

# In Our Care

## Promoting the Rights of Children in Custody

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## Foreword

The Northern Ireland Human Rights Commission exists to protect and promote the rights of all people in Northern Ireland. The Commission has committed itself to prioritising the rights of the most vulnerable in society such as the young, the old, the homeless and people with disabilities. It is widely recognised that children living in institutions – such as those in custody – are a particularly vulnerable group. Because of this they have specific rights under international law. As a society we all have a responsibility towards them.

The system of youth justice in Northern Ireland is in a process of change following the report of the Criminal Justice Review in March 2000. The aim of the current investigation is to feed into that process in a constructive way. *In Our Care* brings together the international human rights standards relating to children in custody and examines the way these are applied in juvenile justice centres in Northern Ireland.

It is undoubtedly the case that many of these young people present challenging behaviour and some have caused considerable distress in their communities. The Commission recognises that the job of staff working with them is responsible, complex and often difficult and stressful.

It is also true that children in custody are children in need. Most enter custody with a variety of problems including family breakdown, educational problems, alcohol and drug addiction and emotional and learning difficulties. How a society deals with its young people who offend is an important test of its commitment to human rights. It is through respecting the rights of these children, and encouraging them to respect the rights of others, that they can best be re-integrated to play a constructive role in society.

The Commission wishes to thank all those who worked on *In Our Care*. In particular we are grateful to Dr Ursula Kilkelly who is the principal author of the final report. Dr Kilkelly worked tirelessly, in collaboration with Commission staff, in researching and writing this document. We are also indebted to Ms Una Convery who carried out the fieldwork in a professional manner and whose empathy with both young people and staff in the centres was clear throughout the process.

The Commission is grateful to all those organisations and individuals who assisted with the investigation. They are referred to in the section of the report dealing with methodology. Special thanks go to the centre staff and young people who talked to the fieldworker about their experiences.

We are honoured that Prof Jaap Doek, Chair of the United Nations Committee on the Rights of the Child, agreed to launch *In Our Care*.

This is the first formal investigation conducted by the Commission. The process has demonstrated the importance of the Commission's investigation role but has also

underlined some of the weaknesses in its powers. The Commission has appealed to the Secretary of State to consider enhancing its investigative powers.

The Human Rights Commission intends to disseminate this report widely and welcomes views on its contents and how best to further its recommendations.

**Brice Dickson**  
**Chief Commissioner**

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## **Executive Summary**

### **Introduction**

The Northern Ireland Human Rights Commission is empowered to carry out investigations under section 69(8) of the Northern Ireland Act 1998. However, the Commission has no concurrent powers to compel the disclosure of documents or testimony. In May 2000 the Human Rights Commission decided to conduct an investigation into the care of children in juvenile justice centres. The process of this investigation has demonstrated the inadequacy of the Commission's powers.

The investigation involved a variety of methods including analysis of relevant international human rights standards; interviews with eleven children and twenty staff in juvenile justice centres; an examination of files; a focus group discussion with probation officers; analysis of legislation, documentation and statistical information relating to the centres; information gathering meetings with key people involved in the operation of the juvenile justice system.

### **Background**

1. When this investigation commenced there were three juvenile justice centres (all former Training Schools) in operation:
  - St Patrick's situated in West Belfast, originally held only Catholic boys but latterly a small number of Protestant boys were detained there. St Patrick's closed in November 2000 as part of Government rationalisation of the juvenile justice estate.
  - Rathgael situated near Bangor accommodates boys and girls. Prior to the introduction of the CJCO, Rathgael accommodated 'non Roman Catholic' children but is now used for the detention of girls and a small number of younger or vulnerable boys.
  - Both St Patrick's and Rathgael were relatively open facilities but with some secure facilities.
  - Lisnevin, in Millisle, is a secure centre built on the model of a Grade C prison. Lisnevin is currently resourced to accommodate 25-30 boys of any religion.
2. The physical environment at Lisnevin has been criticised by children's and human rights campaigners and in March 2000 the Criminal Justice Review recommended that it should close. Government subsequently announced plans to rationalise the juvenile justice estate. These plans included closure of St Patrick's (with immediate effect) and the closure of Lisnevin (still to take place). Northern Ireland is to have one, new-build juvenile justice centre on the Rathgael site, housing boys and girls. In the interim Lisnevin is to close and young people be detained in updated accommodation in Rathgael. This rationalisation will result in a decrease in the capacity of the system from 110 places to 40 places.

3. The Commission expressed its view to Government that the development of small, family sized units, based in local communities was more in keeping with international human rights standards than the building of a single centre.
4. The Commission has concerns about Government's plans including:
  - inadequate consultation with staff, children and their families about the proposals;
  - plans to house a small number of girls along with a larger number of boys;
  - the siting of the proposed centre in the predominantly Protestant area of Rathgael;
  - the inaccessibility of the proposed centre for families particularly from the north and west of Northern Ireland;
  - an over-representation of Catholic children in the centres particularly from north and west Belfast; and
  - an under-representation of Catholics amongst the staff in the centres.
5. International human rights standards identify three core principles children's: the best interests of the child must be paramount (Article 3 UN Convention on the Rights of the Child); children have a right to be heard (Article 12); children have a right not to be discriminated against on the basis, for example, of race, religion or gender (Article 2).

These principles are inadequately reflected in law, policy and practice relating to children in custody and it is recommended that steps be taken to address this gap.

6. Juvenile justice centres are used for detention of children aged 10-16 who have been remanded or sentenced under the Criminal Justice (Children) (NI) Order 1998 (CJCO) or remanded under the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE).
7. The Commission considers that the age of criminal responsibility at 10 years of age is too low and is in breach of international standards. It recommends that Government raise the age.
8. International human rights standards define children as all those under 18. The Commission considers that Government is in breach of this principle through its failure to include all 17 year olds in the ambit of the CJCO. Girls as young as 15 can be sent to the Young Offenders Centre at Maghaberry Prison in clear breach of international standards which state that children should not be detained with adults.
9. The Justice (NI) Bill (currently progressing through Parliament) fails to incorporate human rights standards in its proposed aims for the youth justice system. This legislation should be amended accordingly.

## Findings

10. International standards state that children should be detained only as a measure of last resort and for the shortest period of time. The Commission has concerns about a high level of remand under the CJCO for children are not subsequently given custodial sentences.
11. The Commission is concerned about detention in Lisnevin under PACE with the effect that Lisnevin is used predominantly as a holding centre rather than as a centre for rehabilitation.
12. There is an over-representation of children from care backgrounds in custody especially on remand, yet these children are not any more likely to receive custodial sentences than other young people.
13. Over-use of remand to custody results in a high turnover of young people and presents difficulties for staff working in the centres.
14. The Commission urges Government to monitor the use of remand; to develop a strategy with the Juvenile Justice Board and police service to reduce the levels of admission under PACE; and to review existing care provision with an emphasis on provision of specialist and differentiated care and to develop creative alternatives to custodial remand.
15. International standards stress that assessment of a child's needs is the starting point in the rehabilitation process which must be followed by development and implementation of an individualised treatment plan. Although there has been some recent improvement the system for assessment, planning and review in the centres is not yet fully compliant with international standards.
16. Children's rights in assessment and planning can only be achieved if sufficient resources are there to meet the needs identified and the investigation found that this was not the case in relation to education, health care and rehabilitation. There is a need for an improved multi-agency approach in assessing children and meeting their needs. It is recommended that a multi-agency assessment and review panel be established for this purpose.
17. International standards emphasise the need to prevent offending, divert young people from the formal court system and undertake rehabilitative work in the community. Children deprived of their liberty have a right to be guaranteed the benefit of meaningful activities and programmes aimed at developing their potential as members of society. The Justice (NI) Bill should be amended to include these standards within the stated aims of the system.
18. The lack of available information makes it difficult to assess the effectiveness of work being carried out in the centres on children's offending behaviour. All future programmes should be monitored and evaluated.

19. While the range of programmes on tackling young people's offending has improved in both centres over recent years, some problems are outstanding. Measures to address this should include enhanced staff training on rehabilitative work; a review of the existing staff provision in Lisnevin; more resources for rehabilitative work; and increased contact between the centres and communities children will return to.
20. Multi-agency involvement is crucial to children's rehabilitation and reintegration. Consideration should be given to the creation of a multi-disciplinary staff team to co-ordinate the custody and community phase of Juvenile Justice Centre Orders.
21. International human rights standards give children an absolute right to protection from harm. There has been longstanding concern that allegations made by boys of a child protection nature have not in the past been properly investigated.
22. Contrary to international standards there is no independent complaints mechanism for children in custody.
23. The child protection procedures currently in use in the centres are out of date.
24. Two recent official audits have been carried out of child protection cases emanating from both centres. The general findings from these audits should be published.
25. The current operation of the child protection process gives cause for concern. When boys from Lisnevin make allegations of a child protection nature these are not investigated by the police CARE team but delegated to uniformed officers. This results in inadequate measures for the protection of children. The Commission recommends that an independent expert investigation be established by the Juvenile Justice Board to review the child protection process including the roles of police and social services.
26. International human rights standards stress the need for regimes for young people deprived of their liberty to strike an appropriate balance between respecting the rights of young people and securing the safety of others, including staff.
27. The Juvenile Justice Centre Rules do not strike the right balance but are prison-like rather than care oriented. They should be rewritten and made accessible for children.
28. A code of conduct for staff in the centres should be developed in consultation with staff and young people and made available to young people in an accessible form.
29. The Scrabo isolation block in Lisnevin is still being used, although for more restricted periods. This practice should stop.
30. Staff training on the use of restraint has recently been carried out by Home Office approved trainers. All staff should also be given training in de-escalating situations.



The Juvenile Justice Board should monitor and review incidents of the use of restraint to ensure compliance with international standards.

31. Children have a right to health and health care. Where possible, children in custody should access health care in the community but custodial centres should also be sufficiently equipped to deal with children's health care needs.
32. Responsibility for the health care of children in custody does not fall within the Department of Health and Social Services and Public Safety (DHSSPS) but is the responsibility of the Northern Ireland Office (NIO). This results in inadequate health care access. NIO's failure to date to consult with the DHSSPS about future plans for health care in the juvenile justice system is contrary to international standards which emphasise the need for a multi-agency approach.
33. Current levels of therapeutic provision (including psychological and psychiatric services) for children in custody are seriously inadequate. This potentially puts children's mental health, and indeed their lives at risk. There is an urgent need for the Juvenile Justice Board and centre management to put in place both policy and staff provision to deal with young people's psychological and emotional needs.
34. Health education and promotion is important for young people in custody and should be prioritised and supported through additional resources.
35. Children in custody have a right to private and family life. The siting of the current and proposed centres creates difficulties for contact between children and their families. If Government goes ahead with its plans for a single centre a strategy should be developed for ensuring that children's contact with their families is maximised. Policies should be developed for working in partnership with families throughout the child's sentence or period on remand.
36. The Juvenile Justice Centre Rules do not adequately protect children's right to privacy.
37. Children have a right to an effective education. Education for children in custody should be suited to their needs and abilities and designed to prepare them for their return to society. Education in the centres is inadequately resourced especially in relation to children with learning disabilities.
38. NIO responsibility for education in the centres marginalises children from mainstream education and can deprive teachers of vital training and support. This responsibility should be passed to the Department of Education. In the interim, contact between NIO and the Department in respect of educating children in custody should be maximised.

## **The future**

Most children entering custody present challenging behaviour. The responsibilities of management and staff are many and complex. These children are in the care of the state and there is an onus on all of society to contribute constructively to their well-being and reintegration. Human rights provide a framework for transforming the care of children in the youth justice system. The Human Rights Commission looks forward to working in partnership with others in meeting this challenge.

# **Part 1**

## **Background and remit of the investigation**

### **The investigations role of the Human Rights Commission**

The Human Rights Commission is empowered to carry out investigations under section 69(8) of the Northern Ireland Act 1998. The Commission has an Investigations Committee, whose role is to ensure that topics for investigation are identified and investigations conducted properly.

The Commission has decided that it will select matters for investigation on the basis either that a pattern of alleged abuse has been identified or a serious human rights abuse has allegedly taken place. An investigation may focus on a specific case or a general theme and can use a variety of methods including interviews, analysis of documentation, quantitative and qualitative research and public hearings. A decision to conduct a formal investigation must be endorsed by the Commission as a whole.

### **Background to the investigation**

In May 2000 the Human Rights Commission decided to conduct a formal investigation into the care of children in juvenile justice centres in Northern Ireland. At the time, there were three such Centres, St Patrick's in Belfast, Rathgael in Bangor, Co Down and Lisnevin near Millisle, also in Co Down although St Patrick's closed in December 2000 as part of Government rationalisation of the juvenile justice estate.

St Patrick's accommodated primarily Catholic boys (although just prior to its closure a small number of Protestant boys were detained there). Rathgael was originally for non-Catholic boys and girls but now accommodates children from both communities. Lisnevin accommodates boys from Catholic, Protestant and other backgrounds.

Lisnevin is a highly secure institution built on the model of a Grade C prison. St Patrick's and Rathgael were more open centres although both had some secure facilities.

Current practice is for the majority of detained boys to spend their sentence in Lisnevin and for girls and some very young or vulnerable boys to be accommodated in Rathgael.

Government plans to rationalise the estate into a single centre on the Rathgael site and to close Lisnevin.

The centres are managed by their respective directors. Responsibility for overseeing the operation of the centres lies between NIO and the Juvenile Justice Board (an appointed body made up of people with expertise including in child care and criminal justice issues).

The centres are used for the detention of children aged 10 to 16 years, remanded or sentenced under the Criminal Justice (Children) (NI) Order 1998 (CJCO) or detained under the Police and Criminal Evidence (NI) Order 1989.

The decision to conduct the investigation was based on several factors:

- the Commission had indicated in its draft Strategic Plan that children's rights would be a priority in its work and that it intended to monitor the operation of the CJCO;<sup>1</sup>
- the Commission had been strongly lobbied by a coalition of organisations, which was concerned that the rights of children in custody were at risk;<sup>2</sup>
- official reports on juvenile justice centres by the Social Services Inspectorate (SSI) had raised serious concerns about breaches of children's human rights;
- changes happening in the youth justice system as a result of the Criminal Justice Review and the need to ensure that international human rights standards would underpin this process of change.

Children's and human rights organisations had welcomed much of the thrust of the CJCO, in particular, restrictions to the use of custody and determinate sentences. However, there were serious concerns that aspects of the legislation and its implementation were inconsistent with international guidelines, in particular the United Nations (UN) Convention on the Rights of the Child.<sup>3</sup> These concerns, as indicated to the Commission, included:

- the low age of criminal responsibility;
- the possibility of children as young as 10 years being detained in custody;
- the absence of provision for separating younger and older children in custody;
- the exclusion of 17 year olds from the juvenile justice system and their inclusion in the adult system;
- the absence of a 'best interests' principle from the legislation;
- a concern that custody was not only being used as a last resort;
- the detention of girls as young as 15 in Maghaberry (adult) prison;
- the power to transfer young people of 15 and over to Young Offenders Centres if they are considered to be at risk of self-harm;
- the lack of an independent complaints mechanism for children in custody;
- the lack of emphasis on rehabilitation and inadequate resourcing for supervision in the community or community alternatives to custody;
- the 'prison like' nature of the Juvenile Justice Centre Rules and the lower standard of protection afforded to children than to adult prisoners;
- the lack of transparency and accountability within the juvenile justice system.

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<sup>1</sup> The Order came into effect on 1 February 1999.

<sup>2</sup> Organisations represented on the Lobby Group included Include Youth, Children's Law Centre, Child Care Northern Ireland, Save the Children, Committee on the Administration of Justice, Northern Ireland Association for the Care and Resettlement of Offenders and the National Association of Probation Officers.

<sup>3</sup> See report of Criminal Justice Children Lobby Group, February 1999.

Children's organisations had raised particular concerns about conditions in Lisnevin Juvenile Justice Centre. The Lobby Group expressed serious concerns about the treatment of children in Lisnevin, including:

- allegations of physical and verbal abuse against boys by staff and other boys which were not properly investigated;
- the absence of an independent complaints mechanism;
- methods of discipline and security which breached human rights standards (eg searching techniques; use of physical restraint; use of solitary confinement; censorship of mail);
- inadequate methods of tackling boys' offending behaviour;
- a high recidivism rate;
- an emphasis within the regime on control over care;
- over-reliance on casual, untrained staff;
- the inappropriate building and environment.

The most recent report of the SSI into Lisnevin (1999) was also critical of aspects of children's treatment in the centre. The multidisciplinary team expressed concern about:

- boys being held in Lisnevin for offences which did not fall within the criteria laid down in the legislation;
- the frequency and method of physical restraint employed by staff. Some boys complained of carpet burns following restraint and the inspectors were worried about potential damage to developing bone structures;
- excessive and unregulated use of solitary confinement in the Scrabo 'punishment wing' with irregular or inaccurate recording of such episodes and a failure to incorporate the sanction into the young person's overall care plan or needs;
- complaints by boys not always being appropriately investigated;
- inadequate care planning;
- inadequate staffing plans leading to an ongoing and *ad hoc* reliance on unqualified, temporary staff.

The Commission concluded, therefore, that the concerns provided sufficient grounds for the setting up of a formal investigation into the care of children in Juvenile Justice Centres.

### **Remit of the investigation**

The remit of this investigation is

- to research the international human rights standards relevant to the treatment of children in custody;
- to investigate whether the care of young people being received into and processing through juvenile justice centres in Northern Ireland meets international standards on human rights, in particular the United Nations Convention on the Rights of the Child,

- to make any appropriate recommendations for the promotion and protection of human rights in Northern Ireland as appear to the Commission to be necessary or expedient in light of its findings.

### **The aims of the investigation**

It was hoped that the Commission's investigation would bring added value to the inspections carried out by the SSI in several ways. In particular, it would pull together international human rights standards on the treatment of children in custody; research how these human rights standards operate in practice in this context and document the views of children on their experience of custody as well as the views of staff and those with responsibility for the system.

The Commission hoped that the findings and recommendations of the investigation would be timely in feeding into the process of substantial change currently being undertaken in the system. In its response to the draft version of this report, the Juvenile Justice Board informed the Human Rights Commission that the Board has already implemented or is in the process of implementing many of the recommendations made herein.<sup>4</sup> The Commission welcomes this ethos of change within the system and looks forward to monitoring the Board's progress. More generally, it looks forward to discussion with those with responsibility for the juvenile justice centres on how best the recommendations and the numerous examples of good practice highlighted in this report can be furthered in the interests of the rights of children in custody.

While the issues contributing to the establishment of this investigation have serious implications for the human rights of children, they may also contribute to problems for people working in the centres. Staff working with children in custody have a complex, highly responsible and often stressful job which also has the potential to be dangerous. These difficulties were recognised in an unpublished survey of job related stress in the former Training School system which found a generally high level of stress amongst staff.<sup>5</sup> The study noted that the client group presented a multitude of problems and behaviours which contributed to high staff stress levels.<sup>6</sup>

It is also apparent that the negative publicity which the system as a whole has endured over many years has resulted in low morale among the centres' workforce.

The experiences of children and staff in the centres are clearly interconnected. Meeting the challenges documented in this report will benefit both groups. An effective,

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<sup>4</sup> Correspondence from the Juvenile Justice Board, 18<sup>th</sup> February 2002.

<sup>5</sup> Barbour, M, APRU, May 1995, Job Related Stress: A Survey of Staff Working Within the Northern Ireland Training School System.

<sup>6</sup> Barbour, 1995, p10.

transparent, accountable youth justice system will improve the lives of all those involved in the process – children, their families, staff and the wider community.

# Part 1

## Methodology

### Conduct of the investigation

#### *The people involved*

The Commission's decision to carry out the investigation was taken in May 2000. Two Commissioners were appointed to supervise its conduct, Prof Tom Hadden and Ms Paddy Kelly. The role of these Commissioners is to ensure that the investigation is run according to Commission guidelines and values.

The Human Rights Commission Investigations Worker, Dr Linda Moore,<sup>1</sup> had responsibility for overseeing the progress of and contributing in a substantive way to the investigation. Mr Michael Waters took over this responsibility during Dr Moore's maternity leave.

The Commission contracted two external researchers with expertise in youth justice and human rights to work on the investigation. Ms Una Convery, who is a social scientist currently completing her doctoral thesis on children in custody in Northern Ireland, was employed to carry out field work including interviews with staff and young people in the centres and analysis of files. Dr Ursula Kilkelly, a lecturer in law at University College Cork and an academic expert on the rights of children in international law, was contracted to produce an analysis of international standards relating to the treatment of children in custody and to carry out an audit of the current policy and practice in relation to these standards. Dr Kilkelly's analysis forms the substantive part of this investigation.

#### *The standards used*

The analysis in this report relies heavily but not exclusively on the following international standards, whose importance and relevance is undisputed:

- The United Nations Convention on the Rights of the Child 1989;<sup>2</sup>
- The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (the UN Rules);<sup>3</sup>
- The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules)<sup>4</sup> and

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<sup>1</sup> Dr Moore is investigations worker with the NIHRC. Her previous experience includes a lectureship in critical criminology and she has extensive research experience and publications on youth justice and policing.

<sup>2</sup> UN Doc A/44.

<sup>3</sup> UN Doc 45/113. See also the Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment, UN Doc A/43/49.

<sup>4</sup> UN Doc A Res 40/33.



- The United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990 (the Riyadh Guidelines).<sup>5</sup>

The ethical standards applied to the fieldwork were based on the Commission's Guidelines for Investigations, Confidentiality Policy and Child Protection Policy.<sup>6</sup>

### *The methods employed*

A documentary analysis of the international standards in the area was first carried out. All available documentation relating to the juvenile justice system in Northern Ireland was gathered and where necessary requested from the Northern Ireland Office, the Juvenile Justice Board and the individual juvenile justice centres. As no definitive list of such documentation existed, the Commission was reliant on those in possession or with knowledge of the relevant or updated documents to bring them to the researchers' attention. It was clearly in everyone's interests that the researchers access as comprehensive and as up-to-date a bibliography as possible. The documentation received included policy documents, information from the juvenile justice centres such as that given to young people, mission statements, details of complaints systems and assessment procedures. The relevant international standards are reproduced in appendix A to this report. A list of documents used is set out in appendix B.

Initial meetings were held with managers at each juvenile justice centre. Regular meetings were held with the Northern Ireland Office (NIO) and the Social Services Inspectorate. Other meetings took place with the Juvenile Justice Board, police officers,<sup>7</sup> Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO), the Probation Board for Northern Ireland (PBNI), social services staff and the Minister for Education. All of these meetings provided vital information for the investigation.

The Commission also corresponded in writing and by telephone with many of the above bodies and again this provided important information.

Discussions between the fieldworker and social researchers at the University of Ulster as well as young people in Include Youth helped in planning the research and developing the approach adopted.<sup>8</sup>

The Northern Ireland Office provided statistical information on young people in juvenile justice centre custody. These figures were analysed to determine the extent to which current practice of ordering placement in custody meets international standards. While

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<sup>5</sup> UN Doc 45/112.

<sup>6</sup> These documents can be obtained from the Human Rights Commission.

<sup>7</sup> As the police service was entitled the RUC at the start of this investigation and the PSNI by the end we have used the term 'police' throughout.

<sup>8</sup> In August 2000, the researcher met young people participating in Include Youth's Give & Take Scheme which provides voluntary work placements and social and cultural activities for vulnerable young people. This exercise provided an opportunity to hear young people's views and advice on the proposed research approach to be adopted with young people in the juvenile justice centres.

the remit of this investigation focuses on children's care in custody, the Commission considered it important to consider the routes children take to custody, particularly since this was a key concern of staff and management in the centres. Clearly, management and staff in the centres are not responsible for sentencing policy or practice but they nonetheless have to cope with its consequences, including the high turnover of young people on remand. (See chapter 2).

The aim of the field interviews was to gain an understanding of the care of young people in juvenile justice centres as experienced and described by young people and those working with them. It was hoped to capture a range of young people's experiences, to provide all young people in the centres with the opportunity and support to tell their stories and to ensure that all children then in the centres at least had a chance to hear about the investigation and to say what they thought about it.

It was the Commission's belief that the views of staff within different occupational groups in juvenile justice centres would offer a broad perspective and provide a fuller understanding of the care of young people in the centres. The aim was to work with staff with a managerial role, a medical role, an educational role, a care role and a social work role in each of the centres.

In line with the principles established in the Gillick case<sup>9</sup> regarding the competency of older children, the Commission was of the view that young people in the centres, taking into account their age and understanding, should be entitled to make the decision about their participation in the investigation. One distinctive feature when children are looked after by the state, however, is that there are typically several adults involved in making decisions about them and while these 'gatekeepers' may in general act to protect children's best interests, at time they can also present barriers to access to children.<sup>10</sup> As discussed below, parental consent was presented as an issue for the Commission in planning the fieldwork.

Several broad themes were identified as being central to the field work:

- a) travel from court to the centres
- b) reception at the centres
- c) health care
- d) education/training
- e) child protection
- f) assessment/transfer between centres
- g) regimes
- h) staffing

Semi-structured interviews were chosen as the most appropriate method of data-collection because this approach presented the best opportunity:

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<sup>9</sup> *Gillick v West Norfolk and Wisbech Area Health Authority and another* [1985] All E R.

<sup>10</sup> Thomas & O'Kane, 'The Ethics of Participatory Research with Children', *Children & Society*, Volume 12, 1998, pp 336-348.

- a) to elicit the views, beliefs, feelings and experiences of participants;
- b) to give participants a chance to tell their own stories as they see them; and
- c) to go some way towards addressing the power imbalance between children and the researcher.

To give young people as much choice as possible over how they participated, it was decided that they should be entitled to meet the researcher on their own, with someone present or in groups. It was made clear that the young person could end the interview whenever they wished.

The researcher received security clearance and approval of access to each centre, following which arrangements to commence the research were made with the centres' management. Negotiations between the NIO and the Commission over access to young people and the need to gain parental consent took place during summer 2000.

The fieldwork commenced in the centres in October 2000. It was concluded in St Patrick's in November 2000 due to its closure and in Rathgael and Lisnevin in January 2001 and February 2001 respectively.

Visits were arranged for the researcher to meet young people and staff in all three centres at the end of October 2000. Prior to these visits, information on the investigation designed to inform the decisions of young people and staff as to whether to take part was sent to the directors of each centre.

The researcher had group meetings at the end of October 2000 in each centre with all young people detained at the time. Following the description of how files might be used for analysis during the investigation, young people were asked whether they would consent to the researcher having access to their files. None expressed any objection or concern about this.

Group meetings in each centre to explain the role of the Commission and the aims of the research took place with a total of 25 staff. No care staff were available in Rathgael to attend the meeting. Only two staff, both in Lisnevin, chose not to meet the researcher at this stage.

Of the 25 young people who were met, two boys in Lisnevin were due to be released and could not take part in an interview. Of the remainder, 18 young people agreed to take part. One subsequently withdrew his consent to participate and six young people were released or were not available to participate. Eleven young people were interviewed, most individually but three took part in a group interview.

**Table 1:**

The number of boys and girls interviewed by status of committal

<b>Interviewee</b>	<b>Number</b>
Boys on remand	3
Boys on JJCO <sup>11</sup>	6
Girls on remand	1
Girls on JJCO	1
Total	11

Directors in all three centres encouraged staff to participate in the interviews. Overall 20 staff were interviewed.

All staff in St Patrick's who were asked agreed to take part in interviews. However, the closure of the centre cut the process short and in the end 4 staff were interviewed.

In Rathgael although 15 staff returned reply slips, only four expressed agreement to participate and during visits a staff member who had agreed to an interview was not there. The researcher was verbally informed by a member of care staff that no care staff wished to talk to her and indeed no care staff did participate. Four staff were eventually interviewed.

In Lisnevin, 12 staff were interviewed. The care staff who were interviewed specified that this was because they wanted the Commission to note the good work that is done in the centre. They felt that in the past only negative comments had been made about Lisnevin and that this reflected badly on staff. One member of staff told the researcher that staff did not want to talk to her.

**Table 2:**

Number of staff interviewed by occupational group in juvenile justice centres

<b>Interviewee</b>	<b>Number</b>
Medical staff	4
Care staff	6
Management	4
Education staff	6
Total	20

The interviews took place between November 2000 and February 2001. Interviews with staff explored their area of work and more general views on the system. Interviews with young people focused on the different aspects of life in custody including health care, education, recreation, discipline, experience of the complaints process, contact with family and friends and work on offending behaviour.

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<sup>11</sup> Juvenile Justice Centre Order. Committal under the Criminal Justice (Children) (NI) Order.

Three other interviews took place with a former co-ordinator of the NIACRO Independent Representation project (see chapter 5), with a former resident of a juvenile justice centre and his parent.

All but two interviews were tape recorded. Interviewees were told that they could see a transcript of the interview if they wished. One young person in Rathgael and three staff requested to do see a copy of their transcript and did so.

The Commission recognises that the sample of staff and young people interviewed is relatively small. Consequently, the information elicited and quotes used should not be seen as representing a general view. Interview material is used to illustrate points made or to document an individual's view or experience. The views of both young people and staff have proved to be insightful and their use, although at times anecdotal, constitutes an important part of this report.

Files were examined in Lisnevin and Rathgael in January 2001. Rather than a comprehensive review of records (which was not possible given the Commission's staffing constraints) this stage of the fieldwork entailed collecting information in Rathgael and Lisnevin in relation to how records are maintained in the centres and processes used.

A focus group with five probation officers who have contact with young people in the centres was arranged through Probation Board (NI) management. This focused on work being done with young people on offending behaviour in the centres; relationship with staff in the centres; the involvement of probation with the young person in the centre and information flow between probation and the centres in preparation for the young person's release.

The writing up of the report took place between the spring and winter of 2001 and was a complex and difficult process. The final report is based on themes derived from international standards relating to the rights of children in custody.

In January 2002, the draft report was circulated for comments on factual accuracy among organisations and individuals who had co-operated with the investigation.<sup>12</sup> The report was then amended where appropriate prior to publication. The Commission is grateful to those who provided thoughtful, comprehensive and constructive comments and believes that the final report benefits from their expertise.

From its inception, the report took some 21 months to complete. The process was prolonged, to an extent, by the Commission's staffing and other limitations, but more importantly because this has been a time of great change for the juvenile justice system in Northern Ireland. The Justice (NI) Bill (discussed below) which implements many of the recommendations of the Criminal Justice Review was published in late 2001. Similarly,

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<sup>12</sup> People were asked to respond within two weeks although extensions of a further two weeks were granted on request.

plans for the closure of Lisnevin and development of a new centre on the Rathgael site have been ongoing.

The Commission hopes that this report provides as up-to-date a review of the system as possible given the evolving state of law, policy and practice in this area.

### **The Commission's lack of powers**

Although the Commission has the general power to conduct investigations, it has no concurrent powers of enforcement. Contrary to the Paris Principles, which require that a national human rights institution shall 'hear any person and obtain any information and any documents necessary for assessing situations falling within its competence',<sup>13</sup> the Commission cannot compel witnesses to give testimony, nor can it demand disclosure of documents.

The weakness of the Commission's powers has seriously hampered it in conducting this investigation. The effects of this can be seen throughout the report. The Commission raised these concerns in a report on its effectiveness, which it was required to submit to the Secretary of State under s69(2) of the Northern Ireland Act 1998 in February 2001.<sup>14</sup> It is awaiting the Government's response to this document.

While management in the juvenile justice centres encouraged staff to co-operate, the Commission was disappointed with the small number of care staff who were prepared to talk to the fieldworker, and the reluctance of any care staff in Rathgael to participate. Consequently, the views of care staff are not well reflected in the investigation, giving rise to an information gap, which arguably weakens the final report.

The Commission's interview schedule with young people in Lisnevin was stalled at the start by protracted discussions with the Northern Ireland Office over the need to gain parental permission before conducting interviews with young people.

There are broad issues here relating to the so-called Gillick principle and the capability of young people to take decisions for themselves. However, the central issue is that the Commission found itself squarely in the hands of the Northern Ireland Office and Juvenile Justice Centre management, and unable to interview young people without the permission of their parents as arranged by these bodies.

The Commission also experienced difficulties in gathering information due to its inability to compel full disclosure. Examples include:

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<sup>13</sup> UN Principles relating to the status and functioning of national institutions for protection and promotion of human rights (the Paris Principles) were endorsed by the General Assembly on 20 December 1993 A/Res/48/134. See Part C, principle 3.

<sup>14</sup> See [www.nihrc.org](http://www.nihrc.org)

- inability to access a report into the death of William Campbell (a child who died having absconded from St Patrick’s Training School)<sup>15</sup>;
- inability to gain access to a full copy of an evaluation of the Adolescent & Psychology Research Unit<sup>16</sup>; and
- inability, prior to the publication of this report, to gain access from NIO to a pre-publication copy of the SSI review of the working of the CJCO.

The latter would have been particularly informative for the investigation as it involves an analysis of many of the issues covered here.

The impact of the lack of powers can also be seen in the example of the Commission’s inability to gain access to important documentation relating to child protection issues. The Commission had initially hoped to investigate the child protection process in juvenile justice centres by tracking how allegations were dealt with, from the time of an initial complaint to the satisfactory closure of that complaint. As part of this it was hoped to interview young people (residents and former residents) who had raised child protection issues while in custody.

To date the Commission has been unable to access child protection files from the Juvenile Justice Board or to make contact with the young people who have made allegations.

The Juvenile Justice Board determined that child protection issues were confidential and that the Commission could not have access to the documentation.<sup>17</sup> The Commission continues to seek access from the Board to files related to child protection and assistance in contacting young people who have made complaints through the child protection process (see chapter 5 of this report).

Similarly, the Commission was unable to access files related to child protection issues from the Independent Representation project run by the non-governmental organisation NIACRO. In accordance with its principle of confidentiality, NIACRO refused the Commission access to these files without the express permission of the young person involved. With the exception of those files relating to child protection the Commission did *not* ask NIACRO to pursue the obtaining of children’s consent as it considered it would not be in their best interests to be contacted for this purpose. In relation to child protection cases, however, the Commission did request access to the files even where this meant contacting the young people involved. It was advised that the Commission pursue access to young people through the Juvenile Justice Board.

In addition, NIACRO determined that in a specific number of cases where the young people were the subject of a concurrent child protection investigation led by SSI

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<sup>15</sup> This was refused by the Western Health and Social Services Board in correspondence from WHSSB, 24 August 2000. The SSI did, however, share its report on the death of William Campbell with the Commission.

<sup>16</sup> Correspondence from NIO 24 August 2000.

<sup>17</sup> Letter from Board Chairperson, 22<sup>nd</sup> June 2001.

(discussed in chapter 5) the organisation would not approach them for consent at this stage.

The conduct of this investigation demonstrated to the Commission that it is in a fundamentally different situation than bodies like the SSI which have statutory powers of inspection. Indeed NIACRO made this point in correspondence with the Commission stating that ‘while we fully understand the HRCs desire for greater powers NIACRO had to deal with the reality of what existed then, and what still exists in relation to the differentiation between SSI and HRC powers.’<sup>18</sup> The purpose of the above discussion is not to criticise those organisations which refused access to information but rather to stress the need for the Commission to have increased powers if it is to carry out investigations in an effective and comprehensive manner.

### **Co-operation with the investigation**

While the above section focuses on the problems for the investigation caused by the weakness of the Commission’s powers, the researchers also wish to note the high degree of co-operation and assistance they received from many bodies and individuals. In some instances those bodies which had refused particular information also gave tremendous help on other issues.

The indepth nature of the report demonstrates the amount of information which was collated, and the Commission is grateful to those who spent valuable time corresponding and meeting with the researchers and supervisors of the investigation. Management and staff in the centres as well as young people gave up time to talk to the fieldworker. The Commission hopes that the final report repays their input.

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<sup>18</sup> Correspondence from NIACRO, 25 Jan 2002.



# Part 1

## Recent developments in the youth justice system

### A time for change

Since the introduction of the Criminal Justice (Children) (Northern Ireland) Order 1998 (CJCO) a number of important developments have taken place in relation to youth justice.

In order to place the main findings of the investigation in context it is important to document the process of change taking place. This section charts the developments and highlights relevant human rights concerns. It indicates the Commission's perspective on some of these issues.

Children's rights in custody cannot be understood in isolation from the wider context of legislation, policy and practice on youth justice.

Three key developments are considered here:

- the Criminal Justice Review;
- the Justice (NI) Bill 2001; and
- the future of the juvenile justice estate.

In addition to these developments, it is important to note proposals to establish a commissioner for children, whose office should be of great benefit to all children in custody.<sup>1</sup> In the Commission's view this office must have a remit to include the criminal justice system and policing, a wide range of powers (including effective powers of investigation) and adequate resources.<sup>2</sup>

### Criminal Justice Review

Juvenile justice was one of the main areas studied by the Criminal Justice Review Group established as a result of the multi-party Belfast (Good Friday) Agreement 1998.<sup>3</sup> The Review Group's recommendations included that:

- Government should produce a clear statement of the aims of the juvenile justice system and a statement of principles which should guide those exercising powers with due regard to the international human rights standards to which the United Kingdom has given commitment;<sup>4</sup>

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<sup>1</sup> Protecting our Children's Rights: A Consultation Paper on a Commissioner for Children for Northern Ireland published by the Office of the First Minister and Deputy First Minister, 2001.

<sup>2</sup> See the Commission's response to this document on its website. [www.nihrc.org](http://www.nihrc.org)

<sup>3</sup> Multi-Party Agreement, p 22, para 3. Northern Ireland Criminal Justice Review Group, *Review of the Criminal Justice System in Northern Ireland*, Belfast, Stationery Office, 2000.

<sup>4</sup> Recommendation 169.

- 10-13 year olds found guilty of criminal offences should be accommodated in the care system rather than in juvenile justice centres;<sup>5</sup>
- Lisnevin should be closed and consideration be given to building a new single-site juvenile justice centre;<sup>6</sup>
- 17 year olds should be brought within the jurisdiction of the youth court, but should continue to be held in the young offenders centres;<sup>7</sup>
- staff at YOCs should pay particularly close attention to the 17 year olds in their care and to take special measures, including the provision of separate accommodation, for any assessed as being vulnerable or immature;<sup>8</sup>
- bail information and support schemes and bail accommodation should be developed specifically for juveniles;<sup>9</sup>
- a range of alternative sentences should be introduced including reparation orders and community service orders for under 16s;<sup>10</sup>
- diversionary mechanisms should be further developed based on savings arising from the rationalisation of the juvenile justice estate;<sup>11</sup>
- research, monitoring and evaluation should underpin an informed juvenile justice policy.<sup>12</sup>

The Commission's views on many of these issues are outlined in the section on the Justice (NI) Bill 2001 below.

The Criminal Justice Review also proposed the creation of a 'Next Steps Agency' to take over the responsibilities falling to the current Juvenile Justice Board (JJB).<sup>13</sup> It recommended that the development of youth justice policy should be separate from the functions agency and should be a matter for a separate unit in the department within which the agency is placed. This unit would be responsible for advising the Minister and developing a strategy for the delivery of youth justice services.<sup>14</sup>

The current Juvenile Justice Board has only been in operation since August 2000. It comprises people with considerable expertise in childcare and education issues who were appointed by the NIO following public advertisement.

The Commission welcomed the creation of a board with a wide range of experience, professional backgrounds and qualifications. However, there have been problems associated with the Board which should not be reproduced in the 'Next Steps Agency'.

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<sup>5</sup> Recommendation 170.

<sup>6</sup> Recommendation 177.

<sup>7</sup> Recommendations 171 and 172.

<sup>8</sup> Recommendation 173.

<sup>9</sup> Recommendation 176.

<sup>10</sup> Recommendations 174 and 175.

<sup>11</sup> Recommendation 178.

<sup>12</sup> Recommendation 189.

<sup>13</sup> Recommendation 185.

<sup>14</sup> Recommendation 186.

First, the Board is part-time despite its heavy workload. Second, the role of the JJB *vis a vis* the Northern Ireland Office is unclear. The Commission considers it important that clarity surrounds the respective roles and powers of all bodies involved in the management of the system.

The Criminal Justice Review recommended that, pending devolution, political responsibility for the youth justice system should remain with the Secretary of State for Northern Ireland and that policy and legislative advice should continue to be provided by the NIO. After devolution, however, they recommended that ministerial responsibility should lie with the Minister responsible for prisons and probation.<sup>15</sup>

One of the themes running throughout this report is the difficulties caused by NIO's exclusive responsibility over all the activities in the juvenile justice centres. The effects of this are particularly felt in the areas of health care and education. (see chapters 7 and 9). Responsibility for the education and health care of children should be passed from NIO to the Department of Health and Social Services and Public Safety (DHSSPS) and the Department of Education (DE).

However, the Commission also considers that the establishment of a Minister for Children would better serve the interests of children in trouble with the law by facilitating inter-departmental co-operation.

### **The Justice (NI) Bill 2001**

In November 2001, the Government published the Justice (NI) Bill, intended to implement the recommendations of the Criminal Justice Review. Many aspects of the Bill are welcome including the definition of a child as a person under 18, the inclusion of 17 year olds within the youth court system, provision for some 17 year olds to be accommodated in juvenile justice centres, and the introduction of new sentences including Reparation Orders, Community Responsibility Orders and Restorative Youth Conferencing.

It is hoped that these measures will lead to benefits for children in terms of rehabilitation and reintegration and will result in less children receiving custodial sentence and remands.

While welcoming the emphasis on diversion and reparation, the Commission has serious concerns about aspects of the Bill.

A general criticism of the Bill in terms of youth justice is that it adds to already existing legislation in a somewhat piecemeal approach. A fundamental review of the system and corresponding new legislation would have been preferable.

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<sup>15</sup> Recommendation 188.

The aims of the system as laid down in the Bill<sup>16</sup> do not meet international standards. The lack of any reference to human rights instruments, as recommended by the CJR<sup>17</sup> is a serious oversight. Such instruments should be used as guiding principles for the operation of the youth justice system.

It is disappointing that the best interests principle and the principle of children's right to participate are not included in the legislation (discussed further in chapter 1).

The Bill fails to increase the age of criminal responsibility despite its inconsistency with international human rights law. International standards recommend that states to set a minimum age below which children cannot be held responsible under the criminal law, which is not too low and is in line with other rights and responsibilities in society such as the marriage age or voting age.<sup>18</sup> In Northern Ireland, the age of criminal responsibility is set at 10, and is thus clearly out of line with both the age of marriage or voting and these international standards. Consistent with this, the UN Committee on the Rights of the Child has urged the UK government to give serious consideration to raising the age of criminal responsibility.<sup>19</sup>

In its draft Bill of Rights the Human Rights Commission has recommended that the age of criminal responsibility should be raised to 12, at least. It is currently consulting on this document.<sup>20</sup>

The treatment of 17 year olds under the Bill also gives rise to concern. International law states that children must be separated from adults in detention unless it is in the child's best interests to do otherwise.<sup>21</sup>

The Justice Bill rectifies some of the problems in the Criminal Justice (Children) NI Order 1998 by bringing 17 year olds within the youth court system. It also allows for courts to make juvenile justice centre orders for 17 year olds<sup>22</sup> which goes further than the Criminal Justice Review recommendation. However, the ability of the court to make such an order is limited to cases of 17 year olds who may be particularly vulnerable.

It remains the case that 17 year olds, and younger children, can be detained along with adults in the young offenders centres.

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<sup>16</sup> Clause 49(1)

<sup>17</sup> Recommendation 169.

<sup>18</sup> Rule 2, UN Standard Minimum Rules for the Administration of Juvenile Justice 1985, (Beijing Rules).

<sup>19</sup> Consideration of reports submitted by states parties under article 44 of the Convention: United Kingdom of Great Britain and Northern Ireland. 15/02/95 CRC/C/15/Add.34 (Concluding Observations)

<sup>20</sup> See *Making a Bill of Rights for Northern Ireland: A Consultation by the NI Human Rights Commission*, Belfast 2001, p 67.

<sup>21</sup> Article 10(3) International Covenant on Civil and Political Rights; Article 37 (c) UN Convention on the Rights of the Child; Rule 29, UN Rules for the Protection of Juveniles deprived of their Liberty and Rule 13.4, Beijing Rules.

<sup>22</sup> Clause 60.

The CJCO requires children detained by the police to be separated from adults charged with offences<sup>23</sup> but this requirement does not extend to detention centres. Article 13 of the Order allows children of 15 and over to be remanded to a young offenders centre if the child is considered likely to injure him/herself or others. Use of Article 13 may result in children as young as 15 being detained alongside adults up to 21 years or even older.<sup>24</sup> This practice is clearly contrary to international human rights standards and is acknowledged as such by the Government of the UK, by entering a reservation to Article 37(c) to enable young offenders to be mixed with adults where there is a lack of suitable accommodation or adequate facilities for a particular individual in any institution.<sup>25</sup> Regrettably, the opportunity to remedy this situation, presented by the Justice (NI) Bill was not taken.

While the Commission welcomes the Criminal Justice Review's recommendation that sentenced children aged 10-13 should not be held in juvenile justice centres, it has concerns about the proposed 'Custody Care Order' contained in the Justice (NI) Bill.

There are several problems associated with the proposed Order. These include the crisis in relation to lack of suitable care accommodation (see chapter 2 of this report); a danger that children in care for non-criminal justice reasons will suffer from the stigma of linking of care and custody; the suggestion that children on Custody Care Orders will be accommodated under a different regime than other children within the same institutions and the failure to offer the protection of the full Children (NI) Order 1995 to children on these Orders.

Additionally, the new provision does not deal with the problem of young children being remanded to juvenile justice centres under the CJCO or under PACE (see chapter 2).

### **Government review of the Juvenile Justice Estate**

In March 2000, Government published a review on the future of the juvenile justice centre estate for consultation announcing its intention to 'rationalise' the system. The review put forward a number of options for the future location and spread of custodial places.

In its response, the Commission expressed concern that the review took resource considerations as its starting point<sup>26</sup> despite the fact that the first consideration must be

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<sup>23</sup> Section 9.

<sup>24</sup> The Young Offenders Centre (YOC) at Hydebank accommodates all male young offenders between the ages of 17 and 21 although the Treatment of Offender's Act 1968 permits the detention of young men in a YOC up to their 24<sup>th</sup> birthday. The YOC at Maghaberry prison similarly accommodates young women.

<sup>25</sup> The Second Report of the UK states at para 10.45.3 (p 189) that the 'UK has decided that 15 and 16 year old girls should be placed in non-Prison Service accommodation with the introduction of the Detention and Training Order (DTO) in April 2000. As spaces becomes available, 17 year old girls will also be placed outside the prison service'.

<sup>26</sup> Para 5.1.

the individual needs of children in contact with the juvenile justice system balanced with the safety concerns of the broader community. The Commission stated that:

‘While we appreciate that decisions on the future of the juvenile justice estate need to be taken urgently to reduce the uncertainty felt by both staff and children, we hope that the process of change will include an assessment of how best to transform the policies, ethos and operation of the whole system.’<sup>27</sup>

The Commission argued that Lisnevin is unsuitable for housing children and must be closed. It drew Government’s attention to international human rights standards which state that the establishment of small open facilities is encouraged to enable individualised treatment and to avoid the additional negative effects of the deprivation of liberty.<sup>28</sup> For example, standards provide that

‘As far as possible, the education of children deprived of their liberty should take place in the community outside the detention facilities in programmes integrated with the educational system of the State.’<sup>29</sup>

The Commission recommended that the development of small units throughout Northern Ireland would enable children to stay in closer contact with their families and communities throughout their period in custody. This would facilitate their re-entry into the community and would be in keeping with international principles and with Article 8 of the European Convention on Human Rights, which guarantees respect for family life.<sup>30</sup>

Following the ending of the consultation period, the Government announced its decision in November 2000. Lisnevin and St Patrick’s were to close. A single centre would be built on the site that currently houses Rathgael. Prior to completion of the new centre but following the closure of Lisnevin, all detained young people would be accommodated on the existing Rathgael site.

St Patrick’s was closed with immediate effect. Staff were given the option of transferring to another centre or to Whitefield (a network of community based provision for children at risk of offending) or to take redundancy. In the event, while some St Patrick’s staff went to Whitefield, none took the option of transfer to Rathgael or Lisnevin. The Minister, Adam Ingram, stated that although St Patrick’s would not be required to provide residential accommodation, he hoped that it would continue to play a ‘major role in west Belfast.’<sup>31</sup>

The closure of Lisnevin has taken longer than desirable however and this interim period has been difficult for staff and young people. The Commission is informed that it is

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<sup>27</sup> NIHRC response, p 2.

<sup>28</sup> Rule 30 UN Rules for the protection of Juveniles deprived of their Liberty.

<sup>29</sup> UN Guide to International Standards and Best Practice, 1999, para 274.

<sup>30</sup> The Human Rights Act 1998 brought the European Convention on Human Rights into domestic law.

<sup>31</sup> Irish News, 30 November 2000.

planned to have the Rathgael site ready by the end of August to enable the move from Lisnevin to take place. Building improvements on existing buildings at Rathgael are currently ongoing and when complete will accommodate boys from Lisnevin, allowing it to finally close.

Plans are being made for the development of a new building on the Rathgael site. The Commission understands that the favoured model is that of St Mary's Kenmure, at Bishopbriggs near Glasgow. St Mary's provides 30 secure beds and six open beds for boys and girls and is managed by an independent Board of Managers. The unit at St Mary's is a campus style development built largely on one level. According to a recent Inspection document it comprises five living units (each providing six beds), education, recreation and administration units are built around a courtyard or 'village green'. The six bed open unit, Stepps, is separate from the secure unit but is on the same campus. The aim is to create a domestic scale environment. Bedrooms have en-suite facilities.

The NIO has been pursuing this model of a 'village green' development with a philosophy based on building security into the fabric of the design rather than relying on fences and external security. According to the NIO Juvenile Justice Branch, account will be taken of the degree of security needed in placing young people. There will be a more open unit to accommodate young people who are nearing the time for their release.

The new centre will house boys and girls on a single site. While this may have many positive effects it also raises serious issues for girls, who will be in the minority there, some of whom will have experience of sexual abuse. In October 2000 the Government published an equality impact assessment on its plans.<sup>32</sup> The Assessment looked at adverse impact on young people, families, staff and stakeholders in the estate in terms of religious belief, age or gender. Neither disability nor political opinion were considered, however, despite the relevance of these factors to young people in custody. The Commission urges Government to undertake a more extensive equality impact assessment of its proposals.

A recent official inspection of St Mary's Kenmure<sup>33</sup> indicates that there was heavy investment not just into the fabric of the building but also into areas such as education and health care for the young people. There was an emphasis on partnership in appraising the success of the arrangements and on consulting with young people.<sup>34</sup> A similar approach to co-working and consultation with young people would be vital to the success of the centre in Northern Ireland.

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<sup>32</sup> Northern Ireland Information Service, Review of Juvenile Justice Centre Estate: Equality Impact Assessment, October 2000.

<sup>33</sup> Inspection of Care Arrangements and Education at: St Mary's Kenmure, Bishopbriggs, Joint Report by Social Work Inspectorate and HM Inspectorate of Education, June 2001.

<sup>34</sup> The appraisal team interviewed young people, care, teaching and specialist staff and managers; received postal questionnaires from stakeholders (parents, social workers, children's rights officers, Who Cares? Scotland, local authorities and the Parole Division, Scottish Executive Justice Department.

## Part 2

### Chapter 1 Core principles of children's rights

#### Introduction

The UN Convention on the Rights of the Child (CRC) sets out the universally accepted, minimum standards for the protection of the rights of all children. In addition to recognising the specific rights of children in custody, the Convention sets out three core principles which must guide the implementation of the rights of children in all areas:

1. the best interests of the child (Article 3);
2. the right to be heard (Article 12); and
3. non-discrimination (Article 2).<sup>1</sup>

The Committee on the Rights of the Child, which monitors implementation of the Convention, has recommended that the UK Government give 'greater priority' to incorporating these principles into law and policy concerning children.<sup>2</sup> This chapter examines the extent to which the care and treatment of children in custody in Northern Ireland meets these core principles.

#### *The best interests principle*

#### International standards

Article 3 CRC provides that in all actions concerning children, the best interests of the child shall be a primary consideration. The importance of implementing this principle in the criminal justice system is clear from other international standards. For example, Rule 4 of the UN Rules for the Protection of Juveniles Deprived of their Liberty provides that the juvenile justice system should uphold the rights and promote the physical and mental well-being of children. Rules 1.1, 1.3 and 5.1 of the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) provide for the promotion of the child's welfare as a general principle and aim and Paragraphs 4 and 52 of the UN Guidelines for the Prevention of Juvenile Delinquency attach clear priority to the need to protect the best interests of all children.<sup>3</sup> In 1995, the UN Committee on the Rights of the Child recommended that the Government pursue law reform with a view to making the administration of youth justice child-oriented.<sup>4</sup>

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<sup>1</sup> The application of these principles to children in the justice system has been confirmed by the Committee on the Rights of the Child (see Committee on the Rights of the Child: Recommendation on the administration of juvenile justice, 20 Sept – 8 Oct 1999) and other standards highlighted below.

<sup>2</sup> Consideration of reports submitted by states parties under article 44 of the Convention: United Kingdom of Great Britain and Northern Ireland. 15/02/95 CRC/C/15/Add.34 (Concluding Observations).

<sup>3</sup> Relevant standards are annexed to this report. See also ECOSOC Resolution 1997/30 Administration of Juvenile Justice E/RES/1997/30 21 July 1997, para 8.

<sup>4</sup> Concluding Observations, para 35.



## Law, policy and practice

Neither the Criminal Justice (Children) (Northern Ireland) Order 1998 (CJCO) nor the Justice (Northern Ireland) Bill 2001 contain an express commitment to the best interests principle, as set out in the above standards. Instead, Article 4 of the CJCO and s 49(3) of the Justice (NI) Bill set out the lesser test that in any proceedings for an offence, the court shall have regard to the welfare of any child brought before it. Similarly, the Northern Ireland Office (NIO) document 'Aims of the Juvenile Justice System' provides that in criminal proceedings 'court disposals should have regard to the best interests of the child with custody being used to the minimum extent possible.'<sup>5</sup>

The failure to afford explicit, statutory recognition to the principle of the child's best interests means that children for whom detention is inappropriate given their age or immaturity may nevertheless be sentenced to custody when the seriousness of their crime or the public interest requires it. This failure to give legislative expression to the best interests principle falls short of minimum international standards and undermines attempts to prioritise children's welfare throughout the system.

Although the general welfare principle may be implicit in the Juvenile Justice Centre Rules<sup>6</sup> and the Northern Ireland Standards<sup>7</sup>, the requirement that the best interests of the child guide all decisions made about a child's care is not given express recognition. In contrast, the Children (Northern Ireland) Order 1995, which governs the care system in Northern Ireland, provides that the best interests of the child shall be a paramount consideration in such circumstances. The protection of this Order does not currently extend to children in custody, however.

In family proceedings, the court can appoint a guardian ad litem (GAL) under Article 60 of the Children (Northern Ireland) Order 1995. The guardian, whose duty it is to safeguard the interests of the child, is drawn from the Guardian Ad Litem Agency, which is a panel of qualified, experienced social workers. The guardian's role is to investigate the circumstances of the case and make a report to the court to assist it to consider the child's welfare and take decisions in the child's best interests. Children being brought to court under the criminal law have no such protection.

The recent review of the youth justice estate provided an opportunity to put into practice the principle of making the child's best interests a primary consideration. However, it is

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<sup>5</sup> NIO, Aims of the Juvenile Justice System, April 1999.

<sup>6</sup> For example Rule 3 (1)(c) of the Juvenile Justice Centre (NI) Rules 1999 provides that 'the treatment of children shall be such as to promote self-respect and good health' and Rule 3(1)(h) provides that the custodial environment shall, as far as is possible, be stable and control will be maintained as befits the needs and interests of the children, the community and the good order of the centre'.

<sup>7</sup> For example, it provides that 'day to day care is of good quality and is provided by staff who can relate effectively to the young people, in a way which takes into account their individual needs and safeguards and actively promotes their welfare'. Standard 4.1 in NIO, Statements of Standards and Criteria for Juvenile Justice Centres in Northern Ireland, February 1999.

apparent that the factor of cost received priority attention here with the result that the conclusion reached by Government does not reflect the needs and best interests of children. The fact that this decision has taken years to reach and will take many more to implement highlights further the weakness of Government's commitment to securing the best interests of young people in conflict with the law in Northern Ireland.<sup>8</sup>

### **Recommendations**

1. Government should extend the remit of the Children (Northern Ireland) Order 1995 to apply to all children in custody.
2. Government should review appropriate processes for ensuring that the child's best interests are represented in proceedings in the youth courts, particularly in relation to those cases which may result in custody for the child. Specific consideration should be given to the feasibility of expanding the GAL service to children in all cases where custody is a possible outcome of court proceedings.
3. Government should amend the Criminal Justice (Children) (NI) Order 1998 to incorporate an explicit duty on all those exercising functions in relation to the youth justice system, including the courts, to give paramount consideration to the child's best interests in any decision affecting the child.
4. Government should amend the Justice (NI) Bill 2001 to place a duty on all those exercising functions in relation to the youth justice system to have as a primary consideration the child's best interests.
5. The Northern Ireland Office, Juvenile Justice Board and management of the juvenile justice centres should undertake to express the best interests principle clearly in all documentation concerning the operation of the juvenile justice centres. Measures should be adopted to assist all staff in the translation of this principle into practice.

### ***The right to be heard***

### **International standards**

Young people determine the fairness of procedures according to their perception of their ability to take part in them. Accordingly, Article 12 of the Convention on the Rights of the Child provides that every child must be facilitated to express their views freely in all matters, and have those views given due weight in accordance with their age and maturity. The Committee on the Rights of the Child has expressed particular concern about the extent to which this principle is embedded in UK law, policy and practice.<sup>9</sup>

### **Law, policy and practice**

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<sup>8</sup> The Criminal Justice Review Implementation Plan (2 November 2001) undertakes at p68 to detail further plans for the future of the youth justice estate.

<sup>9</sup> Concluding Observations, para 27.

There is no provision in the Criminal Justice (Children) (NI) Order 1998 or the Justice (NI) Bill setting out the right of children to be consulted about decisions affecting them.

S36 B (5) of the Justice (NI) Bill imposes a requirement on the court to explain the new Reparation Order to children in ordinary language. However, there is no requirement to ensure that children understand what is happening to them throughout the whole youth justice system.<sup>10</sup>

The NIO Standards require that explanations be given to all young people about how particular decisions affecting them are reached and also stipulate that young people and their families/carers should be fully consulted about important decisions affecting their lives.<sup>11</sup>

The juvenile justice centre rules do not recognise this right to participate either as a principle or in specific instances. Additionally, there is insufficient evidence in the centres' documentation that listening to young people is a priority or that their opinion is sought as a rule.<sup>12</sup>

The translation of the principle of participation into practice in juvenile justice centres is problematic therefore and while it is acknowledged that individual staff listen to the views of young people and take them into account, there is an apparent weakness at policy level. For example, it is unclear whether young people have the opportunity to express their views on when visits take place; which activities are available; what time they get up in the morning or what personal possessions they can have in their rooms. Reports of the Social Services Inspectorate show that issues of concern to the young people include food and hygiene standards and access to radios and clearly they are keen to have their views heard.<sup>13</sup> It is welcome therefore that Lisnevin Juvenile Justice Centre has a Food Committee on which young people are represented and contribute to decisions about the food provided by the centre. It is unfortunate that it can only meet monthly due to staffing constraints.<sup>14</sup>

One positive way in which children's views are put forward is through the Independent Representation scheme run by NIACRO. Volunteers visit the centres, talk to children and relate their concerns to staff. However, the project has only a reporting role.

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<sup>10</sup> See, in particular, the judgments of the European Court of Human Rights in *V v UK* and *T v UK*, judgment of 16 December 1999, [2000] 30 EHRR 121.

<sup>11</sup> See Standard 1, Criteria 7 and 8 in NIO, Statements of Standards and Criteria for Juvenile Justice Centres in Northern Ireland, February 1999.

<sup>12</sup> See for example the Juvenile Justice Board, Director's Standing Orders - Lisnevin (April 1999) ; Lisnevin Staff Procedural Manual (April 1999), the Rathgael Information Booklet and the Lisnevin Handbook. Although these documents provide for the child's views to be sought in certain limited circumstances, none provides for the child's right to be heard as a fundamental objective or principle.

<sup>13</sup> SSI, Unannounced Inspection of Lisnevin JJC, 1<sup>st</sup> December 2001, p5.

<sup>14</sup> SSI, Unannounced Inspection of Lisnevin JJC, 1<sup>st</sup> December 2001, p5.

A high level of participation in matters which concern children is necessary to comply with Article 12 of the Convention on the Rights of the Child. Elsewhere in this report, the Human Rights Commission highlights areas where young people are not given an effective voice about issues of even greater concern to them. For example, it is the Commission's view that the operation of the Placement Panel system<sup>15</sup> was contrary to this principle.<sup>16</sup>

The Commission is also concerned that the Secretary of State and the Northern Ireland Office did not consult with young people in reaching their decision about the future of the juvenile justice estate despite the fact that young people with experience of the system are best placed to contribute to such a debate.

The Commission is pleased to note that the (as yet unpublished) SSI review of the operation of the Criminal Justice Children Order includes interviews with young people in custody.

### **Recommendations**

6. Government should amend the Justice (NI) Bill to require the courts to inform any child before them about the nature and progress of proceedings in language that the child can understand.
7. The Juvenile Justice Centre (NI) Rules 1999 should be amended to incorporate in principle and in practice the right of children to express their views and have them given due weight in all matters that concern them.
8. The Juvenile Justice Board, in co-operation with juvenile justice centre managers, should develop mechanisms for consulting young people on all matters concerning them with a view to having this principle permeate every aspect of care in the centres.
9. Juvenile Justice Board should review all centre documentation to ensure that the principle of the child's right to be heard is included therein.
10. Northern Ireland Office should urgently develop a process for consultation with children about the future of the juvenile justice estate. Independent channels should be used to facilitate this consultation.

### ***The non discrimination principle***

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<sup>15</sup> This system was used to determine whether a young person would be transferred from the centre in Lisnevin to St Patrick's or Rathgael. See further Chapter 3.

<sup>16</sup> See *In Re: An Application by Kevin Phillips A Minor for Judicial Review*, where LCJ Carswell in the High Court noted that consultation was not required in the circumstances of that particular case given the relatively slight impact that the decision regarding his placement had upon the applicant's interests. The High Court went on to say, however, that when the boy's solicitors questioned the decision made, an obligation then arose for the Secretary of State to give an explanation for the decision.

## **International standards**

The principle of non-discrimination is a cornerstone of international human rights protection. It is set out in numerous instruments, particularly Article 2 of the UN Convention on the Rights of the Child, which provides that Convention rights must be secured to all children without discrimination on any ground. The Human Rights Commission's draft Bill of Rights for Northern Ireland also proposes to eliminate discrimination on the ground of age.<sup>17</sup>

## **Law, policy and practice**

Section 75 of the Northern Ireland Act 1998 places a statutory duty on all public authorities to promote equality of opportunity and good relations. The effects of policies must be examined for their potential impact on nine identified groups based on age, race/belonging to an ethnic minority, religion, political opinion, sexual orientation, marital status, responsibility for dependents, gender and disability.

This means that in planning for the future of the juvenile justice estate and in the implementation of current policy and practice, the Juvenile Justice Branch of the NIO has a duty to consider how best to promote equality of opportunity for young people in its care.

The Juvenile Justice Board is not a designated public authority under Section 75 and does not have its own equality scheme. However, the Board comes under the aegis of the NIO and is bound by its scheme.<sup>18</sup>

Legislation governing youth justice in Northern Ireland makes no reference to the principle of non-discrimination. In contrast, the Juvenile Justice Centre Rules provide that children in custody will be treated equally and will have access to services and facilities without discrimination on the basis, inter alia, of gender, disability or other status.<sup>19</sup>

The NIO Standards also contain a commitment to equal treatment requiring that the regime offer 'equal standards of care, education, training, safety and security to all young people, irrespective of race, religion, gender, sexual orientation or disability'.<sup>20</sup>

However, these standards do not expressly underpin centre documentation. For example, the principle of equal treatment is absent from the Mission Statement of both juvenile justice centres and commitment to it is not expressly apparent from the Lisnevin

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<sup>17</sup> See *Making a Bill of Rights for Northern Ireland: A Consultation by the NI Human Rights Commission*, Belfast 2001, p 31. The Commission has also proposed to include the best interests principle and the child's right to be heard in the Bill of Rights.

<sup>18</sup> Letter from Chair of the JJB to the Commission, 22<sup>nd</sup> June 01.

<sup>19</sup> Rule 3(1)(g) Juvenile Justice Centre (NI) Rules 1999.

<sup>20</sup> Standard 1, Criteria 6, NIO, Statements of Standards and Criteria for Juvenile Justice Centres in Northern Ireland, February 1999.

handbook 'You have arrived!! What next??' or the Staff Procedural Manual. This raises concerns about the ability to prioritise the implementation of the principle in practice.

The Human Rights Commission is concerned that aspects of the care of young people in juvenile justice centres are inconsistent with the principle of non-discrimination. In addition to the differential regimes experienced by remand and committed boys in Lisnevin (see chapters 2 and 4), the Commission is also concerned that there is potential for discrimination against young people on the basis of gender, disability and religion.

### *Gender*

S 13(1) Criminal Justice (Children) (Northern Ireland) Order 1998 provides that young people over 15 who are likely to injure themselves or others may be remanded to a young offenders centre. For boys, this means being sent to the Young Offenders Centre (YOC) at Hydebank, which detains young men between 17 and 23 years.

The current lack of secure provision for girls at Rathgael Juvenile Justice Centre has undermined its ability to cope with those who are at risk to themselves, to other young people or to staff. Those at risk in this way are sent to the YOC at Maghaberry, an adult women's prison. Figures from the Northern Ireland Office show that between the commencement of the CJCO and September 2001 four girls were transferred to Maghaberry from juvenile justice centres. Notwithstanding the small numbers, the detention of young girls in Maghaberry has been widely condemned as inappropriate, disruptive and potentially damaging.<sup>21</sup> The fact that the right of children to be detained separately from adults is the subject of a derogation from Article 37 of Convention on the Rights of the Child indicates the incompatibility with international law of this practice.<sup>22</sup> Clearly, it is also contrary to the universal principle of non-discrimination.

The principle of non-discrimination also demands that positive measures be taken in addressing the needs of young women in particular. Rule 26.4 of the UN Standard Minimum Rules for the Administration of Juvenile Justice recognise that the personal needs and problems of young female offenders deserve special attention and provide that they shall not receive less care, protection, assistance, treatment and training than their male counterparts. However, practice does not always adhere to this standard. For example, during the visit of the European Committee for the Prevention of Torture in 1999, girls detained in Rathgael Juvenile Justice Centre were being denied the opportunity to exercise outside because they presented a security risk.<sup>23</sup> Although the Commission has been assured that the present position is that girls in Rathgael have access to a back yard for outdoor exercise,<sup>24</sup> clearly, difficulties may arise in this area.

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<sup>21</sup> Maghaberry Board of Visitors, HMCIP, 1997, para 1.16 and Chief Inspector of Prisons, 1997, para 9.17 and 8.29.

<sup>22</sup> See The Second Report of the UK to the UN Committee on the Rights of the Child, para 10.45.3 (p 189)

<sup>23</sup> CPT/Inf (2001) 7: Report of the Government of the UK on the visit to Northern Ireland carried out by the CPT from 29 November to 8 December 1999, May 2001.

<sup>24</sup> Correspondence from SSI to HRC, 29 January 2002.

The present mixing of boys and girls in Rathgael also raises concerns. In particular, while this situation suits the needs of some girls, it may not be in the best interests of all and female-only accommodation may be more suitable for some. In his thematic review of juvenile custody in England and Wales, then Chief Inspector of Prisons, Sir David Ramsbotham, found that almost half of the girls in custody had reported past experience of sexual abuse.<sup>25</sup> A staff member in Rathgael raised a similar concern with the Human Rights Commission and expressed the view that the needs of girls with a history of exploitation and abuse by men might be better addressed through differentiated care.<sup>26</sup>

The Commission notes, however, that the young people interviewed in Rathgael said that boys and girls there got on well together.<sup>27</sup> A manager at Rathgael also noted that their experience to date in terms of mixing boys and girls had been generally positive, although there had been occasional difficulties in the past when individual boys and girls fell out with each other.<sup>28</sup>

While boys have greater access than girls to secure facilities in the juvenile justice system, the fact that girls admitted to custody are generally held in Rathgael - a relatively open setting - while boys are normally held in Lisnevin - a highly secure establishment - has equality implications. In particular, this difference in treatment has the potential to disadvantage boys.

The development of a new juvenile justice centre on a single-site, and interim plans to move all young people in juvenile justice centres to Rathgael, highlight the importance of addressing the needs of girls in the system. The number of girls in custody has been consistently small since the introduction of the CJCO and it is likely, that the future population will include only a few girls. This situation must be carefully planned and sensitively addressed.

The Juvenile Justice Board states that the issue of the gender/religious mix of young people has been 'successfully dealt with by the JJ system for a number of years' and that the Board has an on-going and positive relationship with the Equality Commission.<sup>29</sup> However, to date, the Commission has been unable to access firm proposals from the NIO or the Juvenile Justice Board for dealing with the proposed mixed gender residency on the Rathgael site or plans for providing training for those staff unused to working with girls.

The Commission welcomes the intention of the Social Services Inspectorate to carry out a thematic inspection of custody for girls.<sup>30</sup>

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<sup>25</sup> Chief Inspector of Prisons, 1997, Thematic Inspection of Young Prisoners, p 55.

<sup>26</sup> Commission interview with staff (15).

<sup>27</sup> Commission interview with young people (10).

<sup>28</sup> Commission interview with staff (19).

<sup>29</sup> Commission correspondence from the Juvenile Justice Board, 21 June 2001.

<sup>30</sup> Commission correspondence from SSI, 29<sup>th</sup> January 2002.

### *Disability*

Article 23 of the Convention on the Rights of the Child recognises that children with disabilities require special protection and have the right to special care, education and training to help them enjoy full and decent lives in dignity and achieve the greatest degree of self reliance and social integration possible.

In a study of the (former) Training School system, Horgan and Sinclair discovered that nearly one-third of young people in Training Schools had a learning or physical disability and all but two had emotional or behavioural problems.<sup>31</sup>

To the Commission's knowledge, there is no current, official survey determining the number of young people with a disability who enter juvenile justice centres or identifying the range of emotional, learning or physical disabilities requiring attention there.

The Juvenile Justice Board has acknowledged that 'many of the young people in our care have special needs in terms of learning and behaviour and all efforts are made to meet specific needs'.<sup>32</sup> Several staff members interviewed mentioned the number of young people who are on the drug 'Ritalin' coming into juvenile justice centres, suggesting that they may have Attention Deficit Hyperactivity Disorder.<sup>33</sup>

Despite the awareness that many young people in detention have special needs, the lack of detailed and specific information regarding children with disabilities suggests that such young people in detention may not be receiving the same treatment as those in the community. Moreover, it is apparent that children with learning disabilities and emotional disturbance suffer more than others from the lack of resources and support within the centres. While details of these problems are set out below,<sup>34</sup> the Commission considers that the failure to address the needs of these children raises an issue under the principle of equal treatment and non-discrimination.

### *Religious and political opinion*

Prior to the introduction of the Criminal Justice (Children) (NI) Order 1998, courts were obliged to take into consideration the religion of a child in recommending which Training School should accommodate them. This obligation was removed by the Order and thus the courts no longer have a role in determining where children serve their sentence.

Both existing juvenile justice centres are situated in predominantly Protestant areas despite the fact that Northern Ireland Office figures show the average resident of a juvenile justice centre to be a 15 year old, Catholic boy. These statistics further show that young people from west Belfast are especially over-represented.<sup>35</sup> While these 'Mr Average' figures date from 1997, there remains an over representation of young people

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<sup>31</sup> Horgan, G & Sinclair, R, *Planning for Children in Care in Northern Ireland*, London: National Children's Bureau, 1997, p 131.

<sup>32</sup> Correspondence from the Juvenile Justice Board to the Human Rights Commission, 21<sup>st</sup> June 2000.

<sup>33</sup> Commission interview (no 7) with staff. See further Chapter 7.

<sup>34</sup> See chapter 9.

<sup>35</sup> NIO, 'Mr Average' Statistics, 1997.



from the Catholic community in juvenile justice statistics. In 1999, 62% of young people admitted to juvenile justice centres were from Catholic backgrounds (compared to 32% Protestant) and in 2000 the figure was 54% (compared to 41% Protestant).<sup>36</sup>

In the year 2000, NIO figures show that 22% of young people admitted to Juvenile Justice Centres were young people from west Belfast and 13% from north Belfast.

Despite this, the equality impact assessment on the future of the juvenile justice estate did not make a full study of the impact of the closure of St Patrick's, which is located in west Belfast, on young people from the area.<sup>37</sup>

Furthermore, when St Patrick's closed, its staff were offered the option of either transfer to another centre, work at Whitefield, or redundancy, yet none opted to transfer to another centre. The Commission has been trying to establish the impact of this on the make up of the overall staffing of the system by religion, but has, to date, been unable to obtain this information.<sup>38</sup>

The Juvenile Justice Branch of the NIO has informed the Commission that additional funding is going into projects in the west Belfast area since the closure of St Patrick's. The Commission would welcome more information on this situation.

Religious differences sometimes cause a problem in the juvenile justice centres. In interviews, one boy in Lisnevin and a group of children in Rathgael complained about sectarian threats and name calling in the centres. Furthermore, SSI reports have noted heightened tension in the centres during July.<sup>39</sup> A manager in Rathgael also noted that tension is worse at this time, although his policy is to try to distract young people's attention from the issue.<sup>40</sup>

“The tension surrounding the Drumcree Sunday or whatever, yes, but we can manage that, we keep the TV switched off. You mustn't make an issue out of religion. The kids will know within minutes who is of which religion.”

On a positive note he added that in his experience young people become friends with each other because of issues other than religion.

This interviewee said that circus skills and cross community work are used to address the issue. International law recognises that every child has the right to respect for their religion.<sup>41</sup> It is important to note also that Northern Ireland does not comprise of two communities only. In view of Northern Ireland's increasingly diverse society, plans for

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<sup>36</sup> Juvenile Justice Centre Statistics 1999 and 2000, produced by Juvenile Justice Branch NIO.

<sup>37</sup> Northern Ireland Information Service, Review of Juvenile Justice Centre Estate: Equality Impact Assessment, October 2000.

<sup>38</sup> Promised by Board in letter of 22 June 01.

<sup>39</sup> SSI Inspector Report on Lisnevin, 1997, p 26.

<sup>40</sup> Commission interview (no 19) with staff.

<sup>41</sup> Article 14, UN Convention on the Rights of the Child.

the future of the system should address the needs of all our communities. Standards stipulate that every young person should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination.

If a detention facility contains a sufficient number of children of a given religion, international standards require that a qualified representative of that religion should be facilitated to hold regular services and pay pastoral visits in private to young people at their request.<sup>42</sup> At the same time, the child's right not to participate in religious services and to decline freely religious education or counselling must be respected.

NIO standards stipulate that young people are encouraged and allowed to practice their faith and observe their religious identity as is their custom at home in the community.<sup>43</sup> The Lisnevin Handbook specifies that on arrival, 'a chaplain of your denomination will be informed of your arrival and will make contact with you'.<sup>44</sup> According to SSI, the chaplains 'call weekly to Lisnevin to offer religious instruction, which is optional' and they are also available on request.<sup>45</sup>

The Commission welcomes the fact that a Catholic Chaplain has been appointed to Rathgael.<sup>46</sup>

## **Recommendations**

11. Government should amend the Justice (NI) Bill 2001 and the Criminal Justice (Children) (NI) Order 1998 to make explicit its commitment to the principle of non-discrimination in the justice system.
12. Juvenile Justice Board (JJB) and management of the juvenile justice centres should make explicit their commitment to the principles of non-discrimination and equal treatment in all policy documentation.
13. NIO should make clear its plans for the secure detention of girls, in the context of the review of the juvenile justice centre estate.
14. NIO and JJB should consider how best to meet the specific needs of girls in the context of the new juvenile justice centres, including outlining staff training and other necessary preparation which should involve consultation with experts in the area including the Equality Commission.

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<sup>42</sup> Rule 48, UN Rules for the Protection of Juveniles deprived of their Liberty.

<sup>43</sup> Standard 4, Criteria 20, NIO, Statements of Standards and Criteria for Juvenile Justice Centres in Northern Ireland, February 1999.

<sup>44</sup> See The Lisnevin Handbook, You have Arrived !! What next??.

<sup>45</sup> SSI, Unannounced Visit to Lisnevin JJC, 1<sup>st</sup> December 2001, p 6.

<sup>46</sup> Commission correspondence from the Juvenile Justice Board, 18<sup>th</sup> Feb 2002.

15. Government should amend section 13(1) of the Criminal Justice (Children)(NI) Order 1998 to prevent the courts from remanding young people to facilities in the adult prison estate.
16. Government should urgently conduct a needs-analysis for accommodating the small group of under 17 year olds currently being remanded to YOCs because they are considered a risk to themselves or others. Measures should be put in place to ensure that these needs are met without recourse to sending children to prison service custody.
17. JJB should undertake effective monitoring and analysis of all young people coming into juvenile justice centres with a disability (including learning disabilities). An approach should be developed at NIO, Board and centre (management) level to identify and address the needs of these individual children.
18. Having identified these children's needs, policies and individual strategies to address them should be developed in co-operation with the Department of Health, Social Services and Public Safety, and the Department of Education.
19. NIO and JJB should develop their plans for the future of the youth justice system in full compliance with their equality obligations. This means carrying out a thorough impact analysis of proposals and of any policies developed as part of the changing ethos, taking into account the diversity of Northern Ireland society. Such impact assessments should include consultation with the people most affected by the proposals – the young people, their families, as well as juvenile justice centre staff.
20. NIO and JJB have a duty under Section 75 of the Northern Ireland Act 1998 to promote good relations between persons of different religious belief, political or racial group. Consequently, consideration should be given to developing training programmes for staff on working in a diverse community, as well as on methods of resolving disputes in this context.
21. JJB and centre managers should review policy and practice to ensure that human rights standards on the practice of religion are being implemented fully.
22. As part of a non-discriminatory approach to respect for religion in the juvenile justice centres, individuals should not have to request expressly the attendance of a priest or a chaplain as this may attract harassment or intimidation. Instead, efforts should be made to establish formal links with all the main religious communities and worship groups in a pluralistic manner and if numbers permit, regular services should be organised. The positive influence of religion should be drawn upon in this regard.

23. The Commission supports the view of the Social Services Inspectorate that what is provided in terms of religion should be 'meaningful and attractive to young people' and information should be provided 'so that they can make an informed choice'.<sup>47</sup>
24. Young people's views should be sought in developing policy for the practice of religion in planning for the future of the juvenile justice estate.

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<sup>47</sup> Correspondence to the Commission , 29 January 2002.

## **Chapter 2**

### **The Right to liberty: detention as a last resort?**

#### **International standards**

International law is clear that children should be detained only as a measure of last resort and for the shortest period of time.<sup>1</sup> It stipulates that deprivation of liberty shall not be imposed unless the young person is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences *and* unless there is no other appropriate response.<sup>2</sup>

Pre-trial detention should only be used in limited exceptional circumstances and for the shortest possible period of time.<sup>3</sup> When possible, pre-trial detention should be replaced by alternative measures such as close supervision, intensive care or placement with a family or in an educational setting or home.<sup>4</sup>

This chapter examines the extent of compliance with these standards in relation to the use of detention in juvenile justice centres and whether courts are detaining young people as a measure of last resort. This is followed by a discussion of particular issues of concern: the cross-over between care and custody and the need for a range of specialist services to reduce custodial remand.

#### **Law, policy and practice**

“We are still too quick to lock children up when it should be the last resort<sup>5</sup>.”

There are three main routes through which children can be detained in juvenile justice centres:

- a) sentenced to a Juvenile Justice Centre Order (JJCO);
- b) remand under the Criminal Justice (Children) (NI) Order 1998 (CJCO);
- c) remand under the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE).

Children can also be detained for serious crimes during the Pleasure of the Secretary of State under s45 CJCO. Although this power is seldom used, it has given cause for concern in the past, particularly because of its indeterminate nature. Although the Life Sentences (Northern Ireland) Order 2001 provides a mechanism for the setting and

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<sup>1</sup> Article 37 UN Convention on the Rights of the Child (CRC) and Rules 1 and 2 of the UN Rules for the Protection of Juveniles deprived of their Liberty 1990 (the UN Rules).

<sup>2</sup> Rule 17.1 (b) and (c) of UN Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules) .

<sup>3</sup> Article 37(c) CRC; Rule 13, Beijing Rules and Rule 17, UN Rules.

<sup>4</sup> Rule 13, Beijing Rules.

<sup>5</sup> Commission interview with staff (No 11).

review of the tariff or fixed element of this sentence, s72 of the Terrorism Act 2000 extends the power of the court to impose the sentence on a young person in respect of a crime for which an adult would receive a sentence of 5 years or more. While the use of an indeterminate sentence may be considered to be appropriate for serious crimes, it is the view of the Commission that its continued use for children is inconsistent with the international principle of using custody as a last resort and for the shortest possible duration.

### *Juvenile Justice Centre Order*

The CJCO 1998 aims to limit custody to the most serious, violent or persistent young offenders. While this is an improvement on previous legislation, the Order does not meet the international standard highlighted above insofar as it allows for the detention of young people for violent and persistent offending without requiring the court to consider the availability of alternative, appropriate responses.<sup>6</sup>

Under Article 39 CJCO, a court can sentence young people to a Juvenile Justice Centre Order, which is a fixed-length sentence ranging from 6 months to 2 years. The JJCO is designed to be shorter than its predecessor, the Training School Order, and importantly, while the first half of the sentence is spent in custody, the second half is served under supervision in the community. Under Article 41 CJCO, young people can be returned to custody if they break the conditions of their supervision.

The aim of reducing the length of time young people spend in custody is in keeping with international human rights standards. A staff member in St Patrick's Juvenile Justice Centre consulted by the Commission, believed that determinate sentences had been positive for young people:

“Since the system has changed, there has been a big difference in that the boys in the justice side are always more settled, better behaved, less problematic than they were previously. I think it's because when they were here before on the long term, on a Training School Order, they couldn't see light at the end of the tunnel . . .<sup>7</sup>”

While the intention of the CJCO was to reduce numbers and the length of time in custody, many young people are encountering a 'revolving door' effect whereby they experience repeated spells in custody on remand or (less often) following reconviction under the Order. The experiences of the young people interviewed for this investigation highlight what this can mean in practice. One 14 year old boy explained:

“The last time I was here serving eight months and done four months and that was me. I've been in three times after that just on remand. This time I

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<sup>6</sup> Article 39 Criminal Justice (Children) (NI) Order 1998 with reference to Articles 19 and 20 of the Criminal Justice (NI) Order 1996.

<sup>7</sup> Commission interview with staff (No 3).

got sentenced to six months ... I've been in about nine months altogether, but I've been in and out."<sup>8</sup>

Another boy said:

"I've been here about seven times, the first time when I was 12, [I] am now 14."<sup>9</sup>

In its recent review of the CJCO, the Social Services Inspectorate found that in a sample of files studied 81% of young people were charged with further offences when released from custody. Although this is an improvement on the figure of 93% recorded during the Training School era, it means, however, that the 'revolving door' is still a reality for some young people.<sup>10</sup>

Despite the fact that the CJCO reduces the length of the sentence served by young people, statistics cast doubt on whether detention is being used for the shortest period of time. For example, in 2000, there were 76 new Juvenile Justice Centre Orders imposed by the courts. Although this figure shows a slight increase on the previous year (66 Orders were made in the eleven months of 1999 for which the CJCO was in force) it is significant that these Orders were given to 54 individuals (48 boys and six girls). Out of these 54 young people, 36 served one Order, 15 were given two Orders, two children were given three Orders and one child was given four separate Orders during the course of the year. Thus, although 58% of the Orders imposed are for the minimum period of six months (74% in 1999), one third of those being sentenced (39% in 1999) have received more than one Juvenile Justice Center Order. These figures do not take into account that under the legislation a person can only actually serve one Order, even though s/he may have received multiple convictions for a number of offences at one court hearing.

Northern Ireland Office (NIO) statistics monitoring movements in and out of juvenile justice centres following the introduction of the CJCO on 31 January 1999 suggest that its implementation is not resulting in young people being detained as a measure of last resort. Although figures show a slight drop in the number serving custodial sentences (between 12% in 1997 and 8% in 2000) there has been no overall decrease in the number of admissions of children to custody. In fact, these numbers have increased by 20% - from 285 in 1997 to 342 in 2000. This increase is largely due to the use of remand (and predominantly remand under PACE which is discussed below).

#### *Remand under the Criminal Justice (Children) (NI) Order 1998*

International standards recognise the necessity for pre-trial detention in limited circumstances and it is conceivable, therefore, that a small number of young people, usually those charged with violent or very serious crimes, will have to be detained on remand. As recommended by the Review of the Criminal Justice System in Northern

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<sup>8</sup> Commission interview with young person (No 7).

<sup>9</sup> Commission interview with young person (No 1).

<sup>10</sup> Figures from Commission correspondence from SSI, 29 January 2002.

Ireland in 2000, those remanded in custody should be assessed as quickly as possible to determine the nature of the regime required including the degree of custody.<sup>11</sup>

Although the CJCO narrows the criteria for remands in custody, NIO Statistics on juvenile justice centres show that since the legislation came into force the number of children remanded in custody is disproportionately large compared with those admitted following the imposition of a custodial sentence. For example, out of the total admissions in 2000, 37% were there to serve pre-trial detention ordered by the courts (with 55% admitted by the police under PACE).

Excluding PACE statistics, then, the proportion of the centre population which is on remand shoots to an astonishing 91%, with a mere 9% serving committal orders following conviction. Thus, although there were 252 admissions on remand (some of them via PACE) in 2000, only 38 of these young people (15%) went on to serve a Juvenile Justice Centre Order. Figures from 1999 show a similar trend with nearly 40% of all admissions being on remand under CJCO, with a further 52.5% being admitted by the police under PACE. Thus, a tiny minority (6%) of the centre population was there to serve a Juvenile Justice Centre Order.

Of those young people placed on remand only 12% go on to serve a custodial sentence following conviction. In 2000, 69% of those placed on remand eventually received bail, half of those within a week (although 20% served over a month on remand), 12% received a non-custodial order and a mere 12% were committed.

Statistics suggest that young people are granted bail on second and successive applications giving rise to a presumption may in fact be operating in favour of pre-trial detention, with bail only being granted on subsequent applications.<sup>12</sup>

All of the above figures raise serious doubt as to whether the detention of young people before trial is being limited to exceptional circumstances as international law, and indeed domestic legislation requires. The Juvenile Justice Board has expressed concern about the high level of remands:

“We provide a remand service, but have no say in who is remanded and no right to refuse any order of the courts. We have raised the issue repeatedly with the NIO and have requested meetings with magistrates.”<sup>13</sup>

Inappropriate use of remand was also of great concern to staff who had experience of children being remanded on relatively minor offences. One commented:

“Here’s a few examples of remands that I have started to note down. One child – theft and criminal damage, serious family problems, first offence,

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<sup>11</sup> Northern Ireland Criminal Justice Review Group, Review of the Criminal Justice System in Northern Ireland, London: Stationery Office, 2000, Para 10.78.

<sup>12</sup> See NIO, Juvenile Justice Centre Statistics 1999 and 2000.

<sup>13</sup> Commission correspondence from Chair of the Juvenile Justice Board, 22<sup>nd</sup> June 2001.



remanded in custody. Another child who is now in the system big time, breach of an Attendance Centre Order, remanded. Another one, attempted taking and driving away, remanded, he had previous as he had received two Juvenile Liaison Official Cautions. Another, one theft of £16.49, had had a previous Caution, first Court appearance, family involved with social services, remanded in custody. He got bail and was then further remanded in custody for writing graffiti on a wall. Theft against his family, remanded in custody. GBH, assault causing ABH in which he had minimal involvement and he was remanded in custody, he was later bailed, most of these children were later bailed.”

This staff member concluded that:

“Magistrates should take more time at the first appearance ...when a child appears they should be saying they want information before I make a decision... They should bail them at that stage and request more information. But it’s the opposite, they’re remanding them first and then bailing them.”<sup>14</sup>

The fact that a disproportionate number of young people in juvenile justice centres are there on remand and not serving finite Juvenile Justice Centre Orders makes it increasingly difficult to manage the centres and to develop appropriate facilities and programmes for the population, especially in Lisnevin which has considerably higher numbers of remandees. The redeployment of staff and specific allocation of resources to cover increased numbers of admissions on remand inevitably takes away from the intense work which should be done with those serving a Juvenile Justice Centre Order.

Reasons for the over-use of remand may include a shortage of specialist and differentiated care facilities, a shortage of appropriate secure accommodation and little alternative to custodial remand. These issues are discussed below.

## **Recommendations**

1. Juvenile Justice Board and the Northern Ireland Office should commission independent research into why rates of remand remain high.
2. Northern Ireland Office should collect and publish detailed statistical information about the type of offences for which young people are remanded so that the operation of the Criminal Justice (Children) (NI) Order 1998 can be monitored by independent bodies and by the Juvenile Justice Board and NIO themselves.
3. NIO should conduct or commission research tracking young people’s movement through the youth justice system. This should include an examination of why young people spend time in custody, what purpose their period in detention is designed to

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<sup>14</sup> Commission interview with staff (No 11).

achieve and involving a follow-up study of what happens to children when they leave custody including and extending beyond the supervision stage.

4. A reference group should be set up to review the above research, with representation from, for example, the juvenile justice centres, the police, probation services and the courts. Representation from the Equality Commission, the Human Rights Commission, children's organisations such as the Children's Law Centre, and the Departments of Education, and Health, Social Services and Public Safety should also be considered.
5. Specific and regular training should be provided to magistrates, the legal profession and probation officers on international human rights standards relating to the use of custody for young people.
6. While magistrates and lay panel members currently visit Lisnevin as part of their training,<sup>15</sup> the Commission recommends that all professionals and others working with children in the justice system should be encouraged to visit and experience the juvenile justice centres, in order to develop and foster formal links and continue to develop informal channels of communication with staff and management.

*Police and Criminal Evidence (Northern Ireland) Order 1989*

The Police and Criminal Evidence (NI) Order 1989 (PACE) provides that where a child has been charged with an offence and either bail cannot be granted or no place of safety can be established for their release, s/he may be detained overnight in custody pending a court appearance.

The largest category of young people admitted to juvenile justice centres is the number admitted under PACE. These children are usually admitted to Lisnevin as it is the only secure unit in operation. NIO statistics show that this category of young people has been growing steadily from a total of 97 admissions in 1997 to 189 in 2000.

In 2000, 55% of the young people admitted to juvenile justice centres were brought in under PACE, essentially for holding purposes. This is indicated by the fact that 80% of these children were either released to the police or bailed within days<sup>16</sup>. The majority of young people in juvenile justice centres, therefore, have not been placed in detention by a court, which is the correct body to determine the appropriateness of a custodial sentence.

As the NIO comments in relation to its annual statistical analysis:

'these children [admitted under PACE] are held on behalf of the police until they appear at court, and have not, at this stage, been formally admitted to custody by the courts. Many of them do not return on remand from court, and it is therefore

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<sup>15</sup> Commission correspondence from the Juvenile Justice Board, 18<sup>th</sup> February 2002.

<sup>16</sup> NIO, Juvenile Justice Centre Statistics 2000, table 2.1.

questionable as to whether these should be included in the admissions statistics.<sup>17</sup>

The apparent use of juvenile justice centres to hold young people following charge and pending a court appearance demonstrates a lack of commitment to international standards. Moreover, it is increasing. In 1997, 37% of those admitted were via PACE while in 2000, that figure had increased to 55% or 189 young people. In the period between January and June 2001, there were 243 admissions under PACE.

Out of the 189 young people admitted under PACE in 2000, 125 or 66% were returned on remand from court. The gravity of the situation is illustrated further by the fact that, out of a combination of PACE/remand admissions in 2000, only 12% went on to serve a Juvenile Justice Centre Order.

Interviews with Lisnevin night staff suggest that many of the boys admitted in these circumstances have never been in custody before. The situation can be frightening for these children. As one Lisnevin staff member commented:

“In some cases kids will know other kids here so they shout out to each other about what’s been happening, but in other cases, the kids are lost and scared once they see the wire . . . you do have to be very careful with PACE kids and monitor them carefully. Some will cry for their mothers . . .”<sup>18</sup>

The disruption of PACE receptions creates its own problems for staff and management of the centres. Lisnevin is often expected by police to admit young people late at night when the appropriate staff, including medical staff, are not available to complete normal admission procedures. A Lisnevin staff member commented:

“We have no extra staff to cope [with PACE admissions]. If three extra children came in on PACE tonight, the staffing levels would not change but we do have there members of staff ‘floating’ in case there is a problem with anxiety cases or a row or a fight.”<sup>19</sup>

Certainly, in the experience of Lisnevin, the lack of control which management experience regarding who they are required to admit confuses the centre’s objectives (is it a holding centre, a remand centre or a centre for treating and re-educating offenders?) and contributes to creation of a system which is criticised for failing to work in favour of the young people detained there.

The NIO informed the Human Rights Commission that it has had discussions with the police about the problem of the high use of detention in JJs under PACE. The outcome of these discussions is unknown.

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<sup>17</sup> NIO, Juvenile Justice Centre Statistics 2000.

<sup>18</sup> Commission interview with staff (No 11).

<sup>19</sup> Commission interview with staff (No 11).

## Recommendations

7. NIO, the Juvenile Justice Board and the Police Service of Northern Ireland (PSNI) should develop a joint strategy for reducing the levels of admission under PACE.
8. SSI should continue to monitor the use of PACE and place its findings in the public domain.

### *Cross over between care and custody*

Statistics show that a large proportion of young people who end up in juvenile justice centres have their background in the care system.

In 1999, for example, 48 young people (out of a total of 323) admitted to detention came directly from care establishments, while in 2000, that figure rose to 95 (out of a total of 330), nearly one third of the total admissions.<sup>20</sup> The figure is even worse for girls, considering that in October 2000, all of the admittedly small number of girls in Rathgael had come from the care system.

In cases studied in the Social Services Inspectorate review, 25% of young people entering custody were from Looked After Care.<sup>21</sup>

Figures show that children from care are also over-represented in terms of remandees in juvenile justice centres.<sup>22</sup> In 1999, of the 44 young people admitted from care establishments on remand under CJCO or under PACE, only three individuals went on to serve a Juvenile Justice Centre Order. In 2000, eleven children out of 88 were committed. These statistics highlight the disproportionate number of children remanded to custody vis a vis the number who receive a Juvenile Justice Centre Order. This suggests an inappropriate use of remand for children in care.

The Juvenile Justice Board commented that:

'The source of these admissions [from care backgrounds] is of great concern to us and on occasion, JJB staff have gone back to court to challenge the decisions of magistrates and judges and to advise on the appropriateness of placements – to no avail.'<sup>23</sup>

Interviews confirmed that some juvenile justice centre staff members also have concerns about the over-representation of young people from care:

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<sup>20</sup> NIO, Outcomes of Care Admissions, 1999 and 2000.

<sup>21</sup> SSI correspondence to the Commission, 29 January 2002.

<sup>22</sup> In 1999, out of the 48 admissions made direct from care establishments, four were directly committed with Orders, 25 were admitted on remand and 19 were admitted under PACE. In 2000, out of the 95 children admitted direct from care establishments, seven were directly committed with Orders, 46 were admitted on remand and 42 were admitted under PACE. NIO, Outcomes of Care Admissions, 1999 and 2000.

<sup>23</sup> Commission Correspondence from Chair of the Juvenile Justice Board, 22<sup>nd</sup> June 2001.

“... all of the young people are from care, if not from a residential home where they were under the auspices of a social worker.”<sup>24</sup>

“I’ve worked in children’s homes ...and you get a lot of the same people. A lot of them would have the same difficulties. You look at everybody’s file and you say it’s not one bit of wonder they’ve actually ended up in this system. And then you see that there is an unfairness because they’re in children’s homes and it’s very easy for them to get into this system.”<sup>25</sup>

I know with the Order, it’s meant to be more difficult but I still think it’s very easy [to end up in custody]. You assault a member of staff – which obviously is serious if you keep doing it – but you know it’s easy to get into this system. And once you get in, it’s not that easy for young people to get out.”<sup>26</sup>

A staff member concluded that inadequate staff training and resources in the care sector were important factors in children ending up in custody:

“I am not excusing these offences, but it highlights the fact that social services have not the training among their staff, nor the secure facilities to cope and deal with some of the children who are ending up in care.”<sup>27</sup>

This staff member wondered why Children’s Services Plans were not having more impact on the situation for children in care. They were also concerned that when children are bailed to secure (care) accommodation this time is not counted as part of their sentence, whereas if they have remained on remand in custody, the time in detention would be taken off the sentence. This situation was affecting girls more often than boys.<sup>28</sup>

One young interviewee who had made the transition from care to custody, told of how having run away from home, he was placed in a care institution in England where he got involved with ‘bad people’ and started taking drugs.<sup>29</sup> The phenomenon of ‘contamination’ resulting from children crossing over between care and custody would benefit from further research.

The issue of the cross-over between care and custody may be further exacerbated by the provision in the Justice (NI) Bill for a new Custody Care Order for 10-13 year olds.<sup>30</sup>

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<sup>24</sup> Commission interview with staff (No 15).

<sup>25</sup> Commission interview with staff (No 1).

<sup>26</sup> Commission interview with staff (No 1).

<sup>27</sup> Commission interview with staff (No 11).

<sup>28</sup> Commission interview with staff (No 11).

<sup>29</sup> Commission group interview with young people (No 10).

<sup>30</sup> See further the introduction to the report and chapter one above.

The introduction of this new Order will have clear implications for the care system in terms of already pressed resources.

The problem of young people from care backgrounds ending up in custody is one which demonstrates clearly the need for a co-ordinated and inter-departmental strategy.

*The need for specialist services*

Lack of appropriate, specialist care accommodation undoubtedly contributes to the overuse of remand to juvenile justice centres.

The 'Children Matter' review of residential child care services in Northern Ireland<sup>31</sup> reported in 1998 that there had been a reduction in residential provision over the past decade, while there remained a constant number of children requiring this provision. It identified gaps, including the need for more specialised and differentiated facilities. The types of services recommended included sub-regional specialist provision for example, units for children with psychiatric/psychological needs, or those who present a significant risk to other children. Differentiated local provision was recommended to include short stay units for emergency admissions and assessments, homes to support the wider welfare system, for example, providing space for children to reflect on their behaviour as well as homely living environments for children for whom fostering is not an option.<sup>32</sup>

As well as the issue of providing suitable accommodation, the problem of attracting and retaining well qualified staff for children's residential services was noted.

A 'task force', led by the Department of Health Social Services and Public Safety (DHSSPS) has been charged with fulfilling the recommendations of 'Children Matter'.

The number of places in secure care facilities in Northern Ireland has recently risen from eight to 15 but this has not resolved the crisis in residential provision.

The problems in the system were brought into sharp focus early in 2001 when 14 year old Gary Fenton fell tragically to his death from a block of flats after being released on bail because there was no suitable secure accommodation available. According to Mr Des Perry, a Northern Ireland magistrate, this is a tragedy which could happen again, given that: 'there has never been proper funding for secure accommodation in Northern Ireland for the very large number of young people who are greatly at risk.'<sup>33</sup>

The situation is illustrated by a case heard by Mr Perry in October 2001. Before the court were two boys in similar circumstances, one of whom was a 13 year old boy on minor charges of assaulting staff at a children's home and causing criminal damage. The court was told that a number of factors, including solvent abuse, had led to the assessment that the teenager was 'a classic candidate' for a secure (care) accommodation order.

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<sup>31</sup> Social Services Inspectorate, Children Matter: A Review of residential child care services in Northern Ireland, 1998.

<sup>32</sup> SSI, Children Matter, p21.

<sup>33</sup> McIntyre, J 'Vulnerable teens at great risk' Irish News, 26<sup>th</sup> October 2001.

However, a shortage of suitable care accommodation resulted in the boys being remanded to Lisnevin juvenile justice centre despite Mr Perry's concerns that:

'[He does not] like the thought of boys of this age in Lisnevin – a place which is effectively a prison.'<sup>34</sup>

The Commission understands that it is not unusual for children to be placed in care accommodation where they subsequently cause damage to the home or assault staff. These children are then brought before the court where the magistrate is informed by the relevant Trust that there are no secure beds available. While some are sent back to the care setting where staff are having serious difficulty in dealing with their behaviour, others are remanded to Lisnevin.

The Commission is aware that the Social Services Inspectorate (SSI) has recently completed an inspection of secure care accommodation and that its report is forthcoming. The Commission urges Government to take immediate and significant action following consideration of this SSI inspection.

International standards, including the UN Convention (Article 37), make clear that deprivation of children's liberty should be used only as a last resort. The Children (Northern Ireland) Order 1995 also places strict limitations on the deprivation of children's liberty through use of secure accommodation.<sup>35</sup>

The Commission therefore, concludes that there is a need for a range of specialist and differentiated residential services to preempt the need for secure accommodation and/or custody for as many children as possible. In those cases where secure accommodation is required it should be of an adequate standard, staffed with appropriate numbers of well-trained professionals and serve the aim of returning the child to a more open setting as soon as is practicable.

While provision of these services may be costly, the alternative of not addressing the needs of troubled and troublesome young people will be more costly, in terms of damaged lives as well as the future financial cost to health and social services and the criminal justice system.

## **Recommendations**

9. Government should develop an inter-departmental strategy aimed at reducing the use of custodial remand for children from care backgrounds.
10. Training should be provided for magistrates aimed at reducing custodial remand from the care system.

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<sup>34</sup> McIntyre, J 'Vulnerable teens at great risk' Irish News, 26<sup>th</sup> October 2001.

<sup>35</sup> Article 44 of the Children (NI) Order 1995.

11. There should be a review of training needs for staff in residential care homes aimed at reducing the movement from care to custody.
12. The Department of Health, Social Services and Public Safety (DHSSPS) should provide additional funding to develop a range of specialist and differentiated residential services for children taking into consideration the forthcoming inspection report of SSI on secure accommodation for children.
13. The DHSSPS should review the issues leading to the difficulty in attracting and retaining staff in residential services for children and take steps to address this problem.

*Pre-trial detention – the need for alternatives*

International human rights standards place a duty on the state to provide safe alternatives to pre-trial detention.<sup>36</sup> It is clear that there are few, if any, alternatives available in Northern Ireland, which is worrying given the small number of children eventually committed to serve a custodial sentence.

As noted above, lack of appropriate bail accommodation appears to be an important factor in magistrates' decisions to remand young people to custody. Several staff in the centres concurred with the call for more bail provision:

“We have kids arriving on remand because we have no alternative accommodation as opposed to the seriousness of the offence.”<sup>37</sup>

There is a particular need for bail accommodation in the geographical areas from which children are over-represented in custody, west Belfast being a notable example.<sup>38</sup> A staff member commented:

“70% of the children are jailed because of the geograph [ical area] they live in. These areas need to be looked at and accommodated for and it's up to the communities to look at it and try to develop it.”<sup>39</sup>

They urged Government to explore the possibility of developing bail accommodation in local communities:

“They need small pockets in different areas and they need their own areas. I think there are enough good people in the communities to set up these hostels and run them but they can't run on fresh air.”<sup>40</sup>

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<sup>36</sup> Rule 13.2 Beijing Rules.

<sup>37</sup> Commission interview with staff (No 11).

<sup>38</sup> This view was shared by the Criminal Justice Review Group, 2000. See Recommendation 176 para ii.

<sup>39</sup> Commission interview with staff (No 11).

<sup>40</sup> Commission interview with staff (No 11).



A member of Rathgael staff felt that there is little point in bailing young people into the community if adequate resources are not available to ensure that they don't get into trouble:

“They cannot just be bailed to return in a month, there has to be other facilities within the community, reporting and some sort of a bail programme. We need to look at all issues of keeping them off the streets.”<sup>41</sup>

They felt it particularly disastrous that programmes for young people tend to be shut down at weekends when that is the most vulnerable time for young at risk of offending.

In 1999, the Social Services Inspectorate called on the NIO to review the need for bail legislation and to consider the merits of introducing bail support schemes as a means of reducing the number of what it saw as ‘unnecessary remands’.<sup>42</sup>

In 2000, the Criminal Justice Review recommended the piloting of bail information and support schemes and the development of bail hostel accommodation specifically for juveniles in order to cut down on their custodial remand.<sup>43</sup> Moreover, the Government's implementation plan for the Review envisages developing bail accommodation in conjunction with the voluntary sector and other statutory providers and putting bail pilot schemes in operation by spring 2002.<sup>44</sup>

## **Recommendations**

14. NIO should urgently progress the recommendation of the Criminal Justice Review Group that bail accommodation and support be established for young people.
15. Other forms of alternative to custodial remand including remand fostering should be developed.
16. NIO should fund pilot diversionary programmes including cover at night and weekends when young people may most need support. These should provide the opportunity for young people to drop-in and find a safe, mature reception. These programmes should be evaluated independently.
17. NIO should facilitate research and engage in consultation with expert practitioners in the area in order to identify which alternatives would serve the needs of vulnerable children in Northern Ireland. Government should make the necessary funding available to enable the lives and health of these children to be guaranteed.

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<sup>41</sup> Commission interview with staff (No 15).

<sup>42</sup> SSI, Report on the Inspection of Lisnevin JJC, 1999, p12.

<sup>43</sup> Recommendation 176, Northern Ireland Criminal Justice Review, 2000.

<sup>44</sup> Criminal Justice Review Implementation Plan, 2 November 2001, p 68.

## **Chapter 3**

### **Meeting the needs of children in custody: induction, assessment and planning**

#### **International standards**

It is widely acknowledged that if detention of young people is to have a positive effect it must involve a serious and co-ordinated effort to address the problems giving rise to the young people's offending behaviour and prepare them for life following release.

Interventions with young people are more likely to be successful if both they and their families participate in the planning process.<sup>1</sup> For practical reasons and in recognition of children's participation rights, international standards stress the need to inform young people about the institution in which they are detained and the applicable regulations. Thus, the UN Rules for the Protection of Juveniles Deprived of their Liberty require that all young people receive a copy of the rules governing the detention centre and a written description of their rights and obligations in a language they can understand.<sup>2</sup> They should be helped to understand the regulations governing the detention centre, the goals and methodology of the care provided and the disciplinary requirements and procedures. In addition, young people should be given details of the complaints procedures and advised as to methods of seeking information, including legal advice.<sup>3</sup>

International standards stipulate that children in detention should be interviewed and a psychological and social report prepared in order to identify any factors relevant to the specific type and level of care and programme required by each child. This report should be combined with the medical report for the purposes of determining the most appropriate placement for the young person within the Centre, and the specific type and level of care and programme to be pursued. Subsequently, trained personnel should prepare a written, individualised treatment plan, specifying treatment objectives and the time-frame within which it should be achieved.<sup>4</sup>

Central to securing an effective assessment and monitoring process which enables young people to return safely to society on release is a modern, comprehensive system for recording, storing and communicating information. Thus, international standards stipulate that each juvenile justice centre must have a complete and secure record of information relating to the identity of every young person in the centre, their commitment details, including the reasons for their detention and admission and release or transfer dates, family contact information and details of known physical and mental problems including addiction.<sup>5</sup>

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<sup>1</sup> See Horgan and Sinclair, *Planning for Children in Care in NI*, 1997.

<sup>2</sup> Rule 24, UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (UN Rules).

<sup>3</sup> Rule 25, UN Rules.

<sup>4</sup> Rule 27, UN Rules.

<sup>5</sup> Rule 21, UN Rules.

International standards also require that all reports, records and other information should be placed in a confidential individual file, which is kept up to date, accessible only to authorised personnel and classified in a way that is easily understood.<sup>6</sup>

Where possible, young people should have the right to contest any fact or opinion contained in their file in order to permit the correction of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of children shall be sealed, and, at an appropriate time, expunged.<sup>7</sup>

This chapter examines the extent to which juvenile justice centres meet these international obligations in the areas of young people's information rights on reception, assessment of children's needs, planning and review and record keeping. Planning for return to the community, which is also relevant to the rights above, is discussed in chapter 4.

## **Law, policy and practice**

### *Reception and Induction*

Northern Ireland Office (NIO) Standards require that each young person take part in an induction programme, which is designed to establish positive relationships with young people, to help them to adjust to life in the Centre and to set clear expectations about their behaviour while in the centre and after release.<sup>8</sup> The Juvenile Justice Centre (Northern Ireland) Rules also require that upon reception, a child shall be provided with sufficient information, in written and oral form, to enable him or her to understand the requirements of the centre.<sup>9</sup> These standards are in general compliance with international standards in this area.

In practice, some parts of the induction process comply with international standards, but there is room for improvement. Both Rathgael Juvenile Justice Centre and Lisnevin Juvenile Justice Centre have produced brief, simply worded booklets which explain to young people how the centres operate.<sup>10</sup>

Both handbooks provide useful, basic guides to young people about the running of the centres. Booklets with similar content are also produced for families.<sup>11</sup> Given that parents are often well placed to explain and discuss issues with their children, consideration should be given to providing them with documentation about the centre that provides more detail and is more comprehensive.

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<sup>6</sup> Rule 21, UN Rules.

<sup>7</sup> Rule 19, UN Rules.

<sup>8</sup> NIO, *Statements of Standards and Criteria for Juvenile Justice Centres in Northern Ireland, 1999* Standard 4: Care of the Young People.

<sup>9</sup> Rule 22(1) Juvenile Justice Centre (Northern Ireland) Rules, 1999.

<sup>10</sup> Lisnevin JJC, *You have arrived! what next?*, Rathgael JJC, *Guide for Young People*.

<sup>11</sup> Lisnevin JJC, *Information Book for Friends and Family*; Rathgael JJC, *Guide for Parents*.

In order to ensure that the information available to young people meets fully international standards some additional material should be provided.

In compliance with international standards, young people must have access to the rules of the juvenile justice centre in a language they can understand. The documentation of both centres outlines some of their (internal) basic rules and suggests that young people can have access to the juvenile justice centre rules if requested. The Commission has two concerns here. First, it regards it as unreasonable to require young people to request the rules and considers that this information should be available to all young people automatically. Second, the rules do not exist in child-friendly form meaning that certain children may be unable to access them in a way that they can understand.

On admission to the centres, young people receive a handbook describing how the centre works and other leaflets with useful information. However, the induction material which children receive does not appear to cover adequately the goals and methodology of the care in the centres.<sup>12</sup> Although it provides basic information on the centre, the Commission considers the information to be insufficient to provide young people entering custody for the first time with a complete understanding of these issues. The SSI has noted, for example, that more needs to be done to impress on young people at admission the expectation of involvement in the centre's programmes that exists.<sup>13</sup> The Commission shares this understanding.

Each centre's handbook describes its complaints procedure. Rathgael's booklet for families contains a tear-off slip for families to forward any complaints or concerns they might have to the director. Although the Juvenile Justice Board has assured the Commission that copies of the child protection procedures are available for young people,<sup>14</sup> it is unclear what version of the document this refers to and whether it is child-friendly.<sup>15</sup>

SSI has suggested that production of a video about the centres may increase understanding among young people and their families about its objectives.<sup>16</sup> The Commission fully supports this recommendation.

On admission young people receive information on 'Chalky', the Children's Law Centre's free information and advice line and a contact card, which sets out who to contact for information or queries. Moreover, it is stated throughout the handbooks that staff are there to help and that young people uncertain about anything should just ask. Good relations between staff and young people clearly facilitate this. At the same time, the willingness of staff to help in this regard should not be used to circumvent the need to provide a comprehensive induction programme to every young person admitted to the

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<sup>12</sup> See Lisnevin JJC, You have arrived ! what next? and Rathgael JJC, Guide for Young People.

<sup>13</sup> SSI, Unannounced Inspection of Lisnevin JJC, 1<sup>st</sup> December 2001, p 6.

<sup>14</sup> Commission correspondence from the Juvenile Justice Board, 18<sup>th</sup> February 2002.

<sup>15</sup> See further chapter 5 for concerns that the child protection procedures available are out of date.

<sup>16</sup> SSI, Unannounced Visit to Lisnevin JJC, April 2001.

centre, designed to introduce them to staff, explain the centre's code of conduct and rules, and provide them with important introductory information.

The requirement to provide this information should be set out in staff procedural manuals, which should also make clear whose function it is to ensure that young people are made aware of their responsibilities and are informed of their rights and privileges on admission. Lack of certainty about roles in this area may mean that not every young person gets the vital introduction to the Centre necessary to maximise the positive effect of their placement.<sup>17</sup>

Young people spoke of varying experiences and expressed mixed views to the Commission about the induction process. These views are outlined below.

One boy at Lisnevin told of his positive experience of induction. He explained that as soon as he arrived a key worker was waiting, gave him a booklet about the rules of the centre and the daily programmes and offered to explain anything that was unclear.<sup>18</sup>

However, another committed boy said that:

“As soon as you get into Lisnevin you're put in your room for an hour, 'til the nurse comes and sees you and then you're out on the floor.”<sup>19</sup>

One girl in Rathgael interviewed by the Commission described the reception process as follows:

“You come in here [office] and get searched. ... You get something to eat and go up and watch TV. ... [then] your key worker takes you into the office and explains to you how long you're going to be here for and all that there.”<sup>20</sup>

In Lisnevin, practice appears to be inconsistent and according to staff interviews with the Commission, time spent with young people on arrival may vary from ten minutes to forty. This is not surprising given numbers of young people in Lisnevin at any one time, and the fact that young people can arrive unexpectedly under PACE.

In both centres, staff clearly make themselves available informally to young people who may need help at this time and the young people interviewed by the Commission reported that staff were supportive following their admission, saying they just had to ask for help.

However, there does not appear to be a formal induction programme in place at either Rathgael or Lisnevin and there is no record kept as to whether a sufficiently comprehensive introductory session has been completed with each young person.

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<sup>17</sup> Note the concerns of SSI in its recent unannounced inspection of Lisnevin JJC, 1<sup>st</sup> December 2001, p 6.

<sup>18</sup> Commission interview with young person (No 3).

<sup>19</sup> Commission interview with young person (No 4).

<sup>20</sup> Commission interview with young person (No 5).

## Recommendations

1. The induction material available to children should be comprehensively reviewed by juvenile justice centre management for compliance with international standards.
2. NIO should publish a child-friendly version of both the Juvenile Justice Centre (NI) Rules 1999 and Statements of Standards and Criteria for Juvenile Justice Centres, 1999.
3. Each centre should put a formal induction programme in place for every young person admitted to comply with domestic and international requirements. Policy should be established on whose role it is to provide this induction programme to young people, what the content of the programme should contain and the completion of the programme should be recorded. Those working in admissions should be appropriately trained.
4. Juvenile justice centre management should explore the possibility of involving young people in the centres and/or past residents in production of induction material.
5. NIO should produce a video for use with young people and their parents as part of the induction process.

### *Assessment, planning and review*

The Juvenile Justice Centre Rules require that each child be assessed with a view to ascertaining their 'educational, training, emotional and developmental needs for the purpose of devising an individual programme to prepare a child for his return to the community.'<sup>21</sup> The rules contain no detail regarding when this assessment should take place or stipulating the timescale which should be applied to its implementation. The NIO Standards require a full assessment of children's individual needs and problems and a flexible, individual action plan for meeting as many of those needs and tackling *as many of those problems as possible* (emphasis added).<sup>22</sup> Although this focus on assessment of the child's needs is compatible with international standards, the italics reflect an acceptance that there are limits on what the centres can achieve. Low expectations are also contained in NIO conclusions about procedures to be followed regarding reception, initial assessment, and transfer between centres.<sup>23</sup> Even though these stress the importance of identifying each young person's special needs on admission, they state clearly that neither centre can expect to meet children's needs fully.

Practice in the juvenile justice centres regarding assessment and review has varied widely, attracting considerable criticism in the past. In 1997, for example, SSI described the planning arrangements in Rathgael as 'weak' and in 1999, the inadequacies in the

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<sup>21</sup> Rule 21(2), Juvenile Justice Centre Rules (Northern Ireland) 1999.

<sup>22</sup> NIO, Statements of Standards and Criteria for Juvenile Justice Centres in Northern Ireland, 1999, Standard 1.

<sup>23</sup> NIO, Juvenile Justice Centres: Reception, Initial Assessment and Transfer between Centres, March 1999.

system in operation in Lisnevin, as recognised by management there, were also criticised by SSI.<sup>24</sup>

The main problems identified by SSI were:

1. delays in undertaking the assessment, and
2. failure to undertake a comprehensive multi-disciplinary assessment.

The Commission finds that there has been some improvement in these areas but that the system for assessment, planning and review is not yet fully compliant with international standards.<sup>25</sup>

In both centres, when children are admitted staff on duty fill in a brief admission form.<sup>26</sup> The value of these initial forms is questionable. For example, the Lisnevin form asks 12 questions regarding risk factors including history of violence, drugs or self-injury; previous offending behaviour; possible illness or mental disturbance and family life. However, this is in the nature of a tick box exercise rather than a detailed assessment and there is little space for staff to write details about young people's experience or needs. Rathgael's initial assessment form has the benefits of more space for information and a question asking whether the young person was willing to cooperate with the work suggested.

Following induction, both centres use a more comprehensive assessment package entitled 'Justice Centres Assessment Package and Self-Reporting Offending Assessment'. This covers health, family background information, education, personal social and emotional characteristics, self-reporting assessment, offence analysis. This is completed by social work staff in collaboration with the young person.

Input into this assessment is sought from other agencies. However, relevant staff repeatedly complained of problems with regard to getting adequate information about young people from outside agencies. These difficulties contribute to incomplete assessment of the child's needs and contribute to delay in the process.

Weaknesses in the assessment process are illustrated by practice in Lisnevin although the problems experienced there are symptomatic of the system as a whole. For example, although young people admitted to Lisnevin undergo a medical on arrival, this is not taken into account in the development of a treatment plan, as international standards require, but is retained in the medical centre.

Secondly, it appears that young people do not routinely undergo a psychological assessment following admission, something which is directly related to the lack of staff in this area and which is discussed in greater detail in chapter 7 below. This failure to address the emotional and psychological needs of young people as a positive part of a

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<sup>24</sup> See SSI, Report on the Inspection of Lisnevin JJC, 1999.

<sup>25</sup> This analysis is based on consideration of records by the field worker in Lisnevin on 18 January 2001 and in Rathgael on 3 and 5 January 2001.

<sup>26</sup> In Lisnevin this is the 'initial assessment form' and in Rathgael an 'initial pupil information sheet'.

treatment and rehabilitation programme threatens to undermine the entire assessment process and is a matter of serious concern.

Finally, when the fieldworker conducted her work in Lisnevin in 2001, it was apparent that the medical part of the assessment form was filled out by the partnership development officer, a non-medical member of staff. Given the incompatibility with international standards which this suggests, the Commission welcomes the confirmation by the Juvenile Justice Board that the medical assessment is completed by a qualified nurse.<sup>27</sup>

The Commission welcomes the fact that current practice in both centres is to conduct weekly reviews in respect of both committed young people and longstanding remands.<sup>28</sup>

These review meetings are interagency based. For example, in an unannounced visit report, SSI noted that a review meeting had involved several social workers, a child therapist and the child's former foster parent.<sup>29</sup> However, the Commission understands that the centres are not always successful in arranging multi-agency involvement in reviews. For example, representatives from the child's school are often not in attendance.

SSI has recommended to NIO that a multi-agency assessment and review panel be established to undertake a monitoring and co-ordinating function.<sup>30</sup> Its role would be to oversee allocation of young people to programmes, review their placement location (eg between different units in the new centre when built) and evaluate their achievement and progress throughout remand, custody and supervision in the community. The panel would also receive reports on each young person's progress at the completion of the Order which will be copied to the juvenile justice centre.

According to SSI, this would ensure that the process of assessment (including risk) and review is carried out effectively; that the young person and his/her family are informed and involved and the skills of staff of all disciplines are properly harnessed and deployed throughout the currency of the Order.

The Human Rights Commission considers that the setting up of such a panel would improve inter-agency involvement in line with international standards. With regard to the placement location, however, the Commission recommends that the process incorporate the right of the young person to put their views to the panel and to appeal its decisions.

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<sup>27</sup> Commission correspondence from the Juvenile Justice Board, 18<sup>th</sup> February 2002.

<sup>28</sup> Commission correspondence from the Juvenile Justice Board, 18<sup>th</sup> February 2002.

<sup>29</sup> SSI, Unannounced visit to Rathgael JJC, July 2001.

<sup>30</sup> Commission correspondence from SSI, 29 January 2002.



Children's parents are also invited to review meetings although rates of take-up are not known to the Commission. SSI has noted that parents are keen to get involved in their child's care while in custody.<sup>31</sup>

In a previous study of planning for children in care in Northern Ireland, Horgan and Sinclair found a lack of involvement of children in drawing up their care plans and in the review process.<sup>32</sup> During this investigation, centre staff assured the Commission that key workers discuss care plans with young people to ascertain their views. Furthermore, according to the Juvenile Justice Board, 'evidence of take-up invitations to review meetings is clear in the files as is that of young people attending case reviews'.<sup>33</sup> The Commission welcomes this confirmation that all young people are now actively encouraged to attend their reviews and is optimistic that the multi-agency assessment and review panel proposed by SSI would integrate further the right of the child and his/her parents to be involved in this process.

Overall, it is clear that assessment of the child's needs and effective planning can only achieve full implementation of international standards if sufficient resources are there to meet the needs identified. As the chapters on rehabilitation (4), health-care (7) and education (9) demonstrate, resources are lacking in all these areas.

It is clear that change is possible from the fact that the centres have improved their practice in this area in recent years, with particular reference to enhanced information and improved communication between staff. In order to make further advances in this context, and to ensure that the process of admitting every young person is completed in line with international standards, NIO is urged to invest further in the resources of juvenile justice centres, particularly by appointing specifically qualified staff and offering further training to existing staff in this area. Only improved resources will deliver the necessary training and opportunities to staff to enable them to put the theory into practice.

## **Recommendations**

6. The child's right to a multi-disciplinary programme should be set out both in Northern Ireland Office and juvenile justice centre policy documentation, whose standards should reflect, more ambitiously, what can be achieved with the young people who serve a custodial sentence.
7. The Juvenile Justice Centre (NI) Rules 1999 should be amended to provide when the child's assessment should take place and stipulating the timescale to be applied to its implementation.
8. NIO should consider amending its documentation to make a more positive statement about the fulfilment of a child's needs in custody in line with the requirement in the

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<sup>31</sup> SSI unannounced visit to Lisnevin, September 2001.

<sup>32</sup> Horgan, G & Sinclair, R, *Planning for Children in Care in Northern Ireland*, London: National Children's Bureau, 1997, 144-145.

<sup>33</sup> Commission Correspondence from the Juvenile Justice Board, 18<sup>th</sup> February 2002.

NIO Standards that the progress of each young person is closely monitored, recorded and regularly reviewed.

9. The development and implementation of an individual multi-disciplinary assessment and treatment plan for each young person in detention must be a stated priority for each juvenile justice centre, set out in the mission statement.
10. Translation of this policy into practice should involve all of the centre's professional and trained staff, including medical, psychiatric and educational staff, as well as those with knowledge and interest in the young person's past and future, including social services, probation and educational authorities, as well as parents and the young people themselves. The Commission recommends that the centres draw up policy requiring:
  - that every individual placed in the centre be assessed as soon as possible (within a strict time limit) following arrival;
  - that every young person receive an individualised action or treatment plan, containing clear objectives, timescales and review dates; and
  - that a process of frequent and systematic review be put in place, involving the recording of all relevant progress and incidents, such as misbehaviour, sanctions applied and the use of restraint, on each young person's file.
11. The Commission supports the recommendation of SSI for the establishment of a multi-agency assessment and review panel, which should incorporate an appeals mechanism.
12. Juvenile Justice Board should continue to encourage and facilitate the meaningful participation of young people in the planning and review process in compliance with Article 12 of the Convention on the Rights of the Child. JJB and the Social Services Inspectorate should monitor the rate of take-up by young people and their parents of the invitation to review meetings.
13. NIO standards should be revised with a view to amplifying the emphasis on the participation of children and their families in the assessment, treatment and review processes.
14. Government should make available the resources necessary to achieve full implementation of international standards in this area.

#### *Information & Record Keeping*

The importance of having in place a comprehensive and up to date information system is not reflected in domestic law or policy relating to juvenile justice centres.

The Juvenile Justice Centre Rules are silent on this issue. The NIO Standards address the need to monitor and record each young person's progress, and also requires that mechanisms be put in place to monitor and evaluate the effectiveness of each 'action

plan'.<sup>34</sup> However, the standards make no suggestion as to the sort of systems that should be in place, or principles that should guide the achievement of this goal. Nor is this level of detail found in centre documentation.

The Commission finds inadequacies in the standard of record keeping and maintenance of young person's files in the juvenile justice centres.

SSI has reported that record keeping is erratic and inconsistent. In its 1999 report on Lisnevin, for example, it criticised the fact that incidents that occurred, and other important matters such as the sending of a child to the isolation unit, 'were often not fully recorded in the case files'.<sup>35</sup> It has also criticised a failure to keep young people's files up to date and keeping poor records of the boys' progress and development.<sup>36</sup> When the Commission inspected files in Lisnevin in January 2001 it found that the files had been completed in hand-writing and while some sections were blank and had no information, information written in others was illegible. This failure to maintain records and files in an up-to-date, comprehensive, tidy and legible manner reveals poor management supervision and is a matter of serious concern.

The failure to maintain comprehensive records on each young person in the centre is explained partly by difficulties external to the centres. The poor availability of background information is a particularly serious matter and the lack of information from former schools, social services, other juvenile justice centre placements or concerning medical or psychological interventions<sup>37</sup> suggests that poor record keeping exists throughout the system. Poor communication exacerbates matters further given that when young people are transferred from one institution to another, the information that comes with them is often inadequate.<sup>38</sup>

Regardless of its root cause, this lack of information and complete records threatens to undermine the assessment of the young person's situation and the development of any individualised action plan designed to address his/her needs. Moreover, in some cases, the failure to record all essential information, especially in relation to the individual's medical and psychological history, may have far reaching and damaging consequences.

It appears that the effectiveness of the record keeping in the centres is also undermined by the nature of the forms used. In its investigation the Commission found that some of the forms used in the centres permit too little detail to be recorded. For example, staff regularly change the wording of the self-injury form by hand, which suggests that the form's rigid style is inadequate and should, where appropriate, be replaced with a more open format.

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<sup>34</sup> NIO, Statements of Standards and Criteria for Juvenile Justice Centres in Northern Ireland, 1999, Standard 3, Criteria 7.

<sup>35</sup> SSI, Report on the Inspection of Lisnevin JJC, 1999, p 14.

<sup>36</sup> See SSI, Report on the Inspection of St Patrick's JJC, 1999, p 15.

<sup>37</sup> See SSI, Report on the Inspection of Lisnevin JJC, 1999, p 22.

<sup>38</sup> See SSI, Report on the Inspection of St Patrick's JJC, 1999, p 12.

There does not appear to be any policy on the issue of confidentiality. It is unclear, therefore, whether young person's files are considered to be confidential in the centres and if not, who has access to them. The principle of confidentiality should underline the record keeping system in the centres as a rule although there will be circumstances in which it will be necessary to share that information in order to protect the young person's best interests. Without guidance from the NIO or management, however, access to information by those who need it will remain problematic. For example, it is current practice in the Centres that certain information, such as that relating to education or health, is confined to the relevant unit rather than available in a central register. Difficulties also exist with regard to social workers seeking access to psychological reports.

It does not appear to be established practice for young people to enjoy the right to study their own files or to correct inaccurate facts recorded. This was policy in St Patrick's<sup>39</sup> where young people were, on occasion, permitted to study their case record.

### **Recommendations**

15. The entire system of recording and maintaining records should be completely overhauled as a matter of urgency.
16. A clear and detailed policy needs to be developed to govern comprehensive, accurate and effective record-keeping, incorporating complete computerisation of the current system and disposal of files within a reasonable period of time.
17. Individual files should contain a comprehensive account of the young person's background and current position, including legal, medical, educational and family/social details and history. Each file should be properly maintained and kept up to date at all times and all incidents and developments concerning the young person should be recorded on the file.
18. Young people should be entitled to access the file as part of monitoring their own progress and in the interests of transparency, the young person or another acting on their behalf, should be permitted to read the file with a view to correcting or disputing any factual details or reports.
19. A policy of confidentiality should be applied and access to the file should be restricted to specific, authorised personnel. Computerisation of the system will also enable the file to accompany the young person as s/he moves through the system and on release of the young person it should be sealed and expunged in accordance with international standards.

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<sup>39</sup> See SSI, Report on the Inspection of St Patrick's JJC, 1999, p 14.

20. NIO should make the appropriate resources available to enable all staff to receive the training necessary to facilitate a smooth transition from manual record keeping to computerisation and the implementation of the above standards.
21. In the lead up to the establishment of a new juvenile justice centre, staff and files should be prepared for computerisation. Investigations should also take place into the most effective and efficient system available to do this work and consultation should begin as to how procedures, particularly of recording and having access to the information, should be developed. This should include permitting access by third parties, such as any independent monitoring body, to ensure that the highest standards are maintained and files are comprehensible to all as required.

## Chapter 4

### The child's right to rehabilitation and reintegration into the community

#### International standards

International human rights standards demand that the entire youth justice system be based on the principles of re-education, development of a sense of responsibility and respect for the rights of others, and reintegration of the child into the community.<sup>1</sup> They emphasise the need to prevent offending; divert from the formal court system and undertake rehabilitative work within the community.<sup>2</sup> Detention is seen as a last resort and it is recognised that supporting children's rehabilitation will also benefit the wider community to which they will ultimately return.

Children deprived of their liberty have a right, recognised by international standards, to be guaranteed the benefit of meaningful activities, and programmes aimed at developing their potential as members of society.<sup>3</sup> These programmes should be planned and developed on the basis of reliable, scientific research findings, and periodically monitored, evaluated and adjusted accordingly.<sup>4</sup>

Children themselves should be involved in the formulation, development and implementation of programmes.<sup>5</sup>

All young people should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release.<sup>6</sup>

It is the aim of this chapter to examine the extent to which juvenile justice centres meet these international obligations. It looks at the stated objectives of custody; the extent and effectiveness of work on offending behaviour carried out in the centres; the liaison between probation and juvenile justice centres in preparation for the second half of the sentence; and preparation for the child's return to the community.

#### Law, policy and practice

##### *Stated objectives of custody*

According to Article 51 of the Criminal Justice (Children) Order 1998 (CJCO), juvenile justice centres are places in which those serving Juvenile Justice Centre Orders may be detained, given training and education, and prepared for their release. According to the

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<sup>1</sup> Article 37 (c) and 40 UN Convention on the Rights of the Child.

<sup>2</sup> Principles 5 and 6, UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) 1990.

<sup>3</sup> Rule 12 UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (UN Rules) and Rule 26 UN Standard Minimum Rules for the Administration of Juvenile Justice 1985 (the Beijing Rules).

<sup>4</sup> Principle 48, Riyadh Guidelines.

<sup>5</sup> Principle 50, Riyadh Guidelines.

<sup>6</sup> Rule 79, UN Rules.

Government, 'the aim of the order is to plan from the first day for successful rehabilitation and to that end an individual plan should be drawn up for each child'.<sup>7</sup>

The importance of working with the child in the community is expressed through the non-custodial element of the sentence which is carried out under probation supervision.

Northern Ireland Office (NIO) documentation suggests that one of the principal objectives of the juvenile justice centre is to:

'challenge and reduce offending behaviour, through the provision of programmes to address such behaviour and by responding to individual needs identified through the assessment procedures.'<sup>8</sup>

NIO Standards require that 'each young person is subject to an individual offending behaviour programme which is consistent with his/her assessment and other elements of the action plan' and that there be mechanisms in place to develop, monitor and evaluate the effectiveness of such programmes.<sup>9</sup> This sets a very high standard, implementation of which would ensure to the maximum extent possible that detention for young offenders is an effective and beneficial process.

The Juvenile Justice Centre Rules provide little detail about the general objectives of rehabilitation suggesting only that 'young people will be supported in working towards this goal'.<sup>10</sup>

The SSI has recently expressed concerns regarding the failure to communicate to young people on admission the expectation of involvement in programmes designed to achieve reintegration and rehabilitation.<sup>11</sup> Clearly, if the goals are not set out clearly in the centre's documentation, then it is difficult to provide such information in a clear manner to young people.

Lack of available information makes it difficult to assess the effectiveness of work being carried out in the Centres on children's offending behaviour. The Northern Ireland Office is unable to provide figures for recidivism. Moreover, there have been no published Social Services Inspectorate inspection reports on the Juvenile Justice Centres since 1997 in the case of Rathgael and 1999 in the case of Lisnevin.<sup>12</sup>

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<sup>7</sup> Second Report to the UN Committee on the Rights of the Child by the United Kingdom 1999, London; Stationery Office, 1999, para 10.43.14.

<sup>8</sup> NIO, Aims of the Juvenile Justice System, February 1999.

<sup>9</sup> NIO, Statements of Standards and Criteria for Juvenile Justice Centres in Northern Ireland, 1999, Standard 6: Tackling Offending.

<sup>10</sup> Juvenile Justice Centre Rules (Northern Ireland) 1999, Rule 3 (1) (e).

<sup>11</sup> SSI, Unannounced Inspection of Lisnevin JJC, 1<sup>st</sup> December 2001, p 6.

<sup>12</sup> It was agreed with NIO that SSI would rely on informal regular unannounced inspections (which are detailed but not published) given the fluid situation regarding changes of numbers, low occupancy at Rathgael and potential amalgamation. Commission correspondence from SSI, 29 January 2002.

## Recommendations

1. Government should revise the Juvenile Justice Centre (NI) Rules 1999 to provide greater detail to young people about their entitlement to rehabilitative programmes, and how these will be delivered and monitored.
2. The objectives of such programmes should be explained to young people on admission.
3. The Northern Ireland Office should produce regular statistical evidence relating to recidivism rates for children in custody.

### *Working with children on their offending behaviour*

Attempts to achieve the stated objectives have faced practical difficulties and it is apparent from the evidence below that although improvements have been made, practice in this area does not yet fully comply with international human rights standards.

### Monitoring recidivism rates

The material below focuses on the structured work which takes place in juvenile justice settings. However, it is important to note that unstructured contact, which involves simply listening to young people, is an important part of helping them with offending behaviour. As one staff member in Lisnevin commented:

“One child came in and everyone thought he was bad. He’d had a troubled life and he just needed someone to talk to and listen to him.”<sup>13</sup>

The difficulties facing children and staff can be seen in some comments made by young people about their offending behaviour. Most of the young people hoped not to reoffend and did not want to come back to custody but knew that this would be hard to achieve:

“I’ve a funny feeling that I’ve a high risk of re-offending, but I’m going to try and keep myself under control. I’m just going to try my best not to get into trouble. I think I’ve changed.”

“I was lying in my bed one night in here and thinking what am I achieving? What am I getting for getting into trouble? six months in a juvenile justice centre – that’s not very good. I was just thinking about all the people that I’m stealing their cars and breaking into houses. ... I love stealing cars, I get a wee buzz out of it. I’ve just been thinking in my head, I’ve just went off it. I don’t think its exciting anymore.”<sup>14</sup>

Another young person said that he did not think he needed to talk to anyone about his offending behaviour because

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<sup>13</sup> Commission interview with staff (No 13).

<sup>14</sup> Commission interview with young person (No 7).



“I know why I’m here and what I did. ... stupid things to do with drink and wanting money.” He thought that he would not reoffend because “I hate being locked up”. He said that “your keyworker and co-worker would talk with you about your offending if you asked them but you don’t have to do anything if you don’t want to.”<sup>15</sup>

The young people had different views about whether the experience of custody would have an impact on their offending behaviour: one thought being in custody would make a difference to him: “It made me not to fucking doing reoffending and stuff like that there”.<sup>16</sup> However, this was his second time receiving a Juvenile Justice Centre Order.

In contrast, another boy felt that custody was not going to work for him:

“It’s more or less like a holiday camp. All you’re doing is going to bed, getting your activities. This place isn’t going to stop you from doing criminal things. Definitely not!”<sup>17</sup>

Moreover, this boy, who had spent a lot of time in children’s homes, said he liked Lisnevin so much that he would deliberately get into trouble to be returned there:

“If I’d known about this place when I was 13 I would never have been out of trouble”. He continued: “you make all mates in here with the staff and then you just want to come back to see them and all, so you do more crime and come back in.”<sup>18</sup>

It is clear that staff and children face an uphill struggle in achieving rehabilitation, and the pessimism expressed by certain staff members with regard to promoting change in young people who offend may be understandable, there is a danger that low expectations may become accepted. According to Lisnevin management:

“the Centre is a Juvenile Justice facility which exists to rehabilitate juvenile offenders in a regime which challenges offending behaviour in a safe and secure environment.”<sup>19</sup>

This is in keeping with international human rights requirements. However, in the same document, Lisnevin management takes a pessimistic view that:

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<sup>15</sup> Commission interview with young person (No 3).

<sup>16</sup> Commission interview with young person (No 4).

<sup>17</sup> Commission interview young person (No 3).

<sup>18</sup> Commission interview young person (No 3).

<sup>19</sup> Future Juvenile Justice Residential Provision in Northern Ireland – a Lisnevin Perspective, February 2000, section [3] .

“since it is anticipated that only the most serious and persistent offenders will be placed at Lisnevin, one should not expect a highly significant decrease in the level of recidivism.”<sup>20</sup>

This statement together with the pessimism expressed by other individual staff members is both worrying and understandable. While slightly more optimistic, the strapline along Rathgael’s material for children and families reads ‘Working to reduce Juvenile Offending’ [emphasis added].

International human rights standards set a high standard in terms of supporting young people to overcome their offending behaviour. Pessimism about the chances of success may reflect reality in the present circumstances but it suggests ultimately that children’s rights are not being fully met here. In this regard, it is important that the opportunity which the new centre provides to place renewed emphasis on achieving positive change in a manner consistent with respect for children’s rights, be grasped by all.

The Commission welcomes the improvement in both centres in the range of programmes on offending behaviour.

SSI records that drug awareness, dealing with addiction, anger management, ‘taking care-taking control’, ‘offending is not the only choice’, crime-pics, attitude inventory and ‘challenge initiative’ are all ways in which rehabilitative work with boys is happening in Lisnevin. Additionally, positive partnership work is taking place between Lisnevin and outside agencies such as the Community Safety Centre and Dunlewy Substance Abuse Centre.<sup>21</sup>

In Rathgael Juvenile Justice Centre, SSI noted that programme sessions were taking place aimed at gauging ‘victim awareness’ and examining the young people’s attitudes.<sup>22</sup> Information for young people in Rathgael tells them that they will receive group work and one-to-one sessions. The range of topics for discussion at these include drug awareness, health education, offending and family problems.<sup>23</sup> One young person interviewed in Rathgael mentioned that they had received drugs education but that: “it never works”.<sup>24</sup>

The Rathgael information booklet for parents explains that they will be asked to contribute to their child’s programme of work on offending behaviour.<sup>25</sup> The Commission has no evidence to show the extent to which this is taken up but the intention is certainly in keeping with international standards.

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<sup>20</sup> Future Juvenile Justice Residential Provision in Northern Ireland – a Lisnevin Perspective, February 2000, section [3].

<sup>21</sup> SSI, Unannounced Inspection of Lisnevin Juvenile Justice Centre, 11<sup>th</sup> – 17<sup>th</sup> January, 2000.

<sup>22</sup> SSI Unannounced visit to Rathgael, March 2001.

<sup>23</sup> Rathgael, Guide for Young People.

<sup>24</sup> Commission interview with young people (No 10).

<sup>25</sup> Rathgael, Guide for Parents.

SSI reported the introduction of cognitive behaviour therapy in Lisnevin and noted that a formally evaluated programme was to commence in January 2001. Encouragingly, SSI found that staff were very enthusiastic about this. Unfortunately, the Commission does not have details of the formal evaluation, although a staff member reported that of six boys who started the course three had finished and had not returned to Lisnevin.<sup>26</sup> Some Rathgael staff members were also intending applying Cognitive Behaviour Therapy<sup>27</sup> but low numbers have precluded any prospect of a group-work approach.<sup>28</sup>

While the range of programmes on tackling young people's offending has improved in both centres, a number of problems are outstanding.

There is an unevenness within the staff group in terms of training and involvement in rehabilitative work.

The role of unqualified care staff in carrying out rehabilitative work with young people seemed unclear to the Commission. A staff member commented:

“I'm just a care worker and not a qualified one. That means that I'm their mummy and daddy whilst they're here. I get them out of bed, make sure they wash, get recreation, if they need to see the nurse, need clothes, help them to do things for themselves.”<sup>29</sup>

This staff member noted that they would have access to some training courses but not to others as: “you can only have so many people away in one day. But I've had a fair crack of the whip.”<sup>30</sup>

SSI has stated that it is important for this emphasis on rehabilitative work to be supported right across the staff group and he recommends appropriate training in furtherance of this.<sup>31</sup> The Commission agrees that the shift towards rehabilitative work must be encouraged throughout the whole staff group which necessitates more training than appears to be available at present.

Specialist training is important in both the design and delivery of courses. As stated in Sir David Ramsbotham's thematic review of young prisoners: ‘much can be accomplished by commitment and enthusiasm, but there needs to be a balance between energy and expertise, as inappropriate programmes can damage the recipient’.<sup>32</sup>

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<sup>26</sup> Commission interview with staff, Lisnevin JJC.

<sup>27</sup> SSI Report on Unannounced visit to Rathgael JJC, March 2001.

<sup>28</sup> Commission correspondence from SSI, 29<sup>th</sup> January 2002.

<sup>29</sup> Commission interview with staff (No 14).

<sup>30</sup> Commission interview with staff (No 14).

<sup>31</sup> SSI, Report on an Unannounced visit to Lisnevin Juvenile Justice Centre, 3 September 2001.

<sup>32</sup> Chief Inspector of Prisons, 1997, Thematic Review of Young Prisoners.

The low ratio of staff to young people in Lisnevin appears to leave little time for addressing the young person's behaviour.

In interviews with the Commission a staff member called for more resources for rehabilitative work:

“Lately we have the Cognitive Behavioural Programme. It certainly helps the young people to look at their offending and to look at ways of dealing with it. It also helps them to become more aware of victims. ... It is built in at the moment on two days every week but it needs to be done more. That will only come about if there is more money available for training.”<sup>33</sup>

Interviews with the staff of St Patrick's before it closed, suggested that the gradual reduction in the size of the population and increase in qualified staff meant there was more time to assess the needs of the young people and identifying appropriate work programmes to address those needs.<sup>34</sup> A staff member commented:

“These things [work on offending] are done in a more systematic, more structured way than they've ever been done before. Certainly in my time here things have improved in that respect. And that may be because there are less young people because staff have a lot more time to devote to them.”<sup>35</sup>

In St Patrick's a combination of a fresh strategic approach by management to dealing with offending behaviour, recruitment of qualified and experienced staff, and a low staff-young person ratio enhanced the centre's capacity to undertake individual specific programmes directed at offending behaviour.

Concerns were expressed to the Commission by both staff and young people about the different opportunities available to young people on remand and committed young people. Staff also complained that the high levels of remand cut down on the work which could be done on committed young people's offending behaviour.

While the pre-trial status of children as innocent until proven guilty must be respected this does not necessarily prevent staff from carrying out any work with children. In particular, children who have alcohol abuse or anger problems deserve to have them addressed independent of their allegedly criminal behaviour. It is vital that all children are entitled to a wide range of programmes to address a variety of needs.

International human rights standards stipulate that programmes must be developed and based on the evidence of scientific research about what is effective for practical rather than academic reasons. Evaluation is vital and the Commission thus welcomes the fact that the Cognitive Behaviour Therapy work is being monitored and evaluated. However,

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<sup>33</sup> Commission interview with staff (no 11).

<sup>34</sup> Commission interview with staff (No 3).

<sup>35</sup> Commission interview with staff (No 3).

it is not aware of any other evaluation taking place on work being carried out in custody on young people's offending despite the fact that it should be standard practice to monitor and evaluate independently all activities.

Staff in juvenile justice centres cannot be expected to take on the task of rehabilitating young people in isolation. Multi-agency intervention is crucial to the child's successful re-education and treatment. The issue of multi-agency work is discussed in greater detail in the chapters on assessment, education and health.

The role of the probation service is particularly important as they will be carrying through the work with the child from custody to supervision in the community. Staff at St Patrick's described this important role:

“Probation has a key role... I would say we [now] have a much closer relationship to probation. I would say the same for Lisnevin and Rathgael. Key workers, their probation worker is identified, you get to know them a bit more and the young people get to know the probation worker a lot more. They would usually come to see the young person half a dozen times during the placement. They might identify areas to work on ... We can feed probation information... The more the overlap the better for the young person.”<sup>36</sup>

In a focus group discussion, the Commission fieldworker talked to probation officers about their experiences and views of their role in relation to the juvenile justice centres. In summary their views in relation to work on rehabilitating the young person and preparing them for release were that:

- there is a need for greater communication within centres and from the centre to the outside world including with probation and with the young person's family;
- there is a need for multi-disciplinary staff team to co-ordinate the custody and community phase of Juvenile Justice Centre Orders, possibly involving a probation representative working within the centres on a regular full time basis;
- there needs to be a more open and honest relationship between the Probation Board and juvenile justice centre staff;
- there is a need to move away from the notion of 'doing time' towards a greater implementation of new responses to young people who offend;
- there is a need for more detailed documentation on young people's files;

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<sup>36</sup> Commission interview with staff (No 3).

- anti-discrimination training is needed for all staff involved in working with young people given that stereotyped attitudes only serve to reinforce the young people's negative image of themselves rather than support rehabilitation.

Many of these recommendations are endorsed by the Commission throughout this report.

## **Recommendations**

4. Juvenile Justice Board should review the role of all staff groups in doing work with young people on offending behaviour. In particular, providing specialist training for all staff must be a priority.
5. Juvenile Justice Board is encouraged to review whether the existing staff provision is adequate for carrying out work in offending, particularly in Lisnevin.
6. Northern Ireland Office should provide necessary resources for additional training for staff in this area of work.
7. JJB should publish the evaluation of the Cognitive Behaviour Therapy work being carried out in Juvenile Justice Centres.
8. JJB should ensure that all future programmes developed in the centres are independently monitored, evaluated and subsequent amendments made.
9. JJB and centre management should explore the possibility of involving young people in development of programmes on offending behaviour.
10. JJB and centre management should review the work being carried out with young people on remand to ensure that these young people receive the benefits of all relevant programmes in accordance with international standards.
11. Consideration should be given to creation of a multi-disciplinary staff team to co-ordinate effectively the custody and community phase of Juvenile Justice Centre Orders. The possibility of including a probation representative within the centres on a regular full time basis should be considered.

### *Planning for release*

An important part of work on reoffending is preparing the child for release to the community. It is there that their commitment and willpower to resist re-offending will be tested.

In theory, the implementation of the Criminal Justice (Children) (Northern Ireland) Order 1998 should make preparation for leaving easier as the sentence is determinate. As a staff member said:

“Now with the determinate sentencing, you actually do have a date to work towards and there is a notion of completion. You know we need to get this completed so we can hand it across.”

However, the design of the system is such that children are not always released when expected. This staff member said:

“There were a couple of the girls in that situation and it was fortunate that they had other things pending so they weren’t discharged ... but if they hadn’t had anything outstanding they would have walked from the court, leaving themselves very much at risk because there was no exit plan anticipated because the court did not appreciate this...”<sup>37</sup>

A staff member in St Patrick’s had experienced a similar situation where a young person was unexpectedly given a conditional discharge and released:

“I was very surprised. I was his key worker. ... He had a period of home leave coming up and I was actually organising the contract for that with him and his mum. I was also organising with other professionals to come to his discharge meeting next week..... We knew there was a possibility he could walk but I don’t think any of us believed that he actually would. It’s a quirk in the system.”<sup>38</sup>

The Commission does not recommend that children spend longer than necessary in custody and considers it vital that the advantages of spending a finite period in custody are maximised. In this regard, children should not be released into situations where they are at risk whether by returning to an unsafe family environment, homelessness or exposure to paramilitary threat.

There is a clear need for more resourcing for children’s services and better inter-agency working to ensure that suitable accommodation and support is available for all young people leaving custody.

The situation for children who have come into custody from residential care is particularly bleak. A manager in Rathgael described planning for aftercare of these children as “still the most frustrating part of the job”. For example:

“We have a child being discharged soon and we still don’t know where he’s going to. We will be sitting down on

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<sup>37</sup> Commission interview with staff (No 19).

<sup>38</sup> Commission interview with staff (No 3).

Monday to try and decide. That's not fair on anybody, he will have little or no opportunity to be phased in."<sup>39</sup>

Interagency work in preparation for aftercare is vital but a staff member at Lisnevin confirmed the difficulty in liaising with social services regarding planning for a child's release into care:

"We would contact the childrens' home. In very few of the cases do they visit or visit regularly. We would do a lot of the chasing as in 'he's going back to you and we would like to work with you, we are doing such and such with him. They will come to case discussions but some of it is to dictate that if he does this again he'll get more of the same because they run a children's home and they won't put up with this."<sup>40</sup>

Lisnevin has a programme called 'skills for independent living' designed specifically for boys coming out of custody or care who are going into their own accommodation or supported accommodation. This includes topics such as how to wash clothes, how to cook meals on a budget, how to fill in forms, and some interview and career work. Preparation for going into the workplace, however, appears to be inadequately addressed. A staff member in Lisnevin noted that "we don't have any form of careers guidance at all", although he said that there were some ad hoc projects about career planning or interview skills. They said that the local careers office had been approached to see if they would come and speak to the young people. However:

"they felt it would not be at all possible, too big a drain on their resources to have somebody to keep coming back maybe five to six times a year."<sup>41</sup>

Staff in St Patrick's said that they tried to get a work placement identified for young people before they left. It was the responsibility of the key worker to do this planning whether in relation to return to school or the workplace.

Teachers in the centres were concerned about the poor level of contact between the education sector and the centres when boys were brought into custody. There are difficulties too in liaising with schools about boys' returns to education. When this worked it tended to be on the basis of individual cases rather than through an agreed, structured system of cooperation. This is discussed further in chapter 9 on education.

#### *Post-release follow up*

There does not appear to be a formal mechanism in place for monitoring the progress of young people who leave the centres.

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<sup>39</sup> Commission interview with staff (No 19).

<sup>40</sup> Commission interview with staff (No 11).

<sup>41</sup> Commission interview with staff (No 7).



A staff member in Lisnevin said that he is able to follow up what is happening to boys following their release “more by luck than design” as he has outside contacts with probation officers. A staff member at St Patrick’s also said that whether or not contact with the young person continued depended on the decisions of individual staff.

The difficulties in communication between PBNI and the centres is discussed above. This has implications for preparation for leaving. The Criminal Justice Review Group recommended that PBNI staff be allocated to the centres in order to help prepare for the young person’s release and to ensure that the care needs of those held on remand or on foot of an Order are met.<sup>42</sup> A post of ‘partnership development officer’ was created in recent months to build up relations with the Probation Board and although initial feedback is positive, no evaluation appears to have been carried out as to whether this has redressed the imbalance.

#### *A future for custody*

Some of the recommendations in this chapter can be addressed without fundamental change to the system, such as provision of additional training and resources. However, the lack of success in achieving children’s rehabilitation has more fundamental roots emanating from the custodial setting itself.

As noted earlier, the NIO is unable to provide statistics for recidivism rates for young people in juvenile justice centres sentenced to CJCOs. However, a 1998 study of recidivism rates for juvenile offenders in Northern Ireland<sup>43</sup> found that the overall rate was 75% (the rate was significantly higher for males than for females).<sup>44</sup>

There are several critical difficulties in the system in Northern Ireland which contribute towards this failure. Firstly, as highlighted in chapter 2 above, it is clear that children are not being sent to custody as a last resort. As well as being contrary to international law, this means that the young people detained in the juvenile justice centres are there for a variety of reasons.

The fact that the population is not homogenous – for example that those detained following conviction are detained alongside those on remand or detained under PACE – creates logistical problems as to how to best provide resources to meet their needs.

Secondly, the legislation allows for children to be detained for a determinate period – generally three months. While the Commission does not wish to see this extended, it is clear that there are limits to what can be achieved in such a short time particularly given the deep-seated problems facing many children in custody.

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<sup>42</sup> Northern Ireland. Criminal Justice Review Group. Review of the Criminal Justice System in Northern Ireland, London: SO, 2000, para 10.84.

<sup>43</sup> D Wilson, H Kerr and M Boyle, Juvenile Offenders and Reconviction in Northern Ireland, Research Findings, NIO, 3/98.

<sup>44</sup> The recidivism rate for the old Training School system was in the region of 92%.

Thirdly, the fact that the juvenile justice centres are closed institutions, removed from the communities in which the children live, is inconsistent with international guidelines and also limits the rehabilitative work which can be carried out with them. Research shows that community based interventions enjoy much higher success rates as it is easier for the child to relate lessons learned to real life.<sup>45</sup> Moreover, the regimes in place in juvenile justice centres have tended to be security led rather than child centred.<sup>46</sup> The predominance of the security ethos serves to militate against the success of rehabilitative work. For example, the possibilities of home leave or outdoor pursuits or trips tend to be viewed as rewards for having behaved well in the centres rather than community-based work being considered part of the rehabilitative plan for the child from the start of their sentence.

Fourthly, there is scope for arguing that placement in detention in itself can undermine the chances of changing behaviour. The influence of peer pressure is not to be underestimated. As a staff member in Lisnevin commented about one boy:

“He’s a child who needs help, not help in here though, help out there. He’s going to become used to the system and contaminated as we have one or two serious, persistent offenders and they will rub off on him.”<sup>47</sup>

In addition to these problems at the heart of the system, there are also funding difficulties – both in terms of finance and staffing – which exacerbate the problems. These and other operational issues are discussed below.

In short, the system as presently constituted is set up for failure in terms of rehabilitation of young people. Unless there is a change of mind set and a whole shift in direction towards a child centred focus then the likelihood of improvement in recidivism rates is virtually nil. Recommendations as to how this can be achieved are stated throughout the report. Moreover, while the current centres contain a wealth of experience, their replacement with a new single institution provides an opportunity to put these recommendations and the best practice that they incorporate into effect *ab initio*.<sup>48</sup> This opportunity to review the entire culture of the juvenile justice centres must not be wasted.

The Commission welcomes the publication of the Justice (NI) Bill and plans to implement the recommendations of the Criminal Justice Review. In this regard, it notes recommendation 169, which states that Government should develop, agree and incorporate a clear statement of the aims of the juvenile justice system in Northern Ireland and a statement of the principles, to be based on human rights standards, which should guide those who exercise the powers conferred by the legislation.

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<sup>45</sup> Audit Commission, ‘Misspent Youth’, 1996, cited in Ramsbotham, Thematic Review of Young Prisoners, p 19.

<sup>46</sup> The Juvenile Justice Centre Rules and design of JJC buildings are evidence of this.

<sup>47</sup> Commission interview with staff (No 11).

<sup>48</sup> Notwithstanding the Commission’s view that a single site institution is not the best setting for rehabilitative work.

While the Commission is currently considering its response to the Bill it is clear that bringing the system into line with international standards in the area of rehabilitation and reintegration of young people who have offended requires all of the above issues to be addressed.

### **Recommendations**

12. Urgent consideration should be given to the effectiveness of the post of 'Partnership Development Officer' with a view to taking further measures to improve communication and co-operation with the Probation Board if necessary.
13. Centres are encouraged strongly to put in place effective mechanisms to ensure that the welfare of young people released is monitored and supervised. In particular, formal channels of communication between PBNI and the key workers should be established with the possibility of seconding a PBNI worker to each Centre to allow effective co-operation being explored.

## Chapter 5

### The right of the child to protection from harm

#### International standards

International human rights law gives children an absolute right to protection from all forms of ill-treatment, torture, neglect and physical, emotional and sexual abuse.<sup>1</sup> International standards specifically provide that the youth justice system should uphold the rights and safety, and promote the physical and mental well-being of children.<sup>2</sup> Accordingly, children in custody must be protected from ill-treatment by staff and other young people.<sup>3</sup>

Staff, too, have a right to protection and while international standards recognise their obligations to protect young people from abuse, they also express their right to receive training, which will enable them to carry out these responsibilities effectively.<sup>4</sup> It is the responsibility of the Northern Ireland Office (NIO) and the Juvenile Justice Board (JJB) to ensure that this occurs.

This chapter examines whether the policies and procedures on child protection in juvenile justice centres comply, and are applied in a way that complies with international and indeed national requirements. In order to put this assessment into context, it is necessary to take a brief look at the history of concern that exists around child protection issues, and the reviews currently on-going in this area. The chapter will then go on to consider the current arrangements to protect children in custody looking specifically at the child protection procedures and the investigation of child protection allegations in the juvenile justice centres giving special consideration to the role of NIACRO's Independent Representation scheme in this area.

Complaints made by young people about ill-treatment and threats of violence by the police and by paramilitary organisations respectively are also represented, notwithstanding that they fall outside the strict terms of the investigation. Finally, the chapter addresses the issues of substance abuse and bullying as both fall within the wider scope of child protection requirements.

#### The history of concerns

There is a history of concern about the adequacy of child protection procedures for children in custody in Northern Ireland. The following historical overview aims to show

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<sup>1</sup> See Article 19 UN Convention on the Rights of the Child and Article 3 European Convention on Human Rights.

<sup>2</sup> Rule 1 UN Rules for the Protection of Children deprived of their Liberty 1990 (UN Rules) and Rule 5 UN Standard Minimum Rules for the Administration of Juvenile Justice 1990 (the Beijing Rules).

<sup>3</sup> Rule 87 (a) and (d) UN Rules.

<sup>4</sup> Rule 85 UN Rules.

that current deficiencies in child protection are not new, but represent a continuation of existing failure.<sup>5</sup>

### *Lisnevin*

A report by the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) – a non-governmental organisation working in the field of criminal justice and community safety - details issues arising from the Independent Representation (IR) scheme in Lisnevin between 1994 and 1999.<sup>6</sup> The report documents a history of complaints from boys in Lisnevin and records 20 allegations made during this five year period ranging from extremely serious incidents of assault by staff to bullying by other boys. The report also reveals that the response of Lisnevin management to the allegations involved a mixture of flawed policies and procedures and poor practice.

Before 1995, allegations were investigated internally by the centre director, but new guidelines introduced in that year provided that internal investigation was no longer permitted. From then on all, allegations of a child protection nature had to be referred to the police and social services. Evidence shows, however, that this practice was not always followed. In May 1997, for example, an allegation of physical assault on a boy by a staff member was investigated internally by Lisnevin management.<sup>7</sup> In 1998, concerns were expressed about management having interviewed boys who had made complaints of a serious nature before the police were contacted, and of at least two boys dropping allegations following these discussions.<sup>8</sup> Lisnevin management practice of investigating child protection allegations internally before informing the police (if at all) was confirmed by the SSI report in 1997.<sup>9</sup>

NIACRO records the situation coming to a head in 1998. In November of that year, a boy complained to an IR volunteer that staff were watching him when he went to the toilet. The new IR co-ordinator (in place during the permanent IR co-ordinator's secondment) was deeply unhappy about the failure of Lisnevin management to process the complaint in the appropriate manner. When the co-ordinator visited the boy, the child expressed fear for his safety and spoke of having witnessed a boy being attacked by another boy, as a staff member present failed to intervene. He said that he himself was being threatened by these boys.

The NIACRO report notes that despite the strenuous attempts made by the co-ordinator to insist upon compliance with procedures, the issue was not referred through the appropriate child protection process. The co-ordinator argued that the IR scheme should be withdrawn from Lisnevin in the absence of compliance with the agreed child protection procedures. NIACRO management disagreed arguing that, although sharing

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<sup>5</sup> Material used here is derived primarily from SSI Reports and information supplied by NIACRO.

<sup>6</sup> NIACRO manages the Independent Representation project in which volunteers visit children in centres, talk to them about their concerns and make recommendations about these to Centre management.

<sup>7</sup> NIACRO, *Lisnevin: Issues of Concern for NIACRO*, p13.

<sup>8</sup> NIACRO, *Lisnevin: Issues of Concern for NIACRO*, See references for July 1998, Aug 1998, Sep 1998, pp 13-15.

<sup>9</sup> SSI, *Report on the Inspection of Lisnevin Training School 1997*, pp 30-31.

the coordinator's concerns, it was in children's best interests for the project to retain the IR role in the centre. Having failed to negotiate a withdrawal of the scheme and the implementation of a service that maximised child safety and the proper processing of allegations of abuse, the co-ordinator resigned.

In April 1999, NIACRO was informed by Lisnevin management that allegations of verbal abuse were no longer considered child protection issues by the police. This was in response to an incident where a young person alleged that a staff member had threatened to take him to his room by the throat. Lisnevin management had (correctly in the Commission's view) passed the issue on to the police CARE team at Newtownards, which rejected it as not a child protection issue.<sup>10</sup>

Concerns regarding child protection issues have been raised by others in this area:

- A former member of Lisnevin staff has publicly raised concerns that some staff were involved in physical abuse of boys.<sup>11</sup>
- The matter has been raised in Parliament. For example, in answer to a parliamentary question put by Kevin McNamara MP, the (then) Secretary of State for Northern Ireland confirmed that two boys were compensated for injuries allegedly inflicted by staff in Lisnevin during the 1991-1998 period. These incidents occurred in 1995 and 1996.
- In its 1997 inspection, the Social Services Inspectorate was told by a boy that care workers would give 'a clip round the ear' for misbehaving. This remark confirmed other comments made by concerned staff to SSI that rough handling of boys had occurred in the past and was continuing, albeit less frequently.<sup>12</sup>

#### *Rathgael and St Patrick's*

Anxieties regarding the failure to operate child protection procedures correctly have also been expressed with regard to the other (then) Training Schools, Rathgael and St Patrick's.

In its 1997 inspection report on Rathgael, SSI found that copies of NIO guidance on policy and procedures for child protection had not been distributed to all staff and that 'little had been provided in the way of training.'<sup>13</sup> The Inspector has also reported incidents of sexual assault by one resident on others, in which proper procedures were not followed.<sup>14</sup>

In St Patrick's in 1997 the Social Services Inspectorate was concerned about the protection of a boy who was in custody on charges of sexual offences and was himself being bullied by his peers. SSI found that the school's new child protection policies were

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<sup>10</sup> NIACRO Lisnevin report p 17.

<sup>11</sup> See for example, Newtownards Chronicle, Thursday 24 April, 1997: report of case heard at Downpatrick Crown Court where Mr Wilhem Schumacher was acquitted of making threats against senior staff at Lisnevin cited in NIACRO, Lisnevin: Issues of Concern for NIACRO, p 5.

<sup>12</sup> SSI, Inspection of Lisnevin Training School, p 24.

<sup>13</sup> SSI, Inspection of Rathgael Training School, p 18.

<sup>14</sup> SSI Rathgael Report 1997, p19.

not being properly implemented to protect the child.<sup>15</sup> Later in 1999, the Inspectorate found an ‘overpreoccupation with bullying’ among St Patrick’s staff. While agreeing that all bullying is ‘child abuse’ SSI argued that formal child protection procedures do not always need to be invoked if it is possible to deal with the issue at the point of disclosure.<sup>16</sup>

It is clear from this evidence that, historically, there have been grounds for concern about the protection of children in all three juvenile justice centres. In the light of these concerns, official audits are currently being carried out in relation to cases emanating from Lisnevin and Rathgael.

#### *Audits of past cases*

A review of child protection procedures and separate audits of previous child protection cases are on-going in both Lisnevin and Rathgael

The Social Services Inspectorate and Juvenile Justice Board recently completed an audit of cases coming through the NIACRO IR project relating to Lisnevin. The audit resulted in the identification of nine cases considered to have been inappropriately closed, in which it was recommended that the young person be contacted and asked whether they wish to have the case reopened. In this regard, SSI recommended to the JJB that an independent organisation with expertise in child protection issues be contracted to follow up cases requiring further investigation. The Human Rights Commission strongly supports this proposal.

The JJB has written to the young people involved asking them if they wish their case to be reopened. While the Board has provided those young people with a stamped addressed envelope to facilitate their reply,<sup>17</sup> the Commission disagrees with an approach which appears to place an onus on young people with regard to re-opening the complaints made in the past.

The Commission has a number of misgivings about this audit and follow-up approach:

- it is concerned that the audit took the form of a paper exercise. Neither young people, nor those associated with the issue, were interviewed.
- the audit dealt only with cases arising from NIACRO’s IR project. The Commission is aware that other cases have been referred through the Joint Protocol.
- as far as the Commission is aware, the audit did not cover all aspects of the child protection process, such as the role of the police. In any case, the Commission is unclear to what extent the SSI is empowered to examine police practice in relation to the working of the Joint Protocol.
- while confidentiality of the young people needs to be secured, the general findings of the review have not yet been made public.

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<sup>15</sup> SSI, Overview Report on Training Schools, p20.

<sup>16</sup> SSI, Inspection of St Patrick’s Juvenile Justice Centre, 1999.

<sup>17</sup> Commission correspondence from the Juvenile Justice Board, 18 February 2002.

The Rathgael audit is being conducted under the auspices of the Joint Strategy Group, a group involving the Ulster Hospital Community Trust, the police, SSI, NIO and Rathgael. The audit deals with allegations dating back to when Rathgael was a Training School, ranging from failure by management and staff to intervene in incidents to protect children, to allegations of staff involvement in inappropriate behaviour, to physical abuse. The impetus for this audit came from a joint view that although there was insufficient evidence for prosecution in some cases, they raised issues of relevance for policy and practice.

Given its concerns relating to past and current practice in child protection in relation to juvenile justice centres the Commission has called on the Juvenile Justice Board to establish an independent, expert investigation into policy and practice. As long as no such investigation is forthcoming, the Human Rights Commission intends to continue and extend this part of the current investigation into the child protection process in juvenile justice centres. The Commission has accordingly asked the Board for access to child protection files and for assistance in contacting those young people with experience of the system.

### **Recommendations**

1. Juvenile Justice Board should instigate an independent, expert investigation into child protection in the juvenile justice centres. The remit of this review should include reference to international human rights standards and the standards set in the Children (Northern Ireland) Order 1995. The remit should include a commitment to interview children and others with experience of the child protection system. The findings should be made public.
2. The general findings and recommendations of the audits carried out by the Juvenile Justice Board with SSI, and the Joint Strategy Group should be published.

### **Law, policy and practice**

Both the Human Rights Act 1998 and the Children (Northern Ireland) Order 1995 contain protection for children reflective of international standards. Additionally, the 'Joint Protocol' for social services and police outlines procedures for investigating allegations of child abuse.

#### *The Human Rights Act 1998*

Section 6 of the Human Rights Act (HRA) requires public authorities to act in compliance with Convention rights, including Article 3, which prohibits torture, inhuman and degrading treatment or punishment. The European Court of Human Rights has made it clear that the vulnerability of children requires that they have sufficient protection against any treatment constituting a serious breach of personal integrity.<sup>18</sup> Under the

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<sup>18</sup> Eur Court HR *A v UK*, judgment of 23 Sept 1998, Reports 1998-VI no 90.



HRA, therefore, all public bodies involved in the care of children in juvenile justice centres (including the centres, the JJB and the NIO) are obliged to take steps to ensure that young people are not ill-treated and to protect them from harm. If they fail to take adequate measures to protect young people from abuse by others, whether in a private or public capacity, they may be liable under the HRA.

### *The Children Order*

The Children (NI) Order (1995) is the main piece of legislation dealing with the protection of children from abuse in Northern Ireland. NIO Standards for Juvenile Justice Centres demand that child protection policies and practices in the centres conform to Children Order guidance.<sup>19</sup>

Under the Children Order, Health and Social Services Boards and Trusts have a duty to investigate where there are concerns about a child suffering or being likely to suffer 'significant harm'. Although this term is not defined by the legislation or its guidance, the Order does identify different forms of child abuse, including physical abuse, emotional abuse, sexual abuse and neglect.<sup>20</sup>

The Order contains guidance and regulations concerning the protection of children including children living away from home.<sup>21</sup> The guidance stresses the importance of interagency working in the best interests of the child;<sup>22</sup> thoroughness in conducting investigations;<sup>23</sup> parental participation throughout and participation of the child insofar as it is in their best interests;<sup>24</sup> sound record keeping, transparency<sup>25</sup> and clear policies, procedures and training for all staff.<sup>26</sup>

### *The 'Joint Protocol'*

In the early 1990s, a protocol for joint investigation of child abuse allegations was developed between social services and the police,<sup>27</sup> the most recent edition of which takes into account the requirements of the Children Order. When a young person in custody makes an allegation of a child protection nature, the agreed procedure in both juvenile justice centres is to refer the complaint to police and social services for processing through Joint Protocol arrangements. However, the Commission has serious

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<sup>19</sup> NIO, Statements of Standards and Criteria for JJC NI, 1999, Standard 4: Care of the Young People, point 19.

<sup>20</sup> Article 66 Children (NI) Order (1995) and Department of Health, Home Office, Department for Education and Employment, Working Together to Safeguard Children, London, Stationary Office, p 7.

<sup>21</sup> Children (NI) Order 1995: Volume 6, 'Co-operating to Protect Children', DHSS.

<sup>22</sup> Point 6.1

<sup>23</sup> Point 2.6.

<sup>24</sup> Point 6.1.

<sup>25</sup> Point 6.19.

<sup>26</sup> point 8.1

<sup>27</sup> The first Protocol for Joint Investigation was introduced in NI in November 1991. There have been three revised editions of the Protocol since then.

concerns about the way the Joint Protocol arrangements are handled in respect of children in custody.<sup>28</sup>

### *Standards and procedures for child protection in juvenile justice centres*

While the Juvenile Justice Centre Rules state as a general principle that children ordered to be detained in a juvenile justice centre shall be held safely for their protection,<sup>29</sup> they offer no further guidance as to how to secure to each child the right to be protected from harm.

The NIO Standards require that each juvenile justice centre have specific policies and practices for keeping young people safe from self harm and abuse from family, staff, visitors and other residents. As noted above these policies and practices must conform to Children Order guidance.<sup>30</sup>

Despite these requirements, arrangements for child protection in the juvenile justice centres are apparently based on an outdated NIO document, 'The Child Protection Policy and Procedures for Training Schools', 1995. This was not revised to reflect the changes brought about by the CJCO 1998 and consequently, juvenile justice centres are still working to a document which is entirely inappropriate to the current system.<sup>31</sup>

Although 'copies of the child protection process are available to children'<sup>32</sup>, there does not appear to be any document to explain child protection procedures to children in the centres or their parents. Children are informed, however, that they can telephone Childline and receive a contact card (informing them who to contact about a problem or query) and details for contacting 'Chalky', the Children's Law Centre's free information and advice line.

The review of child protection procedures initiated in November 1998 is being conducted by the Social Services Inspectorate and has now become the responsibility of the Juvenile Justice Board. The remit of this review is: 'to undertake a review of the child protection policy and procedures in training schools which were issued to the training schools by NIO in November 1995. The review should make recommendations for any changes in both procedure and practice that would be beneficial to safeguarding the wellbeing of the young people and protecting the interests of staff.'

The work of the Juvenile Justice Board in revising these procedures has been delayed pending the publication of DHSSPS guidance on child protection. Regardless, the ongoing failure to produce revised procedures stands in apparent breach of the state's

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<sup>28</sup> See Appendix C for a summary of the principles and procedures of the Joint Protocol.

<sup>29</sup> Rule 3 para 1(a) Juvenile Justice Rules (Northern Ireland) 1999.

<sup>30</sup> NIO, Statements of Standards and Criteria for JJC NI, Feb 1999, Standard 4: Care of the Young People, point 19.

<sup>31</sup> While some Lisnevin policy documents refer to a document, 'Juvenile Justice Centers - Child Protection Policy and Procedures', the Commission has been unable to obtain a copy.

<sup>32</sup> Commission correspondence from the Juvenile Justice Board, 18 February 2002.

obligations under international law to protect children from harm, as well as its own standards.

It is conceivable that the current situation, under which there is no effective procedure in place to protect children from harm, is in breach of Article 3 ECHR and Human Rights Act.<sup>33</sup>

This is an area in which staff themselves feel vulnerable. One member of staff at Lisnevin commented:

“I would like some more specific training [on child protection] because it’s an area where I have never been formally trained. Once a child did make a disclosure to me and I wasn’t 100% sure what to do. I felt I was in a situation where I was treading on egg shells.”<sup>34</sup>

Another staff member said that they had done training in their own time on dealing with children who had been abused and found it invaluable in their work.<sup>35</sup>

The production of revised procedures will of course necessitate refresher training for all staff (care and ancillary) in the child protection process. It is recommended that as many staff as possible are provided with specialist training in the area.

The Commission was unable to access any document which detailed what protection is afforded to children who have made allegations. The procedure for dealing with complaints made on behalf of young people at Lisnevin does not involve a policy of routinely suspending staff against whom allegations have been made.<sup>36</sup> Instead, the member of staff is merely required not to discuss the complaint with the complainant and efforts are made to ensure that the member of staff is placed where they will not come into routine contact with the young person. This could place considerable strain on management of the centres in terms of staffing arrangements.

This is an issue which must be considered when staffing levels are being reviewed to ensure protection for both children and staff.

At present there is no formal requirement for young people themselves to have to ‘sign off’ that they are content that a complaint has been properly investigated. One interviewee (who was no longer resident in a juvenile justice centre) explained to the Commission that he was unhappy about how his complaint was processed. He had received a letter from Lisnevin (viewed by the researcher) informing him that his complaint had been investigated by the police and that there would be no prosecution or

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<sup>33</sup> See in particular Eur Court HR A v UK, above and Eur Court HR Z and Others v UK, judgment of 10 May 2001, [2001] 2 FLR 612.

<sup>34</sup> Commission interview with staff (No 14).

<sup>35</sup> Commission interview with staff (No 13).

<sup>36</sup> JJB Policy and Procedure for Dealing with Complaints made by, or on behalf of, Young Persons Detained at Lisnevin, June 2001, para 10.

disciplinary action. The letter also stated that a strategy meeting would be held to discuss the outcome of his complaint. It was clear that the interviewee felt marginalised from this process.

The Commission understands that one of the recommendations arising out of the joint SSI/JJB audit was that it should be standard practice for young people to be asked to 'sign off' complaints in the presence of a trusted adult. The Commission supports this recommendation.<sup>37</sup>

## **Recommendations**

3. Juvenile Justice Board should produce and disseminate revised child protection procedures with urgency. The guidance and procedures should:
  - conform with guidance in the Children Order, 'Cooperating to Protect Children' and 'Working Together to Safeguard Children', as well as international principles.
  - have a clearly defined remit, including the definition of abuse, and set out the principles by which it is to be governed.
  - detail the procedures to be followed when abuse is suspected, including where the suspected perpetrator is a member of staff
  - include details of how the young person who has made the allegation and any witnesses will be protected and supported during the process.
  - Ensure that young people 'sign off' complaints in the presence of a trusted adult.
4. Juvenile Justice Board should appoint two contact personnel, one of whom must be on site at all times, specifically trained with a remit of liaising with social services, as well as other appropriate agencies for advice and consultation and supporting the child who has made the complaint and other young people who may have acted as witnesses. This could be a seconded post from another agency such as probation or social services. The post should have a status equivalent to management level.
5. Justice Board and centre managers should develop and implement refresher training for all staff following the production of revised child protection policies.
6. A strict policy of medical assessment should be put in place in the centres whereby everyone admitted to the centre by the police or from court must undergo a medical within 24 hours and those released or transferred to another centre should be similarly assessed prior to departure.
7. An updated child protection policy should be made available for staff, children and their parents. There must be a child friendly version disseminated to all young people on admission.

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<sup>37</sup> See also, SSI, Unannounced Inspection of Lisnevin JJC, 1<sup>st</sup> December 2001, p 6.

8. Once the revised procedures are in place, the Juvenile Justice Board should initiate constant, independent monitoring of the working of the child protection process.
9. As a significant number of staff were appointed before the Pre-Employment Consultancy Service was established and have never been vetted, all staff working in the juvenile justice centre should be checked regardless of their start date.

*Child protection in practice - operating the Joint Protocol*

When an allegation of a child protection nature is made in a juvenile justice centre, management must immediately inform the local social services unit and the local police CARE team. Lisnevin cases are referred to the PSNI CARE Unit at Newtownards, and Rathgael cases to PSNI CARE Unit at Willowfield, Belfast. These can involve allegations of abuse of children in the centre (caused either by other young people or by staff) or disclosure of abuse alleged to have happened to the child prior to their detention or during home visits.

The police CARE unit at Newtownards provided figures showing that in 1999 two cases from Lisnevin were referred to its office, in 2000 there were three allegations against staff and two allegations of abuse by other young people and by May 2001 there had been two allegations. NIO figures record seven Joint Protocol referrals from Lisnevin and one from Rathgael from January 2000 to March 2001.<sup>38</sup>

The Human Rights Commission has serious concerns about the operation of the Joint Protocol in relation to Lisnevin. The Commission considers that current practice may compromise the safety of children in the centre and does not meet the standard of prioritising the child's best interests.

It is important to stress that as far as the Commission is aware Lisnevin management is now correctly following procedures in alerting the police CARE unit and Newtownards Family and Childcare Social Services team of any allegations of a child protection nature. Both the police and social services in Newtownards have confirmed that they are informed immediately when a child protection allegation is made.

However, the Commission is concerned about recent changes in the way that allegations are then processed, particularly by the police. Historically, when a complaint relating to child protection was referred from Lisnevin to the police CARE team, this unit carried out the actual investigation of the case in liaison with social services. However, due to the CARE unit's wide regional remit and heavy workload, police management decided on a change of policy. The view was put to the Commission that the role of the unit is primarily to deal with 'child abuse' rather than with what was perceived as a simple assault.<sup>39</sup>

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<sup>38</sup> Commission Correspondence from NIO, Juvenile Justice Branch, 22 March 2001.

<sup>39</sup> Commission interview with officer from PSNI CARE unit, 5 April 2001.

The decision of the police in early 2000 was that the CARE unit would make a paper based assessment of the complaint and, from this, would determine if it should be investigated within the unit or referred to uniformed officers at Donaghadee. Current practice is that:

- if the reported assault was alleged to have been carried out by Lisnevin staff and is 'low level' it will be referred to Donaghadee;
- if it involves serious injury it goes to CID;
- if the alleged assault happened outside the area it goes to the local sergeant for investigation (eg if a boy discloses that he was assaulted prior to going into Lisnevin or on home leave);
- if the allegation involves sexual assault or a pattern of abuse it is investigated by the CARE Unit.

The police have developed a written 'draft' protocol for dealing with allegations emanating from Lisnevin.

An initial strategy meeting (by telephone) is held between staff from social services and police. However, an officer from the CARE unit informed the Commission that it is only if there is an allegation of sexual assault or suspicion of a pattern of abuse that appropriate contact with social services will be made using Joint PJ1 forms. In these cases a Joint Protocol trained social worker will be involved from the child's area.<sup>40</sup>

As far as the Commission is aware (notwithstanding its inability to access the relevant child protection files) for nearly two years now, all cases emanating from Lisnevin have been passed to police at Donaghadee for investigation. A representative from Ards Social Services Initial Response Team confirmed that there have been no joint social services/police investigations since the police adopted the practice of referring allegations to Donaghadee uniformed branch.

The Commission understands from discussions with the police that the delegation of investigation of allegations of this nature to non-CARE team officers is permitted under a PSNI Force Order on child protection.

However, the Commission has serious concerns about what it considers is, at best, a misinterpretation of the Joint Protocol:

*Definition of 'child abuse' and 'significant harm'.*

The definition of child abuse as involving only sexual assault or patterns of assault is inconsistent with the Children (Northern Ireland) Order 1995, which identifies different forms of child abuse including neglect, emotional abuse, physical injury and sexual abuse. Physical injury is defined in the Joint Protocol as 'actual or likely deliberate physical injury to a child, or willful or neglectful failure to prevent physical injury or suffering to a child.'<sup>41</sup> The key issue is whether the child may have sustained 'significant

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<sup>40</sup> Material from interviews with police officers from Ards CARE unit and Donaghadee, 5 April 2001.

<sup>41</sup> Joint Protocol p 7.

harm'. Harm is defined as the ill-treatment or the impairment of health or development. Whether it is 'significant' is determined by his/her health as compared to that which could reasonably be expected of a similar child.<sup>42</sup>

In the Commission's view, it is difficult to determine whether a child held in custody has suffered 'significant harm' without talking to the child and otherwise investigating the situation.

The particular vulnerability of these young people, most of whom have a history of family, social and educational problems, coupled with the closed nature of the institution, the inhospitable physical environment of the centre and the unequal power relations within any custodial situation must be taken into account. In these circumstances there is a need for openness and transparency which is in everyone's interests.

Additionally, the failure to talk to the child before deciding whether the case is a child protection one means that Lisnevin is acting as the sole conduit for information. This is a situation which leaves both the child and Lisnevin staff very vulnerable.

The Joint Protocol stipulates that single agency investigations by the police should take place only in 'exceptional' cases'. None of the examples given for suitable police-only investigations match the sort of allegations emanating from Lisnevin.<sup>43</sup> On the contrary, the Protocol notes that Joint Investigation should particularly be considered for 'looked after' children.<sup>44</sup>

The Commission is assured that uniformed officers in Donaghadee have had child protection training. However, the appearance of a uniformed officer may be intimidating to a child who may wish to be protected against harm but does not necessarily want to bring the full rigors of the criminal law into effect. The Joint Protocol is clear that an important part of the function of the child protection process is to assess the child's need. In the Commission's view investigation by the CARE team sends a stronger signal that the child is at the centre of the process.

A representative from Social Services Newtownards Initial Response Team described his role in relation to allegations from Lisnevin as having four components:

1. To ensure that the young person was afforded the opportunity to make a complaint;
2. To ensure that the relevant Probation Officer and/or Social Worker was informed;
3. To ensure that the young person's family were informed;
4. To ensure that Lisnevin management responded appropriately to the allegations.<sup>45</sup>

Following consultations with the police, social services also attend meetings in Lisnevin to discuss the outcome of the investigation.

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<sup>42</sup> Article 50(3).

<sup>43</sup> Joint Protocol, p17.

<sup>44</sup> JP p16.

<sup>45</sup> Correspondence from Assistant Principal Social Worker, Ulster Community and Hospitals Trust, 22 January 2002.

However, since the implementation of the police policy of delegating ‘minor assaults’ to Donaghadee for investigation, social services have played no ‘joint investigation’ role in relation to cases emanating from Lisnevin.

In the Commission’s view, this marginalisation of social services from the process is not in children’s best interests. The Children Order notes that social services and police officers approach child protection from different perspectives. Police involvement stems from their primary responsibilities to protect the community and to bring offenders to justice. The Order guidance notes: the police and social services have different functions, powers and methods of working. While police will be concerned with investigations of alleged offences, the focus of social services work will be on the welfare of the child and the family.<sup>46</sup>

The current process means that the child does not have access to the full range of police and social services functions under the Joint Protocol. This is largely due to the exclusion of children in custody from the protection of the Children Order.

### **Recommendations**

10. Both police and social services should review their role in operating the Joint Protocol in relation to Lisnevin. It is recommended that the Social Services Inspectorate play a part in these discussions.
11. The role of SSI in relation to monitoring the investigation of child protection cases should be reviewed to see whether this can be enhanced.
12. Following this review all those involved in the Joint Protocol should be trained specifically on the operation of the Protocol in relation to the juvenile justice centres.
13. The Child Protection Panel of the Ulster Hospital and Community Trust should have responsibility for child protection policy in the centres, given that both centres are in that Trust area. The juvenile justice centres should also have a representative on that Panel, which would ensure that centres were up to date with Child Protection Policy information and encourage good liaison with other agencies.

### *The role of the NIACRO IR project*

An important way (indeed perhaps the main way) in which allegations of ill-treatment of children (either by other young people or by staff) can be raised in juvenile justice centres is through the Independent Representation (IR) Project managed and run by NIACRO. The aim of the scheme is to provide a service whereby volunteers visit juvenile justice centres on a weekly rota basis, listen to the views of young people and make these views known to staff or management in the schools. The volunteers’ training includes a short element on child protection.

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<sup>46</sup> Although as the Joint Protocol notes, the police’s foremost objective will also be the welfare of the child.



The IR project has a reporting function only. Although NIACRO can follow up child protection (and other) issues through its regular meetings with centre managers, it has no statutory powers of investigation.

The circumstances in which IR visits to children are carried out militates against potential disclosure of abuse.<sup>47</sup> In particular, visits are short and take place in view of staff and other residents. While a child may ask to see an IR in private this will be facilitated by staff but in doing so the child may draw unwanted attention to themselves.

Despite the limitations, allegations of a child protection nature continue to be made through the volunteers. Figures provided by NIACRO show that in the years 1999/2000 there were seven issues related to child protection raised through the project in Lisnevin and one bullying incident.<sup>48</sup>

A previous co-ordinator of the IR project, who had resigned because of his concerns, expressed the view that the project was encouraging children to raise issues but that these were not effectively addressed through the existing child protection procedures. He concluded that, ironically, the project was potentially placing children in an increased position of vulnerability as, having provided a channel for the allegation to be expressed, the project was unable to ensure that the child would be protected or that the allegation would be thoroughly investigated.

The former co-ordinator explained that as a trained social worker with experience in the statutory sector, he had brought the thinking from that sector to the post in NIACRO. This meant:

“I had an awareness of legal responsibilities, that if policies are written down, you use them – you don’t use your imagination, the time scales that are specified should be followed.”<sup>49</sup>

He was concerned early on that NIACRO, a voluntary organisation, was being placed almost in a statutory, regulatory role without accompanying powers to enforce compliance with procedures and policies. He voiced doubts that a service which was not on-site and had no investigative remit or track record of instigating successful outcome on child protection issues within an appropriate timescale was in the best interests of young people.

Clearly, the existence of the IR project should not be seen as a substitute for an effective complaints process with an independent element and on-site independent support for children who have made allegations of abuse. Given the concerns outlined above, the Commission believes that the Juvenile Justice Board must give urgent attention to

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<sup>47</sup> NIACRO, Lisnevin: Issues of Concern for NIACRO, p 8.

<sup>48</sup> An analysis of the nature and frequency of issues raised by young people in Lisnevin through the IR project.

<sup>49</sup> Commission interview with Mr Malachy Muinzer, 11 December 2001.

ensuring that an independent complaints process is put in place and that sufficient protection is given to young people making allegations of a child protection nature.

### **Recommendations**

14. The role of the IR project in relation to child protection should be reviewed.

15. Complaints procedures with an independent element should be introduced urgently.

#### *Child protection and allegations of police assault*

While the treatment of young people by the police is not within the strict remit of this investigation, two boys interviewed by the Commission alleged that they had been assaulted by police officers following their arrest and prior to going into the Juvenile Justice Centre. The Commission believes it is important to raise their allegations here.

The first boy alleged that he had been abused by the police when he was apprehended while absconding. He said that he had been held in handcuffs with a brown paper bag over his head:

“I was spitting on the peelers because I didn’t like them. I was high. I got to the police barracks and then they came in to take the handcuffs off me and put a brown paper bag over my head. I couldn’t see anything. I tried to bite a hole in the bag and they squashed me up against the wall. There was no need to put a brown paper bag over my head. Do you think that’s right?”<sup>50</sup>

This interviewee alleged that he had also been assaulted by police on a previous occasion. He had stolen a car and got involved in a chase with police through into Bangor:

“...and the car got rammed at Bangor and when I got out the peeler got me on the ground and said this would teach you, you joyriding wee b and hit me a boot to the jaw, and saying shut up or you’ll get another one.”

Another boy said that he had been assaulted by the police on arrest:

“Caught stealing a car. Got stopped at a roadblock, they chased me for about half an hour and couldn’t catch me when I went through the roadblock. When they did they gave me a bad beating, bruises all over.”<sup>51</sup>

He said that he had got bruises, a broken arm and scarring.

This interviewee said that he had made several complaints about the police but these had been unsuccessful:

“They got away with it... when there’s three or four cops and you’re by yourself they’ll believe them before they believe you.”

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<sup>50</sup> Commission Interview with young person (No 7).

<sup>51</sup> Commission Interview with young person (No 9).

## Recommendations

16. Centre management should ensure that staff and young people are made aware of the office of the Police Ombudsman for Northern Ireland and its role in carrying out independent investigation of complaints against the police.
17. Juvenile Justice Board should monitor the extent of allegations of boys being mistreated by police prior to entry to the centres and should make such information available to the Police Ombudsman.

### *Bullying*

While it does not traditionally fall within the scope of child protection, protecting young people from bullying in the juvenile justice centres falls squarely within the authorities' obligations under international law and the HRA to protect young people from harm.

Bullying has existed as a problem in the juvenile justice centres for some time. In recognition of this fact, Lisnevin has an anti-bullying policy and an effective booklet entitled *Bullying: 'What is it? What can you do about it?'*<sup>52</sup> which is distributed to the young people before they attend a talk on bullying following their admission. This is a positive and welcome initiative. The same policy also exists in Rathgael.<sup>53</sup>

In his inspection of St Patrick's in 1999 SSI recommended that staff attempt to genuinely resolve episodes of bullying at the point of disclosure or discovery. If the problem persisted, however, either for the victim or perpetrator having serial victims there should be a preliminary or strategy discussion involving social services and the police. An investigation leading to a case conference would be necessary if the problem is intractable and a protection plan is needed.<sup>54</sup>

SSI comments highlight the need both for training for all staff on dealing with bullying and on the necessity of having a layered strategy for dealing with incidents of bullying.

More generally, it is necessary to tackle the underlying reason why bullying takes place, both in relation to the ethos of the centre and more importantly perhaps, by examining why certain young people are being bullied and are choosing to bully. In this regard, it can really only be eliminated by undertaking specialised treatment programmes with the individual young people, as well as, on a more general level, attempting to foster in the centres a general ethos of self- and mutual-respect among staff and young people.

While some young people interviewed in Lisnevin were not aware of bullying in the centre, two interviewees reported the existence of violence between boys. One interviewee said:

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<sup>52</sup> St Patrick's also had a bullying policy.

<sup>53</sup> Commission correspondence from the Juvenile Justice Board, 18 February 2002.

<sup>54</sup> SSI, Inspection of St Patrick's JJC, 1999, p 18, para 3.

“I may have been fighting but I kept on my own, to certain places, in the showers or in the gym, when none of the staff are about. If you get black eyes or something and they ask what happened, I just say that I walked into a door. They can’t prove that.”<sup>55</sup>

Another said that there had been a few fights and ‘slabbering’. He also spoke of sectarian threats:

“there’s a wee lad threatening by the UDA so he is, and he’s going to get beat. You can’t get near him, staff stand in front of you, no fighting. In the common room he threatened me with the UDA last night – [staff name] was standing in front of me and wouldn’t let me near him. ... Hate that shit – sitting saying all that – you’re going to get shot by the UDA and all that. He’s stealing razor blades – trying to say he’s going to slice people up.”<sup>56</sup>

Young people in Rathgael also spoke of sectarian bullying. One girl in particular was said to be threatening others and calling them names. The young people agreed that the perpetrator would not call people names in front of staff and, therefore, they felt nothing could be done about it.<sup>57</sup>

According to the Social Services Inspectorate, there are frequent assaults (boys on boys) in Lisnevin against the anti-bullying policy, which deserve analysis. However, it is welcome that staff are being encouraged to apply mediation and a restorative justice approach.<sup>58</sup>

Failure to deal with systematic bullying or abuse in the centre may give rise to a Human Rights Act challenge under Article 3 ECHR. For this reason and to ensure the protection of everyone in the juvenile justice centres, it is vital to put in place clear policy and guidelines, to publicise this policy among staff, young people and their families and to facilitate further staff training designed to counteract bullying behaviour.

## **Recommendations**

18. Juvenile justice centres should present clear guidance to both staff and young people as to what constitutes bullying and appropriate training for all staff.
19. Northern Ireland Office and the Juvenile Justice Board should include the issue of sectarian bullying when considering Section 75 issues relating to the proposed changes to the Juvenile Justice Estate.
20. JJB should conduct a survey to determine the extent of bullying including sectarian bullying in the centres.

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<sup>55</sup> Commission interview with young person (No 9).

<sup>56</sup> Commission interview with young person (No 2).

<sup>57</sup> Group interview (No 10) with young people in Rathgael.

<sup>58</sup> SSI Unannounced Inspection of Lisnevin JJC, December 2001.

### *Protecting young people from substance abuse and other harm*

A further dimension to the responsibility to protect young people in juvenile justice centres relates to protecting them from harming themselves through substance or drug abuse.<sup>59</sup> If this protection is to be effective, the centres must prevent the development of addictions within the centres and aim to address them where they are prevalent. In particular, efforts must be made to keep addictive substances out of the centres and in this regard search procedures need to be clear and supported by staff training. However, in 1999, the SSI described the search procedures in Lisnevin as ‘dangerously inadequate’ and was concerned that senior managers there were unaware of their powers in relation to searching young people. This was noted in the light of two incidents where a young person had set fire to his bedroom.

There is a clear awareness among staff and management in the centres about the seriousness of this problem and in Lisnevin random spot checks and searches are carried out following visits or on return to the centre.<sup>60</sup> It was clear from interviews with staff that they feel powerless in the face of young people who, when confronted with a search, threaten staff with assault and/or abuse allegations. However, the Commission is pleased to learn that staff training on searching has commenced and that management continues to seek out ways of improving security and safety without unduly draconian methods.<sup>61</sup>

### **Recommendations**

21. Adequate procedures regarding searches should be put into place to ensure the protection of both staff and young people in the centre. Conversely, however, staff should receive training on how to deal with a confrontation where they believe a search is necessary but where the young person is making allegations of abuse or assault in order to prevent the search from taking place.
22. Policy and detailed guidelines should be drawn up, in consultation with all staff, as to the circumstances in which searches – room searches and body searches – may be carried out and the procedures and principles which should govern such searches. In particular, where searches are to be carried out on a regular or random basis, measures should be taken to ensure that practice is not arbitrary in this regard. Respect for the possessions and dignity of the young person should be guaranteed.
23. Guidelines and procedures, once in place, should be brought to the attention of all young people together with details of applicable complaints procedures should they feel victimised or aggrieved about the way in which a search was conducted.

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<sup>59</sup> For more on self-harm see further Chapter 7 Health Care.

<sup>60</sup> SSI, *Unannounced Inspection of Lisnevin*, 1 December 2001, p 3

<sup>61</sup> Commission correspondence from SSI, 29 January 2002.

## Chapter 6

### Care and control

#### International standards

International standards stress the need for a disciplinary regime to strike the appropriate balance between respecting the rights of young people and securing the safety of others, including staff. In particular, the UN Rules for the Protection of Juveniles deprived of their Liberty provide that disciplinary measures should be 'consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely the instilling a sense of justice, self-respect and respect for the basic rights of every person'.<sup>1</sup>

Standards provide that no juvenile should be sanctioned disciplinarily except in strict accordance with the terms of the law and regulations in force, and without being informed of the alleged infraction in a manner appropriate to his/her full understanding, having a proper opportunity of presenting his/her defence, including the right of appeal to a competent impartial authority.<sup>2</sup>

Article 3 of the European Convention on Human Rights (ECHR) provides that no one shall be subjected to inhuman or degrading treatment or punishment and the UN Convention on the Rights of the Child states that every child deprived of liberty shall be treated with respect for humanity and respect for dignity.<sup>3</sup> More specific international standards governing discipline in detention prohibit the use of measures that constitute cruel, inhuman or degrading treatment, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the young person.<sup>4</sup>

Recourse to instruments of restraint and to force is permissible only in exceptional circumstances - to prevent a young person from inflicting self-injury, injuries to others or serious destruction of property - and where all other control methods have been exhausted and failed. Even then it must be used only as explicitly authorised and its use must be specified by law and regulation. When used, such measures should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. Moreover, the director of administration should at once consult medical and other relevant personnel and report to the higher administrative authority.<sup>5</sup>

Contact with family members shall not be restricted or denied for any disciplinary purpose.

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<sup>1</sup> Rule 66, UN Rules for the Protection of Juveniles deprived of their Liberty, 1990 (UN Rules).

<sup>2</sup> Rule 70, UN Rules.

<sup>3</sup> Article 37 (c) UN Convention on the Rights of the Child.

<sup>4</sup> Rule 67, UN Rules.

<sup>5</sup> See Rules 63 and 64, UN Rules.

Complete records should be kept of all disciplinary proceedings and regulations should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

- (a) conduct constituting a disciplinary offence;
- (b) type and duration of disciplinary sanctions that may be inflicted;
- (c) the authority competent to impose such sanctions;
- (d) the authority competent to consider appeals.<sup>6</sup>

Finally, a report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay, involving a thorough examination of the case.<sup>7</sup>

## **Law, policy and practice**

### *Setting standards and making them available*

Northern Ireland office (NIO) Standards require that each young person is made aware of expectations regarding their conduct and control in the centre. They also require systems of rules, incentives and sanctions to be published, explained and understood by all staff and young people. Notably, the Standards require that there should be evidence that rules are consistently and appropriately applied.<sup>8</sup>

The Juvenile Justice Rules require that children be provided with sufficient information on reception to enable them to understand the requirements of the centre, with particular efforts being made to ensure that a child is aware of and understands the complaints procedure.<sup>9</sup> This information shall be available in writing and children should also be informed of their right to access the Juvenile Justice Centre Rules at any time.<sup>10</sup>

The Human Rights Commission has found that there is insufficient material available for young people on the Juvenile Justice Centre Rules.<sup>11</sup> It is also concerned that young people do not have access to the staff code of conduct to help them understand how staff will treat them.

## **Recommendations**

1. The Juvenile Justice Centre (NI) Rules 1999 should be made available to children in an accessible form.
2. A code of conduct for staff in centres should be developed in consultation with staff and young people and made available to young people in an accessible form.

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<sup>6</sup> Rule 68, UN Rules.

<sup>7</sup> Rule 69, UN Rules.

<sup>8</sup> NIO, Statements of Standards and Criteria for Juvenile Justice Centres in Northern Ireland, 1999, Standard 4: Care of the Young People, criteria 10 and 12.

<sup>9</sup> Rule 22 (1) Juvenile Justice Centre (NI) Rules, 1999.

<sup>10</sup> Rule 22(2) and 22(4).

<sup>11</sup> See further chapter 3.

3. Breaches of the above code should be monitored by the Juvenile Justice Board.

*Use of separation*

The Juvenile Justice Centre Rules provide that where it is necessary in the child's interests or to maintain the good order of the centre, the manager may arrange for the restriction of a child's association, in accordance with limits and guidelines approved by the Secretary of State.<sup>12</sup> It is not apparent where these guidelines can be found or whether they refer to the removal of children from the group for so called 'time-out' purposes.

In a further section on 'Temporary Confinement', the rules go on to detail how, on the express authority of a manager, a child can be confined temporarily for the purpose of preventing disturbance, damage or injury.<sup>13</sup> There is no time limit placed on the duration of this confinement but children must be observed by staff at least every 15 minutes, and visited by the manager within one hour and at regular intervals thereafter.

NIO Standards permit locking young people in their bedrooms where depriving a child of association is considered necessary 'for their own safety, the safety of other young people or the security of the Centre'.<sup>14</sup> Young people placed under single separation must be checked in accordance with statutory rules and regulations, a reference, presumably to the Juvenile Justice Centre Rules, whose shortcomings are highlighted above.

Neither centre appears to have a policy setting a time limit for the separation of a young person and the SSI suggests that the working limit within juvenile justice centres is currently up to three hours "unless the young person has fallen asleep on a bed and is left until they awake naturally".<sup>15</sup> In St Patrick's, policy was to limit such separation to a maximum of 3 hours."<sup>16</sup>

In 1999, the SSI reported the frequent use in Lisnevin of a punishment wing in which the young people were deprived of contact with their peers, something which the young people saw as 'solitary confinement'. It noted two cases, one in which a boy spent 14 days out of a total period of 26 days in the so called Scrabo unit and the other involving 15 days in a 37 day period being spent there.

In this report, SSI recommended that the use of Scrabo be suspended.<sup>17</sup> In December 1999, the European Committee for the Prevention of Torture (CPT) visited Lisnevin and noted in its report that, at the time of its visit, the unit was out of service. Instead, however, the delegation noted that 'aggressive children could be placed in their own room or cell until they calmed down'.

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<sup>12</sup> Rule 27(1).

<sup>13</sup> Rule 30.

<sup>14</sup> NIO, Statements of Standards and Criteria for Juvenile Justice Centres in Northern Ireland, 1999, Standard 4: Care of the Young People, criteria 10 and 12, criteria 6.

<sup>15</sup> Commission correspondence from SSI, 29<sup>th</sup> January 2002.

<sup>16</sup> SSI Report on the Inspection of Lisnevin JJC, 1999, p 19.

<sup>17</sup> SSI, Report on the Inspection of Lisnevin JJC, 1999, p 19.



The CPT stressed that the placement of children in conditions resembling solitary confinement must be regarded as ‘a highly exceptional measure’.<sup>18</sup> Moreover, it went on to state that if juveniles are held separately from others, this should be for the ‘shortest possible period of time and, in all cases, they should be guaranteed appropriate human contact, granted access to reading material and offered at least one hour of outdoor exercise every day’.<sup>19</sup>

Although management at Lisnevin has insisted that the Scrabo unit is no longer used, recent reports from young people and some staff are contradictory. Moreover, it appears from an unannounced inspection of SSI that the unit is still in use, albeit to deal with exceptional circumstances. Thus, the unit was reportedly used on six occasions between April and August 2001<sup>20</sup> and according to SSI, its current use is to support a ‘time-out’ resource for night staff who need to ‘spare the unit as a whole from the disruption and taunts of individuals’. Use of Scrabo on a limited basis (30 – 60 minutes) for this purpose is supported by SSI although it is clearly preferred that additional staff and training be provided to calm some of the disruptive behaviour.

The use of single separation in Rathgael is also reported to have increased between March and July 2001.<sup>21</sup> Although used on 32 occasions over a three month period, SSI reported that the separations mainly involved four young people, and lasted on average 30 minutes. However, one young person was segregated over night, whereby s/he was provided with a mattress in the time-out room, something which raises serious issues of concern.

It is unclear whether separation is used as a last resort, following the exhaustion of other efforts to diffuse as suggested by SSI<sup>22</sup> and the CPT,<sup>23</sup> or indeed what other policy guides the use of this measure. Some staff members have questioned its use. For example, one former member of staff at Rathgael was critical of what they saw as a practice of using isolation as a punishment there:

“If someone went to their room I would go and talk to them but it was thought they should be isolated as a punishment. I don’t think we are here to punish. Maybe I’m wrong. I thought we were here to try and help and we should listen.”<sup>24</sup>

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<sup>18</sup> CPT/Inf (2001) 6: Report to the Government of the UK on the visit to Northern Ireland carried out by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) from 29 November to 8 December 1999, para 114. [www.cpt.coe.int](http://www.cpt.coe.int).

<sup>19</sup> CPT Report, para 114.

<sup>20</sup> SSI, Report of Unannounced visit to Lisnevin JJC, 3<sup>rd</sup> September 2001.

<sup>21</sup> SSI, Report of Unannounced visit to Rathgael JJC, 17 July 2001.

<sup>22</sup> SSI, Inspection of St Patrick’s JJC, 1999, p 19.

<sup>23</sup> CPT Report, para 114.

<sup>24</sup> Commission interview with staff (No 13).

An interview with a former resident of Lisnevin suggests that, in his case at least, Scrabo may have been used as punishment:

“... one of them came to me and says that they weren’t happy with my behaviour and the way I was getting on and they would have to move me to a place called Scrabo. That’s what they called it but it used to be the block. Some of the staff called it the block and some of them called it Scrabo. So they moved me down there. I says how long for? I says no I don’t want to go. At the start I disagreed and he says well you can either walk down yourself or I can push my buzzer and there’ll be four people appear to take you down either way. I says right OK I’ll walk down and I says how long for, he says two to three days. ... When my three days was up I asked about being moved and transferred back up to the landing again.”

This incident throws doubt on whether the requirement of the rules that centre management regularly visit a child being held in segregation are observed:

“My three days was up and I asked about being moved and one of the staff told me that I’d had my chance, that I would need to see someone higher. So I asked to speak to [the managers] and they told me .. this here was at about half two in the afternoon, they told me it was too late, that they were away home and all. I asked about all three bosses ... and they says they’re all away home, everybody’s away home, there’s just us in now. I says right OK I’ll sort it out tomorrow. And I never ever got the chance to see ... any one of the three bosses. I did see one of them once. [a member of management team] walked up the hall past me once ..”<sup>25</sup>

A boy in Lisnevin, however, held the view that everyone wanted to get down to the block because it was “brilliant down there”. You get out to the canteen for your food and for school. You don’t get as many privileges like television and snooker.<sup>26</sup> One boy said that the isolation unit is used if you’re messing about and “going bonkers”. They put you in to calm you down. He had been in it once. It was “just like an ordinary room. You just go in and sit down until you calm down. Then they let you back out to join your group”. He said that sometimes a staff member might come and talk to you in the room and sometimes they don’t: “If you’re restrained and taken to your own room then sometimes one of the staff will come and talk to you and then about an hour later you’re back out.” He didn’t know if staff took notes about what had happened but thought that they probably did and that they should.<sup>27</sup>

In Lisnevin, it is uncertain whether the manager sanctions the removal, although this is clearly required by the Juvenile Justice Centre Rules<sup>28</sup> and the Director's Standing

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<sup>25</sup> Commission interview with former resident of Lisnevin, 31 January 2001.

<sup>26</sup> Commission interview with young person (No 4).

<sup>27</sup> Commission interview with young person (No 9).

<sup>28</sup> Rule 30 para 1 Juvenile Justice Centre (NI) Rules 1999.

Orders.<sup>29</sup> It is not known who determines the duration of the placement, although the Lisnevin Staff Procedural Manual gives broad discretion to the manager to ensure that a period of exclusion is for the minimum time needed for the young person to settle and rejoin the group.<sup>30</sup>

There does not appear to be any requirement or entitlement for the young person to talk through the incident with their key worker or a counsellor in order to identify the root causes of their conduct or anger, and to seek to prevent its reoccurrence.

### **Recommendations**

4. It is recommended that Government set up an urgent review and revision of the Juvenile Justice Centre Rules to bring them into line with international standards. In particular, they should provide clear guidance on the use of separation procedures.
5. The rules governing separation should be amended to include reference to the rights of young people, including the right to have their version of the incident recorded.
6. Centre policy on the use of separation should be drawn up and made clear to both staff and young people. In particular, it should include strict time limits on the use of such procedures and incorporate medical supervision as well as key-worker and therapeutic follow up.
7. The use of Scrabo should be stopped immediately. The Juvenile Justice Board should consider alternative ways of preventing boys disturbing others at night, including additional staffing and training, in liaison with centre management.

#### *Use of restraint*

The Juvenile Justice Centre Rules state that ‘only forms of control approved by the Secretary of State may be used in dealing with an unruly child’ and that such measures can only be used as a last resort and when all other reasonable efforts have been tried and failed or where there is a danger to the child, others, or a risk of serious damage to property. Staff should be trained in approved forms of control. Where the use of control is necessary, a report of the circumstances shall be made to the manager without delay and confirmed in writing.<sup>31</sup>

Similarly, NIO Standards require that there must be a ‘policy and written guidance on the use of restraint and evidence that it is implemented appropriately and used only when

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<sup>29</sup> Rules 10, 12 and 14 Juvenile Justice Board, Director's Standing Orders - Lisnevin, 1999.

<sup>30</sup> See Point 4, Procedure for Adjudication of Young people who Seriously Misbehave, 1999.

<sup>31</sup> Rule 29, Juvenile Justice Centre (NI) Rules, 1999.

necessary.’<sup>32</sup> In this regard, ‘each episode of physical restraint, single separation or the application of sanctions is recorded in permanent form’.<sup>33</sup>

Commission interviews indicated real concern among staff about the use of physical restraint techniques, particularly in Rathgael where relevant training, long outstanding had not been provided at the time of interviews. Moreover, SSI has commented on the high levels of aggression between boys in Lisnevin and the challenging behaviour towards staff.<sup>34</sup> The Commission welcomes the fact that the training in physical restraint techniques has now been approved by a Home Office approved trainer. However, it agrees with SSI that restraint is only part of the safety process and that there is also a need for therapeutic crisis intervention training to ensure that restraint is used only as a last resort. Moreover, SSI has expressed concerns recently about the adequacy of these techniques to all eventualities and this is something which should clearly be kept under review.<sup>35</sup>

When interviewed by the Commission a Lisnevin staff member supported the view that more training in de-escalating situations would be beneficial:

“I had to help remove one boy, who can get violent when he gets angry. Later he said it was my fault because if I’d been there he could have talked to me and there would have been no need to remove him. I think everyone needs more training in that respect.”<sup>36</sup>

In interviews with the Commission, boys in Lisnevin gave disturbing descriptions of being restrained and taken off for separation by staff, although some understood why restraint was necessary.<sup>37</sup> In general, however, the Commission is concerned about the frequency with which physical restraint methods appear to be used, and the particular method used. This involves three members of staff forcing the young person to the ground in a face down position with his arms locked behind him and his legs held. In addition to the physical injuries suffered by some of the boys as a result, the SSI has in the past highlighted the danger involved in using this type of restraint on children given that their bone structures are not fully mature.<sup>38</sup> Indeed, it is arguable that in certain circumstances such treatment might raise an issue under Article 3 ECHR given the emphasis placed on factors such as age and state of health in the determination of whether treatment is severe enough to amount to inhuman and degrading punishment.<sup>39</sup>

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<sup>32</sup> Statements of Standards and Criteria for Juvenile Justice Centres in Northern Ireland, 1999, Standard 4: Care of the Young People, Criteria 12.

<sup>33</sup> Standard 4, Criteria 3.

<sup>34</sup> SSI, Unannounced Inspection of Lisnevin JJC, 1<sup>st</sup> December 2001, p 2.

<sup>35</sup> SSI, Unannounced Inspection of Lisnevin JJC, 1<sup>st</sup> December 2001.

<sup>36</sup> Commission Interview with staff (No 13).

<sup>37</sup> Commission interviews with young people (Nos 3, 4 and 9).

<sup>38</sup> SSI, Report of the Inspection of Lisnevin JJC, 1999, p 18, para 6.7

<sup>39</sup> Eur Court HR *Tyrrer v UK*, judgment of 25 April 1978, Series A, no 26, 2 EHRR 1.

According to SSI, it is a serious omission that incidents involving the use of physical restraint techniques are not routinely reviewed by management so that serious causes could be identified and addressed.<sup>40</sup> It is the Commission's view that failure to monitor the use of such treatment on children in custody may raise a further issue under Article 3 ECHR, which requires all children to be protected from ill-treatment.<sup>41</sup>

In addition to protecting young people from harm, preserving the integrity and personal safety of all staff must also be a priority. Teachers and female staff may be particularly vulnerable in this regard. The alarm system in place in the centres seems to provide an adequate level of protection here, but it may be more appropriate for teachers to be assisted by care staff on a partnership basis as recommended by SSI in 1999.

### **Recommendations**

8. Physical restraint should be used only as a measure of last resort and the Juvenile Justice Board should ensure that staff continue to receive regular training on the latest ways of preventing the escalation of disputes to the point where restraint is necessary.
9. Juvenile Justice Board should monitor and review incidents of the use of restraint to ensure compliance with international standards. The Board's findings should be made publicly available.
10. Records regarding use of restraint in the centres should permit the inclusion of the young person's comments on the incident.
11. Juvenile Justice Board should give consideration to SSI's recommendation that teachers be assisted by care staff on a partnership basis in the interests of teacher's safety.

### *Rewards and sanctions*

It is clear that Rathgael and Lisnevin are permitted to determine their own strategy on discipline and thus have different regimes for reward and punishment. Notwithstanding that the lack of a uniform approach leads to concerns among young people about their right to equal treatment, practice will have to be consolidated prior to the establishment of a single centre. This point has been raised by SSI.<sup>42</sup>

The Lisnevin handbook 'You've Arrived! What Next?' lists some basic rules, including requiring young people to be in the view of staff at all times; attending school; keeping clean and tidy and refraining from assault. The main recourse open to a young person who feels aggrieved by this process, either because he was unfairly accused or too harshly punished, is the complaints process although over avenues of advice and information also exist.

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<sup>40</sup> SSI, Report of the Inspection of Lisnevin JJC, 1999, p 18, para 6.8.

<sup>41</sup> See further Chapter 5 above.

<sup>42</sup> SSI Unannounced Visit to Rathgael JJC, 17<sup>th</sup> July 2001 and Unannounced visit to Lisnevin JJC, 3<sup>rd</sup> September 2001.

Lisnevin's disciplinary regime is based on a system whereby marks are achieved for good behaviour and hard effort. High marks allow young people to avail of certain privileges, such as listening to the radio and playing computer games. Conversely, young people are awarded zero for poor behaviour. One zero results in a loss of leisure activities (bedtime is reduced from 10.00pm to 9.30pm) two zeros result in bed at 9.00pm and so on. It is not clear who determines the consequences of a 'zero grade' and for how long the penalty will be imposed.

The marks system and sanctions and rewards was one of the areas which young people wanted to talk most about to the Commission fieldworker. For example, a boy explained:

“If I haven't lost a nought all this week then I'll have 145 marks and you need to get to 150 and they'll probably let me off with 5, then I can go off campus. I can go outside and all, down to canoeing, swimming pool and all that.”

He continued explaining that if you don't have enough marks you:

“do the same thing you do all the time. Watch videos, pool, computers, ‘Who Wants to be a Millionaire’.”<sup>43</sup>

Another boy told the fieldworker he was on early beds for smoking (which is not permitted for under 16s): “I got caught smoking in the toilets so I got three early beds – 7.30, 8.30 and 9.15.” When asked to further explain the marks system this boy commented: “I don't really understand it myself. If you get a zero you get half an hour taken off your bedtime – you go to bed half an hour earlier. If you get two – an hour earlier.” On the other hand, marks could be earned by attending school: “you get two points for every class you go to.”<sup>44</sup>

A boy who had been given early beds for “doing a runner” said that he liked the marks system because it enabled you to go off campus. He was hoping to get full marks to get home leave.<sup>45</sup>

However, another boy said he had preferred St Patrick's as it was more lenient than Lisnevin: “In Lisnevin ‘if you do the slightest thing wrong ... its always fucking half-seven bed.”<sup>46</sup>

Some boys did understand that sanctions could be the result of serious misdemeanours for example: “if you bully people and do and do all that there – damage furniture, assault staff or something – you get sanctions.”<sup>47</sup>

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<sup>43</sup> Commission interview with young person (No 1).

<sup>44</sup> Commission interview with young person (No 2).

<sup>45</sup> Commission interview with young person (No 3).

<sup>46</sup> Commission interview with young person (No 4).

<sup>47</sup> Commission interview with young person (No 2).

Boys who smoked reported that they were repeatedly losing marks as a result of being caught with cigarettes. One said that he was always on early bedtimes (as early as 6.30pm) because he was repeatedly being caught with cigarettes. He commented that this makes the craving for cigarettes worse as: “when you go to bed early you wake early wanting your next smoke.”<sup>48</sup>

Penalties for misbehaviour in Lisnevin seem to be limited either to early bedtime, which is a form of separation, or loss of leisure activities.

Imposing sanctions such as ‘early bedtime’ may, as SSI noted in 1999, lead to further disruption as the young person tries to get the attention of others in order to detract from his boredom.<sup>49</sup> Moreover, the Commission was disturbed at evidence from Lisnevin demonstrating problems with the use of early bedtimes as a sanction, particularly in the case of very disturbed young people. In reviewing boys files, the fieldworker found examples such as a boy with suicidal tendencies given three early beds for being ‘non-compliant, disruptive, argumentative, throwing his breakfast out the window and threatening to staff’. This boy had tried to hang himself and was said by staff to be ‘emotionally flat’ because he did not want to be in Lisnevin over the Christmas period.

In another example, a boy who had inflicting harm on himself and expressing suicidal wishes had also been given an early bed. It was noted that this boy was worried about threats of a paramilitary punishment beating and felt depressed when he received his first early bed.

The Commission is concerned about these incidents of sending suicidal, self-injuring or depressive young people to bed early, forcing them to spend time alone in a small confined space, which can only add to their difficulties. It considers that it must be very distressing for these disturbed young people to be confined in this way.

Regarding the other penalty imposed in Lisnevin, ie loss of leisure activities, concern is expressed as to whether it involves denying young people access to exercise, although it is more likely to relate to television viewing. In any event, while the young people see access to outdoor activities as a reward for good behaviour, international standards recommend providing full access to sport and recreation facilities as a matter of right not privilege earned through good behaviour.

In addition to concerns about its compatibility with international standards, research shows that while a marks or token system aids institutional management,<sup>50</sup> it shows no

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<sup>48</sup> Commission interview with young person No 9.

<sup>49</sup> See SSI, Report of the Inspection of Lisnevin JJC, 1999, p 17.

<sup>50</sup> J.D.Burchard and P.T. Harig, 'Behavior Modification and Juvenile Delinquency' in H. Leitenberg, ed. Handbook of Behavior Modification and Behavior Therapy, Englewood Cliffs, NJ Prentice-Hall 1976 pp. 405-52.

long-term benefits with respect to reducing recidivism rates.<sup>51</sup> This view is shared by SSI, who described it as ‘counter-productive’ and ‘largely ineffective’ and have encouraged management to develop a more imaginative system of positive regards to offer the young people realistic incentives.<sup>52</sup> A member of staff agreed that discussion works better than sanctions in getting to the root of why these damaged children are behaving badly:

“As a general rule, sanctions don’t work. Although there are times when sanctions have to be used, for example if a child assaults someone, - but then it is still best to go and talk to the child and find out why they did it.”<sup>53</sup>

The staff member felt pleased that: “there were very few from the old brigade in Lisnevin” with the attitude that: “you can’t control kids without sanctions.”<sup>54</sup>

Further difficulty with the ‘marks’ approach is that it is susceptible to unequal application or arbitrariness given the possibility that some staff may be more strict or tolerant than others. Staff interviewed in Lisnevin, for example, reported the difficulty involved in deciding whether to give a young person who was misbehaving a zero for the class, or alternatively, have him removed to his room for some ‘time-out’.<sup>55</sup>

In February 2000, as part of Lisnevin’s strategy for the management of change within the centre, a working party was set up to review the operation of the existing adjudication system, particularly the use of Scrabo; review the rationale underpinning and the administration of the existing rewards and sanctions system and to review the effectiveness/appropriateness of the current model of child management techniques. The full working party was anticipated to have completed its work for presentation to the Juvenile Justice Board by 5 April 2000.<sup>56</sup> The work was held up by a change in management at Lisnevin and it is unknown whether it was (or will be) ever completed.

### **Rathgael**

Rathgael operates a more sophisticated stage system whereby the rules are relaxed and privileges increased as a young person graduates along a scale from stage one to three. In stage one for example, young people are restricted to the unit, must be in bed by 9.00pm, are educated in the unit and enjoy no outdoor pursuits. In stage two, bedtime extends to 9.45pm, restriction is to the campus, and some belongings are permitted to personalise their room. Finally, in stage three, freedom extends to enjoying structured outings with staff, bedtime is at 10.10pm and young people have further opportunities to personalise their room. Movement along the stage system is discussed at a weekly team

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<sup>51</sup> R.R. Ross and B. McKay, 'A Study of Institutional Treatment Programs', *International Journal of Offender Therapy and Comparative Criminology*, 1976, Vol. 20, 167-73, quoted in Kelly, 1992: 129.

<sup>52</sup> See SSI, Report of the Inspection of Lisnevin JJC, 1999, p 17.

<sup>53</sup> Commission interview with staff (no 13).

<sup>54</sup> Commission interview with staff (no 13).

<sup>55</sup> Commission interview with staff (No 9).

<sup>56</sup> See Memorandum from Mr M Logue to All Members of the Working Party, dated 4 February 2000.



meeting with documented evidence required before a young person will be moved forward or backwards on the scale.

A girl in Rathgael explained to the fieldworker how the stages system worked:

“There are stages. Stage one’s nine o’clock bed, stage two’s half nine bed and stage three’s ten past ten bed and at the weekend stage one’s at nine o’clock still, stage two’s at a quarter to ten and stage three’s at eleven.

“One of the staff will explain it to you but the first five days you come in you’re not allowed out at all. You can’t go swimming or anything like that.”<sup>57</sup>

In principle, this is a more sophisticated model than that used in Lisnevin, and has the benefit that behaviour can be assessed over a period rather than on the basis of single incidents. Given the range of outings and activities under stage three, this forms an attraction for achievement for young people. It is clear that the rewards systems operate best when there is both something to gain and something to lose. However, concern is expressed about the limits placed on the young people’s freedom as a rule and reiterates that according to international standards all young people in detention should have the opportunity to personalise their bedrooms and to take outdoor exercise for at least one hour every day, not only those who have behaved well.<sup>58</sup>

SSI has been critical of aspects of the stage system and in 2001 it expressed concern about the decision in Rathgael to confine an active girl to the house unit on stage one of the rewards system, despite her frustration and the difficulties which the situation creates for staff.<sup>59</sup> It consequently recommended that the nature of rewards should be primarily in-house. It is unclear whether the situation has been reviewed.

## **Recommendations**

12. Juvenile Justice Board in collaboration with the Northern Ireland Office should commission an independent evaluation of best practice in promoting positive behaviour with adolescents in care and custody. This should include a review of relevant international human rights standards. The review process should involve wide consultation with all staff and professionals with expertise in the area and should, where possible, take into account the personal experience of young people.
13. As an immediate measure, the JJB and centre management should ensure that the imposition of punishment should never infringe upon:
  - a young person’s right to have contact with his/her family;
  - a young person’s right to education;

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<sup>57</sup> Commission interview No 5.

<sup>58</sup> See the concerns expressed by the CPT in its report on its visits to Lisnevin and Rathgael, paras 113 and 114.

<sup>59</sup> SSI, Unannounced Visit to Rathgael JJC, 17<sup>th</sup> July 2001, p 3.

- a young person's entitlement to outdoor exercise;
- a young person's entitlement to personalise his/her bedroom.

14. It is recommended that a code of conduct in the centres be developed on the basis of the independent evaluation recommended above. Consequently, all staff should receive regular, on-going training.
15. Sessions surrounding offending behaviour should aim to incorporate behavioural incidents which occur in the centres with a view to maximising the potential of a holistic approach to the young person's care and treatment.
16. International standards prescribe that the disciplinary code include a right to appeal to a separate, independent body. This could be a body like the Juvenile Justice Board, which could also act to oversee the discipline in all centres, ensuring an even and consistent approach is being adopted throughout the system. It is in the interest of fairness and consistency in all cases that disciplinary procedures should be developed at this level.
17. The procedure to be followed should be made clear to staff and young people and monitoring occur to ensure that all incidents are dealt with in accordance with it.

#### *Reporting incidents*

International standards highlight the importance of reporting incidents of misconduct and any sanctions imposed on young people as a result. In 1999, SSI noted it to be 'a significant omission' that serious incidents in Lisnevin were not routinely reviewed for the purposes of identifying causes and trends of behaviour in the Centre.<sup>60</sup> There appears now to be a system in place where incidents are logged in a daily log and also in a significant events file.<sup>61</sup> These are reviewed by the deputy director.

Good practice existed in St Patrick's where a record of incidents was kept and these were reviewed by management as they occurred and as part of a monthly monitoring exercise.<sup>62</sup>

Rathgael also uses a 'Separation Record' which records details of events prior to separation, action taken to diffuse the situation, an account of the removal, observations of the young person during separation and action taken to reduce separation time. However, there is no space for young people's comments on the incident and it is unclear whether it is entered into a young person's file and/or whether it is also kept together with other similar incidents so as to monitor the behaviour of the centre's population generally.

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<sup>60</sup> SSI, Report on the Inspection of Lisnevin JJC, 1999, para 6.8, p 18.

<sup>61</sup> SSI, Unannounced visit to Lisnevin JJC, 1<sup>st</sup> December 2001, pp2-3.

<sup>62</sup> Inspection of St Patrick's JJC, 1999, para 5.4, p 19.

## **Recommendations**

18. Policy and practice in the centres should be brought into line with international standards to ensure that all incidents involving the imposition of a sanction or penalty be recorded comprehensively both on young person's individual files, and also in a separate incident file. The former record should be taken into account as part of the review of the young person's development and progress and the latter report should be used to provide material for a systematic monitoring of the centre's management, permitting the identification of more general problems, together with their causes.
19. Centre management should also continue to keep unusual or violent incidents under review.

## Chapter 7

### The Right of the Child to Health and Health Care

#### International Standards

While the right to health and good health care is a universally important right, it has special relevance and importance to children in detention for a number of reasons. Firstly, many children arrive into detention with poor health and associated problems including drug and solvent abuse and learning, emotional or behavioural difficulties. Frequently, it is the first and only opportunity such children have for their health needs to be identified and addressed. Secondly, these problems are linked to children's offending behaviour in a way that makes resolution of them essential to their successful reintegration into society upon release.

Article 27 of the UN Convention on the Rights of the Child guarantees to children the right to the highest attainable standard of health care and health care services. Although this right is enjoyed by all children, standards also recognise that children in detention need 'adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care.'<sup>1</sup>

To this end, international guidelines state that every detention facility should have:

- immediate access to adequate medical facilities; and
- equipment appropriate to the number and requirements of its residents; and
- staff should be trained in preventive health care and the handling of medical emergencies.

Moreover, every child who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.<sup>2</sup>

In order to prevent stigmatisation and promote young people's self-respect and integration into the community, international standards provide that the medical care provided in detention should, where possible, be provided through the appropriate health facilities and services of the community in which the detention facility is located.<sup>3</sup>

The administration of any drug should always be authorised and carried out by qualified medical personnel.<sup>4</sup>

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<sup>1</sup> Rule 49, UN Rules for the Protection of Juveniles Deprived of their Liberty 1990 (UN Rules).

<sup>2</sup> Rule 51, UN Rules.

<sup>3</sup> Rule 49, UN Rules.

<sup>4</sup> Rule 55, UN Rules.

All children have a right to be protected from narcotic substances<sup>5</sup> and detention facilities must adopt specialised drug abuse prevention and rehabilitation programmes administered by qualified personnel.<sup>6</sup>

Young people suffering from mental health difficulties should be treated in a specialised institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.<sup>7</sup>

### **Law, policy and practice**

The Northern Ireland Office (NIO) Standards provide that all young people will be provided with health care to National Health Service (NHA) standards and with health education, and goes on to recognise the right to access suitably qualified medical and nursing staff 24 hours a day.<sup>8</sup>

The Juvenile Justice Centre Rules reiterate these standards and prescribe that at least part of a building in each centre shall be equipped, furnished and staffed for the appropriate care and treatment of sick children.<sup>9</sup>

These standards are clearly consistent with international law, although they do not appear to be comprehensive or sufficiently detailed to guide practice and policy in the juvenile justice centres. For example, the Rules require that a medical officer – defined as a registered medical practitioner – examine each child following admission and report to the manager if a child is found to have an infectious disease or other condition threatening his health or well-being.<sup>10</sup> However, while the rules require that steps be taken to treat the child appropriately, they make no reference to the right of children to have their specific health needs, including mental health and addiction problems, identified and addressed in a systematic way while in detention.

The NIO Standards require that ‘adequate arrangements’ be made for the ‘secure storage, recording and administration of medication’ without providing further detail as to what is adequate.<sup>11</sup> Consideration of the international standards here supports the view that a practical distinction may be made between the administration of routine medication, such as for colds and other minor ailments, and prescribed medication. While the administration of the former by non-medical staff may be within international standards, it is clear that the failure to ensure that suitably qualified personnel administer prescribed medication is not.

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<sup>5</sup> Article 33, UN Convention on the Rights of the Child.

<sup>6</sup> Rule 54, UN Rules.

<sup>7</sup> Rule 53, UN Rules.

<sup>8</sup> NIO, Statements of Standards and Criteria for JJC NI, 1999, Standard 7: Health Care.

<sup>9</sup> Rule 45 Juvenile Justice Centre (NI) Rules, 1999.

<sup>10</sup> Rule 20.

<sup>11</sup> Standard 7, Criteria 4.

In general, the Commission is concerned about the lack of clear and detailed standards and policy regarding the child's right to health care and the right to an individualised health plan and considers that this lacuna leaves this vital area of centre activity without guidance or regulation. The Social Services Inspectorate (SSI) reported in 2001 that a boy who forgot to remind a member of staff about his medication for ADHD subsequently did then not receive it.<sup>12</sup>

A serious difficulty faced by those attempting to provide health care services in the juvenile justice centres is the fact that responsibility does not fall within the Department of Health and Social Services and Public Safety (DHSSPS), but is the responsibility of the Northern Ireland Office (NIO).

During this investigation, the Commission wrote to the Minister for Health enquiring whether her Department was playing a role in the development of Government plans for the future of the juvenile justice estate, particularly in relation to the health care of children in custody. Specifically, the Commission asked what input the Department has into plans for the psychological services for the centres.<sup>13</sup> The response indicated that the Department had not been consulted by NIO about future health care in the juvenile justice system and moreover, that the Department did not see itself as having a role in this regard.<sup>14</sup>

The Commission considers that NIO's failure to consult with the DHSSPS is contrary to international standards which emphasise the need for a multi-agency approach to the care of children in custody.

### **Recommendations**

1. Responsibility for the health care of children in juvenile justice centres should, ultimately, be passed from the NIO to the DHSSPS.
2. As an interim measure NIO should have immediate consultation with the Department on future plans for health care provision in juvenile justice centres.
3. As an interim measure DHSSPS should be given a statutory advisory role in relation to health care in the juvenile justice system.

### *Medical assessment*

Both the NIO Standards and the Juvenile Justice Centre Rules stipulate that each young person must be examined by a medical officer within 24 hours of admission and within the 24 hours preceding their release.<sup>15</sup>

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<sup>12</sup> SSI, Unannounced visit to Lisnevin JJC, 1<sup>st</sup> December 2001, p 5.

<sup>13</sup> Commission Letter to Minister for Health, 1 August 2001.

<sup>14</sup> Telephone call with official from DHSSPS, Aug 2001.

<sup>15</sup> NIO, Statements of Standards and Criteria for JJC NI, 1999, Standard 7, Point 2 and Rule 20 Juvenile Justice Centre (NI) Rules, 1999.

With regard to the assessment on arrival, the Commission has been concerned that those admitted to the centres under the Police and Criminal Evidence Order 1989,<sup>16</sup> particularly at night, may not necessarily undergo a medical examination.<sup>17</sup> In this regard, the Commission welcomes the reassurance provided by the Juvenile Justice Board that ‘a medical examination is carried out on every young person upon admission to a Juvenile Justice Centre’.<sup>18</sup>

Practice with regard to medical assessment before transfer or discharge is inconsistent, however, and appears therefore to operate contrary to both domestic and international standards.<sup>19</sup> This raises concerns given that the failure to provide a health check for all young people leaving the centre increases the likelihood of them being transferred without the necessary medication, prescription or health records.<sup>20</sup>

In addition to staffing difficulties discussed below, it is clear that problems relating to record keeping threaten to undermine the effective work that staff are currently undertaking in the centres. Firstly, the process of transferring a young person’s medical records from their general practitioner (GP) to the juvenile justice centre, which appears to happen in Lisnevin but not Rathgael, may take weeks and threatens to stigmatise and create problems for young people when seeking to re-register with their GP following release. Secondly, there is no system allowing staff in each centre to exchange a young person’s medical records when they are transferred.

Commission interviews with staff reported that communication between centres about young people’s medical history is conducted in an informal way, normally between nurses over the telephone.<sup>21</sup> This practice may pose risks to the health of young people, particularly those already on medication.

Problems exist in relation to the nature and role of the medical assessment on arrival. In Lisnevin for example, while the young person undergoes a medical on arrival this is not something which is taken into account in the development of a treatment plan, but rather is retained in the medical centre. However, the Commission welcomes the fact that the medical part of the assessment form is now filled out by a qualified nurse and not the partnership officer, as previously occurred.<sup>22</sup> It is still not clear, however, whether this assessment constitutes a full medical assessment, which would allow medical details, including addictions and other conditions such as self-harm tendencies, to be identified and recorded and form the basis of a programme developed in conjunction with the relevant health professionals to counteract them.

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<sup>16</sup> See further chapter 2.

<sup>17</sup> Commission interview with staff (11 and 21).

<sup>18</sup> Commission correspondence from the Juvenile Justice Board, 18<sup>th</sup> February 2002.

<sup>19</sup> The failure to implement transfer or discharge medicals in Lisnevin, as required by the standards, was criticised by SSI in 1999, see Report, para 9.2

<sup>20</sup> Lisnevin, not Rathgael (Commission interview with staff No 2 and 10)

<sup>21</sup> Commission interview with staff (No 2 and 10)

<sup>22</sup> Commission correspondence from the Juvenile Justice Board, 18<sup>th</sup> February 2002.

Development of a comprehensive, computerised system of record keeping would permit medical personnel in either centre to instantly access and exchange vital information on a confidential basis regarding the state of health of a young person, including addictions or other vulnerabilities, and their medication.<sup>23</sup>

### **Recommendations**

4. As far as possible, in accordance with international standards, young people in detention should remain registered with their own GP.
5. A comprehensive and computerised system of record keeping should be put in place.
6. Every young person admitted to a juvenile justice centre should be guaranteed a full medical by a medical officer within 24 hours of arrival as the Standards require.
7. Young people addicted to drugs or alcohol, or who have been sexually or physically abused, should have access to specialised medical facilities aimed at recovery and treatment.

#### *Medical provision in the centres*

The Juvenile Justice Board assured the Commission that children's health care is well serviced in juvenile justice centres:

'Each centre has an equipped and staffed medical facility, a weekly visiting GP and contracted-in psychiatric and dental care. We are currently reviewing psychological provision with a view to increasing this substantially. We actively promote the physical well being of the children and their health is closely monitored.'<sup>24</sup>

Nevertheless, the Commission has concerns about the extent to which children's right to health care is being met in custody. The decrease in numbers of children in the system has led to a subsequent reduction in medical staff and facilities and a restructuring of service provision. While this is understandable given the resource restrictions, the Commission is not convinced that current staff levels are sufficient to meet children's healthcare needs.

Although Rathgael and Lisnevin have dedicated medical centres, it is not apparent that either has the necessary staff provision to operate at the appropriate level. For example, since SSI inspected in 1999, Lisnevin's nursing staff has been reduced to one full-time and two part-time nurses who between them are expected to cover the Centre from 9.00am to 8.00pm Monday to Friday, for six hours at the weekend and the remaining time on call. Bearing in mind that a member of staff may be absent or on leave at any

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<sup>23</sup> See further consideration of this issue and recommendations in Chapter 3.

<sup>24</sup> Commission correspondence from the Juvenile Justice Board, 22<sup>nd</sup> June 2001.



time, the staffing arrangements scarcely cover the core hours putting tremendous strain on resources.

A GP in Newtownards acts as medical officer for the centre and he visits once a week and is on call otherwise during working hours. Concern has been expressed by staff that access is difficult during evenings and weekends however.<sup>25</sup> This is made worse by the expectation of the deputising GP service that patients will travel to see them, which may not be possible in the case of a child in custody.

In Rathgael where one nurse is currently on long term sick leave<sup>26</sup> the medical centre is staffed by one nurse, operating on a part-time basis, who visits the unit every morning. Prior to 1985 there was a sick-bay and a flat where nursing staff did overnight duty and could be buzzed if a young person was ill. This is no longer available.

Despite this reduction in service, medical cover appears to be better than in Lisnevin insofar as two doctors – one male and one female - with practices in the vicinity provide cover to the centre. Doctors from the local practice are on call over weekends but there are no nursing staff on duty in the centre at weekends.<sup>27</sup> While numbers in Rathgael have been very small since the introduction of the Criminal Justice (Children) (NI) Order 1998, some of the children placed there have serious health concerns including drug abuse, a history of sexual abuse, and tendency towards self-injury. It is vital therefore that there is sufficient nursing and medical cover to meet their needs.

While the Commission has concerns about staffing levels, staff in Rathgael assured the fieldworker that children are well looked after there in terms of health. One commented:

“I can’t think of anywhere where a child is so well looked after.” This staff member explained that staff have a: “tremendous responsibility looking after someone else’s child. We nearly go overboard in ensuring that children are cared for.”<sup>28</sup>

In terms of dental care, young people in Rathgael visit a dentist in the local community when required (a dentist used to visit Rathgael twice a week<sup>29</sup>) and there are arrangements in Lisnevin for a dentist to visit once a week.<sup>30</sup> Staff noted that this access is important as children may not have been to the dentist for years.<sup>31</sup>

International standards indicate a preference for providing young people in detention with health care through the facilities based in the community in which the detention centre is

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<sup>25</sup> SSI, Report on the Inspection of Lisnevin JJC, 1999.

<sup>26</sup> See the SSI Report following its unannounced visit to Rathgael JJC in December 2000.

<sup>27</sup> Commission Staff Interview No 17.

<sup>28</sup> Commission Staff Interview No 17.

<sup>29</sup> Commission Staff Interview No 17.

<sup>30</sup> SSI, Report on the Inspection of Lisnevin JJC, para 9.4.

<sup>31</sup> Commission Staff interview No 10.

located. This is clearly easiest to comply with in a situation where the centre is based geographically within a community. A member of the medical team in St Patrick's before its closure, told the Commission that boys were routinely brought to the local GP practice when they needed to see a doctor and for their initial health assessment. Where necessary the GP would come to the centre to see the boy (for example if there were concerns that the child was at risk of absconding).<sup>32</sup>

It is apparent that the rationalisation of the system has been accompanied by a reduction of in-centre health care facilities. For example, in St Patrick's before its closure, staff explained that:

“When we were in the old building we had a medical department with a surgery and we had everything equipped for proper medical examination and since that all was done away with the doctor was coming here and seeing them in this room and it wasn't suitable at all, so we decided we would bring the boys down to the surgery....”<sup>33</sup>

A modern, well-equipped health care facility in each centre is necessary with a capacity to meet young people's routine health care where it is not possible for them to visit their GP, and to cater for young people for whom use of external facilities may be inappropriate.

During hospital visits some young people have used the opportunity to abscond.<sup>34</sup> In interviews, staff explained to the Commission about the difficult logistics involved when a child needed to go to hospital:

“A boy comes in, falls on the floor and bangs his head. Straight away you don't muck about, he needs x-rayed. Now for me deciding he needs an x-ray, to get him to the hospital and to get him back is an absolute nightmare. Generally if they're committed they should have a police escort with them but the police now have told us that they can't escort boys to and from, they don't have the staff.”<sup>35</sup>

SSI has recommended that, as happened in a recent case, those attending hospital be required to travel in pyjamas and dressing gown or for very high risk in handcuffs.<sup>36</sup> While the Commission recognises that safety (of staff, the public as well as young people) must be the uppermost consideration, it is concerned that this practice raises an issue regarding the child's right to respect for his/her dignity.

In the interests of children's health it is important that the issue of how best to keep young people safe during hospital visits is resolved quickly. In developing policy on the issue the Juvenile Justice Board should look at best practice elsewhere.

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<sup>32</sup> Commission Staff interview No 2.

<sup>33</sup> Commission Staff interview No 2.

<sup>34</sup> SSI, Unannounced inspection of Lisnevin JJC, 3 September 2001.

<sup>35</sup> Commission staff interview (No 10).

<sup>36</sup> SSI unannounced visit to Lisnevin JJC, 3 September 2001, p 5.

## Recommendations

8. Northern Ireland Office should restore the staffing levels of health care staff to full capacity in both centres by recruiting specifically qualified personnel to fill current vacancies.
9. Policy and training should be developed based on best practice so that young people's hospital visits take place in conditions which are humane and respect the child's dignity.
10. Where the risk to the child or threat to public safety is very great, the medical centres in the juvenile justice centres should have sufficient equipment to meet young people's routine health care.
11. Special arrangements should also be put in place with community practitioners to ensure that all young people who need to, can see a medical officer without delay or threat of harm to either staff or themselves.
12. The First Aid training provided to staff should be followed up with refresher courses on an annual basis.
13. Juvenile Justice Board and the Northern Ireland Office should take into account the child's right to health care in international standards when designing and equipping the new centre. They should look at best practice elsewhere in carrying out this task.

### *Administering medication*

Nurses in the juvenile justice centres are non-prescribing. Prescriptions are written by visiting GPs and administered by staff. The lack of adequate staffing in the medical centre means that medication is currently distributed by non-medical staff outside the nurse's hours.<sup>37</sup> As noted above, the distribution of routine remedies by non-medical staff may be acceptable. However, the failure to ensure that medical staff administer prescribed drugs is considered to be contrary to international standards and is both inappropriate and unfair to such staff, and potentially dangerous for the young person concerned, particularly given that it has occurred that, through omission, medication was not given out at all. Responsibility for this situation does not rest with individual staff members, but with centre management and the Northern Ireland Office, which has failed to address the staffing shortages which give rise to the problem in the first place.

In 1999, SSI recommended that a procedure be devised to confirm the identity of a boy each time he receives medication, to avoid the administration of medication to the wrong individual.<sup>38</sup> It is unclear whether this has been undertaken and similarly, there is no

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<sup>37</sup> Commission interview with staff (No 11).

<sup>38</sup> SSI, Report of the Inspection of Lisnevin JJC, 1999, p 28.

medication log-book, which could be used to verify if medication has been distributed correctly.

## **Recommendations**

14. Northern Ireland Office should ensure that appropriate and sufficient medical staff are appointed to the Centres to ensure that prescribed medication is administered safely in line with international standards.
15. Pending the appointment of such staff, a system should be put in place immediately to ensure that young people on medication receive it on time and that that fact can be independently verified. The onus should never be on individual children to remind staff about their medication.

### *Therapeutic services*

The state of psychological services in the juvenile justice centres is of great concern to the Commission particularly given the high number of young people believed to have special needs in this area.<sup>39</sup> It is clear that the currently poor level of mental health service provision, which contrasts dramatically with that on offer in the community, places at real risk the mental health and potentially the life of young people in detention.

The SSI recently commented that:

‘the lack of access to psychology service inhibits assessment and planning in some cases. This remains a frustration to the staff and could raise the issue of a lack of equal treatment in comparison with other young people in the area.’<sup>40</sup>

Furthermore, lack of specialised therapeutic services contributes to the practice of remanding young people considered to be a danger to themselves or others in the Young Offender Centres.<sup>41</sup> If a young person displays markedly disturbed or psychotic behaviour there are not appropriate resources in either centre to deal with this.

Young people do not routinely undergo a psychological assessment following admission. Notwithstanding that a number of young people entering the accommodation have been there previously and the assessment may not need to be repeated, the lack of a routine psychological assessment on admission may undermine the ability to identify any health conditions which may threaten their well-being in accordance with the Juvenile Justice Centre Rules.<sup>42</sup> As a direct consequence of this staff shortage, young people do not meet the psychologist until evidence of a serious problem, such as self-harm, manifests itself. The failure to undertake an initial psychological assessment with every young person

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<sup>39</sup> A survey from 1997 suggested that almost all young people in detention have some form of learning, emotional or behavioural difficulty. See Horgan, G & Sinclair, R, *Planning for Children in Care in Northern Ireland*, London: National Children’s Bureau, 1997, p 131. No current statistics are available. See further Chapter 1.

<sup>40</sup> SSI unannounced visit Lisnevin JJC, 3 September 2001.

<sup>41</sup> See further chapter 1.

<sup>42</sup> See Rule 20 Juvenile Justice Centre (NI) Rules 1999.

admitted to the centre makes early intervention in this area almost impossible, and has given rise to a crisis management approach to mental health in the centres.

Since the disbandment of the Applied Psychology and Research Unit (APRU) in August 2000, Lisnevin has lost its full-time psychologist reducing the facility to a skeleton service. Unfortunately, the Commission was unable to gain access from NIO to the full evaluation of the APRU which led to its disbandment. The current arrangement is for a psychologist to undertake approximately 10 hours per week at Lisnevin, a level considered grossly inadequate.<sup>43</sup> The service is now operating at a level of 'crisis intervention' (for self injurious behaviour or history; seriously threatening behaviour and emotional distress) with referrals for any other reason being discouraged, as any child requiring long term intervention cannot receive that service at present.

The psychologist at Lisnevin believes that very few young people there would not require help from a psychologist and furthermore, that the expectations of both young people and their parents about the level of the service available are rarely met. The fact that the psychologist has very limited time available to provide the service means not only is it extremely difficult to build up the necessary relationship with young people conducive to their treatment, but it also damages the perception of what a psychology service can offer. As a result, young people leave the centre cynical about what can be achieved and this is compounded when they are released and find the service in the community is even more difficult to access.

Overall, the lack of dedicated psychology service provision in Lisnevin currently means that young people are not getting the service they need, except in crisis situations. The lack of trained care and social work staff compounds this problem as it is not possible to take the multi-disciplinary approach to young people's aggressive behaviour and the resources are not available to intervene in a timely and preventive manner. While efforts have been made to draw the inadequacy of the service to the attention of Lisnevin management and the Juvenile Justice Board, little has been done by NIO to address the problem. This situation may result in permanent damage, injury or even death of a young person in the care of the centre.

According to SSI, the psychologist visits Lisnevin five days each week and the psychiatrist visits once to see referrals.<sup>44</sup> Nevertheless, the failure to provide a full psychology service, including a full assessment on admission and the development of a multi-faceted individualised treatment plan to be implemented by the psychologist together with professional care and social work staff, heightens the risk of self-harm among young people. This type of emergency situation is one of few which currently attracts the intervention of the psychologist, although the fact that she is only available for ten hours each week makes it likely that she will not be nearby when it arises.

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<sup>43</sup> Commission interview with staff (No 8 and 9).

<sup>44</sup> SSI, Unannounced visit to Lisnevin JJC, 1 December 2001.

The judgment of the European Court of Human Rights in case of *Keenan v UK* suggests that the procedures and facilities currently in place in the centres may fall short of what is expected under the Human Rights Act 1998.<sup>45</sup> In particular, the Court's judgment in this case makes it clear that effective monitoring and informed psychiatric input into the assessment and treatment of mental health problems in detention is essential to avoid falling short of the Convention's standards. Moreover, failure to maintain full and detailed records of the mental state of vulnerable young people may undermine the 'effectiveness of any monitoring or supervision' causing significant defects in treatment offered.

The Commission has serious concerns about arrangements in Lisnevin for children thought to be at risk of suicide. It notes from the SSI report that there were seven incidents of self-harm or attempted self-harm including attempts at hanging in Lisnevin between September and November 2001.<sup>46</sup> At the same time, the Commission welcomes the fact that 'all of the self-injury situations were the subject of close observation and also prompted the recruitment of additional psychological support.' SSI also reported that 'since the previous unannounced visit, there has been a greater involvement of staff with nursing expertise whenever closer observation is needed'. Basic training on depression, particularly on identifying and counteracting its effects,<sup>47</sup> has also been provided to staff and while this is a sign of progress, training of non-specialist staff is no substitute for providing full mental health services.

This improvement in the approach of the centres to mental health and relevant staffing arrangements is most welcome.

#### *Mental health services for young people in the community*

The lack of mental health services in the centres is exacerbated by an overall lack of provision for young people in Northern Ireland. The Commission understands that there are waiting lists for Child and Adolescent Mental Health Services (CAMHS) across Northern Ireland. At present, there is also a shortage of inpatient adolescent psychiatric beds although an adolescent unit is expected to open in Knockbracken, a secure psychiatric centre for adults, in the near future. At least one young person who had been resident in Lisnevin was moved from there to an adult ward in Knockbracken.<sup>48</sup>

The shortage of provision in the community means that it is likely that some young people will be entering custody without having had their mental health needs adequately met. This puts added strain on the staff in the centres.

In the interests of continuity, it is recommended that the CAMHS be capable of following the child into and out of custody. It is also important that the specialist psychiatric

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<sup>45</sup> Eur Court HR *Keenan v UK*, judgment of 3 April 2001. See further Kilkelly, 'The Human Rights Act 1998: Implications for the Detention and Trial of Young People' 51(3) Northern Ireland Legal Quarterly (2000) 466 at 478.

<sup>46</sup> SSI, unannounced visit Lisnevin JJC, 1 December 2001.

<sup>47</sup> SSI, unannounced visit Lisnevin JJC, 1 December 2001.

<sup>48</sup> Irish News, 9 March 2000.

accommodation in the community is capable of coping with a young person who may present problems of safety and security in their own respect and that of others.

### *Self-harm*

In 1999, SSI reported that Lisnevin had established a group to monitor self-injurious behaviour. This is welcome in the light of the judgment of the European Court of Human Rights in the Keenan case, which highlighted the responsibilities of prison authorities with respect to a prisoner at risk of suicide.<sup>49</sup> The Commission is encouraged to learn that the self-injuring monitoring group meets every Monday morning.<sup>50</sup> It recommends that the Juvenile Justice Board and SSI undertake to continuously review the work of this group and where appropriate, publish any lessons which can be learned.

### **Recommendations**

16. The Juvenile Justice Board and juvenile justice centre management should put in place urgently both policy and staff provision to deal with young people's psychological and emotional needs. This should be carried out in line with the recommendations made by the BDS Review of the APRU in 1999 and pay particular attention to integrating the work of the psychologist into the centre's programmes, policies and training.<sup>51</sup>
17. Provision should be made, urgently, for out of hours services and all centre staff should be provided with the necessary skills to handle a crisis' early stages. This and other medical attention should never be substituted for the attendance and intervention of a psychologist with knowledge of the person and situation involved.
18. Consideration should be given to making provision, in advance of such an emergency, for locating an emergency care unit within the centre where those at risk of self-harm could be monitored in appropriate surroundings. The new centre should have such accommodation built into the medical wing and dedicated, full-time, psychological staff.
19. The possibility of CAMHS having a role in following a child into and out of custody should be explored.

### *Drug therapy*

International standards require the adoption of specialised drug abuse prevention and rehabilitation programmes.<sup>52</sup>

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<sup>49</sup> See further discussion of this issue in chapter 9.

<sup>50</sup> Commission correspondence from the Juvenile Justice Board, 18 February 2002.

<sup>51</sup> See BDS, Review of the APRU, 1999, pp 23-27.

<sup>52</sup> Rules 51 and 54 UN Rules.

The Social Services Inspectorate review of the Criminal Justice (children) Order found that an estimated 60% of young people coming into custody had a substance misuse problem. Addiction to cigarettes is a particular problem for many of the young people.

Juvenile justice centres have only recently focussed attention on drug abuse and related problems.

Lisnevin staff are currently undertaking training in this area – in addition to the nurses' postgraduate studies, five members of staff have completed a 13 week course on drug abuse – and this will be the first time that staff in the centre will have formal qualifications for working with children with drug problems. While staff are willing and have sufficient expertise in the area, the lack of adequate funding appears to seriously hinder the development of a more sophisticated drug treatment strategy. For example, in 2000 the medical centre in Lisnevin succeeded in winning a grant of £15,000 (five times its annual budget) to pursue drugs treatment work. Resources, as well as information about the availability of grants and programmes, are scarce.<sup>53</sup>

The Commission understands that Lisnevin is currently bidding for £91,000 from the NIO to fund work on drugs treatment work.

It would be a positive step if a programme was developed spanning both custody and the community phase of the sentence. Relevant expertise both inside and outside custody should be brought into the programme.

### **Recommendations**

20. A health strategy, including a dedicated drugs programme, should be put in place.. This should take both a preventive approach, incorporating an awareness raising programme, as well as a strong rehabilitative element in each young person's treatment plan, as appropriate.
21. Further efforts should be made to develop links with community groups in a way which facilitates the integration of the young person with drug problems into the community following release. In this regard, existing links with specialist organisations such as the Dunlewy Centre should be built upon as they offer valuable assistance in the development of appropriate treatment programmes from a group and an individual perspective.
22. A health education policy should be put in place in every detention centre. Residential and medical staff, together with outside agencies should be involved in raising awareness among the young people about the dangers of alcohol and drug addiction, smoking and the importance of maintaining good health and fitness.

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<sup>53</sup> Commission interview with staff (No 10).



23. All initiatives taken by staff in this area – including their training – should be strongly supported and facilitated by management and NIO.

#### *Health promotion and awareness*

The importance of health education and promotion is apparent from international standards and is shared by the medical staff in the centres who have made positive efforts to develop a health promotion or health education policy in the centres. There remains much to be done in the area, however, and the development and implementation of a comprehensive policy has hitherto been delayed due to staffing difficulties. Medical staff, despite their clear initiative, cannot be expected to cope with the obligations central to providing a full medical service in the centre as well as undertaking work in the area of health promotion and education.

In 1999, Lisnevin was criticised for failing to give staff further access to training in this area<sup>54</sup> and the failure to support efforts of staff in this area is evident from the fact that under 10% of the centre's budget is attributed to the medical centre.<sup>55</sup> While management retains some discretion in this area, the poor budgetary allocation is something for which the NIO must retain ultimate responsibility. Clearly, this is an area in which proper funding would make an enormous difference as the staff have the skills and the initiative to develop and implement a health promotion strategy. This is illustrated by the fact that what has been achieved to date, on a tiny budget, is due to the initiative shown by the nursing staff themselves, which are all currently undertaking postgraduate study (two are pursuing a master's degree in health promotion and a third is doing an advanced diploma in addiction studies).<sup>56</sup> Moreover, they have taken steps to raise awareness about health issues, such as exercise, diet and basic health care. It is clear, however, that medical staff are not supported adequately in the work that they do in this area.

#### **Recommendations**

24. In order to guarantee the implementation of standards regarding health promotion and awareness, the many initiatives of medical staff should be supported by the addition of resources to their work. The allocation of greater funding and staffing to the fulfilment of health education goals must be prioritised in order to maximise the potential which exists to put these projects into effect.

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<sup>54</sup> SSI, Report of the Inspection of Lisnevin JJC, 1999, p 28, para 9.6.

<sup>55</sup> Commission interview with staff (No 10).

<sup>56</sup> Commission interview with staff (No 10).

## Chapter 8

### Private and Family Life

#### International Standards

International standards state clearly that every child who is deprived of liberty must enjoy the right to maintain regular contact with his/her family through correspondence and visits. These visits should be regular and take place in circumstances that respect the need for privacy, contact and unrestricted communication with family and legal counsel. Children should be allowed to leave detention for home visits and other important reasons.<sup>1</sup>

The Human Rights Act 1998 (HRA) imposes additional obligations in relation to the right to respect for private and family life and correspondence safeguarded by Article 8 of the European Convention on Human Rights. This provision permits restrictions on communication with family and friends in limited circumstances only, such as where it is necessary to prevent disorder or protect the rights of others, and never as punishment. To satisfy HRA obligations, any restriction or prohibition of contact must have a clear legal basis, and must be no more invasive than is necessary to achieve the desired aim. There must also be a mechanism in place to ensure that any interference with an individual's rights is subject to effective control and that effective safeguards are put in place in this regard.<sup>2</sup>

Further to the importance of adequate communication with the outside world, international standards also stress the importance of ensuring that young people have the opportunity to keep themselves informed regularly of the news by reading newspapers and magazines, through access to radio, television and films and through the visits of the representatives of any lawful club or organisation in which the child is interested.<sup>3</sup>

#### Law, policy and practice

The Juvenile Justice Centre Rules provide that communication between a young person and his/her family can be restricted in certain circumstances, at the discretion of the centre manager.<sup>4</sup> In particular, s/he may delay, interrupt or prevent communication to or from a child if s/he believes that written or verbal communication is not consistent with the child's welfare or well-being or where the good order of the centre may be put at risk. However, there appears to be no mechanism in the rules for challenging this restriction,

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<sup>1</sup> Article 37(c) UN Convention on the Rights of the Child; Rules 59-62 of the UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (UN Rules). See also the comments of the European Committee for the Prevention of Torture at CPT/Inf (99) 12.

<sup>2</sup> See Eur Court HR *Malone v UK*, judgment of 2 August 1984, para 67, Eur Court HR *Rotaru v Romania*, judgment of 4 May 2000, para 55 and Eur Court HR *Silver v UK*, judgment of 25 March 1983.

<sup>3</sup> See Rule 62, UN Rules and Article 17, Convention on the Rights of the Child.

<sup>4</sup> Rule 40, Juvenile Justice Centre (NI) Rules, 1999.

should the young person become aware of it, nor any requirement that any restriction be proportionate as required under the Human Rights Act 1998.

The importance of contact between children and their families is recognised by the Northern Ireland Office, which identifies as a priority of juvenile justice centre management that: ‘young people are given every opportunity and encouragement to re-establish, maintain and strengthen contacts with their family, friends and significant others outside the Centre.’<sup>5</sup>

This is followed by the more detailed requirement that: ‘young people are encouraged to maintain outside contacts by writing and receiving letters, telephone calls and visits from family and friends, subject to the need to ensure the security of the Centre and the safety of the young person.’<sup>6</sup>

There is a welcome recognition, therefore, that encouraging links between the child in detention, and family, school and other sources of support is vital in order to successfully re-integrate the young person into the community. In interviews, staff and young people stressed the importance of contact with family. Young people also feel that contact with friends is important.

Despite the apparent consensus about the importance of maintaining contact between young people in detention and their family and friends, difficulties remain in implementing this in practice. Problems are caused by factors including the location of the centres, understaffing, and the policy and practice of individual centres. The fewer centres exist the less accessible they are likely to be to the broader population.

The difficulties which centre location can cause for families was acknowledged by SSI in its 1999 report on Middletown JJC in Co Armagh (since closed). The Inspectors noted that notwithstanding the efforts of staff, the geographical separation of the girls from their homes inevitably created problems in maintaining positive links with their families and made visiting by parents difficult.<sup>7</sup> In the Human Rights Commission’s assessment the same could be said for both Lisnevin (in Millisle, Co Down) and Rathgael (near Bangor, Co Down).

The location of Lisnevin, which is within one hour of Belfast, is recognised as being awkward and it poses a problem for families who do not have private transport. While the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO), a voluntary organisation, is funded by NIO to provide a minibus service between Belfast and Lisnevin, this service is unfortunately limited. In particular, it caters only for those travelling from Belfast and runs on Sundays only. Consequently, the location of Lisnevin can and does determine whether young people receive regular visitors.

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<sup>5</sup> NIO, Statements of Standards and Criteria for Juvenile Justice Centres in Northern Ireland, 1999, Standard Standard 4, Point 3.

<sup>6</sup> Standard 4, point 7.

<sup>7</sup> SSI, Report on the Inspection of Middletown Juvenile Justice Centre, 1998, p 3.

In interviews, young people referred to the location of the centres as a barrier to regular visits. For example, a young person from Newry said that he did not get any visitors at Lisnevin because it was too far for his family to travel. He only saw his parents during court appearances.<sup>8</sup> Another said that her mother was only able to visit Rathgael “once in a blue moon” because of the difficulty and cost of travelling”.<sup>9</sup> When her mother did visit the girl worried “I don’t like her coming ... it’s too far for the weans to travel”. Some young people said that loss of contact with their family was the worst thing about being in custody.

These problems will not be alleviated by the decision to locate the new detention centre on a single site at Rathgael. In the Commission’s view, the Government did not give sufficient consideration to the children’s right to family life when taking the decision to close St Patrick’s. According to NIO statistics, a substantial proportion of young people in custody come from the west Belfast area.

International standards support overwhelmingly the need for decentralised facilities for young people in order to maximise the opportunity for family visits and contact. In the Commission’s view, these standards were not considered seriously in the planning process for the future of the juvenile justice estate.

### **Recommendations**

1. NIO is strongly recommended to reconsider its decision to locate its entire facility for detaining young people on a single site given the implications for maintaining direct contact between young people and their families.
2. Comprehensive arrangements must be put in place in order to facilitate visits to young people by their families and friends. As a minimum NIO should provide transport to and from the centres via NIACRO or other voluntary sector organisations.
3. The new juvenile justice centre must contain adequate provision for communication between the young people and their family and friends, both structurally and in policy terms. It should incorporate family rooms, which permit young people in detention to have parents and siblings stay overnight, desired particularly by younger children or those finding detention particularly difficult, and also include appropriately decorated rooms which would make visits an enjoyable and positive experience. Closed circuit television should be incorporated into any visiting room so that the necessity of having Centre staff physically near could be avoided in favour of remote monitoring.

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<sup>8</sup> Commission interview with young person (no 9).

<sup>9</sup> Commission interview with young person (no 5).

### *Visiting arrangements*

Contact between young people and their friends and family is crucial for all young people in detention, and is particularly important for those detained in closed institutions. While a remote location, poor facilities and inadequate staffing cause obvious problems in this regard, it appears that much remains within the discretion and power of individual centres. For example, interviews with staff in St Patrick's before it closed indicated that arrangements regarding contact between young people and their families were relatively unrestricted. Staff appeared to encourage family visits, collecting them from the station and providing bus passes or refunding the cost of public transport, where private transport was unavailable.<sup>10</sup> These are clearly positive initiatives which facilitate the full implementation of international and NIO standards.

Following its inspection in 1999, however, the SSI highlighted Lisnevin's lack of facilities for accommodating overnight or lengthy family visits and were criticised of the information sent to parents and for the visiting times that were both restrictive in length and bureaucratic.<sup>11</sup>

However, it is apparent that the regime in Lisnevin has been relaxed in relation to visits. The Commission was pleased to note that Lisnevin had plans to provide play tables for visiting younger siblings. SSI commented positively that 'families I have spoken with were appreciative of the welcome they receive at visiting time and the hospitality'.<sup>12</sup>

Rathgael, on the other hand, has recently established provision whereby families can stay overnight when visiting young people. According to the NIO, this facility, involves use of a former staff house, has been used successfully several times since its inception and is to be encouraged.

The Commission understands that the NIO plans to include provision for overnight stays for families in the new centre. This is a positive development.

The voluntary organisation, NIACRO, runs a minibus from Belfast for families visiting Lisnevin, providing a much needed service. However, for families without private transport, particularly those coming from the west of Northern Ireland, this is still a difficult and costly journey. These difficulties can impact on young people both by reducing the level of contact with family members, and also by causing anxiety about stress placed on family members by travelling.

Current levels of staffing and the physical constraints of existing centres work against full implementation of the NIO standard, which encourages high levels of contact and communication between young people and their families and friends. Staffing considerations and lack of appropriate visiting areas make it difficult to facilitate

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<sup>10</sup> Commission interview with staff, (No 1).

<sup>11</sup> SSI, Report on the Inspection of Lisnevin JJC, 1999, para 10.1.

<sup>12</sup> SSI Unannounced visit to Lisnevin JJC, 3 September 2001.

telephone conversations and regular visits for all young people in the centres. For example, the canteen at Lisnevin has been required to double up as a visiting room.<sup>13</sup>

There is a problem of transfer of contraband between visitors and young people, which has, on occasion, led to the distribution of tablets or other drugs among children with very damaging consequences including assault on staff members. This creates ongoing difficulties for staff in Lisnevin, who have continued to seek advice on search procedures and other methods of frustrating the passing of contraband between visitors and young people. Recently, the dining room was laid out with coffee tables, which it is hoped will make it more difficult to pass contraband.<sup>14</sup>

The lack of alternative methods of protection, such as CCTV, means that visits must thus be supervised to prevent the passing of contraband to the young people. Yet, this frustrates the young people who genuinely want close contact with their families, and also makes visiting periods difficult to manage from the perspective of staff. In recent months, the large population in Lisnevin, together with the limited staffing available to supervise visits, has brought these difficulties into sharp focus. To address the problem, Lisnevin management has increased the number of days per week on which visits are possible – visits can now take place on Tuesdays, Wednesdays, Saturdays or Sundays - so as to maximise the number of visits that each young person can enjoy. This is a positive response to a very difficult situation.

### **Recommendations**

4. Juvenile Justice Board and the Northern Ireland Office should give staffing levels priority in their plans for the new juvenile justice centre given the direct correlation between inadequate staffing and restrictions on the right of young people to enjoy visits and communication with family and friends.
5. Bearing in mind the need to prevent the passing of contraband which may harm young people, the newly designed juvenile justice centre should put in place a system, which permits young people to enjoy their visits with family and friends without undue interference with their privacy. Consideration should be given to introducing CCTV in visiting rooms and applying other best practice in the area.

### *Parental involvement*

The NIO clearly envisages a high level of involvement for parents in the planning and implementation of programmes for the development of their children and requires also that young people and their families are fully consulted about important decisions which affect their lives. Indeed, it is arguable that such consultation is required by the Human Rights Act 1998.<sup>15</sup>

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<sup>13</sup> SSI, Unannounced visit to Lisnevin JJC, 1 December 2001, p 6.

<sup>14</sup> SSI, Unannounced visit to Lisnevin JJC, 1 December 2001, p 6.

<sup>15</sup> Such procedural rights are an implicit part of respect for family life under Article 8 of the European Convention on Human Rights. See Eur Court HR *W v UK*, judgment of 8 July 1987, Series A no 121.

The difficulties which some family members experience getting to and from the juvenile justice centres are a huge obstacle to parental involvement in children's care. Nonetheless, it is incumbent on policy makers and centre management to do all that they can to work with parents. Centre staff interviewed for this investigation were sympathetic to the problems faced by parents in coping with young people in trouble with the law. A Lisnevin staff member commented:

“In nearly 30 years of this job I have found very few bad parents. I have found a lot of inadequate parents, crying out for help, and a lot who say they didn't get the help and support.”<sup>16</sup>

It is vital that parents get the support they need and are involved in decision making about the child, especially given that in the main they will be the people left to cope when the child returns to the community.

SSI's review of the CJCO included interviews with parents of children in detention. Although the review is not yet published, SSI has indicated that parents expressed a preference for more involvement in decisions relating to the care of their child.<sup>17</sup> In another context, SSI reported that families had indicated that they appreciated: 'the occasional comments by staff about how their boy is doing.'<sup>18</sup>

However, in the last available published reports Social Services Inspectorate was critical of the centres in regard to parental involvement.<sup>19</sup> SSI recommended review of visiting arrangements, improved information to parents, increased involvement of parents in review meetings on the child's progress and opportunities for staff to undertake direct work with parents on parenting skills.

The Commission is pleased to note that there appears to have been improvement since these reports. It is good to see that staff and the management team at Lisnevin are conscious of the need to undertake more direct work with parents,<sup>20</sup> something which is discussed in more detail in Chapter 3 above. The Lisnevin guide for parents lets parents know that they are encouraged to attend case conferences.

In an unannounced inspection report on Rathgael, SSI gave positive examples of staff encouraging parental involvement with a young boy and of parents involved in review meetings.<sup>21</sup>

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<sup>16</sup> Commission interview with staff (No 8).

<sup>17</sup> Discussion with SSI Inspector, 11 September 2001.

<sup>18</sup> SSI Unannounced visit to Lisnevin JJC, 3 September 2001.

<sup>19</sup> SSI, Overview Report of Inspection of Rathgael Centre, June 1997 and SSI, Report on the Inspection of Lisnevin JJC, 1999.

<sup>20</sup> See Future Juvenile Justice Residential Provision in Northern Ireland – A Lisnevin Perspective, February 2000.

<sup>21</sup> SSI, Unannounced visit to Rathgael JJC, 17 July 2001.

Both Rathgael and Lisnevin produce brief guides for parents. The Rathgael booklet contains a tear out slip which can be used for parents to express any concerns or complaints about their child's treatment and tells parents they have a right to see a copy of the Juvenile Justice Centre Rules. The Commission recommends that the Lisnevin guide be amended to include these points.

The improvements in parental involvement are welcome. It would be beneficial if, in addition, guidelines for positive parental involvement were produced at policy level and included within the Juvenile Justice Centre Rules. Furthermore, despite the positive developments, the obstacles in the way of parents actually visiting the centres suggest that a wide gap continues to exist between what staff want to achieve and what is feasible in the circumstances.

#### *Contact with friends*

In interviews with the Commission, young people stressed the importance of their relationships with friends and receiving visits and correspondence from them. In the past, however, restrictions have been placed on the rights of some people to visit the juvenile justice centres. For example, Lisnevin has operated a policy prohibiting young people who were once in detention there from returning to visit friends for a period of three years. The blanket nature of the policy arguably constitutes a disproportionate restriction on the right to respect for private life of the young people in the centre, which may be contrary to the Human Rights Act 1998. A more positive approach should be adopted where the application of a friend to visit is considered on its merits, bearing in mind both the positive impact which such a visit may have on the friend left behind, on the one hand, as well as any threat posed to either the Centre's security, or to the welfare of the young people there on the other.

#### **Recommendations**

6. Juvenile justice centre management must prioritise parental involvement in the preparation and implementation of plans regarding their children's care and treatment in detention. In addition, practical measures, such as facilitating transport and refunding costs, must be adopted in order to alleviate the difficulties families experience accessing the centres.
7. Lisnevin management should review its policy prohibiting visits from former residents in light of international standards.

#### *Home leave*

The Juvenile Justice Board has noted that: 'There is a clear policy on home leave displayed on the Notice Boards at the end of each corridor and in Common Rooms, and this policy has been in existence since the implementation of the new Juvenile Justice Order.'<sup>22</sup>

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<sup>22</sup> Commission correspondence from the Juvenile Justice Board, 18 February 2002.



At the same time, the Commission is not convinced that there is a clear link between a young person's achievements in tackling their home behaviour and the granting of home leave. In this regard, it is clear that home leave should not be granted arbitrarily,<sup>23</sup> but that it should be integrated into every young person's individualised treatment plan.<sup>24</sup> In this regard, the clear objectives pursued by visits home and the conditions attached to it should be made clear to young people on a personal level. Thus, while it is clearly necessary to take decisions about home leave on an individual basis, it is in the interests of equal treatment and transparency that young people are aware of the principles guiding such decisions. Making a clear commitment to equal treatment and allowing children to participate in the process will work to refute any claims of arbitrariness<sup>25</sup> and create a better understanding that while good behaviour may result in the application of a more flexible regime of which visits and excursions are a part, granting or denying home visits will never be used to reward or punish.

### **Recommendations**

8. Clear policy on home leave should incorporate the guiding principles of non-discrimination and the child's right to be heard.
9. In addition to developing and publicising clear rules about the entitlement to home visits, the frequency and length of such visits should form an integral part of a young person's individual plan. Formal procedures should be put in place to permit home visits in special circumstances or occasions.

#### *Telephone calls*

There is no clear policy regulating matters of communication between young people and their families and friends. Practice in relation to telephone use and letter writing, insofar as it is apparent, is detailed below.

Rules on the use of the telephone in Lisnevin seem unnecessarily restrictive. The manual, 'You have arrived!! What Next??', states, for example, that telephone cards may be ordered through staff on a Sunday or Wednesday night provided the young person has £3 in his bank account. If this rule applies, then a young person who does not have the necessary funds, or who wishes to telephone family or friends outside of these times, may be denied contact for what is essentially an administrative reason.

Similar conditions prevail in Rathgael, where young people can buy telephone cards provided they have enough money, although they also have access to the unit phone for calls to family and to social workers and solicitors. Young people get at least £2 per week, which can rise to £5 if they regularly attend. The young people interviewed said they think they should be entitled to a free card each week, and that they found £3 did not

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<sup>23</sup> These concerns were raised by the SSI in 1999. See SSI, Inspection of St Patrick's JJC, October 1999.

<sup>24</sup> For example, see the Mission Statement of (former) St Patrick's JJC.

<sup>25</sup> See complaints of young person in this regard. SSI, Unannounced visit to Lisnevin JJC, 1<sup>st</sup> December 2001, p 5.

allow for much conversation. They complained that they are only allowed to telephone family but that friends can phone them.

While it is clearly necessary, for various reasons, to place a limit on the amount of time as well as the time of day during which young people can use the telephone, it seems unjust to link their use of the telephone to their ability to purchase a telephone card. It is unclear whether young people can make a telephone call without the necessary funds, although they can surely receive calls at any time. For example, one boy interviewed in Lisnevin stressed that staff there tried to make provision for him to talk to his mother whenever possible:

“You’re not normally allowed [to take a call from your mother] but they just say go ahead and put the call through for you... Whenever my mum phones they always put the call through to me, and I just tell my key worker that it’s important to talk to her. It’s not really important, I just phone her anyway to talk to her.”<sup>26</sup>

Interviews with staff and young people suggested that staff often make an effort to be as helpful as possible to young people in facilitating contact. It would appear, therefore, that the strictly worded policy does not reflect the more flexible situation in reality and it should be updated accordingly.<sup>27</sup>

It is uncertain whether young people who are separated from others for so called ‘time out’ purposes may receive calls from family or friends who happen to telephone them at this time, although they are clearly unable to make such calls. Both policy and practice on this issue are unclear.

If communication is not permitted at this crucial time, then this restriction would have to satisfy the HRA requirements in relation to Article 8 of the European Convention meaning that any restriction would have to be set out clearly in law and be necessary to pursue a legitimate aim, such as maintaining order in the centre. Whether such a restriction would be proportionate in any given case would depend on a number of factors, including the duration of the separation.<sup>28</sup>

Regardless, denying contact at this time could be construed as being inextricably linked to punishment and consideration should be given to how best to avoid this practice, where possible.

Management in Lisnevin can listen in to young people’s telephone calls. Staff said in interviews with the Commission that if they had cause for concern about a young

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<sup>26</sup> Commission interview with young person (No 3).

<sup>27</sup> In particular, SSI noted a lack of awareness about either Centre prohibiting contact. Correspondence with the Commission 29<sup>th</sup> January 2002.

<sup>28</sup> See further Chapter 6.

person's calls, they would tell the manager and would never take a decision to listen in themselves. On this basis, listening in could happen, for example, on the suspicion that a young person was planning to bring in contraband or was involved in an abusive situation. Strictly applied, these are legitimate reasons for limiting a young person's privacy during telephone calls.

In 1999, the Social Services Inspectorate criticised the lack of privacy enjoyed by young people when on the telephone and expressed the view that it was unacceptable for staff to listen to conversations. It stated that such a practice should only be permissible in limited and specific circumstances<sup>29</sup>, such as identified threats to the child's welfare or the security of Lisnevin and recommended that Lisnevin draw up policy in this regard.

It is clear from staff views, however, that this recommendation has not yet been implemented and that Lisnevin continues to operate without policy in this area. While it is acknowledged that listening in to telephone conversations may be necessary in exceptional circumstances,<sup>30</sup> the practice may nonetheless be contrary to international and domestic standards such as Article 8 of the European Convention on Human Rights under the Human Rights Act 1998, particularly where it is not strictly defined.

In Rathgael, there seemed to be contradiction between what the young people were telling the fieldworker and reported practice. SSI reports that young people can make phone calls in private whereas young people suggested that staff know who they are phoning and that they were not allowed to call friends.

## **Recommendations**

10. Policy documentation should be revised to reflect current practice in this area.
11. Details of rules governing the use of the telephone should be set out clearly in the information given to young people on arrival in detention, as well as to family members and significant others who may wish to contact them during their placement.
12. Each centre is strongly encouraged to draw up policy immediately to limit the use of the restriction on privacy to a set of clearly defined, exceptional circumstances. Once clarified, the policy should then be brought to the attention of both young people in the centre and their callers.

## *Correspondence*

Contrary to the recognised principle that letter writing and contact with family and friends should be encouraged, the rules in Lisnevin appear to be unnecessarily strict. For example, the rules set out in the Lisnevin handbook, 'You have arrived!! What Next??',

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<sup>29</sup> SSI, Report on the Inspection of Lisnevin JJC, 1999, para 6.11.

<sup>30</sup> SSI, Unannounced visit to Lisnevin JJC, 1<sup>st</sup> December 2001, p 4.

state that young people may only send two letters free of charge and must then wait for relatives to bring more stamps at visits. Given that visits may be infrequent in certain cases, this is hardly a practical alternative, and is inconsistent with international standards governing contact between young people and their families and friends.

The Rathgael guide for parents states simply that parents will be able to ‘telephone, write and visit on a regular basis by arrangement with staff’. The Commission is not aware of the extent of support given to parents and young people regarding contact by letter.

The practice in Lisnevin to censor all correspondence without explanation was criticised by the SSI in 1999<sup>31</sup> and was undoubtedly contrary to Article 8 of the European Convention on Human Rights. However, the reference to the obligatory opening of mail was deleted from the handbook, ‘You have arrived!! What Next??’ revised in 2001, suggesting that the practice has been changed. At the same time, current policy on the issue is unclear.

## **Recommendations**

13. Policy on correspondence and telephone calls should be drawn up outlining the circumstances in which an interference is permissible, and stipulating the applicable conditions and staff responsible. The policy should incorporate the requirements of the European Convention on Human Rights, particularly the principle of proportionality.
14. If security considerations require it, policy on the matter should indicate the limited circumstances in which a young person’s correspondence will be censored and should detail the procedure to be followed in each case. Neither incoming nor outgoing correspondence should be read unless absolutely necessary in order to protect the security of the centre and/or to protect the rights of the young people.
15. The Young Person’s Manual should encourage correspondence between young people and their families and children with literacy problems should be assisted in writing letters to their family and friends.
16. Juvenile justice centres must develop clear objectives, which they should set out in their mission statements, about the importance of maintaining contact between young people and their family and friends and developing practical rules.
17. The statement of Purpose of each institution should recognise clearly the right of young people to receive visits from both family and friends, subject to specific conditions:
  - that they are free to correspond in writing and to have private telephone conversations with family and friends;

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<sup>31</sup> SSI, Report on the Inspection of Lisnevin JJC, 1999, para 6.11.

- and that arrangements may be made for lengthy and overnight visits, or home visits in certain circumstances.

#### *Access to media*

International standards make clear the important link between access to the media and the success of reintegrating young people into their communities. However, there is no clear policy either at NIO or at juvenile justice centre level on the entitlements of young people in relation to accessing the print and other media. Young people enjoy limited access to television and radio in the juvenile justice centres (in fact, SSI has warned in the past that attention needed to be given to the amount of time spent on television as recreation)<sup>32</sup>.

It is important that young people be encouraged, as part of their broad education and with a view to maintaining a link with the outside world, to read newspapers and appropriate magazines. The Lisnevin document ‘You have arrived!! What next??’ sets out the rules regarding the items young people can keep in their rooms and although some regulation may be necessary, the rules regarding reading materials and music – young people may have only two tapes and magazines or one book – appear unnecessarily strict. Young people should be encouraged and assisted to read widely.

#### **Recommendation**

18. The right of young people to access appropriate information and reading materials should be made clear to them on arrival in the centre and be integrated into the statement of purpose of each juvenile justice centre. Young people with a special interest or hobby should be encouraged to read about the topic through magazines and books and the centre should aim to offer wide access to reading materials and other media through its library and educational resources. NIO funding should be made available for this specific purpose.

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<sup>32</sup> SSI, Report on the Inspection of St Patrick’s JJC, 1997, p 20.

## Chapter 9 The Child's Right to Education and Recreation

### EDUCATION

#### **International standards**

International law recognises that every child, including those in custody, has a right to education.<sup>1</sup> Standards provide for the right of children in custody to have education suited to their needs and abilities and designed to prepare them for return to society. To this end, they emphasise the need to provide education through programmes integrated with the education system. They also recognise the right of children with learning difficulties to have their special educational needs met.<sup>2</sup> International standards insist that education programmes are part of the mainstream education system of the state. They also demand 'joined-up government'. The Beijing Rules insist on the need for inter-ministerial and inter-departmental co-operation on the provision of education.<sup>3</sup>

UN Rule 38, which states that children should be taught 'through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty.'

#### **Law, policy and practice**

Northern Ireland Office (NIO) Standards on education and vocational training provide many detailed and positive standards including the following:

- Young people of school age will experience a 'broad and balanced curriculum appropriate to their age, ability and level of attainment with a view to return to school in the community on their release';
- Young people who will be above the school age on release will receive a programme or educational and vocational training designed to prepare them for entrance to education, training or work experience.<sup>4</sup>

The Juvenile Justice Centre Rules set a similarly high standard by recognising the obligation to make available at the centres 'full-time education suitable to the age, ability and aptitude of a child of compulsory school age'.<sup>5</sup> However, by limiting this obligation to 'what is practicable', there is a danger that this obligation may be narrowly applied and used as a catch-all justification for failure to implement and prioritise high standards with respect to the education of children in custody. There is no clear requirement in the rules

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<sup>1</sup> Article 2 First Protocol to the European Convention on Human Rights and Articles 28 and 28 UN Convention on the Rights of the Child.

<sup>2</sup> Rule 38, UN Rules for the protection of Juveniles deprived of their Liberty, 1990 (UN Rules).

<sup>3</sup> Rule 26.6.

<sup>4</sup> NIO, Statements of Standards and Criteria for Juvenile Justice Centres in Northern Ireland, 1999, standards 1.2 and 1.3

<sup>5</sup> Rule 32(1) Juvenile Justice Centre (NI) Rules, 1999.

to translate these positive standards, which reflect the international approach, into practice in the juvenile justice centres.

Education provision in juvenile justice centres is currently the responsibility of the Northern Ireland Office and not the Department of Education.

Under current arrangements, young people in juvenile justice centres have no established legal entitlement to be taught within the Northern Ireland Curriculum something which may give rise to a claim of discriminatory treatment under the Human Rights Act, 1998.<sup>6</sup> In particular, although teachers may take individual decisions to try to ensure that pupils follow the curriculum, it is not available to children in custody on the same basis that it is offered in the community.

The lack of Department of Education involvement impacts negatively on teachers, who are deprived of the access to training received by their counterparts in the community. In interviews, teachers expressed concerns about the lack of contact with other professional education staff, feeling cut off from the outside world of education, problems of communication between the young person's previous school and the centre on admission.

One teacher summed up the problem:

“the educational needs of young people have never been fully addressed, because civil servants run education [in the juvenile justice system]”<sup>7</sup>

The same teacher told of a very positive experience when he had attended a conference in the education sector. He had benefited from:

“all the things that they were talking in terms of relevance of education, all of the stuff that the Minister of Education is standing up and talking about – about inclusion, about choice.”<sup>8</sup>

In a less positive vein he added that: “young people in juvenile justice centres ... don't have any of that.”<sup>9</sup>

A teacher in a different centre commented that:

“I know a lot of people in mainstream schools who will give me information but that's not that good because you only get bits.”<sup>10</sup>

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<sup>6</sup> It is arguable for example that the inability to access equivalent educational facilities in detention as in the community raises a *prima facie* case of discrimination in the enjoyment of education. This is particularly the case if no real effort has been made to secure equal treatment. See *McIntyre v UK*, Dec of the Eur Commission of Human Rights, 21.10.98, unreported. See further Kilkelly, *The Child and the ECHR*, 1999.

<sup>7</sup> Commission interview with staff (No 7).

<sup>8</sup> Commission interview with staff (No 7).

<sup>9</sup> Commission interview with staff (No 7).

<sup>10</sup> Commission interview with staff (No 15).

While supporting what they saw as the inevitable moves towards integration with Department of Education, this teacher felt that it was important not to lose the fact that teachers in juvenile justice centres have a distinctive role. The teacher emphasised the holistic nature of their role in caring for the children:

“Overall, as a teacher I have to be aware that I’m not just a teacher. If a child comes to the class and I can see that they’re agitated about something, it is my role to find out what’s bothering them. I would give the rest of the class work and I would spend time with the child doing perhaps a counselling session. I have trained as a counsellor also. ... If a child wants to talk to you and you suggest they go and talk to their primary worker instead you are essentially closing a door in that child’s face, a child who thought they could trust you. ... So my role is wider than just academic.”<sup>11</sup>

Teachers clearly have a lot to offer young people in detention. However, one felt they are missing out on training:

“because (the Department of Education) have nothing to do with us, our previous training has been through contacts but little tasters are no good. We have missed out on the most recent training, ICT training which is using the internet as a teaching tool.”<sup>12</sup>

The Department of Education does provide an Inspector from its Education and Training Inspectorate to form part of the Social Services Inspectorate (SSI) team responsible for inspection of the juvenile justice centres. However, as discussed above, the effects of this involvement appear to be limited in terms of having a positive effect on the provision of education in the centres.

Funding for the young people’s education is a problem. Given that responsibility for education in the centres lies with NIO, education boards are not keen to provide funding for young people. So, for example, the Commission was told of a boy in Lisnevin, who was due to sit GCSEs.<sup>13</sup> However, the relevant Education and Library Board had refused to provide money to pay for these exams although if he had not been in custody they would have been responsible.

Not only do international standards insist that education programmes are part of the mainstream education system of the country, they also demand ‘joined up government’. Consultation between the NIO and the Department of Education seems ad hoc at best. The Commission asked the Department of Education what role it was playing in helping to shape the future of education provision in the new juvenile justice centre. The Department’s response was that:

‘as regards the outworkings of the juvenile justice estates review to create a single centre on the Rathgael site, this Department has had no involvement with the development of these plans save in so far as they impinge physically on the

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<sup>11</sup> Commission interview with staff (No 15).

<sup>12</sup> Commission interview with staff (No 16).

<sup>13</sup> Commission interview with staff (No 7).



educational provision for the children at Lakewood Special School [a Children's Home which shares the Rathgael site].<sup>14</sup>

The Commission welcomes some recent developments. In October 2000, the Minister for Education met with the then NIO Minister responsible for juvenile justice to explore whether there was scope for the education sector to assist the NIO to improve the quality of education provided. The Commission is assured that since that meeting there has been regular contact between officials from the two departments.

As a result of this contact, the South-Eastern Education and Library Board, in whose area both Rathgael and Lisnevin centres lie, now offer inservice training courses to teachers in these centres and advisory support. The Board is also in discussion with NIO about what further curriculum and staff development services might be helpful to staff in these centres. It is vital that juvenile justice centre management ensures that staff in the centres are fully consulted about what support they require from the Board.

The Department of Education has also bid successfully for funding to employ two liaison teachers who will be working to ensure continuity in young people's educational progress within the centres and to work to improve the prospects for successful integration back into mainstream education once released.<sup>15</sup> However, these appointments have now been postponed pending research commissioned by the Northern Ireland Office, the Juvenile Justice Board and the Department of Education at Queen's University Belfast.<sup>16</sup> The Commission looks forward with interest to the conclusion of this research and the publications of the findings.

The situation whereby education provision is out of the remit of the Department of Education contributes to a lack of cohesion in this provision. Teaching departments in the two remaining centres work in isolation from each other. The Commission was told:

“It may well be that when we go to this one site that there will be coordination there but it is so fragmented at the minute. What we do here is different to what St Pat's do, to what Rathgael used to do, to what Lakewood does, to what mainstream education does.”<sup>17</sup>

During an unannounced visit, SSI found staff in Rathgael anxious about the consequence of mixing the two teaching staff units when there had been so little previous contact and different ways of working. SSI has made some recommendations in this regard, such as that teaching staff in the two centres should be treated as one team both to encourage breadth of curriculum and to prepare for the new situation. While supporting this recommendation, the Commission considers transferring responsibility for education to the Department of Education to be the best way of ensuring consistency and coherence.

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<sup>14</sup> Correspondence from the Department of Education, 8 August 2001.

<sup>15</sup> (As above).

<sup>16</sup> Correspondence from the Juvenile Justice Board, 18<sup>th</sup> February 2002.

<sup>17</sup> Commission interview with staff (No 7).

## Recommendations

1. Government should urgently revise the Juvenile Justice Centre (NI) Rules 1999 dealing with education to bring them into line with rights based international standards and to reflect the positive approach adopted in the NIO Standards.
2. Northern Ireland Office should amend the Justice (NI) Bill 2001 to impose a statutory obligation on its office to consult with the Department of Education about any decisions affecting the provision of education in the Juvenile Justice Centres. The Bill should also be amended to require NIO and the Department of Education to ensure effective communication and cooperation between Education and Library Boards, schools and the Juvenile Justice Centres.
3. In order to ensure continuity of education and equality of access to the Northern Ireland Curriculum, education in the Juvenile Justice Centres should be brought within the remit of the Department of Education.
4. The Department of Education should have statutory responsibility for inspecting education provision for young people in the Juvenile Justice Centres. This function should be entirely independent from the NIO.

### *Lisnevin*

The SSI painted a gloomy picture of education in Lisnevin in 1999.<sup>18</sup> In particular, it noted that there was no policy to inform teaching strategy and to tailor education to the boys' timescales; there were no procedures to obtain background information about the young people from their previous educational placements and overall planning was deemed to be poor; there was no dedicated provision for young people above school leaving age and in general the quality of exit strategies was inadequate. Overall, the SSI's conclusion was that the educational provision did not adequately prepare the young people for further education, training or work experience.<sup>19</sup>

In 2001, many of these concerns were reflected to the Commission in interviews with staff. The Commission was told of the problems caused by teaching staff shortages and resourcing difficulties:

“I have three teachers off this morning and I'm replacing them by two members of the care staff. We have them playing computer games. There has been no facility to replace like with like and this morning we have at least three kids who have either been diagnosed or suspected of being ADHD [Attention Deficit Hyperactivity Disorder] and we haven't the facility to develop specialist programmes to meet their individual needs.”<sup>20</sup>

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<sup>18</sup> SSI, Report on the Inspection of Lisnevin JJC, 1999, pp 21-24.

<sup>19</sup> Para 7.8, p 23.

<sup>20</sup> Commission interview with staff (No 7).

The budget for education provision in the centre was cut by one third in 2000 as a consequence of overspend on the care side. The Commission was told that planned work such as the upgrading of computers had to be put on hold.

The SSI report of an unannounced visit to Lisnevin in January 2001 noted that staff promotion had led to the education team being half a post short but that no additional money had been forthcoming to cover this gap.<sup>21</sup> While it is uncertain whether this allocation has been made, the Social Services Inspectorate reiterated its concerns regarding student-teacher ratios in December 2001.<sup>22</sup>

In interviews with the Commission, teachers stressed the negative impact that resourcing difficulties was having on young people especially those with educational difficulties. They said that individual work was impossible with current resources and that some of the children found working in large groups too much over a 25 hour week. The impact on individual children was described as follows:

“There’s a fella came in on Tuesday and an initial assessment highlights the fact that he has literacy and numeracy difficulties. He’s at court today and hopefully he’ll leave but throughout yesterday we haven’t actually had a chance to sit down and educationally assess him because that assessment is done once he’s put into class so we have to assess him within a group.

“Here’s a kid who’s never been in trouble before. All of a sudden he’s in custody, he’s in a classroom with three other strangers of his age but an adult who he has never met is now asking him to do a maths test to try and do some sort of initial screening. That’s the sort of culture that exists here. It’s get them in the class, get them being productive, get them off the floor.”<sup>23</sup>

It is clearly challenging for teaching staff to provide sufficient attention for a small group of boys within which are represented both low academic achievement and older boys with higher expectations.<sup>24</sup> Clearly a dual response is demanded from the staff in very difficult circumstances.

If time and resources permitted, one teacher felt that it would be better for the children if more time were taken in settling them into the centre before introducing them to the classroom. This would allow time for assessment and contact with outside agencies to get more information about the young person:

“...so that by the time they come to class they are settled, they’ve seen the building, they’ve met the other kids, they’ve met the teachers, almost like a kid going to school for the first day. ... [the boys] are having to overcome all those emotional turmoils as well as ‘sit down there, get your pen out, take your page

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<sup>21</sup> SSI, Unannounced visit to Lisnevin JJC, 11-17<sup>th</sup> January, p 5.

<sup>22</sup> SSI, Unannounced visit to Lisnevin JJC, 1<sup>st</sup> December 2001.

<sup>23</sup> Commission interview with staff (No 7).

<sup>24</sup> This is described by SSI as ‘an unenviable struggle’. See SSI, Unannounced Visit to Lisnevin JJC, 1<sup>st</sup> December 2001, p 7.

out, you're going to do a page of something'. They haven't been to school for five years...."<sup>25</sup>

The only special needs teacher had been on sick leave since 1997 and recently retired on grounds of ill health. As a result:

“individual needs aren't being addressed, we can't do our remedial programme because we can't free up our only English teacher, we haven't been allowed to buy in specialist support, there's no specialist budget for substitute teachers ...”<sup>26</sup>

The Commission was told of high levels of teaching staff stress and sickness and it is clear that when teachers are absent then care staff must replace them albeit in a purely supervisory capacity.<sup>27</sup> This leads to a direct correlation between staffing difficulties and the quality and level of education received by young people in the centres.

The Commission is concerned about the levels of resources in education provision in Lisnevin overall, and particularly the resourcing of special needs work. The lack of specialist, expert staff in the Special Education Needs field is especially worrying given the probably high level of children in the system with learning or behavioural disabilities.

Small teaching staff numbers mean that the curriculum taught in the Lisnevin school is necessarily reduced making it difficult for staff to cater for all needs. This is a result of historical decisions. In the mid-1980s NIO took a decision to rationalise staffing in the education department of Lisnevin and the number of teachers was reduced. A teacher who had been there from this time felt that boys were getting a more rounded education when there were more teaching staff available:

“whenever I started there were eleven teachers in the staffing complement and whilst we dealt with bigger numbers and we dealt with a fairly traditional timetable ... I felt that the education provision was fairly focussed and that the lads were getting a fairly good breadth ...”<sup>28</sup>

However, following rationalisation:

“we ended up with three teachers who specialised in English, with very little vocational education and we ended up with one lab specialist and no language specialist.”<sup>29</sup>

As a result he felt that boys were not getting a broad, relevant curriculum. This concern has also been expressed by the Social Services Inspectorate who has noted how keen some boys are to learn.<sup>30</sup>

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<sup>25</sup> Commission interview with staff (No 7).

<sup>26</sup> Commission interview with staff (No 7).

<sup>27</sup> Commission correspondence from the Juvenile Justice Board, 18<sup>th</sup> February 2002.

<sup>28</sup> Commission interview with staff (No 7).

<sup>29</sup> Commission interview with staff (No 7).

<sup>30</sup> SSI, Unannounced Visit to Lisnevin JJC, 1<sup>st</sup> December 2001, p 7.

On a positive note, the curriculum in Lisnevin was expanded in January 2001 to include an introduction to catering and independent living training. SSI noted that this had been successful.<sup>31</sup> A catering instructor told that Commission that the boys enjoy cooking because it's a practical class. Learning how to do simple things like make a cup of tea could enhance a young person's self confidence:

"I had a boy in a few weeks ago and . . . he went up to the kettle and poured three cups of water out of the kettle which hadn't been boiled. . . . by the end of the class I had . . . shown him how to make a cup of tea and . . . he went out knowing that he had achieved something."<sup>32</sup>

SSI recommends that the delivery of the curriculum in the juvenile justice system could be enhanced by treating Lisnevin and Rathgael as a single entity. The Inspectorate also recommends that this would be good preparation for the mixing of staff which will result from the move of Lisnevin staff to Rathgael.

Problems of communication and partnership between teaching staff and care staff in the centre were cited causing some difficulties.

Some teaching staff felt that care staff did not fully appreciate the nature of their role. As one member of the education department commented:

"it's not as easy for us [as for care staff] because the boys maybe haven't been in school for a few years before they come here, so for us to try and get them into that sort of a system again they don't necessarily want to do it. . . . I think its hard for the care staff to appreciate that we're providing a totally different service than them and its that wee bit harder for us because the boys would obviously prefer to be sitting in a common room than in a classroom."<sup>33</sup>

However, when positive interaction did take place it benefited staff and young people. For example, young people in the catering class are asked to invite a care staff member up for refreshments:

"One week we made breakfast baps for them. We set the table, we made the tea and the coffee and we were polite to them and then we did their dishes."<sup>34</sup>

In terms of their own teaching team, this staff member felt that they got good support from each other:

"My team leader is always, always there and always able to listen...."<sup>35</sup>

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<sup>31</sup> SSI Unannounced Visit to Lisnevin JJC, 11-17<sup>th</sup> January 2001, p 5.

<sup>32</sup> Commission interview with staff (No 9)

<sup>33</sup> Commission interview with staff (No 9).

<sup>34</sup> Commission interview with staff (No 9).

<sup>35</sup> Commission interview with staff (7).

This team work meant that staff would meet to discuss concerns if someone was worried about a particular young person.

It is important that teachers feel part of the team in the centre and also that they feel part of the broader education community. As discussed above, the separation of education provision in the juvenile justice centres from mainstream education provision results in teaching staff there feeling cut off from the outside world of education.

There appeared to be little formal communication between teaching staff at Lisnevin and Rathgael. A teacher in Rathgael commented that:

“that’s a sad thing about the system. I have been in for 18 years and I know only a couple of teachers in other establishments.”<sup>36</sup>

Communication with the child’s previous schools and with the education and library boards was also cited as a problem. For example, at the time of the fieldwork visit a child had recently come into Lisnevin and teaching staff were only aware that the child was statemented for special needs because the boy told them himself. Three weeks later they were still unable to get a copy of the statement from the education and library board.<sup>37</sup>

The Lisnevin education department was keen to provide careers advice for the young people. However, they have found it difficult to get access to this as given the high turnover of young people it would mean fairly regular visits from an adviser. The Department was also interested in piloting the new Citizenship Awards being promoted by the Government in England and Wales. However, the previous Lisnevin director was reportedly not in favour of the project and in any case the Northern Ireland Office refused funding for this purpose.

In its 1999 inspection of Lisnevin, SSI found that there was no dedicated provision for young people above school age although there were plans for vocational training programmes. The Commission does not have information about the progress of these plans although it notes the recent comments of SSI that a smaller student-teacher ratio would permit more vocational training with the young people.<sup>38</sup>

### *Rathgael*

The situation for teaching staff and young people in Rathgael is quite different from that in Lisnevin by virtue of numbers alone. Whereas staff in Lisnevin found it difficult to get time to do individual work with young people, there are generally only a handful of children in Rathgael at any one time.

Nonetheless, teaching staff in Rathgael felt the pressure of a shortage of resources particularly in regard to computer facilities:

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<sup>36</sup> Commission interview with staff (No 16).

<sup>37</sup> Commission interview with staff (No 16).

<sup>38</sup> SSI, Unannounced Visit to Lisnevin JJC, 1<sup>st</sup> December 2001, p 7.

“[resources] are very poor. We have a load of old Apple Macs that are about seven years old and I spoke to the South Eastern Advisor who said that life of a computer is only two and a half to three years. But there are no resources.”<sup>39</sup>

Science equipment was also a problem:

“Our funding is so low that is poor also. Our budget for paying everyday expenditure is about £5,000 per year.”<sup>40</sup>

SSI noted positively that the computerised teaching package ‘Successmaker’ used at St Patrick’s had been passed on to Rathgael.<sup>41</sup>

A member of teaching staff described communication between teachers and care workers as ‘very good at break time, lunch times and at the end of the day.’ This benefits the young people:

“If something is happening with a child we will pass on information to each other. ... Sometimes if a child is expecting a visit from a parent or a social worker they would be very unsettled and this would be passed on to the teaching staff.”<sup>42</sup>

As in Lisnevin, teachers in Rathgael may get little information about a new child who arrives in their class. Again, time is a critical problem:

“if you need to access the file it’s a question of having them time. We get the young people in the morning but then there is no time to go and read a file. That usually has to be done outside of school hours.”<sup>43</sup>

This teacher emphasised the importance of having the correct information about a child in your class:

“you don’t need all the background information that comes with a child but we do need to know what ‘trigger buttons’ might send them off the deep end. We need to know the family background just in case you say something you ought not to.”

While smaller numbers of children means that teaching staff in Rathgael are able to do more individualised work than teachers in Lisnevin, the counter side is that there is only a small teaching staff of three. A staff member commented that this meant that the atmosphere was less enjoyable. They also were fearful about future prospects. Those staff that remain are divided into a junior (years 8, 9 and 10) and senior (years 11 and 12) staff. Although these are broadly divided by age young people can move into a different group if they feel uncomfortable. At the time of the fieldwork one year 11 boy was in the junior class as he felt more confident there. Having such a small staff team may have an

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<sup>39</sup> Commission interview with staff (No 16).

<sup>40</sup> Commission interview (16) with staff.

<sup>41</sup> SSI, Unannounced Visit to Rathgael JJC, March 2001.

<sup>42</sup> Commission interview (15) with staff.

<sup>43</sup> Commission interview (5) with staff.

impact on the breadth of curriculum offered - hence, SSI's suggestion that the Lisnevin and Rathgael teaching teams be treated as one entity. A teacher explained however, that despite the reduction in teaching staff, those staff that remained had been determined to stay positive and to try to be as inventive as possible in providing an interesting curriculum. This teacher felt that the young people responded well to having a small staff as it provided security. This comment was supported by a boy with experience of both Lisnevin and St Patricks. In Lisnevin boys go to different classes whereas in St Patricks' boys stayed in the same room for all subjects. This boy preferred the system in St Patrick's.

Children are able to do art and crafts and home economics. At the time of the fieldwork the young people had just made christmas cakes for their families.

Young people are encouraged to do appropriate exams. Staff try to liaise with the young person's school to get information about their previous coursework. The aim is to try to ensure that when the child returns to school they haven't lost ground.

Small numbers in Rathgael also created a difficult situation as the young people do not go out to a separate school building but simply into a different room. A teacher commented that: "if your classroom is next door to your bedroom it's not like going to school, its like what it is - going into the room next door."<sup>44</sup>

Staff try to involve the teaching staff at the child's school in meetings about their progress, however, time commitments meant that the outside teachers were rarely able to attend. Instead the child's work would be sent to them. However, although the level of information received is generally good, if a child has been excluded it was claimed that the school tends not to be interested

## **Recommendations**

5. Given that children who are admitted to the Centres may have been excluded from school previously, it is vital that the time spent in custody is used to undertake necessary remedial tuition.
6. Measures should be put in place to ensure that information regarding every young person's educational background be forwarded to the centre by their school and that a representative from the young person's school should be present at the assessment which takes place following admission.
7. A clear statement of the young person's educational and vocational needs should be drawn up bearing in mind that if the young person has been permanently excluded from school s/he may not be given a further opportunity to finish his/her education.

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<sup>44</sup> Commission interview (16) with staff.



8. For those young people above the school age, the right to vocational training must be recognised as part of the help they need to play an active role in the community following their release. While it is positive that young people serving JJC Orders spend the second part of their placement in the community, a clear exit strategy is vital and emphasis must be placed on vocational training, particularly for those over school leaving age.
9. Efforts should be made to tailor the educational and vocational activities on offer to take into account the young people's wishes and interests so that their effective involvement may be maximised. The secondment of staff from PBNI would facilitate this process.
10. Given the short term nature of their placement, it is vital that the young people receive some form of accreditation for their educational and vocational achievements while in detention, although these should refrain from using any stigmatising characteristics. Efforts should be made to reproduce initiatives like that in place in St Patrick's in 1999 where the chef was qualified to train staff and boys in domestic hygiene and the programme of skills for independent living offered in Lisnevin JJC on a one year basis must also be encouraged.
11. Measures should be put in place to ensure that all teaching staff complete an induction programme before starting employment in a juvenile justice centre to ensure that they are familiar with the Centre's rules, policies and ethos. They should also receive training on how to handle difficult situations, such as disruptive behaviour, although consideration should be given to co-teaching to ensure the safety of all employees.
12. Adequate resources must be made available to ensure that a meaningful educational service is available to all young people in detention offering education appropriate to a child's age and ability. Considerable effort must also be spent building up adequate library materials, which young people should be encouraged to use and developing other teaching facilities in the Centre. Links with community groups should also be fostered and efforts should be made to invite individuals and groups into the Centre to talk to young people about careers, opportunity for further education and skills development.

## **Recreation**

### **International standards**

The UN Convention on the Rights of the Child recognises that children need time to rest and enjoy leisure and recreational activities. Standards also stipulate that children in custody must enjoy the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. They also set out that adequate space, installations and equipment should be provided for these activities and that every child should have additional time for daily leisure activities. The detention facility should

ensure that each juvenile is physically able to participate in the available programmes of physical education.<sup>45</sup>

### **Law, policy and practice**

NIO standards require that young people enjoy a curriculum which includes a range of cultural, sporting and leisure activities.<sup>46</sup> The extent to which these standards translate into reality in the juvenile justice centres, particularly, whether the right to appropriate recreational and physical training, including outdoor exercise, is available to every young person every day is examined below.

Rathgael reportedly offers a range of physical recreational activities both within the centre and at local leisure facilities, and it is clear that the ‘openness’ of the facility provides the young people with enhanced opportunities for outside trips. As part of the rewards scheme young people are taken out, for example, to concerts. SSI notes that girls and boys can do circus skills, pursue the Duke of Edinburgh Awards, music (such as learning keyboard or tin whistle), arts and crafts. There is mention in an SSI unannounced visit of girls taking part in physical recreation such as football. There is a snooker table.

Lisnevin has a range of activities on site. SSI noted that during the summer holidays boys were involved in weight training, cycling in the grounds, craftwork, gymnasium, horticulture, music, snooker and television. Staff interviewed by the Commission were also very positive about the range of activities in Lisnevin:

“we have facilities like the gym, craft facilities, the music room, leather workshops, wood workshops. Now all those things help children and young people to achieve something.”<sup>47</sup>

Two staff members who had experience of both Rathgael and Lisnevin commented that facilities for recreation are better in Lisnevin. One who was very positive: “somebody could do a great PR job here because of the number of activities going on” felt, however, that young people should have televisions or music in their rooms so that they can have some distraction rather than being forced to dwell on problems.

One young person in Lisnevin was particularly positive about horticulture:

“you learn more out there than you do in here. I was out digging ... digging and putting plants in ... [its ] brilliant.”<sup>48</sup>

However, young people in Lisnevin expressed some resentment about the different facilities sometimes available to remand or sentenced young people:

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<sup>45</sup> Rule 47, UN Rules.

<sup>46</sup> NIO, Statements of Standards and Criteria for Juvenile Justice Centres in Northern Ireland, 1999, Standard 5, Criteria 4 and 5.

<sup>47</sup> Commission interview with staff (No 7).

<sup>48</sup> Commission interview (9) with young person.

“See us down here we only get, say like a PE teacher comes in and remand would get the PE teacher ... that’s twice in a row they’ve had a PE teacher, we don’t get that. ... I feel like they get everything because they’re not guilty yet and because we’re the ones that are sentenced. ... Committed boys don’t even get out in the garden.

“We’re [committed boys] not even getting out there for a bit of fresh air. The only fresh air we get is through the windows.”<sup>49</sup>

Another boy noted that committed boys get off campus twice a week if they have their marks whereas remand boys do not.

The Juvenile Justice Centre Rules refers only to the requirement that a child be given the opportunity to associate with other children for not less than one hour each day, and that association may be taken as exercise in the open air.<sup>50</sup> Otherwise, the rules contain no requirement or right to access sports facilities.

In the absence of express provision in policy documentation of the child’s right to physical exercise, concern is expressed as to the possibility that the way disciplinary regimes currently operate in the centres may result in a young person being denied such access as a penalty for poor behaviour. The Commission welcomes the confirmation from the Juvenile Justice Board, therefore, that this does not happen.<sup>51</sup> International standards make it clear that a young person’s access to sports facilities is a right, and not a privilege to be earned.

## **Recommendations**

13. Clear policy should be developed within the juvenile justice centre as well as integrated into the NIO standards on the importance of physical education, health and fitness and leisure and the entitlement of every young person to access a broad range of facilities to this end. This should be integrated into both the health and the education policies in place at the centre.
14. The new juvenile justice centre must have adequate facilities for sport and leisure activities and young people must have access both to these and to outside facilities on a daily basis, regardless of the risk of absconding. It is vital also that in the interim period arrangements be made for all young people to continue to have access to sports facilities in and outside the centre at Rathgael and that concerns about the lack of such facilities be alleviated immediately.

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<sup>49</sup> Commission interview (7) with young person.

<sup>50</sup> Rule 35(1) Juvenile Justice Centre (NI) Rules 1999.

<sup>51</sup> Commission correspondence from the Juvenile Justice Board, 18<sup>th</sup> February 2002.

## Appendix A – Relevant international human rights standards

### **The United Nations Convention on the Rights of the Child, UN General Assembly Resolution 44/25, Nov. 1989. [excerpts]**

Recognition of the inherent dignity and of the equal and inalienable rights of the human family is the foundation of freedom, justice and peace in the world...

- \* When...authorities deal with children, the child's best interests shall be a primary consideration. The child's opinions shall be given careful consideration.
- \*States shall ensure that each child enjoys full rights without discrimination or distinctions of any kind.
- \*States shall protect children from physical or mental harm and neglect, including sexual abuse and exploitation.
- \*Children...must not be tortured or suffer cruel and degrading treatment.
- \*States should make the rights in the Convention widely known to both adults and children.
- \*State Parties shall respect the right of the child to freedom of thought, conscience and religion.
- \*State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse...including sexual abuse while in the care of parents(s) or any other person who has care of the child.
- \*State Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
- \*...the right of the child to be protected from economic exploitation.
- \*...to protect the child from all forms of sexual exploitation and abuse.
- \*...protect the child against all...forms of exploitation prejudicial to any aspects of the child's welfare.
- \*No child shall be subjected to torture or other cruel, inhuman or degrading treatment.
- \*[State Parties] shall take all appropriate measures to promote physical and psychological recovery...of a child victim of: abuse; torture or any other form of cruel, inhuman or degrading treatment.
- \*No child shall be deprived of his or her liberty...arbitrarily.
- \*Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.

### **United Nations Rules for the Protection of Juveniles Deprived of their Liberty Adopted by General Assembly resolution 45/113 of 14 December 1990**

#### ***I. Fundamental Perspectives***

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.
2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). 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. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.

3. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.

4. The Rules should be applied impartially, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.

5. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.

6. The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.

7. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.

8. The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.

9. Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, recognized by the international community, that are more conducive to ensuring the rights, care and protection of juveniles, children and all young persons.

10. In the event that the practical application of particular Rules contained in sections II to V, inclusive, presents any conflict with the Rules contained in the present section, compliance with the latter shall be regarded as the predominant requirement.

## ***II. Scope and Application of the Rules***

11. For the purposes of the Rules, the following definitions should apply:

(a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

(b) The deprivation of liberty means 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 of any judicial, administrative or other public authority.

12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

13. Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

14. The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority, while the objectives of social integration should be secured by regular inspections and other means of control carried out, according to international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.

15. The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and section III applies specifically to juveniles under arrest or awaiting trial.

16. The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

### ***III. Juveniles under Arrest or Awaiting Trial***

17. Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

(a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;

(b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;

(c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

#### ***IV. The Management of Juvenile Facilities***

##### ***A. Records***

19. All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.

20. No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The details of this order should be immediately entered in the register. No juvenile should be detained in any facility where there is no such register.

##### ***B. Admission, registration, movement and transfer***

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

- (a) Information on the identity of the juvenile;
- (b) The fact of and reasons for commitment and the authority therefor;
- (c) The day and hour of admission, transfer and release;
- (d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;
- (e) Details of known physical and mental health problems, including drug and alcohol abuse.

22. The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.

23. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.

24. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

25. All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.

26. The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity. Juveniles should not be transferred from one facility to another arbitrarily.

### ***C. Classification and placement***

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.

28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

29. In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.

30. Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.

### ***D. Physical environment and accommodation***

31. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

32. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.

33. Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, while bearing in mind local standards. During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual



rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

35. The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. An inventory thereof should be signed by the juvenile. Steps should be taken to keep them in good condition. All such articles and money should be returned to the juvenile on release, except in so far as he or she has been authorized to spend money or send such property out of the facility. If a juvenile receives or is found in possession of any medicine, the medical officer should decide what use should be made of it.

36. To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.

37. Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

***E. Education, vocational training and work***

38. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

39. Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.

40. Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized.

41. Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.

42. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

43. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.

44. All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty.

45. Wherever possible, juveniles should be provided with the opportunity to perform remunerated labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.

46. Every juvenile who performs work should have the right to an equitable remuneration. The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use or to indemnify the victim injured by his or her offence or to send it to his or her family or other persons outside the detention facility.

#### ***F. Recreation***

47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.

#### ***G. Religion***

48. Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination.

#### ***H. Medical care***

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and

services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

50. Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

51. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.

52. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.

53. A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.

54. Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.

55. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint. Juveniles shall never be testers in the experimental use of drugs and treatment. The administration of any drug should always be authorized and carried out by qualified medical personnel.

#### ***I. Notification of illness, injury and death***

56. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should also be given to the consular authorities of the State of which a foreign juvenile is a citizen.

57. Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there

should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention.

58. A juvenile should be informed at the earliest possible time of the death, serious illness or injury of any immediate family member and should be provided with the opportunity to attend the funeral of the deceased or go to the bedside of a critically ill relative.

***J. Contacts with the wider community***

59. Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.

60. Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel.

61. Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.

62. Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures, and through the visits of the representatives of any lawful club or organization in which the juvenile is interested.

***K. Limitations of physical restraint and the use of force***

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.

64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

***L. Disciplinary procedures***

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent

dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

- (a) Conduct constituting a disciplinary offence;
- (b) Type and duration of disciplinary sanctions that may be inflicted;
- (c) The authority competent to impose such sanctions;
- (d) The authority competent to consider appeals.

69. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.

70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

#### ***M. Inspection and complaints***

72. Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.

73. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections, evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions of institutional life that affect the physical and mental health of juveniles. Every juvenile should have the right to talk in confidence to any inspecting officer.

74. After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and

recommendations regarding any steps considered necessary to ensure compliance with them. Any facts discovered by an inspector that appear to indicate that a violation of legal provisions concerning the rights of juveniles or the operation of a juvenile detention facility has occurred should be communicated to the competent authorities for investigation and prosecution.

75. Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.

76. Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.

77. Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.

78. Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.

#### ***N. Return to the community***

79. All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.

80. Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community.

#### ***V. Personnel***

81. Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. These and other specialist staff should normally be employed on a permanent basis. This should not preclude part-time or volunteer workers when the level of support and training they can provide is appropriate and beneficial. Detention facilities should make use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles.

82. The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.

83. To secure the foregoing ends, personnel should be appointed as professional officers with adequate remuneration to attract and retain suitable women and men. The personnel of juvenile detention facilities should be continually encouraged to fulfil their duties and

obligations in a humane, committed, professional, fair and efficient manner, to conduct themselves at all times in such a way as to deserve and gain the respect of the juveniles, and to provide juveniles with a positive role model and perspective.

84. The administration should introduce forms of organization and management that facilitate communications between different categories of staff in each detention facility so as to enhance cooperation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favourable to the efficient fulfilment of their duties.

85. The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.

86. The director of a facility should be adequately qualified for his or her task, with administrative ability and suitable training and experience, and should carry out his or her duties on a full-time basis.

87. In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular, as follows:

- (a) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;
- (b) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;
- (c) All personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;
- (d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;
- (e) All personnel should respect the right of the juvenile to privacy, and, in particular, should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity;
- (f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.

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**Office of the United Nations High Commissioner for Human Rights  
Geneva, Switzerland**

**United Nations Standard Minimum Rules for the Administration of Juvenile Justice  
("The Beijing Rules")**

**Adopted by General Assembly resolution 40/33 of 29 November 1985**

***PART ONE***

**GENERAL PRINCIPLES**

**1. Fundamental perspectives**

1.1 Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family.

1.2 Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.

1.3 Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.

1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

1.5 These Rules shall be implemented in the context of economic, social and cultural conditions prevailing in each Member State.

1.6 Juvenile justice services shall be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

**2. Scope of the Rules and definitions used**

2.1 The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.

2.2 For purposes of these Rules, the following definitions shall be applied by Member States in a manner which is compatible with their respective legal systems and concepts:

(a) A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult;

(b) An offence is any behaviour (act or omission) that is punishable by law under the respective legal systems;

(c) A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence.

2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

(a) To meet the varying needs of juvenile offenders, while protecting their basic rights;

(b) To meet the needs of society;



(c) To implement the following rules thoroughly and fairly.

### 3. Extension of the Rules

3.1 The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult.

3.2 Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.

3.3 Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.

### 4. Age of criminal responsibility

4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

### 5. Aims of juvenile justice

5.1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

### 6. Scope of discretion

6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions.

6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion.

6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates.

### 7. Rights of juveniles

7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

### 8. Protection of privacy

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

### 9. Saving clause

9.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations and other human rights instruments and standards recognized by the international community that relate to the care and protection of the young.

## ***PART TWO***

### **INVESTIGATION AND PROSECUTION**

#### **10. Initial contact**

10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.

10.2 A judge or other competent official or body shall, without delay, consider the issue of release.

10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or hi m, with due regard to the circumstances of the case.

#### **11. Diversion**

11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below.

11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.

11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

#### **12. Specialization within the police**

12.1 In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

#### **13. Detention pending trial**

13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality.

### ***PART THREE***

#### **ADJUDICATION AND DISPOSITION**

##### **14. Competent authority to adjudicate**

14.1 Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial.

14.2 The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

##### **15. Legal counsel, parents and guardians**

15.1 Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

15.2 The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

##### **16. Social inquiry reports**

16.1 In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

##### **17. Guiding principles in adjudication and disposition**

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

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

(b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;

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

(d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case. 17.2 Capital punishment shall not be imposed for any crime committed by juveniles.

17.3 Juveniles shall not be subject to corporal punishment.

17.4 The competent authority shall have the power to discontinue the proceedings at any time.

##### **18. Various disposition measures**

18.1 A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:

- (a) Care, guidance and supervision orders;
- (b) Probation;
- (c) Community service orders;
- (d) Financial penalties, compensation and restitution;
- (e) Intermediate treatment and other treatment orders;
- (f) Orders to participate in group counselling and similar activities;
- (g) Orders concerning foster care, living communities or other educational settings;
- (h) Other relevant orders.

18.2 No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.

#### 19. Least possible use of institutionalization

19.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

#### 20. Avoidance of unnecessary delay

20.1 Each case shall from the outset be handled expeditiously, without any unnecessary delay.

#### 21. Records

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

#### 22. Need for professionalism and training

22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.

22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

### ***PART FOUR***

#### **NON-INSTITUTIONAL TREATMENT**

#### 23. Effective implementation of disposition

23.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require

23.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these Rules.

#### 24. Provision of needed assistance

24.1 Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

#### 25. Mobilization of volunteers and other community services

25.1 Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

## ***PART FIVE***

### **INSTITUTIONAL TREATMENT**

#### **26. Objectives of institutional treatment**

26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance-social, educational, vocational, psychological, medical and physical-that they may require because of their age, sex, and personality and in the interest of their wholesome development .

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

26.6 Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

#### **27. Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations**

27.1 The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.

27.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

#### **28. Frequent and early recourse to conditional release**

28.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.

28.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

#### **29. Semi-institutional arrangements**

29.1 Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

***PART SIX***

**RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION**

30. Research as a basis for planning, policy formulation and evaluation

30.1 Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.

30.2 Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody.

30.3 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.

30.4 The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.

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***NOTE: The reproduced version of the rules does not include the detailed and informative commentary which accompanies them. The Rules should generally be read with the commentary.***

## Appendix B – Documentation used in the investigation

### **Northern Ireland Office**

- NIO, Juvenile Justice Centres, Statistics 1999
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- NIO, Outcomes of Care Admissions, 1999
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- NIO, Criminal Justice (Children) (NI) Order 1998: Monthly Statistics Report No 1, February/March 1999
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- Training Schools Rules 1952, No 132
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- Barbour, Joy related stress: A survey of staff working within the Northern Ireland Training School System, May 1995

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- Overview Report of Inspection of Rathgael Centre, June 1997
- Overview Report of Inspection of St Patrick's Training School, 1997
- Overview Report on the Inspection of Lisnevin 1997
- Quality Living Standards for Services: Children who live away from home
- Report on the Inspection of Middletown Juvenile Justice Centre, 1998
- Inspection of St Patrick's Juvenile Justice Centre, October 1999
- Report on the Inspection of Lisnevin Juvenile Justice Centre, 1999
- Overview Report on the Findings of an Inspection of Rathgael Centre for Children and Young People
- Unannounced visit to St Patrick's Juvenile Justice Centre, 3 November 2000
- Unannounced visit to Lisnevin Juvenile Justice Centre, commenced 11<sup>th</sup> Jan 2001, completed 17<sup>th</sup> Jan 2001
- Unannounced Visit to Rathgael Juvenile Justice Centre, 11 December 2000
- Unannounced Visit to Rathgael Juvenile Justice Centre, 17 July 2001
- Unannounced Visit to Lisnevin Juvenile Justice Centre, 3 September 2001
- Unannounced Visit to Lisnevin Juvenile Justice Centre, 1 December 2001
- The Inspection of the Northern Ireland Training Schools 1997/1998: An Overview

### **Lisnevin Juvenile Justice Centre**

- Lisnevin Juvenile Justice Centre, You have arrived !! What next? (original and second edition, undated)
- Lisnevin Juvenile Justice Centre, Information Book for Friends and Family (original and second edition, both undated)
- Lisnevin Juvenile Justice Centre, Business Plan, 2000-2001
- Lisnevin JJC, Remand Unit, Reception Pack, including personal clothing and property list, information card, reception information sheet, admission form, education form, chaplaincy letter, IR letter, marks card
- Lisnevin JJC, Education Department Educational Report
- Lisnevin JJC, Initial Assessment Form
- Lisnevin JJC, Self-injury Form
- Lisnevin JJC (DHSS) Medical Record
- Lisnevin JJC, Staff Procedural Manual, April 1999
- Lisnevin Bullying Policy 1999
- Lisnevin Juvenile Justice Centre, Bullying What is it? What can you do about it?
- Juvenile Justice Board (Lisnevin) Policy and Procedure for dealing with complaints made by, or on behalf of, young persons detained at Lisnevin, October 1999 and revised 2001
- Juvenile Justice Board, Director's Standing Orders – Lisnevin, April 1999
- Copy Memo of 4<sup>th</sup> February 2000 from M Logue, Juvenile Justice Board (Lisnevin) to all members of the Working Party set up to review policies and procedures



### **Rathgael Juvenile Justice Centre**

- Rathgael JJC, Information on the Stage System
- Rathgael JJC, Admission Pack including a pupil information sheet, bank sheet, contact details, juvenile justice services contact record, care plan progress sheet, separation record, APRU psychological service referral form, child protection referral, complaints form
- Rathgael JJC, Key Worker Synopsis
- Rathgael, JJC, Staff Handover Form
- Rathgael JJC, Daily Report
- Rathgael JJC, Untoward Incident Report Form
- Rathgael JJC, Escape incident contact report
- Rathgael JJC, Medical Form
- Rathgael JJC, Assessment Package
- Rathgael JJC, IR visits on record, 2000

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- Committee on the Administration of Justice, Response to the Report of the Criminal Justice Review, August 2000
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- Response of Mr Ingram to the question of Mr Pickthall regarding the Northern Ireland Juvenile Justice Estate
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- O'Mahony & Deazley, *Research Report 17: Juvenile Crime and Justice* (Criminal Justice Review Group, 2000)
- *The Irish News*, Thursday 30<sup>th</sup> November 2000. Article by Adam Ingram, Minister of State, 'St Patrick's will still have a role'.
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- Horgan, G & Sinclair, R, *Planning for Children in Care in Northern Ireland*, London: National Children's Bureau, 1997.
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- Thomas & O'Kane, 'The Ethics of Participatory Research with Children', *Children & Society*, Volume 12, 1998, pp 336-348.

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- The Children (Northern Ireland) Order 1995
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- *In the Matter of Kevin Phillips (a Minor)*, unreported High Court, LCJ Carswell, 30<sup>th</sup> September 2000.
- *R v Home Office, ex parte (1) Margaret Wright (2) Moira Bennett*, QBD Administrative Court, 20/6/01 Lawtel Report
- *Gillick v West Norfolk and Wisbech Area Health Authority and another*[1986] AC 112
- Eur Court HR *Natoli v Italy*, judgment of 9<sup>th</sup> January 2001
- Eur Court HR *A v UK*, judgment of 23 Sept 1998, Reports 1998-VI, no 90
- Eur Court HR *Tyrer v UK*, judgment of 25 April 1978, Series A no 26, 2 EHRR 1
- Eur Court HR *W (and O, H & B) v UK*, judgment of 8 July 1987, Series A no 121, 10 EHRR 29
- Eur Court HR *T v UK, V v UK*, judgment of 16 December 1999.
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- United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), adopted by GA resolution 45/112 of 14 Dec 1990
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- Government Response to the CPT Report, CPT/Inf (2001) 7 [www.cpt.coe.int](http://www.cpt.coe.int)
- Consideration of reports submitted by states parties under article 44 of the Convention: United Kingdom of Great Britain and Northern Ireland. 15/02/95 CRC/C/15/Add.34 (Concluding Observations)

## Appendix C – The Joint Protocol process: In summary

A referral is received by police, social services or NSPCC from a parent, public or professional practitioner. If the receiving agency considers that there is reason to suspect significant harm to a child then they must immediately consult with the other agency(ies).

An initial assessment is then made based on exchange of information and consultation. At the end of this initial assessment a decision will be taken by the receiving agency in consultation with the other(s) about future action – options include no further action; criminal investigation by police; or a Joint Protocol Investigation by police or social services.<sup>1</sup> The decision to go down the child protection route must always be a joint one between police and social services.

If Joint Protocol is decided upon the next stage is the gathering of information by the nominated officers from each agency. This information is brought to a strategy discussion which forms the basis for planning any subsequent investigation. The nominated social worker should consult with the child's GP and any other professional or person whose knowledge of the child or family may be relevant to the investigation.

The investigation itself may be carried out jointly or by a single agency. The Joint Protocol gives guidance on criteria for deciding which sort of investigation to adopt.

When a decision is taken that the investigation should be conducted jointly a strategy discussion should usually take place within 24 hours from referral. The purpose of this meeting is to ensure an early exchange of information and to clarify what action needs to be taken jointly or separately in the investigation. The meeting involves social services and police but should also include other professionals with knowledge of the child or specialist knowledge in the area.

Where there is no formal complaint or the complaint has been subsequently withdrawn the strategy discussion will consider the future role of the police in the Joint Investigation. The document notes: *“both police and social services should not lose sight of the fact that they have a continuing statutory responsibility to investigate fully any allegation of child abuse about which they have been made aware.”*<sup>2</sup>

The next stage is interviewing, including interviews with the person who made the referral, parents or other carers, the child and other witnesses. Only interviewers who have received specialist training in joint interviewing can be involved where there is a joint social services/police investigation. The purpose of the interview with the child is not only to establish the facts but also to assess the child's needs.

There are three possible outcomes to this process (1) no further action (2) initial case conference (3) further investigation.

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<sup>1</sup> If a Joint Protocol Investigation is indicated a PJI1 referral is made in writing.

<sup>2</sup> Joint Protocol p19.

Where there is sufficient evidence for a prosecution the police send a referral to the Director of Public Prosecutions whose role is to decide whether there shall be a prosecution.