



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**Alternative Care and Children's Rights in  
Northern Ireland**

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## Foreword

This report covers the rights of the most vulnerable children in Northern Ireland who cannot be cared for within their own family. The purpose of the report is to review the current provision and circumstances facing such children and young people and how international human rights standards can offer protection and support.

The report is timely for two reasons. First, there are currently more 'looked after children' in Northern Ireland than at any time since the Children Order came into effect. Moreover, the numbers of child protection and children in need referrals are on an upward curve. Secondly, the report can feed into the forthcoming examination of the United Kingdom's compliance with the United Nations Convention on the Rights of the Child (UNCRC). The UNCRC includes core principles of a child's right to be heard and taken seriously alongside consideration of the best interests of the child in any decision-making process. When making decisions of the magnitude of what is the appropriate form of care for a child or young person who can no longer be raised within his or her family, these rights are pivotal. The UN Guidelines for the Alternative Care of Children provide that frequent changes in care settings are detrimental to a child or young person's development. Yet, despite the need for stability and permanence the report highlights that almost half of all looked after children had three or more placement moves.

The report is wide-ranging encompassing early intervention to support for the family, though to appropriate care placements for children, and issues covering secure care accommodation.

The report's recommendations are also broad in scope and the Commission recognises that many organisations will want to build on this work and ensure that human rights are at the heart of any proposed reforms. After publication, the Commission will host a round table for the key organisations in this area to look at how this work can be carried forward. The financial climate is not propitious. Nonetheless, the recent House of Commons Committee of Public Accounts Children in Care Report noted that local authorities in England and Wales protected spending on foster care and residential care despite wider cuts to council spending. This is recognition that securing the well-being of children and young people is money well spent in both the short and long term. Research for the report was primarily desk based and sought to bring a range of existing research and analysis into one place. Beyond this, the research team also conducted a number of interviews with organisations and individuals working with children and families. These interviews included the Northern Ireland Commissioner for Children and Young People, the Fostering Network Northern Ireland, the Regulation and

Quality Improvement Authority, Children's Law Centre, Include Youth, Barnado's, members of the Guardian Ad-Litem Agency and members of the Northern Ireland Bar. The Department for Health, Social Services and Public Safety and health and social care trusts also assisted the Commission and researchers with specific requests for information.

A team of researchers from Queen's University School of Sociology, Social Policy and Social work, Karen Winter, Katrina Lloyd and Bronagh Byrne conducted extensive research for the report. I would like to thank the researchers for their valuable assistance in developing the report alongside all those who gave their time to assist the Commission in completing the report.



Les Allamby  
Chief Commissioner

## Acronyms

ACPC - Area Child Protection Committee (Replaced in 2012 by SBNI)  
BAAF – British Association for Adoption and Fostering  
Bamford Review – The Bamford Review of Mental Health and Learning Disability (named after Professor David Bamford)  
CAMHS – Child and Adolescent Mental Health Service  
CEOP – Child Exploitation and Online Protection Centre  
Children Order – Children (Northern Ireland) Order 1995  
CJINI - Criminal Justice Inspection of Northern Ireland  
CMR - Case Management Review  
COAC - Children Order Advisory Committee  
CoE – Council of Europe  
CSE – Child Sexual Exploitation  
CYPU - Children and Young People’s Unit (of the OFMDFM)  
CYPSP - Children and Young People’s Strategic Partnership  
DE - Department of Education  
DEL - Department for Employment and Learning  
DHSSPS – Department of Health, Social Services and Public Safety  
DoJ – Department of Justice for Northern Ireland  
DSD - Department for Social Development  
ECHR – European Convention on Human Rights  
ECtHR – European Court of Human Rights  
EITP - Early Intervention Transformation Programme  
ETI - Education and Training Inspectorate  
EU – European Union  
FGC – Family Group Conferences  
FHA - Family Health Assessment  
HSCT – Health and Social Care Trust  
HSCB – Health and Social Care Board  
HRA – Human Rights Act 1998  
ICCPR – United Nations International Covenant on Civil and Political Rights  
ICESCR – United Nations International Covenant on Economic Social and Cultural Rights  
LAC – Looked After Child(ren)  
NCB – National Children’s Bureau  
NGO – Non-Governmental Organisation  
NICCY – Northern Ireland Commissioner for Children and Young People  
NIGALA – Northern Ireland Guardian Ad Litem Agency  
NIHRC/The Commission – Northern Ireland Human Rights Commission  
NIHE - Northern Ireland Housing Executive  
NILC – Northern Ireland Law Commission  
NISRA – Northern Ireland Statistics and Research Agency  
NSPCC – National Society for the Prevention of Cruelty to Children  
OFMDFM – Office of the First Minister and Deputy First Minister

PHA – Public Health Agency  
PSNI – Police Service of Northern Ireland  
RQIA – Regulation and Quality Improvement Authority  
SBNI – Safeguarding Board for Northern Ireland  
SSI – Social Services Inspectorate (Now the Office of Social Services)  
UN – United Nations  
UNCRC – United Nations Convention on the Rights of the Child  
UNCRRPD – United Nations Convention on the Rights of Persons with  
Disabilities  
UNICEF – United Nations  
UNOCINI – Understanding the Needs of Children in Northern Ireland  
(Assessment Framework)  
VOYPIC – Voice of Young People in Care (NGO)



# Terminology

## Child

Unless stated otherwise, in accordance with international human rights standards, “a child means every human being below the age of 18 years.”<sup>1</sup>

## Alternative care

Alternative care may take the form of:

(i) Informal care: any private arrangement provided in a family environment, whereby the child is looked after on an ongoing or indefinite basis by relatives or friends (informal kinship care)<sup>2</sup> or by others in their individual capacity, at the initiative of the child, his/her parents or other person without this arrangement having been ordered by an administrative or judicial authority or a duly accredited body;

(ii) Formal care: all care provided in a family environment which has been ordered by a competent administrative body or judicial authority, and all care provided in a residential environment, including in private facilities, whether or not as a result of administrative or judicial measures.<sup>3</sup>

## Children in need

The *Children (Northern Ireland) Order 1995* (Children Order), Article 17, states that a child shall be taken to be in need if:

(a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by an authority under this Part;

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<sup>1</sup> UNCRC, Art. 1.

<sup>2</sup> In Northern Ireland, unless care is provided by a close relative, such arrangements will be identified as private fostering arrangements. DHSSPS, *Children Living with Carers in Private Fostering Arrangements, Including Children from Overseas*, DHSSPS Circular: CCPD1/11, 25 March 2011, para. 2: “The Children (Northern Ireland) Order 1995 (the Children Order), makes the distinction between a private fostering and the fostering arrangements made by a Trust or voluntary organisation for a child to be cared for by approved foster carers under the Foster Placement (Children) Regulations (Northern Ireland) 1996. A private fostering situation is an arrangement whereby an adult, who is not a relative of the child, cares for a child under the age of 16 years (or in the case of a disabled child, under 18 years) for more than 28 days. Under the Children Order a relative in relation to a child is defined as “a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by affinity), or step-parent”. See also fn 17.

<sup>3</sup> *UN Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 29 (b).

(b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or

(c) he is disabled.

### **Children in need referrals**

A referral is defined as a request for services to be provided by children's social care. In the case of a new referral a child is not yet assessed as in need. A referral may result in an episode of care which may be an initial assessment of the child's needs, the provision of information or advice, referral to another agency, alternatively no further action may be required.<sup>4</sup>

### **Human rights laws and standards**

These include binding international treaties, decisions of the European and domestic courts, as well as jurisprudential authorities such as General Comments or Recommendations and Concluding Observations of UN Human Rights Treaty Bodies. In addition, the NIHRC takes account of non-binding soft law, including Declarations and Resolutions.

### **Looked after child**

A looked-after child means a child accommodated for 24 hours or longer in the care of the authority, or in accommodation provided by the authority.<sup>5</sup>

### **Safeguarding**

"Safeguarding children is the process of preventing impairment of children's health and development, and of ensuring they are growing up safely and securely and provided with effective care, all of which collectively enables them to attain greater success in adulthood. Safeguarding also extends to protecting children from abuse or neglect, when it occurs, including the promotion and protection of children's rights."<sup>6</sup>

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<sup>4</sup> DHSSPS/NISRA, *Children's Social Care Statistics for Northern Ireland 2012/13*, 2013 available at: [http://www.dhsspsni.gov.uk/microsoft\\_word\\_-\\_childrens\\_social\\_care\\_stats\\_201213.pdf](http://www.dhsspsni.gov.uk/microsoft_word_-_childrens_social_care_stats_201213.pdf), p. 13.

<sup>5</sup> Children (Northern Ireland) Order 1995, Part 4, Article 25(2).

<sup>6</sup> SBNI, Strategic Plan September 2013-March 2017, available at: <http://www.safeguardingni.org/sites/default/files/sites/default/files/imce/04.1.14%20SBNI%20Strategic%20Plan%20Version%203.0%20FINAL%20COPY.pdf>, pp. 4-5.

Safeguarding incorporates all preventable harm that impacts on the lives of children, with a clear focus on children's personal development and well-being and making children's lives better.<sup>7</sup>

### **Secure accommodation**

Secure accommodation means accommodation which is provided for the purpose of restricting the liberty of a child who is being looked after with regard to whom it appears

(a) that – (i) he has a history of absconding and is likely to abscond from any other description of accommodation; and (ii) if he absconds, he is likely to suffer significant harm; or

(b) that if he is kept in any other description of accommodation he is likely to injure himself or other persons.<sup>8</sup>

### **Trust/Health and Social Care Trusts**

Northern Ireland has five Health and Social Care Trusts; Belfast, Northern, South Eastern, Southern and Western, which provide a range of health and social care services under contract with the Regional HSCB. Statutory services are provided under schemes of delegation of statutory functions on behalf of the Regional HSCB to its Trusts, which are approved by the DHSSPS.

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<sup>7</sup> OFMDFM, *Safeguarding Children: A Cross-Departmental Statement on the Protection of Children and Young People*, 2009, para 1.4.

<sup>8</sup> The Children (Northern Ireland) Order 1995, Article 44; The Children (Secure Accommodation) Regulations (Northern Ireland) 1996, Regulation 1.1.

# Overview

## The Northern Ireland Human Rights Commission

The Northern Ireland Human Rights Commission (NIHRC or the Commission) was established following the Belfast (Good Friday) Agreement under the Northern Ireland Act 1998. Pursuant to Section 69(1) of the Northern Ireland Act the Commission reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI).

The NIHRC works to promote and protect those human rights to which the United Kingdom (UK) is legally committed and does so in full conformity with the United Nations (UN) Principles relating to the Status of National Institutions (The Paris Principles).<sup>9</sup>

In Pillar One of the Commission's Strategic Plan, the Commission recognises that

Human rights need to be embedded at the heart of the executive and legislature, reflected in our basic legal framework and honoured in the operation of all offices of State. The challenges in these regards include the complexity of our constitutional system, the nature of our devolved jurisdiction and the relative newness of many of the governance structures.<sup>10</sup>

The NIHRC has produced this report in furtherance of its Strategic Plan and on the basis of its statutory responsibility to review the adequacy and effectiveness of law and practice relating to the protection of human rights. The NIHRC considers that this report, which provides an overview examination of law, policy and practice regarding alternative care and children's rights in NI, will make a valuable contribution in considering children's issues from a human rights perspective. The Commission intends that this report will encourage steps to ensure the protection of the human rights of some of the most vulnerable children in our society.

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<sup>9</sup> UN General Assembly Resolution 'National institutions for the promotion and protection of human rights', UN Doc. A/RES/48/134 (4 March 1994).

<sup>10</sup> NIHRC, Strategic Plan 2013-2016, available at: [http://www.nihrc.org/uploads/documents/nihrc-general/corporate-reports-plans/NIHRC%20Strategic%20Plan\\_2013-2016.pdf](http://www.nihrc.org/uploads/documents/nihrc-general/corporate-reports-plans/NIHRC%20Strategic%20Plan_2013-2016.pdf), p. 3.

## Overarching human rights laws and standards

Chapter 1 of this report addresses overarching international human rights standards relevant to alternative care and children's rights in Northern Ireland.

The principal sources of human rights laws are international treaties. Treaties are written agreements to which the participating States are legally bound.<sup>11</sup> The UN Treaty that speaks most directly to the issues addressed in this report is the UN Convention on the Rights of the Child (UNCRC).<sup>12</sup> The UN Guidelines for the Alternative Care of Children were adopted in 2010 to enhance the implementation of the UNCRC.<sup>13</sup> Due to the indivisible nature of human rights, rights protected under other international human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR)<sup>14</sup> and the Convention on the Rights of Persons with Disabilities (UNCRPD),<sup>15</sup> will also be engaged.

Typically, the implementation of a treaty is overseen by a UN Committee. The UNCRC is monitored by the UN Committee on the Rights of the Child (UNCRC Committee). The two primary methods by which Committees monitor compliance are through the State's reporting procedure and the individual complaints procedure. The State must submit a periodic report describing its actions to implement the treaty provisions. Upon review of this report and after a dialogue with the State, the Committees issue concluding observations that contain both a note of general areas of concern or approval and recommendations. Where accepted by the State, a Committee may also receive complaints directly from individuals who allege a breach by the State of a treaty obligation through what is known

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<sup>11</sup> See Shaw, M., *International Law* (Cambridge, 2003), p 88.

<sup>12</sup> Ratified by the UK on 16 December 1991.

<sup>13</sup> UNCRC Committee, *General Comment No 13 (2011), The right of the child to freedom from all forms of violence*, para 6; *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010. Note, the scope of the Guidelines does not extend to: "(a) Persons under the age of 18 years who are deprived of their liberty by decision of a judicial or administrative authority as a result of being alleged as, accused of or recognising as having infringed the law, and whose situation is covered by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty. (b) Care by adoptive parents from the moment the child concerned is effectively placed in their custody pursuant to a final adoption order, as of which moment, for the purposes of the present Guidelines, the child is considered to be in parental care. The Guidelines are, however, applicable to pre-adoption or probationary placement of a child with the prospective adoptive parents, as far as they are compatible with requirements governments such placements as stipulated in other relevant international instruments. (c) Informal arrangements whereby a child voluntarily stays with relatives or friends for recreational purposes and reasons not connected with the parents' general inability or unwillingness to provide adequate care."

<sup>14</sup> Ratified by the UK on 20 May 1976.

<sup>15</sup> Ratified by the UK on 8 June 2009.

as the treaty complaint procedure.<sup>16</sup> In this way, a Committee develops jurisprudence determining the appropriate application of treaty obligations to the factual scenarios raised.

In addition to engaging directly with the State, Committees also formulate and publish general statements concerning the application of treaty provisions. These statements are called 'general comments' or 'general recommendations'. The concluding observations, jurisprudence, and general comments serve as authoritative statements on how each treaty should be interpreted.

Within Europe, the European Convention on Human Rights (ECHR) provides protection for many of the rights addressed in this report. Under the ECHR, the European Court of Human Rights (ECtHR) was established to consider inter-State complaints and complaints made by individuals against a State Party.<sup>17</sup> Individuals must exhaust any effective domestic legal remedies for an alleged violation of one of these rights before taking a case to the ECtHR.

Through the Human Rights Act 1998 (HRA) the majority of the rights and freedoms contained in the ECHR have been given domestic effect. When interpreting the scope and application of ECHR rights UK Courts must, by virtue of Section 2 of the HRA, take into account judgments and decisions of the ECtHR.

In addition to the international treaties there exist a number of instruments that are collectively referred to as 'soft law'. These are not legally binding but are of strong persuasive value, especially when issued by the treaty monitoring bodies. Soft-law principles are often referenced and used by supervisory mechanisms, in particular the ECtHR, in assessing States Parties' compliance with their human rights obligations.

International human rights standards set out obligations on States to ensure that the rights of children are fulfilled but emphasise that parents "have the primary responsibility for the upbringing and development of the child."<sup>18</sup> Public authorities will often be the part of the State that is required to fulfill the States' obligations in this regard. States parties to the UNCRC have undertaken:

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<sup>16</sup> A complaint may only be brought against a State where it is a party to the treaty in question *and* it has accepted the relevant Committee's competence to examine individual complaints, either through ratification or accession to an Optional Protocol or by making a declaration to that effect under a specific article of the Convention. See for example: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>

<sup>17</sup> ECHR, Article 35.

<sup>18</sup> UNCRC, Article 18.

to ensure the child such protection and care as is necessary for his or her well-being taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures."<sup>19</sup>

Children should not be separated from their parents unless it is in the child's best interests and States are required to provide assistance to parents in fulfilling their parental responsibilities in order to prevent the need for alternative care. International standards also require the child's safety to be secured and in certain circumstances the child will need to be placed in alternative care in order to fulfill these rights. At all times the best interests of the child must be a primary concern of the State and the caregiver. Where the child's family is unable, even with appropriate support, to provide adequate care for the child, or abandons or relinquishes the child, the State is responsible for protecting the rights of the child and ensuring appropriate alternative care.<sup>20</sup>

The best interests of the child, the right of the child to be heard and taken seriously, and the right to family life are considered in Chapter 1 as they are three overarching principles of children's human rights.<sup>21</sup> All decisions and actions taken in relation to children in the situations addressed in this report should fulfill the State's duties and responsibilities regarding these rights.

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<sup>19</sup> UNCRC, Article 3.2.

<sup>20</sup> *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, Para 5.

<sup>21</sup> The UNCRC is founded on four general principles; the primary consideration of the child's best interests, the right of all children to be heard and taken seriously, the right to non-discrimination and the right to life and development (the right to life and development is discussed in Chapter 2 below). While not discussed in depth in this report, the Commission notes that the State authorities must be increasingly alert to the prevention of both direct and indirect discrimination issues as Northern Ireland's society becomes ever more diverse, as illustrated by the 2011 Northern Ireland census. On Census Day 2011 1.8% (32,400) of the usually resident population of Northern Ireland belonged to minority ethnic groups, more than double the proportion in 2001. The main ethnic groups were Chinese, Indian, Mixed and other Asian. A further 0.1% of people were Irish Travellers. See, SBNI, Strategic Plan September 2013-March 2017, available at:

<http://www.safeguardingni.org/sites/default/files/sites/default/files/imce/04.1.14%20SBNI%20Strategic%20Plan%20Version%203.0%20FINAL%20COPY.pdf>. The Commission further notes that Section 75 of the Northern Ireland Act (1998) places a duty on public authorities to promote effective equality of opportunity for all and good relations between those of different religious belief, political opinion or race. See also, UNCRC Committee, *General Comment No 13 (2011), The right of the child to freedom from all forms of violence*, para 60.

## Preventing the need for alternative care: support for children and their families

International standards' requirements on the State as part of the effort to prevent the need for alternative care are outlined in Chapter 2, including the requirement to provide support and assistance to the family in caring for the child. International human rights standards recognise the family as "the fundamental group of society" and outline the rights of the child to know and be cared for by his or her parents provided that this is consistent with protecting and promoting the child's welfare. States Parties are required to provide support to parents who may need assistance in order to ensure that these rights are fulfilled and that children are not separated from their parents unnecessarily, for example for solely economic reasons.

The *Children (Northern Ireland) Order 1995* (the Children Order) is the principal statute governing the care, upbringing and protection of children, which sets out a range of specific powers and duties regarding the provision of services to families. A series of Regulations and Guidance accompany the Children Order, providing greater clarity on the requirements this Statute entails. A number of strategies and policies outline the Northern Ireland Executive's commitments to provide support for children and their families. The Children and Young People's Strategic Partnership (CYSP), a strategic alliance that replaced Children and Young People's Committees in 2011, works on the themes: communication with government; early intervention; resource optimisation; and the integration of planning. The DHSSPS has introduced thresholds for determining levels of need as well as assessment frameworks to determine the needs of children.

In NI the annual number of children in need referrals received by social services has increased approximately 43% since 2008. In 2008 the UNCRC Committee examined the implementation of the UNCRC in the UK and 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." In 2010 a judge in NI remarked that he was "often struck in these cases by the paucity of [good practical help] for parents in the community, especially for parents who lack familial support." An audit of parenting programmes highlighted a number of available programmes but also drew attention to concerns regarding the provision of information, equality of access, and availability of services. The CYPSP has identified the need for additional research in a number of areas, including family support and access to support services, and has established a subgroup to support a focus on early intervention. More recent developments, including the establishment of the Early Intervention Transformation Programme, are addressing some of the



difficulties identified. Developments are also necessary to address the complex needs of families facing mental health issues, child sexual exploitation (pp. 56-57), youth homelessness, and support for families of children with disabilities.

## **Preserving the family unit while protecting the best interests and welfare of the child**

Chapter 3 considers the difficult balance of preventing family separation while protecting the best interests and welfare of the child as stipulated in international human rights and domestic law. International human rights standards set out the State's obligations with respect to the protection of children, including: to support parents in fulfilling their responsibilities; to ensure to the maximum extent possible the survival and development of the child; and to take action where children's well-being may be at risk. Positive obligations in this regard require legislative, administrative, social and educational measures to be taken. The impact of measures taken to prevent and respond to violence against children can be limited by issues including: lack of knowledge, data and understanding of violence against children and its root causes; by focusing on symptoms and consequences rather than causes; and by strategies which are fragmented rather than integrated.

Protecting children requires States to engage in a balancing exercise between the, at times competing, rights of the child and the rights of his or her parents. In order to fulfil its obligations and ensure the effective protection of the child, various measures, up to and including the removal of the child in certain circumstances, must be implemented by the State. Such measures engage the right to family life and may constitute an interference with this right. Interferences with the right to family life constitute a violation of the ECHR unless they are in accordance with the law, pursue an aim or aims that are legitimate under ECHR Article 8, and are necessary in a democratic society. ECtHR guidance regarding the latter two of these criteria requires: assessment of the impact of the proposed care measure and possible alternatives, with removal of a child from the care of the family seen as a measure of last resort; care measures should be temporary and for the shortest possible duration; exceptional circumstances are required to divest a parent of his or her parental rights; the measures must be in the best interests of the child and the reasons adduced in justification must be relevant and sufficient; and procedural requirements, including the right to be heard and the right to participation must be satisfied.

In NI children at risk of harm are protected through the child protection process. In cases where the child's welfare cannot be protected at home they are looked after by the State, either with the agreement of their

parents or through care proceedings instigated by Health and Social Care Trusts. Chapter 3 also examines the 'Protection of Children' and 'Intervention to ensure child safety'. The Safeguarding Board for Northern Ireland (SBNI) was established in 2012 for the purposes of safeguarding and promoting the welfare of children. Guidance and procedures were adopted by the DHSSPS with the aim of ensuring the development of strategies, policies and procedures to safeguard children assessed to be at risk of significant harm. A Child Protection Register must be maintained by each Trust listing each child in the Trust's area for whom a Child Protection Plan is required. In certain cases neither the family support pathway, nor the child protection pathway, are sufficient to safeguard the child or to promote his or her welfare, and additional intervention, generally following the looked after child pathway is required.

The five Trusts received 4,114 child protection referrals in 2013/2014. The number of referrals received in 2013/2014 was 8% higher than during 2008/09. Three thousand two hundred and sixty child protection investigations were carried out in 2013/2014. At 31 March 2014, 1,914 children's names were listed on Child Protection Registers in NI. The largest proportion of children whose names were included on the register were at risk of Physical Abuse. At 31 March, 2014 there were 2,858 looked after children in Northern Ireland. This is the highest number of looked after children since the Children Order came into force. Two hundred and forty-nine children had been looked after for more than 10 years and 547 children had been looked after for between 5 and 10 years.

In 2008 the UNCRC Committee expressed alarm at the "high prevalence of violence, abuse and neglect of children [in the UK], including in the home, and at the lack of a comprehensive nationwide strategy in this regard." Issues identified in the research for this report include gaps in available data, child sexual exploitation, concerns about delay, the need for oversight and learning from experiences, and limitations regarding participation.

## **Protecting the rights of the child not cared for by his or her family**

Chapter 4 considers the rights of children who cannot be cared for by their family. These children may be cared for in foster care, residential care, secure care accommodation, private fostering arrangements,<sup>22</sup> or may be adopted. A child who is temporarily or permanently deprived of

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<sup>22</sup> Provisions regarding private arrangements for fostering children, and Trust duties in that regard, are outlined in the Children Order, the Children (Private Arrangements for Fostering) Regulations (Northern Ireland) 1996 and the Children (NI) Order 1995, Guidance and Regulations, Volume 3, Family Placements and Private Fostering.

his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, is entitled to special protection and assistance provided by the State. The State is responsible for the protection of the rights of the child and for ensuring the availability of appropriate alternative care for him or her.

The right to be heard and taken seriously and consideration of the best interests of the child are two of the founding principles of the UNCRC constituting legal obligations on the State. These rights are particularly relevant in the determination of the most appropriate form of care and review of care but issues have been raised with respect to their fulfillment in Northern Ireland. For example, a 2014 survey suggests that significant numbers of children in care have inadequate knowledge of their care plans and a lack of involvement in the care planning process. Concerns have also been raised regarding the availability of suitable placements for children, in particular due to a lack of emergency foster care placements. Research for this report indicates that assessment of the adequacy of the relevant legislation and guidance regarding private fostering is necessary, and that further monitoring in this regard is required.

The State has positive obligations pursuant to international human rights standards to enable regular contact between children in care and their parents and, where possible, to keep siblings together. Although similar provisions are reflected in domestic legislation and policy, in 2013/2014 more than a third of children were separated from their siblings when placed in foster care in Northern Ireland. Further, a survey regarding the views and experiences of children in care in Northern Ireland found contact with family and friends remained the most common issue identified by the children who completed the survey and less than half (49%) of these children were able to keep in touch with their family as much as they want.

Taking a child into care should normally be a temporary measure for the shortest possible duration, to be discontinued as soon as circumstances permit. The child should be returned to a family environment as soon as possible and a permanent solution should be sought. ECHR, Article 8 contains positive obligations inherent in an effective respect for family life, including to make serious efforts to facilitate reuniting children with their natural family and until then enable regular contact between them. Particular importance attaches to the best interests of the child in these cases and at times may override the interests of the parents. Time is of particular importance as there is a danger that delay will result in the *de facto* determination of the issue. For example, a prolonged interruption of contact between parent and child can undermine any real possibility of their being helped to surmount the difficulties that have arisen. The UNCRC Committee has noted that "the passing of time is not perceived in

the same way by children and adults” and that “delays in or prolonged decision-making have particularly adverse effects on children.” Concerns regarding delay were raised in the Access to Justice Reviews 1 and 2 and have also been referenced by the judiciary. In the context of adoption for example, though there is no common legislative framework operating across the UK, which would allow like-for-like comparisons, statistics indicate that delays regarding adoptions are longer in Northern Ireland than in the rest of the UK.

The UN Guidelines for the Alternative Care of Children note that frequent changes in care setting are detrimental to the child’s development and ability to form attachments and should be avoided. Thus permanence and stability of placement is of great importance in decisions regarding children in alternative care. In the year 2013-2014, of the looked after children who had placement moves; 35.1% had had one move; 17.8% had two moves; and 47.1% had three or more placement moves. In the context of fostering services the RQIA found that placement stability was raised as a significant issue and that “some children and young people were facing placement moves due to financial pressure within Trusts.”

## **Addressing challenging behaviour**

Children’s right to liberty is protected under international human rights instruments, including the ECHR, the ICCPR and the UNCRC. Any deprivation of liberty must comply with specific requirements in order to be permissible. International standards make clear that any detention of a child shall be used only as a measure of last resort and for the shortest appropriate period of time. However, though Children Order Guidance and Regulations set out that secure accommodation must be used only as a last resort, reports examining secure care accommodation have raised questions as to whether, in practice, this is always the case. Reports further raise concerns as to whether the best interests of the affected children, and their right to be heard, are adequately protected in the process of assessment for, and placement in, secure accommodation.

With respect to looked after children in contact with the criminal justice system, ongoing concerns regarding the involvement of police in the context of challenging behaviour have been raised. In relation to bail, the issue of accommodation and the possibility of children, in particular looked after children, being placed on remand for accommodation reasons has been described as a central concern. Failures in this regard engage domestic law as well as international human rights protections.

## Conclusions and recommendations

The report concludes making 29 recommendations for aimed toward assisting the relevant public authorities improve the respect, protection and fulfilment of their human rights obligations. The recommendations affect 11 areas of law, policy and practice which may be summarised as follows:

1. Review of legislation and related guidance
2. Delay
3. Support and early intervention
4. Collection of data, assessment, and learning lessons
5. The Right of the child to be heard and participate
6. Best interests of the child
7. Contact with family members
8. Challenging behaviour: police involvement
9. The right to liberty and detention as a last resort
10. Secure care accommodation
11. Bail remand

# 1 Overarching human rights laws and standards

International human rights standards set out obligations on States to ensure that the rights of children are fulfilled but emphasise that parents “have the primary responsibility for the upbringing and development of the child.”<sup>23</sup> Public authorities will often be the part of the State that is required to fulfill the States’ obligations in this regard. States parties to the UNCRC have undertaken:

to ensure the child such protection and care as is necessary for his or her well-being taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.<sup>24</sup>

Children should not be separated from their parents unless it is in the child’s best interests and States are required to provide assistance to parents in fulfilling their parental responsibilities in order to prevent the need for alternative care. International standards also require the child’s safety to be secured and in certain circumstances the child will need to be placed in alternative care in order to fulfill these rights. At all times the best interests of the child must be a primary concern of the State and the caregiver. Where the child’s family is unable, even with appropriate support, to provide adequate care for the child, or abandons or relinquishes the child, the State is responsible for protecting the rights of the child and ensuring appropriate alternative care.<sup>25</sup>

The best interests of the child, the right of the child to be heard and taken seriously, and the right to family life are considered below as they are three overarching principles of children’s human rights.<sup>26</sup> All decisions and

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<sup>23</sup> UNCRC, Article 18.

<sup>24</sup> UNCRC, Article 3.2.

<sup>25</sup> *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, Para 5.

<sup>26</sup> The UNCRC is founded on four general principles; the primary consideration of the child’s best interests, the right of all children to be heard and taken seriously, the right to non-discrimination and the right to life and development (the right to life and development is discussed in Chapter 2 below). While not discussed in depth in this report, the Commission notes that the State authorities must be increasingly alert to the prevention of both direct and indirect discrimination issues as Northern Ireland’s society becomes ever more diverse, as illustrated by the 2011 Northern Ireland census. On Census Day 2011 1.8% (32,400) of the usually resident population of Northern Ireland belonged to minority ethnic groups, more than double the proportion in 2001. The main ethnic groups were Chinese, Indian, Mixed and other Asian. A further 0.1% of people were Irish Travellers. See, SBNI, Strategic Plan September 2013-March 2017, available

actions taken in relation to children in the situations addressed in this report should fulfill the State's duties and responsibilities regarding these rights.

## Best interests of the child

The UNCRC requires the best interests of the child to be a primary consideration "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies."<sup>27</sup> This requirement is also reflected in international human rights standards regarding the rights of children such as the UN Guidelines for the Alternative Care of Children.<sup>28</sup> Similarly the *Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally* states that: "In all matters relating to the placement of a child outside the care of the child's own parents, the best interests of the child, particularly his or her need for affection and right to security and continuing care, should be the paramount consideration."<sup>29</sup>

The ECtHR has considered children's rights in the context of their right to family life under ECHR, Article 8 and has held that "[u]ndoubtedly, consideration of what is in the best interests of the child is of crucial importance in every case of this kind."<sup>30</sup> The Court has noted that domestic authorities must attach particular importance to the best interests of the child and strike a fair balance "between the interests of

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at:

<http://www.safeguardingni.org/sites/default/files/sites/default/files/imce/04.1.14%20SBI%20Strategic%20Plan%20Version%203.0%20FINAL%20COPY.pdf>. The Commission further notes that Section 75 of the Northern Ireland Act (1998) places a duty on public authorities to promote effective equality of opportunity for all and good relations between those of different religious belief, political opinion or race. See also, UNCRC Committee, *General Comment No 13 (2011), The right of the child to freedom from all forms of violence*, para 60.

<sup>27</sup> UNCRC, Art. 3.1. See also, UNCRC Committee, *General Comment No 13 (2011), The right of the child to freedom from all forms of violence*, para 61.

<sup>28</sup> *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, Para 6-7. See also, Council of Europe, Committee of Ministers, *Council of Europe Recommendation on children's rights and social services friendly to children and families*, CM/Rec(2011)12, A. Provisions in the best interest of the child.

<sup>29</sup> *Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally*, 3 December 1986, A/Res/41/85, Article 5.

<sup>30</sup> *Dmitriy Ryabov v Russia*, ECtHR, Application no. 33774/08, 1 Aug, 2013, para 46. See also, *Scozzari and Giunta v Italy*, ECtHR, Applications nos. 39221/98 and 41963/98, 13 July 2000, para 169. *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), para 154.

the child and those of the parents.” The Court recognises that the interests of the child “may override those of the parents.”<sup>31</sup>

The UNCRC Committee has clarified that the child’s best interests is a threefold concept; a substantive right, a fundamental interpretative legal principle, and a rule of procedure.<sup>32</sup> Article 3, paragraph 1, creates an intrinsic obligation for States.<sup>33</sup> Whenever a decision is to be made that will affect a child, the decision-making process must include an evaluation of the possible impact of the decision on the child concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account. In this regard, States parties must explain how the right has been respected in the decision, that is, what has been considered to be in the child’s best interests; what criteria it is based on; and how the child’s interests have been weighed against other considerations.<sup>34</sup> The scope of circumstances requiring consideration of the best interests of the child is broad, thus “the word ‘action’ does not only include decisions, but also all acts, conduct, proposals, services, procedures and other measures”.<sup>35</sup> “[I]naction or failure to take action and omissions are also ‘actions’, for example, when social welfare authorities fail to take action to protect children from neglect or abuse.”<sup>36</sup>

The child’s best interests may not be considered on the same level as all other considerations but must be given “primary consideration”.<sup>37</sup> A child’s best interests must be determined on a case by case basis.<sup>38</sup> The UNCRC Committee has stated that assessing the best interests of a child should include a “best-interests assessment”, which “consists in evaluating and balancing all the elements necessary to make a decision in a specific situation for a specific individual child” and a “best-interests determination”, which is a “formal process with strict procedural safeguards designed to determine the child's best interests on the basis of

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<sup>31</sup> *Dmitriy Ryabov v Russia*, ECtHR, Application no. 33774/08, 1 Aug, 2013, para 48. See also, *Scozzari and Giunta v Italy*, ECtHR, Applications nos. 39221/98 and 41963/98, 13 July 2000, para 169.

<sup>32</sup> UNCRC Committee, *General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, Para 6.

<sup>33</sup> UNCRC Committee, *General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, paras 6 and 36: “The words “shall be” place a strong legal obligation on States and mean that States may not exercise discretion as to whether children’s best interests are to be assessed and ascribed the proper weight as a primary consideration in any action undertaken.”

<sup>34</sup> UNCRC Committee, *General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, Para 6.

<sup>35</sup> *Ibid*, Para 17.

<sup>36</sup> *Ibid*, Para 18. See also, paras 29-30.

<sup>37</sup> *Ibid*, Para 37. See also, para 40.

<sup>38</sup> *Ibid*, Para 32.



the best-interests assessment."<sup>39</sup> The best interests assessment should consider the specific circumstances of a child and a range of elements, including: the child's views; the child's identity; preservation of the family environment and maintaining relations; care, protection and safety of the child; situation of vulnerability; the child's right to health; and the child's right to education.<sup>40</sup>

In 2008, the UNCRC Committee called on the UK to "take all appropriate measures to ensure that the principle of the best interests of the child, in accordance with UNCRC, Article 3, is adequately integrated in all legislation and policies which have an impact on children"<sup>41</sup> and to "[m]ake sure that children without parental care have a representative who actively defends their best interests."<sup>42</sup>

## The right of the child to be heard and taken seriously

Assessment of a child's best interests includes respect for the child's right to express his or her views freely and to have due weight given to said views in all matters affecting the child.<sup>43</sup> The Council of Europe has similarly stated that "social services in their work should ensure that the child is heard and taken seriously. Children should be considered and treated as full bearers of rights, as active subjects in the planning, delivery and evaluation of social services."<sup>44</sup> UNCRC, Article 12 requires actions to be taken to assure "the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child."<sup>45</sup> The UNCRC Committee has noted that Article 12 does not impose an age limit on the right of the child to express her or his views "and discourages States parties from introducing age limits either in law or in practice which would restrict the child's right to be heard in all matters affecting him or her."<sup>46</sup> The child must be provided with an opportunity to be heard "in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body."<sup>47</sup>

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<sup>39</sup> *Ibid*, para 47.

<sup>40</sup> *Ibid*, para 48-79.

<sup>41</sup> UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 27.

<sup>42</sup> *Ibid*, para 67(e).

<sup>43</sup> UNCRC Committee, *General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, para 43.

<sup>44</sup> Council of Europe, Committee of Ministers, *Council of Europe Recommendation on children's rights and social services friendly to children and families, CM/Rec(2011)12*, B. The child's rights to participation, para 1.

<sup>45</sup> UNCRC Committee, *General Comment No 12 (2009) on the right of the child to be heard*, paras 20-27.

<sup>46</sup> *Ibid*, para 21.

<sup>47</sup> *Ibid*, paras 32-33.

The views of the child must be given “due weight in accordance with the age and maturity of the child.”<sup>48</sup> The UNCRC Committee has stated that the “evolving capacities of the child (Article 5) must be taken into consideration when the child’s best interests and right to be heard are at stake.”<sup>49</sup> The Committee has stated that:

Maturity refers to the ability to understand and assess the implications of a particular matter, and must therefore be considered when determining the individual capacity of a child. Maturity is difficult to define; in the context of article 12, it is the capacity of a child to express her or his views on issues in a reasonable and independent manner. The impact of the matter on the child must also be taken into consideration. The greater the impact of the outcome on the life of the child, the more relevant the appropriate assessment of the maturity of the child.<sup>50</sup>

States parties must ensure that the child receives all necessary information and advice to make a decision in favour of his or her best interests.<sup>51</sup> States parties are under a strict obligation to undertake appropriate measures to fully implement this right for all children,<sup>52</sup> however, expressing views is a choice for the child, not an obligation.<sup>53</sup>

The UNCRC Committee has identified five steps to be taken in order to effectively realise the right of the child to be heard whenever a matter affects a child or when the child is invited to give her or his views:<sup>54</sup>

1. *Preparation* – those responsible for hearing the child and the decision maker must adequately prepare the child, including ensuring that the child is fully informed about the process, his or her right to express his

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<sup>48</sup> UNCRC, Art. 12. See also, Council of Europe, Committee of Ministers, *Recommendation Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions*, 2005; UNCRC Committee, *General Comment No 13 (2011), The right of the child to freedom from all forms of violence*, para 63.

<sup>49</sup> UNCRC Committee, *General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, para 44.

<sup>50</sup> UNCRC Committee, *General Comment No 12 (2009) on the right of the child to be heard*, para 30.

<sup>51</sup> *Ibid*, para 16.

<sup>52</sup> *Ibid*, para 19. See also, UNCRC Committee, *General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, paras 89-91.

<sup>53</sup> UNCRC Committee, *General Comment No 12 (2009) on the right of the child to be heard*, paras 16 and 22.

<sup>54</sup> *Ibid*, para 40.

or her opinion either directly or through a representative, the impact that his or her views will have and the possible consequences.<sup>55</sup>

2. *The hearing* - the context in which a child exercises her or his right to be heard has to be enabling and encouraging, so that the child can be sure that the adult who is responsible for the hearing is willing to listen and seriously consider the child's views.<sup>56</sup> States parties must ensure an environment in which the child feels respected and secure when freely expressing her or his opinions and the child must not be manipulated or subjected to undue influence or pressure.<sup>57</sup> A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. Proceedings must be both accessible and child-appropriate.<sup>58</sup>
3. *Assessment of the capacity of the child* - if the child is capable of forming her or his own views in a reasonable and independent manner, the decision maker must consider the views of the child as a significant factor in the settlement of the issue.<sup>59</sup> States parties should presume that a child has the capacity to form her or his own views and recognise that she or he has the right to express them; it is not up to the child to first prove her or his capacity.<sup>60</sup> The capacity of the child must be assessed in a case-by-case examination.<sup>61</sup>
4. *Information about the weight given to the views of the child (feedback)* - the decision maker has to inform the child of the outcome of the process and explain how her or his views were considered. The feedback is a guarantee that the views of the child are not only heard as a formality, but are taken seriously.<sup>62</sup> Article 12 stipulates that simply listening to the child is insufficient; the views of the child have to be seriously considered when the child is capable of forming her or his own views.<sup>63</sup>
5. *Complaints, remedies and redress* – Legislation should provide children with complaint

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<sup>55</sup> *Ibid*, paras 35-36 and 41.

<sup>56</sup> *Ibid*, para 42.

<sup>57</sup> *Ibid*, paras 22-23 and 132.

<sup>58</sup> *Ibid*, para 34.

<sup>59</sup> *Ibid*, para 44.

<sup>60</sup> UNCR Committee, *General Comment No 12 (2009) on the right of the child to be heard*, para 20.

<sup>61</sup> *Ibid*, para 29.

<sup>62</sup> *Ibid*, para 45.

<sup>63</sup> *Ibid*, paras 28 and 132.

procedures and remedies when their right to be heard and for their views to be given due weight is disregarded and violated.<sup>64</sup>

The UNCRC Committee has stated that all processes in which a child or children are heard and participate, must be: transparent and informative; voluntary; respectful; relevant; child-friendly; inclusive; supported by training; safe and sensitive to risk; and accountable.<sup>65</sup> Furthermore:

States parties must be aware of the potential negative consequences of an inconsiderate practice of this right, particularly in cases involving very young children, or in instances where the child has been a victim of a criminal offence, sexual abuse, violence, or other forms of mistreatment. States parties must undertake all necessary measures to ensure that the right to be heard is exercised ensuring full protection of the child.<sup>66</sup>

## The right to family life

ECHR, Article 8 protects the right to family life, including children's right to family life.<sup>67</sup> The ECtHR has found that "the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life"<sup>68</sup> and that "the natural family relationship is not terminated by reason of the fact that the child has been taken into public care ..."<sup>69</sup>

The UNCRC recognises the family as "the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children".<sup>70</sup> The UNCRC Committee has noted "that a range of family patterns may be consistent with promoting children's well-being."<sup>71</sup> In its general comment regarding the rights of children in early childhood the Committee explained that "family" "refers to a variety of arrangements that can provide for young children's care,

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<sup>64</sup> *Ibid*, paras 46-47. See also, UNCRC Committee, *General Comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child*, para. 24.

<sup>65</sup> *Ibid*, para 134.

<sup>66</sup> *Ibid*, para 21.

<sup>67</sup> ECHR, Article 8. 1. Everyone has the right to respect for his private and family life, his home and his correspondence.

<sup>68</sup> *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), Para 151.

<sup>69</sup> *Scozzari and Giunta v Italy*, ECtHR, Applications nos. 39221/98 and 41963/98, 13 July 2000, Para 169. See also, *A.K. and L. v. Croatia*, ECtHR, Application no. 37956/11, 8 Jan 2013, para 51.

<sup>70</sup> UNCRC, Preamble.

<sup>71</sup> UNCRC Committee, *General Comment No 7 (2005) Implementing child rights in early childhood*, Para 19.

nurturance and development, including the nuclear family, the extended family, and other traditional and modern community-based arrangements, provided these are consistent with children's rights and best interests."<sup>72</sup>

The ECtHR has similarly explained that the protection provided by the right to family life is not restricted to the traditional nuclear family but that "'family life', within the meaning of Article 8 includes at least the ties between near relatives, for instance those between grandparents and grandchildren, since such relatives may play a considerable part in family life."<sup>73</sup> Thus, "the existence or non-existence of 'family life' is essentially a question of fact depending upon the real existence in practice of close personal ties."<sup>74</sup> The protections of the right to family life also apply to the family which has been created following adoption.<sup>75</sup>

Interferences with the right to family life constitute a violation of ECHR, Article 8 unless they are in accordance with the law, necessary in a democratic society and pursue an aim or aims that are legitimate under paragraph 2 of Article 8.<sup>76</sup> Paragraph 2 specifies that an interference may be permissible if it is "in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."<sup>77</sup> Furthermore, the right to family life also contains positive obligations, including that respect for family life "implies an obligation for the State to act in a manner calculated to allow these ties to develop normally".<sup>78</sup>

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<sup>72</sup> UNCRC Committee, *General Comment No 7 (2005) Implementing child rights in early childhood*, Para 15.

<sup>73</sup> *Scozzari and Giunta v Italy*, ECtHR, Applications nos. 39221/98 and 41963/98, 13 July 2000, Para 221. See also, *A.K. and L. v. Croatia*, ECtHR, Application no. 37956/11, 8 Jan 2013, para 52.

<sup>74</sup> *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), Para 150.

<sup>75</sup> See for example, *Ageyevy v. Russia*, ECtHR, Application no. 7075/10, 18 April, 2013, para 120.

<sup>76</sup> *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), Para 151. See also, *Ageyevy v. Russia*, ECtHR, Application no. 7075/10, 18 April, 2013, paras 119-120.

<sup>77</sup> ECHR, Art. 8.2.

<sup>78</sup> *Scozzari and Giunta v Italy*, ECtHR, Applications nos. 39221/98 and 41963/98, 13 July 2000, para 221.

## 2 Preventing the need for alternative care: support for children and their families

### Human rights laws and standards

The UNCRC recognises that the family is “the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children” and calls for the family to “be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.”<sup>79</sup> The UNCRC further specifies that a child must have “as far as possible, the right to know and be cared for by his or her parents.”<sup>80</sup> The UNCRC Committee has explained that realising children’s rights is in large measure dependent on the well-being and resources available to those with responsibility for their care.<sup>81</sup>

In order to guarantee and promote the rights set out in the Convention “States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities.”<sup>82</sup> The Convention recognises in particular the special needs of disabled children and calls for assistance to be provided to parents and others caring for a disabled child “free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child...”<sup>83</sup> The Convention further recognises the right of every child “to benefit from social security”<sup>84</sup> and the “right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development,” including States Parties’ obligations to “take appropriate measures to assist parents and others responsible for the child to implement this right.”<sup>85</sup> Children should not be separated from their

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<sup>79</sup> UNCRC, Preamble. See also, Council of Europe, Committee of Ministers, *Recommendation Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions*, 2005.

<sup>80</sup> UNCRC, Art. 7.1. See also, UNCRC Art. 9.

<sup>81</sup> UNCRC Committee, *General Comment No 7 (2005) Implementing child rights in early childhood*, paras 20 and 10.

<sup>82</sup> UNCRC, Art. 18.2. See also, Art. 27.2, Art. 3 and *Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally*, 3 December 1986, A/Res/41/85, Article 2: “Child welfare depends upon good family welfare.”

<sup>83</sup> UNCRC, Art. 23. See also, UNCRC Committee, *General Comment No 7 (2005), Implementing child rights in early childhood*, para 36: “Young children should never be institutionalized solely on the grounds of disability.”

<sup>84</sup> UNCRC, Art. 26.

<sup>85</sup> UNCRC, Art. 27.

parents solely for economic reasons<sup>86</sup> or on the grounds of a disability of either the child or his or her parents.<sup>87</sup>

The Committee of Ministers of the Council of Europe has similarly called for “preventive measures of support for children and families in accordance with their special needs” to “be provided as far as possible.”<sup>88</sup> The Committee has stated that “social service delivery should ensure that there is a supportive environment for the child by providing the appropriate level and diversity of services and resources necessary for positive parenting and the empowerment of parenting skills.”<sup>89</sup>

The UN Guidelines for the Alternative Care of Children state that “efforts should primarily be directed to enabling the child to remain in or return to the care of his/her parents, or when appropriate, other close family members” and that “the State should ensure that families have access to forms of support in the care giving role.”<sup>90</sup> The Guidelines further note that “as part of efforts to prevent the separation of children from their parents, States should seek to ensure appropriate and culturally sensitive measures: (a) To support family care giving environments whose capacities are limited by factors such as disability, drug and alcohol misuse, discrimination against families with indigenous or minority backgrounds...”.<sup>91</sup> The Guidelines provide detailed information on the policies that should be pursued in providing support for families including addressing the root causes of child abandonment, relinquishment and separation of the child from his or her family and empowering parents and strengthening their ability to care for their children, for example through ensuring the availability of counselling and social support.<sup>92</sup>

The UNCRC recognises the right of children with disabilities to special care and pursuant to the Convention States Parties:

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<sup>86</sup> UNCRC Committee, *General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, para 61.

<sup>87</sup> UNCRPD, Art. 23. 4.

<sup>88</sup> Council of Europe, Committee of Ministers, *Recommendation Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions*, 2005. See also, Council of Europe, Committee of Ministers, *Resolution (77) 33 of the Committee of Ministers of the Council of Europe on Placement of Children*, 1977, Guiding Principles 1 and 2. See also, *Saviny v Ukraine*, ECtHR, Application no. 39948/06, 18 December 2008, para 36.

<sup>89</sup> Council of Europe, Committee of Ministers, *Council of Europe Recommendation on children's rights and social services friendly to children and families, CM/Rec(2011)12*, A. Provisions in the best interest of the child, para. 2.

<sup>90</sup> *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 3.

<sup>91</sup> *Ibid*, para 9.

<sup>92</sup> *Ibid*, paras 32-45.

shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.<sup>93</sup>

The UNCRC Committee has expressed concern "that insufficient account is taken of the resources, skills and personal commitment required of parents and others responsible for young children, especially in societies where early marriage and parenthood is still sanctioned as well as in societies with a high incidence of young, single parents."<sup>94</sup> The UN Guidelines for the Alternative Care of Children also call for special attention to be paid to the "provision and promotion of support and care services for single and adolescent parents and their children, whether or not born out of wedlock."<sup>95</sup>

## **Domestic law, policy and practice: support for children and their families**

*The Children Order* is the principal statute governing the care, upbringing and protection of children in Northern Ireland. The Children Order Advisory Committee (COAC) restated a number of key principles enshrined in the Order:

- the child's welfare shall be the paramount consideration in court proceedings;<sup>96</sup>
- any delay in determining the question with respect to the upbringing of a child is likely to prejudice the welfare of the child;<sup>97</sup>
- no order or orders should be made unless that would be better for the child than making no order at all;<sup>98</sup>

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<sup>93</sup> UNCRC, Art. 23.2. See also, UNCRC Committee, *General Comment No. 9 (2006), The rights of children with disabilities*; UNCRPD, Preamble (x) and Arts. 7 and 23: 3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

<sup>94</sup> UNCRC Committee, *General Comment No 7 (2005) Implementing child rights in early childhood*, para 20. In this regard the Commission recalls that "Northern Ireland rates of teenage pregnancy are among the highest in Europe" and that "rates are highest in areas of greatest social and economic deprivation." Children and Young People's Strategic Partnership, *Children's Services Planning; Northern Ireland Outcome Monitoring Report with Trends 2006-2012/13*, Multi-agency Information to Support Integrated Planning for Children and Young People in Northern Ireland, September 2013.

<sup>95</sup> *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 36.

<sup>96</sup> Children Order, Art. 3(1).

<sup>97</sup> Children Order, Art. 3(2).



- where possible, children should be brought up and cared for within their own families;<sup>99</sup>
- children should be safe and protected by effective intervention, but such intervention should be open to challenge;<sup>100</sup>
- children should be kept informed about what happens to them and should ordinarily participate (subject to age and understanding) when decisions are made about their future;<sup>101</sup> and,
- parents continue to have parental responsibility even when their children are no longer living with them. They should be kept informed about their child and participate when decisions are made about their child's future.<sup>102</sup>

Northern Ireland is geographically divided into five Health and Social Care Trusts, each of which holds delegated authority for the welfare and safeguarding of children in its area.<sup>103</sup> The Children Order imposes a general duty on Health and Social Care Trusts in Northern Ireland to provide help to children in their localities by providing services to their families.<sup>104</sup> Article 17 of the Children Order defines children who are in need. Article 18 sets out the duties of authorities to provide a range of personal social services to promote the well being of such children and also to enable them to remain in the care of their parents/families, provided this is in the children's best interest. Those children who, without the provision of services, are unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development, are defined as children "in need." Children whose health or development is likely to be significantly impaired, or further impaired, without the provision of services, and children with disabilities, are also defined as "in need." An assessment should also be completed for children who are carers and provide, or

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<sup>98</sup> Children Order, Art. 3(5).

<sup>99</sup> Children Order, Art. 18.

<sup>100</sup> Children Order, Art. 66.

<sup>101</sup> See for example, Children Order, Art. 21(b).

<sup>102</sup> Children Order, Art. 5(5). See also, COAC, *The Children Order Advisory Committee, Twelfth Report*, 2013, p. 5; Children (NI) Order 1995, Guidance and Regulations, Volume 1, Court Orders and Other Legal Issues, Preface.

<sup>103</sup> The Department of Health, Social Services and Public Safety (DHSSPS) has business responsibility for Health and Social Care in NI, which includes policy and legislation for hospitals, family practitioner services and community health and personal social services. ([http://www.dhsspsni.gov.uk/index/about\\_dept.htm](http://www.dhsspsni.gov.uk/index/about_dept.htm)) The Health and Social Care Board (HSCB) is responsible for commissioning services, resource management and performance management and service improvement. It works to identify and meet the needs of the Northern Ireland population through its five Local Commissioning Groups which cover the same geographical areas as the HSC Trusts. (<http://www.dhsspsni.gov.uk/index/hss.htm>)

<sup>104</sup> Children Order, Art. 18. See also, DHSSPS, *Co-operating to Safeguard Children*, 2003, para 3.7.

intend to provide, care on a regular basis for a person aged 18 or over, to determine whether that child is in need.<sup>105</sup>

Once a child is defined as “in need” the Trust, under Children Order, Article 18, has a duty to safeguard and promote his or her welfare. In so far as it is consistent with that duty, Trusts should promote the upbringing of the child by his or her family through the provision of a range and level of personal social services appropriate to the child’s needs. Article 18(5) sets out the various ways in which services may be provided, facilitated by a Trust, including by the child’s family,<sup>106</sup> or by others, such as voluntary organisations.<sup>107</sup> Assistance may be in kind or, in exceptional circumstances, cash.<sup>108</sup> Services may be unconditional or subject to repayment.<sup>109</sup> Recalling Trusts’ duties under Article 18 the DHSSPS has noted that “no child or young person should have to become looked after, whether by agreement with those with parental responsibility or by virtue of a court order, for the sole purpose of enabling financial, practical or other support to be provided to the child’s carer.”<sup>110</sup>

Article 18A relates to carers of disabled children. It establishes the circumstances in which, subject to the request of the carer, the Trust shall carry out an assessment of his or her ability to provide care for the child, and take this assessment into account when deciding what, if any, services to provide. The Children Order also establishes the right to information for carers regarding their right to an assessment.<sup>111</sup>

Schedule 2 of the Children Order sets out specific powers and duties regarding the provision of services for families, including to:

- take reasonable steps to identify the extent to which there are children in need in an authority’s area;

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<sup>105</sup> Children Order, Art. 17A(1) If (a) a child (“the carer”) provides or intends to provide a substantial amount of care on a regular basis for a person aged 18 or over; (b) the child requests an authority to carry out an assessment for the purposes of determining whether he is to be taken to be in need for the purposes of this Part; and (c) the authority is satisfied that the person cared for is someone for whom it may provide social care, the authority (i) shall carry out such an assessment; and (ii) taking the results of that assessment into account, shall determine whether the child is to be taken to be in need for the purposes of this Part.

<sup>106</sup> Children Order, Art. 18(3).

<sup>107</sup> Children Order, Art. 18(5).

<sup>108</sup> Children Order, Art.18(8).

<sup>109</sup> Children Order, Art. 18(7) and (9).

<sup>110</sup> DHSSPS, *Minimum Kinship Care Standards Northern Ireland*, February 2014, para 1.6.

<sup>111</sup> Children Order, Art. 18D.

- publish information about services provided and make sure that those who might benefit from the services receive information relevant to them;
- maintain a register of disabled children in an authority's area;
- assess whether a child is in need for the purposes of the Children Order at the same time as any assessment of his or her needs under other statutory provisions;
- take reasonable steps, through the provision of services, to prevent children suffering ill-treatment or neglect;
- provide assistance to obtain alternative accommodation for another person to protect a child;
- provide services for disabled children;
- take reasonable steps to reduce the need for care proceedings or proceedings which may bring children into a Trust's care or lead to their being placed in secure accommodation;
- provide a range of services to children living with their families including advice, guidance and counselling; occupational, social, cultural and recreational activities; home help, and assistance to enable the child and family to have a holiday;
- provide "family centres" at which a child and a parent, a person with parental responsibility, or a person looking after the child, may attend for services including; occupational, social, cultural or recreational activities; advice, guidance or counselling; and
- take such steps as are reasonably practicable, where a child in need is living apart from his or her family, to enable him or her to live with, or maintain contact with, his or her family, if necessary in order to safeguard or promote the child's welfare.

Trusts are required under Children Order, Article 21 to provide accommodation for children in need who require it as a result of:

- there being no person who has 'parental responsibility' for him or her<sup>112</sup>
- being lost or having been abandoned; or
- the person who has been caring for him or her being prevented (whether permanently or not, for whatever reason) from providing him or her with suitable accommodation or care.

Each Trust shall provide accommodation for any child in need who is aged 16 years and over and whose welfare is likely to be seriously prejudiced if it does not provide him or her with accommodation.<sup>113</sup> A Trust may provide accommodation for a child within its area (even when a person

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<sup>112</sup> Children Order, Art. 6, defines 'parental responsibility' as "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property."

<sup>113</sup> Children Order, Art. 21(3).

who has parental responsibility for him or her is able to provide him with accommodation),<sup>114</sup> and for any person who has reached the age of 16 but is under 21 in specified homes,<sup>115</sup> if the authority considers that it would safeguard or promote his or her welfare.

A Trust may not provide accommodation as outlined above, if a person who has parental responsibility for the child and is willing and able to provide accommodation for him or her, or arrange for accommodation to be provided for him or her, objects.<sup>116</sup>

For children accommodated under Article 21 of the Children Order, the Trust does not acquire parental responsibility for them; any person with parental responsibility for a child may at any time remove the child from accommodation provided under Article 21.<sup>117</sup>

Before providing accommodation under any of these circumstances a Trust should, as far as possible, ascertain the child's wishes regarding the provision of accommodation and give due consideration to these wishes.<sup>118</sup>

A series of Regulations and Guidance accompany the Children Order.<sup>119</sup>

The *regulations* made under the Children Order include permissions and restrictions as to what may or may not be done and also requirements on what must be done. As with the Order itself the regulations carry the full weight of the

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<sup>114</sup> Children Order, Art. 21 (4).

<sup>115</sup> Children Order, Art. 21 (4).

<sup>116</sup> Children Order, Art. 22(1). This does not apply where a child who has reached the age of 16 agrees to being provided with accommodation under Article 21. (Children Order, Art. 22(5)) This Para does not apply while any person (a) in whose favour a residence order is in force with respect to the child; or (b) who has care of the child by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children, agrees to the child being looked after in accommodation provided by or on behalf of the authority. Where there is more than one such person, all of them must agree. (Children Order, Arts. 22(3) and (4)). Children Order, Art. 21 (4) An authority may provide accommodation for a child within the authority's area (even when a person who has parental responsibility for him is able to provide him with accommodation)

<sup>117</sup> Children Order, Art. 22(2). This does not apply where a child who has reached the age of 16 agrees to being provided with accommodation under Article 21. (Children Order, Art. 22(5)) This Para does not apply while any person (a) in whose favour a residence order is in force with respect to the child; or (b) who has care of the child by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children, agrees to the child being looked after in accommodation provided by or on behalf of the authority. Where there is more than one such person, all of them must agree. (Children Order, Arts. 22(3) and (4)).

<sup>118</sup> Children Order, Art. 21 (6).

<sup>119</sup> [http://www.dhsspsni.gov.uk/index/hss/child\\_care/children-order/children-order-guidance-regulations.htm](http://www.dhsspsni.gov.uk/index/hss/child_care/children-order/children-order-guidance-regulations.htm).

law. The *guidance* issued under the Children Order is not law in the way that regulations are. Where the guidance explains the requirements of the Children Order or regulations it is reaffirming the law. Where it goes beyond regulations it conveys the message that 'It is highly desirable to...' or 'Unless there is good reason not to, you should...' rather than 'You must.' This is intended to give some degree of flexibility in the application of what the Department considers to be good practice. However, it should be noted that, whilst they are not in themselves law in the way that regulations are law, it is possible that guidance documents may be referred to in court proceedings and that courts may expect justification for not following guidance.<sup>120</sup>

Volume 2 of the accompanying Guidance and Regulations provides comprehensive information on family support, including service provision, the range of services required and requirements on Trusts to publicise services.<sup>121</sup>

A number of strategies and policies outline the Northern Ireland Executive's commitments to provide support for children and their families, including those set out below.

*Our Children and Young People Our Pledge*,<sup>122</sup> is a 10-year cross-departmental strategy, aimed at improving the lives of children, measuring progress against six 'high level' outcomes: being healthy; enjoying, learning and achieving; living in safety and with stability; experiencing economic and environmental well being; contributing positively to community and society; and living in a society that respects children's rights.<sup>123</sup> A core aspect of the strategy is support for parents in caring for their children. It is the responsibility of the Children and Young People's Unit (CYPU) of the Office of the First Minister and deputy First Minister (OFMDFM) to oversee the development, implementation, and subsequent evaluation of the strategy. In 2014 the OFMDFM conducted a public consultation regarding a draft strategy entitled *Delivering Social Change for Children and Young People*, which contained draft proposals to provide an integrated policy framework encompassing policy on children and young people, including child poverty and children's rights, which would follow on from *Our Children and Young People, Our Pledge* and the Child Poverty Act 2010. In light of the responses received it was decided

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<sup>120</sup> Children Order, Children (NI) Order 1995, Guidance and Regulations, Volume 2, Family Support, Child Minding and Day Care Centre, Preface.

<sup>121</sup> *Ibid.*

<sup>122</sup> OFMDFM, *Our Children and Young People –Our Pledge: A Ten Year Strategy for Children and Young People in Northern Ireland 2006-2016*, 2006. Available at: <http://www.dardni.gov.uk/our-children-and-young-people-ten-year-strategy.pdf>.

<sup>123</sup> *Ibid.*, p. 7.

to develop a strategy focused on child poverty now and to engage with stakeholders to discuss and develop proposals further before the end of 2016.<sup>124</sup>

*Care Matters in Northern Ireland*,<sup>125</sup> is a strategy focused on strengthening the role of the State in relation to its supportive role towards children and families, their protection and their care. The policy states that:

We must ensure that parents have access to the help they need, when they need it, in a non-stigmatising environment and allowing parents to be in control of solving their parenting difficulties while having access to the services to help them do so. In this regard we aim to deliver services consistent with Article 8 of the Human Rights Act protecting the rights of individuals to family life.<sup>126</sup>

A 2009 policy initiative, *Families Matter*,<sup>127</sup> has a particular emphasis on ensuring early, focused and timely intervention and support “for families where children are on the edge of care”.<sup>128</sup> It focuses on universal support and preventative and early intervention services to support parents, children and young people continuously throughout childhood. In so doing it distinguishes between assistance and intervention, and the responsibilities of parents versus those of the government.

*Healthy Child, Healthy Future*<sup>129</sup> is a policy that outlines a universal child health service to be delivered to all families and children (aged 0 -19) in Northern Ireland. It aims to engage families in the completion of a Family Health Assessment (FHA) so that input can be tailored to reflect assessed levels of need. The policy has a “major emphasis on parenting support and positive parenting”.<sup>130</sup> It states that parenting programmes should be offered and should be “outcome focused, evidence based [and], within Northern Ireland, a menu of such programmes should be agreed”.<sup>131</sup>

*Improving Children’s Life Chances: The Child Poverty Strategy*<sup>132</sup> is aimed at addressing the causes and consequences of child poverty and is

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<sup>124</sup> OFMDFM, *Delivering Social Change for Children and Young People; Summary and analysis of consultation responses*, May 2014, p. 104.

<sup>125</sup> DHSSPS, *Care Matters in Northern Ireland- A Bridge to a Better Future*, 2007.

<sup>126</sup> *Ibid*, p. 5.

<sup>127</sup> DHSSPS, *Families Matter. Supporting Families in Northern Ireland*, 2009.

<sup>128</sup> *Ibid*, p. 9.

<sup>129</sup> DHSSPS, *Healthy Child, Healthy Future. A Framework for the Universal Child Health Promotion Programme in Northern Ireland. Pregnancy to 19 Years*. 2010.

<sup>130</sup> *Ibid*, p. 11.

<sup>131</sup> *Ibid*, p. 18.

<sup>132</sup> OFMDFM, *Improving Children’s Life Chances- The Child Poverty Strategy*, 2011.

underpinned by a number of principles, including: a shift towards the use of preventative measures to tackle child poverty and, when families face difficulties, intervention at an early stage, reducing the likelihood of more serious problems developing in the future; applying an evidence-based approach; and adopting an approach which concentrates on all members of the family and supporting family life.<sup>133</sup>

*Transforming Your Care: A Review of Health and Social Care in Northern Ireland*<sup>134</sup> is a policy document which considers the quality and accessibility of current health and social care services and the extent to which people's needs are being met against a series of outcomes including: "accessibility, safety, standards, quality of services and value for money".<sup>135</sup> The proposed integrated model of care is based on population based planning, a focus on prevention and the delivery of evidence based services.

A 2008 *Regional Hidden Harm Action Plan*<sup>136</sup> calls for the development of preventative and early identification strategies based on a scoping review and development of baseline data. The Plan recognises growing concerns regarding the needs of children living with parental alcohol and drug misuse in NI and outlines proposals for Regional Action and Local Action Planning. The interface between these services and services for people with mental health problems is emphasised.

The service framework for *Mental Health and Wellbeing*<sup>137</sup> is based on the whole family model; it indicates that parents with mental health issues should be supported in their parenting role. Critical to the delivery of non-stigmatising services is good signposting, screening and assessment as it is known that parental mental health is a risk factor for children who live 'on the edge of care' and thus risk coming into care.

*Making Life Better* is a ten year public health strategic framework which provides direction for policies and actions to improve the health and wellbeing of people in Northern Ireland. This framework has been structured around 6 themes: giving every child the best start; equipped throughout life; empowering healthy living; creating the conditions; empowering communities; and developing collaboration.<sup>138</sup> The framework seeks to create a whole system approach across the various

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<sup>133</sup> *Ibid*, p. 11.

<sup>134</sup> HSCB/DHSSPS, *Transforming Your Care. A Review of Health and Social Care in Northern Ireland*, 2011.

<sup>135</sup> *Ibid*, p. 11.

<sup>136</sup> DHSSPS, *Regional Hidden Harm Action Plan: Responding to the needs of children born to and living with parental alcohol and drug misuse in Northern Ireland*, 2008.

<sup>137</sup> DHSSPS, *Service Framework for Mental Health and Wellbeing*, 2011.

<sup>138</sup> DHSSPS, *Making Life Better: A Whole System Strategic Framework for Public Health, 2013-2023*, 2014, p. 9.

levels of the system at which work needs to be taken forward, illustrates the inter-connectedness of government policies and programmes, and highlights opportunities to strengthen linkages.<sup>139</sup>

In addition to these general policy developments, the publication of *Local Commissioning Plans* by the five Trusts indicate a commitment to family support and early intervention with the aim of preventing admission to care.<sup>140</sup>

The *Children and Young People's Strategic Partnership* (CYPSP)<sup>141</sup> is a strategic alliance working in partnership with statutory agencies, voluntary and community organisations, children and young people, and parents. The overall purpose of the CYPSP is to lead integrated planning and commissioning of support and services, with a view to achieving the six high level outcomes defined in the strategy 'Our Children and Young People – Our Pledge', outlined earlier.<sup>142</sup>

The CYPSP has four core themes: communication with government; early intervention; resource optimisation; and the integration of planning. 'Family Support Hubs'<sup>143</sup> have been developed with the aim of improving access to, awareness of, and coordination of family support services. Family Support Hubs work with children, young people and their families to ensure that they have easy access to preventative and early intervention services to meet identified needs at the earliest possible opportunity. The Hubs are virtual networks of organisations and professionals, and with parental consent, a professional from any background can refer a family for support. There are plans to develop Family Support Hubs across Northern Ireland. Twenty four hubs are currently operational.<sup>144</sup> When complete all of Northern Ireland will be covered.

The HSCB hosts the *Northern Ireland Family Support* website,<sup>145</sup> which provides details of a wide range of organisations that provide help and support to families. This website is intended to assist family members seeking support, frontline staff and organisations or partnerships who

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<sup>139</sup> *Ibid*, pp. 10-11.

<sup>140</sup> HSCB, *Commissioning Plan 2013/14 31 January 2012. Working Draft, 2012*; HSCB, *Belfast Local Commissioning Plan 2013/14. 2013*; HSCB, *Southern Local Commissioning Plan 2013/14. 2013*; DHSSPS, *Child and Adolescent Mental Health Services. A Service Model, 2012*.

<sup>141</sup> <http://www.cypsp.org/>

<sup>142</sup> Children and Young People's Strategic Partnership, *Communication Strategy (2013-2014)*, available at:

[http://www.cypsp.org/publications/cypsp/communication/cypsp\\_communication\\_strategy.pdf](http://www.cypsp.org/publications/cypsp/communication/cypsp_communication_strategy.pdf), p. 3.

<sup>143</sup> <http://www.cypsp.org/family-hubs.htm>.

<sup>144</sup> <http://www.cypsp.org/family-support-hubs/>, accessed February 19, 2015.

<sup>145</sup> <http://www.familysupportni.gov.uk>.



may use it as a planning tool.

## Levels of need

The Children Order defines children 'in need' for whom social services have a general duty to provide a range and level of social care services. Thresholds for determining appropriate actions in this regard are set out in guidance provided by the DHSSPS; the Thresholds of Need Model<sup>146</sup> and the Family and Child Care Thresholds of Intervention.<sup>147</sup> The aim is early identification, referral and service provision, with the goal of ensuring that "children are prevented from moving towards the higher levels of need and wherever possible concerns are reduced so that their levels of need reduce."<sup>148</sup> The Four 'Levels of Need' are:

**Level 1: Base population** refers to children and families who may require occasional advice, support and/or information. In general they should not be referred to 'Family and Child Care Services' within the Trust or anticipate a response from a Trust as their needs are met through universal services.

**Level 2: Children with additional needs** refers to vulnerable children who may be at risk of social exclusion and in addition to universal services, may need access to community support services. The majority of children at level 2 are unlikely to need a statutory social work intervention. However, for vulnerable children identified as having the potential to deteriorate and escalate to a higher level of need, an assessment, based on consent, may be necessary to identify the assistance and help required and thereby avoid escalation.

**Level 3: Children in need** refers to children who have complex needs that may be chronic and enduring. They are children 'in need' within the meaning of the Children Order, which includes children who are in need of safeguarding. Children in need of safeguarding and/or who are at risk of significant harm will be subject to 'child protection' procedures, where the cooperation of the family, although desirable, is not a precondition to either assessment or intervention.

**Level 4: Children with complex and/or acute needs** applies to children in the greatest need: children in need of rehabilitation with critical and/or high-risk needs; children in need of safeguarding (including those in care); and children with complex and enduring needs.<sup>149</sup>

These guidance documents, and the assessment procedures discussed

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<sup>146</sup> DHSSPS, *Thresholds of Need Model*, 2011.

<sup>147</sup> DHSSPS, *Family and Child Care Thresholds of Intervention*, 2008.

<sup>148</sup> DHSSPS, *Thresholds of Need Model*, 2011, p. 4.

<sup>149</sup> DHSSPS, *Family and Child Care Thresholds of Intervention*, 2008.

below, apply to children in need of protection (see Chapter 3) as well as to children in need. The DHSSPS has noted that “although a child in need may not be at risk of significant harm, a child who is at risk of significant harm will always be a child in need.”<sup>150</sup> Children may move between the levels of vulnerability as their particular circumstances change, thus a flexible service response that can address changing needs is required.<sup>151</sup>

## Understanding the needs of children

An inter-agency assessment framework, ‘Understanding the Needs of Children in Northern Ireland (UNOCINI)’, has been developed to support staff to conduct high quality assessments.<sup>152</sup> The UNOCINI Assessment Framework was developed to: improve the quality of assessment within stakeholder agencies; assist in communicating the needs of children across agencies; and avoid the escalation of children’s needs through early identification of need and effective intervention.<sup>153</sup>

The UNOCINI Assessment Framework should be implemented whenever a practitioner identifies that a child may have needs that are additional to those of a similar aged child living in similar circumstances.<sup>154</sup> There are essentially four phases in the UNOCINI Assessment Framework:

- Agency Appraisal and Preliminary Assessment,<sup>155</sup>
- Referral,<sup>156</sup>
- Initial Assessment,<sup>157</sup> and
- Pathway Assessment.<sup>158</sup>

The UNOCINI framework can be used to make referrals to children’s social services and other children’s services or after a referral has been received.<sup>159</sup>

UNOCINI has three assessment domains: the needs of the child; the capacity of their parents or carers to meet these needs; and wider family and environmental factors that impact on parental capacity and children’s

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<sup>150</sup> DHSSPS, *Co-operating to Safeguard Children*, 2003, para 3.9.

<sup>151</sup> DHSSPS, *Thresholds of Need Model*, 2011, p. 4.

<sup>152</sup> DHSSPS, *UNOCINI Guidance. Understanding the Needs of Children in Northern Ireland*, 2011.

<sup>153</sup> DHSSPS, *UNOCINI Guidance. Understanding the Needs of Children in Northern Ireland*, 2011, p. 8; OFMDFM, *Safeguarding Children: A Cross-Departmental Statement on the Protection of Children and Young People*, 2009, p. 41.

<sup>154</sup> DHSSPS, *UNOCINI Guidance. Understanding the Needs of Children in Northern Ireland*, 2011, p. 14.

<sup>155</sup> *Ibid*, pp. 49-54.

<sup>156</sup> *Ibid*, pp. 55-61.

<sup>157</sup> *Ibid*, pp. 61-.

<sup>158</sup> *Ibid*, pp. 17.

<sup>159</sup> *Ibid*, pp. 10-11.

needs.<sup>160</sup> UNOCINI guidance explains that assessment has five interconnected stages: preparation; information collection; weighing the information; analysing the information; and utilising the information.<sup>161</sup>

## Referral and assessment

Referrals constitute requests for assessment and assistance because of concern about the safety, welfare, or well-being of children.<sup>162</sup> The initial point of contact with social services, for those who self-refer and for referrals from other agencies, is usually a Gateway Team.<sup>163</sup> These teams represent one point of contact within each Trust and are designed to improve accessibility, assessment processes and accountability. Three kinds of contact have been identified as part of the Gateway Service: information exchange; requests for advice and guidance; and referrals.<sup>164</sup>

The Gateway Service has responsibility for receiving referrals and for completion of an initial assessment, which will inform the future direction of the case.<sup>165</sup> The DHSSPS has specified classifications of priority (1-3) which should be assigned to referrals based on the Levels of Need outlined above, including assessed parental capacity.<sup>166</sup>

**Priority 1** is assigned to children with complex and/or acute needs (Level 4), requiring urgent assessment and early intervention to safeguard the child, with likely complications regarding parental capacity and environmental factors. It is likely that safeguarding procedures will apply regarding these referrals and a child should be seen and assessed within 24 hours.<sup>167</sup>

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<sup>160</sup> *Ibid*, p. 8.

<sup>161</sup> *Ibid*, p. 8.

<sup>162</sup> DHSSPS, *Gateway Service-Processes: Guidance for Northern Ireland Health and Social Care Trusts*, 2008, p. 6. See also, DHSSPS, *Family and Child Care Thresholds of Intervention*, 2008, p. 9.

<sup>163</sup> DHSSPS, *Gateway Service-Processes: Guidance for Northern Ireland Health and Social Care Trusts*, 2008, p. 4. P.6 "there are some discrete and clearly defined areas of work where members of the public/other agencies will make direct contact or where the Gateway Service will transfer automatically. This will include: Applications for adoption/fostering; Early Years provider registrations/enquiries; Article 4 courtwork applications; Children with a disability referrals." The Gateway Service was part of the reforms introduced in response to problems identified in an inspection of Child Services in NI: SSI/DHSSPS, *Our Children and Young People – Our Shared Responsibility: Inspection of Child Protection Services in Northern Ireland*, 2006; OFMDFM, *Safeguarding Children: A Cross-Departmental Statement on the Protection of Children and Young People*, 2009, p. 41.

<sup>164</sup> DHSSPS, *Gateway Service-Processes: Guidance for Northern Ireland Health and Social Care Trusts*, 2008, p. 4.

<sup>165</sup> *Ibid*, p. 6.

<sup>166</sup> DHSSPS, *Family and Child Care Thresholds of Intervention*, 2008, p. 9.

<sup>167</sup> *Ibid*, p. 9.

**Priority 2** is assigned to children described and evidenced as children in need (Level 3), including children who may be in need of safeguarding and require assessment and intervention. In the case of those children who are in need of safeguarding, with significant parental capacity issues, the initial assessment should be initiated within 24 hours and completed within 7 working days. If parental capacity is at level 1 or 2 “the case is likely to be less urgent but would still require an initial assessment.”<sup>168</sup>

**Priority 3** is assigned to children with additional needs (Level 2) where parental capacity is at level 3 or 4 and environmental factors may also be high. These referrals relate to children where there is likely to be a potential for circumstances to deteriorate leading to a reduction in parental capacity and/or an escalation of children’s needs. If these referrals are defined as children in need the consent of the child and parent/carer will be required. If it is not forthcoming the supervising manager should consider whether the need to safeguard the child may over-ride issues of consent.<sup>169</sup>

Referrals regarding children in the base population (Level 1) or children with additional needs (Level 2) whose parental capacity is at level 1 or 2 will generally be classified as *inappropriate referrals* requiring no further action following explanation to the referrer, check and scrutiny by the supervising manager.<sup>170</sup> It is noteworthy that this sifting process is undertaken on the basis of available information without seeing either the child or his or her parent.

The UNOCINI Initial Assessment must be completed by the Gateway Team within a maximum of 10 working days.<sup>171</sup> The Initial Assessment is not designed to be an in-depth exploration of a child and families’ circumstances. It is intended to provide an overview of current circumstances in order to take appropriate decisions about future management and thresholds of intervention, for example provision of statutory social services, referral to another more appropriate agency, or case closure.<sup>172</sup>

If the Initial Assessment indicates that social services should become involved a more comprehensive UNOCINI Pathway Assessment is required to be completed.<sup>173</sup> In this case children and families are likely to follow one of three Care Pathways: Family Support; Child Protection (see

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<sup>168</sup> *Ibid*, p. 9.

<sup>169</sup> *Ibid*, p. 10.

<sup>170</sup> *Ibid*, p. 10.

<sup>171</sup> DHSSPS, *Gateway Service-Processes: Guidance for Northern Ireland Health and Social Care Trusts*, 2008, p. 6.

<sup>172</sup> DHSSPS, *UNOCINI Guidance. Understanding the Needs of Children in Northern Ireland*, 2011, p. 18.

<sup>173</sup> *Ibid*, p. 18.

Chapter 3); or Looked After Child procedures (see Chapter 3).<sup>174</sup>  
Continued assessment will be required on all three pathways.<sup>175</sup>

## Family support

Where family support is required, a UNOCINI Family Support Pathway Assessment, supported by Family Support Plans, should be developed over several weeks through a series of meetings with children and their families.<sup>176</sup> Family support will be most effective where the capacity of the parents is relatively strong and a Family Support Plan is agreed with the co-operation and agreement of the children and family.<sup>177</sup>

Guiding standards for children's social services have been developed to support implementation of UNOCINI Family Support Plans, including: an initial UNOCINI Family Support Plan should be completed within 20 working days from receipt of the referral; a review UNOCINI Family Support Plan should be completed within 3 months of the Initial UNOCINI Family Support Plan; and subsequent reviews should be completed at least at six monthly intervals. The UNOCINI Family Support Plan serves as a contract between the Trust and the family. The UNOCINI Family Support Plan contains specific actions for the child, family, social worker and other professionals as appropriate. All UNOCINI Family Support Plans should clearly specify further assessment requirements, including specialist assessment if appropriate, and timescale for completion of such assessment.<sup>178</sup>

## Family Group Conferences

Family Group Conferences (FGC) are a process by which immediate and extended family members meet together to find solutions to difficulties, which they or a child in their family are facing.<sup>179</sup> The FGC, is a family led decision making process. It allows the child's "wider family and friends to come together in a meeting (conference) to develop a plan to protect and support the child/young person of the family."<sup>180</sup> FGCs may be appropriate in a number of contexts where there is a plan or a decision to be made and are thus also of relevance regarding the child protection and

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<sup>174</sup> DHSSPS, *Family and Child Care Thresholds of Intervention*, 2008, p. 10.

<sup>175</sup> DHSSPS, *UNOCINI Guidance. Understanding the Needs of Children in Northern Ireland*, 2011, p. 46-7.

<sup>176</sup> *Ibid*, pp. 65-71.

<sup>177</sup> DHSSPS, *Family and Child Care Thresholds of Intervention*, 2008, p. 11.

<sup>178</sup> DHSSPS, *UNOCINI Guidance. Understanding the Needs of Children in Northern Ireland*, 2011, pp. 69-71.

<sup>179</sup> ACPC, *Area Child Protection Committees' Regional Policy and Procedures*, 2005, para.4.8.

<sup>180</sup> COAC, *Best Practice Guidance, 2<sup>nd</sup> Edition 2010*, as updated 2012, p. 111.

looked after child processes.<sup>181</sup>

## Northern Ireland context

In NI, 25,998 children were known to social services as children in need during the year ending 31 March 2014.<sup>182</sup> The number of children in need in 2014 was six percent higher than in 2013 when there were 24, 473 children in need.<sup>183</sup> Trusts received 40, 165 children in need referrals.<sup>184</sup> The annual number of referrals received has increased approximately 43% since 2008.<sup>185</sup> There were a total of 66 homeless children, 16-17 years of age, at 31 March 2014.<sup>186</sup> Comparing available data across the UK is problematic given the variation in operational definitions employed in the different jurisdictions.<sup>187</sup>

During 2013/14, of the children referred to Trusts, 71% were allocated for further action.<sup>188</sup> Of the children in need that had undergone an initial assessment, the majority of episodes (78%) were for a "child whose carers require support and assistance to provide a reasonable standard of care."<sup>189</sup> A further 20% of episodes resulted in a child protection investigation.<sup>190</sup> The number of episodes (after initial assessment) of involvement between children in need and Health and Social Care Trusts almost doubled between 2007/08 and 2012/13, from 10,395 to 20,340.<sup>191</sup>

Information relating to the number of children referred to Family Intervention Teams is not held centrally.<sup>192</sup> Waiting times across the Trusts for family centre support services ranged from 0 weeks to 14

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<sup>181</sup> ACPC, *Area Child Protection Committees' Regional Policy and Procedures*, 2005, para. 4.9; COAC, *Best Practice Guidance, 2<sup>nd</sup> Edition 2010*, as updated 2012, pp. 111-117.

<sup>182</sup> DHSSPS/NISRA, *Children's Social Care Statistics Northern Ireland 2013/14*, 2014, p. 9.

<sup>183</sup> *Ibid.*

<sup>184</sup> *Ibid.*, p. 11: "A referral is defined as a request for services to be provided by children's social care and is in respect of a child who is currently not assessed to be in need. A referral may result in an episode of care which may be an initial assessment of the child's needs, the provision of information or advice, referral to another agency or alternatively no further action."

<sup>185</sup> *Ibid.*

<sup>186</sup> HSCB, *Delegated Statutory Functions Statistical Report*, 2014, p. 12.

<sup>187</sup> <https://www.gov.uk/government/publications/safeguarding-children-statistics-the-availability-and-comparability-of-data-in-the-uk-brief>. (Munro, Brown and Manful, 2011) at p. 2 and 7.

<sup>188</sup> DHSSPS/NISRA, *Children's Social Care Statistics Northern Ireland 2013/14*, 2014, p. 12.

<sup>189</sup> *Ibid.*, p. 13.

<sup>190</sup> *Ibid.*, p. 13.

<sup>191</sup> DHSSPS/NISRA (2013) *Children's Social Care Statistics for Northern Ireland 2012/13*. Belfast: DHSSPS. [http://www.dhsspsni.gov.uk/microsoft\\_word\\_-\\_childrens\\_social\\_care\\_stats\\_201213.pdf](http://www.dhsspsni.gov.uk/microsoft_word_-_childrens_social_care_stats_201213.pdf), p. 17.

<sup>192</sup> Correspondence with DHSSPS Community Information Branch (CIB).

weeks, with the longest average waiting time being in the Northern Trust's area.<sup>193</sup>

In 2008 the UNCRC Committee examined the implementation of the UNCRC in the UK and was concerned at "increased numbers of children in alternative care"<sup>194</sup> and "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"<sup>195</sup> and recommended that the UK "[i]ntensify its efforts to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities" and "[a]void having children taken into alternative care as a result of low parental income."<sup>196</sup>

A 2014 NSPCC report noted that in the UK early intervention has been embraced as a concept and that since 2010 at least 84 reports that discuss early intervention and recommend it as an approach have been published.<sup>197</sup> However, the NSPCC advises that "over this same period and despite the rhetoric, resources available for early intervention have arguably decreased rather than increased."<sup>198</sup> An Action for Children, Barnardo's, The Children's Society, and NSPCC Campaign supported by a number of children's organisations is highlighting the need for early support for families and calling for a focus on early support to help children, young people and their families.<sup>199</sup>

In Northern Ireland the CYPSP decided that it "will support an increased focus on early intervention as key to our role in improving the six high level outcomes for children and young people."<sup>200</sup> The CYPSP has set up a strategic sub group, made up of CYPSP members, which will support the CYPSP planning process to take forward the CYPSP's focus on early intervention.

In the context of early intervention and the link to child sexual exploitation the 2014 Marshall Report recommended that:

**The Northern Ireland Assembly, through the Office of the First Minister and Deputy First Minister, should re-affirm its**

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<sup>193</sup> HSCB, *Delegated Statutory Functions Statistical Report*, 2014, pp. 14-16.

<sup>194</sup> UNCRC Committee, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4*, 2008, para 44.

<sup>195</sup> *Ibid*, para 44.

<sup>196</sup> *Ibid*, para 45. See also, *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, Para 15.

<sup>197</sup> NSPCC, *How Safe Are Our Children*, 2014, available at: [http://www.nspcc.org.uk/Inform/research/findings/how-safe/how-safe-2014\\_wda101852.html](http://www.nspcc.org.uk/Inform/research/findings/how-safe/how-safe-2014_wda101852.html), p. 7.

<sup>198</sup> *Ibid*, p. 7.

<sup>199</sup> See: <http://www.stitchintime.org.uk/>

<sup>200</sup> CYPSP, *Northern Ireland Children and Young People's Plan*, 2011-2014, p. 40.

commitment to strategic, long-term and sustained funding of services for prevention and early intervention.<sup>201</sup>

Despite the legislative and policy basis for family support outlined above, in a 2010 case, the Judge remarked on inadequacies in support provided to parents in the community. He assessed evidence regarding the likely source of injuries sustained by one of SM's children and in a postscript to his judgement stated that the "overall evidence in this case establishes that SM tried very hard to succeed, virtually single-handedly, in the particularly difficult task of parenting these children" and that he was "often struck in these cases by the paucity of [good practical help] for parents in the community, especially for parents who lack familial support."<sup>202</sup> He considered that:

What is badly needed is more practical day to day support from people with practical parenting skills... An investment in recruiting support of this type would be both effective and cost-effective in maintaining families within the community and avoiding the costly involvement of the care system. This form of "upstream" intervention obviously cannot hope to prevent every mishap or tragedy but it would help to keep children to receive "good enough" care where ideally they belong, living in their own families. An outcome of permanent removal of children from their families is, too often, as much an indictment of a failed system as it is of inadequate parents.<sup>203</sup>

It has been suggested that the 'tipping points' for statutory intervention are complex<sup>204</sup> and research examining social work decision-making concluded from patterns of decision making that:

Social work has developed a response to the needs of families based on an inherited responsibility to identify and manage child protection risks in the narrowest of senses [and this means that] they remain poorly placed to respond to the increased volume of families [that require family support services that focus on early intervention and prevention].<sup>205</sup>

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<sup>201</sup> Kathleen Marshall, CJINI/RQIA/ETI, *Child Sexual Exploitation in Northern Ireland; Report of the Independent Inquiry*, 2014, p. 17, Key Recommendation 7.

<sup>202</sup> *Belfast Health & Social Care Trust v SM* [2010] NIFam 10 (28 June 2010), para 28.

<sup>203</sup> *Ibid*, para 28. See also, *Homefirst Community Health and Social Services Trust v SN* [2005] NICA 14, para 29.

<sup>204</sup> Hayes, D. and Spratt, T (2009) 'Child welfare interventions: patterns of social work practice', *British Journal of Social Work*, 39(8), pp.1575-1597.

<sup>205</sup> *Ibid*, p.1594. See also, Hayes, D. and Spratt, T (2012) 'Child welfare as child protection then and now: what social workers did and continue to do', *British Journal of Social Work*, pp. 1-21.



An audit of parenting programmes carried out in Northern Ireland highlighted a number of available programmes but also drew attention to concerns regarding the provision of information, equality of access and the availability of services.<sup>206</sup> Evaluations of support services that centre on the experiences and views of the families and children themselves in Northern Ireland are limited. With regard to “access to family support services appropriate to age and location” the CYPSP has identified that qualitative research is required “with parents/carers who receive parental training and support...” and “with parents/carers to evaluate current availability of family support, identify the most effective forms of material assistance and other support... for parents of children of different ages and in particular circumstances, and suggest improvements to existing provision.”<sup>207</sup>

At 31 March 2014 there were 347 unallocated cases of children who were awaiting an assessment of need.<sup>208</sup> This represents an increase of 47% from March 2013. The Commission notes that without an assessment and contact with the child/family it is unknown how many of these children were living with acute needs, potentially of a child protection or safeguarding nature.

A 2011 review by the RQIA considered the provision of family support services in the context of child protection.<sup>209</sup> In relation to access to family support services, the RQIA found that waiting lists existed for accessing a social worker, an assessment, and ultimately, services. The review found examples across Trusts where cases, referred to the Gateway Teams, were not processed within the required time frames. Moreover, this had a knock on effect in terms of passing cases to the Family Intervention and Support Teams.

The Northern Ireland Commissioner for Children and Young People (NICCY) has noted a concern that government strategy lacks a clear focus on those groups which are more likely to need greater levels of support, such as the support needs of families where there are mental health issues, disability or sustained illness.<sup>210</sup>

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<sup>206</sup> McStravick, C. and Meehan, M (2013) *Parenting Programmes. Audit of Delivery in Northern Ireland*, National Children’s Bureau NI.

<sup>207</sup> CYPSP, *Developing Child Rights-Based Indicators, Record of Qualitative Research, 2011*, available at: [http://www.cypsp.org/publications/research/record-qualitative-research\(dh\).pdf](http://www.cypsp.org/publications/research/record-qualitative-research(dh).pdf), p. 32-33.

<sup>208</sup> HSCB, *Delegated Statutory Functions Statistical Report, 2014*, p. 10.

<sup>209</sup> RQIA, *A Review of Child Protection Arrangements in Northern Ireland: An Overview Report, 2011*. See also, SSI/DHSSPS, *Our Children and Young People – Our Shared Responsibility: Inspection of Child Protection Services in Northern Ireland, 2006*. Overview Report.

<sup>210</sup> NICCY, *Policy Briefing: Supporting Families, 2010*.

More recent developments aim to address some of the difficulties identified. For example, the Early Intervention Transformation Programme (EITP), an initiative to transform mainstream services to develop a prevention and early intervention approach, has been established.<sup>211</sup> The EITP is funded by six government departments: Department of Education (DE), DHSSPS, Department for Employment and Learning, Department for Social Development, Department of Justice, and OFMDFM, as well as the Atlantic Philanthropies. The EITP is organised into three work streams: work stream 1 aims to support parents to give their children the best start in life; work stream 2 aims to support families quickly when issues start to emerge; and work stream 3 is focused on children, young people and their families who are experiencing some adversities. HSCB regional commissioning priorities for 2014/2015 and 2015/2016 include; "PHA/HSCB to strengthen early year's provision and family support through parenting programmes" and "Work with the CYPSP and cross-departmental Early Intervention Transformation Programme to deliver integrated services through pooled budgetary arrangements."<sup>212</sup>

### Support for families facing mental health issues

Parents with mental health problems and their children, as well as children facing mental health issues, are a group with complex needs. Not all parents and children will need the support of health and social care services but those that do can find it difficult to get support that is acceptable, accessible and effective for the whole family.<sup>213</sup>

A 2011 RQIA review of children's mental health services provides an indication of how far policy developments have translated into actual service provision.<sup>214</sup> The RQIA measured progress against recommendations for comprehensive child and adolescent mental health services in the Bamford Review of Mental Health and Learning Disability<sup>215</sup> and the subsequent response by the Northern Ireland Executive.<sup>216</sup>

The RQIA made a number of recommendations for improvement, including that the DHSSPS should confirm a model for service provision in NI through policy guidance.<sup>217</sup> The recommendations called on the HSCB

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<sup>211</sup> <http://www.cypsp.org/early-intervention-transformation-programme/>

<sup>212</sup> PHA/HSCB, Draft Commissioning Plan 2014/2015, January 2015, p. 98-99.

<sup>213</sup> Social Care Institute for Excellence (SCIE), *Think Child, Think Parent, Think Family: A Guide to Parental Mental Health and Child Welfare*, 2011, p. 8.

<sup>214</sup> RQIA, *Independent Review of Child and Adolescent Mental Health Services (CAMHS) in Northern Ireland*, 2011.

<sup>215</sup> The Bamford Review of Mental Health and Learning Disability (Northern Ireland), *A Vision of a Comprehensive Child and Adolescent Mental Health Service*, 2006.

<sup>216</sup> DHSSPS, *Delivering the Bamford Vision*. 2008; DHSSPS, *Delivering the Bamford Vision: The Response of Northern Ireland Executive to the Bamford Review of Mental Health and Learning Disability, Action Plan 2009-2011*, 2009.

<sup>217</sup> RQIA, *Independent Review of Child and Adolescent Mental Health Services (CAMHS) in Northern Ireland*, 2011, p. 133.

to investigate and address high combined Did Not Attend and cancellation rates and to measure service user and carer experience and outcomes using consistent methods across all Trusts.<sup>218</sup> The HSCB was urged to ensure that all young people who present in a crisis have access to emergency or intensive support services. Further, young people who present with acute mental health problems, or in an emergency, or who require intensive support should be managed in the community wherever possible.<sup>219</sup> Demographic information should be collected and monitored to ensure that CAMH services meet the needs of young people and their families.<sup>220</sup>

On the particular issue of the mental health needs of children, parents and carers in Northern Ireland, an extensive research review<sup>221</sup> commissioned as part of the DHSSPS 'Bamford Action Plan'<sup>222</sup> indicated a series of gaps in service provision. The authors recommended the need for a full survey of the mental health needs of children, young people and their carers in Northern Ireland, further research regarding help seeking interventions, the factors that contribute to poor mental health and more research regarding the effectiveness of parenting support programmes. A 2012 policy response to the RQIA report called for a stepped care approach to be developed across all levels of service provision. The DHSSPS explained that:

This approach is patient focused and aims to deliver the appropriate level of care at the earliest point that best meets the assessed needs of the child or young person, while also enabling them to move up or down the steps as their needs change.<sup>223</sup>

The report sets out the 'Stepped Care Model' which provides a framework for the organisation and integration across family, child health and social care services.<sup>224</sup> Emphasis on the importance of prevention, early

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<sup>218</sup> *Ibid*, p. 133.

<sup>219</sup> *Ibid*, p. 134.

<sup>220</sup> *Ibid*, p. 134.

<sup>221</sup> MacDonald, G., Livingstone, N., Davidson, G., Sloan, S., Fargas, M. And McSherry, D, *Improving the Mental Health of Northern Ireland's Children and Young People: Priorities for Research*, QUB/PHA, 2011.

<sup>222</sup> DHSSPS, *Delivering the Bamford Vision: The Response of Northern Ireland Executive to the Bamford Review of Mental Health and Learning Disability, Action Plan 2009-2011*, 2009.

<sup>223</sup> DHSSPS, *Child and Adolescent Mental Health Services. A Service Model*, 2012, p. 3.

<sup>224</sup> The Royal College of Psychiatrists in Northern Ireland has stated that "whilst this framework might allow for the development of more efficient services that can be more easily measured in terms of short term outcome, it would not necessarily allow for the considered long-term planning and evolution of more effective and comprehensive services overall." Child and Adolescent Faculty of the Royal College of Psychiatrists in

intervention and proactive recovery is integral to the model.<sup>225</sup> The report recognises that evidence to support early intervention is very clear and “therefore implementation of the stepped care model described in this document must support the reorganization/reorientation of services across health and social care sectors in pursuit of this goal.”<sup>226</sup>

A revised follow-on ‘Bamford Action Plan 2012-2015’ was published by the DHSSPS and measures taken by the Northern Ireland Executive in response to the Bamford review are outlined in a 2013 Monitoring Report. For example, a “Regional Service Model for Child and Adolescent Mental Health Services (CAMHS) was published by the DHSSPS in July 2012, and is being implemented by the HSCB through a Regional Steering Group and Local Implementation Teams based in each Trust.”<sup>227</sup> Further, “£2M additional funding has been allocated for the development of Primary Mental Health Workers teams and Home Treatment Crisis Response service in each Trust’s area.”<sup>228</sup>

In 2014 the HSCB stated that “Child and Adolescent Mental Health Services have received additional funding to support ongoing development of crisis resolution and home treatment and primary mental health services.” The Board reported that this “has led to improvements in waiting times for specialist services.”<sup>229</sup> The HSCB’s regional commissioning priorities for 2014/2015 and 2015/2016 include; “Full implementation of RQIA recommendations of CAMHS review and Departmental CAMHS ‘step care’ model” and a “Forensic Adolescent Consultation and Treatment Service will become operational (*consistent with proposed developments in Residential Child Care Review and CAMHS developments*).”<sup>230</sup>

Also in 2014, two new Care Pathways were launched by the HSCB: a Regional Mental Health Care Pathway<sup>231</sup> and a Regional Care Pathway for

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Northern Ireland, *Response to Review of CAMHS acute pathway including inpatient services (for Northern Ireland HSCB)*, 2014.

<sup>225</sup> DHSSPS, *Child and Adolescent Mental Health Services. A Service Model*, 2012, p. 5.

<sup>226</sup> *Ibid*, p. 11.

<sup>227</sup> DHSSPS, *Delivering the Bamford Vision: The Response of the Northern Ireland Executive to the Bamford Review of Mental Health and Learning Disability, Action Plan 2012-2015: Monitoring Report November 2013*, p. 28.

<sup>228</sup> *Ibid*.

<sup>229</sup> HSCB, *Health and Social Care Board Annual Report and Accounts for the Period Ended 31 March 2014*, 2014, p. 23.

<sup>230</sup> PHA/HSCB, *Draft Commissioning Plan 2014/2015*, January 2015, p. 99.

<sup>231</sup> HSC, *Regional Mental Health Care Pathway: Promoting Hope, Opportunity and Personal Control*, 2014. Available at:

[http://www.hscboard.hscni.net/mentalhealth/Regional\\_Care\\_Pathway\\_Mental\\_Health.pdf](http://www.hscboard.hscni.net/mentalhealth/Regional_Care_Pathway_Mental_Health.pdf)

Personality Disorders.<sup>232</sup>

The Regional Mental Health Care Pathway is for people, families, their partners and friends who may require support from Mental Health Services. The Care Pathway sets out the standards expected of all mental health and psychological therapy services provided by Health and Social Care Trusts including those services commissioned from independent community and voluntary sector organizations.<sup>233</sup> It outlines the various services which may be available, including Family and Social Interventions such as:

Social Support: Can help me with my housing, benefits and family support needs, including practical and emotional support for me, my partner and/or my children. ...<sup>234</sup>

The Regional Care Pathway for Personality Disorders outlines the mental health care available in Northern Ireland for people with a Personality Disorder, the steps involved in accessing that care, the types of interventions that may be offered, and what service users and their family carers can expect from the professionals providing care and treatment.<sup>235</sup> This Care Pathway notes that people with Personality Disorders can “experience varying degrees of subjective distress and problems in personal and social functioning that can lead to social care needs, particularly in relation to parenting and childcare.”<sup>236</sup>

In 2014 a Review of CAMHS acute pathways was undertaken on behalf of the HSCB. This Review is complete and the NIHRC has been advised that implementation regarding the Review will progress in 2015.<sup>237</sup> In the interviews with stakeholders for this report some highlighted ongoing pressures within the system where demand exceeds provision and the need for more research regarding the accessibility, availability and effectiveness of the various programmes on offer.

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<sup>232</sup> HSC, Regional Care Pathway for Personality Disorders: Promoting Hope, Opportunity and Personal Control, 2014. Available at: [http://www.hscboard.hscni.net/mentalhealth/Regional\\_Care\\_Pathway\\_for\\_Personality\\_Disorder\\_PDF\\_1MB.pdf](http://www.hscboard.hscni.net/mentalhealth/Regional_Care_Pathway_for_Personality_Disorder_PDF_1MB.pdf)

<sup>233</sup> HSC, Regional Mental Health Care Pathway: Promoting Hope, Opportunity and Personal Control, 2014. Available at: [http://www.hscboard.hscni.net/mentalhealth/Regional\\_Care\\_Pathway\\_Mental\\_Health.pdf](http://www.hscboard.hscni.net/mentalhealth/Regional_Care_Pathway_Mental_Health.pdf)

, p. 8.

<sup>234</sup> *Ibid*, p. 42.

<sup>235</sup> HSC, Regional Care Pathway for Personality Disorders: Promoting Hope, Opportunity and Personal Control, 2014. Available at: [http://www.hscboard.hscni.net/mentalhealth/Regional\\_Care\\_Pathway\\_for\\_Personality\\_Disorder\\_PDF\\_1MB.pdf](http://www.hscboard.hscni.net/mentalhealth/Regional_Care_Pathway_for_Personality_Disorder_PDF_1MB.pdf), p. 5.

<sup>236</sup> *Ibid*.

<sup>237</sup> Telephone call between NIHRC and HSCB.

With regard to “reduced inequalities in health and access to health services” the CYPSP has identified that qualitative research is required about reasons why children and families do not access available health services (e.g. mental health, drugs and alcohol and sexual health), factors contributing to and inhibiting the use of services and suggested improvements – by specific groups...<sup>238</sup>

Further, regarding “improved mental and emotional well-being by strengthening services and promoting positive attitudes” qualitative research is required to explore the reasons for mental health problems, identify those most at risk, and establish the most appropriate responses for children of different ages and in particular circumstances (e.g. LAC/care leavers, children affected by conflict, children living in poverty, children in conflict with the law)...<sup>239</sup>

The CYPSP is leading a “Think Family” Sub Group which “aims to improve outcomes for children who have a family member with Mental Health issues by improving the interface between Children, Mental Health and Adults services across the statutory, voluntary and community sectors.”<sup>240</sup> The Think Family group has developed an action plan<sup>241</sup> to progress key actions against three main themes:

- improve communication and information sharing between professionals and families;
- improve access to early intervention family support for children, young people and their families;
- improve the extent to which assessment, planning and treatment is inclusive of a ‘whole family’ approach.<sup>242</sup>

The Bamford Centre for Mental Health and Wellbeing was established in 2011 with the aim of increasing understanding of mental health through research conducted in Northern Ireland. Two of the Centre’s ongoing projects are of particular interest in regard to support for families with mental health issues; Improving mental health pathways and care for adolescents in transition to adult services in Northern Ireland (IMPACT), and the Northern Ireland Study for Adolescent Wellbeing (NISAW).<sup>243</sup>

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<sup>238</sup> CYPSP, *Developing Child Rights-Based Indicators, Record of Qualitative Research*, 2011, available at: [http://www.cypsp.org/publications/research/record-qualitative-research\(dh\).pdf](http://www.cypsp.org/publications/research/record-qualitative-research(dh).pdf), p. 1.

<sup>239</sup> *Ibid*, p. 4.

<sup>240</sup> [http://www.cypsp.org/think\\_family.htm](http://www.cypsp.org/think_family.htm)

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[http://www.cypsp.org/publications/subgroups/think\\_family/CYPSP\\_Think\\_Family\\_Action\\_Plan.pdf](http://www.cypsp.org/publications/subgroups/think_family/CYPSP_Think_Family_Action_Plan.pdf)

<sup>242</sup> *Ibid*.

<sup>243</sup> <http://www.science.ulster.ac.uk/bamfordcentre/our-research/>

The overall aim of the NISAW study is to build an evidence base for the provision of primary care and psychological and other care services for young people – their location and type, acceptability and accessibility. The Centre hopes that the “new findings will go some way to improving access to mental health services for young people in Northern Ireland in order to assist timely intervention.”<sup>244</sup>

The IMPACT study aims to determine the best way to organise the interface between services for children and young people and for adults in order to support the transition from childhood to adulthood. The Centre states that the “findings from this study will significantly contribute to the improvement in early intervention and continuity of care for young people in Northern Ireland.”<sup>245</sup> In this regard it is relevant to note that VOYPIC have called for operational protocols to be developed “to allow for seamless transfer of young people from Child and Adolescent Mental Health Services (CAMHS) to adult services.”<sup>246</sup> Further, a 2013 OFMDFM Commissioned report similarly recommended that:

The Health and Social Care Board should attempt to streamline the operational protocols in place for the seamless transfer of young people from CAMHS to adult services. There should be routine evaluation of how these arrangements are working and efforts taken to ensure that the views of the young people are collected and considered.<sup>247</sup>

## Child sexual exploitation

In 2013 a number of actions in relation to child sexual exploitation (CSE) in Northern Ireland were commenced by the PSNI, the SBNI and an Independent Inquiry.<sup>248</sup> While the PSNI Operation involved children known to social services, respondents to the Inquiry confirmed that “CSE was a part of life for other children, and any child could be vulnerable to it. Agencies referred to increasing numbers of CSE cases relating to children from family environments, with no identified vulnerabilities.”<sup>249</sup> Measures regarding CSE relate to preventing the need for alternative care

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<sup>244</sup> <http://www.science.ulster.ac.uk/bamfordcentre/northern-ireland-study-for-adolescent-wellbeing/>

<sup>245</sup> <http://www.science.ulster.ac.uk/bamfordcentre/our-research/impact/>

<sup>246</sup> VOYPIC, *Let’s Change the Story for Children in Care*, 2013, p. 25.

<sup>247</sup> Institute for Conflict Research, *Grasping the Nettle: The Experiences of Gender Variant Children and Transgender Youth Living in Northern Ireland*, 2013, Recommendation 15, p. 8.

<sup>248</sup> <http://www.niassembly.gov.uk/Documents/Official-Reports/Written-Ministerial-Statements/2013-2014/HSSPS%20WMS%2025%20September%202013.pdf>

<sup>249</sup> Kathleen Marshall, CJINI/RQIA/ETI, *Child Sexual Exploitation in Northern Ireland; Report of the Independent Inquiry*, 2014, p. 14.

and protecting the best interests and welfare of children, discussed in greater detail below.

## Youth homelessness

As outlined above, Children Order Article 21 requires Trusts to provide accommodation for children in need who require it in certain circumstances. Over the years concerns have been raised regarding compliance with this obligation, in particular in relation to older children and children who are leaving care. In 2011 an RQIA report regarding young people placed in leaving care projects and health and social care Trusts' 16 plus transition teams noted that:

All of the trusts are operating with a level of unmet need regarding the commissioning of accommodation for these young people. There also appeared to be a lack of strategic planning around how meeting future needs will be addressed. This will become increasingly important as trusts will be expected to undertake needs assessments and complete an Understanding the Needs of Children in Northern Ireland (UNOCINI) proforma for all young people (under 18 years) who report to trusts or the [Northern Ireland Housing Executive] NIHE as homeless. If these young people are assessed as children in need they will require to be accommodated by the trust.<sup>250</sup>

In this regard the RQIA recommended that Trusts should "ensure that measures are introduced to identify and meet all of the identified needs of this age group. This is particularly important in identifying new accommodation; ensuring that the legislation can be implemented fully and that homeless young people are assessed and accommodated."<sup>251</sup>

In 2013 a regional seminar on youth homelessness co-hosted by the HSCB, the Northern Ireland Housing Executive (NIHE) and Supporting People (SP) emphasised:

the importance of averting crisis, providing better support to young people and their families from an earlier stage and thereby focusing efforts in the first instance on preventing family breakdown which is a major predisposing factor leading to homelessness among young people.<sup>252</sup>

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<sup>250</sup> RQIA, *Young People Placed in Leaving Care Projects and Health and Social Care Trusts' 16 Plus Transition Teams: Overview Inspection Report*, August 2011, p. 17.

<sup>251</sup> *Ibid*, p. 18.

<sup>252</sup> HSCB/NIHE/SP, *A Shared Commitment to Improve Pathways and Interventions for Homeless Young People*, 2013. Available at: <http://www.cypsp.org/wp->



In the context of proposed Draft Standards for Supported Lodgings for Young Adults the Commission reminded the DHSSPS in 2015 that:

a young person in Supported Lodgings continues to fall within the ambit of the Children (NI) Order 1995, with full access to the range of services and entitlements afforded to an individual defined as 'child in need' for this purpose. Health and Social Care Trusts must continue to fully discharge their Article 18 and 21 requirements to children in need; and in doing so ensure that any child eligible for support under the Children (Leaving Care) Act suffers no detriment in relation to receipt of such provisions as a result of them being provided with Supported Lodgings.<sup>253</sup>

In 2012 the High Court granted a Judicial Review brought by the Children's Law Centre in relation to a 17 year old child who had presented to the Simon Community as homeless.<sup>254</sup> The Northern Health and Social Care Trust's Gateway Team had subsequently completed a UNOCINI assessment and concluded that the applicant was not a child in need entitled to accommodation under Children Order, Article 21. The Court considered relevant case law and the respondent Trust consented to a declaration:

That the Northern Health and Social Care Trust made an error in failing to classify the applicant as a 'child in need' to whom a duty of accommodation under Article 21, Children (NI) Order 1995 was owed and that at all times since 21 March 2011 the applicant has been 'a child in need' who was owed a duty of accommodation by the Northern Health and Social Care Trust under Article 21, Children (NI) Order 1995 and has since become an 'eligible' child within the meaning of Article 34A, Children (NI) Order 1995.<sup>255</sup>

Following this judgment work was undertaken to revise the existing "Regional Good Practice Guidance on meeting the accommodation and support needs of 16-21 year olds".<sup>256</sup> The Children's Law Centre has delivered awareness raising seminars and training to provide guidance on the implications of the JR66 judgment and to ensure ongoing compliance

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content/uploads/2014/08/A\_Shared\_Commitment\_to\_Improve\_Pathways\_and\_Interventions\_for\_Homeless\_Young\_People.pdf

<sup>253</sup> NIHRC, *The Department of Health, Social Services and Public Safety consultation on the Draft Standards for Supported Lodgings for Young Adults (aged 16-21) in Northern Ireland*, 2015, para. 42.

<sup>254</sup> JR 66, Re Judicial Review [2012] NIQB 5.

<sup>255</sup> *Ibid*, para. 7.

<sup>256</sup> *Ibid*, para. 8.

with the revised Good Practice Guidance.<sup>257</sup> In 2014 the Children’s Law Centre noted that it was receiving an “increased number of advice calls to CHALKY from those advocating on behalf of homeless young people.”<sup>258</sup> Statistics indicate that at 31 March 2014 there were a total of 66 homeless children, 16-17 years of age, in Northern Ireland.<sup>259</sup>

A CYPSP Looked After Children/Youth Homelessness 16+ Sub Group has been established and is charged “with drawing up a plan for integrated commissioning of supports and services for this group of children and young people, which will improve their outcomes.”<sup>260</sup> The Draft Action Plan includes the Action to “Develop a range of appropriate accommodation for Looked After and care experienced young people aged 16+, including those who are experiencing youth homelessness.”<sup>261</sup>

### **Support for families of children with disabilities**

The Children Order provides the legislative framework for the provision of social care services to children with disabilities and other children in need.<sup>262</sup> It requires Trusts to open and maintain a register of children with disabilities in their area and to provide services to them.<sup>263</sup> In Northern Ireland these registers have not been established. It is not clear what level of family and professional support exists for the creation of such registers.

In England a similar requirement to establish registers of children with disabilities was included in the Children Act, 1989.<sup>264</sup> This requirement has been implemented and disability registers have been established in England. For example Coventry City Council explains that the “Children’s Disability Register is a confidential list of names and basic information about children with disabilities, special or additional needs... Children’s names are added to the register at their parent’s request, and in return

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<sup>257</sup> Children’s Law Centre, Annual Report 2012/2013; Children’s Law Centre, Annual Report 2013/2014.

<sup>258</sup> Children’s Law Centre, Annual Report 2012/2013; Children’s Law Centre, Annual Report 2013/2014.

<sup>259</sup> HSCB, *Delegated Statutory Functions Statistical Report*, 2014, p. 12.

<sup>260</sup> CYPSP, *Draft Action Plan for Looked After Children/Youth Homelessness 16+, 2011-2014*, p. 2.

<sup>261</sup> CYPSP, *Draft Action Plan for Looked After Children/Youth Homelessness 16+, 2011-2014*, p. 18.

<sup>262</sup> Articles 17 and 18, Children Order.

<sup>263</sup> Children Order, Schedule 2(3): Every authority shall open and maintain a register of disabled children within the authority’s area.

<sup>264</sup> Children Act, 1989, Schedule 2, (2)(1)Every local authority shall open and maintain a register of disabled children within their area. (2) The register may be kept by means of a computer.

parents can receive information about services available in their area."<sup>265</sup> The information held on the register is confidential and conforms to the Data Protection Act.<sup>266</sup> Councils explain the utility of the register on their websites, for example that it: "ensures that we appropriately reflect the needs of children with disabilities in our planning"<sup>267</sup>; "helps us to plan better and more useful service"<sup>268</sup>; "helps us to know about the needs of disabled children, young people and their families in the area so services can be planned to help meet those needs."<sup>269</sup>

In Northern Ireland there is no overarching government strategy or policy for disabled children. Within DHSSPS more than one policy branch has responsibility for disabled children rather than such children being the responsibility of the Child Care policy branch. Disabled children are children first; the lack of a unified approach at Departmental level for such children appears not to reflect the primacy of them as 'children first'. In Northern Ireland:

- 8% of all people living in private households have some degree of disability; 21% of adults and 6% of children have a disability;
- 37% of households include at least one person with a disability; 20% of these contain more than one person with a disability;
- 8% of boys aged 15 and under have a disability, compared with 4% of girls of the same age.<sup>270</sup>

There is a concern that some children with disabilities in NI live in families under stress where difficulties accessing respite services combined with other circumstances (such as increased likelihood of parental poverty, social isolation and ill health) can place families under stress.<sup>271</sup> Difficulties are compounded when families with children with disabilities live in poverty.<sup>272</sup> Research suggests that 57% of disabled children in Northern Ireland are living in poverty compared to 37% of those without

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<sup>265</sup> See:

[http://www.coventry.gov.uk/info/156/special\\_educational\\_needs\\_and\\_disabilities/1816/childrens\\_disability\\_register](http://www.coventry.gov.uk/info/156/special_educational_needs_and_disabilities/1816/childrens_disability_register)

<sup>266</sup> *Ibid.* See also, [http://www.richmond.gov.uk/disabled\\_childrens\\_register](http://www.richmond.gov.uk/disabled_childrens_register).

<sup>267</sup> [http://www.richmond.gov.uk/disabled\\_childrens\\_register](http://www.richmond.gov.uk/disabled_childrens_register).

<sup>268</sup> <http://www.trafford.gov.uk/residents/children-and-families/childrens-disability-record/childrens-disability-record.aspx>

<sup>269</sup> See:

[http://www.royalgreenwich.gov.uk/info/200071/parental\\_support/679/disabled\\_children\\_and\\_young\\_peoples\\_register](http://www.royalgreenwich.gov.uk/info/200071/parental_support/679/disabled_children_and_young_peoples_register)

<sup>270</sup> DHSSPS, *Physical and Sensory Disability Strategy and Action Plan 2012-2015*, 2012, p. 18-19.

<sup>271</sup> NICCY (MacMahon, L. and Keenan, P), *NICCY Rights Review 2008*, 2008.

<sup>272</sup> Child Poverty Alliance, *Beneath the Surface, Child Poverty in Northern Ireland*, 2014, pp. 35-47, Chapter Three, Child Poverty and Disability.

disabilities.<sup>273</sup> This can be caused by higher living costs associated with bringing up a child with a disability, and, in some cases, parents giving up employment to care for their disabled child/children.<sup>274</sup> Research indicates that flexible support services are needed in light of the experiences of some disabled children living at home and the experiences of their parents and carers. The social isolation of disabled children was a particular concern given that they have to endure long journeys to and from their special schools and have a lack of opportunity to make networks in the community. In recognition of social isolation and related issues guidance recommends the development of short break services.<sup>275</sup> In addition, there have been a significant number of changes to the social security system to make savings to the overall budget. While the changes have not particularly focused on children with disabilities the overall changes have reduced the household incomes of working age families in real terms, including for payments for children in general. Further changes which will have an adverse impact on working age families are also contained in the Welfare Reform Bill which has still to be passed by the Northern Ireland Assembly.<sup>276</sup>

Research in NI highlights the benefits to carers of respite services.<sup>277</sup> Further research illustrates parents' and carers' difficulties gaining access to support services.<sup>278</sup> Help provided tended to come from voluntary services rather than the statutory sector because some were unable and/or did not want to access assessments and/or respite via social services. Difficulties gaining access to services extend beyond respite and include day-care services and services for particular impairments.<sup>279</sup> The CYPSP notes that "it is universally agreed that there is a great need for better coordination of supports and services for children and young people with disabilities and their families, but that this has yet to be achieved in Northern Ireland."<sup>280</sup> The CYPSP oversees a Sub Group on Children and Young People with Disabilities, which is charged with

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<sup>273</sup> UNCRPD Independent Mechanism for Northern Ireland: ECNI/NIHRC, Jurisdictional 'Parallel' Report on Implementation in Northern Ireland, Working Paper, 2014, p. 9.

<sup>274</sup> Save the Children/Family Fund (Monteith, M., Casement, E., Lloyd, K. and McKee, P.), *Taking a Closer Look: Child Poverty and Disability*, 2009. See also, <http://www.belfasttelegraph.co.uk/community-telegraph/east-belfast/heartbreaking-wait-for-a-homeless-family-of-disabled-boy-taken-into-emergency-care-29253442.html>.

<sup>275</sup> DHSSPS, *Developing Services for Children with Complex Physical Healthcare Needs*, 2009.

<sup>276</sup> For a full list of changes to social security since 2010 see; Child Poverty Alliance, *Beneath the Surface, Child Poverty in Northern Ireland*, 2014, pp. 71-76.

<sup>277</sup> McConkey, R., Nixon, T., Donaghy, E. and Mulhearn, D, 'The characteristics of children with a disability looked after away from home and their future service needs', *British Journal of Social Work*, 34, 2008, p. 555-569.

<sup>278</sup> Save the Children/Family Fund (Monteith, M., Casement, E., Lloyd, K. and McKee, P.), *Taking a Closer Look: Child Poverty and Disability*, 2009.

<sup>279</sup> National Children's Bureau (Geraghty, T. and Sinclair, R), *The Daycare Needs of Disabled Young Children in Northern Ireland*, 2007.

<sup>280</sup> <http://www.cypsp.org/children-disabilites.htm>

drawing up a plan for integrated commissioning of supports and services for children and young people with disabilities. The Sub Group has developed a draft action plan which includes the priorities that need to be taken forward to improve the six high level outcomes for children and young people with disabilities.<sup>281</sup>

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<sup>281</sup> CYPSP, Children and Young People with Disabilities Action Plan, 2011-2014., p.2.

# 3 Preserving the family unit while protecting the best interests and welfare of the child

## Human rights laws and standards

One of the four founding principles of the UNCRC is that every child has the inherent right to life and development.<sup>282</sup> State parties are required to “ensure to the maximum extent possible the survival and development of the child.”<sup>283</sup> The ICCPR provides for “the right to such measures of protection as are required by [every child’s] status as a minor, on the part of his family, society and the State.”<sup>284</sup> Protecting children requires States to engage in a balancing exercise between the, at times competing, rights of the child and the rights of his or her parents. In general “a child shall not be separated from his or her parents against their will.”<sup>285</sup> The best interests of the child must, however, be a primary consideration.<sup>286</sup> The State must ensure that children are protected from violence, abuse, neglect and all forms of exploitation, whether on the part of care providers, peers or third parties, in whatever care setting they may find themselves.<sup>287</sup> Intervention and support are required “when children become the victims of hardship and distress imposed on, or generated in, families.”<sup>288</sup>

The World Conference on Human Rights stated “that the child, for the full and harmonious development of his or her personality, should grow up in

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<sup>282</sup> UNCRC Committee, *General Comment No 5 (2003), General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para 6)*, para 12; UNCRC Committee, *General Comment No 7 (2005), Implementing child rights in early childhood*, Para 10.

<sup>283</sup> UNCRC Committee, *General Comment No 7 (2005), Implementing child rights in early childhood*, Para 10. UNCRC Committee, *General Comment No 13 (2011), The right of the child to freedom from all forms of violence*, para 62: “the obligation of the State party includes comprehensive protection from violence and exploitation which would jeopardize a child’s right to life, survival and development. The Committee expects States to interpret ‘development’ in its broadest sense as a holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological and social development. ...”

<sup>284</sup> ICCPR, Art. 24

<sup>285</sup> UNCRC, Art. 9.

<sup>286</sup> UNCRC, Art. 3.

<sup>287</sup> UNCRC, Arts 3, 6 and 9. See also, UNCRC, Arts. 19, 31, 33, 35, 36, 37 and 39; *Saviny v Ukraine*, ECtHR, Application no. 39948/06, 18 December 2008, para 33; *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 13; UNCRC Committee, *General Comment No 7 (2005), Implementing child rights in early childhood*, Para 18.

<sup>288</sup> UNCRC Committee, *General Comment No 13 (2011), The right of the child to freedom from all forms of violence*, para 3(h).

a family environment which accordingly merits broader protection.<sup>289</sup> The UNCRC Committee urged States parties to take all necessary steps to ensure that parents are able to take primary responsibility for their children; to support parents in fulfilling their responsibilities, including by reducing harmful deprivations, disruptions and distortions in children's care; and to take action where children's well-being may be at risk.<sup>290</sup>

## Positive actions required to protect children

International human rights standards require positive actions to be taken to protect children. In order to fulfil their positive obligations the UNCRC requires State parties to put in place measures such as social programmes to provide necessary support for the child and his or her carers.<sup>291</sup> Other forms of prevention also required include: identification, reporting, referral, investigation, treatment, and follow-up of instances of child maltreatment, and, as appropriate, judicial involvement.<sup>292</sup> With regard to identification and reporting, the UNCRC Committee in 2008 called on the UK to "ensure that professionals working with children (including teachers, social workers, medical professionals, members of the police and the judiciary) receive training on their obligation to report and take appropriate action in suspected cases of domestic violence affecting children."<sup>293</sup>

The UNCRC Committee has noted that "article 6 encompasses all aspects of development, and that a young child's health and psychosocial well-being are in many respects interdependent. Both may be put at risk by adverse living conditions, neglect, insensitive or abusive treatment and restricted opportunities for realising human potential."<sup>294</sup> The UNCRC Committee recommended that the UK "use all available resources to

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<sup>289</sup> *Vienna Declaration and Programme of Action*, para 21. See also, *Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally*, 3 December 1986, A/Res/41/85, Articles 3-4.

<sup>290</sup> UNCRC Committee, *General Comment No 7 (2005), Implementing child rights in early childhood*, para 18, see also para 36.

<sup>291</sup> UNCRC, Art. 19.2; UNCRC Committee, *General Comment No 13 (2011), The right of the child to freedom from all forms of violence*, para 32.

<sup>292</sup> UNCRC, Art. 19.2. See also, UNCRC Committee, *General Comment No 13 (2011), The right of the child to freedom from all forms of violence*, para 32: "Authorities at all levels of the State responsible for the protection of children from all forms of violence may directly and indirectly cause harm by lacking effective means of implementation of obligations under the Convention. Such omissions include the failure to adopt or revise legislation and other provisions, inadequate implementation of laws and other regulations and insufficient provision of material, technical and human resources and capacities to identify, prevent and react to violence against children."

<sup>293</sup> UNCRC Committee, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008*, para 51.

<sup>294</sup> UNCRC Committee, *General Comment No 7 (2005), Implementing child rights in early childhood*, Para 10.

protect children's rights to life, including by reviewing the effectiveness of preventive measures" and "introduce automatic, independent and public reviews of any unexpected death or serious injury involving children – whether in care or in custody."<sup>295</sup>

The UNCRC requires States Parties to take "legislative, administrative, social and educational measures"<sup>296</sup> which are necessary to protect children "from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."<sup>297</sup>

The Committee has noted that "legal frameworks in a majority of States still fail to prohibit all forms of violence against children, and where laws are in place, their enforcement is often inadequate."<sup>298</sup> The impact of measures taken to prevent and respond to violence against children can be limited by issues including: lack of knowledge, data and understanding of violence against children and its root causes; by focusing on symptoms and consequences rather than causes; and by strategies which are fragmented rather than integrated.<sup>299</sup> The Committee outlined that a holistic child protection system requires comprehensive and integrated measures at all stages.<sup>300</sup>

ECHR, Article 2 protects the right to life,<sup>301</sup> while Article 3<sup>302</sup> requires "States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private

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<sup>295</sup> UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 29.

<sup>296</sup> UNCRC Committee, *General Comment No 13 (2011), The right of the child to freedom from all forms of violence*, paras 38-44 outline various measures that are required. The Committee specified that "the right to protection from all forms of violence outlined in article 19 is a civil right and freedom. Implementation of article 19 is therefore an immediate and unqualified obligation of States parties." (at para 65).

<sup>297</sup> UNCRC, Art. 19.1. See also, UNCRC Arts. 3, 6, 34, 36 and 39; UNCRC Committee, *General Comment No 7 (2005), Implementing child rights in early childhood*, para 36; UNCRC Committee, *General Comment No 13 (2011), The right of the child to freedom from all forms of violence*, paras 4, and 37: "'Shall take' is a term which leaves no leeway for the discretion of States parties."

<sup>298</sup> UNCRC Committee, *General Comment No 13 (2011), The right of the child to freedom from all forms of violence*, para 12.

<sup>299</sup> UNCRC Committee, *General Comment No 13 (2011), The right of the child to freedom from all forms of violence*, para 12.

<sup>300</sup> *Ibid*, paras 45-56.

<sup>301</sup> ECHR, Art. 2: "Everyone's right to life shall be protected by law. ..." See also, ICCPR, Art. 6.

<sup>302</sup> ECHR, Art. 3: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." See also, ICCPR, Art. 7.



individuals.<sup>303</sup> The Court has specified that the required measures “should, at least, provide effective protection in particular of children and other vulnerable persons and should include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge.”<sup>304</sup>

ECHR, Article 8 protects the physical and psychological integrity of a child. Positive obligations on the State “in some cases under Articles 2 or 3 and in other instances under Article 8 taken alone or in combination with Article 3 of the Convention – may include a duty to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals.”<sup>305</sup> Furthermore, the Court has held that:

in respect of children, who are particularly vulnerable, the measures applied by the State to protect them against acts of violence falling within the scope of Articles 3 and 8 should be effective and include reasonable steps to prevent ill-treatment of which the authorities had, or ought to have had, knowledge and effective deterrence against such serious breaches of personal integrity.<sup>306</sup>

## Interferences with the right to family life

In order to fulfil these obligations and ensure the effective protection of the child, various measures, up to and including the removal of the child in certain circumstances, must be implemented by the State. The UN Human Rights Committee has noted that “in cases where the parents and the family seriously fail in their duties, ill-treat or neglect the child, the State should intervene to restrict parental authority and the child may be separated from his family when the circumstances so require.”<sup>307</sup> Measures which hinder “the mutual enjoyment by parent and child of each other’s company” amount to an interference with the right to family life.<sup>308</sup> Interferences with the right to family life constitute a violation of

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<sup>303</sup> *Z and Others v the United Kingdom*, ECtHR, Application No. 29392/95, 10 May 2001, para 73.

<sup>304</sup> *O’Keefe v. Ireland*, ECtHR, Application No. 35810/09, 28 January 2014 (GC), para 144. See also, *Z and Others v the United Kingdom*, ECtHR, Application No. 29392/95, 10 May 2001, para 73.

<sup>305</sup> *Söderman v. Sweden*, ECtHR, Application no. 5786/08, 12 November 2013, para 80. See also, *M. And C. v. Romania*, ECtHR, Application no. 29032/04, 27 September 2011, para 108.

<sup>306</sup> *Söderman v. Sweden*, ECtHR, Application no. 5786/08, 12 November 2013, para 81. See also, *M. And C. v. Romania*, ECtHR, Application no. 29032/04, 27 September 2011, para 108.

<sup>307</sup> Human Rights Committee, *General Comment no. 17: Article 24 (Rights of the Child)*, (1989), para 6.

<sup>308</sup> *A.K. and L. v. Croatia*, ECtHR, Application no. 37956/11, 8 Jan 2013, para 58. See also, *Saviny v Ukraine*, ECtHR, Application no. 39948/06, 18 December 2008, para 47.

the ECHR unless they are in accordance with the law, pursue an aim or aims that are legitimate under Article 8<sup>309</sup> and are necessary in a democratic society.<sup>310</sup> The ECtHR has provided guidance regarding the tests to be satisfied with respect to interferences with the right to family life.

### Assessment of impact of proposed care measure and possible alternatives

The ECtHR has made clear that a careful assessment of the impact of the proposed care measure on the parents and the children, as well as of the possible alternatives to taking the children into public care, must be carried out prior to the implementation of such a measure.<sup>311</sup> The Court has reiterated that "... it is an interference of a very serious order to split up a family" and that "such a step must be supported by sufficiently sound and weighty considerations in the interests of the child ..."<sup>312</sup> Similarly the UN Guidelines for the Alternative Care of Children state that "removal of a child from the care of the family should be seen as a measure of last resort."<sup>313</sup>

In compliance with the ECHR "the fact that a child could be placed in a more beneficial environment for his or her upbringing will not on its own justify a compulsory measure of removal from the care of the biological parents."<sup>314</sup> Other circumstances pointing to the "necessity" for such an interference with the right to family life must exist.<sup>315</sup> Relevant factors,

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<sup>309</sup> ECHR, Art. 8.2: There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

<sup>310</sup> *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), para 151. See also, *Ageyevy v. Russia*, ECtHR, Application no. 7075/10, 18 April, 2013, para 119-120; *Saviny v Ukraine*, ECtHR, Application no. 39948/06, 18 December 2008, para 47.

<sup>311</sup> *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), para 166. See also, *Saviny v Ukraine*, ECtHR, Application no. 39948/06, 18 December 2008, para 49, 52; *P., C. And S. v The United Kingdom*, ECtHR, Application no. 56547/00, 16 July 2002, para 116; *Haase v Germany*, ECtHR, Application no. 11057/02, 8 April 2004, para 101.

<sup>312</sup> *Scozzari and Giunta v Italy*, ECtHR, Applications nos. 39221/98 and 41963/98, 13 July 2000, para 148. See also, *Saviny v Ukraine*, ECtHR, Application no. 39948/06, 18 December 2008, para 49. The Court has noted in particular that "the taking of a newborn baby into public care at the moment of its birth is an extremely harsh measure" and that "there must be extraordinarily compelling reasons." *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), para 168.

<sup>313</sup> *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 14. See also, Council of Europe, Committee of Ministers, *Recommendation Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions*, 2005.

<sup>314</sup> *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), Para 173; *Haase v Germany*, ECtHR, Application no. 11057/02, 8 April 2004, para 95.

<sup>315</sup> *Haase v Germany*, ECtHR, Application no. 11057/02, 8 April 2004, para 95.

which have been considered by the ECtHR include: the mother of the children was seriously mentally ill; there were social problems in the family and the prospects for the healthy development of the children in foster care appeared far more positive than the expected development in the care of their biological parents; where by virtue of remaining in the care of his or her parents the child would suffer abuse or neglect; educational deficiencies and lack of emotional support; or whether the child's placement in public care was necessitated by the state of his or her physical or mental health.<sup>316</sup> Removal of a child cannot be justified by reference to the parents' precarious situation, which could be addressed by less radical means than splitting the family, such as targeted financial assistance and social counselling.<sup>317</sup>

### Care measures should be temporary and for shortest possible duration

Whenever possible, taking a child into care should be temporary and for the shortest possible duration, to be discontinued as soon as circumstances permit.<sup>318</sup> ECHR, Article 8 contains positive obligations "inherent in an effective 'respect' for family life." Consequently, "where the existence of a family tie has been established, the State must in principle act in a manner calculated to enable that tie to be developed and take measures that will enable parent and child to be reunited."<sup>319</sup> Thus the State is obliged to make serious and sustained efforts to facilitate the reuniting of children with their birth parents and until then enable regular contact between them, including, where possible, by keeping siblings together.<sup>320</sup>

A fair balance must be struck between the interests of the child remaining in care and those of the family in being reunited, with particular importance attaching to "the best interests of the child which, depending on their nature and seriousness, may override those of the parent."<sup>321</sup> Parents cannot be entitled under ECHR, Article 8 to have such measures taken as would harm the child's health and development.<sup>322</sup> Removal

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<sup>316</sup> *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), Para 173 and *Saviny v Ukraine*, ECtHR, Application no. 39948/06, 18 December 2008, para 50.

<sup>317</sup> *Saviny v Ukraine*, ECtHR, Application no. 39948/06, 18 December 2008, para 50.

<sup>318</sup> *Ibid*, para 52. See also, *P., C. And S. v The United Kingdom*, ECtHR, Application no. 56547/00, 16 July 2002, para 117; *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 14.

<sup>319</sup> *Haase v Germany*, ECtHR, Application no. 11057/02, 8 April 2004, para 84.

<sup>320</sup> *Saviny v Ukraine*, ECtHR, Application no. 39948/06, 18 December 2008, para 52. See also, *P., C. And S. v The United Kingdom*, ECtHR, Application no. 56547/00, 16 July 2002, para 117. *Haase v Germany*, ECtHR, Application no. 11057/02, 8 April 2004, para 93.

<sup>321</sup> *Haase v Germany*, ECtHR, Application no. 11057/02, 8 April 2004, para 93.

<sup>322</sup> *Scozzari and Giunta v Italy*, ECtHR, Applications nos. 39221/98 and 41963/98, 13 July 2000, para 169; *Haase v Germany*, ECtHR, Application no. 11057/02, 8 April 2004, para 93.

decisions should be reviewed regularly.<sup>323</sup> The child should be returned to parental care once the original causes of removal have been resolved or have disappeared, provided it is in the best interests of the child.<sup>324</sup>

### Exceptional circumstances required to divest a parent of his or her parental rights

The ECtHR has stated that measures which “totally deprived the applicants of their family life with the children in question, were irreversible under the domestic law... and were inconsistent with the aim of reuniting them”<sup>325</sup> should only be applied in exceptional circumstances and can only be justified if they are motivated by an overriding requirement pertaining to the children’s best interests.<sup>326</sup> The Court noted that “divesting a parent of his or her parental rights and putting a child up for adoption are both very restrictive measures, the latter of which results in the complete disruption of the relationship between a parent and a child.”<sup>327</sup>

The ECtHR has outlined a number of factors that should be considered by the domestic courts in a decision regarding the removal of children from their parents and the imposition of restrictions on contact between family members. Such factors included: “assessment of already established family bonds between the applicants and their children and ... damage to the emotional security and psychological condition of each child that might result from the sudden breaking of such bonds, regard being had, in particular, to the children’s age at the time.”<sup>328</sup>

The Court has noted that assessment of child protection issues must examine the circumstances at the time the decision is taken and “domestic decisions can only be examined in the light of the situation such as it presented itself to the domestic authorities at the time these decisions were taken.”<sup>329</sup>

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<sup>323</sup> *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 14.

<sup>324</sup> *Ibid*, para 14.

<sup>325</sup> *Ageyevy v. Russia*, ECtHR, Application no. 7075/10, 18 April, 2013, para 144.

<sup>326</sup> *Ibid*, para 144. See also, *P., C. And S. v The United Kingdom*, ECtHR, Application no. 56547/00, 16 July 2002, para 118. However, this approach “may not apply in all contexts, depending on the nature of the parent-child relationship”.

<sup>327</sup> *A.K. and L. v. Croatia*, ECtHR, Application no. 37956/11, 8 Jan 2013, para 60.

<sup>328</sup> *Ageyevy v. Russia*, ECtHR, Application no. 7075/10, 18 April, 2013, para 151.

<sup>329</sup> *B.B. and F.B. v. Germany*, ECtHR, Applications Nos 18734/09 and 9424/11, 14 March 2013, para 48. See also, *Ageyevy v. Russia*, ECtHR, Application no. 7075/10, 18 April, 2013, para 144; UNCRC Committee, *General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, Para 74.

## Necessary in a democratic society

Generally the focus of the ECtHR's assessment will lie in whether the interference was "necessary in a democratic society." In determining whether the particular measure was "necessary in a democratic society" the Court will consider "whether, in the light of the case as a whole, the reasons adduced to justify them were relevant and sufficient for the purposes of Article 8 § 2 of the Convention."<sup>330</sup> Consideration of the best interests of the child will be "of crucial importance in every case of this kind"<sup>331</sup> and should be central to a determination on this issue.<sup>332</sup> The UNCRC Committee has explained that an assessment of best interests must consider the child's safety, including, the right of the child to protection against violence, injury or abuse,<sup>333</sup> sexual harassment, peer pressure, bullying and degrading treatment,<sup>334</sup> as well as sexual, economic and other exploitation.<sup>335</sup>

The reasons for the measures which interfere with the right to family life must be both relevant *and* sufficient for the purposes of Article 8 § 2. For example, in *K and T v Finland* the ECtHR found that reasons relied on by the national authorities "were relevant but, in the Court's view, not sufficient to justify the serious intervention in the family life of the applicants."<sup>336</sup> Assessments must not consider "impugned decisions in isolation, but must look at them in the light of the case as a whole."<sup>337</sup> While there may be a "necessity" to take some precautionary measures in order to protect a child, the impact of the relevant measures on the right

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<sup>330</sup> *Ageyevy v. Russia*, ECtHR, Application no. 7075/10, 18 April, 2013, para 126. See also, *Saviny v Ukraine*, ECtHR, Application no. 39948/06, 18 December 2008, para 48; *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), para 154; *Scozzari and Giunta v Italy*, ECtHR, Applications nos. 39221/98 and 41963/98, 13 July 2000, para 148.

<sup>331</sup> *Ageyevy v. Russia*, ECtHR, Application no. 7075/10, 18 April, 2013, paras 126, 144 and 155. See also, *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), para 154; *Haase v Germany*, ECtHR, Application no. 11057/02, 8 April 2004, para 89; Council of Europe, Committee of Ministers, *Recommendation Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions*, 2005.

<sup>332</sup> *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 6; *Scozzari and Giunta v Italy*, ECtHR, Applications nos. 39221/98 and 41963/98, 13 July 2000, para 201: "consideration of what is in the best interest of the child is in any event of crucial importance."

<sup>333</sup> UNCRC, Article 19.

<sup>334</sup> UNCRC Committee, *General Comment No 13 (2011), The right of the child to freedom from all forms of violence*.

<sup>335</sup> UNCRC Committee, *General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, Para 73.

<sup>336</sup> *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), Para 168.

<sup>337</sup> *Scozzari and Giunta v Italy*, ECtHR, Applications nos. 39221/98 and 41963/98, 13 July 2000, para 148.

to family life must be proportionate in order for the measure to satisfy the requirement that it is “necessary in a democratic society.”<sup>338</sup>

### Margin of appreciation

The ECtHR has recognised that “in reaching decisions in so sensitive an area, local authorities are faced with a task that is extremely difficult.”<sup>339</sup> Consequently local authorities are allowed a measure of discretion in reaching such decisions, the ‘margin of appreciation’.<sup>340</sup> This discretion is, however, balanced with “the fact that the decisions may well prove to be irreversible as in a case where a child has been taken away from his parents and freed for adoption” calling for greater protection against arbitrary interferences with the rights of those affected.<sup>341</sup> The Court has made clear that the more serious the interference with the right to family life, the more stringent the test that will be applied.<sup>342</sup> The margin of appreciation to be accorded to the national authorities:

will vary in the light of the nature of the issues and the seriousness of the interests at stake, such as, on the one hand, the importance of protecting a child in a situation which is assessed as seriously threatening his or her health or development and, on the other hand, the aim to reunite the family as soon as circumstances permit.<sup>343</sup>

### Procedural requirements including the right to be heard and the right to participation

Any decision to remove a child against the will of his or her parents must be made by competent authorities, in accordance with applicable law and procedures and subject to judicial review, the parents being assured the right of appeal and access to appropriate legal representation.<sup>344</sup> In assessing whether a measure was “necessary in a democratic society” procedural issues will also be of significance.<sup>345</sup> Thus, when making determinations regarding measures which may amount to an interference

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<sup>338</sup> *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), para 168. See also, *Haase v Germany*, ECtHR, Application no. 11057/02, 8 April 2004, para 100.

<sup>339</sup> *A.K. and L. v. Croatia*, ECtHR, Application no. 37956/11, 8 Jan 2013, para 62.

<sup>340</sup> *Ibid*, para 62; *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), para 154; *Scozzari and Giunta v Italy*, ECtHR, Applications nos. 39221/98 and 41963/98, 13 July 2000, para 201.

<sup>341</sup> *A.K. and L. v. Croatia*, ECtHR, Application no. 37956/11, 8 Jan 2013, para 62.

<sup>342</sup> *Ageyevy v. Russia*, ECtHR, Application no. 7075/10, 18 April, 2013, para 127.

<sup>343</sup> *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), para 155. See also, *Ageyevy v. Russia*, ECtHR, Application no. 7075/10, 18 April, 2013, para 127.

<sup>344</sup> *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 47. See also, *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), para 173.

<sup>345</sup> *Saviny v Ukraine*, ECtHR, Application no. 39948/06, 18 December 2008, para 48.

with the right to family life, the decision-making process must be fair and such as to afford due respect to the interests safeguarded by Article 8.<sup>346</sup> In the context of proceedings regarding the separation of a child from his or her family against their will, all interested parties must be given an opportunity to participate in the proceedings and make their views known.<sup>347</sup> Although ECHR, Article 8 contains no explicit procedural requirements the ECtHR has developed jurisprudence establishing a number of requirements in this area.<sup>348</sup> A violation of procedural requirements identified as essential by the ECtHR will mean that “the interference resulting from the decision will not be capable of being regarded as ‘necessary’ within the meaning of Article 8”<sup>349</sup> and will thus be a violation of the right to family life.

Interested parties, in particular parents, should be allowed the opportunity to participate in the procedure in question, to a degree sufficient to provide them with the requisite protection of their interests.<sup>350</sup> The decision-making process must be such as to ensure that the views and interests of the birth parents are made known to, and duly considered by, the authority reaching decisions on children in its care and that they are able to exercise in due time any remedies available to them.<sup>351</sup> The serious nature of the decisions to be taken will be a relevant factor in determining whether the parents have been adequately involved in the decision-making process.<sup>352</sup>

The UN Guidelines for the Alternative Care of Children similarly note that the preparation, enforcement and evaluation of a protective measure for a child should be carried out, to the greatest extent possible, with the participation of his or her parents or legal guardians and potential foster carers and caregivers, with respect to his or her particular needs, convictions and wishes.<sup>353</sup>

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<sup>346</sup> *Ageyevy v. Russia*, ECtHR, Application no. 7075/10, 18 April, 2013, para 128. See also, *Saviny v Ukraine*, ECtHR, Application no. 39948/06, 18 December 2008, para 51; *Haase v Germany*, ECtHR, Application no. 11057/02, 8 April 2004, para 94.

<sup>347</sup> UNCRC, Article 9.2.

<sup>348</sup> *A.K. and L. v. Croatia*, ECtHR, Application no. 37956/11, 8 Jan 2013, para 63. See also, *P., C. And S. v The United Kingdom*, ECtHR, Application no. 56547/00, 16 July 2002, para 119.

<sup>349</sup> *Ageyevy v. Russia*, ECtHR, Application no. 7075/10, 18 April, 2013, para 128. See also, *A.K. and L. v. Croatia*, ECtHR, Application no. 37956/11, 8 Jan 2013, para 63.

<sup>350</sup> *Ageyevy v. Russia*, ECtHR, Application no. 7075/10, 18 April, 2013, para 128. See also, *Saviny v Ukraine*, ECtHR, Application no. 39948/06, 18 December 2008, para 51; *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), Para 173.

<sup>351</sup> *A.K. and L. v. Croatia*, ECtHR, Application no. 37956/11, 8 Jan 2013, para 63. See also, *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 66.

<sup>352</sup> *A.K. and L. v. Croatia*, ECtHR, Application no. 37956/11, 8 Jan 2013, para 63.

<sup>353</sup> *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 65.

The ECtHR has held that it is essential that a parent be placed in a position where he or she may obtain access to information which is relied on by the authorities in taking measures of protective care or in taking decisions relevant to the care and custody of a child.<sup>354</sup> Failure to ensure such access to information will mean that a parent will be unable to participate effectively in the decision-making process.<sup>355</sup>

In assessing the process used, the ECtHR will have regard to “whether, where appropriate, the children themselves were able to express their views.”<sup>356</sup> Similarly the UN Guidelines for the Alternative Care of Children, and the UNCRC Committee, call for “decisions, initiatives and approaches” impacting on the child to “respect fully the child’s right to be consulted and to have his/her views duly taken into account in accordance with his/her evolving capacities, and on the basis of his/her access to all necessary information.”<sup>357</sup>

In procedures regarding the determination of issues relating to family life parents normally have a right to be heard and to be fully informed.<sup>358</sup> However, here, as in all issues regarding the rights of the child, the best interests of the child and the safety and security of the child must be a primary concern. The ECtHR has recognised that “when an emergency care order has to be made, it may not always be possible, because of the urgency of the situation, to associate in the decision-making process those having custody of the child.”<sup>359</sup> Furthermore, if those having custody of the child are considered to be the source of an immediate threat it may not be desirable, even if possible, for them to be involved in the decision-making process as giving them prior warning potentially could “deprive the measure of its effectiveness.”<sup>360</sup> The Court has observed however, that “before public authorities have recourse to emergency measures in connection with such delicate matters as care orders, the imminent danger should be actually established.”<sup>361</sup> Thus, though the Court is “aware of the problems facing the authorities in

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<sup>354</sup> *P., C. And S. v The United Kingdom*, ECtHR, Application no. 56547/00, 16 July 2002, para 120. See also, *Ageyevy v. Russia*, ECtHR, Application no. 7075/10, 18 April, 2013, para 129.

<sup>355</sup> *P., C. And S. v The United Kingdom*, ECtHR, Application no. 56547/00, 16 July 2002, para 120.

<sup>356</sup> *Saviny v Ukraine*, ECtHR, Application no. 39948/06, 18 December 2008, para 51.

<sup>357</sup> *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 6. See also, para 66 and UNCRC Committee, *General Comment No 12 (2009) on the right of the child to be heard*, paras 53 and 97.

<sup>358</sup> *A.K. and L. v. Croatia*, ECtHR, Application no. 37956/11, 8 Jan 2013, para 64.

<sup>359</sup> *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), para 166. See also, *P., C. And S. v The United Kingdom*, ECtHR, Application no. 56547/00, 16 July 2002, para 128; *Haase v Germany*, ECtHR, Application no. 11057/02, 8 April 2004, para 95.

<sup>360</sup> *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), para 166.

<sup>361</sup> *Haase v Germany*, ECtHR, Application no. 11057/02, 8 April 2004, para 99.



situations where emergency steps must be taken”<sup>362</sup> it has suggested that in contrast to obvious cases of danger, if it is still possible to hear the parents of the children and to discuss with them the necessity of the measure, there should be no room for emergency action.<sup>363</sup>

Conclusions of the public authorities regarding the care of a child should be based on “sufficient evidentiary basis (including, as appropriate, statements by witnesses, reports by competent authorities, psychological and other expert assessments and medical notes).”<sup>364</sup> The UN Guidelines for the Alternative Care of Children similarly call for “proper criteria based on sound professional principles to be developed and consistently applied for assessing the child’s and the family’s situation, including the family’s actual and potential capacity to care for the child, in cases where the competent authority or agency has reasonable grounds to believe that the well-being of the child is at risk.”<sup>365</sup> Decisions regarding removal or reintegration of the child are required to be based on this assessment.<sup>366</sup>

ECHR, Article 6 embodies the right of access to a court for the determination of civil rights and obligations.<sup>367</sup> The ECtHR has ruled that there is no automatic right under the Convention for legal aid or legal representation to be available to an individual who is involved in proceedings which determine his or her civil rights.<sup>368</sup> However, failure to provide an individual with the assistance of a lawyer may breach Article 6 “where such assistance is indispensable for effective access to court, either because legal representation is rendered compulsory... or by reason of the complexity of the procedure or the type of case.”<sup>369</sup> Furthermore, even when an individual manages to conduct his or her case without the assistance of a lawyer a question may arise as to whether the procedure was fair and whether the party to the proceedings was able to participate effectively.<sup>370</sup>

The UN Guidelines for the Alternative Care of Children state that in a situation where the child’s parents are absent or are incapable of making day-to-day decisions in the best interests of the child “a designated individual or competent entity should be vested with the legal right and

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<sup>362</sup> *Ibid*, para 101.

<sup>363</sup> *Ibid*, para 99.

<sup>364</sup> *Saviny v Ukraine*, ECtHR, Application no. 39948/06, 18 December 2008, para 51.

<sup>365</sup> *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 39.

<sup>366</sup> *Ibid*, para 40.

<sup>367</sup> ECHR, Article 6.1: “In the determination of his civil rights and obligations..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

<sup>368</sup> *P., C. And S. v The United Kingdom*, ECtHR, Application no. 56547/00, 16 July 2002, para 88.

<sup>369</sup> *Ibid*, para 89. See also paras 136-137.

<sup>370</sup> *Ibid*, para 91.

responsibility to make such decisions in the place of parents, in full consultation with the child.<sup>371</sup> States should ensure that a mechanism is in place for designating such an individual or entity and for supervising the exercise of this responsibility.<sup>372</sup>

## Domestic law, policy and practice: protection of children

In Northern Ireland children at risk of harm are protected through the child protection process.<sup>373</sup> In cases where the child's welfare cannot be protected at home they are looked after by the State, either with the agreement of their parents or through care proceedings instigated by Trusts. This Chapter examines the 'Protection of Children' and 'Intervention to ensure child safety' separately, there is however, a degree of cross-over between law, policy and practice in relation to the two areas. Further, the children in need provisions discussed in Chapter 2 are also of relevance in relation to children in need of protection; as previously noted, "a child who is at risk of significant harm will always be a child in need."<sup>374</sup>

The primary legislative provision relating to the protection of children in Northern Ireland is *the Children Order*, Article 66. This Article provides that where an authority:

(a) is informed that a child who lives, or is found, in the authority's area—(i) is the subject of an emergency protection order; or (ii) is in police protection; or

(b) has reasonable cause to suspect that a child who lives, or is found, in the authority's area is suffering, or is likely to suffer, significant harm, the authority shall make, or cause to be made, such inquiries as it considers necessary to enable it to decide whether it

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<sup>371</sup> *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 101.

<sup>372</sup> *Ibid*, para 101-103. Para 104: The role and specific responsibilities of the designated person or entity should include: (a) Ensuring that the rights of the child are protected and, in particular, that the child has appropriate care, accommodation, health-care provision, developmental opportunities, psychosocial support, education and language support; (b) Ensuring that the child has access to legal and other representation where necessary, consulting with the child so that the child's views are taken into account by decision-making authorities, and advising and keeping the child informed of his/her rights; (c) Contributing to the identification of a stable solution in the best interests of the child; (d) Providing a link between the child and various organizations that may provide services to the child; (e) Assisting the child in family tracing; (f) Ensuring that, if repatriation or family reunification is carried out, it is done in the best interests of the child; (g) Helping the child to keep in touch with his/her family, when appropriate.

<sup>373</sup> Kil Kelly, *A Children's Rights Audit of Northern Ireland Law and Policy* [2005] 2 IJFL1.

<sup>374</sup> DHSSPS, *Co-operating to Safeguard Children*, 2003, para 3.9.

should take any action to safeguard or promote the child's welfare.

Section 5(1) of *the Criminal Law Act (1967)* provides for a criminal offence of failing to disclose an arrestable offence to the police. This includes arrestable offences against children.

The *Safeguarding Board Act (NI) 2011* established the Safeguarding Board for Northern Ireland (SBNI) to replace the Regional Area Child Protection Committee, which was formed when the 4 Boards ACPCs were amalgamated in 2009 following the Review of Public Administration. *The Safeguarding Board for Northern Ireland (Membership, Procedure, Functions and Committee) Regulations (NI) 2012* ('SBNI Regulations') prescribed the SBNI's membership, functions and procedure.

The objective of the SBNI, "is to co-ordinate and ensure the effectiveness of what is done by each person or body represented on the Board... for the purposes of safeguarding and promoting the welfare of children."<sup>375</sup>

The duties placed on the SBNI, include:

- developing policies and procedures for safeguarding and promoting the welfare of children;
- promoting an awareness of the need to safeguard and promote the welfare of children;
- keeping under review the effectiveness of what is done by agencies tasked with safeguarding and promoting the welfare of children;
- undertaking case management reviews, in order to learn lessons in cases where children have died or have been significantly harmed;
- reviewing information in relation to deaths of children in Northern Ireland;
- advising the regional Health and Social Care Board and local commissioning groups in relation to safeguarding and promoting the welfare of children; and
- promoting communication between the SBNI and children and young people.

The SBNI became fully operation in 2012. It has developed its governance arrangements, committee structures, membership and governance.<sup>376</sup> The committees and task groups include:

- Five Safeguarding panels;
- Case Management Review panel;
- Policy and Procedures Committee;

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<sup>375</sup> Safeguarding Board Act (NI) 2011, s.2(1).

<sup>376</sup> SBNI, *Annual Report for the period to 31 March 2014*, 2014, p. 6.

- Engagement and Communication Committee;
- Education and Training Committee; and
- The Child Sexual Exploitation Strategic Partnership Group;

One of the statutory functions of the SBNI is to develop policies and procedures for safeguarding and promoting the welfare of children.<sup>377</sup> These policies and procedures should include:

- a. definitions of child safeguarding, child protection and child abuse, and how concerns should be managed, including thresholds for intervention;
- b. a training framework with different levels of training commensurate with the level and nature of contact with children and young people;
- c. procedural guidance on recruitment, selection and supervision of staff including reference to statutory requirements relating to those who work with children and young people;
- d. procedural guidance on the sharing of information between organisations working with children and families.<sup>378</sup>

Since policies and procedures operationalise Departmental guidance a revision of this guidance is necessary before the SBNI's policies and procedures can be developed. A revision of the Departmental guidance, *Cooperating to Safeguard Children*, is expected in March 2015.

The SBNI's Business Plan has adopted five Strategic Priorities: work in partnership to ensure children and young people are living in safety and with stability; protect and safeguard children by responding to new and emerging concerns; providing leadership and setting direction; driving improvements in the current child protection system; and building the capacity of the Safeguarding Board in the medium term.<sup>379</sup>

Current child protection guidance in Northern Ireland is '*Co-operating to Safeguard Children*'<sup>380</sup> which is operationalised by the '*Area Child Protection Committees' Regional Child Protection Policy and*

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<sup>377</sup> Safeguarding Board Act (NI) 2011, S. 3.1; DHSSPS, *Guidance to Safeguarding Board for Northern Ireland (SBNI)*, amended 2014, p. 22; SBNI, Strategic Plan September 2013-March 2017, available at:

<http://www.safeguardingni.org/sites/default/files/sites/default/files/imce/04.1.14%20SBNI%20Strategic%20Plan%20Version%203.0%20FINAL%20COPY.pdf>, Strategic Priority 3, p. 25; Northern Ireland Assembly, AQW 25786/11-15, Answered on 23/09/2013.

<sup>378</sup> DHSSPS, *Guidance to Safeguarding Board for Northern Ireland (SBNI)*, amended 2014, pp. 22-3.

<sup>379</sup> SBNI, Business Plan: September 2013-March 2015.

<sup>380</sup> DHSSPS, *Co-operating to Safeguard Children*, 2003. This policy is currently under review, with a revision due to be published in March 2015.

*Procedures*'.<sup>381</sup> *Co-operating to Safeguard Children* was published by the DHSSPS with the aim of ensuring the development of strategies, policies and procedures to safeguard children who are assessed to be at risk of significant harm. It emphasises the multi-agency, interdisciplinary contribution required to protect children. It outlines the roles and responsibilities of the then health and social services Boards, health and social services Trusts, social services, health services, education services, youth service, day care/after-school services, police, the probation service, the prison service, the voluntary and community sector, the NSPCC, housing agencies, the Northern Ireland Guardian ad Litem Agency (NIGALA), the wider community, local government, and the armed services in protecting the safety and welfare of children.<sup>382</sup>

An update to the *Area Child Protection Committees' Regional Child Protection Policy and Procedures*, including amendments and additions, came into effect in 2008.<sup>383</sup> In 2012 DHSSPS published guidance regarding the SBNI, which was amended in May 2014.<sup>384</sup> Annex B of this guidance replaces *Co-operating to Safeguard Children* Section 10 on Case Management Reviews, to ensure such reviews continued following the replacement of ACPCs.<sup>385</sup> The Regional Child Protection Policy and Procedures and *Cooperating to Safeguard Children*, however, have not been updated to take account of the structural changes resulting from the Review of Public Administration or the establishment of the SBNI.

*Safeguarding Children: A Cross-Departmental Statement on the Protection of Children and Young People* was published by the OFMDFM in 2009. It aims to develop a safeguarding framework across government.<sup>386</sup>

In situations where there are reasons to believe that a child is suffering, or is likely to suffer, significant harm, or is subject to an Emergency Protection Order or Police Protection, or at the direction of a Court under Children Order, Article 56, Trusts have a duty to investigate or make enquiries to enable them to decide whether they should take action to safeguard or promote the child's welfare.<sup>387</sup> Procedures and guidance

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<sup>381</sup> ACPC, *Area Child Protection Committees' Regional Policy and Procedures*, 2005.

<sup>382</sup> See also, ACPC, *Area Child Protection Committees' Regional Policy and Procedures*, 2005, paras. 3.1-3.132.

<sup>383</sup> Regional ACPC Policy and Procedures Amendment, available at:

[http://www.dhsspsni.gov.uk/acpc\\_policy\\_\\_procedures\\_amendments\\_-\\_pdf.pdf](http://www.dhsspsni.gov.uk/acpc_policy__procedures_amendments_-_pdf.pdf)

<sup>384</sup> DHSSPS, *Guidance to Safeguarding Board for Northern Ireland (SBNI)*, amended 2014, available at:

[http://www.dhsspsni.gov.uk/guidance\\_to\\_the\\_safeguarding\\_board\\_for\\_northern\\_ireland\\_\\_sbni\\_-\\_19\\_december\\_2012.pdf](http://www.dhsspsni.gov.uk/guidance_to_the_safeguarding_board_for_northern_ireland__sbni_-_19_december_2012.pdf)

<sup>385</sup> *Ibid*, Annex B, p. 47.

<sup>386</sup> OFMDFM, *Safeguarding Children: A Cross-Departmental Statement on the Protection of Children and Young People*, 2009.

<sup>387</sup> ACPC, *Area Child Protection Committees' Regional Policy and Procedures*, 2005, para. 3.6. See also, DHSSPS, *Co-operating to Safeguard Children*, 2003, para 3.8; DHSSPS,

regarding child protection are set out in a number of documents.<sup>388</sup> *Cooperating to Safeguard Children* notes that:

Because of their responsibilities, duties and powers, the Trusts' social services staff should act as the principal point of contact for children where there are child protection concerns. Arrangements should exist so that they may be contacted directly by parents or family members seeking help, concerned friends and neighbours, or by professionals and statutory and voluntary agencies.<sup>389</sup>

## Referral and assessment

When concerns are raised that a child may be suffering significant harm, social services have a responsibility for co-ordinating assessment of the: child's needs; parents' capacity to keep the child safe and promote his or her welfare; and wider family circumstances.<sup>390</sup> Child protection cases are those where the original referral will identify the child as 'potential at risk' and following an initial assessment there are indications that there may be child protection concerns.<sup>391</sup> Referrals are received by Gateway Teams

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*Family and Child Care Thresholds of Intervention*, 2008, para 5.2; *Northern Ireland Health and Social Care Trust for Northern Ireland, Re Judicial Review* [2014] NIQB 49, para 44: "In deciding how to 'safeguard and promote' a child's welfare, the Trust must weigh up the risks in the child's current environment to her welfare, against the traumatic effect of an unplanned move to foster care on the child's welfare."

<sup>388</sup> See for example, DHSSPS, *Co-operating to Safeguard Children*, 2003; ACPC, *Area Child Protection Committees' Regional Policy and Procedures*, 2005; DHSSPS, *Gateway Service-Processes: Guidance for Northern Ireland Health and Social Care Trusts*, 2008; DHSSPS, *UNOCINI Guidance. Understanding the Needs of Children in Northern Ireland*, 2011; COAC, *Best Practice Guidance, 2<sup>nd</sup> Edition 2010*, as updated 2012; A series of circulars regarding information sharing regarding child protection is provided by the DHSSPS, see [http://www.dhsspsni.gov.uk/hss/child\\_care/child\\_protection/child\\_protection\\_guidance.htm](http://www.dhsspsni.gov.uk/hss/child_care/child_protection/child_protection_guidance.htm); HSCB/PSNI/NSPCC/HSCT, *Protocol for Joint Investigation by Social Workers and Police Officers of Alleged and Suspected cases of Child Abuse – Northern Ireland*, 2013; HSCB, *Interim Regional Guidance – Management of Child Sexual Exploitation Referrals*, 2014; HSCB, *Regional Guidance: Police Involvement in Residential Units. Safeguarding of Children Missing from Home and Foster Care*, 2012.

<sup>389</sup> DHSSPS, *Co-operating to Safeguard Children*, 2003, para 3.12.

<sup>390</sup> *Ibid*, para 3.9.

<sup>391</sup> DHSSPS/NISRA, *Children Order Child Protection and Referral Statistics for Northern Ireland (quarter ending 31 December 2013)*, 2013, pp. 23-24. As outlined above, *Priority 1* should be assigned to children with complex and/or acute needs (Level 4), requiring urgent assessment and early intervention to safeguard the child, with likely complications regarding parental capacity and environmental factors. It is likely that safeguarding procedures will apply regarding these referrals. In this case a child should be seen and assessed within 24 hours. *Priority 2* should be assigned to children described and evidenced as children in need (Level 3), including children who may be in need of safeguarding and require assessment and intervention. In the case of those children who are in need of safeguarding, with significant parental capacity issues, the initial assessment should be initiated within 24 hours and completed within 7 working

which are responsible for completing an Initial Assessment within a maximum of 10 days. Following this cases are transferred within children's services teams operating behind the Gateway Team system.<sup>392</sup>

When a referral indicates that a child is suffering, or is likely to suffer, significant harm the explicit requirement is that the child is seen and spoken to within 24 hours and that the Initial Assessment is completed within 7 working days.<sup>393</sup> There is a need for PSNI and social services to work collaboratively in such cases. The DHSSPS outlines that for new referrals the responsibility for investigation and joint protocol interviews should sit within the Gateway Service and the case should then transfer, for example, to the Family Support team.<sup>394</sup>

Where a child is deemed to be in need of immediate protection, action must be taken to secure his or her immediate safety, while giving consideration to the least intrusive form of intervention.<sup>395</sup> Additionally, where the Trust, the police or the NSPCC are satisfied that there are grounds to warrant a joint investigation there must be a 'strategy discussion,' or if possible a 'strategy meeting,' within 24 hours. The purpose is to share information and decide what action, if any, is required.<sup>396</sup>

Those who make referrals and enquiries about safeguarding children should receive an appropriate response to their concerns within 24 hours, with written acknowledgement of the referral provided within 2 working days of it being received. They also should be kept informed of the progress and outcome of the investigation.<sup>397</sup>

## Case conferences

The Gateway Team has responsibility to convene an Initial Case Conference within 15 working days of receiving a child protection referral

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days. If parental capacity is at level 1 or 2 "the case is likely to be less urgent but would still require an initial assessment." DHSSPS, *Family and Child Care Thresholds of Intervention*, 2008, p. 9.

<sup>392</sup> DHSSPS, *Gateway Service-Processes: Guidance for Northern Ireland Health and Social Care Trusts*, 2008, para 4.4. See also, ACPC, *Area Child Protection Committees' Regional Policy and Procedures*, 2005, para. 5.1 and paras 5.35-5.36.

<sup>393</sup> DHSSPS, *Gateway Service-Processes: Guidance for Northern Ireland Health and Social Care Trusts*, 2008, para 5.1; ACPC, *Area Child Protection Committees' Regional Policy and Procedures*, 2005, para. 5.1 and 5.28.

<sup>394</sup> DHSSPS, *Gateway Service-Processes: Guidance for Northern Ireland Health and Social Care Trusts*, 2008, para 5.1

<sup>395</sup> ACPC, *Area Child Protection Committees' Regional Policy and Procedures*, 2005, para. 5.37-5.45.

<sup>396</sup> *Ibid*, para. 5.31-5.32.

<sup>397</sup> DHSSPS, *Standards for Child Protection Services*, 2008, para. 2.6.

and to make chairing arrangements.<sup>398</sup> The Initial Case Conference acts as a point of transfer of case responsibility to a Family Intervention Team, although in complex cases co-working arrangements may be agreed between the Teams.<sup>399</sup>

The Regional Child Protection Policy and Procedures set out the planning framework for children in need of protection.<sup>400</sup> The Initial Child Protection Case Conference is a multi-disciplinary/inter-agency meeting that brings together the family and professionals and allows them to exchange information and plan together.<sup>401</sup> The UNOCINI Child Protection Conference Agenda should guide the conduct of the Conference.<sup>402</sup> The Conference should:

- share and evaluate the information gathered during the investigation;
- assess whether the child is at risk of significant harm;
- decide on the need for registration;
- agree an inter-agency child protection plan for the future needs of the child, which should include supportive services to the child and the family, if the child's name is placed on the Child Protection Register;
- agree a review date within 3 months if the child's name is placed on the Child Protection Register;
- agree the arrangements for the completion of a comprehensive assessment; and
- consider the provision of family services if the child's name is not placed on the Child Protection Register.<sup>403</sup>

Reports are provided to the Conference by the appointed social worker and other relevant professionals.<sup>404</sup> The UNOCINI Initial Child Protection Conference Report is used by the investigating social worker to build on any previous UNOCINI Assessment, adding to it those recommendations

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<sup>398</sup> DHSSPS, *Gateway Service-Processes: Guidance for Northern Ireland Health and Social Care Trusts*, 2008, para 4.4; ACPC, *Area Child Protection Committees' Regional Policy and Procedures*, 2005, para. 5.1.

<sup>399</sup> DHSSPS, *Gateway Service-Processes: Guidance for Northern Ireland Health and Social Care Trusts*, 2008, para 4.4. See also, para 4.5: Where the Initial Assessment indicates that a short time limited intervention will offer the appropriate support or guidance the Gateway service should conclude this piece of work to offer greater continuity.

<sup>400</sup> DHSSPS, *UNOCINI Guidance. Understanding the Needs of Children in Northern Ireland*, 2011, p. 71. See also, ACPC, *Area Child Protection Committees' Regional Policy and Procedures*, 2005, Chapter 6.

<sup>401</sup> ACPC, *Area Child Protection Committees' Regional Policy and Procedures*, 2005, para. 6.1.

<sup>402</sup> DHSSPS, *UNOCINI Guidance. Understanding the Needs of Children in Northern Ireland*, 2011, p. 72.

<sup>403</sup> ACPC, *Area Child Protection Committees' Regional Policy and Procedures*, 2005, para. 6.7.

<sup>404</sup> *Ibid*, at para. 6.52.



relevant to the protection of the child.<sup>405</sup> In the development of these reports a number of guiding standards should be followed.<sup>406</sup>

Children are entitled to attend the case conference depending on their age, maturity and understanding.<sup>407</sup> If they choose to attend, the child can bring a friend or someone to support him or her.<sup>408</sup> Where a child does not wish to attend, a social worker should enable him or her to submit his or her views in writing or by other means.<sup>409</sup> Where possible, parents should be involved in all discussions and decision making about their child.<sup>410</sup> Parents should be provided with copies of reports at least one working day prior to the Conference.<sup>411</sup> Parents may be excluded from the whole case conference, or a part thereof.<sup>412</sup> A parent who is excluded should be informed in writing of the exclusion and the reason for it and should be advised that they have the right to make a representation to the Case Conference by other methods.<sup>413</sup>

The Case Conference must decide that either:

- the child is not at continuing risk and therefore the child's name will not be placed on the Child Protection Register. In such a case the child and his family may be in need of support and the Conference should ensure arrangements for support are in place and the child is assessed as a child in need, or
- the child is at continuing risk and therefore his or her name should be placed on the Child Protection Register and a Child Protection Plan established.<sup>414</sup>

Parents and where appropriate the child, should be made aware of the decisions to place a child's name on the Child Protection Register and the purpose of the Register.<sup>415</sup> The social worker should also ensure that they understand: the reasons for the decision; how registration and the child protection plan are linked; the procedure for de-registration; where responsibility for decision-making lies; the appeals process and the complaints procedure; the procedure with regard to regular review of the

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<sup>405</sup> DHSSPS, *UNOCINI Guidance. Understanding the Needs of Children in Northern Ireland*, 2011, p. 72.

<sup>406</sup> *Ibid*, p. 72-74.

<sup>407</sup> ACPC, *Area Child Protection Committees' Regional Policy and Procedures*, 2005, para. 6.30.

<sup>408</sup> *Ibid*, para. 6.30.

<sup>409</sup> *Ibid*, para. 6.30.

<sup>410</sup> *Ibid*, para. 6.27-6.29.

<sup>411</sup> *Ibid*, para. 6.54.

<sup>412</sup> *Ibid*, para. 6.42, 6.45-6.47.

<sup>413</sup> *Ibid*, para. 6.43-6.44.

<sup>414</sup> *Ibid*, para. 6.64.

<sup>415</sup> *Ibid*, para. 6.15 and 6.66.

child's progress and assessed risk.<sup>416</sup>

The family should be advised in writing of the outcome of the Case Conference within 14 working days.<sup>417</sup> Minutes should be circulated within 14 days of the Conference and their receipt acknowledged within 7 days.<sup>418</sup> Parents, and on occasions, a child, can raise concerns or complaints with the Conference's Chairperson about the process of the Conference or outcomes and decisions regarding registration.<sup>419</sup> The results of the discussion at the Case Conference are recommendations to individual agencies for action, any deviation from the recommendations should not be made, except in an emergency, without informing the other agencies involved, through the Chairperson.<sup>420</sup>

A review Child Protection Case Conference should be convened within three months of the initial Case Conference and thereafter at not more than six-monthly intervals to ensure that the Child Protection Plan continues to provide protection for the child.<sup>421</sup> Any professional may request a review Case Conference outside of these timescales where he or she has cause for concern about a registered child.<sup>422</sup>

A multi-disciplinary comprehensive assessment must be undertaken whenever a child's name is placed on the Child Protection Register.<sup>423</sup> The comprehensive assessment should be completed before the first review Case Conference to enable the inter-agency child protection plan to be agreed.<sup>424</sup> The UNOCINI Child Protection Pathway Assessment is designed to provide an overview of the child and his or her family's needs, in a format that encourages analysis of information and which serves as the report to the Review Child Protection Conference.<sup>425</sup> The assessment should be undertaken as a continuing process, enabling an update for each subsequent Review Child Protection Conference.<sup>426</sup>

## Child protection register

A Register must be maintained by each Trust listing each child in the Trust's area for whom there are unresolved child protection issues; who are considered to be suffering from, or likely to suffer, significant harm

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<sup>416</sup> *Ibid*, para. 6.66.

<sup>417</sup> *Ibid*, para. 6.36 and 6.67.

<sup>418</sup> *Ibid*, para. 6.71.

<sup>419</sup> *Ibid*, para. 6.77-6.78.

<sup>420</sup> *Ibid*, para. 6.2.

<sup>421</sup> *Ibid*, para. 6.99.

<sup>422</sup> *Ibid*, para. 6.101.

<sup>423</sup> *Ibid*, para. 6.86.

<sup>424</sup> *Ibid*, para. 6.86.

<sup>425</sup> DHSSPS, *UNOCINI Guidance. Understanding the Needs of Children in Northern Ireland*, 2011, p. 74.

<sup>426</sup> *Ibid*, p. 74-76.

and for whom there is a Child Protection Plan.<sup>427</sup> “The Child Protection Register is a confidential list of all children in the area who have been identified at a Child Protection Conference as being at significant risk of harm.”<sup>428</sup>

A Child Protection Case Conference determines whether the child’s name should be added to the child protection register.<sup>429</sup> This register categorises cases under the headings of confirmed, suspected or potential, physical, sexual, or emotional abuse or neglect.<sup>430</sup> A child’s name may be registered under more than one category of abuse.<sup>431</sup>

The initial case conference should determine under which category of abuse the child’s name must be registered.<sup>432</sup> The category used in registration will indicate to those consulting the register the primary presenting concerns in respect of the child at the time of registration.<sup>433</sup>

### Child protection plans

The act of registering a child on the Child Protection Register itself confers no protection on a child and must be accompanied by a Child Protection Plan.<sup>434</sup> Where an assessment identifies a continuing risk of harm, or likely harm, to a child, social services within the Trust are responsible for co-ordinating and implementing an inter-agency Child Protection Plan to safeguard the child.<sup>435</sup> The initial Case Conference agrees the Child Protection Plan, which should be based on the contributions of family members, professionals and agencies involved in safeguarding the child and should set out each individual’s role and responsibility to the child.<sup>436</sup>

A case co-ordinator and the membership of a core group are appointed at the initial Case Conference.<sup>437</sup> The case co-ordinator is responsible for developing the Child Protection Plan into a comprehensive inter-agency plan.<sup>438</sup> All children whose names are on the Child Protection Register

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<sup>427</sup> ACPC, *Area Child Protection Committees’ Regional Policy and Procedures*, 2005, para. 7.1.

<sup>428</sup> DHSSPS/NISRA, *Children’s Social Care Statistics 2012/13*, 2013, p. 19.

<sup>429</sup> ACPC, *Area Child Protection Committees’ Regional Policy and Procedures*, 2005, para. 6.64, 7.5-7.6.

<sup>430</sup> *Ibid*, para. 7.7.

<sup>431</sup> *Ibid*, para. 7.7.

<sup>432</sup> *Ibid*, para. 6.64.

<sup>433</sup> *Ibid*, para. 6.64.

<sup>434</sup> *Ibid*, para. 6.64.

<sup>435</sup> DHSSPS, *Co-operating to Safeguard Children*, 2003, para 3.10.

<sup>436</sup> ACPC, *Area Child Protection Committees’ Regional Policy and Procedures*, 2005, paras. 6.64, 6.90-6.98; DHSSPS, *Co-operating to Safeguard Children*, 2003, para 3.10.

<sup>437</sup> ACPC, *Area Child Protection Committees’ Regional Policy and Procedures*, 2005, para. 6.65.

<sup>438</sup> *Ibid*, para. 6.83.

must have an inter-agency Child Protection Plan and must be seen by the case co-ordinator at no more than 4 weekly intervals.<sup>439</sup> The case co-ordinator acts as lead worker for inter-agency work and co-ordinates and completes a comprehensive assessment of the child and family.<sup>440</sup> He or she convenes the first core group meeting within 10 working days of the initial Case Conference.<sup>441</sup> The core group carries out the inter-agency work and includes the case co-ordinator and professional workers who have direct contact with the child and family.<sup>442</sup> Parents and the child should be invited to attend core group meetings.<sup>443</sup>

The parents and the child (dependent on age) should be invited to comment on the Child Protection Plan, be afforded the opportunity to sign the plan and be given a copy of it.<sup>444</sup> The case co-ordinator should ensure that the family understand the Plan and are prepared to work with it.<sup>445</sup>

Once decisions have been made each agency is expected to support and carry out the Child Protection Plan.<sup>446</sup> Every effort should be made to establish the Child Protection Plan as a formal contract involving professionals, the family and the child.<sup>447</sup> The inter-agency Child Protection Plan should be reviewed regularly to ensure that it continues to provide protection for the child.<sup>448</sup>

### **De-registration from the child protection register**

At every review Case Conference a specific list of criteria for de-registration should be considered, including: that the comprehensive assessment has shown that a Child Protection Plan is not necessary; or the child remains at home but the risk of significant harm has been reduced significantly.<sup>449</sup> If the decision is made to remove the child's name from the Register, the child and parents should be informed in writing of the decision.<sup>450</sup> De-registration does not mean that support services should be withdrawn, as the child may still be assessed as a child in need under Children Order, Article 17, (see Chapter 2).<sup>451</sup>

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<sup>439</sup> *Ibid*, para. 6.90.

<sup>440</sup> *Ibid*, para. 6.83.

<sup>441</sup> *Ibid*, para. 6.83.

<sup>442</sup> *Ibid*, para. 6.84.

<sup>443</sup> *Ibid*, para. 6.84.

<sup>444</sup> *Ibid*, para. 6.96.

<sup>445</sup> *Ibid*, para. 6.96.

<sup>446</sup> *Ibid*, para. 6.63.

<sup>447</sup> *Ibid*, para. 6.63.

<sup>448</sup> *Ibid*, para. 6.100.

<sup>449</sup> ACPC, *Area Child Protection Committees' Regional Policy and Procedures*, 2005, para. 6.112.

<sup>450</sup> *Ibid*, para. 6.113.

<sup>451</sup> *Ibid*, para. 6.115.

## Significant harm

The circumstances regarding protection of children, as set out in the Children Order, are based on the concept of 'significant harm'.<sup>452</sup> Professionals must make judgments as to whether the harm a child is suffering amounts to significant harm at a number of stages in the Child Protection Process:

- following initial assessment, when deciding to make further enquiries under Article 66 of the Children Order;
- following Article 66 enquiries, when deciding whether or not to convene an Initial Child Protection Case Conference;
- in the Child Protection Case Conference, when deciding whether or not to place a child's name on the Child Protection Register;
- for social services and the police, in deciding whether to apply for a variety of Orders under the Children Order or the criminal system in relation to offences against children.<sup>453</sup>

There are no absolute criteria for judging what constitutes 'significant harm' and the threshold criteria to determine if a child is at risk of 'significant harm' are defined broadly within the legislation. The Children Order, Article 2(2) states 'harm' means "ill treatment or the impairment of health or development." 'Ill-treatment' is defined under Article 2(2) as including sexual abuse and forms of ill-treatment that are not physical, for example emotional abuse. 'Health' is defined as physical or mental health and 'development' as physical, intellectual, emotional, social or behavioural development. Whether the harm is significant is determined by the health and development of the child as compared with that which could reasonably be expected of a similar child.<sup>454</sup> The word similar could refer to similar environmental, cultural and social contexts.<sup>455</sup>

As there is no statutory definition of 'significant' each case is decided on the basis of the evidence available, including the actual factual evidence of harm or likely harm; the level of risk; its impact on the health and development of the child; and to whom the harm can be attributed.<sup>456</sup> *Co-operating to Safeguard Children* notes that:

There are no absolute criteria for judging what constitutes significant harm. However, they may include the degree,

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<sup>452</sup> Children's Order, Articles 2(2), 50(3) and 66.

<sup>453</sup> ACPC, *Area Child Protection Committees' Regional Policy and Procedures*, 2005, para. 2.6.

<sup>454</sup> Children Order, Art. 50(3).

<sup>455</sup> Children (NI) Order 1995, Guidance and Regulations, Volume 1: Court Orders and Other Legal Issues, at p. 63.

<sup>456</sup> See generally Children (NI) order 1995, Guidance and Regulations, Volume 1: Court Orders and Other Legal Issues, Annex B.

extent, duration and frequency of harm. Sometimes, a single traumatic event may constitute significant harm... More often, significant harm is a series of events, both acute and long-standing, which interrupt, change or damage the child's physical and/or psychological development. Some children live in family and social circumstances where their health and development are neglected. For them, it is the corrosiveness of long-term emotional, physical and/or sexual abuse that causes impairment, sometimes to the extent of constituting significant harm.<sup>457</sup>

## Types of abuse

DHSSPS guidance outlines the definitions of physical abuse, emotional abuse, sexual abuse and neglect of children:<sup>458</sup>

### Physical abuse

Physical abuse is the deliberate physical injury to a child, or the wilful or neglectful failure to prevent physical injury or suffering. This may include hitting, shaking, throwing, poisoning, burning or scalding, drowning, suffocating, confinement to a room or cot, or inappropriately giving drugs to control behaviour.

### Emotional abuse

Emotional abuse is the persistent emotional ill-treatment of a child such as to cause severe and persistent adverse effects on the child's emotional development. It may involve conveying to children that they are worthless or unloved, inadequate, or valued only insofar as they meet the needs of another person. It may involve causing children frequently to feel frightened or in danger, or the exploitation or corruption of children. Some level of emotional abuse is involved in all types of ill-treatment of a child, though it may occur alone. Domestic violence, adult mental health problems and parental substance misuse may expose children to emotional abuse.

### Sexual abuse

Sexual abuse involves forcing or enticing a child to take part in sexual activities. The activities may involve physical contact, including

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<sup>457</sup> DHSSPS, *Co-operating to Safeguard Children*, 2003, para 2.4-2.5. See also, ACPC, *Area Child Protection Committees' Regional Policy and Procedures*, 2005, paras. 2.11 – 2.13.

<sup>458</sup> DHSSPS, *Co-operating to Safeguard Children*, 2003, para 2.2; ACPC, *Area Child Protection Committees' Regional Policy and Procedures*, 2005, para 2.3.

penetrative or non-penetrative acts. They may include non-contact activities, such as involving children in looking at, or the production of, pornographic material or watching sexual activities, or encouraging children to behave in sexually inappropriate ways.

## Neglect

Neglect is the persistent failure to meet a child's physical, emotional and/or psychological needs, likely to result in significant harm. It may involve a parent or carer failing to provide adequate foods, shelter and clothing.

## Safeguarding panels

Pursuant to the Safeguarding Board Act, Safeguarding Panels have been established to replace the Trusts' Child Protection Panels.<sup>459</sup> There are five Safeguarding Panels located within the geographical area of each of the five Trusts.<sup>460</sup> These Panels are inter-agency and multi-disciplinary SBNI statutory committees, which assist the SBNI to deliver its functions. The functions of a Safeguarding Panel include:

- a. co-ordinating the implementation of the Safeguarding Board's strategic plan for safeguarding and promoting the welfare of children;
- b. monitoring the implementation of the Safeguarding Board's policies and procedures;
- c. promoting an awareness of the need to safeguard and promote the welfare of children;
- d. implementing any arrangements established ... for sharing the findings of Case Management Reviews; and
- e. promoting communication between the Safeguarding Panel and children and young persons.<sup>461</sup>

## Case Management Reviews

A Case Management Review (CMR) system was established by '*Co-operating to Safeguard Children*'.<sup>462</sup> CMRs are now a statutory requirement,<sup>463</sup> and must be undertaken by the SBNI: Reg. 17 (2) Where

- a. a child has died or been significantly harmed;
- b. any of the following apply –
  - i. abuse or neglect of the child is known or suspected;

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<sup>459</sup> Safeguarding Board Act (NI) 2011, S. 7(1)(a).

<sup>460</sup> SBNI Regulations, Regulations 21-33.

<sup>461</sup> *Ibid*, Regulation 31.

<sup>462</sup> DHSSPS, *Co-operating to Safeguard Children*, 2003.

<sup>463</sup> Safeguarding Board Act (NI) 2011, S. 3(4).

- ii. the name of the child or a sibling of the child is or has been placed on the register maintained by a HSC Trust which lists each child resident in the area of the Trust who, following an investigation by that Trust under Article 66 of the Children (Northern Ireland) Order 1995, is subject to a plan to safeguard that child from further harm and promote his health and development; or
  - iii. the child or a sibling of the child is or has been looked after by an authority within the meaning of Article 25 of the Children (Northern Ireland) Order 1995; and,
- c. the Safeguarding Board has concerns about the effectiveness in safeguarding and promoting the welfare of children of any of the persons or bodies represented on the Safeguarding Board by virtue of section 1(2)(b) and (4) of the Act.<sup>464</sup> or

3) Where the Safeguarding Board has determined that a case demonstrates that any of the persons or bodies represented on the Safeguarding Board by virtue of section 1(2)(b) and (4) of the Act, have worked effectively (individually or in partnership) and that there is outstanding positive learning to be gained from the case which will lead to improved practice in safeguarding and promoting the welfare of children across Northern Ireland.<sup>465</sup>

Since “most CMRs will have their origins in serious adverse incident or critical incident reporting processes within organisations” internal serious adverse/critical incident reporting systems within the bodies that are represented on the SBNI must include a mechanism for triggering a notification to the SBNI in relevant circumstances.<sup>466</sup>

It is intended that the statutory CMR process will operate differently from the previous CMR arrangement.<sup>467</sup> The CMR process aims to reflect on practice, identify learning from practice (what worked and did not work and why) and disseminate that learning in order to improve practice and future safeguarding outcomes for children. Case Management Reviews are not undertaken to find fault with individual practice but rather are focused on learning, that is:

- learning from what has worked well and then build upon it; and
- what has not worked well and determine how this should be prevented in the future.<sup>468</sup>

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<sup>464</sup> SBNI Regulations, Regulation 17(2).

<sup>465</sup> *Ibid*, Regulation 17(3).

<sup>466</sup> DHSSPS, *Guidance to Safeguarding Board for Northern Ireland (SBNI)*, amended 2014, Annex B, p. 54.

<sup>467</sup> *Ibid*, p. 26.

<sup>468</sup> *Ibid*, Annex B, p. 47.



The SBNI is required to establish a CMR Review Panel.<sup>469</sup> Each CMR Team is a statutory sub-committee of the SBNI.<sup>470</sup> In general a CMR should be completed within 9 months from the decision by the SBNI Chair to proceed with a Review.<sup>471</sup>

In accordance with the Safeguarding Board Act (NI) the Regional Health and Social Care Board, the Regional Agency for Public Health and Social Well-being, the Health and Social Care Trusts, the PSNI, the Probation Board for NI, the Youth Justice Agency, education and library boards, district councils, the NSPCC and any other relevant persons or bodies must make arrangements to ensure that their functions are discharged having regard to the need to safeguard and promote the welfare of children and that the services they contract out to others are provided having regard to that need.<sup>472</sup> Where one of these bodies is not fulfilling this duty the SBNI Chair must address this as soon as practicable with the body and seek a timely resolution.<sup>473</sup>

*Standards for Child Protection Services*<sup>474</sup> are applicable to all public bodies, organisations, professionals and other persons who provide statutory services to children. The standards also establish a framework of best child protection practice for voluntary, community and independent sector organisations and practitioners (including counsellors and therapists working in a private capacity) who work with or have significant contact with children and young people.<sup>475</sup>

## Northern Ireland context

The five Trusts received 4,114 child protection referrals in 2013/2014.<sup>476</sup> Neglect and physical abuse were the main reasons for a child's name being on the Child Protection Register.<sup>477</sup> Over half of the referrals (52% - 2,152) originated from social services, 14% (562) from the PSNI, 8% (337) from school, and 5% (188) from relatives.<sup>478</sup> The number of

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<sup>469</sup> Safeguarding Board Act (NI) 2011, S. 7(1)(c). See also, DHSSPS, *Guidance to Safeguarding Board for Northern Ireland (SBNI)*, amended 2014, pp. 39-40.

<sup>470</sup> DHSSPS, *Guidance to Safeguarding Board for Northern Ireland (SBNI)*, amended 2014, Annex B, p. 53.

<sup>471</sup> *Ibid*, Annex B, p. 54.

<sup>472</sup> Safeguarding Board Act (NI) 2011, S. 12. DHSSPS, *Guidance to Safeguarding Board for Northern Ireland (SBNI)*, amended 2014, pp. 21 and 10-11.

<sup>473</sup> DHSSPS, *Guidance to Safeguarding Board for Northern Ireland (SBNI)*, amended 2014, pp. 19-21.

<sup>474</sup> DHSSPS, *Standards for Child Protection Services*, 2008.

<sup>475</sup> *Ibid*, p. 2.

<sup>476</sup> DHSSPS/NISRA, *Children's Social Care Statistics Northern Ireland 2013/14*, 2014, p. 14.

<sup>477</sup> *Ibid*.

<sup>478</sup> *Ibid*, p. 23.

referrals received in 2013/2014 was 8% higher than during 2008/09.<sup>479</sup> Three thousand two hundred and sixty child protection investigations were carried out in 2013/2014.<sup>480</sup> The vast majority of the investigations were carried out by Social Workers (75%), with a further 23% Joint Protocol Investigations involving both the Police and Social Workers. Two thousand three hundred and thirteen Initial Case Conferences were completed in NI during 2013/2014. Eighty six percent of the case conferences resulted in a child's name being placed on the child protection register.<sup>481</sup>

During 2013/2014, there were 2,004 registrations to the child protection register.<sup>482</sup> There were 386 re-registrations to the child protection register in 2013/2014.<sup>483</sup> 2,058 children's names were removed from the child protection register during 2013/2014.<sup>484</sup>

1,914 children's names were listed on Child Protection Registers in NI at 31 March 2014.<sup>485</sup> The largest proportions of children whose names were on the Register were aged 5-11 years (37%) and 1-4 years (29%).<sup>486</sup> The largest proportion of children whose names were included on the register were at risk of Physical Abuse (relating to 'Physical Abuse Only' and mixed categories where physical abuse was present). Neglect Only (30%) was the largest single cause of a child's name being placed on the register. Regarding mixed categories of abuse, the total for Neglect and Physical Abuse was nine times higher (18%) than the next nearest category of Physical and Sexual Abuse (2%).<sup>487</sup>

Three quarters of the 1,914 children whose names were on the Child Protection Register at 31 March 2014 had been included on the register for less than one year. The largest number of children's names had been on the register for between six months and one year (29%), and the lowest number (2%) had been on the register for three years or longer.<sup>488</sup> Of all children who became looked after during 2013/2014, two-thirds had previously had their names listed on the Child Protection Register.<sup>489</sup>

## Data

In 2008 the UNCRC Committee examined the protection of the rights of

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<sup>479</sup> *Ibid*, p. 22.

<sup>480</sup> *Ibid*, p. 25.

<sup>481</sup> *Ibid*, p. 26.

<sup>482</sup> *Ibid*, p. 27.

<sup>483</sup> *Ibid*, p. 28.

<sup>484</sup> *Ibid*, p. 28.

<sup>485</sup> *Ibid*, p. 15.

<sup>486</sup> *Ibid*, p. 15.

<sup>487</sup> *Ibid*, p. 18.

<sup>488</sup> *Ibid*, p. 20.

<sup>489</sup> *Ibid*, p. 20.

children in the UK. The Committee expressed alarm at the “high prevalence of violence, abuse and neglect of children, including in the home, and at the lack of a comprehensive nationwide strategy in this regard.”<sup>490</sup> The Committee regretted that “there is still no comprehensive system of recording and analysing abuses committed against children and that mechanisms of physical and psychological recovery and social reintegration for victims are not sufficiently available across the State party.”<sup>491</sup> The Committee recommended that the UK “Establish mechanisms for monitoring the number of cases and the extent of violence, sexual abuse, neglect, maltreatment or exploitation, including within the family, in schools and in institutional or other care.”<sup>492</sup> The SBNI has “recognised that not all children who are subject to abuse will have been referred to Child Protection Services and it is generally accepted that figures on child protection registers will be an underestimation of the extent of abuse.”<sup>493</sup>

Research indicates that the classification of child protection referrals is complex. The system, it is argued, is not nuanced enough to encompass chronic, longstanding difficulties that contribute towards risk, abuse and neglect but have not resulted in an acute harmful episode. As a result, some cases may be classified as childcare concerns, rather than child abuse or ‘at risk.’ This suggests that some children may be exposed to harm over longer periods of time than had their case been classified as ‘at risk’ earlier in the process.<sup>494</sup>

The Children Order requires an annual general report on the operation of the Order “to be prepared and laid before the Assembly.”<sup>495</sup> However, although regular statistics are compiled, the statutory requirement for an annual report is not fulfilled, reducing the available data and information for analysis.

Gaps in available data were identified by the researchers for this report, for example, there are no available figures as to how often parents are excluded from attending Case Conferences, and the reasons for such

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<sup>490</sup> UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 50.

<sup>491</sup> *Ibid*, para 50.

<sup>492</sup> *Ibid*, para 51.

<sup>493</sup> SBNI, Strategic Plan September 2013-March 2017, available at: <http://www.safeguardingni.org/sites/default/files/sites/default/files/imce/04.1.14%20SBNI%20Strategic%20Plan%20Version%203.0%20FINAL%20COPY.pdf>, p. 19. See also, OFMDFM, *Safeguarding Children: A Cross-Departmental Statement on the Protection of Children and Young People*, 2009, p. 15.

<sup>494</sup> Hayes, D. And Spratt, T (2009) ‘Child welfare interventions: patterns of social work practice’, *British Journal of Social Work*, 2009, 39(8), pp. 1575-1597 and Hayes, D. and Spratt, T (2012) ‘Child Welfare as child protection then and now: what Social workers did and continue to do’, *British Journal of Social Work*, pp. 1-20.

<sup>495</sup> Children Order, Art. 181.

exclusions.

## Child sexual exploitation

In 2013 a number of actions in relation to child sexual exploitation (CSE) in Northern Ireland were commenced by the PSNI, the SBNI and an independent inquiry.<sup>496</sup>

A PSNI investigation (Operation Owl) focused on a number of children, mostly from care settings. The investigation initially identified 22 children, aged between 13 and 18, who have been the subject of a police investigation related to allegations of sexual exploitation. Operation Owl was subject to joint protocol arrangements between the police and Health and Social Care (HSC) sectors and an operational group was established, involving a range of disciplines and agencies.<sup>497</sup>

In 2014 the NI Policing Board stated that “the Policing Board and the Committee have received briefings from the PSNI on Operation Owl, which exposed serious lacunae in respect of the protection of children from sexual exploitation.”<sup>498</sup> The independent Inquiry into Child Sexual Exploitation recommended that the DHSSPS should consider “development of a model for a multi-agency safeguarding hub (MASH) in Northern Ireland which should take into account learning from good practice in recent projects such as Operation Owl...”<sup>499</sup> In 2015 the NI Policing Board noted the recommendations contained in the Marshall report and recommended that:

The PSNI should within 3 months of the publication of this Human Rights Annual Report provide to the Performance Committee a report on progress made to implement the recommendations directed at the PSNI in the Report of the Independent Inquiry into Child Sexual Exploitation in Northern Ireland. The report should include the lessons learned by the PSNI from its own internal review of Operation Owl.<sup>500</sup>

A thematic review in relation to the 22 cases of alleged child sexual exploitation, which triggered the PSNI investigation, is currently being

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<sup>496</sup> <http://www.niassembly.gov.uk/Documents/Official-Reports/Written-Ministerial-Statements/2013-2014/HSSPS%20WMS%2025%20September%202013.pdf>

<sup>497</sup> Kathleen Marshall, CJINI/RQIA/ETI, *Child Sexual Exploitation in Northern Ireland; Report of the Independent Inquiry*, 2014, p. 24.

<sup>498</sup> Northern Ireland Policing Board, *Human Rights Annual Report 2013*, p. 11, fn 17.

<sup>499</sup> Kathleen Marshall, CJINI/RQIA/ETI, *Child Sexual Exploitation in Northern Ireland; Report of the Independent Inquiry*, 2014, p. 154, Supporting Recommendation 60.

<sup>500</sup> Northern Ireland Policing Board, *Human Rights Annual Report 2014*, p. 85.

carried out by the SBNI.<sup>501</sup> This review is intended to identify key learning points and opportunities for improvement for relevant persons. The SBNI prioritised the issues of children who go missing from their home or care and/or are at risk of CSE and put in place a Strategic Partnership Group (SBNI SPG) as a time-limited committee of the SBNI Board to develop a strategic and coordinated plan to tackle CSE.<sup>502</sup> The terms of reference of the SBNI SPG are to:

- raise awareness;
- educate young people, families and professionals;
- develop appropriate policies and procedures to improve professional practice;
- identify the scale and nature of child exploitation in Northern Ireland;
- disrupt criminal activity; and
- help achieve future convictions.<sup>503</sup>

An independent expert-led inquiry into child sexual exploitation in NI was supported and facilitated jointly by the Regulation and Quality Improvement Authority (RQIA) and the Criminal Justice Inspection of Northern Ireland (CJINI) and the Education and Training Inspectorate (ETI) in relation to schools. Kathleen Marshall led the Inquiry, which focused on children and young people living at home in the community and those living in care. The Inquiry's report was published in November 2014.<sup>504</sup>

The Inquiry made 17 key recommendations and a further 60 supporting recommendations aimed at preventing, identifying, disrupting and tackling CSE. Three themes emerge from the report:

- the need for greater **awareness** across the whole population in Northern Ireland;
- the need for **balance** in response to the reality of CSE, so that it:
  - Does not focus purely on children in the care system;
  - Does not lead to a panic response that scares children and parents and results in disproportionate repression or suspicion;
  - Does not result in a sudden lurch towards CSE as a stand-alone priority; and
  - CSE is facilitated by underlying vulnerabilities such as neglect, poverty, substance misuse (including alcohol) and domestic violence. CSE will not be effectively tackled if these vulnerabilities are not also addressed. ...

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<sup>501</sup> <http://www.safeguardingni.org/thematic-review-child-sexual-exploitation>

<sup>502</sup> SBNI, Annual Report for the period to 31 March 2014, 2014, p. 23.

<sup>503</sup> *Ibid*, p. 24

<sup>504</sup> Kathleen Marshall, CJINI/RQIA/ETI, *Child Sexual Exploitation in Northern Ireland; Report of the Independent Inquiry*, 2014.

the need to promote **confidence** on the part of children, parents, workers and the community that they can respond appropriately to the threat of CSE. This is reflected in the Inquiry's recommendations about awareness raising, education and training, developing clear pathways for reporting, and promoting an effective response to reports.<sup>505</sup>

The Inquiry stated that a pan-Northern Ireland strategy is required to address CSE, but noted that it "will have very limited impact if it is not informed by the experiences of children, young people and parents, and associated with a change in culture and attitudes."<sup>506</sup>

## **Oversight and learning from experiences**

A number of assessments of Northern Ireland's child protection system have taken place and have resulted in changes in the structure and operation of the system. These assessments include a 2006 Social Services Inspectorate Report,<sup>507</sup> a 2008 inquiry ('the O'Neill inquiry'),<sup>508</sup> and an independent review of agency involvement with specific children ('the Toner report'), which made recommendations, including in the area of child protection, procedure, and practice.<sup>509</sup> Relevant recommendations from these reports were considered by the RQIA in a staged review of child protection arrangements completed in 2011.<sup>510</sup>

An independent expert-led inquiry into child sexual exploitation in NI, the Marshall Review, reported in November 2014.<sup>511</sup> The Recommendations in the report are currently being considered by the relevant Government Departments.<sup>512</sup>

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<sup>505</sup> *Ibid*, pp. 147-148.

<sup>506</sup> *Ibid*, p. 25.

<sup>507</sup> SSI/DHSSPS, *Our Children and Young People – Our Shared Responsibility: Inspection of Child Protection Services in Northern Ireland*, 2006.

<sup>508</sup> WHSSB and EHSSB, *Report of the Independent Inquiry Panel to the Western and Eastern Health and Social Services Boards – May 2007*, 2008, p. 6.

<sup>509</sup> DHSSPS, *Independent Review Report of Agency Involvement with Mr Arthur McElhill, Ms Lorraine McGovern and their children*, 2008. On 13 November 2007 all members of the family died due to a fatal fire at their home. The subsequent coroner's report determined that the fire was started deliberately by Mr McElhill (see e.g. RTE news (2009) *Coroner Confirms McElhill Burned family Home*, <http://www.rte.ie/news/2009/1208/125152-omagh/>)

<sup>510</sup> RQIA, *A Review of Child Protection Arrangements in Northern Ireland: An Overview Report*, 2011, p. 9: Stage 1 – corporate leadership and accountability, Stage 2 – views of service users, Stage 3 – quality of record keeping, Stage 4 – quality assurance, managing performance of service and access to services, Stage 5 – Interagency communication at point of referral.

<sup>511</sup> Kathleen Marshall, CJINI/RQIA/ETI, *Child Sexual Exploitation in Northern Ireland; Report of the Independent Inquiry*, 2014.

<sup>512</sup> See for example, <http://www.dojni.gov.uk/index/media-centre/ford-promises-action-on-child-sexual-exploitation.htm>; <http://www.dhsspsni.gov.uk/cse-pr-181114>.

Pursuant to recently introduced statutory requirements, Case Management Reviews must be undertaken in a number of situations,<sup>513</sup> however, there is no systematic mechanism of review and learning regarding the child protection system in NI. An analysis of 24 Case Management Reviews that took place in Northern Ireland between 2003 and 2008 identified situations when these Reviews had been used effectively to address issues raised in specific cases,<sup>514</sup> but also noted the limitations of individual CMRs, stating that:

it is only when data from a number of reviews are aggregated that we can start to spot trends. The analysis from CMRs also needs to be considered alongside routinely collected administrative data, the findings from audits and service evaluations, and the conclusions from commissioned research studies.<sup>515</sup>

In GB biennial overview reports regarding serious case reviews (roughly equivalent to CMRs) have provided information and analysis, which can provide the basis for additional detailed research.<sup>516</sup>

The OFMDFM outlined the importance of reviews of child deaths, stating that it “is very important that we can learn as much as is possible from the deaths of children.”<sup>517</sup> Neither the SBNI nor the DHSSPS have yet established a child death review mechanism, as set out in the Act.<sup>518</sup>

## Participation in decision-making

The views of children whose names had been included on the Child Protection Register were explored by a local voluntary organisation. Most of those consulted for the report indicated that they had not actively

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<sup>513</sup> SBNI Regulations, Regulation 17(3).

<sup>514</sup> QUB/NSPCC/DHSSPS, Devaney, J., Hayes, D., Bunting, L. and Lazenbatt, A, *Translating Learning into Action: An Overview of Learning Arising from Case Management Reviews in Northern Ireland 2003-2008*, 2013, p. 47.

<sup>515</sup> *Ibid*, p. 65.

<sup>516</sup> In England overview reports regarding learning from serious case reviews have been published biannually –see

<http://www.education.gov.uk/childrenandyoungpeople/safeguardingchildren/reviews/a0068869/scrs>; NSPCC/University of East Anglia, *Neglect and Serious Case Reviews*, 2013; QUB/NSPCC/DHSSPS, Devaney, J., Hayes, D., Bunting, L. and Lazenbatt, A, *Translating Learning into Action: An Overview of Learning Arising from Case Management Reviews in Northern Ireland 2003-2008*, 2013.

<sup>517</sup> OFMDFM, *Safeguarding Children: A Cross-Departmental Statement on the Protection of Children and Young People*, 2009, pp. 58-60.

<sup>518</sup> Safeguarding Board Act (NI) 2011, S. 3. See also, DHSSPS, *Guidance to Safeguarding Board for Northern Ireland (SBNI)*, amended 2014, para 2.3.5; NI Assembly, Committee for Health, Social Services and Public Safety, Official Report, The Safeguarding Board for Northern Ireland (Membership, Procedure, Functions and Committee) Regulations (Northern Ireland) 2012, 28 March 2012, p. 4.

participated in the decision-making process. Furthermore, the report noted an absence of available figures on how many children attend Case Conferences with or without advocacy support.<sup>519</sup>

Domestic courts have recognised the importance of the procedural safeguards required under ECHR, Article 8, including the right to be heard and the right to participation.<sup>520</sup> Respect for these rights by public authorities has at times been called into question. For example, Mr. Justice Treacy stated in 2014 that:

It is crucial that public authorities recognize and accept that statutory requirements or Departmental guidance which recommends genuine consultation with the people most personally affected by administrative decisions do so in order to ensure that decision making is well informed, well calibrated and proportionate and avoids the risk of excessive reliance on coercive powers. ... Good consultation should keep administrators alive to the possibility of legitimate alternative approaches to objectives shared by the administrative system and the human individuals who need to rely on that system.

<sup>521</sup>

## **Domestic law, policy and practice: looked after children and interventions to ensure child safety**

Pursuant to the *Children Order*, Article 25, a child who is looked after by an authority is a child who is in the care of the authority or provided with accommodation by the authority for more than 24 hours.<sup>522</sup> There are a number of ways in which children may become looked after, including voluntarily through the agreement of those with parental responsibility,<sup>523</sup> or through a care order.<sup>524</sup> As already noted, where an Emergency Protection Order is in force,<sup>525</sup> or the child has been taken into police

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<sup>519</sup> VOYPIC, McAlister, K. and McCrea, R., *Listening to Children: Involving Children and Young People in Child Protection*, 2007.

<sup>520</sup> *Northern Ireland Health and Social Care Trust for Northern Ireland, Re Judicial Review* [2014] NIQB 49; *Belfast Health and Social Care Trust v JK & Ors* [2013] NIFam 10, para 15: "The court reminds the Trust that Article 8 of the Convention does contain a procedural dimension which gives to a parent in circumstances such as these the right to make representations to the decision maker before a decision adverse to his or her interests is taken, unless the situation is so urgent this could not be achieved without endangering the baby or child."

<sup>521</sup> *Northern Ireland Health and Social Care Trust for Northern Ireland, Re Judicial Review* [2014] NIQB 49, para 48.

<sup>522</sup> *Children Order*, Art. 25(2): "accommodation" means accommodation which is provided for a continuous period of more than 24 hours.

<sup>523</sup> *Children Order*, Art. 21.

<sup>524</sup> *Children Order*, Art. 50.

<sup>525</sup> *Children Order*, Art. 63.



protection,<sup>526</sup> a Trust is required to undertake inquiries, the outcome of which may include an application being made to the courts to secure a care order in respect of the child.

## Care or Supervision Orders

Under Children Order, Article 50, the court may make a care or supervision order where it is satisfied that a child is suffering, or is likely to suffer, significant harm and that harm, or likelihood of harm, is attributable to either the child's care not being what it would be reasonable to expect a parent to give, or the child's being beyond parental control.<sup>527</sup> Additionally, in any family proceedings where a question arises with respect to the welfare of any child, where the court considers that it may be appropriate for a care or a supervision order to be made with respect to him or her, the court may direct the appropriate authority to undertake an investigation of the child's circumstances.<sup>528</sup>

Where a care order is in force the child is placed in the care of a designated authority.<sup>529</sup> The designated authority acquires parental responsibility, and, subject to certain limitations, has the power to determine the extent to which a parent or guardian may meet his or her parental responsibility for the child.<sup>530</sup> A care order lasts until a child's 18th birthday but can come to an end earlier, for example, if the child is adopted or the care order is discharged by the court.<sup>531</sup> On the application of any person entitled to apply for a care order to be discharged, the court may substitute a supervision order for the care order.<sup>532</sup>

A supervision order places a child under the supervision of a designated authority.<sup>533</sup> While a supervision order is in force the supervisor has a duty to advise, assist and befriend the supervised child and to take such steps as are reasonably necessary to give effect to the order.<sup>534</sup> The supervisor shall consider whether or not to apply to the court for variation or discharge of the order where the order is not complied with or the supervisor considers that the order may no longer be necessary.<sup>535</sup> The

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<sup>526</sup> Children Order, Art. 65.

<sup>527</sup> Children Order, Art. 50(2).

<sup>528</sup> Children Order, Art. 56. Children Order, Art. 56(6): If, on the conclusion of any investigation or review under this Article, the authority decides not to apply for a care or a supervision order with respect to the child – (a) the authority shall consider whether it would be appropriate to review the case at a later date; and (b) if the authority decides that it would be, the authority shall determine the date on which that review is to begin.

<sup>529</sup> Children Order, Art. 50 (1).

<sup>530</sup> Children Order, Art. 52(3-4).

<sup>531</sup> Children Order, Art. 58(1) A care order may be discharged by the court on the application of any person who has parental responsibility for the child, the child, or the authority designated by the order.

<sup>532</sup> Children Order, Art. 58(4).

<sup>533</sup> Children Order, Art. 50(1).

<sup>534</sup> Children Order, Art. 54.

<sup>535</sup> Children Order, Art. 54.

order lasts for one year or for a shorter period as the court determines. It can be extended for a period of up to 3 years but expires when a young person attains his or her 18th birthday.<sup>536</sup> The child, the supervisor or a person who has parental responsibility for the child can apply to discharge a supervision order.<sup>537</sup>

An interim care or supervision order can be granted in proceedings on an application for a care or supervision order if the proceedings are adjourned or if the court directs a Trust to undertake an investigation into the child's circumstances.<sup>538</sup> A court cannot make an interim care order or an interim supervision order unless satisfied that there are reasonable grounds for believing the child is at risk of significant harm within the meaning of Article 50(2) of the Children Order.<sup>539</sup> On first application, an interim order can last for up to eight weeks.<sup>540</sup> Generally, subsequent orders can be made for up to four weeks.<sup>541</sup> Where the court makes an interim care order or interim supervision order, it may give directions with regard to medical, psychiatric or other assessments of the child.<sup>542</sup> The court may include an exclusion requirement<sup>543</sup> in an interim care order where there is reasonable cause to believe that, if a person is excluded from a dwelling-house in which the child lives, the child will cease to suffer, or cease to be likely to suffer, significant harm, and another person is able and willing to live in the dwelling-house and give to the child the care which it would be reasonable to expect a parent to give him or her and consents to the inclusion of the exclusion requirement.<sup>544</sup>

## Child assessment and Emergency Protection Orders

Children Order, Article 62 provides for child assessment orders. These may be made by a court, if it is satisfied that the applicant for the order

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<sup>536</sup> Children (NI) Order 1995, Guidance and Regulations, Volume 1: Court Orders and Other Legal Issues, Chapter 9.

<sup>537</sup> Children Order, Art. 58 (2).

<sup>538</sup> Children Order, Art. 57.

<sup>539</sup> Children Order, Art. 57(2).

<sup>540</sup> Children Order, Art. 57(4)(a).

<sup>541</sup> Children Order, Art. 57(4)(b). Children Order, Art. 57(5): In paragraph (4)(b) "the relevant period" means – (a) the period of four weeks beginning with the date on which the order in question is made; or (b) the period of eight weeks beginning with the date on which the first order was made if that period ends later than the period mentioned in sub-paragraph (a).

<sup>542</sup> Children Order, Art. 57(6-8). If the child is of sufficient understanding to make an informed decision he may refuse to submit to the examination or other assessment.

<sup>543</sup> Children Order, Art. 57A(3): For the purposes of this Article an exclusion requirement is any one or more of the following – (a) a provision requiring the relevant person to leave a dwelling-house in which he is living with the child, (b) a provision prohibiting the relevant person from entering a dwelling-house in which the child lives, and (c) a provision excluding the relevant person from a defined area in which a dwelling-house in which the child lives is situated and any other defined area.

<sup>544</sup> Children Order, Art. 57A.

has reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm; an assessment of the state of the child's health or development, or of the way in which he has been treated, is required to enable the applicant to determine whether or not the child is suffering, or is likely to suffer, significant harm; and it is unlikely that such an assessment will be made, or be satisfactory, in the absence of such an order.<sup>545</sup> The court may treat an application for a child assessment order as an application for an emergency protection order and if it is satisfied that there are grounds for making an emergency protection order it ought to make such an order rather than a child assessment order.<sup>546</sup>

Pursuant to Children Order, Article 63 a court may make an order for emergency protection of a child (emergency protection order) if it is satisfied that:

(a) there is reasonable cause to believe that the child is likely to suffer significant harm if – (i) he is not removed to accommodation provided by or on behalf of the applicant; or(ii) he does not remain in the place in which he is then being accommodated; or

(b) in the case of an application made by an authority –(i) inquiries are being made with respect to the child under Article 66(1)(b); and (ii) those inquiries are being frustrated by access to the child being unreasonably refused to a person authorised to seek access and the applicant has reasonable cause to believe that access to the child is required as a matter of urgency; or

(c) in the case of an application made by an authorised person – (i) the applicant has reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm;(ii) the applicant is making inquiries with respect to the child's welfare; and(iii) those inquiries are being frustrated by access to the child being unreasonably refused to a person authorised to seek access and the applicant has reasonable cause to believe that access to the child is required as a matter of urgency.

A court may also exercise powers to assist in discovery of children who may be in need of emergency protection.<sup>547</sup>

When an emergency protection order is in force it gives the applicant parental responsibility for the child and authorises the removal of the child to accommodation provided by or on behalf of the applicant for the order.<sup>548</sup> It may also prevent the child's removal from any hospital or other place in which he or she was being accommodated immediately

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<sup>545</sup> Children Order, Art. 62(1).

<sup>546</sup> Children Order, Art. 62(3-4).

<sup>547</sup> Children Order, Art. 67.

<sup>548</sup> Children Order, Art. 62(4).

before the making of the order.<sup>549</sup> These powers may be exercised only for the purposes of safeguarding the child's welfare.<sup>550</sup>

An emergency protection order lasts for a specified time period not exceeding eight days.<sup>551</sup> Any person who has parental responsibility for a child as the result of an emergency protection order and is entitled to apply for a care order with respect to the child, may apply to the court for the emergency protection order to be extended by one further period of seven days.<sup>552</sup> In general, after 72 hours from the making of an emergency protection order, the child, his or her parent, any person who has parental responsibility for him or her and anyone with whom he or she was living immediately before the making of the order can apply to court for the order to be discharged.<sup>553</sup>

### Police protection

Where a constable has reasonable cause to believe a child would otherwise be likely to suffer significant harm, he or she may remove the child to suitable accommodation and keep the child there; or take such steps as are reasonable to prevent a child being removed from hospital or another place in which he or she is being accommodated.<sup>554</sup> This is known as 'police protection'.<sup>555</sup> As soon as reasonably practicable thereafter, the case must be inquired into by a designated officer (being a police officer designated by the Chief Constable or by such other police officer as the Chief Constable directs).<sup>556</sup> No child shall be kept in police protection for more than 72 hours.<sup>557</sup>

As soon as reasonably practicable, the designated officer must inform the relevant authority, the child (if he or she is capable of understanding),<sup>558</sup> the parents, any person with parental responsibility for the child, and anyone with whom the child was living immediately before being taken into police protection,<sup>559</sup> of the steps being taken under Art 65 and the reason for them. The designated officer must also take reasonably practicable steps to ascertain the wishes and feelings of the child.<sup>560</sup> Additionally, the designated officer shall allow such contact between the

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<sup>549</sup> Children Order, Art. 63(4)(b).

<sup>550</sup> Children Order, Art. 63(5)(a).

<sup>551</sup> Children Order, Art. 64(1).

<sup>552</sup> Children Order, Art. 64.

<sup>553</sup> Children Order, Art. 64(7). Children Order, Art. 64(10) sets out when paragraph 7 does not apply.

<sup>554</sup> Children Order, Art. 65(1).

<sup>555</sup> Children Order, Art. 65(2).

<sup>556</sup> Children Order, Art. 65(3) and (4).

<sup>557</sup> Children Order, Art. 65(8).

<sup>558</sup> Children Order, Art. 65(5).

<sup>559</sup> Children Order, Art. 65(6).

<sup>560</sup> Children Order, Art. 65(5).

child and specified individuals, including the child's parents, anyone with parental responsibility for the child, any person with whom the child was living immediately before being taken into police protection, and any person in whose favour a contact order is in force with respect to the child, as is reasonable and in the child's best interests.<sup>561</sup>

### **Appointment of guardians ad litem**

Pursuant to Children Order, Article 60, for the purpose of "any specified proceedings", which include proceedings regarding care or supervision orders and interim care orders,<sup>562</sup> the Court shall appoint a guardian ad litem for the child concerned unless satisfied that it is not necessary to do so in order to safeguard his or her interests. The guardian ad litem is appointed in accordance with rules of court and is under a duty to safeguard the interests of the child in the manner prescribed by such rules.<sup>563</sup>

In accordance with the powers and duties set out in the rules of Court the Guardian must; appoint a solicitor to represent the child; instruct the solicitor, unless the child is competent to do so; attend all Court directions, appointments and hearings unless excused by the Court; and advise the Court in a number of areas.<sup>564</sup> The responsibilities of the guardian ad litem and the parameters of the role are defined by statute and limited to the duration of the proceedings. Similar provisions are contained in Art 66 of the Adoption (Northern Ireland) Order 1987 in relation to adoption cases, however, the role of the guardian ad litem in adoption proceedings is more circumscribed.

In certain circumstances where no guardian ad litem has been appointed for the child the court may appoint a solicitor to represent him or her.<sup>565</sup>

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<sup>561</sup> Children Order, Art. 65(10).

<sup>562</sup> Children Order, Art. 60(6) In this Article "specified proceedings" means any proceedings – (a) on an application for a care or a supervision order; (b) in which the court has given a direction under Article 56(1) and has made, or is considering whether to make, an interim care order; (c) on an application for the discharge of a care order or the variation or discharge of a supervision order; (d) on an application under Article 58(4); (e) in which the court is considering whether to make a residence order with respect to a child who is the subject of a care order; (f) with respect to contact between a child who is the subject of a care order and any other person; (g) under Part VI; (h) on an appeal against – (i) the making of, or refusal to make, a care order, supervision order or any order under Article 53; (ii) the making of, or refusal to make, a residence order with respect to a child who is the subject of a care order; or (iii) the variation or discharge, or refusal of an application to vary or discharge, an order of a kind mentioned in head (i) or (ii); (iv) the refusal of an application under Article 58(4); or (v) the making of, or refusal to make, an order under Part VI; or (i) which are specified, for the purposes of this Article by rules of court.

<sup>563</sup> Children Order, Art. 60(2).

<sup>564</sup> COAC, *Best Practice Guidance, 2<sup>nd</sup> Edition 2010*, as updated 2012, pp. 325-6.

<sup>565</sup> Children Order, Art. 60.

In certain cases neither the family support pathway, nor the child protection pathway, are sufficient to safeguard the child or to promote his or her welfare, because the needs of the child are great.<sup>566</sup> For these children, it is expected that work will have been undertaken “to promote the family functioning and utilise the strengths of the family and extended family, to ensure that every opportunity is taken to meet the child’s needs before recourse to the provision of accommodation.”<sup>567</sup> The referral and assessment procedures will generally have been followed for those children who subsequently become looked after. The DHSSPS notes that there will be situations “where it is clear at the outset that there are presenting circumstances which warrant children becoming looked after.”<sup>568</sup> In these cases the requisite response will necessitate transfer of these cases from the Gateway Team to other services, for example a Looked After Child Team, in which case the Gateway Social Work Manager will liaise with the appropriate team with a view to establishing a co-working arrangement at an early stage.<sup>569</sup>

The UNOCINI Looked After Child Pathway should be used with those children who are being looked after by a Trust.<sup>570</sup> The DHSSPS has stated that “the LAC Processes should be sufficiently robust to address the Child Protection needs of the child/young person” and that children who are looked after generally do not need to be the subject of a separate Child Protection Plan.<sup>571</sup> The UNOCINI Looked After Pathway Assessment encompasses risk assessment and promotes the consideration of an appropriate plan to meet the overall needs of a child or a young person, including his or her needs for protection.<sup>572</sup>

The legislative provisions of the Children Order are operationalised by the Regulations and Guidance accompanying it. For example, Volume One: Court Order and Other Legal Issues, Volume Three: Family Placements

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<sup>566</sup> DHSSPS, *Family and Child Care Thresholds of Intervention*, 2008, p. 13. See also, DHSSPS, *Co-operating to Safeguard Children*, 2003, para 3.11.

<sup>567</sup> DHSSPS, *Family and Child Care Thresholds of Intervention*, 2008, p. 13.

<sup>568</sup> DHSSPS, *Gateway Service-Processes: Guidance for Northern Ireland Health and Social Care Trusts*, 2008, para 4.3.

<sup>569</sup> *Ibid*, para 4.3. The Gateway Service Team Member retains responsibility to complete the Initial Assessment which will then be transferred on to the appropriate team. Responsibility for convening LAC Reviews will not rest with the Gateway Service.

<sup>570</sup> DHSSPS, *UNOCINI Guidance. Understanding the Needs of Children in Northern Ireland*, 2011, p. 76.

<sup>571</sup> DHSSPS, *Protecting Looked After Children*, 2010, available at: [http://www.dhsspsni.gov.uk/guidance\\_on\\_protecting\\_and\\_safeguarding\\_looked\\_after\\_children](http://www.dhsspsni.gov.uk/guidance_on_protecting_and_safeguarding_looked_after_children), para 2.1.

<sup>572</sup> *Ibid*, para 2.3; DHSSPS, *UNOCINI Guidance. Understanding the Needs of Children in Northern Ireland*, 2011, pp. 76-80.

and Private Fostering, Volume Four: Residential Care.<sup>573</sup> The *Cooperating to Safeguard Children* guidance document updated guidance previously provided in Volume Six: Co-operating to Protect Children. Comprehensive guidance regarding the procedures to be followed by practitioners making applications to the courts under the Children Order is provided in the Children Order Advisory Committee Best Practice Guidance.<sup>574</sup> This Guidance incorporates the *Guide to Case Management in Public Law Proceedings*,<sup>575</sup> which was introduced in 2009 in response to concerns about delays in decision-making and cost effectiveness. The Guide emphasises strong judicial management in cases and timely decision-making by way of meetings between parents, the Trust and solicitor to encourage early identification and agreement on core issues. This has been part of an effort to address lengthy cases and delays in children's proceedings in Northern Ireland,<sup>576</sup> to ensure that court proceedings regarding children and families are carried out in a timely and cost effective manner.<sup>577</sup>

Care proceedings and emergency protection orders are usually heard in the Family Proceedings Court. Cases may be transferred to Family Care Centres or the High Court. In 2010/2011, the main reason given for transfer from the Family Proceedings Court and the Family Care Centre was complexity of the case (59% and 52% respectively).<sup>578</sup> When a Trust decides that its safeguarding concerns have increased to the stage where it is considering making an application to a court to protect the child (pre-proceedings stage), Trusts are expected to write to parents to inform them of their concerns and their intention to apply for care orders.<sup>579</sup> Parents are invited to attend a pre-proceedings meeting at which their solicitor is present to explore the concerns and to continue to work with the Trust to address them. Children are not entitled to independent legal representation at the pre-proceedings meeting.<sup>580</sup>

If the Trust issues proceedings, a first directions hearing should take place within 8 days of the application being lodged with the court.<sup>581</sup> Subsequent hearings involve the Trust presenting reports to the court (with supporting reports by other professionals if necessary) that outline

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<sup>573</sup> [http://www.dhsspsni.gov.uk/index/hss/child\\_care/children-order/children-order-guidance-regulations.htm](http://www.dhsspsni.gov.uk/index/hss/child_care/children-order/children-order-guidance-regulations.htm).

<sup>574</sup> COAC, *Best Practice Guidance, 2<sup>nd</sup> Edition 2010*, as updated 2012, Appendix 1.

<sup>575</sup> COAC, *Guide to Case Management in Public Law Proceedings*, 2012.

<sup>576</sup> RQIA, *Independent Review of the Governance Arrangements of the Northern Ireland Guardian Ad Litem Agency*, 2013, p. 8.

<sup>577</sup> See generally the work of the Children Order Advisory Committee <http://www.dhsspsni.gov.uk/children-order-advisory-committee>.

<sup>578</sup> COAC, *The Children Order Advisory Committee, Twelfth Report*, 2013, p. 31.

<sup>579</sup> COAC, *Best Practice Guidance, 2<sup>nd</sup> Edition 2010*, as updated 2012, p. 20.

<sup>580</sup> *Ibid*, pp. 20-21.

<sup>581</sup> *Ibid*, pp. 19-24, 117, Appendix 13.

evidence of harm and the intended care plan for the child.<sup>582</sup> The guardian ad litem, as an officer of the court, plays a proactive role in the timetabling of the case for final hearing, instructing experts, appointing a solicitor to represent the child, and in facilitating meetings to establish common areas of agreement before the case proceeds to final hearing.<sup>583</sup> The complexity of the balance to be achieved in these cases was outlined by Lady Justice Hale in the UK Supreme Court:

In a free society, it is a serious thing indeed for the state compulsorily to remove a child from his family of birth. Interference with the right to respect for family life, protected by article 8 of the European Convention on Human Rights can only be justified by a pressing social need. Yet it is also a serious thing for the state to fail to safeguard its children from the neglect and ill-treatment which they may suffer in their own homes. This may even amount to a violation of their right not to be subjected to inhuman and degrading treatment, protected by article 3 of the Convention.<sup>584</sup>

Domestic courts have recalled the obligations imposed by the ECHR in the context of decisions regarding the care of a child.<sup>585</sup> In considering care order applications, the courts have emphasised the requirement for evidence of harm in each case. Lady Justice Hale in *Re J (Children)* stated that 'There are ... three questions to be answered in any care case: first, is there harm or a likelihood of harm; second, to what is that harm or likelihood of harm attributable; and third, what will be best for the child?'.<sup>586</sup> A child may be protected, not only if he is actually suffering harm as a result of a lack of reasonable parental care, but also if it is likely that he will do so in the future.<sup>587</sup>

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<sup>582</sup> *Ibid*, pp. 118-123, Appendix 13.

<sup>583</sup> *Ibid*, pp. 172 and Chapter 11.

<sup>584</sup> *Re J (Children)* [2013] UKSC 9, para 1.

<sup>585</sup> *Belfast Health and Social Care Trust v JK & Ors* [2013] NIFam 10, para 21: "[T]he Trust in making its decision to remove a child from a parent or parents under its [Interim Care Order] powers should consider the case fully and should ensure that it acts consistently with its obligations under the Human Rights Act 1998. The removal of a child from a parent is plainly a matter of great importance which requires full justification. The decision will normally... involve compliance with the requirements of Article 6 and Article 8 of the Convention. The Trust must appreciate this and factor this fully into its decision making."

<sup>586</sup> *Re J (Children)* [2013] UKSC 9. See also: *In re M (A Minor) (Care Orders: Threshold Conditions)* [1994] 2 AC 424; *In re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563; *Lancashire County Council v B* [2000] 2 AC 147; *In re O (Minors) (Care : Preliminary Hearing)* [2003] UKHL 18, [2004] 1 AC 523; *In re B (Children) (Care Proceedings: Standard of Proof) (CAFCASS intervening)* [2008] UKHL 35, [2009] AC 11; and *In re S-B (Children) (Care Proceedings: Standard of Proof)* [2009] UKSC 17, [2010] 1 AC 678.

<sup>587</sup> *Re J (Children)* [2013] UKSC 9, para 4. See also, para 49.



## Northern Ireland context

### Delay

The Children Order, Article 3(2) requires that

In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

The Children Order Guidance and Regulations explain that

The court is required to control the progress of individual cases and take steps to avoid unnecessary delay... Notwithstanding Article 3(2), it should not be thought that delay is always detrimental to the child's welfare. What has to be avoided is unplanned 'drift'. Delay which is purposeful, for example awaiting the outcome of an assessment, may be desirable. The principal effect of Article 3(2) is to place the onus upon the court to ensure that all proceedings concerning children are conducted as expeditiously as possible.<sup>588</sup>

In spite of these provisions regarding the avoidance of unnecessary delay, in 2011 the Access to Justice Review Northern Ireland identified delay as one of two themes which came through strongly from a number of responses and in stakeholder meetings. The Review noted that it is "clear that there remains considerable concern about delay in the criminal and civil justice systems, with particular emphasis on its impact... on children in public and private law matters on the civil side."<sup>589</sup>

In addition to delays in the Court processes, a 2011 review found protracted timescales for processing cases through the Gateway service in some Trusts and, in all Trusts, volumes of work processed through Gateway adversely affected the prompt allocation of cases to Family Intervention and Support Teams.<sup>590</sup> In light of this, Trusts were urged to ensure referral, allocation and intervention within the required timescales and on-going risk assessment and management where this was not achieved.<sup>591</sup>

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<sup>588</sup> Children (NI) Order 1995, Guidance and Regulations, Volume 1, Court Orders and Other Legal Issues, paras 1.7-1.8.

<sup>589</sup> *Access to Justice Review Northern Ireland*, August 2011, available at: [http://ico.org.uk/~media/documents/consultation\\_responses/Access\\_to\\_Justice\\_Review\\_FINAL\\_REPORT.ashx](http://ico.org.uk/~media/documents/consultation_responses/Access_to_Justice_Review_FINAL_REPORT.ashx), para 2.16.

<sup>590</sup> RQIA, *A Review of Child Protection Arrangements in Northern Ireland: An Overview Report*, 2011, pp. 17 and 18.

<sup>591</sup> *Ibid*, p. 18.

A central aim of the *Guide to Case Management in Public Law Proceedings* is to reduce the time it takes the court to reach a final determination in these cases.<sup>592</sup> The COAC considered the effect of the Guide on the progress of cases and reported in 2013 that indications from its monitoring process and “from subjective reports are that the Guide has facilitated earlier resolution of Public Law cases and has helped to identify earlier and more clearly the substantive issues to be resolved in the judicial process.”<sup>593</sup>

The Access to Justice Review (2) identifies issues contributing to delay and increased costs as including; inconsistent application of the COAC guidance on case management; variability in the quality of social work assessments and evidence; excessive and sometimes inappropriate commissioning of expert reports; judges seeking to approve the detail of care plans rather than establishing that the core elements are present; and the legislative requirement that Interim Care Orders be reviewed after 8 weeks and then every 4 weeks.<sup>594</sup> The documents notes that “it is open to question whether the procedures established in the Children Order allow for the most efficient and effective ways of processing these cases in the interests of the child.”<sup>595</sup>

Some of those interviewed for the purposes of this report highlighted a number of factors that might cause delay including:

- instructing experts to undertake assessments;
- securing agreement from the Legal Aid Commission on fees to be paid;
- slow progress through court of consolidated cases that involve multiple applications;
- differences in the approach of Judges regarding their oversight of cases.

Concerns have been raised in some areas with respect to pressures on the court system in relation to the volume of business.<sup>596</sup> A 2013 RQIA report notes that overall court cases still take approximately 55 weeks to finalise in Northern Ireland compared with 51 weeks in England.<sup>597</sup> A small scale NIGALA study raised questions regarding the effectiveness of

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<sup>592</sup> COAC, *Best Practice Guidance, 2<sup>nd</sup> Edition 2010*, as updated 2012, p.25. Provisions regarding the avoidance of delay are referenced throughout the Best Practice Guidance.

<sup>593</sup> COAC, *The Children Order Advisory Committee, Twelfth Report*, 2013, pp. 16-17.

<sup>594</sup> DOJ, *Access to Justice Review (2): The Agenda*, 2014, para 5.6

<sup>595</sup> *Ibid.*

<sup>596</sup> *Ibid.*, p. 14.

<sup>597</sup> RQIA, *Independent Review of the Governance Arrangements of the Northern Ireland Guardian Ad Litem Agency*, 2013. See also NIGALA, *Care Order proceedings in Northern Ireland; A Snapshot Study in May 2012*, 2012, p. 42.

Pre-Proceedings and the potential contribution of this process to delay.<sup>598</sup> In recognition of concerns regarding delay and the family justice system in England and Wales the Westminster government commissioned an independent panel to review the family justice system in that jurisdiction in 2010.<sup>599</sup> Many of the Family Justice Review (Norgrove) Report's recommendations were accepted<sup>600</sup> and legislation has been introduced which seeks to address a number of issues, including the problem of delay.<sup>601</sup>

Despite difficulties regarding delay in NI no similar independent review has been undertaken, although the Access to Justice Review Northern Ireland in 2011 recommended that "the time is right for a fundamental review of family justice in Northern Ireland."<sup>602</sup> The Department of Justice (DOJ) and the DHSSPS have undertaken "work scoping a review of the operation of the family justice system" and have adopted "a staged approach to reform."<sup>603</sup> The Minister of Justice has stated that the "initial stage will include: the development of proposals for a pilot to minimise unnecessary delay in care proceedings; the development of a cross-departmental strategic approach to alternative dispute resolution services for families; and consideration of options for dealing with breaches of contact orders."<sup>604</sup> It is intended that this "initial stage will inform consideration of the need to take forward legislative reform in the future."<sup>605</sup> In 2014 the Minister for Justice established a review known as the Access to Justice Review (2). This Review considers some of the issues addressed in the Norgrove report, however, the Review document recalls that the Access to Justice Review (1) "recommended a fundamental review of family justice to be carried out..." and noted that "There remains a strong case for such a review."<sup>606</sup>

The legislative reform process to address delay in this area in NI is significantly behind the changes that have been introduced in England and Wales following the review in that jurisdiction. Reforms that are

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<sup>598</sup> NIGALA, *Care Order proceedings in Northern Ireland; A Snapshot Study in May 2012*, 2012, p. 42.

<sup>599</sup> Family Justice Review: Final Report, November 2011, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217343/family-justice-review-final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217343/family-justice-review-final-report.pdf).

<sup>600</sup> Ministry of Justice, *Family Justice Review: Government Response*, June 2012. Available at: <https://www.gov.uk/government/publications/family-justice-review-government-response>

<sup>601</sup> Children and Families Act 2012-2013 and 2013-2014.

<sup>602</sup> *Access to Justice Review Northern Ireland*, August 2011, available at: [http://ico.org.uk/~media/documents/consultation\\_responses/Access\\_to\\_Justice\\_Review\\_FINAL\\_REPORT.ashx](http://ico.org.uk/~media/documents/consultation_responses/Access_to_Justice_Review_FINAL_REPORT.ashx), para 5.92.

<sup>603</sup> Northern Ireland Assembly, AQW 29304/11-15, Tabled 10/12/2013.

<sup>604</sup> Northern Ireland Assembly, AQW 29304/11-15, Tabled 10/12/2013.

<sup>605</sup> Northern Ireland Assembly, AQW 29304/11-15, Tabled 10/12/2013.

<sup>606</sup> DOJ, *Access to Justice Review (2): The Agenda*, 2014, para 5.17.

introduced here should learn lessons from the approach which has been adopted in England, including considering a commitment to a time limit for care proceedings, except in certain cases.<sup>607</sup> In the context of any time limit that may be introduced, adequate flexibility should be allowed for an extension in cases where this would be in the best interests of the child, for example, some interventions which are shown to be effective that take longer than the prescribed period.<sup>608</sup>

## Looked after children and interventions to ensure child safety

At 31 March, 2014 there were 2,858 looked after children in Northern Ireland.<sup>609</sup> This is the highest number of looked after children since the Children Order came into force.<sup>610</sup> Of these children:

- 23% (664) children had been Looked After for less than a year;
- 32% (927) had been Looked After for between one and three years;
- 17% (471) had been Looked After for three years to five years;
- 19% (547) had been Looked After for five to ten years;
- 9% (249) had been Looked After for more than ten years.<sup>611</sup>

Seven hundred and fifty two children (26%) were accommodated under Article 21.<sup>612</sup> One thousand six hundred and fifty four children (58%) were subject to a Care Order under Article 50 or 59. Four hundred and nine children (14%) were subject to an interim care order and 43 children (2%) had other legal statuses including Deemed Care Orders.<sup>613</sup> The number of Article 63 applications (emergency protection orders) has varied from 32 applications in 2006/2007 to 86 in 2010/2011, with a general upward trend since 2006/2007.<sup>614</sup>

There were a total of 7075 LAC reviews held in 2013/2014.<sup>615</sup> Of these

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<sup>607</sup> *Access to Justice Review Northern Ireland*, August 2011, available at: [http://ico.org.uk/~media/documents/consultation\\_responses/Access\\_to\\_Justice\\_Review\\_FINAL\\_REPORT.ashx](http://ico.org.uk/~media/documents/consultation_responses/Access_to_Justice_Review_FINAL_REPORT.ashx), para 5.92: "While we do not believe that proposals in England and Wales are invariably applicable in Northern Ireland, there are similarities between our systems and there would be advantage in a review here at least being informed by the outcome of the Norgrove review."

<sup>608</sup> Child Protection All Party Parliamentary Group, *Making Care Proceedings Better for Children: A report by the Child Protection All Party Parliamentary Group*, 2013, pp. 11-13.

<sup>609</sup> DHSSPS/NISRA, *Children's Social Care Statistics Northern Ireland 2013/14*, 2014, p. 31.

<sup>610</sup> *Ibid.*

<sup>611</sup> HSCB, *Delegated Statutory Functions Statistical Report*, 2014, p. 25.

<sup>612</sup> DHSSPS/NISRA, *Children's Social Care Statistics Northern Ireland 2013/14*, 2014, p. 35; HSCB, *Delegated Statutory Functions Statistical Report*, 2014, p. 23.

<sup>613</sup> *Ibid.*

<sup>614</sup> COAC, *The Children Order Advisory Committee, Twelfth Report*, 2013, p. 27

<sup>615</sup> HSCB, *Delegated Statutory Functions Statistical Report*, 2014, p. 34.

reviews, 4.5% were held outside timescale.<sup>616</sup>

The SBNI noted in 2014 that Northern Ireland has a higher level of deaths of children than other regions in the United Kingdom, particularly in the perinatal period. Over the last decade two hundred children under eighteen died each year. Of these 120 children died within a year of birth.<sup>617</sup>

In 2012, the five-year average suicide rate for 15 to 19 year olds was 156.8 per million in Northern Ireland, 97.4 per million in Scotland and 36.7 per million in England and Wales. For 10 to 14 year olds, the five-year average suicide rate in 2012 was 17.6 per million in Northern Ireland, 6.1 per million in Scotland and 1.7 per million in England and Wales.<sup>618</sup>

### Interim care orders

The Access to Justice Review Northern Ireland identified concerns regarding the “repeated use of interim care orders requiring frequent court hearings and creating an atmosphere of uncertainty for the child.”<sup>619</sup>

Lord Nicholls previously explained in a House of Lords judgment that “an interim care order is not intended to be used as a means by which the court may continue to exercise a supervisory role over the local authority in cases where it is in the best interests of a child that a care order should be made.”<sup>620</sup> He outlined that when “a local authority formulates a care plan in connection with an application for a care order, there are bound to be uncertainties”<sup>621</sup> He recognised the importance of clear care plans but also the need for flexibility that in “an appropriate case, a judge must be free to defer making a care order until he is satisfied that the way ahead ‘is no longer obscured by an uncertainty that is neither inevitable nor chronic’.”<sup>622</sup>

Mr. Justice Gillen, in the High Court in Northern Ireland, noted that the “court must be alert to the danger of using Interim Care Orders as a means of policing or supervising the Trust in [the implementation of a care plan].”<sup>623</sup> Lady Hale in the House of Lords noted that a child subject

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<sup>616</sup> *Ibid*, p. 32.

<sup>617</sup> SBNI, *Annual Report for the period to 31 March 2014*, 2014, p. 10.

<sup>618</sup> *Ibid*.

<sup>619</sup> *Access to Justice Review Northern Ireland*, August 2011:

[http://ico.org.uk/~media/documents/consultation\\_responses/Access\\_to\\_Justice\\_Review\\_FINAL\\_REPORT.ashx](http://ico.org.uk/~media/documents/consultation_responses/Access_to_Justice_Review_FINAL_REPORT.ashx), p. 70

<sup>620</sup> *Re S (Minors) (Care Order: Implementation of Care Plan)* [2002] UKHL 10, para 90.

<sup>621</sup> *Ibid*, para 92.

<sup>622</sup> *Ibid*, para 101.

<sup>623</sup> *R and D, Re Care Order* [2003] NIFam 6, para 22.

to an interim care order “is fully protected but the court and the child’s guardian remain fully involved in the case.”<sup>624</sup> She identified that this “may contribute to the temptation to remain involved until much of the uncertainty referred to by Lord Nicholls has been resolved” but stated that “that temptation should be resisted if it conflicts with the ‘cardinal principle’ and the equally important principle that delay in determining their future is bad for children.”<sup>625</sup>

Lord Nicholls stressed that his findings on the issues before him must not:

obscure the pressing need for Government to attend to the serious practical and legal problems identified by the Court of Appeal or mentioned by me. One of the questions needing urgent consideration is whether some degree of court supervision of local authorities’ discharge of their parental responsibilities would bring about an overall improvement in the quality of child care provided by local authorities.<sup>626</sup>

## Data

Researchers for this report found a lack of accessible and available data and research regarding relevant proceedings in Northern Ireland in a number of areas:

- pre-proceedings meetings, in terms of parental experience and/or the outcomes of the court process. Some of those interviewed for the purposes of this report expressed the view that the role of the solicitor acting on behalf of parents in pre-proceedings meetings was critical in encouraging parents to work with the Trust to address the concerns;
- statistical information regarding the number of review meetings each Trust holds, the number of parents and children attending review meetings, their age and whether or not they have advocacy support;
- the impact on decision making of parental and/or child attendance at the formal meetings. Some of those interviewed for the purposes of this report expressed concern that the voices of children were not always heard in decision-making processes. Others also expressed concerns about the vulnerability of those parents who have cognitive impairments that were not always identified and/or assessed by Trusts and which could increase their vulnerability in decision-making processes even when they did attend.

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<sup>624</sup> *Kent County Council v. G and others* [2005] UKHL 68, para 57.

<sup>625</sup> *Ibid*, para 57.

<sup>626</sup> *Re S (Minors) (Care Order: Implementation of Care Plan)* [2002] UKHL 10, para 106.

## Guidance

The COAC Guidance was last updated in 2012 and a Review Panel aims to provide regular updates to ensure the Guidance remains up to date. The COAC has expressed concern that no contributions or suggestions for amendment or update were received “from the Bar Council or the Family Bar, the Law Society NI Family Law Committee, DHSSPS or NIGALA other than via the Advisory Committee and the Review Panel.”<sup>627</sup> The COAC noted that this “is concerning as no doubt there are many new practices and procedures if not case law which may warrant consideration in the Guidance.”<sup>628</sup>

Despite recognition of the need for amendment and up to date information in the context of changes within children’s services and court processes in terms of structure and processes,<sup>629</sup> the series of Regulations and Guidance, which accompanies the Children Order has not been updated since 1996 and no time limit has been placed on care proceedings hearings.<sup>630</sup>

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<sup>627</sup> COAC, *The Children Order Advisory Committee, Twelfth Report*, 2013, p. 9.

<sup>628</sup> *Ibid*, p. 9.

<sup>629</sup> OFMDFM, *Safeguarding Children: A Cross-Departmental Statement on the Protection of Children and Young People*, 2009, p. 42; COAC, *Best Practice Guidance, 2<sup>nd</sup> Edition 2010*, as updated 2012, p.4.

<sup>630</sup> [http://www.dhsspsni.gov.uk/index/hss/child\\_care/children-order/children-order-guidance-regulations.htm](http://www.dhsspsni.gov.uk/index/hss/child_care/children-order/children-order-guidance-regulations.htm).

## 4 Protecting the rights of the child not cared for by his or her family

### Human rights laws and standards

The UNCRC requires that a child who is temporarily or permanently deprived of his or her family environment, or in whose best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.<sup>631</sup> Where the State has pursued all available alternatives, including appropriate support, but a child's family remains unable to provide adequate care or relinquishes the child, the State is responsible for the protection of the rights of the child and for ensuring the availability of appropriate alternative care for him or her.<sup>632</sup> The UNCRC Committee has noted that "children's rights to development are at serious risk when they are orphaned, abandoned or deprived of family care or when they suffer long-term disruptions to relationships or separations."<sup>633</sup> In order to guarantee the rights set out in the UNCRC, States Parties "shall ensure the development of institutions, facilities and services for the care of children."<sup>634</sup>

The Committee of Ministers of the Council of Europe has noted that children who grow up in environments that do not meet their fundamental physical, emotional, intellectual and social needs are put in jeopardy of their lifelong welfare.<sup>635</sup> The Committee has further confirmed that the placement of a child must guarantee full enjoyment of the child's

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<sup>631</sup> UNCRC, Article 20.1.

<sup>632</sup> UNCRC, Art. 20. See also, *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 5; UNCRC Committee, *General Comment No 13 (2011), The right of the child to freedom from all forms of violence*, para 35: "The State party is obliged to take responsibility as the de facto caregiver or the one 'who has the care of the child', even if these children are not within the context of physical care settings such as foster homes, group homes or NGO facilities. The State party is under the obligation 'to ensure the child such protection and care as is necessary for his or her well-being' (art. 3, para. 2) and to 'ensure alternative care' to 'a child temporarily or permanently deprived of his or her family environment' (art. 20). There are different ways to guarantee the rights of these children, preferably in family-like care arrangements, which must be carefully examined with respect to the risk of these children being exposed to violence."

<sup>633</sup> UNCRC Committee, *General Comment No 7 (2005), Implementing child rights in early childhood*, para 36.

<sup>634</sup> UNCRC, Art. 18.

<sup>635</sup> Council of Europe, Committee of Ministers, *Resolution (77) 33 of the Committee of Ministers of the Council of Europe on Placement of Children*, 1977.



fundamental rights.<sup>636</sup>

### **The right to be heard and taken seriously and the best interests of the child: determination of the most appropriate form of care and review of care**

The right of the child to be heard and taken seriously and consideration of the best interests of the child are legal obligations and two of the founding principles of the UNCRC. Respect for, and fulfilment of, these rights is vital at all stages of a child's involvement with the care system, in particular regarding the determination of the most appropriate placement for the child and the planning and review of the placement. As previously discussed, the UNCRC Committee has identified five steps to be taken in order to effectively realise the right of the child to be heard: preparation; the hearing; assessment of the capacity of the child; information about the weight given to the views of the child (feedback); and complaints, remedies and redress.

UNCRC, Article 25 provides for the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement. The UN Guidelines for the Alternative Care of Children state that decision-making on alternative care in the best interests of the child should take place through a judicial, administrative or other adequate and recognised procedure, with legal safeguards, including, where appropriate, legal representation on behalf of children in any legal proceedings. It should be based on rigorous assessment, planning and review, through established structures and mechanisms, and should be carried out on a case-by-case basis, by suitably qualified professionals. It should involve full consultation at all stages with the child and with his or her parents or legal guardians.

UNCRC, Article 12 requires authorities to provide an opportunity for a child to give his or her views "in all matters affecting the child", and that these views must be taken seriously. The UNCRC Committee has stated that "mechanisms must be introduced to ensure that children in all forms of alternative care, including in institutions, are able to express their views and that those views be given due weight in matters of their placement, the regulation of care in foster families or homes and their daily lives." Similarly, the Committee of Ministers of the Council of Europe has noted that the form of care or the continuation of a placement should take into account the child's wishes and the continuity in his or her

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<sup>636</sup> Council of Europe, Committee of Ministers, *Recommendation Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions*, 2005.

life path and his or her fulfilment and own needs. The procedure, organisation and individual care plan of the placement, including its periodic review, should guarantee the rights of the child, in particular the child's right to be heard. The UNCRC Committee has recommended that State parties ensure, through legislation, regulation and policy directives, that the child's views are solicited and considered, including in decisions regarding placement in foster care or homes, development of care plans and their review, and visits with parents and family.

The obligation of the State to ensure the child such protection and care as is necessary for his or her well-being should be considered when assessing and determining the best interests of a child. The UNCRC Committee has noted that the terms "protection and care" must be read in a broad sense in relation to ensuring the child's "well-being" and development" and that "children's well-being, in a broad sense includes their basic material, physical, educational, and emotional needs, as well as needs for affection and safety".

The provision of relevant information to the child is essential in order for the right to be heard to be effectively implemented. Thus the child and his or her parents or legal guardians should be fully informed about the alternative care options available, the implications of each option and their rights and obligations in the matter.

### **Right to be heard in the court process**

Child and parental involvement in the court process is scrutinised following guidance laid out in the Guide to Case Management in Public Law Proceedings, the Children Order Advisory Committee Best Practice Guidance,<sup>637</sup> and wider legal obligations.<sup>638</sup> Mr. Justice Gillen has repeatedly stressed (citing UNCRC, Article 12) that "a child's fundamental rights, including the right to be heard, must be respected in all forums."<sup>639</sup> He has noted that a child's ability to give informed views will necessarily vary according to the individual intelligence and maturity of the child concerned and the circumstances of the case; accordingly he states that there is no set method for ascertaining those views. In *Re C and others* Mr. Justice Morgan highlighted two broad approaches utilised by courts in this process.<sup>640</sup> The first is an interview, often involving police, where the objective is to obtain information for use in subsequent

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<sup>637</sup> COAC, *Best Practice Guidance, 2<sup>nd</sup> Edition 2010*, as updated 2012, p. 160-2.

<sup>638</sup> See for example, decisions concerning disputed care orders in *Re: C1 & Others* [2009] NIFam 4, *In the Matter of J (Care Order)* [2008] NIFam 11, *Re: JH (Judicial Review)* [2013] NIQB 28, *A v A Health and Social Services Trust & Anor* [2011] NICA 32, *In the Matter of JR (Care Order: Rehabilitation)* [2010] NIFam 18, *Re: H (Care Order: Contact)* [2009] 2 FLR 55.

<sup>639</sup> *Re J (Children)* [2013] UKSC 9.

<sup>640</sup> *Re C and others* [2009] NIFam 4, para 17.

criminal or other proceedings. The second is a therapeutic interview where the objective is to enable the child to discuss the issues at hand.<sup>641</sup> While the importance of considering the views of the child has been recognised by Northern Ireland's courts, judges have stressed that the welfare and best interests of the child will take precedence over his or her views.<sup>642</sup> For example, in a situation where the child was determined to be "naïve in her assessments" the Judge felt "unable to give any significant weight to her wishes and feelings."<sup>643</sup> A child's age or mental age should not, however, be determinative of their right to be heard. Thus, in *Re: K (A Child) (Secure Accommodation Order: Right to Liberty)*, the Court of Appeal commended the provision of separate representation for K, which allowed him to participate to some degree in the secure accommodation proceedings:

Having been assessed as having a mental age of 8, one might raise an eyebrow at his ability to give instructions and his separate representation at various proceedings including before this court. But there is no doubt that it has been very beneficial for him to be allowed to play a part and to have some understanding of the legal procedures which have the effect of depriving him of his liberty.<sup>644</sup>

## Permanency of placement

The UN Guidelines for the Alternative Care of Children note that frequent changes in care setting are detrimental to the child's development and ability to form attachments, and should be avoided.<sup>645</sup> The Guidelines note that short-term placements should aim at enabling an appropriate permanent solution to be arranged. Decisions regarding children in alternative care, including those in informal care, should have due regard for the importance of ensuring children a stable home and of meeting their basic need for safe and continuous attachment to their caregivers, with permanency generally being a key goal.<sup>646</sup> When efforts to support a family in caring for a child fail and a child is taken into care, efforts should

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<sup>641</sup> For a discussion regarding requirements of taping such interviews see: *Re L and M (Minors)* [2008] NIFam 10.

<sup>642</sup> *F and T (Care proceedings: Residence)* [2011] NIFam 1; *Re E* [2005] NI Fam 12.

<sup>643</sup> *Dona (a pseudonym) (No.7)(Application to discharge care order)* [2011] NIFam 8, para 35. See, UNCRC, Art. 12.1: States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. UNCRC Committee, *General Comment No 12 (2009) on the right of the child to be heard*.

<sup>644</sup> *Re: K (A Child) (Secure Accommodation Order: Right to Liberty)* [2001] Fam 377, para 44.

<sup>645</sup> *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 60.

<sup>646</sup> *Ibid*, para 12.

therefore be made to ensure that the child is reunited with his or her family as soon as possible. However, if it becomes clear that this is not possible, or is not in the best interests of the child, “efforts should be made to find a permanent family placement within a reasonable period”<sup>647</sup> and “permanency for the child should be secured without undue delay.”<sup>648</sup> The UNCRC Committee has noted that “To the extent that alternative care is required, early placement in family-based or family-like care is more likely to produce positive outcomes for young children.”<sup>649</sup> The Committee has encouraged State parties “to invest in and support forms of alternative care that can ensure security, continuity of care and affection, and the opportunity for young children to form long-term attachments based on mutual trust and respect, for example through fostering, adoption and support for members of extended families.”<sup>650</sup>

The UN Guidelines for the Prevention of Juvenile Delinquency state that alternative care placements “should replicate, to the extent possible, a stable and settled family environment, while, at the same time, establishing a sense of permanency for children, thus avoiding problems associated with ‘foster drift’.”<sup>651</sup>

### The right to maintain family relationships

UNCRC, Article 9 requires States parties to “respect the rights of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.” The State has positive obligations to enable regular contact between children in care and their parents and, where possible, to keep siblings together.<sup>652</sup> The ECtHR has consistently stressed that while local authorities enjoy a wide margin of appreciation with respect to issues such as the assessment of the necessity of taking a child into care, “stricter scrutiny is called for in respect of any further

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<sup>647</sup> *Ibid*, para 44.

<sup>648</sup> *Ibid*, para 60

<sup>649</sup> UNCRC Committee, *General Comment No 7 (2005) Implementing child rights in early childhood*, para 36. See also, UNCRC Committee, *General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, Para 72.

<sup>650</sup> UNCRC Committee, *General Comment No 7 (2005) Implementing child rights in early childhood*, para 36. See also, UNCRC Committee, *General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, Para 72.

<sup>651</sup> *UN Guidelines for the Prevention of Juvenile Delinquency*, A/Res/45/112, 14 December 1990, para 14. See also, *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, paras 21, 22 and 123.

<sup>652</sup> *Saviny v Ukraine*, ECtHR, Application no. 39948/06, 18 December 2008, para 52. See also, Council of Europe, Committee of Ministers, *Recommendation Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions*, 2005.

limitations, such as restrictions placed by those authorities on parental rights of access, and of any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between the parents and a young child would be effectively curtailed.”<sup>653</sup>

The UN Guidelines for the Alternative Care of Children call for contact with the family of a child placed in alternative care “as well as with other persons close to him or her, such as friends, neighbours and previous carers” to be encouraged and facilitated.<sup>654</sup> The Guidelines further call for the child to have access to information on the situation of his or her family members in the absence of contact with them.<sup>655</sup> The Guidelines stress that in the context of alternative care “restriction of contact with members of the child’s family and other persons of special importance to the child should never be used as a sanction.”<sup>656</sup>

As in all matters regarding the rights of the child, the best interests of the child must be a primary concern. Thus, “whilst national authorities must do their utmost to facilitate reunion of the family, any obligation to apply coercion in this area must be limited since the best interests of the child must be taken into account. Where contacts with the parents appear to threaten those interests, it is for the national authorities to strike a fair balance between them and those of the parents.”<sup>657</sup> Limitations of contact with children have been found to be justified in cases where children’s health and development have been harmed by the lack of care in their home, the negative impact of subsequent meetings of the child with their parents, and where the children have expressly stated that they did not want additional contact.<sup>658</sup> As such, the nature of the parent-child relationship will be of particular relevance. The children’s wishes also formed part of the decision in *V v Slovenia*, where the applicants

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<sup>653</sup> *Ageyevy v. Russia*, ECtHR, Application no. 7075/10, 18 April, 2013, para 127. See also, *Scozzari and Giunta v Italy*, ECtHR, Applications nos. 39221/98 and 41963/98, 13 July 2000, para 201; *Haase v Germany*, ECtHR, Application no. 11057/02, 8 April 2004, para 92; *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), para 155; *Dmitriy Ryabov v Russia*, ECtHR, Application no. 33774/08, 1 Aug, 2013, para 47.

<sup>654</sup> *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 81; See also, Council of Europe, Committee of Ministers, *Resolution (77) 33 of the Committee of Ministers of the Council of Europe on Placement of Children*, 1977, para 1.3.

<sup>655</sup> *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 81

<sup>656</sup> *Ibid*, para 96.

<sup>657</sup> *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), para 194. See also, *Neulinger and Shuruk v Switzerland*, ECtHR, Application No.41615/07, 6 July 2010, paras 134-146.

<sup>658</sup> *Levin v Sweden*, ECtHR, Application No. 35141/06, 24 September 2012, paras 64, 66.

contested restricted contact with their children.<sup>659</sup> The Court found the restrictions to be justified on the basis of assessments carried out by experts and given that the applicants had been convicted of the manslaughter of another child following suspicions of domestic violence and neglect.

In *R v Finland*,<sup>660</sup> the care order contained an expectation of long term care on the grounds of the mother's violent behaviour and the parents' incapacity to raise him, and aimed at placing the child in a substitute family. Meetings between the applicant (the father) and child were severely restricted. The Court found a violation of Article 8 and stated that:

the picture transpiring from the facts of the case is one of determination on the part of the local social welfare authority not to consider the reunification of the applicant and his son as a serious option, instead firmly proceeding from a presumption that the boy would be in need of long term public care by substitute carers.<sup>661</sup>

The right of children in alternative care to maintain family contact and the ultimate goal of family reunification, outlined above, are closely connected to the issue of delay in court proceedings, discussed in Chapter 3 and below. Limitations on parental rights of access may curtail family relations and the "possibilities of reunification will be progressively diminished and eventually destroyed if the biological parents and the children are not allowed to meet each other at all, or only so rarely that no natural bonding between them is likely to occur."<sup>662</sup>

### Return to family environment for children in care

Taking a child into care should normally be a temporary measure for the shortest possible duration, to be discontinued as soon as circumstances permit.<sup>663</sup> Authorities should strive for the goal of reuniting a child with

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<sup>659</sup> *V v Slovenia*, ECtHR, Application No. 26971/07, 1 December 2011.

<sup>660</sup> *R v Finland*, ECtHR, Application No. 34141/96, 30 May 2006, paras 92-3.

<sup>661</sup> *Ibid.*

<sup>662</sup> *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), paras 179 and 155.

<sup>663</sup> *Saviny v Ukraine*, ECtHR, Application No. 39948/06, 18 December 2008, para 52. See also, *P., C. And S. v The United Kingdom*, ECtHR, Application No. 56547/00, 16 July 2002, para 117; *Scozzari and Giunta v Italy*, ECtHR, Applications nos. 39221/98 and 41963/98, 13 July 2000, para 169; *Ageyevy v. Russia*, ECtHR, Application no. 7075/10, 18 April, 2013, para 143; *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 14; Council of Europe, Committee of Ministers, *Recommendation Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions*, 2005.

his or her family as soon as possible or if this proves impossible placing the child in a permanent setting as quickly as possible.<sup>664</sup>

ECHR, Article 8 contains positive obligations “inherent in an effective ‘respect’ for family life.”<sup>665</sup> Thus when a child is taken into care the State is obliged, provided it is in the child’s best interests, to make serious efforts to facilitate reuniting children with their natural family and until then enable regular contact between them, including, where possible, keeping siblings together.<sup>666</sup> In *K and T v Finland* the Grand Chamber of the ECtHR held that there had “been a violation of Article 8 of the Convention as a result of the authorities’ failure to take sufficient steps towards a possible reunification of the applicants’ family regardless of any evidence of a positive improvement in the applicants’ situation.”<sup>667</sup> Any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child.<sup>668</sup>

The ECtHR has noted the importance of preparatory counselling to achieve a successful reunification with family and stated that “the reunion of natural parents with children who have lived for some time in a foster family needs preparation.”<sup>669</sup> The “nature and extent of such preparation may depend on the circumstances of each case, but it always requires the active and understanding cooperation of all concerned.”<sup>670</sup> Similarly, the UN Guidelines for the Alternative Care of Children state that, once decided, the reintegration of the child with his or her family should be designed as a gradual and supervised process, accompanied by follow-up and support measures that take account of the child’s age, needs and

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<sup>664</sup> *Scozzari and Giunta v Italy*, ECtHR, Applications nos. 39221/98 and 41963/98, 13 July 2000, para 169; *X v Slovenia*, ECtHR, Application No. 40245/10, 28 June 2012, para 83. See also, *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 11.

<sup>665</sup> *Haase v Germany*, ECtHR, Application no. 11057/02, 8 April 2004, para 84.

<sup>666</sup> *Saviny v Ukraine*, ECtHR, Application no. 39948/06, 18 December 2008, para 52. See also, *P., C. And S. v The United Kingdom*, ECtHR, Application no. 56547/00, 16 July 2002, para 117; *Haase v Germany*, ECtHR, Application no. 11057/02, 8 April 2004, paras 84 and 93; *Görgülü v Germany*, ECtHR, Application no. 74969/01, 26 February 2004, para 45; *Ageyevy v. Russia*, ECtHR, Application no. 7075/10, 18 April, 2013, para 143; Council of Europe, Committee of Ministers, *Recommendation Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions*, 2005; *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 17.

<sup>667</sup> *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), para 179

<sup>668</sup> *Ibid*, para 178

<sup>669</sup> *Scozzari and Giunta v Italy*, ECtHR, Applications nos. 39221/98 and 41963/98, 13 July 2000, para 175; *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 49.

<sup>670</sup> *Scozzari and Giunta v Italy*, ECtHR, Applications nos. 39221/98 and 41963/98, 13 July 2000, para 175.

evolving capacities, as well as the cause of the separation.<sup>671</sup> The ECtHR has held that a single visit will not be sufficient and has also been critical of too lengthy a preparation period which contributed to delays.<sup>672</sup>

A fair balance must be struck between the interests of the child remaining in care and those of the parent to be reunited with the child, with particular importance attaching to the primacy of the best interests of the child, which may override those of the parent.<sup>673</sup> The ECtHR has explained that the obligation to take all reasonable steps to reunite the child with his or her natural family extends “not only to the welfare authorities but also to the judicial authorities involved in the case.”<sup>674</sup> Relevant authorities must coordinate to ensure that efforts towards reunification are implemented in an effective and coherent manner as “no logical purpose would be served in deciding that visits may take place if the manner in which the decision is implemented means that *de facto* the child is irreversibly separated from [his or her] natural parent.”<sup>675</sup>

Removal decisions should be regularly reviewed<sup>676</sup> and the child’s return to parental care, once the original causes of removal have been resolved or have disappeared, should be in the child’s best interests.<sup>677</sup> The ECtHR has noted that:

[e]xperience shows that when children remain in the care of youth authorities for a protracted period, a process is set in motion which drives them towards an irreversible separation from their family. When a considerable period of time has passed since the children were first placed in care, the children's interest in not undergoing further *de facto* changes to their family situation may prevail over the parents' interest in seeing the family reunited. The possibilities of reunification will be progressively diminished and eventually destroyed if the biological parents and the children are not allowed to meet each other at all. Time takes on therefore a particular significance as there is always a danger that any procedural

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<sup>671</sup> *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 52.

<sup>672</sup> *Scozzari and Giunta v Italy*, ECtHR, Applications nos. 39221/98 and 41963/98, 13 July 2000, para 175; *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 51.

<sup>673</sup> *Haase v Germany*, ECtHR, Application no. 11057/02, 8 April 2004, para 93. See also, *Scozzari and Giunta v Italy*, ECtHR, Applications nos. 39221/98 and 41963/98, 13 July 2000, para 175.

<sup>674</sup> *X v Slovenia*, ECtHR, Application No. 40245/10, 28 June 2012, para 83.

<sup>675</sup> *Scozzari and Giunta v Italy*, ECtHR, Applications nos. 39221/98 and 41963/98, 13 July 2000, para 181.

<sup>676</sup> *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001 (GC), para 179.

<sup>677</sup> *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 14.



delay will result in the *de facto* determination of the issue before the court...<sup>678</sup>

The ECtHR has therefore held that “the positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the responsible authorities with progressively increasing force as from the commencement of the period of care.”<sup>679</sup>

## Delay

The issue of delay is closely linked to both regular contact with the child’s natural family and the likelihood of a successful reunification.

Thus the ECtHR has stated that:

there is a significant danger that a prolonged interruption of contact between parent and child or too great a gap between visits will undermine any real possibility of their being helped to surmount the difficulties that have arisen within the family and of the members of the family being reunited. (The danger is even greater for the younger child, who was very young when the separation occurred.)<sup>680</sup>

The ECtHR has further held that “when a considerable period of time has passed since the child was originally taken into public care, the interest of a child not to have his or her *de facto* family situation changed again may override the interests of the parents to have their family reunited.”<sup>681</sup> Delay in proceedings can therefore seriously impact on the right to family life of the parents and children. In this regard, the ECtHR has emphasised that “the passage of time can have irremediable consequences for relations between the child and the parent who do not cohabit” and that “ineffective, and in particular delayed, conduct of proceedings concerning contact with or custody of children may give rise to a breach of Article 8 of the Convention.”<sup>682</sup>

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<sup>678</sup> *Haase v Germany*, ECtHR, Application no. 11057/02, 8 April 2004, para 103. See also, *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001 (GC), para 155.

<sup>679</sup> *Ageyevy v. Russia*, ECtHR, Application no. 7075/10, 18 April, 2013, para 143. *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), para 178.

<sup>680</sup> *Scozzari and Giunta v Italy*, ECtHR, Applications Nos. 39221/98 and 41963/98, 13 July 2000, para 177. See also, para 175.

<sup>681</sup> *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), para 155. See also, *Ageyevy v. Russia*, ECtHR, Application No. 7075/10, 18 April, 2013, para 143.

<sup>682</sup> *X v Slovenia*, ECtHR, Application No. 40245/10, 28 June 2012, para 87. See also, *Görgülü v Germany*, ECtHR, Application No. 74969/01, 26 February 2004, para 46.

The UNCRC Committee has noted that “the passing of time is not perceived in the same way by children and adults.”<sup>683</sup> The Committee has therefore stated that it is “advisable that procedures or processes regarding or impacting children be prioritised and completed in the shortest time possible” as “delays in or prolonged decision-making have particularly adverse effects on children as they evolve.”<sup>684</sup>

## **Domestic law, policy and practice: the rights of the child not cared for by his or her family**

At 31 March 2014, 75% of the looked after children in Northern Ireland were in foster care, 12% were placed with family,<sup>685</sup> 7% were in residential care, and 5% were in other placements.<sup>686</sup>

Children in care are some of the most disadvantaged children in society across a range of measures. For example, in terms of education, in Northern Ireland in 2012/13, 22% of care leavers had been the subject of a Statement of Special Educational Need (SEN), compared with 4% of the general school population.<sup>687</sup> In terms of educational attainment, the proportion of care leavers obtaining 5 GCSEs (grades A\*-C) or higher, was 18% compared with 77% of general school leavers. The proportion of care leavers with no qualifications was 32% compared with 2% of general school leavers.<sup>688</sup>

## **Minimum standards for children’s homes**

In 2014 the DHSSPS adopted Minimum Standards for Children’s Homes, which are underpinned by the UNCRC and the UNCRPD.<sup>689</sup> The views of children living in residential care and using short break services were sought and included in the document; for example regarding new standards such as “living in a supportive home.” The Minimum Standards

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<sup>683</sup> UNCRC Committee, *General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, para 93.

<sup>684</sup> *Ibid*, para 93.

<sup>685</sup> See, Placement of Children with Parents etc. Regulations (Northern Ireland) 1996.

<sup>686</sup> DHSSPS/NISRA, *Children’s Social Care Statistics Northern Ireland 2013/14*, 2014, p. 36.

<sup>687</sup> DHSSPS/NISRA, Northern Ireland Care Leavers Aged 16-18, Statistical Bulletin 2012/2013, p. 10.

<sup>688</sup> DHSSPS/NISRA, Northern Ireland Care Leavers Aged 16-18, Statistical Bulletin 2012/2013, p. 15

<sup>689</sup> DHSSPS, *Minimum Standards for Children’s Homes*, 2014, pp. 4 and 9. It is relevant to note that the Marshall report recommends that “The DHSSPS should explore the benefits of amending or adding to standards for inspection of children’s homes to ensure that they: (a) promote a culture conducive to respect for the best interests of the child; and (b) take account of the specific needs of separated and trafficked children and those affected by CSE...” Kathleen Marshall, CJINI/RQIA/ETI, *Child Sexual Exploitation in Northern Ireland; Report of the Independent Inquiry*, 2014, p. 17.

seek to “balance the therapeutic interventions that vulnerable children and young people need alongside the fact that they are living in their home, not ‘units’ or ‘centres’ and must feel as at home, secure and safe as their peers.”<sup>690</sup> The Minimum Standards set out that certain values should be embedded and demonstrated in the practice of managers, staff and volunteers, including that “children and young people’s individual and human rights are safeguarded and actively promoted within the context of services provided by the home.”<sup>691</sup> These Minimum Standards aim to improve the quality and consistency of care for children and young people living in Children’s Homes or having short breaks and provide further detail on registration and inspection criteria. VOYPIC has noted that if “these new minimum standards achieve what they have set out to do, we should see improved experiences for children and young people in children’s homes in Northern Ireland.”<sup>692</sup>

## Strategic statement

The DHSSPS has commenced a review of all existing strategy and guidance for looked after children, with a view to developing a strategic statement which will encompass services from the edge of care through to leaving and aftercare.<sup>693</sup>

## Private fostering arrangements

Provisions regarding private arrangements for fostering children, and Trusts’ duties in that regard, are outlined in the *Children Order, the Children (Private Arrangements for Fostering) Regulations (Northern Ireland) 1996 and the Children (NI) Order 1995, Guidance and Regulations, Volume 3, Family Placements and Private Fostering*.

In the context of private fostering arrangements a parent, or another person with parental responsibility for the child, arranges for some or all of his or her parental responsibilities to be met by a person acting on his

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<sup>690</sup> DHSSPS, *Minimum Standards for Children’s Homes*, 2014, p. 5.

<sup>691</sup> DHSSPS, *Minimum Standards for Children’s Homes*, 2014, p. 10.

<sup>692</sup> VOYPIC, *Our Life in Care: VOYPIC’s third CASI survey (2013) of the views and experiences of children and young people in care*, 2014, p. 18. 105 children aged 8 to 18 living in care completed the Our Life in Care survey for 2013, p. 8. VOYPIC introduced Our Life in Care (OLC) – a Computer Assisted Self Interview – as a three year pilot project to collect the views and experiences of children in care aged 8 to 18 in Northern Ireland. The first survey was completed in 2011, the second in 2012, and the final third survey in 2013. “This pilot was the first time the majority of children in care in Northern Ireland were invited to share their views and experiences within a defined period of time.” 333 participated in the survey from 2011-2013. p. 6.

<sup>693</sup> PHA/HSCB, *Draft Commissioning Plan 2014/2015*, January 2015, p. 97.

or her behalf.<sup>694</sup> In such a case the parent remains liable for any failure to meet any part of his or her parental responsibility for the child.<sup>695</sup>

A DHSSPS Circular regarding children living with carers in private fostering arrangements notes that:

All practitioners should be alert to the need for such arrangements to be notified to the Trust. In the interests of safeguarding children where it is clear that the Trust has not been involved, or where the practitioner is unable to ascertain this with certainty, the practitioner should refer the matter to the relevant Trust's Gateway team. This also applies to situations where the child is apparently well cared for and there are no known concerns about his or her welfare.<sup>696</sup> ... the role of the Trust is to ensure that the welfare of the child is safeguarded and promoted through supervising, regulating and advising in respect of the placement.<sup>697</sup>

The very small numbers of private fostering arrangements which are notified in Northern Ireland suggest that there are an unidentified number of private fostering arrangements in existence which are not subjected to oversight.

### **Adoption as a route to permanency**

In Northern Ireland the *Adoption (NI) Order (1987)* is the primary legislative framework governing adoption. This legislation covers: arrangements for adoption; adoption orders; care and protection of children awaiting adoption; the status of adopted children; registration of adoption agencies; amendment and revocation of adoption orders; and miscellaneous issues. Article 3(1) states that every Trust shall establish and maintain within its area a service designed to meet the needs, in relation to adoption, of children who have been or may be adopted, their parents and guardians, as well as persons who have or may adopt. In addition, for this purpose, it shall either provide facilities or secure their provision by registered adoption societies.

In adoption proceedings, the child's welfare is the most important consideration.<sup>698</sup> Further, the court must have regard to all the circumstances of the case, including satisfying itself that adoption, or

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<sup>694</sup> DHSSPS, *Children Living with Carers in Private Fostering Arrangements, Including Children from Overseas*, DHSSPS Circular: CCPD1/11, 25 March 2011, para. 12.

<sup>695</sup> *Ibid*, para. 12; *Children Order*, Art. 5.

<sup>696</sup> DHSSPS, *Children Living with Carers in Private Fostering Arrangements, Including Children from Overseas*, DHSSPS Circular: CCPD1/11, 25 March 2011, para. 4.

<sup>697</sup> *Ibid*, para. 10.

<sup>698</sup> *Adoption (NI) Order (1987)*, Art. 9.

adoption by a particular person(s) is in the child's best interests, of the need to safeguard and promote the child's welfare throughout childhood, and the importance of a stable and harmonious home.<sup>699</sup> Importantly, so far as practicable, the court must first have regard to the wishes and feelings of the child and give them due consideration in light of his or her age and understanding.<sup>700</sup>

Freeing for adoption may occur with parental consent<sup>701</sup> or without consent in certain circumstances.<sup>702</sup> In the former circumstance, parental consent is invalid if given by a mother before the child is 6 weeks old.<sup>703</sup> Parental consent may be dispensed with if the parent: cannot be found or is incapable of giving agreement; is withholding agreement unreasonably; has consistently failed without reasonable cause to discharge parental responsibility; or has abandoned, neglected, or persistently or seriously ill-treated the child.<sup>704</sup>

Article 19 provides that progress reports to the former parent (birth parent) on the making of an adoption order and the placement of the child be made unless the birth parent indicates that they do not wish to receive such reports. If at any time following 12 months from the making of a freeing order, no adoption order has been made *and* the child does not have a home with a person with whom he or she has been placed for adoption, the former parent may apply to court to resume parental responsibility.<sup>705</sup>

The *Health and Social (Reform) Act (NI) 2009* amends the Adoption legislation by: inserting Article 59A, which enables the DHSSPS to make Regulations to determine the circumstances in which adoption allowances can be paid; and replacing Article 66 with two new Articles<sup>706</sup> that define the role of guardians ad litem in adoption proceedings.

The *Adoption Agencies Regulations (Northern Ireland) 1989* govern the way in which adoption agencies discharge their functions. *Regional Adoption Policies and Procedures for Northern Ireland* were published in 2010.<sup>707</sup> Under the current regulations a plan for permanency should be agreed at the second review (the first review being held within 2 weeks after admission into care, and the subsequent review being held within 3 months of admission to care). A 'permanency panel' is informed of this

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<sup>699</sup> *Adoption (NI) Order* (1987), Art. 9 (a) (i) – (iii).

<sup>700</sup> *Adoption (NI) Order* (1987), Art. 9(b).

<sup>701</sup> *Adoption (NI) Order* (1987), Art. 17.

<sup>702</sup> *Adoption (NI) Order* (1987), Art. 18.

<sup>703</sup> *Adoption (NI) Order* (1987), Art. 16(3)

<sup>704</sup> *Adoption (NI) Order* (1987), Art. 16(2).

<sup>705</sup> *Adoption (NI) Order* (1987), Art. 20.

<sup>706</sup> Article 66 and 66A

<sup>707</sup> BAAF, *Adoption: Regional Policy and Procedures, Northern Ireland*, 2010.

decision and monitors all plans for permanency to ensure that there is no drift. However, as previously noted, concerns have been raised regarding delays in the adoption process in Northern Ireland.

If adoption is the recommended permanency plan, parents must be made aware of this, and the child's case is then referred to an adoption panel. The referral should occur within 2 months of the review. Where the adoption panel makes a decision recommending adoption as being in the child's best interests, details should go forward to the Adoption Regional Information System (ARIS) within 1 month.

Parents must be told that the adoption decision maker on behalf of the agency will consider the recommendation of the adoption panel. Birth parents should be made aware of the fact that they have a legal right to make their agreement to adoption conditional on the child being brought up in a religion of their choice.

If a freeing order is granted or parental consent for adoption obtained, the child's case is returned to an adoption panel for approval of an adoptive placement with an identified adoptive carer. A regional information system aims to facilitate the exchange of information between Trusts in relation to prospective adopters and children waiting to be adopted.<sup>708</sup>

Adoption allowances may be paid to adoptive parents. This decision is made at the adoption panel and is based primarily on the particular needs of the child and the income of the adopters. There is no duty on Trusts to provide an allowance to adoptive parents after the adoption panel hearing, where some time later their personal circumstances change.

During the court process to free a child for adoption he or she may be placed with dually approved carers (carers identified as suitable foster carers and/or adoptive carers), or with prospective adoptive parents, or remain in their current placement until the freeing proceedings have concluded.

In light of the general principles that children should be removed from their parents only in exceptional cases and where possible reunited with them, the domestic courts have echoed the international standards in describing freeing orders for adoption of a child without the consent of the parent as "draconian in nature." Courts have noted that Freeing orders without parental consent are interferences with ECHR, Article 8 rights of a parent to have his or her right to family life respected and protected.<sup>709</sup> Like the ECtHR, domestic courts note that the focus of assessment will generally be on whether such orders were "necessary in a democratic

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<sup>708</sup> <http://www.ni-aris.org.uk>

<sup>709</sup> *Down and Lisburn Trust and Another* [2006] UKHL 36, at 45.

society and proportionate. This means that an individual order must strike a fair balance between the competing interests. In short, there must be relevant and sufficient reasons of [sic] the making of the order.”<sup>710</sup>

Despite recognition of the difficult balance in deciding to free a child for adoption against the wishes of his or her parents, domestic Courts have also noted that:

there is another way in which a public authority may act incompatibly with the Convention rights in a care case. This is by failing to take adequate steps to secure for a child who has been deprived of a life with his family at birth, a life for the new family who can become his new family for life to make up for what he has lost ... the notion can be readily inferred from the concept of positive obligations inherent in Article 8.<sup>711</sup>

The UNCRC Committee recommended that the UK “strengthen its efforts to facilitate a situation in which children, always in their best interests, be adopted as speedily as possible, taking in due account, inter alia, their cultural background.”<sup>712</sup>

In 2006 the DHSSPS outlined a number of problems in the existing adoption legislation and noted that “there is a disparity between adoption legislation in Northern Ireland and other UK regions.”<sup>713</sup> The DHSSPS recognises that:

It is widely accepted that adoption needs a stronger focus in terms of ensuring permanency of care for looked after children and addressing the long term implications of adoption for children and families affected by its processes. Changes to The Adoption (Northern Ireland) Order 1987 are required to reflect these emerging needs and to ensure that where adoption is the plan, the court will deal with each child’s case in a rigorous but expeditious manner.<sup>714</sup>

A draft Executive paper was issued in 2009 outlining proposals for the development of an *Adoption and Children Bill* to revise the current adoption legislation and amend the Children Order. Some stakeholders have expressed the hope that the new legislation will “address the delays

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<sup>710</sup> *SMcC v Southern Health and Social Care Trust* [2013] NIFam 2, para 68.

<sup>711</sup> *Re W and B: Re W* [2001] UK HRR 9228, para 55. See also, *J (Freeing without consent)* [2002] NI Fam 8.

<sup>712</sup> UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 47.

<sup>713</sup> DHSSPS, *Adopting the Future*, June 2006, available at: [http://www.dhsspsni.gov.uk/adopting\\_the\\_future.pdf](http://www.dhsspsni.gov.uk/adopting_the_future.pdf), p. 9.

<sup>714</sup> [http://www.dhsspsni.gov.uk/index/hss/child\\_care/adoption/adoption\\_review.htm](http://www.dhsspsni.gov.uk/index/hss/child_care/adoption/adoption_review.htm)

which currently plague adoption processes in Northern Ireland.”<sup>715</sup> This Bill is still being drafted and has not yet been published.

## Maintaining family relationships

With regards to the placement of a child in care, Trusts are under a statutory duty, insofar as it is reasonably practicable and consistent with the child's welfare, to place them near their home and to accommodate siblings together.<sup>716</sup> Where a child is looked after, the Trust is required to promote contact with the child and his or her parents, any person who has parental responsibility for him or her, and any relative, friend or other person connected with him or her, unless it is not reasonably practicable or consistent with the child's welfare.<sup>717</sup>

The Children's Homes Regulations (Northern Ireland) 2005 (amended in 2012) provide detailed guidance about the facilitation of contact arrangements as well as the maintenance of case records. The Children Order Regulations and Guidance Volume 3 - Family Placements and Private Fostering; and the Foster Placement (Children) Regulations (Northern Ireland) 1996 establish that a child prior to being placed in foster care should have access to information and preparation by way of an introduction to the foster family. The Children Order Regulations and Guidance state that:

Wherever possible the social worker should bring a parent or previous carer to share in the introduction. Parents have an important part in preparation and introduction. They can provide information about the child's day-to-day routines, capabilities, habits, fears, likes and dislikes. This information is essential if the foster parent is to provide continuity of care for the child and help the child to settle in. The expected role of the parent in the day-to-day care for the child (such as who will be in contact with the school) should be clarified in the preparation for placement).<sup>718</sup>

In 2012 the HSCB finalised *Practice Guidance on Assessing and Planning Contact for Looked after Children* to standardise practice regarding the assessment of contact arrangements to help staff in assessing and planning contact. It defines the legal context of contact, the differing types of contact (ranging from supervised to supported arrangements) and includes proformas detailing contact agreements and the assessment of contact.

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<sup>715</sup> <http://www.baaf.org.uk/ni>.

<sup>716</sup> Children Order, Art. 27(8)(a) and (b).

<sup>717</sup> Children Order, Art. 29.

<sup>718</sup> Children (NI) Order 1995, Guidance and Regulations, Volume 3, Family Placements and Private Fostering, para 5.17, page 74.



## Northern Ireland context

Since 2007 VOYPIC has been commissioned (by DHSSPS and later HSCB) to provide a regional, independent advocacy service which is available to all looked after children and young people in Northern Ireland.<sup>719</sup> The process used by advocates may include: an informal process – resolved by the child, advocate and key individuals; a formal process – whereby a formal complaints process has been used; or a legal process – the child has instructed a solicitor to legally pursue the issue.<sup>720</sup> VOYPIC has urged that awareness regarding the availability of the service be raised and has further called for a statutory right to independent advocacy to be introduced.<sup>721</sup>

## Care planning

Domestic legislation and policy commitments set out requirements in relation to the planning of children's care placements and the involvement of the child in these plans. For example, the Children's Homes Regulations (Northern Ireland) 2005 (amended in 2012) state that children must have a placement plan, that they should know of their placement plan and that they should have participated in the decision making about that plan so far as possible.

In 2010, NICCY noted that "a number of studies reveal ongoing dissatisfaction with the ways and degree to which children are involved in decisions about both their care and other aspects of their lives."<sup>722</sup> The view of a child in care reflected: "I come out [of the LAC Review] and think what happened there – I don't understand three-quarters of it."<sup>723</sup> Similarly, an RQIA review of the care pathways of 10 children who met the criteria for secure accommodation identified concerns regarding fulfilment of the right to be heard in most of these cases.<sup>724</sup> In the context of secure care this view was supported by an earlier report by the National Children's Bureau (NCB).<sup>725</sup> In the RQIA review one child said that "she wanted the professionals to 'listen to the reasons behind what I

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<sup>719</sup> VOYPIC, *Let's Change the Story for Children in Care*, 2013, p. 9.

<sup>720</sup> VOYPIC, *Do You Care? We Do!: Annual Report 2013-2014*, p. 25.

<sup>721</sup> VOYPIC, *Let's Change the Story for Children in Care*, 2013, p. 9.

<sup>722</sup> NICCY, *Policy Briefing: Children and Care*, 8/2010.

<sup>723</sup> *Ibid.*

<sup>724</sup> RQIA, *A Report on the Inspection of the Care Pathways of a Select Group of Young People who Met the Criteria for Secure Accommodation in Northern Ireland*, 2011, available at:

[http://www.rqia.org.uk/cms\\_resources/RQIA%20Pathways%20Report%20March%2011%20Published%20Version%2016%20Jun%2011.pdf](http://www.rqia.org.uk/cms_resources/RQIA%20Pathways%20Report%20March%2011%20Published%20Version%2016%20Jun%2011.pdf), p. 29.

<sup>725</sup> NCB, Sinclair and Geraghty, *A review of the use of secure accommodation in Northern Ireland*, 2008, p. 5.

was doing'.<sup>726</sup> The inspection noted that the "fact that she did not feel listened to, had aggravated her inner chaos, which in turn promoted the ongoing risk taking behaviour."<sup>727</sup>

A 2014 survey published by VOYPIC regarding the views and experiences of children in care suggests that significant numbers of children have inadequate knowledge of their care plans and a lack of involvement in the care planning process.<sup>728</sup> Of the survey participants aged under 12 years, 61% knew what their care plan was but only 39% said that someone had spoken to them about what was in their care plan.<sup>729</sup> Of the survey participants aged over 12 years, only 37% knew "completely" about their care plans; with 29% of participants agreeing completely with decisions made in their care plan; and 27% had a copy of their care plan.<sup>730</sup> Of the survey participants aged over 16 years, 22% did not know "at all" about their pathway plan; only 16% had a copy of their pathway plan; and 31% "completely agreed" with decisions in their plan.<sup>731</sup>

In the context of kinship foster care an RQIA review noted that "some of the young people interviewed by the review team and during the VOYPIC consultation indicated that they were not aware of decisions being made about them."<sup>732</sup> One of the children who completed the 2012 VOYPIC survey stated that "young people in care need to be listened to more and given the right to make decisions in their own life."<sup>733</sup>

VOYPIC has suggested that it may be time to review the process and format of care planning, LAC review and consider more effective ways to help children and young people engage and identify with their own care

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<sup>726</sup> RQIA, *A Report on the Inspection of the Care Pathways of a Select Group of Young People who Met the Criteria for Secure Accommodation in Northern Ireland*, 2011, available at:

[http://www.rqia.org.uk/cms\\_resources/RQIA%20Pathways%20Report%20March%2011%20Published%20Version%2016%20Jun%2011.pdf](http://www.rqia.org.uk/cms_resources/RQIA%20Pathways%20Report%20March%2011%20Published%20Version%2016%20Jun%2011.pdf), p. 29.

<sup>727</sup> *Ibid*, p. 29.

<sup>728</sup> VOYPIC, *Our Life in Care: VOYPIC's third CASI survey (2013) of the views and experiences of children and young people in care*, 2014, pp. 23-26. 105 children aged 8 to 18 living in care completed the Our Life in Care survey for 2013, p. 8. VOYPIC introduced Our Life in Care (OLC) – a Computer Assisted Self Interview – as a three year pilot project to collect the views and experiences of children in care aged 8 to 18 in Northern Ireland. The first survey was completed in 2011, the second in 2012, and the final third survey in 2013. "This pilot was the first time the majority of children in care in Northern Ireland were invited to share their views and experiences within a defined period of time." 333 participated in the survey from 2011-2013. p. 6.

<sup>729</sup> *Ibid*, p. 23.

<sup>730</sup> *Ibid*, p. 24.

<sup>731</sup> *Ibid*, p. 25.

<sup>732</sup> RQIA, *Review of Statutory Fostering Services: Overview Report*, December 2013, p. 42.

<sup>733</sup> VOYPIC, *Our Life in Care. CASI 2012 Survey Results*, 2013, p. 21.

plan,<sup>734</sup> and has called for changes in this regard:

- hold child friendly LAC reviews at a time and place to encourage children and young people to participate.
- provide versions of care and pathway plans that are child and young people friendly.
- set up Children in Care Councils in all HSC Trusts.<sup>735</sup>

## Court processes

Researchers for this report found a lack of accessible and available data and research regarding relevant proceedings in Northern Ireland in a number of areas, including, the numbers of parents and children who attend court, whether children see the Judge in chambers, their experiences of the court process, and the impact of their involvement on decision-making.

In 2013 the Children's Law Centre called for the right of children to be heard to be strengthened in law expressing concern "that children's voices are not being heard such as in court proceedings around living situations."<sup>736</sup>

Simon Hughes, Minister of State at the Ministry of Justice, has similarly noted that "Although they are often at the centre of proceedings, the views of children and how they feel are often not heard, with other people making vital decisions for them."<sup>737</sup> Consequently, in England and Wales the Government has announced its intention to:

move as soon as is practical to apply in all our family justice proceedings in England and Wales where children and young people are concerned the policy that it will be the normal practice, the norm, that, from the age of 10, children and young people involved in public or private law family justice proceedings before the courts will have access to the judge, in an appropriate way which reflects their feelings and wishes to make clear their views as to what is the best resolution of the family dispute in their interest. ... We will also work with the

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<sup>734</sup> VOYPIC, *Our Life in Care: VOYPIC's third CASI survey (2013) of the views and experiences of children and young people in care*, 2014, p. 24.

<sup>735</sup> *Ibid*, p. 50.

<sup>736</sup> Children's Law Centre, *Response to the United Kingdom Draft Periodic Report to the United Nations Committee on the Rights of the Child*, November 2013, p. 16.

<sup>737</sup> Stevenson, *Family Courts to do more to promote the voice of children in care proceedings*, February 19, 2015. Available at: <http://www.communitycare.co.uk/2015/02/19/changes-promote-voice-children-care-proceedings-announced/?cmpid=NLC%7CSCSC%7CSCDDB-2015-0220>

mediation sector to arrive at a position where children and young people of 10 years old and over have appropriate access to mediators too in cases which affect them. ... And if a child younger than 10 years is able to express themselves and wishes to do so then they too should have that opportunity.<sup>738</sup>

It is relevant to note in this regard that in NI children are represented by both a guardian ad litem and a solicitor in public law cases,<sup>739</sup> while this is not the case in England and Wales.

## Care placements

In NI concerns have been raised regarding the availability of suitable placements for children, in particular due to a lack of emergency foster care placements.<sup>740</sup> An RQIA report noted that "demand for foster carers outstrips supply"<sup>741</sup> and stated that:

The challenge for fostering services in maintaining stability is to find the right foster carers, with the right skills, in the right place, for each child. A wider pool of foster families is required to ensure that this happens constantly and for all children, particularly for teenagers, sibling groups and disabled children.<sup>742</sup>

In 2015 Barnardo's noted that there is a current shortfall of 200 foster carers and that there is "still an urgent need to recruit more couples or single people who are able to offer a child a safe and nurturing home."<sup>743</sup>

In 2014 a Judge considering the case of a child requiring urgent

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<sup>738</sup> Rt. Hon. Simon Hughes MP, speech at Voice of the Child Conference, 24 July 2014. Available at: <https://www.gov.uk/government/news/children-will-be-seen-and-heard-in-family-courts>. See also: <http://www.communitycare.co.uk/2015/02/19/changes-promote-voice-children-care-proceedings-announced/?cmpid=NLC%7CSCSC%7CSCDDB-2015-0220>

<sup>739</sup> COAC, *Best Practice Guidance, 2<sup>nd</sup> Edition 2010*, as updated 2012, pp. 325-6.

<sup>740</sup> BBC News Northern Ireland, *Special-needs boy lived in elderly home over lack of foster carers*, 20 Jan 2014. Available at: <http://www.bbc.co.uk/news/uk-northern-ireland-25812807>. See also, RQIA, *Review of Statutory Fostering Services: Overview Report*, December 2013.

<sup>741</sup> RQIA, *Review of Statutory Fostering Services: Overview Report*, December 2013, p. 62.

<sup>742</sup> *Ibid*, p. 29. See also p. 19: "Each foster care panel chair indicated that they try to ensure the needs of children are met by placing children with foster carers who have the competence and skills required to meet their needs. However, a shortage of carers can sometimes mean that matching is restricted, resulting in a less suitable placement."

<sup>743</sup> Barnardo's, *Barnardo's NI celebrates 35 years of fostering*, 10 March 2015. Available at: [http://www.barnardos.org.uk/news/media\\_centre/Barnardo8217s-NI-celebrates-35-years-of-fostering/press\\_releases.htm?ref=103078](http://www.barnardos.org.uk/news/media_centre/Barnardo8217s-NI-celebrates-35-years-of-fostering/press_releases.htm?ref=103078)

specialised and intense intervention noted that there “is no available specialised foster placement in Northern Ireland and placing her in a children’s home would not help her. ... there is no equivalent in Northern Ireland to the services which are provided by Fresh Start [a specialist facility in Co. Dublin].”<sup>744</sup>

At 31 March 2014 a total of 39 children were deemed to be in an inappropriate placement given their assessed needs.<sup>745</sup> Inappropriate or unsuitable placements raise concerns regarding the protection of the rights of these children and suggest that the best interests of the child in these cases may not be respected.<sup>746</sup> During 2013/2014 eleven children were accommodated for three months or more in an adult setting: residential care home, nursing home, or private hospital.<sup>747</sup> Two of these children were under 16 years of age, while the remainder were over 16.<sup>748</sup>

A Judicial Review of a decision by a Trust brought by a guardian ad litem on behalf of a minor, JH, illustrates the problems that can arise in determining appropriate care placements, in particular in relation to the views of the child being given due weight and the protection of the best interests of the child.<sup>749</sup> In this case, the child was placed with foster carers, Mr. and Mrs. E. from 12 August 2010 until 20 June 2011. During this placement the Trust applied to the Family Proceedings Court (FPC) for a Care Order; an Interim Care Order was made in January 2011. In May 2011 the Trust expressed a wish to move JH from the placement with the E family to a placement with Trust based foster carers. The guardian ad litem advised that JH had indicated his strong desire to remain in his placement and stated that he would like to move school to the local high school. The guardian ad litem also reported that the foster parents were prepared to keep JH in this placement and felt that they could manage his sometimes challenging behaviour. At legal proceedings on 6 June 2011 the Court listened to submissions made on behalf of JH to this effect but concluded that under an interim care order they could not dictate where the Trust placed JH.<sup>750</sup>

The Trust decided to move JH to a Trust placement on 20 June 2011. By

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<sup>744</sup> *In the matter of S (arranging for a child in care to live outside Northern Ireland)* [2014] NIFam 7, para. 44.

<sup>745</sup> HSCB, *Delegated Statutory Functions Statistical Report*, 2014, p. 34.

<sup>746</sup> There were a total of 66 homeless children, 16-17 years of age, at 31 March 2014. HSCB, *Delegated Statutory Functions Statistical Report*, 2014, p. 12.

<sup>747</sup> HSCB, *Delegated Statutory Functions Statistical Report*, 2014, p. 26

<sup>748</sup> *Ibid.*

<sup>749</sup> *Re: JH Judicial Review* [2013] NIQB 28.

<sup>750</sup> Under an interim care order the Trust has parental responsibility for a child, which affords to it the power to act as it sees fit in the best interests of a child in its care. *In Re S (FC) In Re S and Others In Re W and Others (First Appeal) (FC) In Re W and Others (Second Appeal) (Conjoined Appeals)* [2002] UKHL 10, para 28.

25 July 2011 this placement had broken down and JH had self-harmed leading to his temporary hospitalisation. Upon release from hospital he was placed in temporary foster care and on 29 July 2011 in a children's home. On 8 September 2011 JH alleged that he had been the victim of rape and other sexual offences within the placement and the police commenced an investigation. Despite these developments the Trust did not move JH from this placement and an alternative foster care placement was not found until January 2012.

Mr. Justice Treacy, in an application seeking to challenge the decision taken by the Respondent to maintain JH's placement, was concerned "to see one statutory agency intervening decisively in a young person's life against advice from another statutory agency and without providing clear and compelling reasons for their intervention." He called for the services involved to "review their procedures with a view to learning lessons and improving their practice"<sup>751</sup> He stressed the need for courts to intervene urgently in similar cases where fundamental rights are engaged noting that such cases should be rare as the welfare of the child should be the public authority's paramount concern and the authority would be acting unlawfully if it acted incompatibly with a child's convention rights.<sup>752</sup>

In 2013 an RQIA review found that "some children and young people were facing placement moves due to financial pressure within Trusts, for example, moving from independent sector foster placements, to Trust foster placements"<sup>753</sup> and noted that:

Decisions need to reflect the balance between the child's wishes and the risk assessment. Research indicates that multiple moves have a negative impact on children's well being and self-worth. Financial pressures should not outweigh a child's welfare as a factor in determining a child's placement.<sup>754</sup>

## Private fostering arrangements

Considering issues regarding private fostering in the UK the Child Exploitation and Online Protection Centre (CEOP) identified concerns in relation to loopholes in legislation,<sup>755</sup> the need for increased data collection,<sup>756</sup> and improving inter-agency cooperation.<sup>757</sup> Referencing the

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<sup>751</sup> *Re: JH Judicial Review* [2013] NIQB 28, para 18.

<sup>752</sup> *Ibid*, para 21.

<sup>753</sup> RQIA, *Review of Statutory Fostering Services: Overview Report*, December 2013, p. 58.

<sup>754</sup> *Ibid*.

<sup>755</sup> Child Exploitation and Online Protection Centre, *Hidden Children: the Trafficking and Exploitation of Children within the Home*, 2011, p. 8.

<sup>756</sup> *Ibid*, pp. 8-9.

Children Act 1989 (which contains provisions similar to the Children Order), CEOP noted that:

the responsibility for registering a [private fostering arrangement] lies with those involved in the care of the child, rather than the local authority. As a consequence, many of these arrangements go unregistered. It is unclear to what extent this is due to a lack of awareness surrounding the law and what proportion of these are intentional exploitation cases.<sup>758</sup>

The CEOP has raised concerns that private fostering arrangements in the UK “may be abused by traffickers”<sup>759</sup> and that “the system has the potential for abuse.”<sup>760</sup> CEOP noted that “many trafficked children are exploited in unregistered private arrangements in the UK. Once in the UK and in the venue of exploitation, which often include private residences, detection of the child can be problematic.”<sup>761</sup> Guidance issued by the DHSSPS and PSNI noted that children who may have been trafficked “may be found in *quasi* private fostering arrangements which have not been notified to the Trust.”<sup>762</sup>

Research for this report indicates that assessment of the adequacy of the relevant legislation and guidance is necessary, and that further monitoring regarding private fostering is required. In the context of child sexual exploitation the Independent Inquiry recommended in 2014 that:

The HSC Board should monitor the arrangements for private fostering to ensure that awareness of CSE is raised and to ensure identification of cases that have not been notified to the HSC Trusts.<sup>763</sup>

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<sup>757</sup> Child Exploitation and Online Protection Centre, *Strategic Threat Assessment Child Trafficking in the UK*, 2010, p. 36.

<sup>758</sup> *Ibid*, p. 6.

<sup>759</sup> *Ibid*, p. 36.

<sup>760</sup> Child Exploitation and Online Protection Centre, *Hidden Children: the Trafficking and Exploitation of Children within the Home*, 2011, p. 6.

<sup>761</sup> Child Exploitation and Online Protection Centre, *Strategic Threat Assessment Child Trafficking in the UK*, 2010, p. 36. See also, ECPAT UK (End Child Prostitution, Child Pornography and Trafficking of Children), *Understanding Child Trafficking and Private Fostering*, 2011, available at: [http://www.ecpat.org.uk/sites/default/files/understanding\\_papers/understanding\\_private\\_fostering.pdf](http://www.ecpat.org.uk/sites/default/files/understanding_papers/understanding_private_fostering.pdf)

<sup>762</sup> DHSSPS and PSNI, *Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking*, 2011, para. 2.4.

<sup>763</sup> Kathleen Marshall, CJINI/RQIA/ETI, *Child Sexual Exploitation in Northern Ireland; Report of the Independent Inquiry*, 2014, p. 65, Supporting Recommendation 13.

## Permanency

In 2008 the UNCRC Committee in examining the protection of the rights of children in the UK expressed concern at the “too frequent move between places for children in alternative care.”<sup>764</sup> The OFMDFM has noted that: “[t]oo often in the past children and young people have been subject to multi-placement with foster carers and in children’s homes. This lack of stability can have a detrimental effect on their young lives and increase the risk to their safety and well-being.”<sup>765</sup> A child in care explained the impact of frequent changes stating: “[I] felt when I was moving that it was my fault and that there was something wrong with me.”<sup>766</sup>

The BAAF discussed Permanence Policy in Northern Ireland in 2010 noting that:

It is the policy of Trusts and Voluntary Adoption Agencies to achieve family life for all children and to ensure that services promote and provide a sense of permanence for them. Article 26 of the Children (Northern Ireland) Order 1995 places a duty on the Trust to safeguard and promote the child’s welfare and before making any decisions with respect to a child, to seek and take account of the views of the child, his parents and relevant others. Trusts seek to ensure that children experience continuity and stability in the parenting they experience, as this is a key factor in safeguarding and promoting their welfare.<sup>767</sup>

The Regional Policy on Permanence emphasises that placement stability through permanency planning is an essential requirement for all children and young people who are looked after or may become looked after by a Trust.<sup>768</sup> The Policy identifies important aspects of permanency planning as including: the need for systematic planning; establishing time limits; and ensuring actions which are designed to help children live in families that offer continuity of relationships, thereby facilitating effective decision making.<sup>769</sup>

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<sup>764</sup> UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 44.

<sup>765</sup> OFMDFM, *Safeguarding Children: A Cross-Departmental Statement on the Protection of Children and Young People*, 2009, p. 49.

<sup>766</sup> NICCY, *Policy Briefing: Children and Care*, 8/2010.

<sup>767</sup> BAAF, *Adoption: Regional Policy and Procedures, Northern Ireland*, 2010, p. 30.

<sup>768</sup> Regional Policy on Permanence, 2007, p. 2. (available at: Appendix 4, BAAF, *Adoption: Regional Policy and Procedures, Northern Ireland*, 2010).

<sup>769</sup> Regional Policy on Permanence, 2007, p. 3. (available at: Appendix 4, BAAF, *Adoption: Regional Policy and Procedures, Northern Ireland*, 2010).



Of the 2,858 children Looked After at 31 March 2014:

- 23% (664) children had been Looked After for less than a year;
- 32% (927) had been Looked After for between one and three years;
- 17% (471) had been Looked After for three years to five years;

In the year 2013-2014, of the looked after children who had placement moves; 35.1% had had one move; 17.8% had two moves; and 47.1% had three or more placement moves.<sup>770</sup> Figures regarding the rate of placement disruption for periods longer than one year are not compiled.<sup>771</sup> VOYPIC's survey suggested that a higher degree of instability exists in placements in children in care aged over 12.<sup>772</sup> While the figures indicate that many looked after children have stability in placements, those who continue to experience placement moves are exposed to "a level of intense disruption" and "a risk to their sense of security and stability".<sup>773</sup>

Concerns regarding placement stability were also raised in the RQIA's Review of Statutory Fostering services: "Placement stability was raised as a significant issue within advocacy. Some children and young people were facing placement moves due to financial pressure within Trusts..."<sup>774</sup> The impact of lack of placement stability is illustrated in the example of a child who, having developed a stammer prior to being placed with a carer, overcame the stammer during the placement. However, when the placement subsequently broke down the child's speech and cognitive functioning deteriorated significantly.<sup>775</sup> Foster carers in one of the Trusts advised that there is no support for foster carers in relation to placement moves.<sup>776</sup>

A young woman responding to a question in VOYPIC's survey regarding what the most important issues are for children in care stated that: Every issue is important but I would highlight having too many placement moves and social worker changes.<sup>777</sup>

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<sup>770</sup> *Ibid*, p. 32.

<sup>771</sup> Correspondence between NIHRC and Northern Ireland Health and Social Care Trusts.

<sup>772</sup> VOYPIC, *Our Life in Care: VOYPIC's third CASI survey (2013) of the views and experiences of children and young people in care*, 2014, p. 37.

<sup>773</sup> VOYPIC, *Our Life in Care. CASI 2012 Survey Results*, 2013, p. 39

<sup>774</sup> RQIA, *Review of Statutory Fostering Services: Overview Report*, December 2013, p. 58; see also pp. 28-30.

<sup>775</sup> *Ibid*, p. 29.

<sup>776</sup> *Ibid*, p. 29.

<sup>777</sup> VOYPIC, *Our Life in Care: VOYPIC's third CASI survey (2013) of the views and experiences of children and young people in care*, 2014, p. 38.

## Insecurity within placement

Even when a child remains in the same placement for a period, insecurities can arise. As children move through the care system they are likely to be allocated social workers in different services and teams, for example, family intervention, Looked After Child teams and the 16+ service.<sup>778</sup> Almost half (48.5%) of the children who participated in VOYPIC's 2013 survey reported having four or more social workers since they came into care.<sup>779</sup> VOYPIC notes that the high level of change of social worker may jeopardise a child's sense of feeling settled and stable and that the system underpinning the role would benefit from a review.<sup>780</sup>

An RQIA review of Statutory Fostering Services noted that many foster carers "complained about the turnover of Trust staff in particular the child's social worker..."<sup>781</sup> A child in care stated that "I've had ten social workers and I've only been in care two years... you get to know them then they go."<sup>782</sup> In a similar vein, a 17 year old young woman stated that she has had "far too many" social workers since she came into care and that:

there needs to be a change. I know people can change jobs and want to do different things, but there needs to be more permanent social workers working with children and young people, it is quite hard to trust anyone if you have a lot of change and people coming in and out of your life.<sup>783</sup>

In 2011 the Access to Justice Review Northern Ireland noted that concerns had been raised regarding the repeated use of interim care orders requiring frequent court hearings and creating an atmosphere of uncertainty for the child.<sup>784</sup> Efforts to address some of these concerns have been introduced, including through the Children Order Advisory Committee's Best Practice Guidance.<sup>785</sup>

In England, in contrast to Northern Ireland, the introduction of special guardianship by the Adoption and Children Act 2002 (fully implemented in December 2005) can provide greater stability for children in long term

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<sup>778</sup> *Ibid*, p. 20.

<sup>779</sup> *Ibid*, p. 20.

<sup>780</sup> *Ibid*, pp. 21-22.

<sup>781</sup> RQIA, *Review of Statutory Fostering Services: Overview Report*, December 2013, p. 15.

<sup>782</sup> NICCY, *Policy Briefing: Children and Care*, 8/2010.

<sup>783</sup> VOYPIC, *Our Life in Care: VOYPIC's third CASI survey (2013) of the views and experiences of children and young people in care*, 2014, p. 21.

<sup>784</sup> *Access to Justice Review Northern Ireland*, 2011:

[http://ico.org.uk/~media/documents/consultation\\_responses/Access\\_to\\_Justice\\_Review\\_FINAL\\_REPORT.ashx](http://ico.org.uk/~media/documents/consultation_responses/Access_to_Justice_Review_FINAL_REPORT.ashx), p 70.

<sup>785</sup> COAC, *Best Practice Guidance*, 2<sup>nd</sup> Edition 2010, as updated 2012.

foster care and their foster carer(s) without severing parental rights.<sup>786</sup> Special Guardianship Orders are intended to provide another option for legal permanence for children who cannot grow up with their birth families. A Special Guardianship Order gives the special guardian(s) Parental Responsibility for the child which lasts until the child is 18. These orders do not remove Parental Responsibility from the child's birth parents, although their ability to exercise Parental Responsibility is limited.

## Maintaining family relationships

In 2008 the UNCRC Committee in examining the protection of the rights of children in the UK expressed concern at "the scarce possibility of contact between [children in alternative care] and their parents and siblings."<sup>787</sup> The Committee recommended that the UK "facilitate the initiation of contact proceedings for all children separated from their parents and siblings, including those in long term residential care."<sup>788</sup>

In 2013/2014 more than a third of children were separated from their siblings when placed in foster care in Northern Ireland.<sup>789</sup> A VOYPIC survey regarding the views and experiences of children in care in Northern Ireland found contact with family and friends remained the most common issue identified by the children who completed the survey.<sup>790</sup> Less than half (49%) of the participants in the survey were able to keep in touch with their family as much as they want.<sup>791</sup>

A RQIA review of statutory fostering services in Northern Ireland states that:

Trusts indicated that some foster carers left the service due to... the impact fostering has on their own family... A particular area of stress for foster carers is a foster child's contact with their birth family. In these situations, strong support from social workers was particularly welcomed.<sup>792</sup>

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<sup>786</sup> See for example, Department for Education, University of York and BAAF, *Investigating Special Guardianship: experiences, challenges and outcomes, research report*, 2014.

<sup>787</sup> UNCRC Committee, Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 2008, para 44.

<sup>788</sup> *Ibid*, para 45(g).

<sup>789</sup> BBC News Northern Ireland, *Third of foster care siblings separated in Northern Ireland*, 8 September 2014, available at: <http://www.bbc.co.uk/news/uk-northern-ireland-29107723>.

<sup>790</sup> VOYPIC, *Our Life in Care: VOYPIC's third CASI survey (2013) of the views and experiences of children and young people in care*, 2014, p. 6.

<sup>791</sup> *Ibid*, p. 16.

<sup>792</sup> RQIA, *Review of Statutory Fostering Services: Overview Report*, December 2013, p. 20.

The RQIA review found that while foster carers were appreciative of the foster child's need for contact with birth parents they reported problems.<sup>793</sup> Problems included concerns regarding exposure to angry and disruptive members of the birth family and parental difficulties such as drinking, as well as distress for children when contact is not maintained. The review noted that contact should be monitored by social workers, who should assess and take account of the risks and impact for all involved. Foster carers stated that both they and the children "require support and follow-up to contact, in order that any anxieties can be dealt with appropriately."<sup>794</sup>

### Impact of maintaining family relations when determining a care placement

In determining the appropriate form of placement for a child the Court will consider the relationship of the child with his or her family. For example in *Re Z and T (Freeing Order Application)* Mr. Justice Gillen was "satisfied that the strength of this child's attachment to her siblings, especially D, and the attachment to her mother, albeit lesser, would visit on this child a strong sense of bereavement if [he] was to sever the parental/familial link to the extent which freeing for adoption would envisage."<sup>795</sup> Kinship foster care may allow a child to maintain connections with his or her family. In *Re S and C, (Care Order)* Mr. Justice Gillen stated:

It is my view that the normal expectation is that children benefit from care from their own families. Where a court does not embrace that principle, it is necessary to explain in some detail why that principle has not been adhered to. In this case I have given anxious scrutiny to this principle and I have revisited my thoughts on this matter over a not inconsiderable period of time before coming to a final conclusion.<sup>796</sup>

At times, however, kinship care will not be appropriate. For example in *J (Care Order)*, a care order was made instead of a kinship placement on the grounds of the proposed kinship carers' age, health, and concern that they did not fully understand the risks posed to the child by contact with the birth parents.<sup>797</sup>

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<sup>793</sup> *Ibid*, p. 22.

<sup>794</sup> *Ibid*, p. 22.

<sup>795</sup> *Re Z and T (Freeing Order Application)*, [2005] NIFam 6, at 21.

<sup>796</sup> *Re S and C, (Care Order)* [2005] NIFam 15, para 3.

<sup>797</sup> *J (Care Order)*, [2008] NIFam 11. See also, *Re C (Contact: Grandfather) (Unreported) GILF4095* and *Re W (Contact: Application by Grandparents)* [1997] 1 FLR 793.

## Post-adoption family contact

The Adoption (Northern Ireland) Order 1987 ('the Adoption Order') and the Adoption Agencies Regulations (NI) 1989 govern the way in which Adoption Agencies discharge their functions. Regional Adoption Policies and Procedures for Northern Ireland were published by BAAF in 2010, which was commissioned by the DHSSPS to lead on this work.<sup>798</sup>

Consideration of contact arrangements between a child and his or her birth family form part of adoption proceedings. Contact arrangements can be either indirect (via letter exchange managed by the adoption service) or direct (involving face-to-face contact arrangements managed by the adoptive parents and the adoption agency). The Adoption Order established the Adoption Contact Register, a mechanism that affords adoptees and birth parents the opportunity to register that they are seeking to make contact with each other.<sup>799</sup>

A study, which conducted interviews with 20 adoptive parents in Northern Ireland, noted that the expectation that there would be some form of contact between the child and their birth parent was established early on in the social work process but that, from the perspective of the adoptive parents, there seemed to be a lack of a forum whereby all parties could come together and negotiate these arrangements and/or where the suitability and frequency of these arrangements could be reviewed and adjusted.<sup>800</sup> Furthermore, none of the children appeared to be actively involved in discussions on this issue. Arrangements for contact were experienced as challenging, practically and emotionally, but, despite this, adoptive parents believed that contact arrangements facilitated the ongoing process of helping their adopted children gain a fuller understanding of their own circumstances that had led to them being adopted.<sup>801</sup>

The ECtHR has stated that, in identifying the child's best interests, two considerations must be borne in mind. First, that it is in the child's best interests that ties with his or her family must be maintained, except in cases where the family has proved particularly unfit; and secondly, that it is in the child's best interests to ensure his or her development in a safe and secure environment.<sup>802</sup> Where the maintenance of family ties would harm the child's health and development, a parent is not entitled under

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<sup>798</sup> BAAF, *Adoption: Regional Policy and Procedures, Northern Ireland*, 2010.

<sup>799</sup> Adoption Order, Art. 54A.

<sup>800</sup> MacDonald, M. And McSherry, D, 'Open adoption: adoptive parents' experiences of birth family contact and talking to their child about adoption', *Adoption & Fostering*, 35(3), 2011, pp. 4-16.

<sup>801</sup> *ibid.*

<sup>802</sup> *Neulinger and Shuruk v Switzerland*, ECtHR, Application No.41615/07, 6 July 2010, para 136; *R and H v UK*, ECtHR, Application No. 35348/06, 15 September 2011, paras 73-74.

Article 8 to insist that such ties be maintained.<sup>803</sup> The judiciary has looked upon the maintenance of contact following freeing and adoption orders favourably and the prevailing opinion is that in general it is in the child's interests for contact to continue where possible.<sup>804</sup>

## Delay

The Children Order, Article 3(2) requires that

In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.<sup>805</sup>

The potential impact of delay was illustrated in *Homefirst Community Health and Social Services Trust v SN* where Lord Justice Sheil noted the role that appropriate assistance could have played in protecting the Article 8 rights at issue and stated that the Trust "should have given [the mother] a further opportunity to prove herself by undergoing the further suggested therapeutic work."<sup>806</sup> However, due to the time which had passed since the child was taken into care he determined that:

Time has now inevitably moved on and this court has to look at this application in the light of matters as they now stand, bearing in mind that JN has now been happily settled with Mr. and Mrs. K for nearly three years and was only in the care of his mother SN for the short period of four months immediately following his birth on 3 April 2001. This court considers that it is now in the best interests of JN that he should be freed for adoption and that SN, his mother, is withholding her consent unreasonably.<sup>807</sup>

The Access to Justice Review Northern Ireland noted "serious concerns about *delay* with full care orders often taking over a year to process, although it was recognised that on occasion 'purposeful delay' had a role

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<sup>803</sup> *Neulinger and Shuruk v Switzerland*, ECtHR, Application No.41615/07, 6 July 2010, para 136.

<sup>804</sup> For example *Re C (No Contact Order)* [2002] NI Fam 14; *A (adoption; unreasonable withholding of consent)* [2011] NIFam 19; *RM (Freeing Order)* [2010] NIFam 23 *Freeing and Contact post adoption*.

<sup>805</sup> See also, Children (NI) Order 1995, Guidance and Regulations, Volume 1, Court Orders and Other Legal Issues, paras 1.7-1.8.

<sup>806</sup> *Homefirst Community Health and Social Services Trust v SN* [2005] NICA 14, para 29.

<sup>807</sup> *Ibid.*

in enabling problems within the family to be addressed.<sup>808</sup> The delays associated with care planning have been critiqued in Northern Ireland's courts. In *SMcC v Southern Health and Social Care Trust*, Mr. Justice Maguire stated: "This is a bad enough state of affairs... but it has undoubtedly been added to by the extensive period of time which has been consumed to date in determining what should occur in relation to the children."<sup>809</sup> Similarly, in 2011, Lord Chief Justice Morgan, in a case concerning parental objection to a freeing application, stated that "this delay in dealing with the issue of permanence for this young child was completely unacceptable and potentially very harmful for the child."<sup>810</sup>

Delay in decision-making was one of the main findings of a 2003 review of freeing order processes in Northern Ireland.<sup>811</sup> The report, commissioned by the SSI and NIGALA, reported on the findings of 200 children who were at various stages in the adoption process from the time that the adoption panel had recommended that adoption was in the best interests of the child to the granting of freeing and adoption orders. The authors found that delays were evident at each stage of the decision making process and that the average time from the child becoming looked after to the granting of an Adoption Order was four and a half years.

In 2013/2014 the average time from the Trust making the decision to pursue adoption for a child to the granting of an Adoption Order was two years three months.<sup>812</sup> The BAAF in Northern Ireland have expressed concern stating that the "impact of this legal uncertainty on children's development and capacity to form secure attachments is deeply worrying, and for prospective adoptive parents, may exacerbate the stresses which these new parent often face in the early stages of a placement."<sup>813</sup>

Though there is no common legislative framework operating across the UK, which would allow like-for-like comparisons, statistics illustrate that delays regarding adoptions are longer in Northern Ireland than the rest of the UK. In 2013 in NI the average duration from last entry into care to

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<sup>808</sup> *Access to Justice Review Northern Ireland*, 2011:  
[http://ico.org.uk/~media/documents/consultation\\_responses/Access\\_to\\_Justice\\_Review\\_FINAL\\_REPORT.ashx](http://ico.org.uk/~media/documents/consultation_responses/Access_to_Justice_Review_FINAL_REPORT.ashx), p. 70

<sup>809</sup> *SMcC v Southern Health and Social Care Trust* [2013] NIFam 2, para 114.

<sup>810</sup> *A (adoption; unreasonable withholding of consent)* [2011] NIFam 19, para 5. See also, *South Eastern Health and Social Services Trust v LS & Anor* [2009] NIFam 14, para 16.

<sup>811</sup> DHSSPS: Kelly, G. And McSherry, D, *Review of the Freeing Order Processes in Northern Ireland*, 2003. See also, Kelly, G., Haslett, P., O'Hare, J. and McDowell, K, 'Permanence Planning in Northern Ireland: A Development Project', *Adoption and Fostering Journal*, 31(3), 2007, pp. 18-27, a small scale study considering the effects of delay on children placed with dual approved carers.

<sup>812</sup> DHSSPS/NIRSA, *Children Adopted from Care in Northern Ireland 2013/2014*, 2014, p.

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<sup>813</sup> <http://www.baaf.org.uk/ni>.

the granting of an adoption order was 2 years 11 months, while the average time of the last period of care in England was 2 years and 4 months and in Wales 2 years and 3 months.<sup>814</sup> Media reports also indicate that NI's adoption rate is only half that of the rest of the UK.<sup>815</sup>

At 31<sup>st</sup> March 2014, a total of 42 prospective domestic adoption applicants were awaiting assessment. One was waiting more than 12 months for assessment. The main reason for waiting was that no social worker was available to commence assessment (95% of cases).<sup>816</sup>

Courts have highlighted the importance of expert evidence in care proceedings, but have also emphasised that the instruction of experts can be a major cause of delay. *In Re: K and S* for example, Mr. Justice Gillen noted that:

The fact of the matter is that in Northern Ireland not only is there a shortage of experts but those who are available are very busy and often cannot undertake the task allotted by the court within the timeframe set down by the judge. The court is then faced with three choices, all unsatisfactory. The first is to wait for the expert, thereby infringing the principle that delay in determining the case is contrary to the interests of the children and adds to the stress on the parties and the children concerned. Secondly to try and find another expert (who is likely to be in the same position or may not be as good) and thirdly to abandon the idea of expert evidence altogether. The solution perhaps is rigorous case planning. In the very early planning stages courts must identify the type of assessments likely to be necessary on the assumption that the court finds the facts in a particular way.<sup>817</sup>

Mr. Justice Gillen continued:

Clearly training in all aspects of court work for social workers is essential and the social work qualification, which most social workers have, must be pitched at an appropriate level with adequate content. There is no doubt that social workers need to be professional and to know what the court requires and expects by way of evidence. They also need to have a thorough understanding of court procedures. However, the

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<sup>814</sup> DHSSPS/NIRSA, *Children Adopted from Care in Northern Ireland 2013/2014*, 2014, p. 18.

<sup>815</sup> BBC News Northern Ireland, *Northern Ireland's adoption laws '30 years out of date'*, 5 November 2013: Available at: <http://www.bbc.co.uk/news/uk-northern-ireland-24819518>

<sup>816</sup> HSCB, *Delegated Statutory Functions Statistical Report*, 2014, p. 52.

<sup>817</sup> *In Re: K and S* [2006] NIFam 11, para 7(e).



courts themselves do need to have a good understanding of the role of the social worker and the extent of his or her authority. Courts should be open to according to social workers the appropriate status in the cases notwithstanding their absence of medical/psychiatric/psychological qualifications. They give evidence as professionals and as part of what is – or ought to be – a multi-disciplinary process. They bring their particular form of expertise into play in each case. No doubt the multi-disciplinary assessment may from time to time uncover the need for a particular therapeutic service or for outside expert evidence, which is not available to the multi-disciplinary team within the public authority. This is where the assistance of the guardian ad litem can be vital in assisting the court to assess the need for outside expertise. The judicial function is to filter when and to what extent experts can provide further assistance of the court. There is no fetter on the judge's discretion to curb proliferation in investigations and reports when they seem to him to be unnecessary or unhelpful to the future resolution of issues. Thus the court should adopt a pro-active role in the appointment of experts in this way.<sup>818</sup>

The Access to Justice Review Northern Ireland noted that concerns raised included “over-use of expensive expert witnesses who add to costs and delay, especially if brought in from other jurisdictions.”<sup>819</sup> In England, the Child Protection All Party Parliamentary Group noted the frequency of courts seeking specialist evidence from expert witnesses and suggest that an “alternative would be to involve independent social workers sooner so that a resolution could be reached at a far earlier stage.”<sup>820</sup>

The RQIA noted in 2013 that there has been a

steady rise in the number of kinship carers entering the fostering system, which in turn increases the number of assessments required. The repeated message from HSC Trusts was their difficulty in terms of capacity as a result of the increased demand for kinship carers’ assessments. HSC Trusts also stated they had to complete extensive kinship care assessments, in situations where families could not agree who should be the main carer. These situations impact on the

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<sup>818</sup> *Ibid*, para 7(f).

<sup>819</sup> *Access to Justice Review Northern Ireland*, 2011:

[http://ico.org.uk/~media/documents/consultation\\_responses/Access\\_to\\_Justice\\_Review\\_FINAL\\_REPORT.ashx](http://ico.org.uk/~media/documents/consultation_responses/Access_to_Justice_Review_FINAL_REPORT.ashx), p. 70

<sup>820</sup> Child Protection All Party Parliamentary Group, *Making Care Proceedings Better for Children: A report by the Child Protection All Party Parliamentary Group*, 2013, p. 11.

Trusts' ability to progress their mainstream fostering assessments in a timely way.<sup>821</sup>

As outlined previously, following an independent panel review of the family justice system in England and Wales,<sup>822</sup> legislation has been introduced which seeks to address a number of issues, including problems of delay.<sup>823</sup> No similar independent review of difficulties regarding delay in NI<sup>824</sup> has been undertaken and the legislative reform process to address delay in NI is significantly behind the changes that have been introduced in England and Wales.<sup>825</sup> In November 2014 the Department of Justice launched a consultation 'Examining the use of Expert Witnesses appearing in the Courts in Northern Ireland'.<sup>826</sup>

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<sup>821</sup> RQIA, *Review of Statutory Fostering Services: Overview Report*, December 2013, p. 64.

<sup>822</sup> Family Justice Review: Final Report, November 2011, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217343/family-justice-review-final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217343/family-justice-review-final-report.pdf). See the Government response at: Ministry of Justice, *Family Justice Review: Government Response*, June 2012. Available at: <https://www.gov.uk/government/publications/family-justice-review-government-response>.

<sup>823</sup> Children and Families Act 2012-2013 and 2013-2014.

<sup>824</sup> *Access to Justice Review Northern Ireland*, August 2011: [http://ico.org.uk/~media/documents/consultation\\_responses/Access\\_to\\_Justice\\_Review\\_FINAL\\_REPORT.ashx](http://ico.org.uk/~media/documents/consultation_responses/Access_to_Justice_Review_FINAL_REPORT.ashx), para 5.92.

<sup>825</sup> Northern Ireland Assembly, AQW 29304/11-15, Tabled 10/12/2013. See also, Child Protection All Party Parliamentary Group, *Making Care Proceedings Better for Children: A report by the Child Protection All Party Parliamentary Group*, 2013, available at: [http://www.nspcc.org.uk/Inform/policyandpublicaffairs/england/consultations/APPG-CP-report\\_wdf94210.pdf](http://www.nspcc.org.uk/Inform/policyandpublicaffairs/england/consultations/APPG-CP-report_wdf94210.pdf).

<sup>826</sup> DOJ, *Examining the use of Expert Witnesses appearing in the Courts in Northern Ireland*, 2014, available at: <http://www.dojni.gov.uk/index/public-consultations/current-consultations/use-of-expert-witnesses-in-courts-in-ni-consultation.pdf>

# 5 Addressing challenging behaviour

## Human rights laws and standards

### The right to liberty

The ECHR provides that “Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law.”<sup>827</sup> The ECtHR has noted that in order to determine whether someone has been “deprived of his liberty” within the meaning of Article 5, “the starting point must be the concrete situation of the individual concerned, and account must be taken of a whole range of factors arising in a particular case, such as type, duration, effects and manner of implementation of the measure in question.”<sup>828</sup> The Court has explained that the “distinction between deprivation of, and a restriction upon, liberty is merely one of degree or intensity and not one of nature or substance.”<sup>829</sup> For example in *HL v United Kingdom*<sup>830</sup> the Court considered the key factor “to be that the health care professionals treating and managing the applicant exercised complete and effective control over his care and movements... the concrete situation was that the applicant was under continuous supervision and control and was not free to leave.” In that case the Court

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<sup>827</sup> ECHR, article 5 §1 “Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (a) the lawful detention of a person after conviction by a competent court; (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law; (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority; (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.” See also, ICCPR, Article 9: Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

<sup>828</sup> *Blokhin v. Russia*, ECtHR, Application No. 47152/06, 14 November 2013 (Note: referred Grand Chamber), para 106; *Guzzardi v Italy*, ECtHR, Application No. 7367/76, 1980, para 92.

<sup>829</sup> *Blokhin v. Russia*, ECtHR, Application No. 47152/06, 14 November 2013 (Note: referred Grand Chamber); *Guzzardi v Italy*, ECtHR, Application No. 7367/76, 1980, para 93.

<sup>830</sup> *HL v United Kingdom*, ECtHR, Application No. 45508/99 (2004)

held that it was “not determinative whether the ward was “locked” or “lockable”.”<sup>831</sup>

In *Koniarska v The United Kingdom* the ECtHR held that an order for secure accommodation under Section 25 of the Children Act 1989 (the Children Order equivalent of Article 44) constituted a deprivation of liberty within the meaning of ECHR, Article 5.<sup>832</sup> Any secure accommodation order must satisfy the requirements of ECHR, Article 5 as well as the protections against deprivations of liberty under international human rights treaties including the UNCRC.

In order to determine whether a deprivation of liberty is compatible with human rights the ECtHR considers ECHR, Article 5. The Court has held that the list of permitted deprivations of liberty set out therein is exhaustive and must be interpreted strictly.<sup>833</sup> In order to be compatible with the ECHR a deprivation of liberty must “comply with the substantive and procedural rules of national law and... be in keeping with the purpose of Article 5, which is to protect an individual from arbitrariness... In this respect, there must be a relationship between the ground of permitted deprivation of liberty relied on and the conditions of detention.”<sup>834</sup> The Court has further noted that “where deprivation of liberty is concerned it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application...”<sup>835</sup>

With regard to Article 5(1)(d) the Court has noted that “in the context of the detention of minors, the words ‘educational supervision’ must not be equated rigidly with notions of classroom teaching: in the context of a young person in local authority care, educational supervision must embrace many aspects of the exercise, by the local authority, of parental rights for the benefit and protection of the person concerned.”<sup>836</sup> In *Blokhin v. Russia* the Court held that the applicant’s detention did not fall within Article 5(1)(d) as “the applicant’s detention in the centre was not

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<sup>831</sup> *Ibid*, paras 91-92. See also, *Stanev v Bulgaria*, ECtHR, Application No. 36760/06, 2012 (GC).

<sup>832</sup> *Koniarska v The United Kingdom*, ECtHR, Application no. 33670/96, 12 October 2000, Decision on Admissibility, para 1.

<sup>833</sup> *D.G. v. Ireland*, ECtHR, Application No. 39474/98, 16 May 2002, para 74. *Blokhin v. Russia*, ECtHR, Application No. 47152/06, 14 November 2013 (Note: referred Grand Chamber), para 108.

<sup>834</sup> *D.G. v. Ireland*, ECtHR, Application No. 39474/98, 16 May 2002, para 75.

<sup>835</sup> *Ichin and Others v. Ukraine*, ECtHR, Applications nos. 28189/04 and 28192/04, 21 December 2010, para 33.

<sup>836</sup> *D.G. v. Ireland*, ECtHR, Application No. 39474/98, 16 May 2002, para 80. *Blokhin v. Russia*, ECtHR, Application No. 47152/06, 14 November 2013 (Note: referred Grand Chamber), para 110. *Ichin and Others v. Ukraine*, Applications nos. 28189/04 and 28192/04, 21 December 2010, para 39.

‘for the purpose of’ educational supervision” and “any education which was offered was purely incidental to the main reason” for his detention, which was to “prevent him from committing new delinquent acts.”<sup>837</sup>

The UNCRC provides further comprehensive protection specific to children requiring that “no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity of the law...”.<sup>838</sup> The UN Rules for the Protection of Juveniles Deprived of their Liberty establish minimum standards for the protection of juveniles deprived of their liberty in all forms.<sup>839</sup> The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty.<sup>840</sup>

### Detention as a last resort and for shortest period

International standards make clear that any detention of a child “shall be used only as a measure of last resort and for the shortest appropriate period of time.”<sup>841</sup> The UN Rules for the Protection of Juveniles Deprived of their Liberty affirm that “deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases.”<sup>842</sup>

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<sup>837</sup> *Blokhin v. Russia*, ECtHR, Application No. 47152/06, 14 November 2013 (Note: referred Grand Chamber), para 115.

<sup>838</sup> UNCRC, Article 37 (b). Further, Article 37(d): “Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”

<sup>839</sup> *UN Rules for the Protection of Juveniles Deprived of their Liberty*, A/Res/45/113, 1990, para 3. The Rules define ‘deprivation of liberty’ as: “any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order or any judicial, administrative or other public authority.” Para 11(b).

<sup>840</sup> *Ibid*, para 15.

<sup>841</sup> UNCRC, Art. 37 (b). Council of Europe, Committee of Ministers, *Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice, Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies*, para 19: Any form of deprivation of liberty of children should be a measure of last resort and be for the shortest appropriate period of time; Council of Europe, Committee of Ministers, *Recommendation Rec (2003)20 of the Committee of Ministers to members states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice*, 2003, para 17. See also as relevant, *Nart v Turkey*, ECtHR, Application No. 20817/04, 6 May 2008, para 31; *Korneykova v. Ukraine*, ECtHR, Application No. 39884/05, 19 Jan 2012, paras 44 and 48.

<sup>842</sup> *UN Rules for the Protection of Juveniles Deprived of their Liberty*, A/Res/45/113, 1990, para 2. See also, *UN Guidelines for the Prevention of Juvenile Delinquency*, A/Res/45/112, 1990, para 46; Council of Europe, Committee of Ministers, *Recommendation Rec (2003)20 of the Committee of Ministers to members states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice*, 2003, para 17.

NI studies regarding secure care accommodation have illustrated links between secure accommodation and the criminal justice system. A 2008 NCB research study regarding young people who had been assessed as being in need of a secure care placement examined the young people's legal status at the time of the assessment and found that a "small minority (9 (14%)) had no criminal record at the point of assessment; almost half (30 (48%)) had a minor record; 16 (25%) had substantial and eight (13%) had major criminal records. At the time of the NCB study some 40 (63%) young people were currently subject to justice orders, or facing outstanding charges."<sup>843</sup>

In order to ensure that detention is in fact used as a last resort, alternative actions must be pursued. For example, the UNCRC Committee has said that "young children who misbehave or violate laws require sympathetic help and understanding, with the goal of increasing their capacities for personal control, social empathy and conflict resolution."<sup>844</sup> The Committee further stated that "State policies on public security must carefully consider the root causes of children's offences in order to provide a way out of a vicious circle of retaliating violence with violence."<sup>845</sup> The Committee has called for States parties to "ensure that parents/caregivers are provided adequate support and training to fulfil their responsibilities (Article 18) and that young children have access to quality early childhood education and care, and (where appropriate) specialist guidance/therapies."<sup>846</sup>

Support programmes, such as those discussed in Chapter 2, are also of particular significance in this regard as adequate support must be provided to those individuals with parental responsibility for a child; whether that child is cared for in the family or in alternative care.<sup>847</sup> The UNCRC Committee has noted that there "is a wealth of information on home and family-based prevention programmes, such as parent training programmes to enhance parent-child interaction and home visitation

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<sup>843</sup> NCB, Sinclair and Geraghty, *A review of the use of secure accommodation in Northern Ireland*, 2008, para 4.2.2; RQIA, *A Report on the Inspection of the Care Pathways of a Select Group of Young People who Met the Criteria for Secure Accommodation in Northern Ireland*, 2011, p. 48.

<sup>844</sup> UNCRC Committee, *General Comment No 7 (2005) Implementing child rights in early childhood*, Para 36(i).

<sup>845</sup> UNCRC Committee, *General Comment No 13 (2011), The right of the child to freedom from all forms of violence*, para 15(c).

<sup>846</sup> UNCRC Committee, *General Comment No 7 (2005) Implementing child rights in early childhood*, Para 36(i).

<sup>847</sup> *UN Guidelines for the Prevention of Juvenile Delinquency*, A/Res/45/112, 1990, para 12-14, 35. See also, UNCRC Committee, *General Comment No 10 (2007) on Children's rights in juvenile justice*, CRC/C/GC/10, para 18.

programmes, which can start at a very young age of the child.<sup>848</sup> The UN Guidelines for the Alternative Care of Children specify that “training in dealing appropriately with challenging behaviour, including conflict resolution techniques and means to prevent acts of harm or self-harm, should be provided to all care staff employed by agencies and facilities.”<sup>849</sup>

The UN Guidelines for the Prevention of Juvenile Delinquency note that the:

need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognised. These should avoid criminalising and penalising a child for behavior that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:

(a) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection;

(b) Specialised philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;

(c) Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;

(d) Safeguarding the well-being, development, rights and interests of all young persons;

(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

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<sup>848</sup> UNCRC Committee, *General Comment No 10 (2007) on Children’s rights in juvenile justice*, CRC/C/GC/10, para 19.

<sup>849</sup> *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 116. See also, Council of Europe, Committee of Ministers, *Recommendation Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions*, 2005.

contributes to the development of a consistent pattern of undesirable behaviour by young persons.<sup>850</sup>

The UN Guidelines for the Prevention of Juvenile Delinquency further state that "Government agencies should give high priority to plans and programmes for young persons and should provide sufficient funds and other resources for the effective delivery of services, facilities and staff for adequate medical and mental health care, nutrition, housing and other relevant services, including drug and alcohol abuse prevention and treatment, ensuring that such resources reach and actually benefit young persons."<sup>851</sup>

## Domestic law, policy and practice

The *Children Order Guidance and Regulations* specify that:

Trusts have a duty under the Children Order to take reasonable steps designed to avoid the need for children within their area to be placed in secure accommodation... Careful consideration should be given to the existing range of alternative facilities and services available locally, identifying any gaps or inadequacies in such provision, and how these might best be met either by the Trust itself or in co-operation with other agencies.<sup>852</sup>

The Children Order Guidance and Regulations recognise that "restricting the liberty of children is a serious step which must be taken only when there is no appropriate alternative" and require that

It must be a "last resort" in the sense that all else must first have been comprehensively considered and rejected – never because no other placement was available at the relevant time, because of inadequacies in staffing, because the child is simply being a nuisance or runs away from his accommodation and is not likely to suffer significant harm in doing so, and never as a form of punishment.<sup>853</sup>

The Children Order, Article 44 defines secure care accommodation as

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<sup>850</sup> UN Guidelines for the Prevention of Juvenile Delinquency, A/Res/45/112, 1990, para 5. See also, UNCRC, Art. 40; UNCRC Committee, *General Comment No 10 (2007) on Children's rights in juvenile justice*, CRC/C/GC/10, para 17.

<sup>851</sup> UN Guidelines for the Prevention of Juvenile Delinquency, A/Res/45/112, 1990, para 45. See also, UNCRC Committee, *General Comment No 10 (2007) on Children's rights in juvenile justice*, CRC/C/GC/10, para 18.

<sup>852</sup> Children (NI) Order 1995, Guidance and Regulations, Volume 4, Residential Care, para 15.6.

<sup>853</sup> *Ibid*, para 15.5.



“accommodation provided for the purpose of restricting liberty.” Children cannot be placed in secure care accommodation unless it appears that:

(a) (i) they have a history of absconding and are likely to abscond from any other description of accommodation; and (ii) if they abscond, they are likely to suffer significant harm; or

(b) if they are kept in any other description of accommodation they are likely to injure themselves or other persons.

A court hearing under Article 44 shall determine whether the relevant criteria for keeping a child in secure care accommodation are satisfied in his or her case. If a court determines that the criteria are satisfied, it shall make an order authorising the child to be kept in secure care accommodation and which specifies the maximum period for which he may be so kept. On any adjournment of the hearing of an application under this Article, a court may make an interim order permitting the child to be kept in secure accommodation during the period of the adjournment. No court shall exercise the powers conferred by this Article in respect of a child who is not legally represented in that court unless, having been informed of his right to apply for legal aid and having had the opportunity to do so, he refused or failed to apply.

The maximum period for which a court may authorise a child to be kept in secure care accommodation is 3 months.<sup>854</sup> A child or young person can be kept in secure care accommodation for a further period not exceeding six months at any one time if agreed by the court. A child under 13 years of age cannot be placed in secure accommodation without the prior approval of the DHSSPS, however, the final decision regarding placement in secure accommodation remains with the court.<sup>855</sup>

Article 44 also makes provision for the DHSSPS to be able to regulate secure care accommodation by way of regulations and provides that an application to the court under this Article shall be made only by an authority. *The Children (Secure Accommodation) Regulations 1996* establish, *inter alia*:

that the use of secure accommodation provisions for children and young people in certain circumstances is prohibited, namely: children and young people who are detained under any provision of the *Mental Health (NI) Order 1986*; children and young people to whom Article 21(5) of the *Children (NI) Order 1995* applies; and children and young people who are subject to a child assessment order under Article 62 *Children (NI) Order*;<sup>856</sup>

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<sup>854</sup> See also, *Children (Secure Accommodation) Regulations 1996*, Regulation 7

<sup>855</sup> *Ibid*, Regulation 2.

<sup>856</sup> *Ibid*, Regulation 3

that the maximum period of time a child or young person can be kept in secure accommodation without the authority of the court is 72 hours (whether or not consecutive) in any period of 28 consecutive days;<sup>857</sup>

that a court can authorise an extension to the 3 months period for a further period but not exceeding six months;<sup>858</sup>

lists the people who should be notified when a child is accommodated in a secure unit;<sup>859</sup>

that the Trust must appoint three persons to review the keeping of the child in secure accommodation and one of these persons must be independent of the Trust. The first review must take place within one month of the placement beginning and then at regular intervals not exceeding 3 months;<sup>860</sup>

that the views of the child or young person must be sought as part of the review process;<sup>861</sup>

outlines the records which must be kept;<sup>862</sup>  
prohibits the use of accommodation for restricting liberty in voluntary homes and private children's homes.<sup>863</sup>

The Trust procedure regarding the use of secure care accommodation involves referring the child to the Trust's 'Restriction of Liberty Panel', which comprises senior representatives and involves the prioritisation of referrals in terms of those in greatest need. Each Trust has an allocated number of placements in Lakewood Regional Secure Care Centre. Once a young person is in secure care accommodation, the Trusts have a duty to appoint an 'independent review panel' (comprising at least 3 people) to review the keeping of them in such accommodation for the purposes of securing their welfare.

## Northern Ireland context

Lakewood Regional Secure Care Centre (Lakewood), a unit which can house up to sixteen young people aged from 11 to 18 years of age (male

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<sup>857</sup> *Ibid*, Regulation 6

<sup>858</sup> *Ibid*, Regulation 8

<sup>859</sup> *Ibid*, Regulation 9

<sup>860</sup> *Ibid*, Regulation 10

<sup>861</sup> *Ibid*, Regulation 11

<sup>862</sup> *Ibid*, Regulation 12

<sup>863</sup> *Ibid*, Regulation 13

and female), provides secure care accommodation in Northern Ireland.<sup>864</sup> Between 1 April 2013 and 31 March 2014 there were 42 admissions to secure care; 7 of these were repeat admissions. At 31 March 2013 thirteen children were in secure care and 1 child was waiting for admission. Of 29 applications for secure accommodation during the first 6 months of the year, 15 children were provided with a place. Of 37 applications to the Restriction of Liberty Panel during October 2013 to March 2014, 22 applications were agreed and admitted and 4 were agreed but not admitted.<sup>865</sup>

A RQIA report examining the care pathways of a group of young people who met the criteria for secure care accommodation in Northern Ireland reviewed Trusts' procedures in relation to the use of such accommodation. The RQIA's findings raise a number of concerns with respect to compliance with international human rights obligations, *inter alia*:

there is no regional guidance relating to the operation of Restriction of Liberty Panels;

there are inconsistencies in Trusts' protocols in terms of panel membership, the frequency of meetings, a lack of clarity (except in one Trust) regarding the criteria by which they prioritised referrals for secure accommodation and a lack of clarity regarding monitoring arrangements for those young people who were not allocated a place;

there are concerns about the objectivity of the chair of the panels given their dual role as chair and senior manager of children's services with some operational responsibilities;

there are concerns that in all of the available Trusts' protocols, the attendance at the panel of an independent advocate and/or the young person themselves was not mentioned.<sup>866</sup>

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<sup>864</sup> Lakewood was listed as a completed project in 2006. See <http://www.dhsspsni.gov.uk/search.ladv?cs=&sc=&ha=dhssps-cms&ty0=0&fl0=&op0=1&tx0=regional+&ty1=1&fl1=&op1=1&tx1=+lakewood&ty2=0&fl2=&op2=0&tx2=+&ty3=0&fl3=&op3=2&tx3=+&dt=0&nh=10&hs=0&sb=0>. For earlier concerns regarding secure accommodation see, DHSSPS: SSI/ETI, *Secure Care: An inspection of secure accommodation at Shamrock House and Linden House*, 2002.

<sup>865</sup> HSCB, *Delegated Statutory Functions Statistical Report*, 2014, pp. 37-8.

<sup>866</sup> RQIA, *A Report on the Inspection of the Care Pathways of a Select Group of Young People who Met the Criteria for Secure Accommodation in Northern Ireland*, 2011.

## Detention as a last resort and for the shortest period

Both the RQIA and NCB reports examining secure care accommodation raise questions as to whether secure care accommodation is in fact used as a measure of last resort and whether appropriate alternative interventions and support are always considered comprehensively and utilised effectively.<sup>867</sup> The NCB report stated that:

there seems little doubt that all those placed in secure care meet the criteria, as set out in the legislation. It is less clear what interpretation is given to the instruction in the guidance that such placement must be 'a last resort', to be taken when there is no other 'appropriate alternative'.<sup>868</sup>

The RQIA report identified "the challenge in accessing timely and effective intervention both within the children's homes and in accessing specialist services."<sup>869</sup> Similarly, the NCB report highlighted "the roles and tasks alternative services need to fulfil if they are to help meet the needs of young people who are a risk to themselves or to others, and do so without restricting their liberty."<sup>870</sup>

The RQIA report further recommended that "Consideration should be given to various forms of intensive support responses to divert young people from restriction of liberty..."<sup>871</sup> In 2012 a Criminal Justice Inspection Northern Ireland (CJINI) report regarding early youth intervention arrangements across the criminal justice system in NI noted that:

Inspectors could not get a complete picture of the number, types and funding of early intervention programmes available in Northern Ireland. They found there was a myriad of

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<sup>867</sup> RQIA, *A Report on the Inspection of the Care Pathways of a Select Group of Young People who Met the Criteria for Secure Accommodation in Northern Ireland*, 2011, pp. 36-37 and 45-46; NCB, Sinclair and Geraghty, *A review of the use of secure accommodation in Northern Ireland*, 2008, pp. 83-88.

<sup>868</sup> NCB, Sinclair and Geraghty, *A review of the use of secure accommodation in Northern Ireland*, 2008, p. 87.

<sup>869</sup> RQIA, *A Report on the Inspection of the Care Pathways of a Select Group of Young People who Met the Criteria for Secure Accommodation in Northern Ireland*, 2011, p. 45. See also, p. 43: "it would appear that their presentation to the restriction of liberty panel which determined the need for secure care would also appear questionable as two of the young people were able to have their needs met successfully in alternate care options. This would indicate that all options had not been exhausted before their cases came to the attention of the panel."

<sup>870</sup> NCB, Sinclair and Geraghty, *A review of the use of secure accommodation in Northern Ireland*, 2008, p. 85.

<sup>871</sup> RQIA, *A Report on the Inspection of the Care Pathways of a Select Group of Young People who Met the Criteria for Secure Accommodation in Northern Ireland*, 2011, p. 48.

providers, target participants, silo funding streams and delivery and evaluation methodologies. In relation to the situation in Northern Ireland generally, and the justice system specifically, there was a lack of co-ordination, a risk of duplication and a lack of evaluation which made it difficult to assess effectiveness and value for money. ... On the face of it however, the costs of addressing issues at an early stage through early interventions are far less than the costs of later criminal justice or social care solutions such as custody or secure care.<sup>872</sup>

Recognising the need for detention to be for the shortest appropriate period of time, the Children Order Guidance and Regulations specify that "a child must not continue to have his liberty restricted once the criteria cease to apply, even if there is a court order authorising restriction of liberty currently in existence"<sup>873</sup> and further notes that:

Secure placements, once made, should be only for so long as is necessary. Care should be taken to ensure that children are not retained in secure accommodation simply to complete a pre-determined assessment or 'treatment' programme.<sup>874</sup>

A 2011 RQIA report regarding the provision of CAMHS recognised progress in reducing waiting times from referral to commencement of treatment but found that "all trusts reported that striving to achieve the waiting times target had affected service delivery in varying ways e.g. reducing the diversity of responses and some targeted services." Furthermore, a VOYPIC consultation with parents "highlighted the delay in accessing CAMH support."<sup>875</sup> The report found that none of the Trusts had developed co-ordinated working relationships with Youth Justice.<sup>876</sup> In its Annual Report the HSCB noted that at the end of March 2014, one hundred and thirteen patients were waiting longer than the target nine weeks to access child and adolescent mental health services – an increase of 84 compared to the end of March 2013.<sup>877</sup>

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<sup>872</sup> CJINI, *Early Youth Interventions: An inspection of the contribution the criminal justice agencies in Northern Ireland make to preventing children and young people from entering the criminal justice system*, 2012, pp. v and viii.

<sup>873</sup> Children (NI) Order 1995, Guidance and Regulations, Volume 4, Residential Care, para 15.3.

<sup>874</sup> *Ibid*, para 15.5.

<sup>875</sup> RQIA, *Independent Review of Child and Adolescent Mental Health Services (CAMHS) in Northern Ireland*, 2011, p. 77.

<sup>876</sup> *Ibid*, p. 86.

<sup>877</sup> HSCB, *Health and Social Care Board Annual Report and Accounts for the Period Ended 31 March 2014*, 2014, p. 90.

In 2014 the Child and Adolescent Faculty of the Royal College of Psychiatrists in Northern Ireland raised a number of concerns in its response to a review of CAMHS acute pathways, including that “There is an expectation that the mental health needs of children and young people will be met through an ‘acute’ medical model, when a more nuanced understanding of social and cultural factors should be acknowledged.”<sup>878</sup> The College also called for scrutiny as to whether crisis/intensive treatment teams function differently according to their geographical locations – noting a perception of different treatment in rural areas. The response further stated that:

Resources have largely been focused on managing short-term risk... Clinicians have sensed a drive for increased turnover within the inpatient units. This is not always appropriate and depends on the development of more robust step-up and step-down pathways, with better planned and resourced community services... Specialist CAMHS continues to operate with a legacy of chronic under-funding, we receive a much lower percentage of the total mental health budget than elsewhere in the U.K.<sup>879</sup>

Illustrating the need for collection and analysis of data, CJINI’s report recognised that the measurement of outcomes is “undoubtedly challenging, potentially time consuming and needs to take place over a longer timeframe than has been achieved to date,” but stated that in the absence of such “critical information decisions around the sustainability of such projects and the funding for them are difficult and potentially inaccurate...”<sup>880</sup>

### **Best interests of the child, the right to liberty, and the right of the child to be heard**

The RQIA review and NCB report raise concerns as to whether the best interests of the affected children, and their right to be heard, are adequately protected in the process of assessment for, and placement in, secure care accommodation.

It is clear from the Children Order, the Children (Secure Accommodation) Regulations, and the Children Order Guidance and Regulations that secure

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<sup>878</sup> Child and Adolescent Faculty of the Royal College of Psychiatrists in Northern Ireland, *Response to Review of CAMHS acute pathway including inpatient services (for Northern Ireland HSCB)*, 2014.

<sup>879</sup> *Ibid.*

<sup>880</sup> CJINI, *Early Youth Interventions: An inspection of the contribution the criminal justice agencies in Northern Ireland make to preventing children and young people from entering the criminal justice system*, 2012, p. 44.

care accommodation is a purpose and not a place. The Children Order Guidance and Regulations note that:

It is important, in considering the possibility of a secure placement, that there is a clear understanding of the aims and objectives of such a placement and that those providing the accommodation can fully meet those aims and objectives.<sup>881</sup>

However, the RQIA review noted that it was not always the case that the assessment process “led to effective care planning and outcomes for the young people.”<sup>882</sup>

In the context of child sexual exploitation, in 2014 the Independent Inquiry into Child Sexual Exploitation in Northern Ireland reported that the PSNI had noted that there are children, “albeit a few, who are clearly placing themselves at risk of serious harm.” The PSNI conclude that, “unless residential care staff have the ability or power to safeguard those children, secure accommodation is probably the only means of ensuring their safety.”<sup>883</sup> However, the VOYPIC consultation for the Inquiry noted “young people’s view that secure accommodation is not effective because you return to the same environment.”<sup>884</sup> The Marshall Inquiry identified that the

challenge for society is to provide the kind of structure, safety and quality of care that these facilities provide without depriving young people of their liberty and of the opportunity to develop into individuals who can cope with freedom.<sup>885</sup>

One of the Key Recommendations of the Marshall Inquiry is that the DHSSPS, with the HSCB and HSC Trusts should consider how ‘safe spaces’ could be developed for children and young people at risk of, subject to, or recovering from CSE. This development should take account of models of best practice and the views of young people, and should respect international human rights standards.<sup>886</sup>

Not all children who are assessed by Trusts as in need of secure care accommodation are in fact placed in secure care. The NCB report found that:

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<sup>881</sup> *Ibid*, para 15.5.

<sup>882</sup> RQIA, *A Report on the Inspection of the Care Pathways of a Select Group of Young People who Met the Criteria for Secure Accommodation in Northern Ireland*, 2011, p. 42.

<sup>883</sup> Kathleen Marshall, CJINI/RQIA/ETI, *Child Sexual Exploitation in Northern Ireland; Report of the Independent Inquiry*, 2014, p.87.

<sup>884</sup> *Ibid*, p. 88.

<sup>885</sup> *Ibid*, p. 88.

<sup>886</sup> *Ibid*, p. 17.

Two in seven of the young people (18 (28 %)) who were assessed and found to be needing secure care were not allocated a place because of a lack of capacity. Instead, a wide range of alternative placement was used... However, compared to the group that had a secure placement, these young people received a smaller range of and fewer services, particularly in respect of their emotional and mental health needs.<sup>887</sup>

During the year 1 April 2012 to 31 March 2013 there were 40 applications for secure care accommodation; 22 admissions resulted.<sup>888</sup>

On those occasions where a child is assessed as in need of secure care accommodation, but there is no place available, the relevant Trust must provide for the child's needs through alternative means. The NCB and RQIA reports indicate inadequacies in this regard. The RQIA review notes that five of the children reviewed did not go to secure care accommodation due to the lack of available places. Three of these children "were admitted to the Juvenile Justice Centre, two of these within a fortnight after they did not gain a place in secure care," leading the RQIA to suggest that "trusts should reflect on the quality of their contingency planning and consider why the intervention struggled to prevent their ongoing anti-social behaviour and criminalisation."<sup>889</sup>

In relation to the right of the child to be heard, a "repeated theme that emerged from the young people during their interviews" in the RQIA review "was their strong sense of powerlessness and lack of influence over decision making."<sup>890</sup>

A number of cases in NI courts have considered issues relating to secure care accommodation.<sup>891</sup> It has been noted that there are circumstances where it is appropriate to make an interim secure accommodation order even though the child has absconded and is not present but that such a course should be exceptional and the period of the order should be limited.<sup>892</sup>

In *Re AS*, the local authority had made a first application for a secure accommodation order in relation to a 13-year-old child.<sup>893</sup> The child was not notified of the hearing and no guardian ad litem was appointed. The child was legally represented at the hearing but his representatives had

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<sup>887</sup> NCB, Sinclair and Geraghty, *A review of the use of secure accommodation in Northern Ireland*, 2008, p. 4.

<sup>888</sup> HSCB, *Delegated Statutory Functions Statistical Report*, 2013, p. 35.

<sup>889</sup> RQIA, *A Report on the Inspection of the Care Pathways of a Select Group of Young People who Met the Criteria for Secure Accommodation in Northern Ireland*, 2011, p. 43.

<sup>890</sup> *Ibid*, p. 44.

<sup>891</sup> *North West Belfast Health and Social Services Trust v DH* [2001] NI Fam 17.

<sup>892</sup> *CM v A Health & Social Services Trust* [2011] NICA 41, para 17.

<sup>893</sup> *Re AS* [1999] 2 FCR 749.



not been able to take any instructions from him. Mr. Justice Bracewell considered that it was implicit in the statutory provisions that legal representation, in order to be effective, must involve the taking of instructions. In those circumstances the making of the order was found to be fundamentally flawed. This decision has been drawn upon in subsequent cases.<sup>894</sup> In *CM v A Health & Social Services Trust* Mr. Justice Morgan stated that:

Both the guardian and the solicitor must have access to the relevant papers and information. The guardian will need to have access to the child to advise the court on the issues and the solicitor must be in a position to take instructions from the child.<sup>895</sup>

VOYPIC provides a visiting advocacy service to children and young people in children's homes, Lakewood Secure Centre and Woodlands Juvenile Justice Centre. VOYPIC advocates aim to visit each home or centre at least once a month to meet with young people, build relationships and offer support to them on either individual or group issues.<sup>896</sup> The purpose of the advocacy service is to offer young people individual time with an advocate to raise any issues or concerns they may have.

## Looked after children in contact with the criminal justice system

### Police involvement

Regional guidance has been published in response to a concern that the care and management of children in residential care has the potential to criminalise them by relying on police call outs to deal with difficult behaviour.<sup>897</sup> In 2011 VOYPIC noted that "many young people have been criminalised for what appear to be minor offences. This policy to prosecute rather than to parent resulted in a significant proportion of young people in residential care having a criminal record."<sup>898</sup>

A 2007 consultation with Children and Young People reflected similar views of a child who stated: "If you do one thing wrong 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.' [eg for smashing cups – 'I was done for criminal damage. They could have just made me

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<sup>894</sup> For example, *CM v A Health & Social Services Trust* [2011] NICA 41, para 12.

<sup>895</sup> *Ibid*, para 14. See also, *North West Belfast Health and Social Services Trust v DH* [2001] NI Fam 17.

<sup>896</sup> VOYPIC, *Do You Care? We Do!:* Annual Report 2013-2014, p. 28.

<sup>897</sup> HSCB, *Regional Guidance: Police Involvement in Residential Units. Safeguarding of Children Missing from Home and Foster Care*, 2012.

<sup>898</sup> VOYPIC, *Because I'm a Kid....And I'm in Care:* VOYPIC's response to the Department of Justice Review of the Youth Justice System, 2011, p. 15

pay it back. ]”<sup>899</sup>

Underpinning the 2011 guidance is the view that police involvement in units should be kept to an absolute minimum, that the process of any investigation must be based on legality, necessity and proportionality and mindful of the rights and dignity of the child.

In practice, however, concerns about the criminalisation of young people in residential care remain. Some of those interviewed for the purposes of this report highlighted that young people in residential care were being penalised for offences in a way that they would not if they resided with their parents. They also stated that the practice of calling police out should only occur as a measure of last resort, and that the focus should be on finding alternative means of dealing with incidents. In particular, that the practice of police involvement and potential subsequent engagement with the youth justice system had profound negative implications for young people’s subsequent life chances. In 2013 an NGO noted that “There are clearly issues to be addressed with regard to practice in children’s homes and their ability to manage challenging young people.”<sup>900</sup>

Concern was also expressed by some of those interviewed for the purposes of this report at the lack of consistency across residential care settings in how they responded to incidents, and suggested that there was a need for more staff training and learning from good practice.

### Bail and remand

The Northern Ireland Law Commission’s (NILC) analysis of bail and remand, in respect of children and young persons noted “the issue of accommodation and the possibility of children (particularly ‘looked after children’) being placed on remand for accommodation reasons emerged as a central concern.”<sup>901</sup> Failures in this regard engage domestic law as well as international human rights protections; the right to liberty and the requirement that detention be utilised as a last resort and for the shortest period set out previously.

The Youth Justice Review Team noted that a number of care homes refuse to have young people back if they have offences against the home or a member of its staff, or where they are considered unruly. The team stated that “these are not sufficient grounds for remanding a child to

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<sup>899</sup> OFMDFM: Haydon, *UNCRC: Consultation with Children and Young People*, 2007, p 28.

<sup>900</sup> Include Youth, *Response to consultation on Custodial Arrangements for Children in Northern Ireland: A Department of Justice Consultation*, 2013, p. 22.

<sup>901</sup> Northern Ireland Law Commission, *Report: Bail in Criminal Proceedings*, NILC 14 (2012), 2012, Para. 6.18, p. 106.

custody.”<sup>902</sup> The NILC recommended “that bail legislation should prohibit the detention of children and young persons solely on the grounds of a lack of suitable accommodation”<sup>903</sup> and “that a range of accommodation options for children and young persons on bail be made available.”<sup>904</sup> In 2014 the Marshall Report noted that “official documents acknowledge that bail conditions imposed on LAC are likely to be more onerous than for the general population and are often unrealistic or even unachievable and therefore more likely to be breached.”<sup>905</sup>

In 2013, a Trust was found to have “breached its duty under Article 27” of the Children Order when it failed to provide alternative accommodation for a child who was the subject of a Care Order and as a result bail could not be granted and “it was necessary for him to be remanded in custody to a Juvenile Justice Centre”.<sup>906</sup> Later that year an NGO urged that the “accommodation and residential care of looked after children who come into contact with the criminal justice system must be addressed as a matter of urgency.”<sup>907</sup> The DoJ has commenced a consultation on the NILC Report on Bail in Criminal Proceedings but the report on the responses to this consultation has not yet been published.<sup>908</sup>

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<sup>902</sup> A Review of the Youth Justice System in Northern Ireland, 2011. Available at: <http://www.dojni.gov.uk/youth-justice-review>, p. 57.

<sup>903</sup> Northern Ireland Law Commission, *Report: Bail in Criminal Proceedings*, NILC 14 (2012), 2012, Para. 6.23, p. 108.

<sup>904</sup> *Ibid*, Para. 6.77, p. 126.

<sup>905</sup> Kathleen Marshall, CJINI/RQIA/ETI, *Child Sexual Exploitation in Northern Ireland; Report of the Independent Inquiry*, 2014, pp.87.

<sup>906</sup> *CM, Re Judicial Review* [2013] NIQB 84, paras 3-5.

<sup>907</sup> Include Youth, *Response to consultation on Custodial Arrangements for Children in Northern Ireland: A Department of Justice Consultation*, 2013, p. 23. See also, Children’s Law Centre, *Response to the United Kingdom Draft Periodic Report to the United Nations Committee on the Rights of the Child*, 2013, pp. 32-33.

<sup>908</sup> <http://www.dojni.gov.uk/consultation-on-bail-in-criminal-proceedings>

## Conclusion and recommendations

International human rights standards are used in this report to examine alternative care and children's rights in Northern Ireland. Law, policy and practice were also considered in full. The report identifies that reforms and comprehensive analysis are required in a number of areas in order for the Northern Ireland Executive and relevant public authorities to comply with their international human rights obligations.

### Review of legislation and related guidance

The UNCRC Committee stated that:

a comprehensive review of all domestic legislation and related administrative guidance to ensure full compliance with the Convention is an obligation. ... The review needs to consider the Convention not only article by article, but also holistically, recognizing the interdependence and indivisibility of human rights. The review needs to be continuous rather than one-off, reviewing proposed as well as existing legislation.<sup>909</sup>

In the context of the protection of children from violence the Committee noted that:

Authorities at all levels of the State responsible for the protection of children from all forms of violence may directly and indirectly cause harm by lacking effective means of implementation of obligations under the Convention. Such omissions include the failure to adopt or revise legislation and other provisions, inadequate implementation of laws and other regulations and insufficient provision of material, technical and human resources and capacities to identify, prevent and react to violence against children.<sup>910</sup>

The OFMDFM has recognised that "[g]uidance and procedures develop all the time, and in order to safeguard children, staff must have access to up-to-date information and guidance."<sup>911</sup> However, this report has identified shortcomings in this area in practice, including:

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<sup>909</sup> UNCRC Committee, *General Comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child*, para. 18.

<sup>910</sup> UNCRC Committee, *General Comment No 13 (2011), The right of the child to freedom from all forms of violence*, para 32.

<sup>911</sup> OFMDFM, *Safeguarding Children: A Cross-Departmental Statement on the Protection of Children and Young People*, 2009, p. 42.

- despite an intention that '*Co-operating to Safeguard Children*' "be periodically updated and amended to reflect changing practice in the field of child protection"<sup>912</sup> this main guidance governing child protection in Northern Ireland has not been comprehensively revised since 2003.<sup>913</sup> As a result what has been described as an "inexorable tide of material generated by the many and constant changes in law, practice and procedure affecting this dynamic area"<sup>914</sup> is not reflected in a single updated document, potentially hampering the effectiveness of the work of professionals in this area;
- given the absence of a revision of *Co-operating to Safeguard Children*, the *Regional Child Protection Policy and Procedures*, which operationalise *Cooperating to Safeguard Children* have not been updated since 2008 despite changes in the structure of children's social services and the establishment of the SBNI;
- despite DHSSPS recognition, as far back as 2006, that the "Adoption Order is based on an English equivalent from the 1970s and is out of date, and potentially out of step with various pieces of recent domestic equality legislation and European Conventions,"<sup>915</sup> the *Adoption (NI) Order 1987* has not been revised;
- the absence of a revision of the Children Order, in contrast to the frequent revisions of the Children Act in England, upon which it is based, means that the introduction of new provisions, for example Special Guardianship Orders is still awaited here; and
- the series of Regulations and Guidance, which accompany the Children Order has not been updated since 1996.<sup>916</sup>

The Commission recommends that:

1. Building on the DHSSPS' work regarding the development of a strategic statement encompassing services from the edge of care through to leaving and aftercare<sup>917</sup> relevant domestic legislation and related guidance should be reviewed by the DHSSPS, in liaison with the DOJ and the Department of Education, to ensure that they are up to date and in compliance with international human rights obligations, including the UNCRC.<sup>918</sup> In particular:

<sup>912</sup> DHSSPS, *Standards for Child Protection Services*, 2008.

<sup>913</sup> DHSSPS, *Co-operating to Safeguard Children*, 2003.

<sup>914</sup> COAC, *Best Practice Guidance, 2<sup>nd</sup> Edition 2010*, as updated 2012, p.4.

<sup>915</sup> DHSSPS, *Adopting the Future*, June 2006, available at:

[http://www.dhsspsni.gov.uk/adopting\\_the\\_future.pdf](http://www.dhsspsni.gov.uk/adopting_the_future.pdf), p. 9.

<sup>916</sup> [http://www.dhsspsni.gov.uk/index/hss/child\\_care/children-order/children-order-guidance-regulations.htm](http://www.dhsspsni.gov.uk/index/hss/child_care/children-order/children-order-guidance-regulations.htm).

<sup>917</sup> PHA/HSCB, *Draft Commissioning Plan 2014/2015*, January 2015, p. 97.

<sup>918</sup> The Marshall report also recommended a review of a number of legislative issues. Key Recommendation 14: "The DOJ should lead on a project to examine legislative issues highlighted in this report and bring forward proposals for change." Kathleen Marshall,

- the Adoption and Children Bill, which should address issues regarding adoption in NI including delay and revision of the Children Order, should be expeditiously brought forward;<sup>919</sup> and
  - the adequacy of legislation and guidance regarding private fostering and the potential need for reform should be considered.
2. Publication of updated 'Co-operating to Safeguard Children' guidance by the DHSSPS, which is currently under review with publication due in March 2015, should be expedited.
  3. Policies and procedures to update the existing ACPC's Policy and Procedures, by the SBNI should be developed to reflect the revision of Departmental Child Protection Policy.

## Delay

The UNCRC Committee has recognised that "the passing of time is not perceived in the same way by children and adults."<sup>920</sup> Thus the Committee has stated that it is "advisable that procedures or processes regarding or impacting children be prioritised and completed in the shortest time possible" as "delays in or prolonged decision-making have particularly adverse effects on children."<sup>921</sup> In the context of family reunification, the ECtHR noted:

When a considerable period of time has passed since the children were first placed in care, the children's interest in not undergoing further *de facto* changes to their family situation may prevail over the parents' interest in seeing the family reunited... *Time takes on therefore a particular significance as there is always a danger that any procedural delay will result in the de facto determination of the issue before the court...*<sup>922</sup>

The Commission notes that existing data indicates problems regarding delay at various points in the child protection and care system in Northern Ireland, including:

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CJINI/RQIA/ETI, *Child Sexual Exploitation in Northern Ireland; Report of the Independent Inquiry*, 2014, p. 18.

<sup>919</sup>Though the Department was scheduled to consult on this legislation from July to September 2014, this schedule has now been delayed. See for example: <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2013-2014/May-2014/Adoption-and-Children-Bill-Departmental-Briefing/> ; and <http://www.adoptionuk.org/sites/default/files/Statement%20on%20Delay%20to%20Northern%20Ireland%20Consultation.pdf>

<sup>920</sup> UNCRC Committee, *General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, Para 93.

<sup>921</sup> *Ibid*, Para 93.

<sup>922</sup> Emphasis added. *Haase v Germany*, ECtHR, Application no. 11057/02, 8 April 2004, para 103. See also, *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), para 155.

- in assessing children’s needs and taking timely and effective action;
- in the judicial system;
- in the making of full care orders;
- in securing adoption for some children and in adoption processes; and
- in the approval of foster carers.<sup>923</sup>

The Commission recommends that:

4. Building on the DOJ and the DHSSPS’ “work scoping a review of the operation of the family justice system”<sup>924</sup> and the Access to Justice Reviews (1) and (2), the DOJ should lead the establishment of a comprehensive review which should assess the possible need for reform and the extent and causes of the problems of delay and make public the results and recommendations for change.
5. The current “staged approach to reform,”<sup>925</sup> which is focused on a limited number of areas, should be expedited and coordinated by the DOJ in liaison with the DHSSPS with recommendations resulting from the above review. Reforms that are introduced here should learn lessons from the approach which has been adopted in England,<sup>926</sup> including considering a commitment to a time limit for care proceedings, except in certain cases.<sup>927</sup>

## Support and early intervention

The UNCRC Committee recognises that realising children’s rights is in large measure dependent on the well-being and resources available to

<sup>923</sup> RQIA, *Review of Statutory Fostering Services: Overview Report*, December 2013, p. 15: “One carer stated she was told it would take 15 weeks for recruitment; however, it actually took 15 months. Approval time appeared to vary between 6-16 months. Another states that the length of time it took for approval was too long.”

<sup>924</sup> Northern Ireland Assembly, AQW 29304/11-15, Tabled 10/12/2013.

<sup>925</sup> *Ibid.*

<sup>926</sup> *Access to Justice Review Northern Ireland*, 2011:

[http://ico.org.uk/~media/documents/consultation\\_responses/Access\\_to\\_Justice\\_Review\\_FINAL\\_REPORT.ashx](http://ico.org.uk/~media/documents/consultation_responses/Access_to_Justice_Review_FINAL_REPORT.ashx), para 5.92: “While we do not believe that proposals in England and Wales are invariably applicable in Northern Ireland, there are similarities between our systems and there would be advantage in a review here at least being informed by the outcome of the Norgrove review.” See, Donovan, *What the Children and Families Act 2014 means for social work and social workers*, updated February 2015. Available at: <http://www.communitycare.co.uk/2014/04/16/children-families-act-2014-means-social-work-social-workers/?cmpid=NLC%7CSCSC%7CSCDDB-2015-0223>

<sup>927</sup> In the context of a time limit, adequate flexibility should be allowed for an extension in cases where this would be in the best interests of the child, for example, some interventions which are shown to be effective that take longer than the prescribed period. See for example, Child Protection All Party Parliamentary Group, *Making Care Proceedings Better for Children: A report by the Child Protection All Party Parliamentary Group*, 2013, pp. 11-13

those with responsibility for their care.<sup>928</sup> In order to guarantee and promote the rights set out in the Convention "States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities."<sup>929</sup> The UNCRC Committee expressed concern "that insufficient account is taken of the resources, skills and personal commitment required of parents and others responsible for young children, especially in societies where early marriage and parenthood is still sanctioned as well as in societies with a high incidence of young, single parents."<sup>930</sup>

The UN Guidelines for the Alternative Care of Children state that "efforts should primarily be directed to enabling the child to remain in or return to the care of his/her parents, or when appropriate, other close family members" and that "the State should ensure that families have access to forms of support in the caregiving role."<sup>931</sup> The Guidelines further note that "as part of efforts to prevent the separation of children from their parents, States should seek to ensure appropriate and culturally sensitive measures: (a) To support family caregiving environments whose capacities are limited by factors such as disability, drug and alcohol misuse, discrimination against families with indigenous or minority backgrounds..."<sup>932</sup>

The Commission recommends that:

6. The RQIA should consider conducting a review of the DHSSPS's policy on early intervention and how it influences the HSCB in commissioning support for families and its support for the work of the CYPSP. The ETI should consider conducting a similar review regarding the work of the DE in regard to early intervention. Each review should consider the impact of budgetary cuts on the provision of services and how the impact of the cuts affects compliance with international human rights obligations.
7. The HSCB should review, and demonstrate, that it is commissioning support for the work of the CYPSP and early intervention to the maximum of its available resources.

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<sup>928</sup> UNCRC Committee, *General Comment No 7 (2005) Implementing child rights in early childhood*, paras 20 and 10.

<sup>929</sup> UNCRC, Art. 18.2. See also, Art. 27.2, Art. 3 and *Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally*, 1986, A/Res/41/85, Article 2: "Child welfare depends upon good family welfare."

<sup>930</sup> UNCRC Committee, *General Comment No 7 (2005) Implementing child rights in early childhood*, para 20.

<sup>931</sup> *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, Para 3.

<sup>932</sup> *Ibid*, Para 9.



8. The CYPSP should conduct regular evaluations of the effectiveness and availability of existing services and address identified shortcomings. These evaluations should ensure the participation of children and their families.
9. The DHSSPS should ensure full compliance with obligations under the Children Order in order to prevent youth homelessness and ensure that homeless children and young people avail of the supports available to them under Parts IV and V of the Children Order.

### Collection of data, assessment, and learning lessons

In the context of the protection of children the UNCRC Committee has commented that it is “an omission when measures and programmes are not equipped with sufficient means to assess, monitor and evaluate progress or shortcomings of the activities to end violence against children”<sup>933</sup> and that:

administrative measures should reflect governmental obligations to establish policies, programmes, monitoring and oversight systems required to protect the child from all forms of violence... (v) Establishing a comprehensive and reliable national data collection system in order to ensure systematic monitoring and evaluation of systems (impact analyses), services, programmes and outcomes based on indicators aligned with universal standards, and adjusted for and guided by locally established goals and objectives.<sup>934</sup>

Specifically, in the context of children with disabilities the UNCRC Committee stated that:

In order to fulfil their obligations, it is necessary for States parties to set up and develop mechanisms for collecting data which are accurate, standardized and allow disaggregation, and which reflect the actual situation of children with disabilities. The importance of this issue is often overlooked and not viewed as a priority despite the fact that it has an impact not only on the measures that need to be taken in terms of prevention but also on the distribution of very valuable resources needed to fund programmes.<sup>935</sup>

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<sup>933</sup> UNCRC Committee, *General Comment No 13 (2011), The right of the child to freedom from all forms of violence*, para 32.

<sup>934</sup> *Ibid*, para 42.

<sup>935</sup> UNCRC Committee, *General Comment No. 9 (2006), The rights of children with disabilities*, para. 19.

The Commission notes that gaps in available data identified in the research for this report include:

- the need for overview assessment of learning from Case Management Reviews as well as data and information;
- the absence of a Child Death Review mechanism as set out in the Safeguarding Board Act (2011);
- the absence of an annual report on the operation of the Children Order as required by Article 181 of the Children Order;
- inadequacy of data regarding children who are privately fostered and Trusts' oversight of such situations;
- figures regarding the rate of placement disruption for children in care are not compiled for periods longer than one year;<sup>936</sup> and
- the absence of a Register of Disabled Children as required by the Children Order.

The Commission recommends that:

10. A comprehensive and reliable data collection and assessment system should be established for Northern Ireland. This should build on existing data collection and ensure systematic monitoring and evaluation of systems (impact analyses), services, programmes and outcomes based on indicators aligned with universal standards, and adjusted for and guided by locally established goals and objectives.<sup>937</sup>
11. The Northern Ireland Assembly's Public Accounts Committee, the Committee for Health, Social Services and Public Safety, the Committee for Justice, the Committee for Education, and the Committee for the OFMDFM, should consider conducting a review of the work of the relevant Departments and oversight bodies in Northern Ireland and making recommendations regarding necessary improvements.<sup>938</sup>

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<sup>936</sup> Correspondence between NIHRC and Northern Ireland Health and Social Care Trusts.

<sup>937</sup> In collecting data particular attention should be paid to ensuring full compliance with international standards, in particular, the UNCRC and UNCRPD. Response to this recommendation should also consider Key Recommendation 4 of the Child Sexual Exploitation Independent Inquiry: "SBNI's developing plan for data collection should include a commitment to collation and analysis of the data in a way that will facilitate a strategic response to CSE." Kathleen Marshall, CJINI/RQIA/ETI, *Child Sexual Exploitation in Northern Ireland; Report of the Independent Inquiry*, 2014, p. 17.

<sup>938</sup> This review should learn lessons from that conducted by the Westminster Committee of Public Accounts. House of Commons Committee of Public Accounts, *Children in Care*, 44th Report of Session 2014-15, 11 March 2015. Available at: <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmpubacc/809/809.pdf>

12. The DHSSPS should comply with Article 181 of the Children Order and issue the required Annual Report.
13. The Children Order requirement to establish a register of disabled children should be addressed; either the legislation should be complied with, or if following consultation it is determined that a different approach is preferable, the legislation should be amended.
14. The DHSSPS should collect and publish data regarding placement moves for children in care and the reasons for the moves, capturing the entire time a child spends in care, not only placement moves over a period of one year.
15. Regularly collected disaggregated data and research should be utilised by the DHSSPS and the HSCB in order to assess the needs of the population, how policies are working, if intended improvements are being achieved, and to address issues and make improvements.<sup>939</sup>

### The right of the child to be heard and participate

The right of the child to be heard and taken seriously is one of the four general principles of the UNCRC. It requires actions to be taken to assure to “the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child.”<sup>940</sup> Specific requirements have been outlined to ensure fulfilment of these rights, including that the views of the child must be given “due weight in accordance with the age and maturity of the child.”<sup>941</sup>

Procedural rights developed in ECtHR jurisprudence on the right to family life include the right to participation.<sup>942</sup> The UN Guidelines for the Alternative Care of Children further note that the preparation, enforcement and evaluation of a protective measure for a child should be carried out, to the greatest extent possible, with the participation of his or

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<sup>939</sup> For example, RQIA, *Review of Statutory Fostering Services: Overview Report*, December 2013, p. 17: “The review team found that trusts did not have robust information about the profile of current foster carers. This makes it difficult to plan ahead, as information regarding current carers and demand for placements, needs to inform recruitment campaigns.”

<sup>940</sup> UNCRC Committee, *General Comment No 12 (2009) on the right of the child to be heard*, paras 20-27.

<sup>941</sup> UNCRC, Art. 12.

<sup>942</sup> *Ageyevy v. Russia*, ECtHR, Application No. 7075/10, 18 April 2013, para 128. See also, *Saviny v Ukraine*, ECtHR, Application No. 39948/06, 18 December 2008, para 51; *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), para 173; *A.K. and L. v. Croatia*, ECtHR, Application No. 37956/11, 8 Jan 2013, para 63. See also, *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 66.

her parents or legal guardians and potential foster carers and caregivers, with respect to his or her particular needs, convictions and wishes.<sup>943</sup>

The Commission notes that despite governmental commitments to these rights, the report indicates that inadequate information is available regarding the protection, respect and fulfilment of the right of affected children to be heard and taken seriously, as well as their participation and the participation of parents, at various stages including:

- participation in decision making;
- in the care planning process; and
- in the court process.

The Commission recommends that:

16. the DHSSPS in liaison with the DoJ review the protection and fulfilment of children's right to be heard and the right to participate throughout the care and legal systems and bring forward proposals for necessary reforms.

### **Best interests of the child**

International and regional human rights standards, including the UNCRC and the ECHR emphasise the obligation on States to protect the best interests of the child. The UNCRC requires the best interests of the child to be a primary consideration "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies."<sup>944</sup>

The UNCRC Committee stated that

Ensuring that the best interests of the child are a primary consideration in all actions concerning children (Article 3(1)), and that all the provisions of the Convention are respected in legislation and policy development and delivery at all levels of government demands a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation).<sup>945</sup>

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<sup>943</sup> *Guidelines for the Alternative Care of Children, A/Res/64/142, 24 February, 2010, para 65.*

<sup>944</sup> UNCRC, Art. 3.1.

<sup>945</sup> UNCRC Committee, *General Comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child*, para. 45.

This report indicates that additional measures are required to ensure that the best interests of the child are protected in Northern Ireland, in particular in the context of care placements and stability of placements. For example:

- a shortage of foster carers sometimes means that matching of child to carers is restricted, resulting in a less suitable foster placement for some children,<sup>946</sup> including in the context of emergency foster placements.<sup>947</sup> The RQIA has indicated that a wider pool of foster families is required;<sup>948</sup>
- a Judge considering the case of a child requiring urgent specialised and intense intervention noted in 2014 that there “is no available specialised foster placement in Northern Ireland and placing her in a children’s home would not help her. ... It would be more than helpful if there was an equivalent facility in Northern Ireland.”;<sup>949</sup>
- some children are facing placement moves due to financial pressure within Trusts, for example, moving from independent foster placements, to Trusts’ foster placements;<sup>950</sup>
- of the looked after children in the year 2013-2014 who had placement moves; 35.1% had had one move; 17.8% had two moves; and 47.1% had three or more placement moves;<sup>951</sup>
- at 31 March 2014 a total of 39 children were deemed to be in an inappropriate placement given their assessed needs;<sup>952</sup>
- during 2013/2014 eleven children were accommodated for three months or more in an adult setting: for example a residential care home, nursing home, or private hospital;<sup>953</sup> and
- almost half (48.5%) of VOYPIC’s 2013 survey participants reported having four or more social workers since they came into care.<sup>954</sup>

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<sup>946</sup> RQIA, *Review of Statutory Fostering Services: Overview Report*, December 2013, p. 19. “Each foster care panel chair indicated that they try to ensure the needs of children are met by placing children with foster carers who have the competence and skills required to meet their needs. However, a shortage of carers can sometimes mean that matching is restricted, resulting in a less suitable placement.”

<sup>947</sup> BBC News Northern Ireland, *Special-needs boy lived in elderly home over lack of foster carers*, 20 Jan 2014. Available at: <http://www.bbc.co.uk/news/uk-northern-ireland-25812807>. See also, RQIA, *Review of Statutory Fostering Services: Overview Report*, December 2013.

<sup>948</sup> RQIA, *Review of Statutory Fostering Services: Overview Report*, December 2013, p. 29.

<sup>949</sup> *In the matter of S (arranging for a child in care to live outside Northern Ireland)* [2014] NIFam 7, paras. 44-45.

<sup>950</sup> RQIA, *Review of Statutory Fostering Services: Overview Report*, December 2013, p. 58.

<sup>951</sup> *Ibid*, p. 32.

<sup>952</sup> HSCB, *Delegated Statutory Functions Statistical Report*, 2014, p. 34. There were a total of 66 homeless children, 16-17 years of age, at 31 March 2014, p. 12.

<sup>953</sup> HSCB, *Delegated Statutory Functions Statistical Report*, 2014, p. 26

<sup>954</sup> *Ibid*, p. 20.

The Commission recommends that:

17. The DHSSPS should ensure that continuous child impact assessments and evaluations are carried out at all levels of government in legislation and policy development, as well as delivery, concerning children. These assessments and evaluations should consider the particular needs of children in care.
18. The DHSSPS should take steps to improve the availability of appropriate placements for children in care, which should be based on the child's best interests.
19. The DHSSPS should collect and publish data regarding placement moves for children in care and the reasons for the moves, capturing the entire time a child spends in care. Based on an analysis of the information gathered the Department should identify patterns and trends and bring forward proposals to increase placement stability for children in care.
20. The DHSSPS should lead and liaise with the DoJ to assess the adequacy of permanency planning at social services and court levels and consider necessary reforms to ensure timely permanence planning and better outcomes for children.
21. The DHSSPS should consider the impact of changes of social workers on children in care, review the support roles as children move through the care system and bring forward proposals to achieve greater continuity of social workers for children in contact with children's services.

## Maintaining family relationships

The UN Guidelines for the Alternative Care of Children call for contact with the family of a child placed in alternative care "as well as with other persons close to him or her, such as friends, neighbours and previous carers" to be encouraged and facilitated.<sup>955</sup> The State further has positive obligations to enable regular contact between children in care and their parents and, where possible, to keep siblings together.<sup>956</sup> In the context of family reunification the ECtHR has stated that "ineffective, and in particular delayed, conduct of proceedings concerning contact with or

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<sup>955</sup> Guidelines for the Alternative Care of Children, A/Res/64/142, 24 February, 2010, para 81.

<sup>956</sup> *Saviny v Ukraine*, ECtHR, Application No. 39948/06, 18 December 2008, para 52. See also, Council of Europe, Committee of Ministers, *Recommendation Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions*, 2005.

custody of children may give rise to a breach of Article 8 of the Convention<sup>957</sup> and that the “possibilities of reunification will be progressively diminished and eventually destroyed if the biological parents and the children are not allowed to meet each other at all.”<sup>958</sup>

The Commission notes that the report identified concerns in this context in Northern Ireland, for example:

- in 2013/2014 more than a third of children were separated from their siblings when placed in foster care in Northern Ireland;<sup>959</sup>
- less than half (49%) of the children who participated in a VOYPIC survey regarding the views and experiences of children in care in Northern Ireland were able to keep in touch with their family as much as they wanted;<sup>960</sup> and
- the RQIA has identified that a particular area of stress for foster carers is a foster child’s contact with the birth family. In these situations, strong support from social workers was particularly welcomed<sup>961</sup> as both foster carers and the children required support and follow-up.<sup>962</sup>

The Commission recommends that:

22. the HSCB should provide support to allow children in care to maintain family relationships and contact, including by ensuring the availability of adequate assistance for children and carers.
23. The DHSSPS in liaison with the HSCB should assess how decisions are made regarding the placement of siblings in foster care, and what

<sup>957</sup> *X v Slovenia*, ECtHR, Application No. 40245/10, 28 June 2012, para 87. See also, *Görgülü v Germany*, ECtHR, Application No. 74969/01, 26 February 2004, para 46.

<sup>958</sup> *Haase v Germany*, ECtHR, Application no. 11057/02, 8 April 2004, para 103. See also, *K and T v Finland*, ECtHR, Application No. 25702/94, 12 July 2001. (GC), para 155.

<sup>959</sup> BBC News Northern Ireland, *Third of foster care siblings separated in Northern Ireland*, 8 September 2014, available at: <http://www.bbc.co.uk/news/uk-northern-ireland-29107723>.

<sup>960</sup> VOYPIC, *Our Life in Care: VOYPIC’s third CASI survey (2013) of the views and experiences of children and young people in care*, 2014, p. 16. 105 children aged 8 to 18 living in care completed the Our Life in Care survey for 2013, p. 8. VOYPIC introduced Our Life in Care (OLC) – a Computer Assisted Self Interview – as a three year pilot project to collect the views and experiences of children in care aged 8 to 18 in Northern Ireland. The first survey was completed in 2011, the second in 2012, and the final third survey in 2013. “This pilot was the first time the majority of children in care in Northern Ireland were invited to share their views and experiences within a defined period of time.” 333 participated in the survey from 2011-2013. p. 6.

<sup>961</sup> RQIA, *Review of Statutory Fostering Services: Overview Report*, December 2013, p. 20.

<sup>962</sup> *Ibid*, p. 22.

factors affect those decisions, and introduce necessary reforms to ensure compliance with the obligation in international and domestic law that siblings are only separated as a last resort.

### **Challenging behaviour: police involvement**

The UN Guidelines for the Alternative Care of Children specify that “training in dealing appropriately with challenging behaviour, including conflict resolution techniques and means to prevent acts of harm or self-harm, should be provided to all care staff employed by agencies and facilities.”<sup>963</sup> The UN Guidelines for the Prevention of Juvenile Delinquency note that the:

need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognised. These should avoid criminalising and penalising a child for behaviour that does not cause serious damage to the development of the child or harm to others.<sup>964</sup>

Despite regional guidance published in response to a concern that the care and management of children in residential care has the potential to criminalise them by relying on police call outs to deal with difficult behaviour,<sup>965</sup> ongoing concerns about the criminalisation of young people in residential care were expressed in interviews conducted as part of the research for this report and in NGO reports.

The Commission recommends that:

24. The HSCB should lead and liaise with the PSNI in assessing the implementation of the regional guidance and bring forward measures regarding responses to challenging behaviour that ensure that police involvement with children in care is minimised.

### **The right to liberty and detention as a last resort**

The ECHR provides that “Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases

<sup>963</sup> *Guidelines for the Alternative Care of Children*, A/Res/64/142, 24 February, 2010, para 116. See also, Council of Europe, Committee of Ministers, *Recommendation Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions*, 2005.

<sup>964</sup> *UN Guidelines for the Prevention of Juvenile Delinquency*, A/Res/45/112, 1990, para 5. See also, UNCRC, Art. 40; UNCRC Committee, *General Comment No 10 (2007) on Children’s rights in juvenile justice*, CRC/C/GC/10, para 17.

<sup>965</sup> HSCB, *Regional Guidance: Police Involvement in Residential Units. Safeguarding of Children Missing from Home and Foster Care*, 2012.



and in accordance with a procedure prescribed by law.”<sup>966</sup> The UNCRC provides further comprehensive protection specific to children requiring that “no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity of the law...”<sup>967</sup> International standards make clear that any detention of a child “shall be used only as a measure of last resort and for the shortest appropriate period of time.”<sup>968</sup> The UN Rules for the Protection of Juveniles Deprived of their Liberty affirm that “deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases.”<sup>969</sup>

The Commission recommends that:

25. In light of concerns regarding the right to liberty and the obligation that detention is a measure of last resort, regular monitoring should be in place at DHSSPS, DOJ and HSCB levels, to ensure compliance with international human rights obligations.

### Secure care accommodation

The Commission notes that concerns have been raised about whether the right to liberty and the obligation that detention is a measure of last resort are currently respected and fulfilled in Northern Ireland, for example:

- the NCB report found that children placed in secure accommodation may meet the criteria set out for secure accommodation in the Children Order but “it is less clear what interpretation is given to the

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<sup>966</sup> ECHR, article 5 §1.

<sup>967</sup> UNCRC, Article 37 (b). Further, Article 37(d): “Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”

<sup>968</sup> UNCRC, Art. 37 (b). Council of Europe, Committee of Ministers, *Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice, Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies*, para 19; Council of Europe, Committee of Ministers, *Recommendation Rec (2003)20 of the Committee of Ministers to members states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice*, 2003, para 17.

<sup>969</sup> UN Rules for the Protection of Juveniles Deprived of their Liberty, A/Res/45/113, 1990, para 2. See also, *UN Guidelines for the Prevention of Juvenile Delinquency*, A/Res/45/112, 1990, para 46; Council of Europe, Committee of Ministers, *Recommendation Rec (2003)20 of the Committee of Ministers to members states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice*, 2003, para 17.

instruction in the guidance that such placement must be 'a last resort', to be taken when there is no other 'appropriate alternative';<sup>970</sup>

- accessing timely and effective intervention and specialist services was identified as a challenge.<sup>971</sup>

The Commission recommends that:

26. The DHSSPS should assess whether the relevant legislation and policy on secure care accommodation comply fully with international human rights law requirements that detention is as a last resort and for the shortest period, and bring forward any changes that are required.

27. The DHSSPS should assess whether legislation and policy regarding secure care accommodation is fully implemented in practice and should address areas where this is not the case, in particular:

- the DHSSPS should bring forward changes that are required to ensure that detention is a measure of last resort after alternatives have been comprehensively considered;
- the DHSSPS should assess whether additional standardised procedures are required to ensure that when a child is identified as in need of secure accommodation the Trust provides alternatives to meet the child's assessed needs, even if that child is not allocated a place in secure accommodation.

## Bail remand

The Commission further notes that the NILC report, the Youth Justice Review, and NGO reports,<sup>972</sup> give rise to concerns that human rights obligations are not being complied with in the remand of some children, in particular children who are looked after.

The Commission recommends that:

28. The DOJ should introduce an amendment to bail legislation to the Northern Ireland Assembly to ensure that it fulfils international human rights obligations, including the best interests of the child, the right to liberty, and the requirement that detention be utilised as a last resort

<sup>970</sup> NCB, Sinclair and Geraghty, *A review of the use of secure accommodation in Northern Ireland*, 2008, p. 87.

<sup>971</sup> RQIA, *A Report on the Inspection of the Care Pathways of a Select Group of Young People who Met the Criteria for Secure Accommodation in Northern Ireland*, 2011, p. 45.

<sup>972</sup> Include Youth, *Response to consultation on Custodial Arrangements for Children in Northern Ireland: A Department of Justice Consultation*, 2013, p. 23. See also, Children's Law Centre, *Response to the United Kingdom Draft Periodic Report to the United Nations Committee on the Rights of the Child*, 2013, pp. 32-33.

and for the shortest period.<sup>973</sup> In particular, the bail legislation should prohibit the detention of children solely on the grounds of a lack of suitable accommodation;<sup>974</sup>

29. The DHSSPS should ensure that appropriate alternative accommodation is available so that a child is not detained on the sole ground that he or she does not have adequate accommodation.

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<sup>973</sup>The DoJ has conducted a consultation on the NILC Report on Bail in Criminal Proceedings but the report on the responses to this consultation has not yet been published. <http://www.dojni.gov.uk/consultation-on-bail-in-criminal-proceedings>

<sup>974</sup> Northern Ireland Law Commission, *Report: Bail in Criminal Proceedings*, NILC 14 (2012), 2012, Para. 6.23, p. 108.