



## **1. INTRODUCTION**

1.1. It is The Children's Society's aspiration that children should have the status in law of being citizens of equal value and personal dignity to all others, protected from negative discrimination and less favourable treatment. We believe that the UN Convention on the Rights of Child (UNCRC) embodies the legal and practical standards that would make real this aspiration and that it should be made directly enforceable in domestic legislation and courts. We welcome the concluding observations of the United Nations committee on the rights of the child (CRC) published on 3 October 2008, and urge this Committee to question the Government on its proposed timetable for meeting the CRC's recommendations.

1.2. The Children's Society is a member of a number of representative bodies who have made separate submissions to this Inquiry, namely the Refugee Children's Consortium, the Standing Committee for Youth Justice and Young Equals. We wholly endorse the contents of these submissions and would refer the Committee to them for fuller treatment of a number of the issues raised below.

## **2. CHILDREN IN DETENTION**

1.1. The CRC's concluding observations noted that, in relation to children in trouble with the law *'the number of children deprived of liberty is high, which indicates that detention is not always applied as a measure of last resort; the number of children*

*on remand is high*.<sup>1</sup> It recommended that *‘the State party develop a broad range of alternative measures to detention for children in conflict with the law and establish the principle that detention should be used as a measure of last resort and for the shortest period of time as a statutory principle.*<sup>2</sup>

1.2. The current numbers of children held in custody in England are too high. The Government’s recent Youth Crime Action Plan (YCAP) referred to ‘the small number of young people who do end up in custody’.<sup>3</sup> We strongly refute this assertion. As at July 2008, 2,938 children were detained in the juvenile secure estate, this is not a small number and compares unfavourably to the majority of European countries.<sup>4</sup> Therefore we are very disappointed that the YCAP does not contain a stronger commitment by Government to reducing custodial numbers. We believe that the existing sentencing framework militates against such a reduction and must be re-evaluated in order to give credence to the Government’s claim that it wants to see custody for children used only as a measure of last resort.

1.3. The report of the joint independent review of restraint of children in custody was published in December 2008. The Children’s Society was disappointed that the Government’s response, published at the same time, failed to address the serious human rights breaches identified in 2008 by your committee<sup>5</sup> and highlighted again in the UNCRC’s concluding observations.<sup>6</sup>

1.4. Children in families continue to be detained in Immigration Removal Centres (IRCs) for significant lengths of time with no judicial oversight, contrary to both article 37 of the CRC and the Government’s own policy. In the light of the damning reports about the failure to protect children and safeguard their welfare and subsequent recommendations of Her Majesty’s Inspectorate of Prisons (HMIP)<sup>7</sup> we continue to

---

<sup>1</sup> Op cit footnote 1 Para. 77 c) and d).

<sup>2</sup> Committee on the Rights of the Child, Forty-ninth session, Concluding observations: UK and Northern Ireland (CRC/C/GBR/CO/4) 20 October 2008

<sup>3</sup> HM Government (2008) Youth Crime Action Plan 2008, para 4.1

<sup>4</sup> Figure taken from YJB website <http://www.yjb.gov.uk/en-gb/yjs/Custody/CustodyFigures/>

<sup>5</sup> Parliamentary Joint Committee on Human Rights, Session 2007-08, Eleventh Report: Use of restraint in secure training centres, 7 March 2008 (HL 65/HC 378)

<sup>6</sup> Committee on the Rights of the Child, Forty-ninth session, Concluding observations: UK and Northern Ireland (CRC/C/GBR/CO/4) 20 October 2008

<sup>7</sup> Recent inspections took place on the following dates: Tinsley House full announced inspection (10-14/03/08) published 27/08/08; Yarl’s Wood full announced inspection (04-08/02/08) published 26/08/08

press the Government to bring an immediate end to the detention of children and their families.

1.5. We are equally concerned to see an end to the practice of separating families by detaining the parent(s) without their children. The Government views this as preferential to detaining children<sup>8</sup> but we believe it to be in contravention of article 9 of the CRC, highly damaging to the family and in some cases a risk to the child. We are unconvinced by the Government's position that this practice is consistent with Article 8 of the ECHR.

## **2. THE PRACTICAL IMPACT OF THE WITHDRAWAL OF THE UK'S RESERVATIONS ON IMMIGRATION AND CHILDREN IN CUSTODY WITH ADULTS**

2.1. We strongly welcome the Government's decision to withdraw the immigration reservation to the UNCRC but we share, with other members of the Refugee Children's Consortium serious concern to learn that according to Phil Woolas "*no additional changes to legislation, guidance or practice are currently envisaged.*"<sup>9</sup> The withdrawal of the reservation demands a root and branch review of the way that the asylum system treats children and young people to ensure that the decision-making through out the asylum process fully evaluates and acts upon their best interests.

2.2. While we welcome the withdrawal of the UK's reservation to article 37 and the Government's stated policy intention never to accommodate children in prison custody with adults, we remain concerned that the Government continues to incarcerate children in YOIs that are part of a prison service estate which is designed for adults (and who are 96% of its clientele). This constitutes a breach of article 40 (3) that requires detention facilities to be "*specifically applicable to children*". Children who are locked up most only ever be held as a measure of last-resort in appropriate, child-centred accommodation.

2.3. In light of the withdrawal of the reservation to article 37 the current situation in which age disputed young people are frequently uncovered in immigration

---

<sup>8</sup> Border and Immigration Agency Code of Practice for Keeping Children Safe from Harm Consultation – Pro Forma for Responses, 25 April 2008.

<sup>9</sup> Hansard, 24 Nov 2008.

detention with adults, is particularly incongruous. Of 165 age dispute cases dealt with at Oakington by the Refugee Council in 2005, 89 (53.9%) turned out to be children. In other periods that figure has been found to be as high as 72%. We urge the Committee to investigate why age disputed young people are still detained, why these cases are not recorded (either upon entry or if they come to light while a young person is being held) and why there is no set process for dealing with an allegation that a child is held in detention as an adult.

### **3. DISCRIMINATION AGAINST CHILDREN ON THE GROUNDS OF AGE OR DISABILITY**

3.1. We call on the Committee to urge the Government to urgently ratify the UN Convention on the Rights of Persons with Disabilities without reservations.

3.2. There is significant evidence that disabled children and young people continue to face high levels of discrimination both on an individual and institutional level:

3.2.1. Disabled Children and still not being heard and taken seriously, in accordance with their rights under article of the UNCRC. Despite an increasing focus on children's participation, disabled children are much less likely than non-disabled children to participate at any level, particularly those with complex needs or communication impairments.<sup>10</sup>

3.2.2. Disabled children are overrepresented amongst the child population in the looked after system and those living in institutions on a long-term basis.<sup>11</sup>

3.2.3. A very high proportion of children involved in anti-social behaviour proceedings have learning difficulties and mental health problems. This seriously calls into question the treatment of disabled children in this context.<sup>12</sup>

3.2.4. Disabled children require services from both universal and specialist health services. Despite their crucial importance however, families using our services

---

<sup>10</sup> Franklin, A. and Sloper, P. (2007) Participation of disabled children and young people in decision-making relating to social care, York, Social Policy Research Unit.

<sup>11</sup> [see CRAE UNCRC report p 11 & 19]

<sup>12</sup> See British Institute of Brain Injured Children November 2005 campaign update Ain't misbehavin'. Young people with learning and communication difficulties and anti-social behaviour. BIBIC has carried out research on the prevalence of disabled children being issued with ASBOs. Over a third of youth offending teams took part in the research: 35% of these said children with a diagnosed mental health disorder or an accepted learning disability had been given an ASBO. The organisation is concerned that '*children are in danger of being penalised for their disabilities and that they are likely to be marginalised further by this action*', Research by Squires, P. (2005) New Labour and the Politics of Anti-social Behaviour, *Critical Social Policy*, 26 (1), pp.144-168 also found that half of anti-social behaviour cases involved children with clinically diagnosed ADHD, in addition to other cases where children had learning difficulties.

frequently report that universal health services are inaccessible. Families also experience a postcode lottery in accessing specialist health services. An investigation by the Disability Rights Commission revealed '*an inadequate response from the health service to the major physical health inequalities experienced by some of the most socially excluded citizens: those with learning disabilities and/or mental health problems.*' This included disabled children and young people.

3.2.5. Disabled children experience a lack of access to accessible information. For examples the Government failed to produce consultations, including *Youth Matters*, and the Welfare Reform Green Paper, in an accessible format, despite guidance stating that it is good practice to do so.

3.2.6. The Disability Equality Duty [Disability Discrimination Act 2005] requires schools to involve disabled pupils in the development and review of their disability equality scheme. Evidence from The Children's Society practice suggests disabled pupils are rarely involved or even know about their school's disability equality scheme.

3.3. The Children's Society is very concerned about the issue of age discrimination against children and young people. We are committed to children's equality with adults and recognise the many ways in which children can be discriminated against both in law and in everyday lived experiences. While there are many laws that have made provision for children's rights and protection as individuals in some areas, in others continued and overt discrimination exists, for example in not assuring equal legal protection from assault for children as that provided for adults.

3.4. We are members of the Young Equals coalition that is campaigning to stop children being treated less favourably on grounds of age. The coalition seeks legal protection for children and young people from unfair age discrimination in the provision of goods, services and facilities in the proposed Equality Bill and for education and children's services to be included in the integrated equality duty.

#### **4. ASYLUM SEEKING CHILDREN**

4.1. Some progress has been made towards improving the treatment of asylum seeking and refugee children since this Committee's Inquiry into the Treatment of Asylum-

Seekers in 2006, including the publication of the Code of Practice under s.21 of the UK Borders Act 2007, the Government's subsequent commitment to introduce a duty equivalent to s.11 of the Children Act 2004 in the Borders, Citizenship and Immigration Bill currently before Parliament and the removal of the UK's immigration reservation to the UNCRC. However it remains to be seen whether these very welcome statements of intent will be translated into concrete improvements in the lives of these children. The current reality for whom is that their best interests continue to be subjugated to the requirements of immigration control.

4.2. Within this context, The Children's Society is particularly alarmed to find itself supporting increasing numbers of destitute children with families, age disputed young people and unaccompanied minors who become 18.<sup>13</sup> Child destitution is neither necessary, proportionate nor humane and is inconsistent with Article 8 of the ECHR. Moreover we fear that this already desperate situation could be made even worse under the proposals currently being developed for reform of the support regime. These could include powers to remove support from unaccompanied children as they approach 18 and from families at any stage in the process if they are deemed to be non-compliant.

4.3. We also remain strongly opposed to s.9 of the Asylum & Immigration (Treatment of Claimants, etc.) Act 2004 and urge the Committee to press Government to exercise its power under s.44 of the Immigration, Asylum and Nationality Act 2006 to repeal it.

## **5. CHILD TRAFFICKING VICTIMS**

5.1. We continue to be very concerned about the difficulty of obtaining immigration status for trafficked children. A discovery that a child has been trafficked can cause their asylum claim to fail because of the limitations of the 1951 Refugee Convention and the way it is interpreted. This creates a barrier to successful prosecutions as there is no guarantee of security for the child, and so we are unable to reassure them about the consequences of giving evidence. There is also

---

<sup>13</sup> See for example, Living on the Edge of Despair, The Children's Society 2008.

a human cost, as it makes already frightened children more afraid and leaves them in limbo with no certainty about the future.

5.2. An amendment is required to the legal definition of trafficking as set out in section 4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 because the current narrow definition does not adequately cover all forms of exploitation. It does not include all those subject to abuse of power or in a position of vulnerability, or where 'requests or inducements' have been made via a third party for example babies and very small children who are trafficked by an adult. There is now evidence that this loophole is preventing successful prosecutions.<sup>14</sup> The Policing and Crime Bill and the Borders, Immigration and Citizenship Bill that are both before the UK parliament, provide an opportunity to amend the definition.

5.3. The CRC recommended that *'The State party should always consider, both in legislation and in practice, child victims of these criminal practices, including child prostitution, exclusively as victims in need of recovery and reintegration and not as offenders.'*<sup>15</sup> In order to implement this recommendation we urge the Government amend clause 15 of the Policing and Crime Bill currently before Parliament to abolish the power to prosecute of a child over the age of ten for offences under s. 1 Street Offences Act 1959.

## 6. EDUCATION

6.1. We have seen no progress in relation to the difficulties refugee children face accessing and participating fully in education because of the demands of the immigration and asylum support processes. Article 22 of the 1951 Convention sets out that refugees should have the same access to elementary education and remission of fees, but it is in practice difficult for them to achieve this. For example we are aware from our practice that some young people who arrive in the UK at the ages of 14 or 15 are placed into pupil referral units or sixth form colleges rather

---

<sup>14</sup> On 16 May 2008 Peace Sandberg was jailed for 26 months at Isleworth Crown Court after being found guilty of facilitating illegal entry into the UK. The illegal entry in question was that of a baby believed to have been purchased in Nigeria, allegedly so that Ms Sandberg could claim to qualify for priority housing in the UK. Ms Sandberg was not prosecuted for trafficking because it was concluded that the definition of trafficking in section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 was inadequate to cover the circumstances in this case.

<sup>15</sup> Committee on the Rights of the Child (2008) Consideration of reports submitted by states parties under article 44 of the Convention. Concluding observations: United Kingdom of Great Britain and Northern Ireland . para. 74 <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

than mainstream school. For as long as this group of children remain without any link to the DCSF it is difficult to see how policies and practices in education will not ignore, or discriminate against them.

6.2. Disabled children are 13 times more likely to be excluded from school. Official figures show that in 2005/6, 39 in every 10,000 pupils with a statement of SEN were permanently excluded. The figure for pupils with SEN but without a statement is 43 and for those with no SEN only 5. Beyond these figures lies a significant number of further exclusions as are pupils are 'informally' or 'unofficially' excluded from school.<sup>16</sup>

6.3. Many Traveller and Gypsy children live on the side of the road in constant fear of evictions, caused by a shortage of Traveller sites and an urgent need for approximately 4,500 transit and residential pitches.<sup>17</sup> This has an impact on these children's education as they are unable to access school places and face prolonged interruptions to their education. Traveller children in The Children's Society projects frequently report experiencing bullying and other forms of discrimination in schools.

## 7. CHILD POVERTY

7.1. We welcome the Government's commitment to enshrine the 2020 commitment to eradicate child poverty in legislation during the 2009 session of Parliament. The Children's Society believes that this promise is intrinsic to securing the conditions for good childhoods for all and putting the target into legislation provides a vehicle for ensuring the necessary policies and mechanisms are in place to keep it.

7.2. The Children's Society is a founding member of the Campaign to End Child Poverty and endorses the coalition's Statement of Principles on legislating for the eradication of child poverty by 2020 that is appended to this submission.

7.3. It is vital that the asylum-seeking children are counted for the purposes of the child poverty measure. They are not currently and as a result they have been excluded from efforts to raise children's standard of living.

---

<sup>16</sup> DfES (2007) Statistical First Release: Permanent and Fixed Period exclusions from schools and exclusion appeals in England, 2005/06

<sup>17</sup> Pat Niner, The provision and condition of local authority sites in England, 2002

## 8. CRIMINALISATION OF CHILDREN

8.1. The most significant factor contributing to the criminalisation of children and young people is the low age of criminal responsibility. The CRC recommended that this should be raised substantially.<sup>18</sup> Such a move would immediately divert large numbers of younger children from the criminal justice process and release resources that could be invested into more effective, informal, responses to their behaviour.

8.2. Additionally a number of specific Government policies have contributed to 'net-widening' which has increased levels of criminalisation of young people in recent years, some examples of which are given below:

8.2.1. The framing of sex offences legislation in the Sexual Offences Act 2003 means that, for example, two children aged 12 who engage in sexual touching by mutual consent (however legally invalid that consent may be), are both automatically committing a criminal offence. Hence the child who is considered absolutely *incompetent* to consent to sexual activity, is at the same time held in law to be absolutely *competent* to face prosecution for the same activity. The absence of the presumption of *doli incapax*, repealed in 1998, only makes this anomaly more stark.

8.2.2. Clause 29 of the Policing and Crime Bill introduces a new offence of persistently possessing alcohol in a public place. Under 18s can be prosecuted for this offence if they are caught with alcohol in a public place three times within a 12-month period. The maximum punishment is a level two fine (currently £500). If enacted this will criminalise children by the creation of an offence that does not even have a functional analogy in the case of an adult. We do not agree that this new offence is either necessary or helpful. For young people who are drinking at harmful levels and getting into trouble, the most effective method of supporting them will be through voluntary access to education and treatment, rather than drawing them into the criminal justice system.

---

<sup>18</sup> UN committee on the rights of the child, 49<sup>th</sup> session, Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, 3 October 2008 (CRC/C/GBR/CO/4)

8.3. Finally we repeat our longstanding call for reform to the youth justice system to put children's welfare concerns at its centre. This should be based on the principle of treating children in trouble with the law as children first and foremost. The majority have experienced/are experiencing chaotic and damaging childhoods that require support by mainstream or specialist services. Addressing these needs rather than simply punishing a child's problematic behaviour is best for the child and for society as a whole.