Young people provided a range of reasons for ‘getting into trouble’, including:

Excitement and enjoyment:

“Buzz from getting a chase - cops and paramilitaries”.

“It’s a laugh – like playing games, sort of grown up chases.”

“’cos all kids like to have fun.”

Peer pressure:

“To act hard.”

“To prove that they’re not scared.”

“Peer pressure.”

“To get respect from friends.”

Boredom:

“There’s not enough to do.”

“Too many people in a small area.”

“Nothing to do.”

“To get out of crime, you need something to keep you occupied. A job.”

Substance use:

“Effects of drink and drugs taken.”

“To pay for drugs.”

“’cos you’re on drugs – you have more balls if you’re wiped out. Some drugs anyway – pills/diazepam and some crime on blow [cannabis].”

“It’s normal to do drugs, everybody does – that makes you more likely to do stuff, you have no inhibitions.”

Labelling:

“You get a reputation that is hard to shake.”

“If you or your family have a bad name, the PSNI keep at you - until you snap.”

“And you hate them so you want to get one over on them.”

“You’re getting the blame for it anyway, so you do anti-social behaviour.”
THE CONTEXTS OF CHILDREN’S LIVES IN NORTHERN IRELAND AND RIGHTS BASED EARLY INTERVENTIONS

While risk factor research highlights the characteristics of children, families and communities most likely to be implicated in crime, it can contribute to the pathologisation of individuals and communities, emphasising a ‘deficit’ model. It is vital that the needs of children who have been damaged within their families, or who live in disadvantaged communities, are identified and addressed. But poverty, ‘chaotic’ family environments, neglected communities are “the products of institutional practices and social arrangements that perpetuate and amplify inequality” 47.

Social exclusion, political alienation and economic deprivation are central to the problems faced by many children and young people in Northern Ireland, contributing to what is perceived or labelled ‘anti-social’ or offending behaviour. Early intervention strategies often focus on the prevention of offending and community safety – targeting children and young people as ‘troublesome’ individuals, rather than children or young people with complex experiences and unmet needs, whose opportunities are limited and voices rarely heard.

In contrast, international human rights standards emphasise that the well-being of young people from their early childhood should be the focus of any preventive programme. 48 It is argued that promotion of young people’s welfare in social policy will minimise the necessity of intervention by the juvenile justice system and, in turn, reduce the harm that may be caused by any intervention. 49 High priority should be given to plans and programmes for young people, with sufficient resources ensuring the effective delivery of adequate medical and mental health care, nutrition, housing and other relevant services. 50

Preventive policies should facilitate the successful socialisation and integration of all children and young people through the family, the community, peer groups, education, vocational training and employment, and voluntary organisations. In the processes of socialisation and integration: “due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners”. 51

Prevention policies should avoid criminalising or penalising a child for behaviour that does not cause serious damage to the development of the child or harm to others. 52 Policies and programmes should involve:

a) provision of opportunities, in particular educational opportunities, to meet the varying needs of young people, ensuring that their voices are heard and their rights are respected. 50

48 Riyadh Guidelines, Op Cit, Guideline 4
50 Ibid, Guideline 10
51 Ibid, Guideline 5
52 Ibid, Guideline 5
needs of young people and to serve as a supportive framework for safeguarding their personal development

b) specialised philosophies and approaches for prevention of offending, on the basis of laws, processes, institutions, facilities and services aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, offending behaviours

c) official intervention pursued primarily in the best interest of the young person, guided by fairness and equity

d) safeguarding the well-being, development, rights and interests of all young people

e) consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process, and tends to disappear spontaneously in most individuals with the transition to adulthood

f) awareness that, in the predominant opinion of experts, labelling a young person as ‘deviant’, ‘delinquent’ or ‘pre-delinquent’ often contributes to the development of a consistent pattern of undesirable behaviour by young people.53

Services and interventions should be community-based - “Formal agencies of social control should only be utilised as a means of last resort”54 - with attention given to positive measures that involve all available resources (including: the family, volunteers, community groups, schools and other community institutions) to promote the well-being of the young person with a view to reducing need for intervention under the law and effectively, fairly and humanely dealing with the young person.55 Participation in programmes should be voluntary, with young people involved in their design, development and implementation.56

The following sections outline in detail international standards relating to rights-based early intervention/preventive policy and practice, and the various issues impacting on children’s lives in Northern Ireland (which often act as barriers to realisation of their rights).

Legacy of the Conflict

The UN Committee on the Rights of the Child’s 2008 Concluding Observations acknowledged the ongoing impacts of the conflict, noting the Committee’s concern “that in Northern Ireland – due to the legacy of the conflict – the situation of children in this respect [ie mental health] is particularly delicate.”57

As a society in transition, the legacy of the conflict continues to affect children, their families and communities. There were 3,636 conflict-related deaths between 1967 and 1999, 2037 of which were civilian.58 In a 2003 survey about poverty and social exclusion in Northern Ireland, half of all household respondents stated that they knew someone who had been killed in the conflict; an estimated 88,000 households were affected by the loss of a close relative; 50,000 households contained someone injured in the conflict; around 28,000 people had been forced to leave work because of intimidation, threats or harassment; 54,000 households had been forced to move

53 Riyadh Guidelines, Op Cit, Guideline 5a-f
54 Ibid, Guideline 6
55 Beijing Rules, Op Cit, Rule 1.3
56 Riyadh Guidelines, Op Cit, Guideline 50
57 UN Committee on the Rights of the Child, Op Cit, 2008, para 56
house for similar reasons. Approximately 80,000 people spent time in prison as a result of the conflict, which led to financial hardship and the difficulties associated with maintaining relationships during and after parental imprisonment for many families.

**Social and economic disadvantage**

Many of the communities most affected by the conflict continue to experience social and economic disadvantage. Historical under-investment has led to continued under-resourcing in the level of public expenditure dedicated to children and young people. For example, the proportion of Northern Ireland’s personal and social services budget spent on children in 2004-2005 amounted to 14.1% compared to 24% in England and 26.1% in Wales. In the same period, personal and social services expenditure per 0-17 year old in Northern Ireland was £287, which was 29% less than expenditure in England (£402), 33% less than expenditure in Wales (£429), and 44% less than in Scotland (£513).

**Segregation**

Most public housing is segregated, with more than half the population living in areas that are either over 90% Catholic or over 90% Protestant according to the 2001 Census. Those living in ‘interface’ areas continue to experience sporadic incidents of violence.

Schools are also segregated. There is limited opportunity for children to attend Integrated schools due to lack of provision. For example, in September 2007, around 700 applicants for places at Integrated schools had to be turned away due to lack of places. Leisure facilities located in predominantly Catholic or Protestant communities will not be used by children, young people or adults outside the local community.

**Psychological well-being/trans-generational trauma**

Although most children and young people in 2009 have not directly witnessed or experienced the consequences of armed conflict, that has been the experience of many of the adults in their families and communities. This informs how they relate to others and the perceptions they communicate to children about ‘other’ communities or events. The impacts of inter-generational trauma and unmet mental health needs among both children and the adults who care for them have been identified. It has been argued that proximity to extremes of violence

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60 Ibid, p8
63 Ibid, p50-51
66 Hansson, Op Cit, p28; Byrne, J. et al, *Young People’s Attitudes and Experiences of Policing, Violence and Community Safety in North Belfast*, Belfast: Northern Ireland Policing Board, 2005
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has led to a high tolerance of violence, with ‘normalisation’ of the use of violence as a way of resolving disputes, demonstrating opposition or drawing attention to perceived injustices.69

Paramilitary/vigilante activity

Paramilitary or vigilante activity remains within some communities, particularly in economically deprived urban areas most associated with high levels of conflict-related violence.70 In such situations, young people allegedly involved in ‘anti-social’ behaviour may be physically assaulted, intimidated or exiled:

“There’s not enough to do, so young people steal cars.”… “But they shouldn’t get knee-capped for doing that, or put out of the country [by paramilitaries].”

“The boys call every night, chasing us with shotguns an’ all.”

“The only way to get the paramilitaries off your back is to take a beating. Then it’s all over, forgotten about.”

“I can never go back to my area. My Granny still lives there, but I can’t go back. Or if I do, I have to sneak in.”

Some young people argue that ‘punishment beatings’ do not stop young people committing crime:

“By the time you get a beating, you’re too far gone – crime’s become a way of life then, and it’s too difficult to change. It’s scary, like, at the time. But then after it’s ok. It’s something to talk about with your mates. It gets you a big name – a beating’s like a medal of honour.”

Civil Rights and Freedoms

The civil rights and freedoms of children and young people are frequently ignored. These include the rights to: freedom of expression; freedom of thought, conscience and religion; freedom of peaceful association and of peaceful assembly; privacy; access to appropriate information; not to be subjected to torture, cruel/inhuman/degrading treatment or punishment (including corporal punishment – see p36-37).

In its 2008 Concluding Observations, the UN Committee on the Rights of the Child was “concerned at the restriction imposed on the freedom of movement and assembly of children by Anti-Social Behaviour Orders (ASBOs),” the use of ‘mosquito devices’; and ‘dispersal zones’.71 It recommended that the State party reconsider use of such measures “insofar as they may violate the rights of children to freedom of movement and peaceful assembly, the enjoyment of which is essential for the children’s development and may only be subject to very limited restrictions as enshrined in Article 15 of the Convention.”72 The Committee also raised concerns about

71 UN Committee on the Rights of the Child, Op Cit, 2008, para 34
72 Ibid, para 35
protection of children from negative media representation and public ‘naming and shaming’, which may undermine their right to privacy.\textsuperscript{73}

**Freedom to practice own religion**

Schools are segregated along religious lines, with only 6\% of pupils attending Integrated schools in 2007-2008.\textsuperscript{74} Although a revised core syllabus for Religious Education was introduced in September 2007, only the ‘four main churches’ (all Christian) were invited to draw up the proposals for this syllabus. Consequently, it focuses almost exclusively on Christianity - learning about ‘world religions’ is based more on teaching Christian children about other world faiths than on meeting the needs of children and young people from other faith groups.

Living in mixed-religion care homes can be problematic for some young people, who do not feel free to practice their own religion:

“I felt intimidated going to Mass because I was the only Catholic in the care home. I ended up getting beat for it [aged 12].”

**Freedom of assembly**

Young people do not feel that they can ‘hang out’ on the streets, since this is increasingly defined as ‘anti-social behaviour’:

“[Police] tell you to move on. But there is nowhere to go. And then when you move on they tell you to move on from there – you can’t win.”

“[When just hanging around, police say] ‘Hope you’re not up to anything.’ – guilty by association”.

Specific youth justice responses inhibit freedom of assembly:

“When I was put on curfew I had to be in at 5pm every night [aged 15]. I wasn't allowed to see my mates, even before 5pm.”

“My bail conditions meant I had to stay away from my best mate. If I was seen near her, I'd be put back in [JJC]. And my ASBO stopped me meeting certain young people.”

**Privacy**

Lack of privacy is a key issue for children and young people, particularly those in care or custody:

“… in care homes they’d go into your rooms an’ all when you were at school.”

“When you’re in custody, they’re always lifting the flaps to watch you at night.”

“You have no right to privacy in [JJC]. Staff are at the door 24 hours.”

“On visits, one person stays in the room – doesn’t say ****-all, just sits there.”

\textsuperscript{73} Ibid, para 36b

\textsuperscript{74} DENI, Enrolments at schools and in funded pre-school education in Northern Ireland 2007/08, Statistical Press Release, DENI, 26 February 2008
Access to information

UNCRC Article 17 recognises the importance of children's access to information and material from a variety of national and international sources, especially those aimed at promotion of well-being and health. However, access to information is affected by literacy:

“I want to know how to do things myself. But I can’t read.”

It is also affected by awareness of available information and services:

“There are support services for young people. But young people don’t know about them.”

“The only reason I found out about them [services] was because my social worker went out and looked for them” [eg a speech therapist].

Services for Children, Young People and Families

Our Children and Young People – Our Pledge. A ten year strategy for children and young people in Northern Ireland 2006-2010,75 outlines how services will be developed to meet six intended outcomes for all children and young people, including those in conflict with the law. These are: being healthy; enjoying, learning and achieving; living in safety and with stability; experiencing economic and environmental well-being; contributing positively to community and society; living in a society which respects their rights.

The Northern Ireland Children’s Service Plan 2008 - 201176 was developed by the four Area Children and Young People’s Committees. Adapting Hardiker et al’s model of prevention in child care,77 services are based on four levels of provision:

- level 1 – universal services at all stages of a child’s/young person’s life and for all families
- level 2 – targeted early intervention programmes for children and families needing extra support, directed at children/young people perceived to be ‘vulnerable’ or ‘at risk’ (of abuse, neglect, offending)
- level 3 – services and support for children and families needing intensive assistance, directed by one or more agency at children/young people in need in the community
- level 4 – specialised services for children and families in crisis who need urgent intervention, focusing on the individual child’s/young person’s need of rehabilitation in which services are designed to prevent harm and provide a (usually residential) opportunity for intensive intervention.

The Plan seeks to support the realisation of the six outcomes of the Strategy for Children and Young People.

76 WSHSSB, SHSSB, NHSSB, EHSSB, Northern Ireland Children’s Services Plan 2008-2011, November 2008
Education

Important elements of early intervention include personal development and education. According to the UNCRC (Article 28.1a-c), primary, secondary and higher education should be accessible to all children and young people, with educational and vocational information and guidance available and accessible to all (Article 28.1d). Through a variety of educational programmes teachers, other adults and students should be sensitised to the problems, needs and views of young people (including those belonging to marginalised groups). Particular care and attention should be extended to young people at social risk, including development and use of specialised prevention programmes and educational materials, curricula and approaches.

The UNCRC (Article 29.1a) states that education should be aimed at developing each child’s personality, talents, mental and physical abilities to their fullest potential. Although the UNCRC does not define what the curriculum should include, it states that the education of the child should be directed to: development of respect for human rights and fundamental freedoms; respect for the child’s parents; her or his own cultural identity, language and values; the values of the country in which the child is living; the country from which the child may originate; and for cultures different from her/his own (Article 29.1b and c). It should also prepare the child for responsible life in a free society (in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and people of indigenous origin), and develop respect for the natural environment (Article 29.1d and e).

Strategies for the prevention of alcohol, drug and other substance abuse should be emphasised, with teachers and other professionals trained to prevent and deal with these problems and information about the use and abuse of substances available to all students. Schools should serve as resource and referral centres providing medical, counselling and other services to young people (particularly those with special needs or suffering from abuse, neglect, victimisation and exploitation). They should also plan, develop and provide extracurricular activities of interest to young people, in co-operation with local community groups.

School discipline should be administered in a manner consistent with the child’s human dignity and in conformity with the UNCRC (Article 28.2). School policies and rules should be fair, and students should be represented on bodies formulating school policies (including on discipline) and decision-making. The UN Committee’s 2008 recommendations reiterated that the State party should: “strengthen children’s participation in all matters of school, classroom and learning which affect them”. Under UNCRC Article 28.1e, measures should be taken to encourage regular attendance at school and reduce ‘drop-out’ rates. Children and young people who find it difficult to comply with attendance codes, and those who ‘drop-out’, should receive special assistance.

In its 2008 recommendations, the Committee stated that the disciplinary measure of permanent or temporary exclusion should be used “as a means of last resort only”, that the number of exclusions should be reduced, and that social workers and educational psychologists should

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78 See also Riyadh Guidelines, Op Cit, Guideline 20
79 Ibid, Guideline 27
80 Ibid, Guideline 24
81 Ibid, Guideline 21
82 Ibid, Guideline 25
83 Ibid, Guideline 26
84 Ibid, Guideline 29
85 Ibid, Guideline 31
86 UN Committee on the Rights of the Child, Op Cit, 2008, para 67g
87 Riyadh Guidelines, Op Cit, Guideline 30
work in schools to help children in conflict with school. In addition, the Committee emphasised the need to “ensure that all children out of school get alternative quality education.”

Recognising the need to address continued inequalities in educational attainment, particularly amongst ‘vulnerable’ groups, the Committee’s range of recommendations included:

- continue and strengthen efforts to reduce the effects of children’s social background on their achievement at school
- invest considerable additional resources to ensure the right of all children to a truly inclusive education which ensures the full enjoyment to those from all disadvantaged, marginalised and school-distant groups
- make sure that children without parental care have a representative who actively defends their best interests
- take measures to address segregation of education in Northern Ireland
- put an end to the two tier culture in Northern Ireland by abolishing the 11+ transfer test and ensure that all children are included in admission arrangements in post-primary schools.

Exclusion and suspension

While disruptive behaviour, bullying and violence in schools are obviously unacceptable, exclusion from the classroom or from school do not address the underlying causes of such behaviour, help young people consider alternative strategies or support young people who are often experiencing significant personal, social or familial difficulties:

“I was always on single separation at school – stuck outside the classroom door – everyone walking past looking at me and all my mates inside.”

“They used to send me home all the time, so I was hardly ever there. They wouldn’t say you can come back in 2 weeks or whatever, they just said they’d ring me when I was allowed back.”

Recent emphasis on zero tolerance of bullying and aggressive behaviour has led to a significant increase in the numbers of children and young people either permanently or temporarily excluded from schools in the UK, with minimal alternative provision.

In Northern Ireland, during the academic year 2005-2006, 54 pupils were expelled from school: 40 males and 14 females. 2 were aged 7-11, 25 were aged 11-14, and 27 were aged 14-16. The reasons for expulsion included: substance misuse (28%), disruptive behaviour in class (15%), significant damage to or misuse of property (15%), physical attack on a pupil (9%), persistent infringement of school rules (9%), physical attack on staff (7%), verbal abuse of staff (7%), bullying of a pupil (6%), stealing (2%), verbal abuse of a pupil (2%).

5,577 children were suspended from school during the same year: 4,276 males and 1,301 females. 47 were aged 4-7, 214 were aged 5-11, 2,615 were aged 11-14, and 2,701 were aged 14-16. 3,831

88 UN Committee on the Rights of the Child, Op Cit, 2008, para 67d
89 Ibid, para 67c
90 Ibid, para 67a
91 Ibid, para 67b
92 Ibid, para 67e
93 Ibid, para 67i
94 Ibid, para 67j
were suspended once, 901 were suspended twice and 782 were suspended three or more times. Reasons for suspensions included: verbal abuse of staff (24%), persistent infringement of school rules (22%), physical attack on a pupil (22%), disruptive behaviour in class (10%), significant damage to or misuse of property (7%), bullying of a pupil (4%), physical attack on staff (3%), substance abuse (2%), stealing (2%), verbal abuse of a pupil (2%), alcohol abuse (1%).

Currently, parents can lodge an appeal against exclusion to the School Board of Governors. At the moment, the only route of appeal against suspension is through a Judicial Review. Changes to suspension and expulsion procedures contained in The Education (Northern Ireland) Order 2006 may lead to more consistent approaches as Article 30 of the Order provides for the introduction of a new, uniform expulsion and suspension scheme. Article 31 of the Order provides for the establishment of a new expulsion appeal tribunal and representations can be made to the tribunal by, or on behalf of, the pupil. Article 32 of the Order provides for the introduction of a mechanism of appeal against suspension. However, there is no indication as to when these proposed changes will take effect.

Most suspended pupils are male and living in areas of high social deprivation, with a disproportionate number of children with statements of special educational needs being suspended. Children and young people who have been expelled often have difficulties being admitted to another school. Many receive no educational provision, or a few hours a week via EOTAS (Education Other Than At School) provision such as home tuition, a placement at an Educational Resource Centre or in an Alternative Education Programme. A recent study found that, while alternative education provision was relatively successful in re-engaging disaffected young people, the projects involved were poorly resourced – funding was ad hoc, short-term and unstable; information sharing about the young person and the circumstances surrounding their referral was minimal; teaching staff did not have automatic access to professional development courses; the projects did not have access to standard educational psychology or welfare services; access to physical resources such as ICT equipment, Art/Science/PE areas, work-related learning was limited or non-existent; post-16 support for those leaving the projects was not readily available or accessible. Many of the young people attending alternative education provision did not understand why they had been placed in the project, perceiving it to be a ‘sin bin’ or provision for ‘the stupid’.

**Curriculum**

The current education system in Northern Ireland is based on delivery of a specified curriculum with regular testing and examination of content. This limits opportunities for teachers to build on children’s interests and talents as there is little scope in the timetable for pursuit of non-specified subjects. Comparing their educational experience in the Juvenile Justice Centre with their experience in mainstream education, young people emphasised the focus within the JJC on individual needs:

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97 Kilkelly, U. et al, Op Cit, p159
98 Ibid, p162-163
“They [teachers in the JJC] don’t expect as much from us, more realistic.”

“Outside teachers just write on a board and make you write it down. Here, they talk to you more, see what help you need.”

“There’s smaller classes in here.”

Some young people question the relevance of the mainstream school curriculum:

“Why do you have to learn French/another language?”

“You should learn history – about the troubles”… “your history – Irish history, about Northern Ireland.”

“Classes should be practical, tell you stuff that’s going to be useful – mechanics, horticulture, joinery, catering, P.E.”

Additional support

There is a constant pressure for both teachers and students to ‘keep up with’ scheduled coursework and acquire knowledge at the expense of skills. For children and young people with special educational needs, for whom English is an additional language, or who have limited support or access to resources outside school this can lead to considerable stress or disengagement. This is exacerbated if special needs have not been identified:

“I was told I was stupid, I was thick an’ all. I never found out I was dyslexic ‘til I came here [Voluntary project].”

“I didn’t find out [about dyslexia] until I was in [JJC].”

“I can’t read or write. Teachers used to make me read things out in front of the class – made a d**k out of you.”

Unidentified needs may lead to truanting;

“Left school at 14. They never gave me any support so I just left.”

Selection

Academic selection at age 11 exacerbates stress for children as schools disrupt the curriculum to prepare for the transfer tests.100 Friendships are affected and some 11 year olds feel that they are labelled ‘failures’.101 While academic achievement for the 42% of post-primary pupils selected to attend Grammar school education on the basis of their performance in the 11+ test is generally high, the majority of young people attending non-selective secondary schools attain fewer points at GCSE level than their Grammar school peers.102 This affects their opportunity

101 Leonard, M. and Davey, C., Thoughts on the 11+ Research commissioned by the Department of Education and Save the Children, 2001
102 Gallagher, A. and Smith, A., Op Cit
to continue studying, since the criteria used by schools to decide whether a young person can remain post-16 to take A levels is usually based on the number of points gained at GCSE.

A Post-Primary Review Body recommended in 2001 that academic selection at age 11 should end. The Post-Primary Review Working Group established by the Government recommended in 2004: the abolition of selection based on ability, the introduction of pupil profiles to help parents decide which post-primary school their child should attend, an ‘Entitlement Framework’ which would guarantee pupils access to a wider range of academic and vocational courses. Although accepted by the then Minister for Education, these recommendations were not implemented as devolution was suspended in October 2002. Since the restoration of devolution in May 2007, the Minister for Education has been reviewing plans for the education system. In December 2007 she announced her intention to “improve our system and to end the two tier culture which brands so many of our young people as failures at the age of 11”, with a plan to end the 11+ transfer test in 2008. However, resistance to change amongst some of the political parties has resulted in a failure to achieve the necessary cross-party support required for legislative change in Northern Ireland, leading to delay in implementation of this plan.

**Qualifications**

Academic achievement is prioritised through qualifications based on assessment of subject-based coursework and exams. Poverty negatively impacts on children’s educational attainments. For example, in 2004-2005, 12% of children entitled to free school meals achieved no qualifications, compared to an average of 4.9%; in 2005-06, 46% of school leavers entitled to free school meals continued their education in Higher or Further Education institutions compared with 70% of those not entitled to free school meals.

Although qualifications provide some form of currency in the employment market, they are often a ‘stepping stone’ to further training and qualifications rather than valued in their own right. For young people who are uninterested or unable to achieve these qualifications, there have generally been few alternatives. This may be addressed by the recently introduced ‘Entitlement Framework’ for young people aged 14+, which guarantees access to a wider range of courses, including vocational courses, through collaborative arrangements between schools, Further Education Colleges and other providers.

**Play and Leisure**

Article 31.1 of the UNCRC states that every child has the right to rest and leisure, to engage in play and recreational activities appropriate to their age, and to participate freely in cultural life and the arts. Play is considered “an essential part of development and children who are unable to play, for whatever reason, may lack important social and personal skills.”

While involvement in play is generally accepted as a vital element of childhood, it is also important to establish and make easily accessible a wide range of recreational facilities and services of particular interest to young people. A range of community-based support measures should be provided for young people, including development centres, recreational facilities and services to respond to the special problems of children at social risk.

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104 Post-Primary Review Working Group, *Future Post-Primary Arrangements in Northern Ireland*, Belfast: DENI, 2004
105 Ruane, C., *Outlining a vision for our Education system*, DENI, 4 December 2007, p1
109 Riyadh Guidelines, Op Cit, Guideline 39
110 Ibid, Guideline 33
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The UN Committee on the Rights of the Child raised concern in 2008 that: “the right to play and leisure is not fully enjoyed by all children in the State party, especially due to poor play infrastructures, notably for those children with disabilities”.\(^{111}\) It also noted that the steady reduction in playgrounds in recent years has had the effect of pushing children into gathering in public open spaces – a behaviour which may be seen as anti-social.\(^{112}\) The Committee recommended strengthening efforts to guarantee the rights to Article 31.1, with particular attention to providing children (including those with disabilities), with adequate and accessible playground spaces.\(^{113}\)

Under UNCRC Article 31.2, States are also expected to respect and promote the right of children to participate fully in cultural and artistic life, encouraging provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity. Children’s cultural rights include their right of access to developmentally appropriate cultural and artistic events, and their right to undertake such activities themselves (ie to join with adults in cultural and artistic pursuits and to enjoy their own).\(^{114}\)

**Lack of safe places to play**

In Northern Ireland, a draft play policy for children aged eleven years and under was launched for consultation in October 2006. Consultation responses were made public in March 2008 and Ministerial approval was given in the following Autumn. Although the age range within the policy has been increased to include all children under 18, there was no further consultation to determine whether the existing draft was applicable to 12-18 year olds. Nor has there been clarity over resourcing of provision.

Young people suggested that one aspect of support needed by children and families is access to play and leisure. For 5-10 year olds, they felt this included: “Play groups” and “Places to play sport”. For 10-15 year olds it included:

- “Places to play football – somewhere good to play.”
- “Good stuff that’s gonna be exciting. Not just like wee youth clubs. Go karting. There’s nothing as exciting as crime, only drugs. But you need something that’s going to keep you occupied.”
- “Leisure centres where you can go do stuff – free, that you don’t have to pay into.”

While they discussed whether or not it was important to have a job once aged 15+, opportunities for leisure remained significant:

- “You need all that other stuff too – like football and things to do round where you live.”

However, in Northern Ireland one in five children (21%) do not have access to adequate, nearby fixed play facilities, although this figure rises to one in three (37%) amongst those experiencing severe child poverty.\(^{115}\) Lack of safe social space, poorly resourced and inadequate provision of affordable sports or leisure facilities are consistently raised as a priority in consultations.

\(^{111}\) UN Committee on the Rights of the Child (2008), para 68
\(^{112}\) UN Committee on the Rights of the Child (2008), para 68
\(^{113}\) Ibid, para 69
\(^{114}\) Hodgkin, R. and Newell, P., Op Cit, p417
with children and young people. Developments such as Anti-Social Behaviour Orders, and proposals for the introduction of Dispersal Zones, could further inhibit the gathering of young people in public spaces. Young people in conflict with the law describe the consequences of limited provision:

“There’s ****-all to do. That’s why kids are out on the streets.”

“Put things into communities that keep young people off the street, especially in the summer. There’s nothing to do. You just drink ‘cos you’re bored.”

“No ball games… nothing to do but stand and drink, sniff glue.”

“Most people get into crime at the start ‘cos they’re bored and have nothing to do.”

“Have more for young people to do, instead of just punishing you after you’ve done something.”

“Drinking – because they’re bored.”

They are clear about what play and recreational facilities are needed in their communities:

“More facilities and support for young people in the area – ones that suit any and all ages, not just for young kids.”

“More affordable facilities – leisure centres, sports clubs, bars – most are too expensive for young people.”

“More money in communities – funding for youth and community projects.”

**Health**

The UNCRC (Article 24.1) states that all children and young people have the right to enjoy the highest attainable standard of physical health, mental health and well-being, and to facilities for the treatment of illness and rehabilitation of health (ie receipt of necessary medical assistance and health care). In 2008, the UN Committee on the Rights of the Child noted its concern that, despite efforts to tackle inequalities in access to health services through substantial investments, inequalities remain a problem. This is demonstrated by the widening gap in infant mortality between the most and the least well off groups. The Committee recommended “that inequalities in access to health services are addressed through a coordinated approach across all government departments and greater coordination between health policies and those aimed at reducing income inequality and poverty”.

In its General Comment No. 4 about adolescent health and development, the Committee stated that insufficient attention is paid to the specific concerns of adolescents as rights holders, and to promoting their health and development.

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118 UN Committee on the Rights of the Child, Op Cit, 2008, para 54
119 Ibid, para 55
Health care should include programmes and services to prevent early pregnancy (including information, counselling and contraceptive supplies to young people). In its 2008 concluding observations, the Committee stated that it “remains concerned at the high rate of teenage pregnancies, especially among girls from a lower socio-economic background”, and recommended that the Government “intensify its efforts in order to provide adolescents with appropriate reproductive health services, including reproductive health education in the school”.

The Committee was “concerned at the incidence of alcohol, drugs and other toxic substance use by adolescents in the State party”, recommending that the issue of substance use by adolescents is addressed by: studying the root causes to provide targeted prevention; strengthening mental health and counselling services, ensuring that they are accessible and sensitive to adolescents in all jurisdictions; providing children with accurate and objective information about toxic substances, as well as support to those attempting to abandon their use or dependency. A range of community-based services should be provided to deal with the difficulties faced by young people in the transition to adulthood, including special programmes for young drug abusers which emphasise care, counselling, assistance and therapy-oriented interventions.

Promotion of emotional well-being and resilience among young people is vital. Despite campaigns to raise awareness that one in four people will experience some kind of mental health problem in the course of a year, there is still a stigma attached to this aspect of health. In 2008, the Committee’s concluding observations noted limited access to required treatment and care for the one in ten children in the UK with diagnosable mental health problems, and concern about the fact that children may still be treated in adult psychiatric wards. The Committee recommended “that additional resources and improved capacities are employed to meet the needs of children with mental health problems…with particular attention to those at greater risk, including children deprived of parental care, children affected by the conflict, those living in poverty and those in conflict with the law”.

All health services must safeguard the rights of young people to privacy and confidentiality, respect, and informed consent. Implementation of UNCRC Article 12 - children’s right to express their views and have these given due consideration - is important in both the planning, delivery and monitoring of health services and in each individual’s treatment and consent to treatment.

**Primary health care**

In Northern Ireland, health and social care services are provided in clinical settings and in the community via nursing, social work and professional services such as Midwives, Health Visitors, and School Nurses. Programmes of health promotion and education encourage adoption of activities, behaviours and attitudes which will contribute towards better health and well-being. A range of strategies has recently been developed, including: *Teenage Pregnancy and Parenthood Strategy and Action Plan and Sexual Health Promotion Strategies 2007-2008; New Strategic Direction for Alcohol and Drugs 2006-2011; Action Plan to Address Young People’s Drinking.*
Despite development of such policies, young people are often unaware of the health services available to them:

"Loads don’t know who their doctor is."… “I haven’t got a clue!”

“There’s good access, but I wouldn’t know what to do – me Ma gets me into all this shit. I’m seeing loads of people – psychiatrists and all sorts.”

They also raise the issue of limited provision relating to sexual health and contraception:

“There’s not enough resources, help, support for wee girls who get pregnant.”

Alcohol and drugs are accessible to young people, and have a considerable influence on their behaviour – reducing inhibitions and providing the impetus for involvement in offending behaviour.

**Mental health**

Young people are aware of the impacts of poor mental health:

“There are not enough mental health services – self harm and suicide are problems in Northern Ireland.”

The 2006 Bamford Review of mental health and learning disability in Northern Ireland stated that prevalence of mental health problems and disorders in children and young people are likely to be greater in Northern Ireland than in other parts of the UK, citing the Chief Medical Officer’s estimate that more than 20% of young people are suffering ‘significant mental health problems’ by their 18th birthday. The Review described child and adolescent services as “wholly inadequate” and “characterised by overwhelming need and chronic underinvestment”.

The existing legislative framework for mental health, *The Mental Health (Northern Ireland) Order 1986*, makes no provision for the rights and best interests of children. For example, it does not incorporate the ‘best interests’ principle or provide a statutory right to independent advocacy. Legislation also fails to require age-appropriate in-patient facilities to be provided for children. Consequently, 14-17 year olds falling into the gap between child and adult services are often placed in adult mental health units - in 2003-2004, children occupied 2,386 bed days in adult psychiatric wards. The number of beds available in secure care is limited, and applications for some children are only successful following a period in custody. An inspection of the Juvenile Justice Centre in November 2007 raised concerns about custody being used as a form of ‘quasi-care’:

“Research suggested that the gatekeeping process for secure care could actually lead to children being placed in the JJC if they did not meet the strict care criteria; and trivial offences provided the opportunity to use custody as quasi-care. However,

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129 DHSSPS, *Number of admissions of Young People to Adult Wards and Bed Days Occupied Across the Region 2003-2005*, DHSSPS, 2005
that was not the JJCs purpose and it could be of no benefit for marginalised children to experience custody for insufficient reason.”131

As a result of insufficient psychiatric provision in Northern Ireland, young people with complex mental health disorders or eating disorders may be sent to facilities in England – when a review was conducted in 2004, 17 children and young people were receiving ‘out of area specialist placements’.132

Early intervention with looked after children is a priority since the implications of not detecting and treating mental health problems often have significant consequences for individuals. The Bamford Review recommended development of a model to meet the needs of looked after children, based on close collaboration between social services and the network surrounding the child or young person. The Review also recommended that practitioners in education should receive training in the necessary skills and knowledge to address children’s/young people’s mental health needs, including fostering positive mental health in the classroom and referring to more specialised staff when appropriate. It suggested that mental health promotion and prevention should be developed across all schools, and that this should include Independent School’s Counselling Services (introduced by the Department of Education in 2006) and pastoral care initiatives.

The Review recommendations identified additional priorities, including:

- further investigation into the specific mental health needs of LGBT young people
- development of infant mental health and early intervention services
- expansion of parenting programmes which incorporate parent management training with problem solving skills training for children
- development of a suicide prevention strategy for Northern Ireland (published in 2006)
- development and implementation of post-abuse services for children and young people, and for children/young people who display sexually harmful behaviour
- development of a regional Child and Adolescent Mental Health (CAMH) community psychology service
- incorporation of prevention and treatment programmes for alcohol and substance misuse in a co-ordinated, multi-agency, long-term specific strategy.

Further recommendations focused on:

- need for inpatient provision to be kept under continuing review, and development of models of assertive outreach/intensive treatment/day unit treatment for young people with complex needs
- development of out-of-hours services
- commissioning of specialist mental health services for children and young people with learning disabilities
- development of specialist community-based/outreach teams for young people with perceived challenging behaviours

132 DHSSPS, Young People in Regional Care Centres/Youth Justice, DHSSPS, 2004
• development of close working relationships and care pathways between specialist CAMH services and youth justice teams

• development of a regional forensic CAMH service in Northern Ireland.

**Family Life and Alternative Care**

The UNCRC (Article 18.1) recognises that both parents have common responsibilities for the upbringing and development of their child, and that the best interests of the child should be their basic concern.

States should place a high priority on the needs and well-being of the family and all its members.\(^{133}\) Community-based services and programmes which respond to the needs, problems, interests and concerns of young people, and which offer appropriate counselling and guidance to them and their families, should be developed and consolidated.\(^{134}\) Family support should include programmes providing families with the opportunity to learn about parental roles and obligations regarding child development and child care, promoting positive parent-child relationships; sensitising parents to the problems of children and young people and encouraging their involvement in family or community-based activities.\(^ {135}\)

Under UNCRC Article 18.2, appropriate assistance should be given to parents/legal guardians in the performance of their child-rearing responsibilities, ensuring the development of institutions, facilities and services for the care of children.\(^ {136}\) Governments should establish policies which are conducive to raising children in stable and settled family environments, with provision of requisite services for families needing assistance to resolve conditions of instability or conflict.\(^ {137}\) Special attention should be given to children of families affected by problems brought about by rapid and uneven economic, social and cultural change (particularly children of indigenous, migrant and refugee families).\(^ {138}\)

In its 2008 Concluding Observations, the UN Committee on the Rights of the Child was “concerned that many families lack appropriate assistance in the performance of their child-rearing responsibilities, and notably those families in a crisis situation due to poverty”.\(^ {139}\) The Committee recommended that the Government “intensify its efforts to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities”.\(^ {140}\) The Committee also demonstrated strong disapproval about the limited reforms contained in UK legislation relating to corporal punishment:

“The Committee is concerned at the failure of the State party to explicitly prohibit all corporal punishment in the home and emphasises its view that the existence of any defence in cases of corporal punishment of children does not comply with the principles and provisions of the Convention, since it would suggest that some forms of corporal punishment are acceptable.”\(^ {141}\)

Reiterating its 2002 recommendations,\(^ {142}\) and referring to its General Comment No. 8 on the

\(^{133}\) Riyadh Guidelines, Op Cit, Guideline 11
\(^{134}\) Ibid, Guideline 32
\(^{135}\) Ibid, Guideline 16
\(^{136}\) Ibid, Guideline 12
\(^{137}\) Ibid, Guideline 13
\(^{138}\) Ibid, Guideline 15
\(^{139}\) UN Committee on the Rights of the Child, Op Cit, 2008, para 44
\(^{140}\) Ibid, para 45a
\(^{141}\) Ibid, para 40
\(^{142}\) UN Committee on the Rights of the Child, Op Cit, 2002, para38a and b
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right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the Committee made a number of recommendations relating to use of corporal punishment:

- prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, in England and Wales, Scotland, and Northern Ireland…

- ensure that corporal punishment is explicitly prohibited in schools and all other institutions and forms of alternative care throughout the UK…

- actively promote positive and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, with a view to raising public awareness of children’s right to protection from all corporal punishment and to decreasing public acceptance of its use in childrearing

- provide parental education and professional training in positive child-rearing.

Governments are expected to discourage the separation of children from their parents unless circumstances affecting the welfare and future of the child leave no alternative. The UNCRC (Article 9.1) states that a child should not be separated from her/his parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child (eg cases involving abuse or neglect of the child by the parents, or where parents are living separately and a decision must be made about the child’s place of residence). Under UNCRC Article 20.1, a child temporarily or permanently deprived of her/his family environment, or in whose best interests cannot be allowed to remain in that environment, should be entitled to special protection and assistance provided by the State. In accordance with national laws, alternative care should be provided (Article 20.2). Such care could include foster placement, kafalah under Islamic law, adoption or, if necessary, placement in a suitable institution – when considering solutions, due regard should be paid to the desirability of continuity in the child’s upbringing and to their ethnic, religious, cultural and linguistic background (Article 20.3). Alternative placements (including foster care and adoption) should replicate a stable and settled family environment while establishing a sense of permanency for children.

In 2008, the UN Committee on the Rights of the Child raised a number of concerns about children in alternative care, including:

- insufficient investment in the staff and facilities to support children deprived of parental care

- the fact that children may be taken into alternative care as a result of parental low income

- the situation of children with one or both parents in prison

- increased numbers of children in alternative care

- inadequate monitoring and review of treatment for children in alternative care

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143 UN Committee on the Rights of the Child, General Comment No. 8 (2006) The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para 2; and 37, inter alia), CRC/C/GC8, 2 March 2007

144 UN Committee on the Rights of the Child, Op Cit, 2008, paras 42a-d

145 Riyadh Guidelines, Op Cit, Guideline 17

146 Ibid, Guideline 46

147 Ibid, Guideline 14
too frequent placement moves and the scarce possibility of contact between children in care and their parents/siblings

the limited number of children in care who have access to complaints mechanisms.\textsuperscript{148}

The Committee’s recommendations included:

• avoid taking children into alternative care as a result of parental low income

• take into account in all measures the views of the children, and provide them with child accessible complaint mechanisms

• ensure support to children with one or both parents in prison, in particular to maintain contact with the parent(s), unless this is contrary to their best interests, and prevent their stigmatisation and discrimination

• monitor the status of children placed in kinship homes, foster care, pre-adoptive homes and other care institutions by regular visitations

• assess why so many children with disabilities are in long term institutional care and review their care and treatment in these settings

• facilitate the initiation of contact proceedings for all children separated from their parents and siblings, including those in long term residential care

• provide training and education programmes to prepare children for adult life

• take into account the Committee’s recommendations issued at the General Day of Discussion on ‘Children without parental care’, held on 16\textsuperscript{th} September 2005.\textsuperscript{149}

Support for parents

When asked what support young people and their families need, young people emphasised the need for parental support:

“Family support.”

“Babysitters – something to give parents a break, respite.”

“Parenting classes, to help you be better parents. So they can give kids more self-confidence and self esteem. But some parents can’t give it to their kids if they never had it themselves – they wouldn’t know how to.”

“Positivity for children! You have no self esteem or confidence otherwise. Some parents don’t know how to do that… they might need help to give it.”

“I think my Ma needs a lot of help. She sits in the house worried about me every day. She needs someone, she needs help.”

Provision of parenting services has been patchy.\textsuperscript{150} Since the early 2000s, there has been an expansion of support for parents of 0-4 year olds through Sure Start schemes based in disadvantaged areas. This has continued with development of nine new projects, satellite

\textsuperscript{148} UN Committee on the Rights of the Child, Op Cit, 2008, para 44a-g

\textsuperscript{149} Ibid, para 45a-i

\textsuperscript{150} Kilkelly, U. et al, Op Cit, p60
services and extension of the boundaries of some existing projects. But levels of family support in Northern Ireland remain lower than in Britain. Lower per capita spending, combined with higher levels of child poverty and subsequent family difficulties, has led to a focus on statutory protection duties in social care expenditure on children, rather than preventive family support initiatives.\footnote{Horgan, G., Op Cit, p12}

Statutory services available to children and families include family centres and family support workers. Services targeted at specific groups include adolescent services and those directed at young people in care. However, resources are often ‘over-stretched’, with long waiting lists and limited availability at weekends or in the evenings when families are likely to experience difficulties.\footnote{McKeaveney, P., Op Cit, p14} Consultations by Save the Children and the Parents Advice Centre outlined limitations in statutory support for parents, including: the stigma associated with accessing services; negative attitudes of staff; lack of information/accessibility; limited co-ordination.\footnote{Save the Children and Parents Advice Centre,\textit{ Parenting – A Job for Life}, Save the Children/PAC, Unpublished Report of a consultation with parents and children, 2004}

The Parents Advice Centre and other NGOs provide support for parents, courses to develop parenting skills and confidence, and training about alternatives to physical punishment. But public acceptance of corporal punishment generally prevails and, despite recent legislative reform, Article 2 of the\textit{ Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006} has not removed the defence of ‘reasonable punishment’ in respect of a charge of common assault tried summarily.

In January 2007 the Minister for Children and Young People launched proposals for\textit{ Families Matter: Supporting Families in Northern Ireland} - a family and parenting strategy - stating that the aim of the strategy “is to ensure that families, particularly those who are vulnerable or isolated, have access to a range of supports when they need them most.”\footnote{Eagle, M.,\textit{ Eagle Announces Additional Funding for Families and Parents}, News Release, OFMDFM, 2007} A £4 million funding package was intended to be spent on: increased provision of parenting education, positive parenting and anger management classes; enhanced provision of family mediation services; a new regional helpline and information service for parents; development of Child Contact Centres. It also included funding for: families affected by parental substance misuse; children experiencing domestic violence; a youth and parent support programme targeted at children at risk of coming into conflict with the law; strengthening front-line services for vulnerable families through development of family group conferencing and the introduction of therapeutic family support workers.

\textit{Alternative care}

On 31\textsuperscript{st} March 2008, 2,433 children were in public care in Northern Ireland – 1,265 (52\%) were male, 1,168 (48\%) were female; 49 (2\%) were under 1 year old, 364 (15\%) were aged 1-4 years, 782 (32\%) were aged 5-11, 733 (31\%) were aged 12-15, and 505 (21\%) were aged 16 or over.\footnote{DHSSPS,\textit{ Children Order Statistical Tables 2007/08}, 2008, p28 Table 3.1 www.dhsspsni.gov.uk/tab-a_children_order_tables_2007-08_final.pdf} Of the 2,433 children in care on this date, 1,376 (57\%) were living with foster carers, 622 (26\%) were living with their family, 319 (13\%) were living in residential care, and 116 (5\%) were living in other types of placement (such as: independent living, supported accommodation, secure accommodation, hospital, hostel, aftercare facilities, Simon Community, respite care facility, bed and breakfast accommodation, bed-sits, dependent living).\footnote{Ibid, p30, Table 3.3} 550 (23\%) had been in care

\begin{itemize}
\item \footnote{Horgan, G., Op Cit, p12}
\item \footnote{McKeaveney, P., Op Cit, p14}
\item \footnote{Save the Children and Parents Advice Centre,\textit{ Parenting – A Job for Life}, Save the Children/PAC, Unpublished Report of a consultation with parents and children, 2004}
\item \footnote{Eagle, M.,\textit{ Eagle Announces Additional Funding for Families and Parents}, News Release, OFMDFM, 2007}
\item \footnote{DHSSPS,\textit{ Children Order Statistical Tables 2007/08}, 2008, p28 Table 3.1 www.dhsspsni.gov.uk/tab-a_children_order_tables_2007-08_final.pdf}
\item \footnote{Ibid, p30, Table 3.3}
\end{itemize}
for less than one year, 587 (24%) had been in care for 1-3 years, 435 (18%) had been in care for 3-5 years, 600 (25%) had been in care for 5-10 years, and 261 (11%) had been in care for 10 years or longer.\footnote{157}

Children and young people in care are survivors of childhood traumas, who have been separated from their parents in their best interests. In addition to dealing with the circumstances leading to them being taken into care, they have to negotiate, on a daily basis, perceptions about them and their family situation:

“I pretended to them [other kids] that my foster parents and family were my real family. It made me feel bad. I would have liked to have told them: ‘I am in the care system’. I didn’t because I was worried they would tease me and treat me badly or differently.”

When considering alternative placements for those unable to remain with their families, care experienced young people preferred foster care to residential care:

“Foster placements are ok. It’s not a routine. At least there are two people there, not different people every day. At least someone trusted you."

“Care homes are crap. You go out worse. It’s like living in a regiment in the army.”

Many looked after children have additional needs - in 2005-2006, 27% of those looked after for a year of more and 18% of young people leaving care had received a statement of Special Educational Needs, compared with 4% of Northern Ireland’s general school population; 15% of those aged 16-18 leaving care had one of more disabilities (over 80% of these young people had a learning disability and almost 10% had mental health needs).\footnote{158}

Experience of care often leads to negative outcomes in terms of educational attainment, exclusion or suspension from school, employment, and young parenthood. The latest available figures relating to outcomes for looked after children and care leavers show that, in 2002-03, nearly two thirds of looked after children who sat Key Stage 1 English (64%) and Key Stage 1 Maths (66%) achieved Level 2 or above, compared with 95% of children in the Northern Ireland general school population;\footnote{159} 30% of looked after children who sat Key Stage 2 English achieved Level 4 or above compared with 76% of the general school population, and 31% of looked after children who sat Key Stage 2 Maths achieved Level 4 or above compared with 78% of the general school population.\footnote{160} In 2005-06, only 9% of looked after children attained 5 or more GCSEs at grades A*-C, compared with 64% of the general school population in Northern Ireland. Care leavers were almost 20 times more likely than school leavers in general to leave school without gaining any qualifications - more than half of all care leavers (55%) left school with no qualifications, compared with 3% of all school leavers.\footnote{161} 1.7% of school-aged looked after children (18 boys and 3 girls) were expelled in 2002-03, compared with 0.02% among the general school population in Northern Ireland. In the same year, over 9% of school-aged looked after

\footnote{157} Ibid, p31, Table 3.4
\footnote{158} DHSSPS, \textit{Northern Ireland Care Leavers 2005/06. Year ending 31 March 2006}, Statistical Bulletin, Belfast: DHSSPS/ NISRA (Community Information Branch), July 2007, p10
\footnote{160} Ibid, p10
\footnote{161} DHSSPS, Op Cit, July 2007, p6
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In 2005-06, 47% of care leavers whose economic activity was known were in education, training or employment (17% in employment, 30% in education or training), compared with 91% of all 16-18 year olds in Northern Ireland (of whom 25% were in employment and 66% were in education or training). 43% of care leavers were economically inactive because of caring responsibilities or sickness. The unemployment level among care leavers (8%) was almost three times the rate among all school leavers in Northern Ireland (3%). The 2005-06 survey of care leavers who had reached their 19th birthday sometime during the year ending 31st March 2006 found that the proportion of female care leavers who had at least one child was seven times higher than for young women under 20 in the general population – 26% compared with 4%. 15% of male care leavers were fathers.

There is an acknowledged link between care and custody. In 2002-2003, 10% of the 986 looked after children aged 10 and over were cautioned or convicted, compared with 1% of all children in Northern Ireland. Of those convicted, almost two thirds were boys. Looked after children aged 10 and over were 15 times more likely than all children aged 10 and over in Northern Ireland to have been cautioned or convicted. A disproportionate number of children in the Juvenile Justice Centre are from care backgrounds – during 2006-07, 30% of all admissions were from care backgrounds and looked after children had on average twice as many admissions (4.4) as non-looked after children (2.7).

A review of 10-13 year olds admitted to custody in the Juvenile Justice Centre between January 2003 and August 2004 found that many were detained overnight under PACE (Police and Criminal Evidence (Northern Ireland) Order 1989) or on short-term remand. Under PACE, when a child is charged with an offence and bail cannot be granted, or no place of safety can be secured, s/he can be held in custody pending a court appearance. Over half of the children (17 of 29) were admitted to custody from a residential childcare facility – from January 2003 to August 2004 these 17 children had 40 admissions to custody between them. While the behaviour of children and young people in residential care may be challenging, clearly this was not the use of custody as a last resort - children who were ‘management problems’ (rather than ‘offenders’) were being moved from residential care, via PACE, to the Juvenile Justice Centre. A full, announced inspection of the JJC undertaken in November 2007 raised concerns about the profile of the children detained there, and the inappropriate use of custody for children from care:

“As in previous JJC inspections, Inspectors’ main concern arises from the high turnover rate of children, and the fact that a disproportionate number of children come directly from residential care placements. These are longstanding features of juvenile custody in Northern Ireland.”

In suggesting reasons for the over-representation of care experienced young people in custody, young people in conflict with the law recognised this problem. They felt that care staff do not have the emotional attachments to young people that their parents would have, hence less

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162 DHSSPS, Op Cit, December 2006, p7
163 DHSSPS, Op Cit, July 2007, p6, 16 and 17
164 Ibid, p6
165 Ibid, p6
166 DHSSPS, Op Cit, December 2006, p1
167 Ibid, p12
169 McKeaveney, P., Op Cit, p3
170 Ibid, p4
171 CJJNI, Op Cit, 2008, pvii
sympathy, sensitivity and understanding of each individual’s needs:

“Your family would forgive you for things that care staff wouldn’t.”

“Staff never listen to you, no matter what you’ve got to say, the way your Ma and Da would. Unless it’s got to do with them – like if you say ‘I’m gonna kill ya’ ”

“Care homes take you to court for silly things. Things that your family, your Ma and Da, wouldn’t.”

“If you do one thing wrong [when in residential care], they phone the peelers [police]. It’s supposed to be a home, where you live. If you were living with your Mum and Dad, they wouldn’t phone the police when you broke a cup!”… “[Care] staff call the police too quickly - for smashing cups, I was done for criminal damage. They could have just made me pay it back.”

Additional reasons identified by the young people included emotional and psychological instability:

“You go crazy in care.”

feeling un-cared-for:

“People don’t think their family care about them, so they don’t care about themselves.”

“When you are in care there’s nobody looking out for you – you can go out and party all the time.”

and meeting other young people at risk of offending:

“You meet different people in care – they can be a bad influence on you.”

Recent legislative and policy developments in Northern Ireland, including enactment of the 2002 Children (Leaving Care) Act (Northern Ireland) and accompanying Regulations, and the recently produced strategy Care Matters in Northern Ireland. A Bridge to a Better Future, should lead to improved provision and more positive outcomes for looked after children and care leavers.

**Poverty and Standard of Living**

The UNCRC (Article 27.10) affirms that every child has the right to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development. In 2002, the UN Committee on the Rights of the Child urged the Government to: “take all necessary measures to the ‘maximum extent of… available resources’ to accelerate the elimination of child poverty”; to better co-ordinate and reinforce its efforts to address the causes of youth homelessness and its consequences; to review its legislation and policies concerning benefits and social security allowances for 16 to 18 year olds”.

While welcoming the Government’s commitment to end child poverty by 2020, and noting that child poverty had reduced, in 2008 the Committee remained “concerned that poverty is a very
serious problem affecting all parts of the UK… and that it is a particular concern in Northern Ireland where over 20% of children reportedly live in persistent poverty.”173 The Committee recommended that the Government should:

- adopt and adequately implement legislation aimed at achieving the target of ending child poverty by 2020, establishing measurable indicators for achievement of this target
- give priority in this legislation and in follow-up actions to those children and families in most need of support
- when necessary, besides giving full support to parents or others responsible for the child, intensify its efforts to provide material assistance and support programmes for children (particularly with regard to nutrition, clothing and housing).174

Government agencies are expected to take special responsibility and provide necessary services for homeless children and young people – making readily available to them information about local facilities, accommodation, employment and other sources of help.175 Special facilities should be set up to provide adequate shelter for young people who are no longer able to live at home, or who do not have homes in which to live.176

Poverty

When discussing the support required by families, young people mentioned financial support:

“Help with money. If you grow up deprived, you’re more likely to go out and steal stuff, get into trouble.”

“Bru [benefits], money.”

However, one in three children (122,000) in Northern Ireland live in income poverty (calculated on how much income a household has to live on), and one in ten (44,000) live in severe poverty (a mixed measure combining low income with experiences of deprivation).177 Between 2001-2004, short-term poverty affected 27% of children in Northern Ireland compared with 22% in Britain. But persistent poverty (ie poverty in at least 3-4 years of a 4 year period) affected 21% of children in Northern Ireland compared to 9% in Britain.178

Income levels are lower in Northern Ireland than in Britain among lone parent families and couples with children.179 Essential goods and services (such as food, fuel and electricity) cost more in Northern Ireland,180 which compounds the income deprivation experienced by poor households. Benefit levels are too low to enable families to rise above the Government’s own poverty threshold.181

173 UN Committee on the Rights of the Child, Op Cit, 2008, para 64
174 Ibid, para 65a-c
175 Riyadh Guidelines, Op Cit, Guideline 38
176 Ibid, Guideline 34
Children living in poverty are more likely than their peers to live in poor-quality accommodation. Living in conditions where walls and floors are damp, there is rot in window frames and doors, and property is in a bad state of repair impacts on children’s health. It also affects their social lives, as they may be reluctant or unable to invite friends home. Children and young people living in poverty experience unequal access to health services and lower health outcomes than their peers. For example, infant mortality rates for those born to parents living in more deprived areas are a third higher than for Northern Ireland as a whole, and children living in the 20% most deprived wards are almost twice as likely to have experienced dental decay as children from the 20% most affluent wards. Young people from poorer families are more likely to engage in smoking, drinking alcohol, solvent and drug abuse than young people from wealthier backgrounds. The rate of teenage pregnancy is highest in areas of greatest social and economic deprivation – in 2004, seven girls in every 1,000 aged 13-16 gave birth in the most deprived areas, compared with two girls in every 1,000 in other areas. The suicide rate for young males living in deprived areas of Northern Ireland is nearly twice that for those living in wealthier communities.

Educational outcomes are also worse for poor children than for their peers. In 2001-2002, pupils at schools with the lowest proportion of children entitled to free school meals were over two and a half times (49%) as likely to achieve a grade A in the transfer test as those at schools with the highest proportion of children in receipt of free school meals (18%). In 2004-05, 12% of children entitled to free school meals achieved no qualifications, compared to an average of 5%. In 2005-06, only 46% of school leavers entitled to free school meals continued their education in Higher or Further Education institutions compared with 70% of those not entitled to free school meals.

The UK Government is committed to halving child poverty by 2010 and eradicating it by 2020. To date, it has not dedicated sufficient resources to meet these targets. Given its responsibility for taxation and benefits, the UK Government retains significant responsibility for the eradication of poverty across the UK, although the devolved institutions have responsibility for many issues that will be critical in meeting both the 2010 and the 2020 goals (such as tackling educational underachievement, health inequalities, low paid employment, shortage of childcare places and high levels of fuel poverty). An Anti-Poverty and Social Inclusion Strategy was drafted in Northern Ireland before devolution, and the 2007 St Andrews Agreement required the Northern Ireland Executive to produce an anti-poverty strategy. However, this has not yet happened. The Executive has stated that eradicating child poverty is a key priority, mirroring the UK Government’s targets for halving child poverty by 2010 and eradicating child poverty by 2020 in their ‘Programme for Government’. In addition, the Executive committed to eradicating severe child poverty by 2012. But there is not yet an action plan or budget to deliver on these targets.

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182 McLaughlin, E. and Monteith, M., Op Cit, p35
184 Ibid, p11
185 Save the Children, Op Cit, p39
188 DENI, Transfer Procedure Test Results 2001/02, Analysis by sex, school management type and free school meal band, DENI, 23 May 2002
189 DENI, Northern Ireland School Leavers Survey 2004-05, DENI, 2005
190 DENI, Qualifications and Destinations of Northern Ireland School Leavers 2005/06, Statistical Press release, DENI, 29 May 2007, p3
Benefits and allowances for 16-18 year olds

16-17 year olds continue to experience age-based discrimination in relation to payment of benefits and allowances. They have no automatic rights to social security and receive lower levels of support than over-25s, despite the fact that they might be living independently. As they explain, young people living on benefits do not have an adequate standard of living:

“You have £80 every two weeks to cover food, heating, electric, clothes, visiting family, having a social life.”… “It’s not enough to live on.”

“It’s the shortage of money that leads to kids being taken into care. The social [services] see you’re not giving your child what they need. And it adds stress, which makes you depressed. It’s a vicious circle.”

Under-16s are not entitled to the minimum wage, and 16-18 year olds receive a lower minimum wage rate than those over 18. Many young people in employment are likely to be living in households experiencing severe poverty, in a situation where they must work. Thus, the discriminatory nature of the minimum wage contributes directly to child poverty.

Homelessness

Decent housing is a key to countering poverty and a catalyst for improved health, educational opportunities, access to services and quality of life. However, housing stress and homelessness are at record levels in Northern Ireland. During 2006-07, of the 36,182 applicants on the social rental sector waiting list, 19,703 were in housing stress (ie had 30 or more points under the Common Selection Scheme). During the same year, 21,013 households presented as homeless, including: 7,100 families; 263 single young women aged 16-18 and 202 single young men aged 16-18. This housing crisis has been caused by a shortage of new social housing and an unprecedented rise in housing costs, which is pushing the cost of renting in the private sector far beyond the level of housing benefit.

In July 2007 the Department of Social Development (DSD) launched a strategy on homelessness – Including the Homeless. It is also developing legislative proposals to give priority need status to 16-17 year olds who are homeless and do not fall within the remit of social services.
CHILDREN’S RIGHTS WITHIN YOUTH JUSTICE

A range of international instruments outline the minimum standards that should be applied throughout each stage of the youth justice process (eg the UNCRC, particularly Articles 37, 39 and 40; the Beijing Rules; the Riyadh Guidelines; the Tokyo Rules; the Havana Rules; and the UN Committee on the Rights of the Child General Comment No. 10: Children’s rights in juvenile justice). The UN Committee on the Rights of the Child has consistently recommended that the provisions and principles of the UNCRC and these international standards are fully integrated into domestic legislation, policies and practices and fully implemented.

As the European Network of Ombudspersons for Children (ENOC) argued in 2003: “Children in conflict with the law are still children first and do not lose their human rights, including rights to special treatment and protection, to education and to health.”

Age of Criminal Responsibility

‘Responsibility’ and ‘criminalisation’

ENOC stated:

“…the concepts of ‘responsibility’ and of ‘criminalisation’ need to be separated… children should be held ‘responsible’ for their actions in line with the concept of evolving capacities and our strong advocacy for respect for children’s views in all aspects of their lives. It is essential to establish responsibility for crimes. Where responsibility is disputed, there has to be a formal process to determine responsibility in a manner which respects the rights of the alleged offender. But this process does not have to lead to criminalising children.”

This does not necessarily undermine the rights of victims of crime:

“In promoting policies which respect the human rights of young offenders, we emphasise that we are not in any way neglecting the rights and concerns of victims of juvenile crime, who must receive appropriate reparation and support from the state. But their interests are not served by pursuing policies that fail to rehabilitate offenders and tend instead to make them more prone to offend and possibly more violent. We must also highlight the fact that children are far more often the victims of crime, including violent crime, than perpetrators.”

Minimum age of criminal responsibility

Although international standards do not specify a specific age of criminal responsibility, they state: “the beginning of that age shall not be fixed at too low an age, bearing in mind the facts of emotional, mental and intellectual maturity.” They also point out that the notion of ‘responsibility’ needs to be carefully considered (ie “whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially anti-social

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193 UN Committee on the Rights of the Child, Op Cit, 2002, para 61
194 UN Committee on the Rights of the Child, Op Cit, 2008, para 78
195 ENOC, Op Cit, p1
196 Ibid
197 Ibid
198 Beijing Rules, Op Cit, Rule 4
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behaviour”), noting the close relationship between the idea of responsibility for criminal behaviour and other social rights and responsibilities, such as being able to marry or to vote.199

At 10, the age of criminal responsibility for children in Northern Ireland is lower than in most advanced democratic jurisdictions, and significantly lower than the age at which children can legally assume other responsibilities. For example, the age of sexual consent is 16, and the voting age is 18. In its General Comment No. 10 on juvenile justice, the UN Committee on the Rights of the Child concluded that: “a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable”.200 The Committee recommended 12 “as the absolute minimum age” and that State parties should “continue to increase it to a higher age level” such as 14 or 16.201 Referring to this General Comment in its 2008 Concluding Observations, the Committee confirmed its previous recommendation that the UK Government raise the minimum age of criminal responsibility.202

Administration of Youth Justice

Under UNCRC Article 40.1, every child accused of, or recognised as, having infringed the penal law has the right to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age, and the desirability of the child assuming a constructive role in society.

The administration of youth justice should be designed to meet the varying needs of young offenders while protecting their basic rights, and to meet the needs of wider society.203 The aims of any youth justice system should be:

1) emphasising the well-being of the young person
2) ensuring that any reaction is in proportion to the circumstances of both the offender and the offence.204

The well-being of the young person should be the main focus of all legal systems - family courts, youth courts and criminal courts - contributing to the avoidance of merely punitive sanctions. The ‘principle of proportionality’ is also an instrument for curbing punitive sanctions, mainly expressed in terms of ‘just deserts’ in relation to the gravity of the offence. The response to young offenders should be based on consideration not only of the gravity of the offence but also of their personal circumstances.205

Appropriate scope for discretion should be allowed at all stages of proceedings and different levels of juvenile justice administration (eg investigation, prosecution, adjudication, follow-up of dispositions), so that those determining what happens can take the actions deemed most appropriate in each individual case. This requires sufficient mechanisms of accountability to curb abuses of discretionary power and safeguard the rights of young people.206

199 Ibid, Rule 4 Commentary
201 Ibid, para 32 and 33
202 UN Committee on the Rights of the Child, Op Cit, 2008, para 78a
203 Beijing Rules, Op Cit, Rule 2.3
204 Ibid, Rule 5.1
205 Ibid, Rule 5 Commentary
206 Ibid, Rules 6.1, 6.2 and 6.3
UNCRC Article 40.2b confirms that basic procedural safeguards should be guaranteed at all stages of proceedings, including: the presumption of innocence; the right to be notified of the charges; the right to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing; the right to legal counsel; the right to the presence of a parent/guardian (unless this is considered not to be in the best interest of the child); the right not to be compelled to give testimony or to confess guilt; the right to cross-examine witnesses; the right to appeal to a higher authority; the right to free assistance of an interpreter; and the right to have her/his privacy fully respected.  

Investigation and Prosecution

Initial contact between young people and law enforcement agencies should be managed in a way that respects the young person’s legal status, promotes their well-being and avoids harm. As involvement in the juvenile justice processes in itself can be harmful to young people, the term ‘avoid harm’ should be broadly interpreted as “doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm”. This is particularly important in initial contact with law enforcement agencies, “which might profoundly influence the juvenile’s attitude towards the State and society”. It is suggested that, to best fulfil their functions, police officers who frequently or exclusively deal with young people, or are mainly involved in prevention of youth crime, should be specially instructed and trained. Since the police are the first point of contact for children and young people with the youth justice system, it is important that they act in an informed and appropriate manner.

When arrested, a young person’s parents/guardians should be notified immediately or within the shortest period of time. A judge or other competent official/body should consider the issue of release without delay.

UNCRC Article 40.3b states that consideration should be given to dealing with young people who offend without resorting to formal trial by the competent authority (such as court, tribunal, board, council). Diversion - removal from formal criminal justice processes and (often) redirection to community-based support services - serves to mitigate the negative effects of subsequent proceedings. The optimum response would be non-intervention, especially where the offence is not serious and the family, school, or other informal social institutions have already reacted in a constructive way. Diversion could be used at any point of decision-making (by the police, the prosecution or the courts) and need not be limited to minor offences - the merits of individual cases would make diversion appropriate.

Any diversion involving referral to community or other services should require the consent of the young person, or her/his parents or guardian, with care taken to ensure that young people
do not feel pressured in any way (eg in order to avoid a court appearance).\textsuperscript{220}

In 2008, the UN Committee on the Rights of the Child stated its concern “at the application to children of the Anti-Social Behaviour Order (ASBOs), which are civil orders posing restrictions on children’s gathering, which may convert into criminal offences in case of their breach”.\textsuperscript{221} The Committee was further concerned:

- at the ease of issuing such orders, the broad range of prohibited behaviour and the fact that the breach of an order is a criminal offence with potentially serious consequences
- that ASBOs, instead of being a measure in the best interests of children, may in practice contribute to their entry into contact with the criminal justice system
- that most children subject to them are from disadvantaged backgrounds.\textsuperscript{222}

The Committee recommended “an independent review of ASBOs, with a view to abolishing their application to children.”\textsuperscript{223}

According to UNCRC Article 37b, detention pending trial should be used only as a measure of last resort and for the shortest possible period of time.\textsuperscript{224} Whenever possible, it should be replaced by alternative measures such as: close supervision, intensive care or placement with a family, in an educational setting or residential home.\textsuperscript{225} Development of new and innovative measures to avoid detention are encouraged, particularly as “the danger to juveniles of ‘criminal contamination’ while in detention pending trial must not be underestimated”.\textsuperscript{226} Young people who are detained on remand pending trial should be held apart from adults - either in a separate institution or in a separate part of an institution also holding adults.\textsuperscript{227} They should also be accommodated separately from convicted young people because they are presumed innocent until their case has been heard and should be treated as such.\textsuperscript{228} While detained, they should receive whatever care, protection and individual assistance they need in view of their age, sex and personality.\textsuperscript{229} Remand prisoners are at greater risk of self harm and suicide, particularly on their first night and the early period of detention,\textsuperscript{230} thus require additional support during this period.

**Adjudication and Disposition**

Any young person whose case has not been diverted should receive a fair trial by a competent authority (eg court).\textsuperscript{231} The proceedings should promote the best interests of the young person, enabling her/him to participate and express her/himself freely.\textsuperscript{232} The young person should have the right to be represented by a legal adviser or to apply for free legal aid where this exists.\textsuperscript{233} Their parents/guardians should be entitled to participate in the proceedings and

\textsuperscript{220} Ibid, Rule 11 Commentary
\textsuperscript{221} UN Committee on the Rights of the Child, Op Cit, 2008, para 79
\textsuperscript{222} Ibid, para 79a-c
\textsuperscript{223} Ibid, para 80
\textsuperscript{224} Beijing Rules, Op Cit, Rule 13.1; Tokyo Rules, Op Cit, Rules 6.1 and 6.2; Havana Rules, Op Cit, Rule 17
\textsuperscript{225} Beijing Rules, Op Cit, Rule 13.2
\textsuperscript{226} Ibid, Rule 13 Commentary
\textsuperscript{227} Ibid, Rule 13.3
\textsuperscript{228} Havana Rules, Op Cit, Rule 17
\textsuperscript{229} Beijing Rules, Op Cit, Rule 13.5
\textsuperscript{231} Beijing Rules, Op Cit, Rule 14.1
\textsuperscript{232} Ibid, Rule 14.2
\textsuperscript{233} Ibid, Rule 15.1
may be required to attend the proceedings in the interest of the young person – to provide psychological and emotional assistance. Or they may be denied participation by the competent authority if this is deemed necessary in the interest of the young person (eg if they display hostility towards the young person).234

In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the young person is living, or the conditions under which the offence was committed, should be properly investigated.235 Pre-sentence reports should include information which is relevant to the young person’s pattern of offending and current offences, and also information and recommendations relevant to the sentencing procedure. They should be factual, objective and unbiased, with any expression of opinion clearly identified.236

The disposition of the competent authority should be guided by the following principles:

a) reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the young person as well as to the needs of society

b) restrictions on the personal liberty of the young person should be imposed only after careful consideration and limited to the shortest possible period

c) deprivation of personal liberty shall not be imposed unless the young person is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences, and unless there is no other appropriate response

d) the well-being of the young person shall be the guiding factor in the consideration of her or his case.237

These practical guidelines are intended to ensure that the fundamental rights of young people are protected, especially the fundamental rights of personal development and education.238 In cases concerning young people, just desert and retributive sanctions should always be outweighed by the interest of safeguarding the well-being and the future of the young person.239

Appropriate provisions should be made for monitoring the implementation of the disposition – either by the competent authority that originally disposed of the case or by an independent body with qualifications equal to those of the competent authority (such as a parole board, probation office, or youth welfare institution).240 This is particularly important for young people as “disposition in juvenile cases, more so than in adult cases, tends to influence the offender’s life for a long period of time.”241 These provisions should include the power to modify the orders.242

Non-institutional Measures

A range of disposition measures should be available to the competent authority to avoid
institutionalisation. These emphasise community-based services and may be combined. No young person should be removed from parental supervision, whether partly or entirely, unless the circumstances of her/his case make this necessary.

Any conditions imposed on the young person should be practical, precise and as few as possible. They should be aimed at reducing the likelihood of the young person relapsing into criminal behaviour and increasing their chances of integration, taking into account the needs of the victim. The young person should receive an explanation, orally and in writing, of these conditions including her/his obligations and rights. Breach of conditions may result in modification or revocation of the sanction, but this outcome should be made by the competent authority only after a careful examination of the facts adduced by both the supervising officer and the offender. Failure of a community sentence should not automatically lead to the imposition of custody - a sentence of imprisonment should be imposed only in the absence of other suitable alternatives.

Within the framework of any alternative sanction, treatment schemes should be developed to meet individual needs. These may include: case-work, group therapy, residential programmes and specialised treatment of various categories of offender, conducted by professionals who have suitable training and practical experience.

Efforts should be made to provide children and young people, at all stages of the proceedings, with necessary practical and material assistance as well as emotional and social support to facilitate the rehabilitative process. There should also be opportunities to strengthen links with the community and promote their reintegration into society.

Use of Custody

As the UNCRC (Article 37b) and other international standards affirm, the placement of a young person in an institution should always be a disposition of last resort and for the minimum necessary period. According to the Beijing Rules:

“Progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the success of institutionalisation as compared to non-institutionalisation. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.”

243 Ibid, Rule 18.1
244 Ibid, Rule 18.1a-g; Tokyo Rules, Op Cit, Rule 8.2
245 Beijing Rules, Op Cit, Rule 18.2
246 Tokyo Rules, Op Cit, Rule 12.2
247 Ibid, 12.3
248 Ibid, Rule 14.2
249 Ibid, Rules 14.3 and 14.4
250 Ibid, 13.1 and 13.2
251 Beijing Rules, Op Cit, Rule 24.1
252 Tokyo Rule, Op Cit, Rule 10.4
254 Beijing Rules, Op Cit, Rule 19 Commentary
In 2008, the UN Committee noted its concern that “the number of children deprived of liberty is high, which indicates that detention is not always applied as a measure of last resort”, and that “the number of children on remand is high”. The Committee recommended that the UK Government “develop a broad range of alternative measures to detention for children in conflict with the law; and establish the principle that detention should be used as a measure of last resort and for the shortest period of time as a statutory principle”. Advice presented by the Northern Ireland Human Rights Commission to the Secretary of State has also stated that custody should only be used as a last resort. The European Network of Ombudspersons for Children stated: “The only legitimate reason for detaining children, before or after trial, must be that they pose a serious and immediate risk to others”. Even in these cases, use of custody should be constantly reviewed and alternatives considered.

There should be special institutional arrangements for detaining young people, with priority given to ‘open’ detention facilities, and any facility should be of a correctional or educational nature rather than of a prison type. In open facilities (with no or minimal security measures), the population should be as small as possible and the number of young people detained in closed facilities should be small enough to ensure that they receive individualised treatment. Small-scale detention facilities should be locally-based; integrated into the social, economic and cultural environment of the community; and of such a size that access and contact between young people and their families can be facilitated.

Article 37c of the UNCRC emphasises that every child or young person deprived of liberty should 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 people his/her age. Detention of young people should only take place under conditions that take full account of their particular needs, status and special requirements. Separation of different categories of young people deprived of their liberty should be based on provision of the type of care best suited to the particular needs of the individuals and the protection of their physical, mental and moral integrity and well-being.

Young people placed in institutions should receive care, protection, education and vocational skills to help them assume socially constructive and productive roles in society. Detained young people should be guaranteed the benefit of meaningful activities and programmes which promote and sustain their health and self-respect, foster their sense of responsibility, encourage attitudes and skills that will help them develop their potential as members of society.

**Implementation of International Standards for Young People in Custody**

The design and physical environment of detention facilities should be in keeping with the rehabilitative aim of residential treatment - recognising the need for: privacy, sensory stimuli,

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255 UN Committee on the Rights of the Child, Op Cit, 2008, paras 77c and d
256 Ibid, para 78b
257 NIHRC, A Bill of Rights for Northern Ireland: Advice to the Secretary of State, Belfast: NIHRC, 10 December 2008, p25
258 ENOC, Op Cit, p2
259 Beijing Rules, Op Cit, Rule 19 Commentary
260 Havana Rules, Op Cit, Rule 30
261 Ibid
262 Ibid, Rule 28
263 Ibid
264 Beijing Rules, Op Cit, Rule 26.1
265 Havana Rules, Op Cit, Rule 12
opportunities for association with peers, participation in sports, physical exercise and leisure activities. Young people should have access to personal possessions and their own clothing. They should receive food that is suitably prepared, presented at normal meal times and of satisfactory quality and quantity.

In 2002, the UN Committee on the Rights of the Child recommended that the UK Government “take all necessary measures, as a matter of urgency, to review the conditions of detention and ensure that all children deprived of their liberty have statutory rights to education, health and child protection equal to those of other children”. Every detained young person should receive adequate medical care, both preventive and remedial (including dental, ophthalmologic and mental health care), wherever possible provided through health facilities and services in the local community.

Education and training should be a core provision for young people in custody. Those of compulsory school age should have access to education, through programmes integrated with the education system so that they may continue their education without difficulty after release. In 2008, the UN Committee on the Rights of the Child affirmed the need to “provide for a statutory right to education for all children deprived of their liberty”. Those above compulsory school age who wish to continue their education should be allowed and encouraged to do so, with every effort made to provide them with access to appropriate educational programmes. Every young person should also have the right to receive vocational training in occupations likely to prepare him/her for future employment. They should have opportunities for paid labour, preferably in the local community, to increase the possibility of finding suitable employment when they return to their communities.

Each young person in detention should have the right to rest, leisure, play and recreational activities appropriate to their age, with a suitable amount of time for daily free exercise (in the open air when weather permits), space and equipment for recreational and physical activities. They should have additional time for daily leisure activities, part of which should be devoted (if the young person wishes) to arts and crafts skills development.

Communication with the outside world “is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society”. Detained young people should be allowed to communicate with their families, friends and others; to leave the detention facilities for visits to their home and family; and to receive special permission to leave the facility for educational, vocational or other important reasons. They have the right to receive regular and frequent visits with their family and defence counsel in circumstances that
respect the need for privacy, contact and unrestricted communication. They should also have access to newspapers and other publications, radio/television programmes and films, and be allowed to satisfy their religious and spiritual needs.

Instruments of restraint and force should be used only in exceptional circumstances, where all other control methods have been tried and failed, and as authorised by law and regulation. Restraint should not cause humiliation or degradation. It should be used restrictively and only for the shortest possible period of time (e.g. to prevent the young person inflicting self-injury, injuries to others or serious destruction of property). In 2008, the UN Committee on the Rights of the Child remained “concerned at the fact that, in practice, physical restraint on children is still used in places of deprivation of liberty.” The Committee urged the State Party “to ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child or others, and that all methods of physical restraint for disciplinary purposes be abolished.”

Any disciplinary measures and procedures should be consistent with upholding the dignity of the young person and the fundamental objective of institutional care (i.e. instilling a sense of justice, self-respect and respect for the basic rights of every person). Disciplinary measures which are cruel, inhuman or degrading should be prohibited, including: closed or solitary confinement; any punishment that may compromise the physical or mental health of the young person; restriction/denial of contact with family members; sanctioning the young person more than once for the same action; and collective sanctions.

Each young person should be able to make requests or complaints to the director of the detention facility and her/his authorised representative; to the central administration, judicial authority or other authorities through approved channels; and to an independent office (e.g. Commissioner for Children and Young People). They should have the right to request help from family members, legal counsellors, humanitarian groups, or others to make a complaint.

In 2002, one of the recommendations of the UN Committee on the Rights of the Child was: “Ensure that every child deprived of his or her liberty has access to independent advocacy services and to an independent, child-sensitive and accessible complaint procedure.”

Inspection of detention facilities is important, to ensure that young people’s rights are being upheld and international standards implemented. Qualified inspectors, or an equivalent duly constituted authority not belonging to the administration of the facility, should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections with full guarantees of independence. Inspectors should have unrestricted access to all people employed by, or working in, any facility where young people may be deprived of their liberty, to all young people, and to all records. Qualified medical officers – attached to the inspecting authority or the public health service – should participate in the inspections to evaluate

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282 Ibid, Rule 60
283 Ibid, Rule 62
284 Ibid, Rule 48
285 Ibid, Rule 64
286 Ibid
287 UN Committee on the Rights of the Child, Op Cit, 2008, para 38
288 Ibid, para 39
289 Havana Rules, Op Cit, Rule 66
290 Ibid, Rule 67
291 Ibid, Rules 75, 76 and 77
292 Ibid, Rule 78
293 UN Committee on the Rights of the Child, Op Cit, 2002, para 62f
294 Havana Rules, Op Cit, Rule 72
295 Ibid
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compliance with rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other conditions of institutional life that affect the physical and mental health of young people. Each young person should have the right to talk in confidence to any inspecting officer. Having completed an inspection, a report on the findings should be submitted. This should include an evaluation of compliance of the detention facility with rules and relevant provisions of national law, and recommendations about any actions considered necessary to ensure compliance with these. Any facts discovered by an inspector that appear to indicate occurrence of a violation of legal provisions concerning the rights of young people, or the operation of a juvenile detention facility, should be communicated to the competent authorities for investigation and prosecution.

UNCRC Article 37c specifies that young people in institutions should be kept separate from adults and detained in a separate institution designed for the purpose, or in a separate part of an institution also holding adults. If children are (exceptionally) held in a prison for adults, there should be special regulations that take account of their status and needs. Following the withdrawal of its reservation to UNCRC Article 37c in September 2008, the UN Committee recommended that the UK Government “ensure that, unless in his or her best interests, every child deprived of liberty is separated from adults in all places of deprivation of liberty.”

A range of post-sentence dispositions to avoid institutionalisation and help early reintegration into society should be provided, including: half-way houses; work or education release; various forms of parole; remission and pardon. Subject to review by a judicial body or other competent independent authority upon application of the offender, any form of release from an institution to a non-custodial programme should be considered at the earliest possible stage. Conditional release from an institution should be used by the appropriate authority to the greatest possible extent, and granted at the earliest possible time. It should be preferred to serving a full sentence, circumstances permitting - even offenders deemed dangerous at the time of their institutionalisation can be conditionally released if there is evidence of satisfactory progress towards rehabilitation. Young people released conditionally from an institution should be assisted and supervised by an appropriate authority and receive full support by the community. The purpose of supervision is to reduce re-offending and help the offender’s integration into society in a way which minimises the likelihood of a return to crime.

“The importance of care following a period of institutionalisation should not be underestimated.” Efforts should be made to provide semi-institutional arrangements to assist the young person’s reintegration into society (eg half-way houses, educational homes, day-time training centres). A diverse range of facilities and services should be designed to meet the different needs of young people.

296 Ibid, Rule 73
297 Ibid
298 Ibid, Rule 74
299 Ibid
300 Beijing Rules, Op Cit, Rule 26.3; European Prison Rules, Op Cit, Rule 11.1
301 Ibid, 11.2
302 UN Committee on the Rights of the Child, Op Cit, para 78d
303 Tokyo Rules, Op Cit, Rules 9.1 and 9.2
304 Ibid, Rules 9.3 and 9.4
305 Beijing Rules, Op Cit, Rule 28.1
306 Ibid, Rule 28 Commentary
307 Ibid, Rule 28.2
308 Tokyo Rules, Op Cit, Rule 10.1
309 Beijing Rules, Op Cit, Rule 29 Commentary
310 Ibid, Rule 29.1
offenders re-entering the community, providing guidance and structural support. These services should ensure that the young person is provided with suitable residence, employment and clothing, and sufficient means to maintain her/himself on release. The representatives of agencies providing such services should be consulted and have access to young people while they are detained, so that they can assist the young person’s return to the community.

Interagency Development and Co-operation

A range of organisations is involved in providing early intervention, diversionary activities, community-based/ non-custodial measures and formal youth justice services. International standards reinforce an expectation that: “Efforts should be made and appropriate mechanisms established to promote, on both a multi-disciplinary and an intradisciplinary basis, interaction and co-ordination between economic, social, education, health agencies and services, the justice system, youth, community and development agencies and other relevant institutions.”

This includes facilitating links between services responsible for non-custodial measures, other branches of the criminal justice system, social development and welfare agencies (both governmental and non-governmental) in fields such as health, housing, education and employment, and the mass media.

There should also be exchange of information, experience and expertise gained through projects, programmes, practices and initiatives relating to youth crime, prevention of offending and juvenile justice, with further development and strengthening of regional and international co-operation in these areas involving practitioners, experts and decision makers.

Research, Planning, Policy Formulation and Evaluation

Efforts should be made to organise and promote research as a basis for effective planning and policy formulation. The mutual feedback between research and policy is perceived to be particularly important in juvenile justice: “With rapid and often drastic changes in the lifestyles of the young and in the forms and dimensions of juvenile crime, the societal and justice responses to juvenile crime and delinquency quickly become outmoded and inadequate.”

International standards emphasise the role of research in informing policy and practice at every level of the youth justice system. Such research is vital for improving the methods of formulating appropriate policies and establishing adequate interventions, at both formal and informal levels. In this context, research by independent individuals and bodies should be facilitated, in addition to obtaining and taking into account the views of young people themselves. Collaborative research should be encouraged, with findings widely disseminated and evaluated.

Additionally, efforts should be made to establish a regular evaluative research mechanism,

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311 Ibid, Rule 29 Commentary
312 Havana Rules, Op Cit, Rule 80
313 Ibid
314 Riyadh Guidelines, Op Cit, Guideline 60
315 Tokyo Rules, Op Cit, Rule 22.1
316 Riyadh Guidelines, Op Cit, Guideline 61
317 Ibid, Guideline 62
318 Beijing Rules, Op Cit, Rule 30.1
319 Ibid, Rule 30 Commentary
320 Ibid
321 Ibid
322 Riyadh Guidelines, Op Cit, Guideline 64
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built into the system of juvenile justice administration, and to collect and analyse relevant data/information for assessment and improvement or reform of the administration. Delivery of services should be systematically planned and implemented as an integral part of national development efforts, with planning processes based on comprehensive and regular assessment of the wide-ranging, particular needs and problems of young people, identification of priorities, and co-ordination over use of existing resources (including alternatives and community support).

Training

UNCRC Articles 4 and 42 stress that all professionals working with children and young people should be aware of, and receive training about, the UNCRC and children's rights. In its 2008 Concluding Observations, the UN Committee recommended that the UK should reinforce "adequate and systematic training of all professional groups working for and with children, in particular law enforcement officials" as well as media, teachers, health and social care professionals.

Youth justice services should be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services - including their methods, approaches and attitudes. Professional qualifications are perceived to be an essential element in ensuring the impartial and effective administration of juvenile justice; necessitating improvement in the recruitment, advancement and professional training of personnel and the need to provide them with the necessary means to enable them to properly fulfil their functions. The professional competence of all personnel dealing with juvenile cases should be established and maintained through professional education, in-service training, refresher courses and other appropriate modes of instruction.

Law enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young people. For the competent authorities who make decisions about depositions (e.g. magistrates, judges, elected or appointed laypeople or jurists, members of community-based boards), a minimum training in law, sociology, psychology, criminology and behavioural sciences is required. It may not be feasible to require professional specialisation as a prerequisite for social workers and probation officers taking over any function dealing with young offenders, so professional on-the-job instruction would be minimum qualifications. Personnel in detention facilities should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare, international standards, norms of human rights and the rights of the child. Prison staff who work with specific groups, including juveniles, should be given specific training for their specialised work. The training of all prison staff should include instruction in international and regional human rights.

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323 Beijing Rules, Op Cit, Rule 30.3
324 Ibid, Rule 30.4
325 Ibid, Rule 30 Commentary
326 UN Committee on the Rights of the Child, Op Cit, 2008, para 21
327 Beijing Rules, Op Cit, Rule 1.6
328 Ibid
329 Ibid, Rule 22.1; Tokyo Rules, Op Cit, Rules 16.2 and 16.3
330 Riyadh Guidelines, Op Cit, Guideline 58
331 Beijing Rules, Op Cit, Rule 22 Commentary
332 Ibid
333 Havana Rules, Op Cit, Rule 85
334 European Prison Rules, Op Cit, Rule 81.3

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[57]
instruments and standards, as well as in the application of the European Prison Rules.335

Juvenile justice personnel should reflect the diversity of juveniles who come into contact with the juvenile justice system, with efforts made to ensure fair representation of women and minorities in juvenile justice agencies.336 To achieve impartiality in the administration of youth justice, all political, social, sexual, racial, religious, and cultural or any other kind of discrimination in the selection, appointment and advancement of juvenile justice personnel should be avoided.337

335 Ibid, Rule 81.4
336 Beijing Rules, Op Cit, Rule 22.2
337 Ibid, Rule 22 Commentary; Tokyo Rules, Op Cit, Rule 15.1
THE CRIMINAL JUSTICE SYSTEM IN NORTHERN IRELAND AND CHILDREN’S RIGHTS

The Criminal Justice System in Northern Ireland includes: the Northern Ireland Office, the Northern Ireland Court Service, the Northern Ireland Prison Service, the Probation Board for Northern Ireland, the Police Service of Northern Ireland, the Public Prosecution Service, and the Youth Justice Agency (YJA). Its purpose is “to support the administration of justice, to promote confidence in the criminal justice system and to contribute to the reduction of crime and the fear of crime.”

Youth Justice

The 2002 Justice (Northern Ireland) Act (Part 4, Section 53(1)) affirms that: “The principal aim of the youth justice system is to protect the public by preventing offending by children.” Under Section 53(2), those exercising functions in relation to the youth justice system are expected to have regard to this aim “with a view (in particular) to encouraging children to recognise the effects of crime and to take responsibility for their actions.” Section 53(3) states that they are also expected to “have regard to the welfare of children… with a view (in particular) to furthering their personal, social and educational development.” Although this reference to welfare is important, it does not make the best interest of the child, or their well-being, the primary consideration in youth justice policy or practice.

The Charter for Youth Justice identifies five aims: operating “a youth justice system that:

- Prevents and reduces offending by children and young people.
- Delivers justice, respects rights and protects the vulnerable.
- Inspires confidence.
- Makes a positive difference.
- Offers value for money.”

In 2006, 1,643 10-17 year olds were proceeded against at the criminal courts in Northern Ireland. 1,064 (65%) were prosecuted for indictable offences, 321 (20%) for summary offences, and 258 (16%) for motoring offences. Of those prosecuted, 1,411 (86%) were male and 1,273 (77%) were found guilty. In 1996, 1,950 young people were convicted, representing a 35% decrease in 10 years.

Figures summarising the numbers and percentages of 10-17 year olds given different disposals in 2006 show that:

- of those sentenced for indictable offences, 35% received Supervision in the community;

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338 CJSNI www.cjsni.gov.uk
339 CJSNI, A Charter for Youth Justice, CJSNI, 2007
30% a Youth Conference Order; 16% a Conditional Discharge; 9% Immediate Custody; 7% a Fine; 3% Suspended Custody; 1% Other

- of those sentenced for summary offences, 27% received Supervision in the Community; 19% a Youth Conference Order; 19% a Conditional Discharge; 14% a Fine; 14% Other; 4% Immediate Custody; 2% Suspended Custody

- of those sentenced for motoring offences, 65% received a Fine; 15% a Conditional Discharge; 12% Supervision in the Community; 4% a Youth Conference Order; 2% Immediate Custody; 1% Suspended Custody; 1% Other.\footnote{341}

**Policing**

The history of policing in Northern Ireland has been and, in some communities, remains contentious, focusing on: tensions between community and paramilitary policing; the handling of serious complaints; the politics of accountability; police powers under emergency legislation; the use of force and police technologies.\footnote{342}

Research has demonstrated that young people’s experiences of the police have often been negative. Reinforcing the experiences of their peers,\footnote{343} young people in conflict with the law have criticised the police for being disrespectful and/or impolite:

“The police never respect young people, and people don’t respect them.”

“The police are harsh and cheeky when they speak to you.”

“Police get into young people’s faces and tell them ‘Don’t talk shite’.”

“(They) don’t give young people an opportunity to explain.”

“Provoke you for no reason – stop you and say things to you to get a reaction.”

Young people have reported feeling harassed as a result of being stopped and questioned, moved on, or watched.\footnote{344}

“You’re prevented from standing on the streets. If the cops come by, they know young people and start going at them.”

“If you’re in large groups, you’re told to separate.”

“[Police] tell you to move on but there is nowhere to go. And then when you move on, they tell you to move on from there. You can’t win.”

\footnotetext{341}{Ibid, p5-6}
\footnotetext{342}{Kilkelly, U. et al, Op Cit, p218}
\footnotetext{343}{Hamilton, J., Radford, K. and Jarman, N., Policing, Accountability and Young People, Institute for Conflict Research, 2003, p42-43}
The process of being arrested and questioned was often intimidating for them:

“I was 10. I was treated well, but I was really scared. As you get older, they treat you worse – they slap [use verbal abuse] at you and throw you in the back of the van. They get rough with you.”

“Hurt you – rougher than they need to be – handcuffs too tight.”

“They provoke you until you hit them. Then they can restrain you or hit you back.”

“They take you away from your streets and your family. And they treat you like shit in the station. They leave you in the cell all day.”

“I was kept in [police cells] over the weekend, even though you shouldn’t be held for more than 48 hours if you’re under 18.”

In a review of the handling of complaints in the criminal justice system between November 2005 and October 2006, many of the young people in the Juvenile Justice Centre stated that “they would have liked to complain about how they had been treated by the police (in terms of the degree of restraint used and/or discriminatory attitudes and actions) but did not because they felt they wouldn’t be believed”.345

In research commissioned by the Northern Ireland Commissioner for Children and Young People, community groups raised concern about use of children as informers by the Police Service of Northern Ireland (PSNI) to gather low level intelligence in exchange for immunity from prosecution. Although this was rejected as institutional policy or practice by the PSNI and Police Ombudsman, a PSNI representative commented that, in terms of routine policing, modern forces are ‘intelligence led’ and that young people would be considered appropriate for ‘information gathering’ regarding crime in the area.346

“A study into the detention and questioning of young people in 2002 found that only 15% of young people detained by the police were eventually charged.347 Solicitors complained that “not enough was done to explain the importance of legal advice to young persons and their parents”,348 and that there were difficulties in ensuring that young people, especially those under 14, understood the advice given to them or the implications of a caution.349

Diversion

Reforms introduced as a result of the 2000 Review of the Criminal Justice System in Northern Ireland350 and the subsequent Justice (Northern Ireland) Act, 2002 demonstrated a commitment to alternatives to custody for children and young people. All decisions with regards to diversions

346 Kilkelly, U. et al, Op Cit, p224
347 Quinn, K. and Jackson, J., The detention and questioning of young persons by the police in Northern Ireland, Northern Ireland Office Research and Statistics Series: Report No. 9, NIO, 2003, pv
348 Ibid, pix
349 Ibid, px
are now within the remit of the Public Prosecution Service who, following advice from the PSNI, Youth Justice Agency (YJA) and others, can impose one of three diversionary disposals (which are incremental). Before a diversionary measure can be considered, there must be a clear admission of guilt, the offence must not be considered a serious one, and the young person must not be deemed a persistent offender. The disposals are:

1. **Informal Warning** – the charge is outlined and the young person and their family are warned with regards to future behaviours. Although not a conviction, a record is kept on the criminal record for 12 months

2. **Restorative Caution** – a trained facilitator, normally a police officer, administers this disposal. This is a formal process which can involve the victim. This is not a conviction, but will remain on the young person’s record for 2 ½ years

3. Diversionary **Youth Conference** – undertaken by trained facilitators within the Youth Justice Agency, this can involve a number of participants including the young person, their parents or carers, police, the victim or their representative. Lengthy preparation is undertaken and an action plan is recommended for approval by the Public Prosecution Service. Whilst not a conviction, it will remain on record for 2 ½ years.

The **Criminal Justice Review** stated that 10-13 year olds should be diverted away from prosecution unless they are persistent, serious or violent offenders. It recommended that 10-13 year olds, including those found guilty of criminal offences, should not be held in the Juvenile Justice Centre - their accommodation needs should be provided by the care system through Custody Care Orders. Article 56 of the **Justice (Northern Ireland) Act 2002** made provision for the introduction of Custody Care Orders for 10-13 year olds. However, this clause has not been implemented. Consequently, the few 10-13 year olds remanded in custody or who receive a custodial sentence are currently sent to the JJC, where they are detained with children aged up to 17.

**Community Restorative Justice Schemes**

Community-based restorative justice schemes also operate in Northern Ireland in response to low-level offending by young people. It is important to acknowledge the “delicate, complex and unique” context in which the schemes emerged and consolidated. This includes: their development during the conflict, issues concerning acceptability of policing within certain communities, the activities of paramilitary organisations and vigilante groups, high rates of poverty and material deprivation. Established in Republican and Loyalist communities, these community development projects negotiate the controversial treatment of children and young people such as paramilitary punishment beatings, control of children's movement within communities, ‘naming and shaming’ of young people and their alleged offences. They aim to challenge and reduce offending or harmful behaviour in communities, develop opportunities for reconciliation of offenders and victims, and encourage safe environments in a context where there is lack of trust within communities relating to intervention by statutory agencies.

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351 Public Prosecution Service, Guidelines for Diversion, Belfast: PPS, November 2008
352 Include Youth. Response to the Northern Ireland Office Consultation on Draft Guidelines for Community-based Restorative Justice Schemes, Belfast: Include Youth, February 2006, p3
Some young people in conflict with the law respond positively to these schemes:

“You would give it [Community Restorative Justice] a try.”

“I wouldn’t trust them, but I’d give it a go. It’s better than getting beat. But I’d still be suspicious, on my guard.”

“You would do it to get the paramilitaries off your back. But you still wouldn’t trust them.”

Others are sceptical about whether they provide an alternative to paramilitary responses:

“Even if they say they won’t, if they want to beat you they’ll find a reason. If they want to do it they will.”

“They might say they wouldn’t get you. But just wait a couple of months, ‘til no-one was noticing you as much, then they’d get you.”

The positive contribution of these schemes was acknowledged by the Independent Monitoring Commission in 2006. However, tensions between community-based restorative justice and formal approaches by statutory providers focus on the issues of standards, accountability, trust, and funding. Development of a protocol by the Northern Ireland Office may help establish community-based restorative justice projects as diversionary schemes, complimentary to formal restorative justice processes provided by statutory providers, and ensure compliance with international standards. By November 2008, the two main community-based restorative justice schemes (Community Restorative Justice, Ireland and Northern Ireland Alternatives) had been accredited by the CJINI to implement the protocol. The challenge for these schemes remains whether they can achieve the requirements of the protocol while retaining their independence and the confidence of the communities in which they work.

**ASBOs**

The *Anti-social Behaviour (Northern Ireland) Order 2004* introduced Anti-Social Behaviour Orders (ASBOs) to Northern Ireland. ASBOs are civil orders which the Police Service of Northern Ireland, the Northern Ireland Housing Executive and District Councils can apply to be granted by courts for behaviour deemed to be ‘anti-social’, but not necessarily criminal. Since the age of criminal responsibility is 10 years, ASBOs can be applied to children from the age of 10.

A range of criticisms have been made about ASBOS, including:

- definition of ‘anti-social behaviour’ is subjective – Article 3 of the legislation states that it is behaviour which has caused or is likely to cause “harassment, alarm or distress”

- as civil orders, there is a lower burden of proof – hearsay and professional evidence is admissible in ASBO hearings

- civil and criminal law are blurred - if an ASBO is granted and subsequently breached, a child can receive a custodial sentence (despite the fact that their anti-social behaviour was not criminal, they have not had the protections of the criminal justice system and they have been denied the right to a fair trial)

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353  Kilkelly, U. et al. Op Cit, p241
• reporting restrictions can be lifted, making a young person’s personal information public – known as ‘naming and shaming’, this raises child protection concerns and is contrary to other court processes

• ASBOs can be used in conjunction with a prison sentence, effectively resulting in a form of ‘release under licence’ – a condition normally imposed on individuals who have committed serious crimes.

Despite their widespread use in England and Wales, mobilisation against their introduction and use by NGOs, vigilant monitoring of their implementation, and emphasis on diversionary approaches have led to relatively limited use of ASBOs in Northern Ireland. Information provided by the UK Government to the UN Committee on the Rights of the Child in September 2008 stated that the Northern Ireland Office does not collect information on the nature of anti-social behaviour leading to courts granting an ASBO. The Northern Ireland Office had been notified of 37 ASBOs being granted against under-18s between 2004 and 2008. 10 (27%) of these individuals were convicted of breaching their ASBOs.\textsuperscript{355} PSNI figures show that up to December 2007, 46\% (30) of the 65 ASBOs granted were against children and young people.\textsuperscript{356} In their inspection of the operation and effectiveness of ASBOs, the Criminal Justice Inspectorate found that there was differing use of ASBOs across Northern Ireland, and that poor communication existed both between agencies and with the public.\textsuperscript{357} The inspection report stated: “Anecdotal evidence suggests that alternatives are as effective, if not more effective, than ASBOs. The use of alternatives appears to be critical in assisting individuals to change their behaviour patterns and therefore should be developed and used as a precursor to ASBOs”.\textsuperscript{358}

\section*{Trial and Sentencing}

\textit{Attending trial}

Young people in conflict with the law have raised a number of concerns relating to the process of attending trial and sentencing. Cases can take a long time to come to Court:

“A quicker court process – you need action to happen quickly, as soon as possible after the offence.”

“It takes too long to get sentenced – you have to go back to Court about 15 times before you know what’s happening to you.”

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\textsuperscript{356} CJINI Anti-Social Behaviour Orders. An inspection of the operation and effectiveness of ASBOs, Belfast: CJINI, October 2008
\textsuperscript{357} Ibid
\textsuperscript{358} Ibid, pviii
\end{flushright}
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Court conditions are generally poor:

“The worst thing about the courts is the cells. You’re stuck in this tiny wee room with just a wee bench, from before 10 in the morning ‘til it’s all over with and they get the paper work done at about half 5.”

“The cells are stinking, they don’t get cleaned. It makes you depressed and it makes you more worried about court.”

“They shouldn’t have any cells – that’s the worst thing. It’s just you and the four walls. You get really claustrophobic. It makes you think things, like about suicide.”

“The worst thing is sitting waiting. For hours sometimes. They should give you certain times for going in.”… “They should have magazines in the waiting room.”

Young people often find Judges (including district judges) intimidating:

“The Judge made me feel really, really small.”… “Yeah, they make you feel like the lowest of the low.”

“Judges don’t listen. They just don’t like you.”

“The Judge made me take my make-up off. If they’ve had a bad day with their family or whatever, they take it out on you. She told me to uncross my arms and stand up straight. She still thinks it’s the 1960s.”

“The Judge made my Ma feel like shit – had her in tears.”

“The Judge discriminated me ‘cos of my brothers’ reputation.”

“The Judge should ask you how you feel about the outcome.”

Participation in court proceedings

The Northern Ireland Court Service has undertaken some work to raise public awareness about its role and operation, much of which has been targeted at young people (eg accessible information and open days). It is clear, however, that young people who appear as defendants often feel alienated. Many do not fully participate in the Court procedures, or understand what is happening:

“You don’t know what’s going on in the court.”

“Can’t understand what’s being said. It’s all big, stupid words – especially the Judge.”

“You don’t listen to anything – there’s no point. The only thing you listen out for is the bit where they say ‘4 MONTHS!’ ”

“I didn’t understand what was happening. My solicitor wasn’t there.”

“You’re not sure what you’re meant to do – should you talk directly to the Judge or through your solicitor?”

“I’m a ‘ward of court’. What does that mean?”
**Legal representation**

Some young people found their legal representatives helpful and understanding:

“My solicitor was good – he dealt with everything. He got me bailed and got me out for Christmas.”

“The first time I saw my solicitor was at the police station. He listened to me and what I wanted. He understood what I was saying.”

“My solicitor and barrister were very good. They took time over me, before the court date.

“I called to see [solicitor]. She was very busy, but she cleared 15 or 20 minutes to see me. That meant a lot.”

But for many, legal representation was poor:

“The solicitor barely talks to you. He just does what he has to do, then he clears off straight after. They don’t give a **** about you.”

“The first time I met my solicitor was at court. You just find one, ring them up, and then talk to them before you go into court.”

“The solicitor should talk to you more about the offence, to find out more about the circumstances.”

“Solicitors just listen to your social worker. They don’t listen to you and just do what the social worker wants them to.”

**Community Disposals**

There are a range of non-custodial disposals available for children and young people aged 10 to 17 years. These include: Absolute or Conditional Discharge; Fine; Probation Order; Community Service Order (16+); Combination Order (16+); Drug Treatment and Testing Order (17+); Community Responsibility Order; Reparation Order; Youth Conference Order; Attendance Centre Order; sentence deferment.

In 2006, 93% of 10-17 year olds convicted and sentenced received non-institutional dispositions. The main disposal was Community Supervision (370: 29%), with smaller proportions receiving a Youth Conference Order (289: 23%), a fine (243: 19%), or a conditional discharge (206: 16%). 7% (89) were sentenced to immediate custody.359

**Restorative justice**

Restorative justice approaches to offending and anti-social behaviour have been developed as alternatives to criminal justice interventions, particularly when societies are in transition. In Northern Ireland, restorative justice approaches involve statutory agencies, the Youth Justice Agency and the PSNI. Since 2002, the Public Prosecutor or the Youth Court have been able to request restorative justice conferences – Youth Conferences – between young people and the victim(s) of their offence if the young person admits to the offence and agrees to meet the victim. During this conference, the young person is involved in considering: what happened, the consequences, what they could do to meet the needs of the victim and prevent further

crime. They agree an action plan, which is forwarded to the Prosecutor or Court for approval. While a Public Prosecution Service Diversionary Action Plan is not classed as a conviction on the young person’s criminal record, the plan can be referred to if there are later criminal convictions. A court ordered Youth Conference Plan is recorded on the young person’s criminal record in the same way as any other court disposal. Progress on completion of the action plan is monitored and failure to meet the requirements may result in breach proceedings. Victims are kept informed with regards to the progress of the Order.

**Community-based measures**

The Youth Justice Agency is responsible for implementing a range of community-based measures: an Attendance Centre Order (requiring a young person under 17 to attend a Project for between 12 and 24 hours, spending that time on activities designed to help them avoid crime in the future); a Community Responsibility Order (between 20 and 40 hours attendance at a Project involved in practical activities and instruction in citizenship) and a Reparation Order (offering the young person an opportunity to make some act of reparation to the victim of their offence).

Unlike in England and Wales, the Probation Board for Northern Ireland supervises Probation Orders (10-17 year olds) and community service (16 and 17 year olds).

**Use of Custody**

When young people in the Juvenile Justice Centre were asked what the purpose of custody should be, their responses included:

“*The Government thinks ‘Let’s put him inside, teach him a lesson’. But it only would if you’re in for 10 years or something. If you’ve done a big crime, you should get big time (like armed robbery, rape, murder, kidnap). But petty time for petty crime doesn’t work.”*

“*Prison shouldn’t be about punishing – you shouldn’t get punished by the people in prison. The staff aren’t there to punish you, they’re there just to look after you…” “They’re there to correct you, help you change your ways.”*

“*You’re not sent to prison for it to be hard – it’s about taking your freedom. The punishment is not being able to go out in your community, being free.”*

“*Helping you learn stuff so that when you go out, you won’t want or need to do crime any more. Like if you’re stealing cars, you should get taught all about mechanics – it means you can make a life for yourself.”*

“*Teaching [education] gives you better opportunities when you’re out.”*

“*You should be at least 18 before they put you in custody.”*

While a few young people who had been in conflict with the law perceived use of custody as an appropriate form of punishment:

“*Do the crime, do the time. Don’t yap!”*

“*Sometimes custody works – depends who it is.”*
others believed that use of custody is counter-productive:

“It doesn’t do any good. People come out of Hydebank [Young Offenders Centre] worse! They’re harder, more likely to do crime.”

“Harsh punishment doesn’t work. It makes you harder, it makes you feel like a bigger man. It’s like ‘I can take that, what do I care?!’”

PACE

Children and young people can be placed in custody under the provisions of the Police and Criminal Evidence (Northern Ireland) Order (PACE). These admissions are generally for 1-2 days, ensuring that children are held securely pending a court appearance. The average of the population detained under PACE is generally just one child or young person. However, annually they represent a persistently high proportion of admissions. For example, of the 655 admissions to the JJC between January 2006 and October 2007, 313 (48%) were PACE placements. 132 (42%) of these children were subsequently released at court, “which calls into question the value of placing them in custody in the first instance, in terms of individual impact as well as the disruption to other children living in the JJC”.360

Remand

Article 12 of the 1998 Criminal Justice (Children) (Northern Ireland) Order, stipulates that a child or young person should only be remanded in custody if it is “necessary” to protect the public, the young person is charged with a violent or sexual offence, or if tried as an adult they would receive 14 years or more imprisonment. The 2002 Justice (Northern Ireland) Act allows children under 14 to be remanded to secure accommodation. As this has yet to be enacted, children aged 10-17 can be remanded to the Juvenile Justice Centre (JJC). Of the 655 admissions to the Juvenile Justice Centre between January 2006 and October 2007, 292 (45%) were remand placements, yet only 8% of remanded children went on to receive a custodial sentence.361 On 30 November 2007, the population of the JJC was 30 children, 21 of whom were remanded (70%).362

Although the Young Offenders Centre (YOC) accommodates 17-21 year olds, 15 and 16 year olds can be remanded to the YOC should the court decide that they pose a risk of self harm, suicide, or violence towards others. In November 2007, the population of ‘juveniles’ (under-18s) at the YOC was 11, all of whom were aged 17. Of these young men, 8 were on remand/ awaiting trial (72%).363

Alternatives to detention while on remand are available. For example, Youth Justice Agency Community Services are responsible for two types of community-based support: Bail Support (a package of activity which supports and supervises the young person while s/he remains at home until their case is dealt with in Court); and Remand Fostering as a support for bail. However, such support has to be manageable if it is to be successful:

361 CJINI, Op Cit, 2008, p4
362 Ibid
Developing a Manifesto for Youth Justice in Northern Ireland

Background Paper

“My bail conditions were: I had to call into the police station 3 times a week to sign bail, go to probation twice a week, do bail support 3 times a week AND turn up for work every day [training course in bricklaying at BIFHE]. I ended up getting kicked out of my course cos I had to do all the other ****ing things – there was NO chance! How was I meant to be at work all the time when they wanted me to be somewhere else?”

Juvenile Justice Centre

Article 39 of the 1998 Criminal Justice (Children) (Northern Ireland) Order restricts use of custodial sentences for children to serious crimes and protection of the public. The Court is compelled to provide justification for each custodial sentence, which is for a period of between 6 and 24 months (1/2 of which is served under supervision in the community). Although the Justice (Northern Ireland) Act, 2002 made provision for children aged 10-13 to serve their sentence in secure accommodation, this provision has not yet been enacted.

Woodlands Juvenile Justice Centre (JJC) is a secure facility for the detention of 10 to 17 year olds sentenced to Juvenile Justice Orders. Under Article 96 of the Criminal Justice (Northern Ireland) Order 2008, in certain circumstances (eg in the “best interests of the child”), 17 year olds can be held in the JJC (rather than at Hydebank Wood Young Offenders Centre). Between January 2006 and October 2007, just 50 (7%) of the admissions were actually sent to the JJC on sentence. The JJC therefore accommodates a mix of convicted and non-convicted (PACE and Remand) young people, many of whom are extremely vulnerable. An inspection undertaken in November 2007 raised concern that:

“many of the children whom Inspectors met were neither serious nor persistent offenders. They were troubled children whose JJC placements often resulted from benign intent on the part of courts or police. When unsure how to deal with them, they were placed in custody as much for their own safety as in response to their offending behaviour. Such placements breach international safeguards, and inappropriate use of custody for children remains a more pronounced problem in Northern Ireland than elsewhere in the UK.”

In 2005, a follow-up investigation by the Northern Ireland Human Rights Commission noted improvements and developments in custodial provision (particularly in the areas of receptions, assessment, family contact, and educational provision). However, the investigators raised concern about inappropriate use of remand and lack of formalisation of the provisions identified in the UNCRC.

Based on its inspection of the JJC in November 2007, a CJINI Inspection team noted that “Children were very well cared for in the JJC” – use of Therapeutic Crisis Intervention (TCI) was proving beneficial, daily delivery of personal development programmes was an important innovation, provision of primary and secondary level healthcare was to a high standard, and a strong educational ethos led to more engagement in schooling and positive outcomes in relation to children’s backgrounds. The Inspectors’ recommendations focused on: the interface between residential care and custody; staff training about new policies, procedures and rules; effective record keeping and reporting; management of child protection information and compliance

364 CJINI, Op Cit 2008, p4
365 Ibid, pvii
367 CJINI, Op Cit 2008, pvii
with regulations; regular access to Independent Representatives; evaluation of programmes aimed at addressing offending behaviour; achievement of a more balanced focus on developing children's learning and their levels of accreditation; development of more robust links between the Centre and community services; regular health and safety assessments.\textsuperscript{368}

**Hydebank Wood Young Offenders Centre**

Hydebank Wood Young Offenders Centre (YOC), operated by the Northern Ireland Prison Service, accommodates 17 to 21 year-old males on remand, committal or convicted. The average number of young offenders held at Hydebank Wood during 2006-07 was 190.\textsuperscript{369} During the period of an inspection in November 2007, the population of the YOC was 196. This included 11 ‘juveniles’ (all aged 17) - 3 (27%) of whom were sentenced, and 8 (73%) of whom were on remand. The remaining 185 were young adults (aged 18 and over) – of whom 81 (44%) were sentenced, 102 (55%) were on remand, 1 (0.5%) was a fine defaulter, and 1 (0.5%) was an immigration detainee.\textsuperscript{370}

Young women are held with women prisoners in a refurbished house within the grounds of the male YOC (on average 1 under 18 year old on any given day). Young women have generally been held in custody as a consequence of the lack of a secure facility for the therapeutic treatment of young people presenting with serious mental health problems. The practice of holding young women with adult prisoners has been defended on the basis that, there are so few, their total separation would result in isolation of the young women. The practice of holding young women with adult prisoners has been defended on the basis that, there are so few, their total separation would result in isolation of the young women. The UK Government announced at the beginning of its 2008 examination by the UN Committee on the Rights of the Child that it planned to withdraw its Reservation to UNCRC Article 37c and ensure that girls were no longer held with adult women. Provision has been included in Article 96 of the *Criminal Justice (Northern Ireland) Order, 2008* to allow the Secretary of State to direct that young people aged 17 be held at the JJC rather than at Hydebank Wood YOC.

Following the announced inspection of the YOC in November 2007, the Chief Inspector of Prisons and Chief Inspector of Criminal Justice in Northern Ireland listed a catalogue of concerns:

“The plight of juveniles was of particular concern… There was insufficient separation of juveniles and young adults in escort vans and an overuse of handcuffs while travelling. Reception was grim and procedures were ill-suited to juveniles, particularly the use of routine strip-searching… many young people still reported feeling unsafe. There was also a need for the centre and its partners to formalise children’s safeguarding issues. Use of force was relatively low, but adjudication punishments were excessive…While it was positive that there was relatively little self-harming, particularly given the level of suicides in the community from which many young people came, a more caring and therapeutic approach was required for those at risk and those withdrawing from substance use…The quality of food was poor and young people had little confidence in the request and complaints systems. Healthcare remained inadequate… There was too little purposeful activity and opportunities were poorly utilized. Those allocated an activity spent a reasonable amount of time out of their cell, but many others spent most of the day in their cells. Matters were made worse by unpredictable cancellations of association, often blamed on staff shortages, which we found hard to reconcile with the number of staff on duty. Young people rarely had exercise in the fresh air. Opportunities for work, learning and skills were limited. The quality of education was mixed… Resettlement arrangements… had not

\textsuperscript{368} Ibid, p ix-xii
progressed sufficiently and had suffered disproportionately from recent cut-backs…While it was commendable that most young people, including those on remand, had sentence plans, these were of limited quality and too little was then done to deliver against them.”

Many of these issues were reiterated in the Independent Monitoring Board’s 2007/08 annual report into Hydebank Wood Prison and YOC, including:

- aside from separate accommodation, there exists no difference between the regime for 17 year olds as for the young adults - with no “apparent” policy governing the management of children
- the “decrepit” state of the reception area
- lack of formal interaction between officers and “prisoners”
- inappropriate use of isolation for those at risk of self-harm and suicide
- lack of confidence amongst young people in complaints procedures
- harsh nature of adjudicated punishment, with a 63% increase in cellular confinement for the young men
- lack of child protection training and no assurances that all staff working with “children” have undergone relevant checks.

Re-offending by Young People in Northern Ireland

Re-offending is defined as “the percentage of offenders who re-offended during a one-year follow-up and subsequently who received a guilty finding for the re-offence.” Re-offending rates underestimate actual re-offending behaviour and are partly determined by the decisions of criminal justice practitioners. They also vary by type of disposal. For example, those given pre-court disposals are generally at a lower risk of re-offending, while those given more severe sentences (such as custody) are more likely to be at a high risk of re-offending. Consequently, re-offending rates cannot be used to judge the effectiveness of different disposals.

Analysis of re-offending In Northern Ireland amongst young people aged 10-17 sentenced to a non-custodial Court Order or discharged from custody in 2005 shows that:

- the overall one-year re-offending rate for the 2005 cohort was 39.3%.
- the re-offending rate was highest for those discharged from custody (72.9%) – 3/4 receiving a Custody Probation Order re-offended; 68.4% (26/38) of young people released from the JJC re-offended, whilst the figure rose to 82.4% (14/17) for those released from the YOC.
- the one-year re-offending rate for non-custodial sanctions was 37.5%.
- the lowest re-offending rate of 23.3% (10/43) was for those ‘Bound Over’.

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371 Ibid, p5-6
374 Ibid
375 Ibid, p3
376 Ibid, p5
377 Ibid, p3
378 Ibid, p5
• those sentenced to community-based disposals (Combination, Community Service, Probation, Attendance Centre, Community Responsibility, and Reparation Orders) re-offended at a rate of 47.4% (153/323)\textsuperscript{379}

• of the community disposals, Community Service Orders had the lowest re-offending rate (33.3% - 18/54) and Community Responsibility Orders the highest (54.5% - 12/22)\textsuperscript{380}

• the overall re-offending rate for youth conferencing was 38.4%\textsuperscript{381}

• for those in receipt of a Court ordered Youth Conference Order, the re-offending rate was 44.3% (43/97), for those receiving a Diversionary Youth Conference Order, the rate was 30.7% (23/75).\textsuperscript{382}

Within six months, just over half (50.8%) of those discharged from custody had re-offended on at least one occasion. This was the case for 32.0% of those given a Youth Conference Order, and 25.6% of those given other non-custodial disposals.\textsuperscript{383} After 12 months, re-offending rates were 72.9% amongst those leaving custody, and 37.5% for all non-custodial disposals (38.4% amongst those who had received a Youth Conference Order, 47.4% amongst those receiving community-based sanctions)\textsuperscript{384}

Almost half the 2005 cohort (47% - 536/1150) were aged 17 and, of this group, 35.8% (192/536) re-offended within one year. The highest re-offending rate (51.6% - 47/91) was amongst those aged 14.\textsuperscript{385}

The majority of the 2005 cohort was male (86% - 990/1150), 42% (416/990) of males re-offended within the year, but the rate was much lower for females (22.5% - 36/160).\textsuperscript{386}

The re-offending rate increased as the number of previous convictions increased. Compared with 26.7% (174/651) for those with no previous convictions, the re-offending rate was 51.0% (182/357) for those who had 1-4 previous convictions; 67.1% (51/76) for those who had 5-8 previous convictions, and 72.7% (40/55) for those who had more than 9 previous convictions.\textsuperscript{387}

\textsuperscript{379} Ibid
\textsuperscript{380} Ibid
\textsuperscript{381} Ibid, p3
\textsuperscript{382} Ibid, p5
\textsuperscript{383} Ibid
\textsuperscript{384} Ibid, p5
\textsuperscript{385} Ibid, p8
\textsuperscript{386} Ibid, p9
\textsuperscript{387} Ibid, p11
Prevention of Offending and Public Protection versus Promotion of Children’s Well-being

The UK Government has re-emphasised “protection of the law-abiding public” and “earlier intervention with some… families, who are often socially excluded and socially dysfunctional”. This has led to a focus on prevention of offending and targeting of services towards those ‘at risk’. A shift in emphasis within social policy towards promoting the well-being of all children and young people would minimise the necessity of intervention by the youth justice system and, in turn, reduce the harm that may be caused by any intervention. At the extreme end of a continuum of youth justice, experience of custody can be seriously damaging for young people as they spend time in environments where bullying and intimidation are endemic. This can lead to loss of life - for example, between July 1990 and January 2005, 28 young people died while detained in Young Offenders Institutions or prisons in England and Wales. It would also be less expensive – in 2004, the Audit Commission calculated that “if effective early intervention had been provided for just one in ten… young offenders [in Young Offender Institutions], annual savings in excess of £100 million could have been made”.

The needs and rights of children and young people should be addressed at an early stage if the negative and cumulative impacts of disadvantage and discrimination are to be avoided and positive outcomes are to be achieved for all. This requires resourcing of universal as well as specialised provision, and increased awareness amongst practitioners, children, young people, and their families about what services are available and how they can be accessed. It also requires effective inter-agency assessment, and a commitment to partnership working within and between statutory and voluntary/community services.

‘Justice’ versus ‘Welfare’ Approaches

In a ‘justice’-based approach, children in conflict with the law are defined as ‘children in trouble’ and the responsibility of the criminal justice system. The emphasis is on public protection and prevention or reduction of offending, with decisions made through the due process of the law and administration of punishment to fit the crime committed. In a ‘welfare’-based approach, children in conflict with the law are defined as ‘children in need’ and the responsibility of children’s services (eg education, health, social care). The emphasis is on care, protection and diversion from the criminal justice system through providing support to children and their families to help them access the services they require and develop strategies to deal with their circumstances.

There is a clear tension between justice and welfare approaches, particularly when prevention of offending is incorporated into welfare-based services. This is evident in the draft Strategy for the Prevention of Offending by Children and Young People in Northern Ireland developed

389  Beijing Rules, OP Cit, Rule 1 Commentary
392  cited in Allen, R., Op Cit, p 11
by the Youth Justice Agency in consultation with children’s services planning sub-groups. Based on the assumption that “children at risk of offending cannot readily be differentiated from children at risk of other dangerous outcomes” 393 the strategy promotes a multi-agency approach to fulfilment of positive outcomes for children and young people. However, while the strategy “seeks to promote the best interests of children in preventing offending” it “accepts the requirement that it meets the criminal justice objective of protecting the public”.394 This shifts the emphasis from the well-being of the young person and promotion/protection of their rights towards prevention of offending.

Although it may be necessary for targeted provision to increase stability and reduce vulnerability, emphasis on vulnerability and risk ignores the broader structural contexts in which children and young people, their families and communities live and how these affect their opportunities and experiences. Provision within the formal youth justice system for those defined as ‘at risk of offending’ criminalises young people who have not committed, or been found guilty of committing, an offence. Removing ‘prevention of offending’ from the remit of the criminal justice system and Youth Justice Agency would resolve this contradiction. Responses to children and young people should be based on meeting their needs, promoting their well-being, and protecting their rights. The outcomes identified in Northern Ireland’s Strategy for Children and Young People: Our Children and Young People – Our Pledge apply to all children and young people, including those in conflict with the law, and provide the framework for mainstream services to fulfil these functions.

394 Ibid