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NORTHERN IRELAND NGO STAKEHOLDER REPORT 2 EVIDENCE

SUBMITTED TO THE UN COMMITTEE ON
THE RIGHTS OF THE CHILD

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LIST OF ABBREVIATIONS

ACE	Adverse Childhood Experiences
ADHD	Attention Deficit Hyperactivity Disorder
AEP	Attenuating Energy Projectiles
ASD	Autism Spectrum Disorder
B&B	Bed and Breakfast accommodation
CAJ	Committee on the Administration of Justice
CAMHS	Child and Adolescent Mental Health Services
CAT	Committee Against Torture
CCEA	Council for the Curriculum, Examinations and Assessment
CED	Conductive Energy Devices [Tasers]
CEDAW	Committee on the Elimination of Discrimination Against Women
CJINI	Criminal Justice Inspection Northern Ireland
CLC	Children’s Law Centre
CTA	Common Travel Area
CRC	Committee on the Rights of the Child
CREU	Centre for Research in Educational Underachievement
CRIA	Child Rights Impact Assessment
CRIDE	Consortium for Research into Deaf Education
DUP	Democratic Unionist Party
EA	Education Authority
ECHR	European Convention on Human Rights
EMA	Early Medical Abortion
ENT	Ear, Nose and Throat
EOTAS	Education Other Than At School
ETI	Education and Training Inspectorate
EU	European Union
HRA	Human Rights Act
IDG	Inter-Departmental Group
IWF	Internet Watch Foundation
JJC	Juvenile Justice Centre [Woodlands]
LAC	Looked After Children
LGBTI+	Lesbian, Gay, Bisexual, Transgender, Intersex+
MBU	Mother and Baby Unit
MLA	Member of the Legislative Assembly
MMPR	Minimising and Managing Physical Restraint
NASUWT	National Association of Schoolmasters Union of Women Teachers
NGO	Non-Government Organisation
NI	Northern Ireland
NICCY	Northern Ireland Commissioner for Children and Young People

NICIE	Northern Ireland Council for Integrated Education
NIHRC	Northern Ireland Human Rights Commission
NISRA	Northern Ireland Statistics and Research Agency
NSPCC	National Society for the Prevention of Cruelty to Children
ONS	Office for National Statistics
PACE	<i>Police and Criminal Evidence (NI) Order 1989</i>
PPR	Participation and the Practice of Rights
PSNI	Police Service of Northern Ireland
RCPCH	Royal College of Paediatrics and Child Health
RE	Religious Education
RSE	Relationship and Sexuality Education
RQIA	Regulation and Quality Improvement Authority
SBNI	Safeguarding Board for Northern Ireland
SEN	Special Educational Needs
SENDIST	Special Educational Needs and Disability Tribunal
STEP	South Tyrone Empowerment Programme
UK	United Kingdom
UNCRC	United Nations Convention on the Rights of the Child
VOYPIC	Voice of Young People in Care

INTRODUCTION

Northern Ireland NGO Stakeholder Report 2: Evidence

This *Evidence Report* provides **background information and evidence for the Northern Ireland NGO Stakeholder Report 2**, based on the topics covered in the ‘List of Issues’ sent to the UK Government by the Committee on the Rights of the Child [CRC] in February 2021, with additional issues identified where relevant. These Reports highlight key issues affecting the promotion and protection of children’s rights in Northern Ireland [NI] over the six years since the previous examination of the UK Government by the CRC (2016-2022). In addition, based on a survey of 12-17 year olds across Northern Ireland and workshops with some of the most vulnerable and disadvantaged groups, the *Rights Here, Right Now: Children and Young People’s Report* has also been submitted to the Committee.¹

In September 2020, the Children’s Law Centre [CLC] contacted voluntary and community sector organisations working with children, young people and families across Northern Ireland requesting information about what they considered to be the key issues affecting realisation of children’s rights. Drawing on their submissions, as well as relevant statistics and research or consultation with children, the *Northern Ireland NGO Stakeholder Report 1* and a *Supporting Evidence Report* were submitted to the CRC in December 2020 to inform the ‘List of Issues Prior to Reporting’. These organisations were contacted again in September 2022 with a request for submissions providing updates and information regarding developments in the two years 2020-2022. CLC would like to thank the organisations and individuals who provided a wealth of evidence (including legislative and policy developments, research, consultations, illustrative cases, statistics, organisational knowledge and experiences) to inform the *NI NGO Stakeholder Report 2* and *Evidence*. These have been endorsed by 50 organisations and individuals.

Context

As in the UNCRC definition of the child, any reference to ‘child(ren)’ refers to under-18s. Since the last periodic reporting process involving the UK Government and devolved administrations in 2016, a number of challenges have disproportionately affected the rights of children in Northern Ireland, both directly and indirectly.

On 23 June 2016, 52% of UK voters in the ‘EU referendum’ voted to leave the EU - commonly referred to as ‘**Brexit**’. (In Northern Ireland 56% voted to remain). Thereafter, the *European Union (Withdrawal Agreement) Act 2020* was passed. The ‘Withdrawal Agreement’ entered into by the UK and EU provided for the UK to leave the EU on 31 January 2020, with special provisions existing after the end of the ‘withdrawal period’ on 31 December 2020 for Northern Ireland in recognition of the *Belfast/ Good Friday Agreement* and its border with the

¹ The *NI NGO Stakeholder Report 2* and the *Rights Here, Right Now: Children and Young People’s Report* is available at: <https://childrenslawcentre.org.uk/policy-work/>

Republic of Ireland, including a commitment that there would be “no diminution of rights”. A *Northern Ireland Protocol*, negotiated as an element of the Brexit trade deal with the European Union, was intended to maintain an open border on the island of Ireland.

The **Northern Ireland Assembly was suspended on 16 January 2017**, when power-sharing arrangements collapsed, and was not re-instated **until 13 January 2020**. During this period no local legislation could be passed.² Civil servants were precluded from filling the void by entering into any ad hoc arrangements on the grounds that this was beyond their legal powers or authority.³ The *New Decade, New Approach* agreement restored the government in January 2020 after this three-year hiatus. However, in **February 2022** the First Minister of Northern Ireland, a member of the main Unionist party [DUP: Democratic Unionist Party], resigned in protest about the *Northern Ireland Protocol*, arguing that the Protocol creates economic barriers between Northern Ireland and the rest of the UK which represent a threat to the future of Northern Ireland’s place within the Union of the UK’s four nations. The First Minister’s resignation meant an immediate **collapse of the Northern Ireland Executive** as Sinn Féin’s Deputy First Minister was automatically stripped of her position. Although other Ministers maintained their seats, the Executive was no longer able to meet or make policy decisions. Following elections which led to Sinn Féin emerging as the largest party for the first time, in May 2022 the DUP refused to engage in the process of selecting a new speaker and also refused to nominate for the position of Deputy First Minister as part of its protest about the Protocol, preventing the formation of a new Executive. The Northern Ireland Assembly has therefore not been able to function, a situation which pertains to date (November 2022). The *Northern Ireland (Executive Formation etc) Bill* was introduced in the House of Commons on 21 November 2022 and is currently receiving accelerated passage.⁴ Additionally, the Secretary of State for Northern Ireland made a statement in the House of Commons on 24 November 2022 in relation to the budgetary situation.⁵

The **COVID-19 pandemic** reached Northern Ireland in February 2020 and on 23 March 2020, with the rest of the UK, Northern Ireland went into its first lockdown in response to the threat posed to the coping capacity of the NHS by the Coronavirus pandemic. A ‘stay-at-home’ order banned ‘non-essential’ travel and contact with others; schools, businesses, amenities and

² For example, the House of Commons Northern Ireland Affairs Committee, considering education funding in Northern Ireland, stated: “the political deadlock at Stormont has meant that the education system has been unable to respond to the urgent challenges facing schools”, and that the UK’s approach of passing budgets for Northern Ireland on a rolling annual basis “has been an obstacle to investment and improvement in children’s education”, *HC 1497 of Session 2017–19*, 22 July 2019, pp 56–7

³ *Re Buick’s application (ARC21) for Judicial Review* [2018] NIQB 43 – Keegan J delivered 14 May 2018

⁴ This includes details about the exercise of functions in the absence of Northern Ireland Ministers and the powers conferred on the Secretary of State (eg to determine salaries and other benefits for Members of the Assembly in respect of periods in which the Assembly is not functioning). See explanatory note, available at: <https://publications.parliament.uk/pa/bills/cbill/58-03/0195/en/220195en.pdf>

⁵ See: <https://questions-statements.parliament.uk/written-statements/detail/2022-11-24/hcws385>

places of worship were closed; major events were cancelled. The *Coronavirus Act 2020* was passed on 25 March 2020 and came into force on the same day. It empowered Ministers in Northern Ireland (as well as those in Britain) to make regulations in a range of sectors to limit transmission of the disease, ease the burden on public health services, assist healthcare workers and the economically affected. The lockdown was gradually lifted in June-July as infection and death rates lowered. Having remained closed over the summer break, schools re-opened in September. Following a rise in the infection rate, restrictions were re-imposed and on 16 October Northern Ireland went into its second lockdown. Intended to be a 4-week 'circuit breaker', this was extended to 8 weeks. Restrictions were eased on 11 December, although social distancing and other limitations remained in place. After a brief easing of restrictions at Christmas, a third lockdown including schools was imposed for 6 weeks from 26 December in response to a sharp rise in the infection rate. Restrictions were hardened on 5 January as a new variant of COVID-19 spread throughout Northern Ireland. A mass vaccination programme was introduced.

From 8 January 2021, a stay-at-home order became law and schools taught via remote learning. In late January it was announced that restrictions would continue until March and on 18 February they were extended until 1 April, although primary school pupils in Years 1-3 returned to school on 8 March. A lockdown 'exit strategy' outlined gradual lifting of restrictions but without a timetable. On 22 March primary pupils in Years 4-7 returned to school and on 12 April all other school year groups returned to school. A staged relaxing of restrictions was announced during April and May. In September several rule changes were announced, ending social distancing restrictions. In December the highly transmissible Omicron variant was confirmed in Northern Ireland. Restrictions were re-introduced in hospitality venues, household mixing was limited, remote working was encouraged, social distancing was required in businesses. These restrictions were removed on 21 January 2022 and all remaining restrictions were lifted on 15 February 2022.

Children raised a number of concerns regarding the pandemic, including: impacts on the physical and emotional health of children and young people, particularly those who are vulnerable; restricted opportunities for play and leisure; negative stereotyping of young people as the main group spreading the virus; the need for dissemination of accurate information about COVID-19 in child-friendly formats and digital poverty.⁶

Throughout the period 2016 to 2018 the **Northern Ireland economy stagnated** from the combined effect of the political vacuum and Brexit.⁷ With the added impact of COVID-19, and heightened concern over the 'trade agreement' between the UK and the EU after the 'withdrawal period', the Purchasing Managers' Index evidenced that the Northern Ireland

⁶ NI Youth Forum submission, September 2020

⁷ NISRA (2018) *Northern Ireland Composite Economic Index (NICEI) Quarter 1 2018*

economy entered into recession in the last quarter of 2019.⁸ The UK economy entered into recession in the second quarter of 2020 as a result of the combined effect of Brexit and COVID-19.⁹ This is significant as the Northern Ireland economy is dependent on Westminster to provide economic support once that from the EU is no longer available, including financial assistance to manage the additional costs of transition.

Deterioration in the finances of their carers, and the economy as a whole, have had a significant impact on children – as previously evidenced.¹⁰ Since 2020, many households have struggled with **spiralling living costs**. Energy bills have increased by hundreds of pounds per year, record levels of inflation are making essentials such as food and fuel unaffordable, and neither wages nor social security support have risen sufficiently to cushion the blow. The situation looks likely to worsen in the coming months. New research predicts a fuel poverty rate (ie % of households in fuel poverty) of 72%: 551,000 households in Northern Ireland by January 2023.¹¹ This means over 1.4 million people will be struggling to afford their energy bills. The much-discussed ‘heat or eat’ dilemma has become almost irrelevant as many households will struggle to do either.

I. NEW DEVELOPMENTS

COVID-19 pandemic

Emergency legislation in response to the COVID-19 pandemic - the *Coronavirus Act 2020* - was particularly significant in relation to health and social care as well as temporary closure of educational institutions and childcare premises. In August 2020, over 50 organisations made a plea to the Northern Ireland Executive that, in responses to COVID-19, children and young people must be prioritised as much as health and the economy.¹² The impacts of emergency legislation and responses to the pandemic are evidenced throughout this Report.

⁸ Rice, C. (2019) *Northern Ireland economy 'enters or is entering' recession*, BBC NEWS, 9 September 2019. Available at: <https://www.bbc.co.uk/news/uk-northern-ireland-49609767>

⁹ Office of National Statistics (2020) *Coronavirus and the impact on output in the UK economy: June 2020*, 12 August 2020

¹⁰ See: Fanjul, G. (2014) *Children of the Recession: The impact of the economic crisis on child well-being in rich countries*, UNICEF; Child Poverty Alliance (2014) *Beneath the Surface: Child Poverty in Northern Ireland*

¹¹ Bradshaw, J. and Keung, A. (2022). *Fuel poverty: Estimates for the UK*. Available at: <https://cpag.org.uk/news-blogs/news-listings/fuel-poverty-estimates-uk>

¹² Action for Children et al (2020) *A Vision for Recovery in Northern Ireland. Overarching Principles and Actions*, 7 August 2020

In Northern Ireland, **Child Rights Impact Assessments** to ensure that laws and policies consider children's rights **were not conducted on legislative measures introduced during the pandemic**.

In NICCY's *2020-2021 Annual Report* the Commissioner noted that during the COVID-19 pandemic, while there was "a determination from government to respond to the needs of the community and particularly the most vulnerable", this determination "was not matched by creativity or a thorough understanding of the issues" - the most significant issues being provision of digital devices, support for vulnerable families to access the most basic services, responses to children with a disability, and educational provision.¹³ NICCY also reported that it had "raised concerns about lack of consultation with the office with respect to the development of emergency coronavirus legislation and its impact on children's rights".¹⁴ In their responses to open questions about the advice they would give to government following the pandemic, 16 year old respondents to the 2021 *Young Life and Times* survey stressed the importance of the government taking time to understand their opinions, experiences and the issues faced by them in terms of potential impact of government action on their lives.¹⁵

Withdrawal from the European Union [EU]

Despite a *Withdrawal Agreement* between the UK and EU, and the associated *Northern Ireland Protocol*, the **impacts on** practical protection, maintenance and development of **cross-border arrangements and relationships remain unclear**. The *Internal Market Bill* gives Ministers power to amend the *Withdrawal Agreement*, allowing for primacy over any conflicting international law. Mainly concerning trade and the market for goods and services within the UK, the (then) Northern Ireland Secretary accepted that that this Bill would "break international law in a very specific and limited way",¹⁶ setting an unwelcome precedent. In addition, the Common Travel Area [CTA], a bilateral set of arrangements on cross-border cooperation between the UK, does not have a legislative basis. Engagement with civil society by the Human Rights Consortium has highlighted deep concern about potential risks to the peace process among people in Northern Ireland. There is anxiety that Brexit could lead to a hard border between Northern Ireland and the Republic of Ireland. Children and young people have identified a range of impacts should a hard border be established, including: increased travel time; disruption travelling to school, visiting friends or accessing services across the border; needing a passport to travel a few miles and the consequences if they could

¹³ NICCY (2021) *The Commissioner for Children and Young People for Northern Ireland. Annual Reports and Accounts for the year ended 31 March 2021*. Available at: <https://www.niccy.org/media/4010/niccy-annual-report-2020-21-final-18-november-2021-web.pdf>, p5

¹⁴ NICCY (2021) *A New and Better Normal. Children and Young People's Experiences of the Covid-19 Pandemic*. Available at: <https://www.niccy.org/media/3882/niccy-covid-report-main-report-final-aug-21.pdf>, p12

¹⁵ ARK (2021) *2021 Young Life and Times Survey*, Coronavirus Module: COVADVICE

¹⁶ See: <https://www.bbc.co.uk/news/UK-politics-54073836> 8 September 2020

not afford a passport; risk of an increased presence of paramilitaries in border areas; change in their relationships, sense of well-being, identity and belonging.¹⁷

Those living in border communities are acutely aware of the potential for Brexit to disrupt their lives in terms of cross-border access to healthcare,¹⁸ childcare,¹⁹ child protection,²⁰ parental separation and child custody arrangements, the education of over 600 children who live on one side of the border but attend school on the other, membership of clubs, enjoyment of sport and leisure facilities, travel and freedom of movement.²¹ Neither the UK Government nor the Northern Ireland Assembly can remedy these issues without them being addressed by both the UK and the EU Commission.²² It is essential that both parties to the negotiations tackle reciprocal rights issues, which extend far beyond trade and customs. Young people have argued that the implications of Brexit for people in the North and South of Ireland should be given special consideration during negotiation processes, and the views of children and young people should be taken into consideration as they will have to live longest with the consequences.²³ The Northern Ireland Commissioner for Children and Young People has called on all involved in negotiations to ensure that there are no adverse impacts on children's rights or their access to services as a result of Brexit.²⁴

¹⁷ Children's Law Centre (2018) *'Greatest Impact – Least Heard' Hearing Young People's Voices on Brexit*. Available at: <https://www.childrenslawcentre.org.uk/images/Final-Brexit-Report-Greatest-Impact--Least-Heard--290618.pdf>

¹⁸ For example, the All-island paediatric cardiology service and Congenital Heart Disease Network; the Cooperation and Working Together programme funded by the EU to develop collaborative relationships including the Cross Border Treatment Scheme and services concerning alcohol abuse, eating disorders, diabetes, health inequalities, and supporting older people. See: Northern Ireland Confederation for Health and Social Care and NHS Confederation (2017) *Northern Ireland and the EU exit: A unique set of challenges*. Available at: <http://www.nhsconfed.org/resources/2017/03/northern-ireland-and-the-eu-exit>

¹⁹ *NB v HMRC* (TC) [2016] NICom 47

²⁰ Child protection measures work on the basis of sharing of information across a range of agencies and through multilateral engagement with a range of security EU mechanisms such as European Arrest Warrants, Eurojust, EUROPOL, ECRIS and Schengen Information System.

²¹ See: Children's Law Centre (2017) *Brexit: Potential Implications for Children and Young People in Northern Ireland*

²² See: Hervey, T. (2022) *Brexit, Health and its potential impact on Article 2 of the Ireland/Northern Ireland Protocol*, NI Human Rights Commission. Available at: <https://nihrc.org/publication/detail/brexit-health-and-its-potential-impact-on-article-2-of-the-ireland-northern-ireland-protocol>

²³ NICCY and Ombudsman for Children (2017) *It's Our Brexit Too: Children's Rights, Children's Voices*, Conference Report, 10 November 2017

²⁴ NICCY (2018) *UK Withdrawal from the EU. An overview of the potential impact on children in Northern Ireland*, Advice Paper, p25-26. Available at: <https://www.niccy.org/media/3142/niccy-advice-paper-potential-impact-of-brexit-on-children-young-people-july-2018.pdf>

Identity, citizenship and differential rights are key issues. At a UK level, the Brexit referendum campaign was built on a narrative of ‘Britishness’ and the UK ‘taking back control’ of laws, borders and sovereignty. According to young people, Brexit has increased racial and sectarian tensions; affecting their lives, interpersonal relationships, friendships and deepening divisions (particularly hostility towards migrants).²⁵ It has also fuelled divisions based on ethno-political identity in Northern Ireland, increasing inter-community tension and identity politics. Both the EU and the UK “acknowledge[d] that the 1998 [Belfast/Good Friday] Agreement recognises the birth right of all the people of Northern Ireland to choose to be Irish or British or both and be accepted as such”.²⁶ In a statement about the Brexit negotiations, the (then) Irish Taoiseach stated: “Everyone born in Northern Ireland will continue to have the right to Irish and therefore EU citizenship. So, a child born in Belfast or Derry today will have the right to study in Paris, buy property in Spain, work in Berlin or any other part of the European Union. All they have to do is exercise the right to Irish and therefore EU citizenship.”²⁷ However, the impact of ‘British’-identifying people losing access to EU citizenship and ‘Irish’-identifying people retaining the rights attached to EU citizenship creates an inherent tension and potentially polarising difference in the realisation of rights between the two main ethno-political communities in Northern Ireland. It is important to recognise that children are rarely given a choice regarding identity and citizenship, yet this is likely to have a significant impact on the rights to which they have access.

II. RIGHTS UNDER THE UNCRC AND OPTIONAL PROTOCOLS

A. GENERAL MEASURES OF IMPLEMENTATION OF THE UNCRC

Legislation

Implementation of the UNCRC and Optional Protocols in domestic law

The UNCRC has not been incorporated into domestic legislation in Northern Ireland. The principles and provisions of the Convention are therefore not directly applicable or justiciable under domestic law.

²⁵ Children’s Law Centre (2017) *Consultation with Children and Young People on Brexit*. Available at: <http://www.childrenslawcentre.org.uk/index.php/component/zoo/item/bbc-broadcast-appeal-for-clc-copy-2-copy-3> ; NI Youth Forum submission to Children’s Law Centre, September 2020

²⁶ Brexit Law NI, *The New UK-EU Joint Report on Phase 1 of the Negotiations*: Preliminary views on the Ireland and Northern Ireland section, 11 December 2017.

Available at: <https://brexitlawni.org/assets/uploads/BrexitLawNI-Analysis-Phase-1-Report-Final-1.pdf>

²⁷ An Taoiseach, Leo Varadkar (2017) *Statement on Brexit Negotiations*, 8 December 2017. Available at: https://merrionstreet.ie/MerrionStreet/en/News-Room/News/Statement_on_Brexit_negotiations_by_the_Taoiseach_Leo_Varadkar_T_D_.html

The ‘best interests’ principle is not reflected in the majority of Northern Ireland legislation. Even when the principle is included in law, this does not necessarily impact on practice. For example, Section 98 of the *Justice (Northern Ireland) Act 2015* inserted new wording into Section 53(3) of the *Justice (NI) Act 2002* which “compels all those working in the youth justice system to take account of the best interests of children with whom they are working as a primary consideration”. However, issues raised in the ‘**Special Protection Measures: Administration of juvenile justice**’ section of this Report demonstrate that this has not led to rights-based practice prioritising the best interests of children in conflict with the law.

Child Rights Impact Assessments [CRIA]

As noted in the State Party Report (2022, para 39), although some Northern Ireland departments have used Child Rights Impact Assessments when developing policies, **there is no formal CRIA process** in place.

Proposals to revise the Human Rights Act

There is a significant **threat to protection of children’s rights following withdrawal of the UK from the European Union**. A key provision of the *Belfast/Good Friday Agreement*, the *Human Rights Act 1998* [HRA] currently gives further effect to rights from the *European Convention on Human Rights* [ECHR] in domestic legislation across the UK. It allows access to UK courts for violations of ECHR rights, although it does not represent full protection of the ECHR. For example, there is no free-standing right to prohibition of discrimination (included in Article 1 of Protocol No. 12 of the ECHR, which the UK has not ratified). The Act protects civil and political rights, but in the absence of wider enforceable economic and social rights protections of children and young people (such as those in the UNCRC) the articles of the HRA have been used in the protection of social and economic rights, including for children.²⁸

Following the UK’s withdrawal from the European Union, the Conservative Government indicated likely **repeal of the HRA** and its replacement with a *British Bill of Rights*. Some politicians within the Conservative Party also proposed that the UK withdraws from the *European Convention on Human Rights*:

“If we want to reform human rights laws in this country, it isn’t the EU we should leave but the ECHR and the jurisdiction of its Court.” (Theresa May, then Home Secretary, April 2016)

“The Government are committed to scrapping the *Human Rights Act* and introducing a *British Bill of Rights*” (Elizabeth Truss, then Lord Chancellor and Secretary of State for Justice, September 2016).

²⁸ See: Decision: McAlinden J delivered on 7 July 2020 in NI High Court in the matter of an application for leave to apply for a Judicial Review by Lorraine Cox, a single mother of three, regarding different treatment of social security benefit claimants with a terminal illness.

Available at: <https://lawcentreni.s3.amazonaws.com/McA11286Final-Typed.pdf>

“We will not repeal or replace the *Human Rights Act* while the process of Brexit is underway but we will consider our human rights legal framework when the process of leaving the EU concludes.” (Conservative Party Manifesto, 2017)

“We will update the *Human Rights Act* and administrative law to ensure that there is a proper balance between the rights of individuals, our vital national security and effective government.” (Conservative Party Manifesto, 2019).

On 7 October 2020, in response to a letter from Harriet Harman, Chair of the Joint Committee on Human Rights, following media reports that the Government was planning to opt out of major parts of European human rights law Lord Chancellor Robert Buckland stated: “As set out in our manifesto, the government will look at the broader aspects of our constitution including the balance between the rights of individuals and effective government. This includes a commitment to updating the Human Rights Act 1998.” On 7 December the Government launched an independent review to examine whether there is a need to reform the HRA. Conducted by a panel of experts, chaired by retired Lord Justice Sir Peter Gross, this reported in December 2021.²⁹ In September 2022 the Government ‘shelved’ its proposal to introduce a so-called *British Bill of Rights* but has since indicated its intention to revisit planned reforms. Without having access to the detail of revised proposals, it is difficult to assess their potential impact on children and young people. However, concerns about the previous plans remain relevant to new proposals to alter overarching human rights protections and structures within which the UK, and specifically Northern Ireland, operate.³⁰

UN bodies have consistently argued that legislative changes require consultation and should not erode the protections provided by the HRA but should strengthen the status of international human rights to provide effective protection of rights across all UK jurisdictions.³¹ The commitment of the UK Government in Westminster to alter or diminish protections afforded by the HRA is in marked contrast to the views of the Northern Ireland

²⁹ See: Full Report, Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040525/ihrar-final-report.pdf;

Summary, Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040526/ihrar-executive-summary.pdf

³⁰ See: CLC (2022) *CLC response to the Ministry of Justice consultation: Human Rights Act Reform*, March 2022; CLC (2022) *Joint Civil Society Briefing on the Bill of Rights Bill: Implications for Children*, 12 September 2022.

³¹ Committee on Economic, Social and Cultural Rights, July 2016; Committee on the Elimination of Racial Discrimination, August 2016; Ireland, UPR, May 2017; Ukraine, UPR, May 2017; Uzbekistan, UPR, May 2017; Committee on the Elimination of All Forms of Discrimination Against Women, 2019.

public. In 2017, 84% of respondents to a Human Rights Consortium poll believed that the HRA “is good for Northern Ireland”.³²

There are significant **concerns about the adverse impacts of withdrawal from the EU human rights framework**. The UNCRC has been a guiding influence on EU law concerning children. It has influenced how law-making institutions have viewed their role as protectors of the best interests of the child while ensuring that children’s rights have been central to law making. The EU human rights framework protects rights across a number of legal mechanisms, particularly EU treaties, the EU *Charter of Fundamental Rights*, directives, regulations and case law, all of which have had a significant impact on the rights of the child. Significantly, the EU Charter uses the UNCRC as the underpinning framework for its recognition of children’s rights. At a policy level, the EU has committed to embedding children’s rights in all its actions, a commitment set out in the *EU Agenda on the Rights of the Child*. In 2016, the European Children’s Rights Unit stated in evidence to the Joint Select Committee on Human Rights that: “CRC-inspired references are now an increasingly routine feature of EU-level legislative and policy measures relating to children, particularly in the context of EU free movement law, immigration and asylum law, EU family law, EU criminal law, and policies seeking to tackle poverty and social exclusion.”³³ The EU Commission’s compilation of law and policy on the rights of the child runs to more than 100 pages,³⁴ covering issues from standardization of toy safety to data protection and privacy, child abuse and exploitation. Having the UNCRC embedded within EU law has enabled the enforcement of protections at a local level, including through the courts. For example, under EU law, a child’s fundamental right to education, regardless of their migration status, is recognised in virtually all aspects of EU migration law.³⁵ The scope and limitation of EU law means that the EU does not have the competence to determine the substance or scope of national educational provisions. Rather, the EU protects migrant children’s right to access education on the same or, depending on their status, similar basis as nationals. The children of EU migrants who move to another EU Member State under free movement law have the right to be admitted to that state’s general

³² Human Rights Consortium (2017) *Attitudes to Human Rights in Northern Ireland. Polling Data*. Available at: <http://www.humanrightsconsortium.org/wp-content/uploads/2017/07/Attitudes-to-Human-Rights-in-Northern-Ireland-Polling-Data-1.pdf>, p11

³³ Written evidence to the inquiry on the Human Rights Implications of Brexit, HL 88/HC 695, 19 December 2016. Available at: <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/695/695.pdf>, HBR0041, p37

³⁴ EC *acquis* and policy documents on the rights of the child, April 2020. Available at: https://ec.europa.eu/info/sites/info/files/eu_acquis_and_policy_documents_rights_of_the_child_april_2020_2.pdf

³⁵ Qualification Directive 2011/95/EU (recast) of the European Parliament and of the Council, 13 December 2011

educational, apprenticeship and vocational training courses under the same conditions as nationals, including access to educational maintenance grants.³⁶

However, UK law has a dualist approach to international human rights Treaties - while there is a general duty on Ministers to act in compliance with international human rights standards, these rights are not directly enforceable in the courts. Although the UK has adopted some international principles in decisions relating to children, these are not always linked directly to the human rights principles in the UNCRC. As the UK moved to exit the European Union it ensured that elements of EU law were retained within domestic UK legislation through the *EU Withdrawal Act 2018*. One important exception was the *EU Charter of Fundamental Rights*, which the UK Government argues is not required within UK law as it adds no additional rights to those already retained. In practice, the ability to ensure UNCRC compliance within EU competencies was directly linked to Charter provisions. Potential rights violations as a consequence of Brexit are highly likely. For example, on the island of Ireland it is unclear how access to education for children who live in border areas between the Republic of Ireland and Northern Ireland, or who move across the border, will be accommodated by any Brexit agreement between the UK and the EU Commission. Having visited the UK in November 2018, the UN Special Rapporteur on extreme poverty and human rights stated that Brexit was likely to have adverse impacts on “the most vulnerable and disadvantaged members of society who will be least able to cope and will take the biggest hit”, and recommended “legislative recognition of social rights”.³⁷

Bill of Rights for Northern Ireland

As noted, the *Human Rights Act 1998* does not represent the full protection of the ECHR. Provision for a ***Bill of Rights for Northern Ireland***, intended to build on the rights contained within the ECHR by including supplementary rights influenced by international standards and reflecting the particular circumstances of Northern Ireland, was provided for in the 1998 *Belfast/Good Friday Agreement*. This commitment to a framework of human rights underpinning government institutions established by the Agreement was an important confidence-building measure in a society transitioning from decades of conflict. Based on an extensive eight-year consultation, advice was provided in 2008 by the Northern Ireland Human Rights Commission [NIHRC] to the Secretary of State on the content of a *Bill of Rights for Northern Ireland*.³⁸ In December 2009 the UK Government published a consultation

³⁶ Regulation 492/2011/EU on freedom of movement for workers within the Union (5 April 2011). In relation to maintenance grants see: C-3/90 *Bernini v Minister van Onderwijs en Wetenschappen* (26 February 1992). Available at: <http://curia.europa.eu/juris/celex.jsf?celex=61990CJ0003&lang1=en&type=TEXT&ancre=>

³⁷ Alston, P. (2018) *Statement on visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights*, London, 16 November 2018. Available at: https://www.ohchr.org/Documents/Issues/Poverty/EOM_GB_16Nov2018.pdf, p3 and p23

³⁸ Available at: <http://www.nihrc.org/uploads/publications/bill-of-rights-for-northern-ireland-advice-to-secretary-state-2008.pdf>

document rejecting most of the advice provided by the NIHRC on the basis that “the introduction of such rights in Northern Ireland would either be unworkable in practice, or could give rise to unjustified inequalities across the UK.”³⁹

Ironically, recently Northern Ireland has fallen behind other devolved administrations regarding children’s rights. Scotland and Wales have used powers within their devolved competencies to give further effect to UNCRC rights.⁴⁰ Despite reference to the *Bill of Rights for Northern Ireland* in a series of Agreements, and the CRC’s recommendation (CRC, 2016: para 7b), there has been **no progress towards achieving this goal**. The *New Decade, New Approach* document - outlining the deal reached by the UK and Irish Governments to restore devolved government in Northern Ireland three years after the Assembly collapsed in January 2017 - provides for the now functioning Ad Hoc Committee on a Bill of Rights. However, with no agreed process for delivery of a meaningful set of rights outcomes when the Committee concludes its work, there is concern that the Committee could become the latest delaying tactic in a long-running process.

An Ad Hoc Committee survey,⁴¹ published in March 2021, found that 80% of respondents across all communities were in favour of *a Bill of Rights for Northern Ireland* and 82% considered this should contain a spectrum of rights reflective of international standards. The Ad-Hoc Committee published its report in February 2022.⁴² While there was no political consensus on a detailed set of proposals for a Bill of Rights in the report, the Ad-Hoc Committee process successfully created the conditions in which majority political support for a Bill of Rights was achieved for the first time in many years,⁴³ with four of the five main political parties (SDLP, UUP, Sinn Fein & Alliance) stating their support for a new Bill of Rights with additional rights for people in Northern Ireland. This is in parallel with the broad cross-

³⁹ Northern Ireland Office (2009) *A Bill of Rights for Northern Ireland: Next Steps*, Consultation Paper, para 3.15

⁴⁰ See briefings to the Ad Hoc Committee on a Bill of Rights:

Simon Hoffman in relation to Wales: <http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/ad-hoc-committee-on-a-bill-of-rights/written-briefings/simon-hoffman-swansea-university/>

Tobias Lock in relation to Scotland: <http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/ad-hoc-committee-on-a-bill-of-rights/written-briefings/tobias-lock-professor-of-law-at-maynooth-university/>.

On 1st September 2020, the First Minister announced that the Scottish Government would introduce the *UNCRC Incorporation (Scotland) Bill* which will incorporate the UNCRC into Scottish law "fully and directly", to the maximum extent of the Scottish Parliament's powers and be passed before the end of the current parliamentary term. This announcement was made as the Scottish Government launched its *Programme for Government 2020-21*, which stated its commitment to "deliver a revolution in children’s rights" through incorporation.

⁴¹ <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/ad-hoc-bill-of-rights/written-briefings/bill-of-rights-survey-report.pdf>

⁴² See: [Report of the Ad Hoc Committee on a Bill of Rights \(niassembly.gov.uk\)](http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/ad-hoc-bill-of-rights/reports/report-on-a-bill-of-rights/report-of-the-ad-hoc-committee-on-a-bill-of-rights.pdf)

⁴³ See: <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/ad-hoc-bill-of-rights/reports/report-on-a-bill-of-rights/report-of-the-ad-hoc-committee-on-a-bill-of-rights.pdf>

community support at a public level – including in every main party voter base.⁴⁴ Yet the UK government continues to insist on the concept of ‘political consensus’ in order to progress legislation for a Bill of Rights.⁴⁵ The requirement for consensus has been accurately highlighted as providing an unacceptable veto on rights progression.⁴⁶ Speaking in an Assembly debate on the Ad-Hoc Committee’s report, Mike Nesbitt, UUP MLA stated: “If you go with consensus, at a certain point it becomes a veto, and no party in the House should have a veto.”⁴⁷

As in Scotland and Wales, the Northern Ireland Assembly could take steps to give further effect to international Treaties within its own devolved competencies. In addition, provision was made in the *Belfast/Good Friday Agreement* for a *Bill of Rights for Northern Ireland* to be enacted through Westminster legislation. There is no limit to the powers of the UK Government to legislate, as there is for the devolved institutions. Consequently, complete incorporation of UN Treaties, including the UNCRC, would be possible through a *Bill of Rights for Northern Ireland*. The Northern Ireland Commissioner for Children and Young People affirmed: “it is apparent that today’s children and young people are profoundly affected by the ‘particular circumstances’ of Northern Ireland and their rights must be protected within this context”.⁴⁸

Comprehensive policy, strategy and co-ordination

Implementation of the UNCRC across all areas of Northern Ireland government

A consultation was undertaken in 2016/2017 to develop a *Children and Young People’s Strategy for Northern Ireland*. A cross-Departmental Strategy was published in December 2019, described as providing a “strategic framework for improving the well-being of children and young people ... pending the formation of an Executive and the approval and adoption of a Northern Ireland Executive Children and Young People’s Strategy”. The *Children and Young People’s Strategy 2020-2030* was finally **published by the Executive in January 2021**.⁴⁹ It is

⁴⁴ The Human Rights Consortium, Ulster University and Queen’s University jointly commissioned polling that evidenced 80%+ support from the public and across political party voters for social and economic rights in a Bill of Rights and for those same rights to be enforceable by law. See: <http://www.humanrightsconsortium.org/polling-shows-public-demand-strongest-rights-protections-following-covid-19/>

⁴⁵ See: <https://www.irishnews.com/news/northernirelandnews/2022/02/17/news/headline-2590735/>

⁴⁶ Human Rights Consortium submission, December 2022

⁴⁷ See: <http://data.niassembly.gov.uk/HansardXml/plenary-14-02-2022.pdf>, p83

⁴⁸ NICCY (2020) *Briefing to the NI Assembly Ad-Hoc Committee on the Bill of Rights for Northern Ireland*, June 2020, p2

⁴⁹ See: <https://www.education-ni.gov.uk/publications/children-and-young-peoples-strategy-2020-2030>

claimed that this Strategy is rooted in the UNCRC, and the *Delivery Plan 2021-2024*⁵⁰ outlines actions departments will take to “improve the children’s wellbeing and rights” (State Party Report, 2022, para 52). However, lack of relevant indicators, data, costed budget and involvement of children in the development of the Delivery Plan have been key concerns.⁵¹

The 3-year Delivery Plan purports to be designed to provide a Northern Ireland-wide, holistic structure to monitor how departments are progressing on agreed outcomes to improve the well-being of children and young people. The first outcome pertains to health - both physical and mental. According to the Royal College of Paediatrics and Child Health [RCPCH], a number of additional actions are required. These include:

- links with the objectives within the *Strategy for Paediatric Healthcare Services Provided in Hospitals and in the Community* (2016 - 2026), and protected funding to deliver these objectives
- an ‘area of greatest focus’ concerning the physical health of all children in Northern Ireland
- outcomes and indicators relating specifically to children and young people, with protected funding within the upcoming *Obesity Prevention Strategy* and *Anti-poverty Strategy*
- pre-emptive actions to promote and establish good oral health for children and young people, support their emotional and mental wellbeing and, crucially, respect and deliver on UNCRC rights.⁵²

Monitoring and evaluating implementation and impact of policies and programmes for children’s rights

Despite the CRC’s (2016, para 14) recommendation, a **child rights indicator framework** covering all areas of the UNCRC, and taking into account the UN High Commissioner for Human Rights publication *Human Rights Indicators*, **has not been developed nor implemented** in Northern Ireland.⁵³

⁵⁰ See: <https://www.education-ni.gov.uk/consultations/consultation-children-and-young-peoples-strategy-initial-3-year-delivery-plan-2021-2024>

⁵¹ Children’s Law Centre submission, November 2022

⁵² See: <https://www.rcpch.ac.uk/resources/ni-executive-children-young-peoples-strategy-3-year-delivery-plan-consultation-response>

⁵³ The Children and Young People’s Strategic Partnership (2020) produced a *Northern Ireland UNCRC Monitoring Report* in relation to the 8 outcomes set out in the NI Executive *Children and Young People’s Strategy*. However, this did not include disaggregated data for all areas of the UNCRC or in relation to specific groups (including: girls/boys; LGBT+, BAME, refugees and asylum seekers, LAC, Roma, Travellers, migrant children, disabled children, children living in poverty).

See: <https://reports.instantatlas.com/report/view/82f7dbf9e2b64cd0bc3effb41ccb6b0/ni001>

In terms of *independent* monitoring, despite the CRC's 2016 (para 16a) recommendation, the **legislation underpinning the powers and duties of the Northern Ireland Commissioner for Children and Young People [NICCY] remains unchanged**. NICCY has conducted a number of rights-based reviews providing detailed evidence of key issues and rights violations across a range of topics plus clear recommendations for relevant Departments and agencies. NICCY's progress updates often demonstrate limited improvement. For example, *Still Waiting* (published in 2018) assessed the adequacy and effectiveness of mental health services for children and young people in Northern Ireland. The *2020 Still Waiting Monitoring Report* analysed the government's response to recommendations and work undertaken September 2018 - December 2019. Although an Inter-Departmental Project Group [IDG] tasked with development of an action plan for taking the recommendations forward was established, the *Monitoring Report* stated: "The Commissioner was frustrated by the slow progress made by the IDG in the months after the publication of *Still Waiting*" and concern was expressed "that so little progress has been achieved on the priority areas previously identified by NICCY".⁵⁴ The draft Action Plan was considered "vague about timelines and next steps in respect of a number of actions", making it difficult to assess progress.⁵⁵ *Too Little, Too Late* (published in 2020) reviewed SEN provision in mainstream schools in Northern Ireland.⁵⁶ The 2022 '*Too Little, Too Late*' *Monitoring Report* noted that, despite an initially positive response, "NICCY did not see much action or progress taken to address the recommendations in the months following publication" of the initial report. In fact, "worryingly" during the COVID-19 pandemic, NICCY "saw a marked decline in the availability of supports and services for children and young people with SEN as a result of restrictions imposed during the pandemic", leading the Commissioner to conclude that the "already difficult situation" faced by children and young people with SEN in accessing their right to education before the onset of the pandemic "was exacerbated by the response to the pandemic".⁵⁷

Progress in implementation of NICCY recommendations by responsible government departments and agencies is inhibited by: vague and inadequate proposed actions within subsequent government Action Plans; need to secure additional funding by the relevant department or agency, in a context of uncertainty about the budget; claimed need for Ministerial sign-off during a period when the Executive has not been in place; limited access

⁵⁴ NICCY (2020) '*Still Waiting*' *Monitoring Report*. Available at: <https://www.niccy.org/publications/2020/february/06/still-waiting-monitoring-report/> , p13; p15

⁵⁵ Ibid, p11

⁵⁶ NICCY (2020) '*Too Little, Too Late*' *A Rights Based Review of Special Educational Needs Provision in Mainstream Schools*. Main Report. Available at: <https://www.niccy.org/media/3515/niccy-too-little-too-late-report-march-2020-web-final.pdf>

⁵⁷ NICCY (2022) '*Too Little, Too Late*' *Monitoring Report*. Available at: <https://www.niccy.org/media/4089/niccy-ttl-monitoring-report-15-march-2022.pdf>, p6-7

to data to enable effective monitoring in relation to how well providers are responding to demand for services or progressing recommendations. **Government departments and public bodies do not have a statutory requirement to respond to NICCY reviews, advice and recommendations.**⁵⁸

Effective co-ordination of UNCRC implementation

A re-organisation of government departments in Northern Ireland was conducted in 2016. Previously, two junior Ministers within the (then) Office of the First Minister and Deputy Minister held overall responsibility for children. However, despite the CRC's recommendation (CRC, 2016: para 11a), currently **no Minister has overall responsibility for children**. This has weakened oversight and accountability for issues relating to children and the implementation of children's rights.

Allocation of resources

Child rights-based approach in budgeting processes

In 2009, a study commissioned by Save the Children to analyse public expenditure on children in the UK, and at devolved administration level, noted that necessary information was neither being collected nor published consistently over time across different jurisdictions.⁵⁹ It strongly recommended that the UK and devolved administrations take steps to develop children's budgets, stating: "More transparency is needed to ensure that civil society is aware of budget allocations for children; how they are changing over time; whether money is reaching and benefitting children living in poverty; and whether money is being spent efficiently." However, regardless of the CRC's (2016, para 13) recommendation, there remains an ongoing **absence of children's budgetary analysis**. To date, the Northern Ireland Executive has not produced a children's budget.

Impacts of austerity measures and measures taken in response to the COVID-19 pandemic

As throughout the UK, in pre-Covid Northern Ireland responses to rising levels of hunger were led by the community and charity sectors rather than by state institutions.⁶⁰ **During Coronavirus lockdowns, food need became so widespread that official programming was required.** The Department for Communities set up emergency measures, including a weekly food basket scheme, initially restricted to provision for the elderly and others advised to

⁵⁸ Haydon, D. (2022) *Response to independent review of NICCY*, submitted to reviewers in August 2022

Children's Law Centre submission, November 2022

⁵⁹ Sefton, T. (2009) *A child's portion: an analysis of public expenditure on children in the UK*, CASE Report 59, Save the Children

⁶⁰ Participation and the Practice of Rights submission, September 2020

shield. This scheme of 10,400 food parcels per week was expanded to 18,000.⁶¹ Additional funds amounting to £1.5m were provided to support district councils ensure access to food for those most in need.⁶² Alongside the Department for Education, the Department for Communities announced that it would make bi-weekly free school meals payments (amounting to £2.70 per day per child for each day the child's school was closed) to families of 97,000 children in receipt of free school meals. Initially, this was restricted to term time but eventually it was extended to include the summer holidays.⁶³ A further extension was announced in October 2022, with a school holiday food grant being paid to all school children entitled to free school meals during the October half term and Christmas holidays in 2022 and half term break in February 2023.⁶⁴ With no Minister in place and restricted decision-making by civil servants, the situation beyond February 2023 is unclear. A statement by the Secretary of State on 24 November 2022 implied that this programme of support would be protected, but this was a general commitment rather than a specific, time-framed undertaking.⁶⁵

Job losses and income instability caused by the Coronavirus pandemic have placed households in acute financial stress. The conditions created by COVID-19 have increased stress on caregivers, exacerbated child vulnerability, and reduced safeguards. This has increased the potential for new and recurring cases of all forms of abuse. While poverty as an isolated factor does not cause child maltreatment, it can have a significant impact on parenting capacity, exacerbating and contributing to parental mental ill-health or substance misuse.⁶⁶ [See [Standard of living](#)]

Data collection

Collection and quality of disaggregated data

It is evident in the State Party Report (2022, Annex E) that essential **data is not available in a range of UNCRC areas**. In Northern Ireland, this includes requested data concerning: cases of discrimination affecting children; use of acoustic devices; number of children placed under solitary confinement and other restrictive interventions in education and other institutional settings; children with psychosocial disabilities and autism who have been placed under

⁶¹ See: <https://www.communities-ni.gov.uk/landing-pages/covid-19-service-updates>

⁶² See: <https://www.communities-ni.gov.uk/landing-pages/covid-19-partner-organisations>

⁶³ See: <https://www.executiveoffice-ni.gov.uk/news/executive-daily-update-initiatives-deal-coronavirus-26-march-2020>

⁶⁴ See: <https://www.education-ni.gov.uk/news/mcilveen-announces-ps55m-school-holiday-food-grant>

⁶⁵ See: <https://questions-statements.parliament.uk/written-statements/detail/2022-11-24/hcws385>

⁶⁶ See: Bywaters et al (2016) *The relationship between poverty, child abuse and neglect: an evidence review*, Joseph Rowntree Foundation

restraint and seclusion in schools; intersex children who have received non-urgent and irreversible surgical procedures; children of incarcerated parents; children with Special Educational Needs/ disabilities attending mainstream and special schools; child victims of sexual exploitation crimes who have been provided with recovery assistance or compensation; asylum seeking/ refugee/ migrant children entering Northern Ireland from areas where children may have been recruited or used in hostilities.

The **data provided by the State Party has not been disaggregated** (specifically by age, gender, disability, ethnicity) concerning: child fatalities due to child abuse/ substance abuse/ suicide; use of CEDs and AEPs on under-18s; child victims of violence reported to the authorities and sanctions imposed on perpetrators; children who have received protective measures and multidisciplinary measures; length of stay in residential care; children diagnosed with a mental illness; children admitted to the Juvenile Justice Centre; children receiving diversionary and non-custodial sentencing; cases regarding the sale of children/ child prostitution/ child pornography reported, investigated, prosecuted and sanctions.

To prevent unequal treatment and promote equality of opportunity for disabled children, the Northern Ireland Government must, under the statutory equality duty in Section 75 of the *Northern Ireland Act 1998*, when introducing policies consider their impact on disabled children's right to equality of opportunity. However, at present this is not possible as relevant disaggregated data is not collected. When formulating the *Northern Ireland Disability Strategy 2012-2015*, no baseline data was established on **children with disabilities or long-term conditions**. A new strategy is currently being formulated and there is still no baseline data, nor a plan to allocate resources for this to be collected.⁶⁷

Provision of targeted support to vulnerable children is hindered by lack of routine health data collection on **child protection**. Official figures underestimate the extent of child maltreatment, as it is often under-reported to child protection agencies. Improved comprehensive data on child protection is required.

Despite the CRC's (2016, para 61a) recommendation that comprehensive, disaggregated data on child mental health is regularly collected, the **scale of poor mental health among children and young people** in Northern Ireland remains unknown as there is no *regularly available* prevalence data. In a 2021 review of mental health statistics in Northern Ireland, the Office for Statistics Regulation stated: "There is a lack of robust and reliable data on mental health in Northern Ireland. This has a profound impact on the provision of official statistics in this area, in particular for mental health data sourced from the community sector."⁶⁸ Although the Department of Health commissioned a prevalence survey in 2018, it is understood that this

⁶⁷ Children's Law Centre submission, November 2022

⁶⁸ See: <https://osr.statisticsauthority.gov.uk/publication/review-of-mental-health-statistics-in-northern-ireland/pages/6/>

was carried out using one-time transformation funding.⁶⁹ A 2020 *Youth Wellbeing Prevalence Survey* indicated that Northern Ireland has the highest level of mental ill-health within UK jurisdictions – 1 in 8 (12.6%) of children in Northern Ireland had an emotional disorder, such as anxiety or depression, compared with 1 in 12 (8.1%) in England.⁷⁰

There is limited data to establish the **specific wellbeing and developmental needs of babies and very young children**, whose needs require a distinctive approach to that of older children. Some data is collected via the *Healthy Child Healthy Future Framework*, but this is limited and does not, for example, include specific information on developmental delay. There is minimal evidence of assessment of parent and infant needs regarding wellbeing and infant development. This includes the factors that shape poorer outcomes, which should provide the basis of strategic decision-making that informs service planning.⁷¹

Contrary to the CRC (2016, para 43b) recommendation, data collection regarding **child victims of domestic abuse** has not been strengthened. Regional data on the number of children experiencing domestic abuse is not published and is therefore unknown, rendering children's experiences invisible. The Police Service of Northern Ireland [PSNI] reports the number of domestic abuse crimes, but this is a record of *reported* abuse. Women's Aid note that in the UK 1 in 7 children under the age of 18 live with domestic abuse each year; 90% of children are in the same or adjacent room when domestic abuse occurs. Experiences of domestic abuse increased markedly during COVID-19 lockdowns, at a time when children were cut off from support networks and potential sources of help.⁷²

As most surveys or studies tend to concentrate on the adult population there is limited data about **children and young people's alcohol and drug use** in Northern Ireland.

Efforts are required to ensure collection and analysis of disaggregated data to enable monitoring of progress towards reduction in the **use of restrictive practices** such as restraint and seclusion in education and other institutional settings. [See [Torture and other cruel, inhuman or degrading treatment or punishment](#)]

⁶⁹ RCPCH submission, September 2020

⁷⁰ Bunting, L. et al (2020) *The Mental Health of Children and Parents in Northern Ireland. Results of the Youth Wellbeing Prevalence Survey*, October 2020, p47

⁷¹ NSPCC submission, October 2022

⁷² Women's Aid, Belfast: <https://belfastwomensaid.org.uk/domestic-abuse-children/>

Dissemination and awareness-raising

Awareness-raising programmes for children

The **UNCRC is not a statutory element of the curriculum** in Northern Ireland. Young people continue to demonstrate limited knowledge about children's rights, the UNCRC and the role of the Northern Ireland Commissioner for Children and Young People. Among respondents to the *Rights Here, Right Now* survey conducted with 12-17 year olds across Northern Ireland in 2022, 24% had not heard of children's rights, 55% had not heard of the UNCRC and 70% had not heard of NICCY. Among those who *had* heard of children's rights, the UNCRC or NICCY, the source of this information was primarily school. Older respondents were more likely to have heard about the UNCRC in school (77% of 16-17 year olds compared with 55% of 12-13 year olds), suggesting that this is a topic covered in the Key Stage 4 curriculum in some schools. Other sources included the internet, media, and parents/ carers/ guardians. Among those with disabilities, youth clubs/ community groups were also a relevant source of information. Most survey respondents (86%) agreed that children and young people *should* learn about their rights, with schools identified by 94% of all respondents as the place where this learning should occur. Almost half (47-49%) identified organisations such as UNICEF, Amnesty International, NICCY, the NIHRC and social media as sources of information, reinforcing the importance of independent human rights institutions and social media (particularly for older respondents) as providers of information about children's rights.⁷³

The principles and provisions of the Convention are not integrated into the structures and practices of all schools, despite the Department for Education's *Circular 2014/14* guidance for Principals and Boards of Governors regarding how pupil participation can be encouraged.⁷⁴

Training of relevant professional groups

Although the UNCRC was ratified by the UK government 30 years ago, many professionals (including in the children's sector) do not fully understand or value the significance of children's rights.⁷⁵ There is **no comprehensive awareness-raising nor training about the UNCRC, children's and human rights for professionals working with children.**

⁷³ Haydon, D. (2022) *Rights Here, Right Now: Children and Young People's Report to the UN Committee on the Rights of the Child*, Belfast: Children's Law Centre

⁷⁴ NI Youth Forum (2015) *#Pupil Voice. Making a Difference*, NIYF/ NICCY

⁷⁵ VOYPIC submission, September 2020

B. DEFINITION OF THE CHILD

Minimum age of marriage

Reflecting para 40 of its General Comment No. 20 on implementation of children’s rights during adolescence, the CRC (2016, para 20) recommended that the UK Government and devolved administrations raise the minimum age of marriage to 18 years. The current legal framework in Northern Ireland enables marriage between the ages of 16 and 17 with parental or judicial consent. In 2019, there were 80 marriages in Northern Ireland in which one or both involved were aged under 18.⁷⁶ In July 2022, following a public consultation on marriage law, the Finance Minister noted that an overwhelming majority of respondents supported raising the minimum age of marriage. The Minister outlined his **intention to increase the minimum age for marriage or civil partnership to 18 years**, stating that work was underway to prepare new legislation to be enacted once a functioning Assembly and Executive has been resumed.⁷⁷

In its response to the consultation regarding marriage law, the Children’s Law Centre highlighted concerns about the **protection of Roma girls in Northern Ireland from child, early and forced marriage**. This group of children is recognised by the World Health Organisation as among those at greatest risk of this violation of their human rights due to continued prevalence of ‘arranged marriage’ for girls, determined by their parents, often to much older husbands (in some instances with Powers of Attorney purporting to transfer parental responsibility to that spouse). In circumstances where girls subsequently lack access to education, social activity or support and often experience early pregnancy, their experiences of child marriage are similar to the experiences of trafficked children. Legislative provision for non-recognition of child marriages contracted outside of the jurisdiction is critical in ensuring that this violation of children’s rights is not accepted in Northern Ireland on traditional, religious, cultural or economic grounds.⁷⁸

⁷⁶ See: <https://www.belfasttelegraph.co.uk/news/northern-ireland/raising-marriage-age-to-18-in-northern-ireland-goes-to-public-consultation-41053243.html>

⁷⁷ See: <https://www.finance-ni.gov.uk/news/finance-minister-outlines-plan-marriage-law-reform>

⁷⁸ Children’s Law Centre (2002) *Response to Department of Finance Public Consultation on Marriage Law*, February 2022, p6-7

C. GENERAL PRINCIPLES

Non-discrimination

Discrimination on the grounds of age

In Northern Ireland **proposed legislation on age discrimination**, which excluded children aged under 16 years of age, did not progress while the Assembly was suspended (January 2017 – January 2020) and has **not** been **reintroduced**.

Negative public attitude towards children, especially adolescents

Despite the CRC's previous concerns (2016, para 23), **children and adolescents continue to experience negative stereotyping and 'intolerance' in public attitudes and the media.**

In the *Rights Here, Right Now* survey, 66% of survey respondents agreed that children and young people are negatively stereotyped in the media, reflecting persistent and discriminatory media representation of under-18s. This proportion was significantly higher among older respondents aged 16-17 (78% compared with 56% amongst 12-13 year olds) and among those with disabilities (72% compared with 66% of those without disabilities).⁷⁹

Discrimination with regard to health, education, alternative care and child justice

Despite the CRC's (2016, para22c) recommendation, **children continue to experience discrimination and stigmatisation.** The following paragraphs outline the discrimination experienced by specific groups.

Data consistently shows that, for **children living in poverty**, inequality significantly impacts on their education, housing, social environment and health outcomes. There is a widening gap between the health of children from affluent and those from deprived backgrounds. Mental ill-health, overweight/obesity and dental decay are indicators that demonstrate worse outcomes for children from deprived backgrounds.⁸⁰ In 2017, more than two thirds of UK doctors responding to a survey about poverty and child health stated that poverty and low income contributed 'very much' to the ill health of the children with whom they worked.⁸¹

Children with disabilities do not access their rights on an equal basis to their non-disabled peers. These inequalities were exacerbated during the response to the COVID-19 pandemic, with differential adverse treatment being experienced by disabled children in access to health, social care and education. For example, CLC commenced legal actions on behalf of

⁷⁹ Haydon, D. (2022) *Rights Here, Right Now: Children and Young People's Report to the UN Committee on the Rights of the Child*, Belfast: Children's Law Centre

⁸⁰ RCPCH (2020) *State of Child Health 2020*. Available at: <https://stateofchildhealth.rcpch.ac.uk/evidence/nations/northern-ireland/>

⁸¹ RCPCH (2017) *Poverty and Child Health: Views from the frontline*

two profoundly disabled young children who were denied access to school transport because they required ventilation and suction. Without proper risk assessment they were deemed to present a COVID-19 risk to drivers, whilst packed school buses were transporting children without disabilities to school. Following protracted negotiations, appropriate transport arrangements were put in place. However, due to a lengthy delay in securing bespoke transport provision, both children experienced significant disruption to their learning over a sustained period.⁸²

Care experienced children and young people continue to endure significant inequalities. In terms of educational attainment, data for 2020/21 demonstrated that children who had been in care continuously for 12 months or longer were more likely to have Special Education Needs (25% compared with 6% of the general school population). Just 45% achieved five GCSE at grades A*-C compared with 92% of the general school population. They were also more likely to be suspended from school: 7% of children in care were suspended compared with 1.2% of the general school population. Looked after children are also over-represented throughout the criminal justice system, from receipt of cautions and convictions to detention in custody. Among children in care aged 10 and over, 6% had been cautioned or convicted of an offence while in care during 2020/21 (7% of boys, 4% of girls), with a higher prevalence amongst older children (10% of those aged 16 and over compared with 4% of those aged 10-15).⁸³

Among **care leavers** aged 16-18 in 2020/21, 20% had a statement of Special Educational Need, compared with 5% of the general school population; 33% left school with no qualifications, compared with a NI average of 0.6%); 29% achieved 5 or more GCSEs grade A*- C, compared with a NI average of 85%; 33% were in education, 22% were in training, 10% were in employment; 13% were unemployed; 7% were economically inactive because of sickness/disabilities, 3% due to caring or parental responsibilities. 30% of care leavers aged 19+ who had been in contact with social services during the 12 months prior to their 19th birthday, and whose economic activity was known, were not involved in education, training or employment compared with 12% of 16-24 year olds in NI.⁸⁴ In addition, many experience housing instability, including living in unstable accommodation and homelessness.⁸⁵ . There is

⁸² Children's Law Centre submission, November 2022

⁸³ Department of Health (2022) *Children in Care in Northern Ireland 2020-2021 Statistical Bulletin*, 23 August 2022. Available at: <https://www.health-ni.gov.uk/sites/default/files/publications/health/child-care-ni-20-21.pdf>, p28, 32, 36, 38

⁸⁴ Department of Health (2022) *Northern Ireland Care Leavers 2020/21*, 16 February 2022. Available at: https://www.health-ni.gov.uk/sites/default/files/publications/health/nicl-20-21_0.pdf, p12, 18, 21, 31

⁸⁵ Include Youth submission, September 2020; Include Youth response to *NICCY Corporate Plan 2020-2023*, p14-15. Available at: <http://www.includeyouth.org/mgmt/resources/include-youth-response-to-niccy-corporate-plan-2020-2023.pdf>

no consistency in leaving care provision across the five Health and Social Care Trusts and access to housing for young people assessed as ready for independent living is poor, with Trusts and the Housing Executive not working together to identify and plan for need.⁸⁶

Young carers find access to certain rights are diminished due to their caring responsibilities, in particular their rights to health and health services, social security, an adequate standard of living, and education.⁸⁷

In Northern Ireland over seven thousand children and young people are educated through the medium of Irish in pre-school, primary, secondary education and youth services, many of whom are raised with Irish as their first language in their homes. However, issues faced by young **Irish language speakers** include difficulties accessing services and resources, correspondence, limited visibility of the language as well as prejudice and discrimination towards the language.⁸⁸ A further issue is that SEN services and support are based on assessment tools derived in using monolingual samples. These tools are not ‘fit for purpose’ in use with bi- or multi-lingual children including those immersed in the Irish-medium context. In a resource for schools produced by the Education Authority to support children with SEN, a chapter focusing on speech, language and communication needs states in the context of bilingualism states: “Don’t test children through the use of assessments standardized on monolingual speakers of English”.⁸⁹ Anecdotal evidence suggests that Irish-medium pupils requiring SEN assessment and interventions are, against their and their parents’ wishes, compelled to leave the Irish-medium sector, denying them the opportunity to be educated in the same setting as other family members.⁹⁰

Concern has been raised that public use and promotion of Irish continues to be resisted politically by UK, devolved and local governments.⁹¹ The 2006 *St Andrews Agreement* stated that the Government would “introduce an Irish Language Act reflecting on the experience of

⁸⁶ Action for Children submission, October 2022

⁸⁷ Action for Children submission, October 2022

⁸⁸ Conradh na Gaeilge submission, September 2020; NIHRC (2018) *Submission to the Committee of Experts of the European Charter for Regional and Minority Languages*. Available at: https://www.nihrc.org/uploads/publications/NIHRC_Submission_to_COMEX_May_2018.pdf

⁸⁹ Douglas, H. et al (2021) *A Resource for school to support children who have, or may have special educational needs*. Chapter: Speech, language and communication needs. Available at: <https://www.education-ni.gov.uk/sites/default/files/publications/education/Amended%20SEN%20Resource%20File%20FINAL%2027-9-21.pdf>, p57

⁹⁰ Comhairle na Gaelscolaíochta submission, October 2022

⁹¹ See: Committee on the Administration of Justice and Ulster University (2019) *Local Councils, Obligations and the Irish Language: A Framework for Compliance*. Available at: <https://caj.org.uk/wp-content/uploads/2018/10/Local-councils-obligations-the-Irish-language.pdf>;

Wales and Ireland and work with the incoming Executive to enhance and protect the development of the Irish language”. Subsequently, the *Northern Ireland (St Andrews Agreement) Act 2007* added a new section [28D] to the *Northern Ireland Act 1998* established a legal obligation on the Northern Ireland Executive to adopt a strategy setting out how it proposed to enhance and protect the development of the Irish language. Ten years later, a High Court Judge ruled that the Executive had failed in its duty to adopt an Irish language strategy.⁹² In the 2020 *New Decade, New Approach* Agreement by the UK and Irish Governments, established to resume devolved government in Northern Ireland after a three year suspension, it was agreed that there would be no stand-alone Irish Language Act. Rather, the *Northern Ireland Act 1998* would be amended with policies implemented to grant official status to both the Irish language and the Ulster Scots language. In its latest report regarding UK compliance with its undertakings under the *European Charter for Regional or Minority Languages*, the Council of Europe Committee of Experts’ recommendations for immediate action included: the adoption of “a comprehensive law and a strategy on the promotion of Irish in Northern Ireland” and provision of “basic and further training for a sufficient number of teachers teaching in Irish”.⁹³ *The Identity and Language (Northern Ireland) Bill* passed its third and final reading in the UK’s House of Commons on 26 October 2022. The Bill will now go forward for Royal Assent and commencement dates will be issued by the Northern Ireland Office (NIO).⁹⁴

The **Roma** community is “routinely subjected to verbal and physical abuse and faces multiple discrimination, from barriers in accessing schools, housing and healthcare to restricted employment opportunities”.⁹⁵ Exiting the EU is likely to have a significant impact on Roma, particularly regarding the application process for ‘settled’ status.

STEP [South Tyrone Empowerment Programme] works with **Traveller children** in Northern Ireland and has highlighted on-going failure to protect their rights to health, education, an adequate standard of living and protection from violence.⁹⁶ Travellers are the ethnic minority that experiences the poorest outcomes in relation to poverty, exacerbated by high rates of unemployment and educational underachievement. The Northern Ireland Human Rights

⁹² See:

<https://judiciaryni.uk/sites/judiciary/files/decisions/Conradh%20Na%20Gaeilge%27s%20Application%20and%20In%20the%20Matter%20of%20a%20Failure%20by%20the%20Executive%20Committee%20of%20the%20Northern%20Ireland%20Assembly%20to%20Comply%20with%20its%20Duty%20Pursuant%20to%20Section%2028D%20of%20the%20Northern%20Ireland%20Act%201998.pdf>

⁹³ Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680948544

⁹⁴ See: <https://www.irishcentral.com/news/thenorth/northern-ireland-irish-language-bill>

⁹⁵ CFNI (2014), cited in NI Housing Executive (2019) *The Roma Community in Northern Ireland: A Scoping Review*, August 2019, p14

⁹⁶ STEP submission, September 2020

Commission’s investigation of Traveller accommodation “provides evidence of the inertia and decline in Traveller accommodation and services”.⁹⁷ The Housing Executive acknowledges that “Irish Travellers are amongst the most disadvantaged and marginalised people living in Northern Ireland and can face multiple deprivations in relation to health and well-being, housing, education, racism, mortality and discrimination”.⁹⁸ In April 2022, a joint submission to the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities by the Children’s Law Centre and STEP on the rights of Traveller children and families in Northern Ireland highlighted urgent areas to be addressed in relation to education, housing, poverty, policing and justice (including the over-representation of Traveller children in stop and search figures) and mechanisms for representation.⁹⁹

STEP also works with families who are **migrants and children from minority ethnic communities**. It notes that bi-lingual children are often actively discouraged or prohibited from using their mother tongue in school and youth work settings (usually because other children and adults, with whom they are not conversing, do not understand what they are saying). They also experience inadequate protection from actual or threatened violence within and outside the home environment.¹⁰⁰ Further, failure to provide culturally appropriate alternative care includes migrant children being unable to retain their mother tongue when placed in English-speaking foster families or residential care. Lack of knowledge or understanding can also lead to failure of alternative care providers to respect the cultural and religious practices of the child’s biological family.¹⁰¹

Although asylum matters remain within the remit of the UK Home Office, education, housing and health are each devolved to the Northern Ireland Assembly. A 2019 survey of 70 **asylum seekers** in Belfast found that 88% of the asylum-seeking parents who responded could not afford basic food, clothing, transport, recreational or school trip costs. They reported that inability to fully participate in school and community life had a detrimental impact on their children’s integration.¹⁰² The school uniform grant administered by the Education Authority was insufficient. Over one third stated that Home Office-mandated home moves meant they had to change their child’s school, disrupting their learning and relationships. Fear of enforced

⁹⁷ NIHRC (2018) “*Out of Sight, Out of Mind*”: *Travellers’ Accommodation in Northern Ireland*. Executive Summary, p3

⁹⁸ NI Housing Executive (2020) *Draft 2020-2025 Irish Traveller Accommodation Strategy*, p4

⁹⁹ Children’s Law Centre and STEP (2022) *Joint submission to Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities: Rights of Traveller Children and Families in Northern Ireland*

¹⁰⁰ STEP submission, September 2020

¹⁰¹ STEP submission, September 2020

¹⁰² See: <https://www.nlb.ie/blog>

relocation prevented children and their families from settling. Three quarters of parents reported that they experienced anxiety, isolation, depression or felt that they could not cope with daily activities.¹⁰³ Since mid-2021, children from the escalating number of asylum-seeking households placed in hostel settings in hotels have faced additional obstacles to schooling and integration, including: increased isolation, blockages in access to mainstream school places, inability to afford transport to school, strains on study time due to severe overcrowding in hotel rooms, and acute poverty.¹⁰⁴

Syrian **refugee children** identified language barriers, shyness, racism and not feeling accepted in their local communities as barriers to cross-cultural friendships and social participation.¹⁰⁵

LGBTI+ children and young people experience prejudice and discrimination regarding their sexual orientation and/or gender identity. In a 2016 survey of LGBT young people in Northern Ireland, 73% of respondents reported that they had personal experience of verbal abuse, 22% reported physical abuse, as a result of their sexual orientation/ gender identity. Concerning life at home, 50% had experienced homophobic or transphobic attitudes from family members, compelling 26% to find alternative accommodation. In addition to negative responses in school, in youth work organisations LGBT young people experienced homophobic attitudes displayed by staff and young people, as well as the privileging of heterosexual relationships.¹⁰⁶

Regarding gender identities, as opposed to sexual identities, there is growing awareness that some children are born **intersex**. The number of people identifying as **transgender** has also increased, although it is unclear whether this is becoming more prevalent or is the result of growing awareness about transgender identity. Children whose personal sense of gender identity differs from the physical presentation of their bodies, face severe emotional and psychological challenges which may begin in infancy and deepen as they reach puberty. Failure to understand their experience has a profound impact on all aspects of their lives,¹⁰⁷ particularly in educational environments.¹⁰⁸ The key issues and challenges faced by

¹⁰³ Housing4All (2019) *A Prison Without Walls. Asylum, Migration and Human Rights*, PPR, June 2019

¹⁰⁴ PPR (2022) *“It’s hard to be in this system”*: The Use of NI Hotels as ‘Contingency Accommodation’ for Asylum and subsequent updates, available on: <https://www.nlb.ie/blog>

¹⁰⁵ Robertson, A. (2020) *‘A New Life for Me’*. *Integration Experiences of Syrian Refugee Children and Their Families*, Barnardo’s NI

¹⁰⁶ Neill, G. and Meehan, D. (2017) *Still Shouting. The needs and experiences of young people in Northern Ireland who identify as lesbian, gay, bisexual and/or transgender (LGBT)*, Cara-Friend/ Youth Action, p14, p24

¹⁰⁷ Focus – The Identity Trust submission, September 2020

¹⁰⁸ McBride, R-S. and Schubotz, D. (2017) Living a fairy tale: the educational experiences of transgender and gender non-conforming youth in Northern Ireland, *Child Care in Practice*, Vol. 23, Issue 3, DOI: [10.1080/13575279.2017.1299112](https://doi.org/10.1080/13575279.2017.1299112)

transgender children in school include binary-gender classification and language/use of names.¹⁰⁹ Transgender people report that they experience high levels of prejudice and harassment.¹¹⁰

Complaints of discrimination against children

The State Party Report (2022, Annex E, Q37a) did not provide data about cases of discrimination against children in any of the UK jurisdictions.

The Northern Ireland Commissioner for Children and Young People [NICCY] has powers to conduct formal investigations. While established in 2003, NICCY initiated its first formal investigation in 2019-2020. There is limited publicly accessible detail about the focus of this investigation, other than that it 'is a complex and lengthy process' involving the engagement of an 'expert panel' comprising a QC, Social Worker, Psychiatrist and Paediatrician to assist analysis of the 'voluminous nature of documentation under disclosure - which encompasses the span of the young person's life while in the care of the State'. The investigation report was 'due to be published before the end of 2021'.¹¹¹ It is CLC's understanding that the complexity of this investigation and level of resource required has resulted in delay, and the report remains unpublished at the time of writing.¹¹²

NICCY also has a statutory duty to keep under review the adequacy and effectiveness of law and practice regarding children's rights and welfare as well as services provided for children by relevant authorities. It has produced a number of significant rights-based reviews.¹¹³ However, NICCY's analysis of the impact of its legal and investigations work over the ten years between 2003 and 2013 demonstrates the **difficulty of bringing legal proceedings to challenge existing or draft legislation because the Commissioner does not have 'victim**

¹⁰⁹ Public and Corporate Economic Consultants (2017) *Post-primary school experiences of 16-21 year old people who are Lesbian, Gay, Bisexual and/or Transgender (LGB&T)*, Research Briefing, September 2017, Department of Education, p6

¹¹⁰ Neill, G. and McAlister, S. (2019) *The Missing T: Baseline Attitudes Towards Transgender People in Northern Ireland*, ARK Research Update 128, p4

¹¹¹ NICCY (2021) *Annual Complaints and Legal Report 2020-2021*. Available at: <https://www.niccy.org/media/3963/niccy-legal-casework-2020-21-web.pdf>, p33

¹¹² Children's Law Centre submission, November 2022

¹¹³ See: NICCY (2018) *'Still Waiting'. A Rights Based Review of Mental Health Services and Support for Children and Young People in Northern Ireland*. Available at: <https://www.niccy.org/wp-content/uploads/media/3114/niccy-still-waiting-report-sept-18-web.pdf>

NICCY (2020) *Too Little, Too Late. A Rights Based Review of Special Educational Needs Provision in Mainstream Schools*. Available at: <https://www.niccy.org/media/3515/niccy-too-little-too-late-report-march-2020-web-final.pdf>

NICCY (2021) *Neither Seen Nor Heard. Rights Based Review on the Use of Restraint and Seclusion in Educational Settings*. Available at: <https://www.niccy.org/wp-content/uploads/media/4026/niccy-restraint-and-seclusion-main-report-final-16-dec-21.pdf>

status'. Therefore it has been unable to argue incompatibility with the *European Convention on Human Rights* [ECHR] or *UN Convention on the Rights of the Child* [UNCRC].¹¹⁴

NICCY has been more successful in **casework responding to enquiries or complaints** from children, young people, their parents/carers concerning potential breaches of individual's rights by relevant authorities, particularly in relation to education. This includes special educational needs and disabilities Tribunals, provision of medical support in school, bullying, suspension, expulsion, school transport, school placement, school closures, progression, use of seclusion, complaints about teachers, and the impacts of COVID-19 arrangements.¹¹⁵ Recently, NICCY has been actively involved in **legal proceedings external to its complaints casework - in support of stakeholders and at the request of families**. This has focused on the need for child-centred and rights-compliant policies and practices, including: intervening in judicial review cases regarding delayed discharge of young people from secure health facilities; supporting cases involving use of restraint or isolation; admissions criteria of some post-primary schools; the role of the SEN and Disability Tribunal.¹¹⁶

Children's access to justice

Applications for legal aid in cases with children's rights implications **have a high rate of denial in the first instance, but are often overturned when appealed**. Creating unnecessary delays in a substantive case being taken forward can have significant implications for the individual child, given that such cases often concern the most vulnerable children and young people.¹¹⁷

Children cannot apply for legal aid on their own, leading to additional barriers for specific demographics of young people (e.g. homeless children and young people, those estranged from their parents) who are required to find an adult prepared to act as a 'next friend' in the legal aid application.

¹¹⁴ NICCY (2013) *Legal and Investigations*. Available at: https://www.niccy.org/media/1024/niccy_10_year_impact_-_legal_and_investigations_nov_13.pdf, p1-6

¹¹⁵ NICCY (2013) *Legal and Investigations*. Available at: https://www.niccy.org/media/1024/niccy_10_year_impact_legal_and_investigations_nov_13.pdf, p6-10; NICCY (2020) *Annual Complaints and Legal Report 2019-2020*. Available at: <https://www.niccy.org/media/3680/niccy-legal-casework-19-20-final-web.pdf>, p13-23; NICCY (2021) *Annual Complaints and Legal Report 2020-2021*. Available at: <https://www.niccy.org/media/3963/niccy-legal-casework-2020-21-web.pdf>, p14-23

¹¹⁶ NICCY (2020) *Annual Complaints and Legal Report 2019-2020*. Available at: <https://www.niccy.org/media/3680/niccy-legal-casework-19-20-final-web.pdf>, p32; NICCY (2021) *Annual Complaints and Legal Report 2020-2021*. Available at: <https://www.niccy.org/media/3963/niccy-legal-casework-2020-21-web.pdf>, p32-33

¹¹⁷ Children's Law Centre submission, November 2022

Legal aid for advice and assistance is heavily restricted. Of particular note, it does not cover representation at Special Educational Needs and Disability Tribunals (SENDIST). Further, the SENDIST does not have a power to order the remedy of compensation for disability discrimination in education. A child who has faced grave and sustained discrimination, such as barriers regarding access to education or failure to provide reasonable accommodation, will not be compensated. Typically, they will receive remedies restricted to an apology or proposals for improved staff training.¹¹⁸

Right to life, survival and development

Review of unexpected death or serious injury involving children

Since January 2018, despite extensive recruitment drives, there has been no Paediatric Pathologist in Northern Ireland. Consequently, **infants requiring a post mortem are taken to the Alder Hey Hospital in Liverpool, England, separating families from their recently deceased babies.**¹¹⁹ It has been reported that 469 deceased babies were taken from Belfast to Liverpool by boat for post mortem examination between 2019 and 2021, accompanied by an undertaker and relatives if they chose to travel.¹²⁰ There have been calls for a cross-border service and talks have been held between health officials from Northern Ireland and the Republic of Ireland, but progress has been stalled by the Covid-19 pandemic.¹²¹

Contrary to consistent CRC (2008, para 29; 2016, para 28b) recommendations, **legislation to establish an independent Panel to review child deaths** (including in custody, care and mental healthcare institutions) **has not been implemented.** All other jurisdictions within the UK have such a mechanism. Under Sections 7(1b) and 3(5) of the *Safeguarding Board (Northern Ireland) Act 2011*, the Safeguarding Board for Northern Ireland [SBNI] is required to establish processes to review child deaths. However, the Department of Health has not commenced Regulations to enable the Board to carry out this statutory role, despite strong advocacy to ensure proper reporting and learning to reduce preventable deaths as well as recommendations from an independent review of the SBNI¹²² and an Inquiry into

¹¹⁸ Children's Law Centre submission, November 2022

¹¹⁹ See: <http://www.northerntrust.hscni.net/site/wp-content/uploads/2017/07/143721-NHSCT-Child-Loss-Practical-Information.pdf>, p5

¹²⁰ See: <https://www.independent.ie/irish-news/almost-500-deceased-babies-taken-to-uk-for-postmortem-due-to-lack-of-paediatric-pathologist-in-the-north-40888694.html>

¹²¹ See: <https://hscboard.hscni.net/our-work/commissioning/perinatal-and-paediatric-pathology/>

¹²² Jay, A. and Somers, K. (2016) *A Review of the Safeguarding Board for Northern Ireland [SBNI]*, Recommendation 6

hyponatraemia-related deaths.¹²³ The Safeguarding Board commissioned a review of Child Death Overview Panels and its report was approved by the Board. At the time of writing it was with the Department of Health, which was considering whether to accept the recommendations of the report and take these forward. No timescale has been provided for completion of the Department's consideration.¹²⁴

Avoidable child deaths

'Avoidable deaths' are defined by the Office for National Statistics [ONS] as deaths from causes considered avoidable, treatable or preventable given timely and effective healthcare or public health interventions. Since 2001, the leading cause of avoidable death in children and young people has been injuries. Other causes include: conditions relating to pregnancy, childbirth and the perinatal period (during pregnancy or the first year after the birth of a child); congenital malfunctions; diseases of the respiratory system such as asthma or pneumonia, alcohol or drug-related deaths; and infectious diseases. In 2019, 34% of all deaths among 0-19 year olds in the UK were considered avoidable (1,590 deaths out of 4,717). Avoidable deaths in children and young people constituted 1% of the total number of avoidable deaths in the UK. **Since 2001, child mortality rates in Northern Ireland and Scotland have remained significantly higher than in England and Wales.**¹²⁵ Between 2014 and 2016, Northern Ireland had the highest rate of avoidable child deaths in the UK (in 2017, Scotland's avoidable mortality rate was highest). 435 avoidable child and teenage deaths (278 males, 157 females) were recorded in Northern Ireland between 2014 and 2017.¹²⁶

Northern Ireland's Mental Health Champion has stated that changes are required in mental health services to better protect those at risk of **suicide**: "During the Covid pandemic there has been an increase in the numbers of people coming forward in acute distress with suicidal thoughts ... Mental health inpatient units have really been struggling to cope. Bed occupancy rates have been above 100% in places at times, and this is just completely unacceptable."¹²⁷ Child-specific data relating to the suicides of those aged under-18 is not available in the statistics published by the Northern Ireland Statistics and Research Agency [NISRA].

¹²³ O'Hara, J. (2018) *The Inquiry into Hyponatraemia-Related Deaths*, Recommendation 88

¹²⁴ NSPCC submission, October 2022.

¹²⁵ See:

<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/causesofdeath/bulletins/avoidablemortalityinenglandandwales/2019#avoidable-mortality-in-children-and-young-people>

¹²⁶ See: <https://www.belfasttelegraph.co.uk/news/northern-ireland/call-for-action-as-its-revealed-northern-ireland-has-highest-level-of-avoidable-child-deaths-in-uk-37844487.html>

¹²⁷ BBC NEWS (2022) *Bereaved mother says daughter 'should have been safe'*, 28 April 2022. Available at: <https://www.bbc.co.uk/news/uk-northern-ireland-61262586>

In April 2022, a 17 year old young woman took her own life while in Northern Ireland’s in-patient child and adolescent mental health Unit. Understandably, her mother expressed concern about how this could happen in a secure facility, which should have been her daughter’s “safe space”.¹²⁸ At the time of writing, a Serious Incident Review was being conducted.

Respect for the views of the child

Ensuring the right of the child to be heard, with adequate support, and that children’s views are given due consideration in decisions affecting them

Children and young people report a lack of involvement in decisions affecting their lives, including: the planning and delivery of child-friendly health and children’s services,¹²⁹ educational policy and practice, as well as in relevant legal and administrative proceedings including those concerning domestic violence, parental custody, placement in alternative care,¹³⁰ mental health treatment.¹³¹

Lack of participation in the planning and review of alternative care has been reported by ‘looked after’ children and young people. Many do not feel comfortable attending review meetings, particularly younger children who are often neither included nor invited to attend. According to Department of Health statistics, during 2017/18 57% (1,371) children in care for 12 months or longer were invited to attend their latest statutory review. Of these, 30% attended, 47% did not attend but sent their views in writing and 11% did not attend but briefed an advocate to speak on their behalf. Of the 43% (1,050) not invited to attend, this was because 79% were considered too young to understand and fully participate in the process, 3% could not engage due to the level of their disability, while 3% did not want to participate.¹³²

For organisations working with care experienced children, key issues in which children’s voices need to be encouraged, included and listened to are: about their placements, within

¹²⁸ Ibid

¹²⁹ RCPCH &Us (2020) Voice bank: <https://www.rcpch.ac.uk/topic/children-young-people-voice>; RCPCH (2020) *Reimagining the future of paediatric care post-COVID-19*; Haydon, D. (2022) *Rights Here, Right Now: Children and Young People’s Report to the UN Committee on the Rights of the Child*, Belfast: Children’s Law Centre

¹³⁰ VOYPIC submission, September 2020; The Fostering Network submission, September 2020

¹³¹ Haydon, D. (2022) *Rights Here, Right Now: Children and Young People’s Report to the UN Committee on the Rights of the Child*, Belfast: Children’s Law Centre

¹³² Department of Health (2019) *Children in Care in Northern Ireland 2017-2018*, Statistical Bulletin, 12 September 2019, p22

their reviews, at end of placement reviews, about their relationships with social care staff and the services they receive.¹³³ In February 2022, young people in care hosted an event at Stormont [NI Parliament Buildings] to demand better input into how their reviews are conducted and to present a set of standards for care planning and review meetings.¹³⁴ During consultations conducted to inform the *Rights Here, Right Now* Report, care experienced young people did not consider that social workers took young people's views into account when making decisions regarding their lives. Consequently, their holistic needs were not identified or met.¹³⁵

Young people placed in secure accommodation have clearly expressed a lack of involvement in decisions taken about them, including their placement in detention.^{136 137}

In relation to mental health treatment, individuals have reported being denied their right to participation. One young person involved in the *Rights Here, Right Now* consultation articulated a sense of frustration while in Northern Ireland's in-patient child and adolescent mental health Unit, commenting that "*because they are detained, [young people] no longer have a say in anything ... You're told you have no mental capacity, so can't make decisions*".¹³⁸ The Children's Law Centre represented and supported a young person to give her own evidence at a Mental Health Tribunal - she had been clear with staff about what she wanted to happen before she brought a tribunal case and felt her views were not taken into account as well as considering that she had minimal, if any, treatment options.¹³⁹ The Children's Law Centre has engaged with a range of organisations, including the office of the Northern Ireland Commissioner for Children and Young People, VOYPIC (an organisation working with care experienced children and young people) and Eating Disorders NI, where it is clear that there are commonly reported issues in relation to limited participation of, and communication with, young people in the Unit regarding decision-making processes.¹⁴⁰ Illustrating the issues of

¹³³ VOYPIC and The Fostering Network submissions, September 2020

¹³⁴ See: <https://www.voypic.org/standards/>;
VOYPIC (2022) *My Meeting: Young People's Standards for Participation in Review Meetings*. Available at: <https://www.voypic.org/wp-content/uploads/2022/02/YP-Meetings-Standards.pdf>

¹³⁵ Haydon, D. (2022) *Rights Here, Right Now: Children and Young People's Report to the UN Committee on the Rights of the Child*, Belfast: Children's Law Centre

¹³⁶ Haydon, D. (2016) *Promoting and Protecting the Rights of Young People Who Experience Secure Care in Northern Ireland*. Belfast: Children's Law Centre, p62-65

¹³⁷ Haydon, D. (2022) *Rights Here, Right Now: Children and Young People's Report to the UN Committee on the Rights of the Child*, Belfast: Children's Law Centre

¹³⁸ Haydon, D. (2022) *Rights Here, Right Now: Children and Young People's Report to the UN Committee on the Rights of the Child*, Belfast: Children's Law Centre

¹³⁹ Children's Law Centre submission, November 2022

¹⁴⁰ Children's Law Centre submission, November 2022

importance to them, the range of advocacy advice and support sought by young people in the Unit includes: access to legal advice, including appealing their detention under the *Mental Health (Northern Ireland) Order*; access to an ‘appropriate adult’ during meetings or interviews by the police if a family member or social worker is not available; ensuring that their voices are heard and taken into account in decision-making processes; understanding the details of their care plan while they are in the Unit; complaints about their care, deprivation of liberty and restrictive practices (eg locked doors, 24/7 close observation, timetabled day, restricted time with family and friends, restricted and banned items such as aerosol deodorants, cigarettes and lighters); planning an appropriate support package for discharge, including where they will live.¹⁴¹

Meaningful participation of children within the family and community, at school, in local/national policy making

Asked whether they considered adults would listen to them if they gave their opinion, the proportion of *Rights Here, Right Now* survey respondents answering ‘Yes’ differed depending on the adults concerned: adults with whom they lived: 79%; teachers: 41%; adults in their community: 35%; and politicians: 15%. These figures indicate that children and young people do not consider their views would be taken seriously by adults outside their home lives, least of all by politicians.¹⁴²

The Rights Here, Rights Now survey found that the majority of respondents considered they were involved in decision-making **in their families**. Most agreed or strongly agreed that the adults they lived with: allowed them to give their opinion (83%); made it easy for them to give their opinion (71%); asked for their opinion when deciding things (66%) and talked to them about how decisions are made (63%). In consultation workshops, the majority of participants considered they were able to participate in decision-making within their families. Exceptions were usually when their parents were busy or did not have time to listen.

Less than half of all survey respondents (41%) considered that the adults **in their place of education** would listen to them if they gave their opinion. Reflecting age differences, while 50% of the 12-13 year old respondents considered that they would be listened to, the figure was just 33% amongst 16-17 year olds. The proportion of disabled children who thought they would be listened to in educational settings was 31%, compared with 43% amongst their non-disabled peers. Less than half of all survey respondents agreed that teachers asked their opinions about: how they were taught (34%); the rules they were expected to follow (42%); what they learnt (43%); how decisions concerning school/ College policies were made (47%) and how to improve their education (48%). The proportion of 16-17 year olds agreeing that

¹⁴¹ VOYPIC submission, November 2022

¹⁴² Haydon, D. (2022) *Rights Here, Right Now: Children and Young People’s Report to the UN Committee on the Rights of the Child*, Belfast: Children’s Law Centre

they were asked their opinions by teachers was far lower than that for 12-13 year olds in response to each issue, but particularly regarding what they learnt. The proportion of those with disabilities agreeing that they were asked their opinions about each issue was lower than amongst those without disabilities, particularly in relation to what they learnt and rules.

Just over one third (35%) of survey respondents considered that the adults **in their community** would listen to them if they gave their opinion. Older respondents (aged 16-17) were much less likely than 12-13 year olds to think they would be listened to in their community (just 20% compared with 44% amongst 12-13 year olds). The proportion was also lower among those with disabilities (28%) in comparison with non-disabled respondents (36%). Only one third of survey respondents agreed that the adults in their community asked them about: how happy they were with things to do in their area, such as youth clubs, libraries, sports centres (39%); how happy they were with the services in their area such as transport, health centres, schools (37%); new activities or services they needed (34%); or how to make their community safer (34%). Older respondents (16-17 year olds) were far less likely to agree that they were asked about any of these issues than those aged 12-13. Those with disabilities were also less likely to agree that they were asked about these issues than those without disabilities.

Lack of child participation in local and national policy development is a significant issue.

Only 15% of the *Rights Here, Right Now* survey respondents considered that they would be listened to by politicians if they gave their opinion. At just 9%, the proportion amongst older respondents (aged 16-17) was far lower than that amongst 12-13 year olds (19%). Less than one quarter of survey respondents agreed that **politicians** asked them about: issues that affect them or other young people in their area (17%); plans or changes in their area (21%); or how to get young people involved in decision making (25%). Again, older respondents (16-17 year olds) were less likely to agree that they were asked about these issues than those aged 12-13, and those with disabilities were less likely to agree than those without disabilities.

The UK and Northern Ireland Governments exclude children from major policy decisions. In addition to expressing a range of concerns about the implications of Brexit for travel, trade, identity, health, education, freedom of movement, security and funding, young people have argued that Brexit-related issues should be taught in schools. They consider that political parties and the media should publish age-appropriate literature about the implications of Brexit, and formal procedures should be established to inform children/ young people as well as engaging them in debate and enabling their voices to be heard.¹⁴³

At a local level, **only two of Northern Ireland's eleven Councils have established Shadow Youth Councils.**

¹⁴³ NI Youth Forum and Royal College of Paediatrics and Child Health [RCPCH] submissions, September 2020

On 22 July 2020, after many years of lobbying by child and youth organisations, the Northern Ireland Assembly Commission announced plans to introduce a Youth Assembly. Organisations sought assurances that this initiative would be informed by consultation with children, building on the recommendations made in the 2011 *Towards a Youth Assembly for Northern Ireland* report.¹⁴⁴ The **Youth Assembly** was established in 2021. Involving young people aged 13-17, it mirrors the structures of the Northern Ireland Assembly, with randomly selected members appointed for two years: 36 to ensure representation of specific groups (experience of the care system, different minority ethnic communities, LGBTQ+, with disabilities, young carers, eligible for free school meals, with different religious beliefs, female and male) and 54 to ensure geographical spread with three from each of the 18 Northern Ireland constituencies. At its first in-person meeting on 6 November 2021, the agreed areas of focus for the following two years were: Education; Environment; Health; Rights and Equality. It remains to be seen whether these priorities and Youth Assembly recommendations are taken into account by MLAs and reflected in government decision-making.

D. CIVIL RIGHTS AND FREEDOMS

Freedom of expression, religion, association and peaceful assembly

Compulsory attendance at collective worship in publicly funded schools, and the right to withdraw from religious observance at school

Compulsory worship continues in Northern Ireland's schools. Despite the CRC's (2016, para 36) recommendation it remains the case that, under Article 21 of the *Education and Libraries (Northern Ireland) Order 1986*, the school day in all grant-aided schools must include collective worship. No action has been taken to permit pupils to withdraw from these sessions. The State Party report states there are no plans to review this policy by devolved administrations, although Scotland is currently examining whether to review the policy on the right of withdrawal.¹⁴⁵

Unlike in England and Wales, there is no legal requirement that school worship in Northern Ireland has a distinctly Christian character. Given the 'faith-informed'¹⁴⁶ nature of the Northern Ireland education system (including the faith-based composition of Boards of Governors), invariably this is how the law is interpreted. By treating Christian worship as the default, the current system favours one faith perspective over all other religious and non-

¹⁴⁴ NI Youth Forum submission, September 2020

¹⁴⁵ UK Government (2022) *The UK's Response to the UN Committee's List of Issues on the Rights of the Child*. Combined 6th and 7th State Party Reports. Submitted 15 June 2022, para 130

¹⁴⁶ Milliken, M (2019) *Religion and Education*, Transforming Education, Briefing Paper 2, p3. Available at: https://www.ulster.ac.uk/_data/assets/pdf_file/0003/476076/transforming-education-02-Religion-and-Education.pdf

religious beliefs, presupposing that children will participate in religious activities unless withdrawn by their parents. This not only undermines the freedom of conscience of pupils and families who are unaware of the right to withdraw, but also indirectly requires those who do exercise this option to reveal information about their beliefs, compromising their right to privacy.

No action has been taken to permit pupils to withdraw from compulsory worship. As in England and Wales, parents in Northern Ireland have a legal right to withdraw their children from collective worship. This ignores the fact that, under both the *Human Rights Act 1998* and UNCRC Article 14, *children* also have the right to freedom of religion or belief. Unlike England and Wales, there is no right in Northern Ireland for older pupils to choose to opt out of collective worship. Not giving those aged over 16 an option to opt out fails to enable children to exercise their ‘Gillick competence’ in a manner that is ‘consistent with’ their ‘evolving capacities’. This has been established in European case law, is reflected in UNCRC Articles 12 and 14, and has repeatedly been endorsed by the UK Parliament’s Joint Committee on Human Rights.¹⁴⁷ ¹⁴⁸Even when parents in Northern Ireland request an exemption, the process of withdrawal is often difficult and children are rarely given a meaningful alternative of equal educational value during the time their peers are attending worship.¹⁴⁹

Further, by treating Christian worship as the default, the current system favours one faith perspective over other religious and non-religious beliefs and pre-supposes that children will participate in religious activities unless opted out by their parents. In a recent case, the High Court in Northern Ireland ruled that this approach is incompatible with Article 2 of the *First Protocol of the European Convention on Human Rights* (A2P1) read with Article 9 of the ECHR, therefore breaching the rights of a non-religious father and his child.¹⁵⁰ In this case, the Court found that the right to withdraw was “not a sufficient answer to the lack of pluralism” identified by the court in both collective worship and Religious Education: “the need to

¹⁴⁷ Joint Committee on Human Rights: *Legislative Scrutiny: Thirteenth Progress Report, Twenty-fifth Report of Session 2005-06*, paras 2.1-2.6. Available at:

<https://publications.parliament.uk/pa/jt200506/jtselect/jtrights/241/241.pdf>;

Legislative Scrutiny: Education and Skills Bill, Nineteenth Report of Session 2007-08, paras 1.40-1.45. Available at: <https://publications.parliament.uk/pa/jt200708/jtselect/jtrights/107/107.pdf>;

Legislative Scrutiny: Children, Schools and Families Bill; other Bills, Eighth Report of Session 2009-10, paras 1.30-1.40. Available at:

<http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/57/57.pdf>

¹⁴⁸ Although sixth-form pupils in England and Wales have the legal right to withdraw themselves from worship, this has not been extended to younger, sufficiently mature pupils.

¹⁴⁹ Erwin, A. (2019) ‘Non-religious couple in legal challenge over Northern Ireland school religious teaching’, *Belfast Telegraph*, 19 November 2019. Available at: <https://www.belfasttelegraph.co.uk/news/northern-ireland/non-christian-couple-in-legal-challenge-over-northern-ireland-school-religious-teaching-38706408.html>

¹⁵⁰ *In the matter of an application by JR87 and her father for Judicial Review* [COL11833], 5.7.2022. Available at: <https://humanists.uk/wp-content/uploads/COL11833-JR-87-Judgment-dated-05-07-2022.doc.pdf>, para 122

withdraw a child would be a manifestation of the lack of pluralism in question”.¹⁵¹ This not only “runs the risk of placing undue burdens on parents”, which might mean they are deterred from withdrawing their child in the first place, but also “runs the risk of stigmatisation of their children”.

Use of acoustic devices to disperse public gatherings of young people

The CRC (2008, para 35; 2016, para 37a) has consistently raised concern about the **use of ‘mosquito devices’ to disperse gatherings of children and young people in public spaces** where they are legally entitled to be, but this **has not been prohibited**. Given that the high-pitched sound emitted by these devices can be heard only by children and young people, their use clearly demonstrates age discrimination and hostility toward them. Deployment of these devices infringes UNCRC Articles 2, 3, 12, 15, 19 and 31. In 2010, the Parliamentary Assembly of the Council of Europe found the use of acoustic devices to disperse children and young people to be a disproportionate interference with their rights under Article 8 of the ECHR, which includes the right to respect for physical integrity. Their use may also interfere with ECHR Article 11 (the right to freedom of peaceful assembly) and the use of acoustic pain may also breach of ECHR Article 3 (the right to freedom from degrading treatment).

Right to privacy

Use of stop and search checks against children

The use of ‘ordinary’ (i.e. non-terrorist) stop and search powers by the PSNI is governed by its *Code of Practice A*, which states that this practice must comply with UNCRC Article 3. These ordinary powers include stop and search based on the legal test of ‘reasonable suspicion’ through the *Police and Criminal Evidence (Northern Ireland) Order 1989* and the *Misuse of Drugs Act 1971*. Yet figures demonstrate that **the PSNI use stop and search at a higher rate** per 1000 of the population than all other police services in the UK, except the Metropolitan Police Service in London and Merseyside Police in Liverpool (approximately 13 stops per 1000 compared with 5 per 1000 in England and Wales), **with one of the lowest ‘outcome’ rates (arrests) in the UK** at just 6%.

In Northern Ireland, between 2010/11 and 2018/19 c.35,000 under-18s were recorded as being subjected to use of this power, with 15-17 year old males four times more likely to be stopped and searched proportionate to their number in the population.¹⁵² According to PSNI

¹⁵¹ See also: *R(Fox) v Secretary of State for Education* (2015) [EWHC 3404], 25.11.2015. Available at: <https://www.judiciary.uk/wp-content/uploads/2015/11/r-fox-v-ssfe.pdf>

¹⁵² Topping, J. (2018) Policy Briefing for the NI Executive Knowledge Exchange Seminar Series. Available at: <https://kess.org.uk/2018/05/17/dr-john-topping-gub-police-stop-search-powers-understanding-nature-extent-adversarial-contact-psni-public/>

figures, during the period 1 July 2021 to 30 June 2022, 2,259 (11%) of those stopped and searched were aged 17 and under, with 55 being children aged 12 and under. Of these 2,259 children and young people, only 63 were arrested (none of whom were aged 12 and under). This was a conversion rate of 2.8%.¹⁵³

In the 2017 *Young Life and Times Survey* of 16 year olds, 69% of those who had experienced direct stop and search were given no clear reason for being stopped. Only 41% were searched when stopped. In 88% instances of direct stop and search, PSNI officers failed to provide identifying details. 90% of respondents stated that no details were recorded on an electronic device and no receipt or record of the encounter was provided. Yet 57% had their name and address recorded in officers' notebooks, suggesting the informal use of stop and search as a form of 'warning'.¹⁵⁴

Consultations about policing with children and young people have highlighted negative experiences of being stopped and searched, a factor affecting their level of confidence in the police. While some reported that negative stop and search incidents led to additional charges, others reported inconsistent experiences of officers' communication when providing a reason for the 'stop and search' and individuals' rights within this process. Young people report feeling targeted and victimised by PSNI use of these powers. They consider that age, appearance, location and family history lead to them being targeted. The attention they receive from the police, including being questioned or searched on the street, has an effect on how young people are viewed by the communities in which they live.¹⁵⁵

Analysis of statistics and young people's accounts indicate that **the legal test of reasonable suspicion is not being applied, records are not being properly kept, and stop and search powers are used as a form of coercive control.** In 2019, the Independent Reviewer of the Justice and Security Act noted that concerns expressed by, and on behalf of, young people included: young people being stopped and searched in disproportionately high numbers; vulnerable and marginalised children being targeted; and police officers being patronising,

¹⁵³ PSNI (2022) *Use of Stop and Search Powers by the Police in Northern Ireland. 1 July 2021 to 30 June 2022*. 24 August 2022. Available at: https://www.psni.police.uk/sites/default/files/2022-09/PSNI%20Stop%20and%20Search%20Report%20Q1%202022_2023v2.pdf, p5-6

¹⁵⁴ Topping, J. and Schubotz, D. (2018) *The 'usual suspects'? Young people's experiences of police stop and search powers in Northern Ireland*, ARK Research Update Number 120, May 2018

¹⁵⁵ Include Youth consultations. Available at: <http://www.includeyouth.org/mgmt/resources/include-youth-response-to-psni-service-instruction-bwv-september-2018.pdf> <http://www.includeyouth.org/mgmt/resources/include-youth-comments-on-draft-psni-children-and-young-people-strategy-october-2018.pdf> <http://www.includeyouth.org/mgmt/resources/include-youth-engagement-with-young-people-on-local-policing-review-november-2018.pdf> <http://www.includeyouth.org/mgmt/resources/include-youth-response-to-draft-northern-ireland-policing-plan-2020-2025.pdf>

rude and disrespectful during encounters.¹⁵⁶ In 2020, concerns noted by the independent Inspectorate of police, fire and rescue services related to: inconsistencies in recording and sampling of records; inconsistencies in training; the PSNI's poor communication approach, especially with young people; recording of data about the community background of individuals; and gaps in forms of external scrutiny, including by young people.¹⁵⁷ The PSNI survey of young people's experiences of stop and search found that:

"77% of survey respondents outlined their experience as negative, whilst 65% of respondents described the officers who searched them as not polite, 64% as not respectful, 55% as not professional, 66% as not fair, 50% as not calm and 69% as not understanding. Furthermore, 41% of respondents stated that the officer who searched them did not explain what they were looking for, 66% said that the officer did not provide their details, 67% said they were not informed of their rights and 72% said that they were not informed that they had the right to ask questions during their search. These feelings ... resulted in 65% of respondents stating that they had decreased confidence in the local police as a result of their stop search encounter and 72% felt that their search was not justified."¹⁵⁸

The principles of the UNCRC, particularly Articles 2 and 3, are evidently not being integrated into the operational delivery of PSNI stop and search powers.

Additional issues

Strip searching of children

'Strip searches' involve the removal of clothing and can include the exposure of body parts. They differ from 'intimate searches' which involve the physical examination of a person's body orifices other than the mouth. In March 2022 it was reported that two years earlier a 15 year old Black girl had been taken from an exam in her London school because teachers wrongly suspected that she had smoked marijuana. She was subsequently subjected to a strip search by Metropolitan Police Officers, including exposure of intimate body parts. At the time

¹⁵⁶ Seymour, D. (2019) *Eleventh Report of the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007*, March 2019

¹⁵⁷ HMICFRS (2020) *The Police Service of Northern Ireland. An inspection of how well the service treats its workforce and the people of Northern Ireland*, p11-13.
Available at: <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/psni-inspection-how-well-service-treats-workforce-and-people.pdf>

¹⁵⁸ Findings of *PSNI Stop & Search Survey* (aged 11 – 18), received by the Children's Law Centre (via email), 27 January 2022

she was menstruating. No drugs were found and the experience left the young woman traumatized.¹⁵⁹

The Detail subsequently submitted a Freedom of Information request to the PSNI about **strip searches conducted on children in Northern Ireland**. In May 2022, it reported that 34 under-18s had been subjected to strip searches by PSNI officers in the previous reporting year. The majority were aged 15-17, but two children aged 12-14 were strip searched. In 14 of the 34 cases, the PSNI was unable to provide justification for these strip searches, despite officers being obliged to record this information. In only three instances was something harmful discovered, in each case this was drugs.¹⁶⁰ This information was shared with the Children's Law Centre and other organisations by the PSNI as a result of questioning at a meeting of the Youth Champions Forum in May 2022. Subsequently, the figures were amended, due to apparent non-compliance with relevant reporting processes at the time the searches took place. It is CLC's understanding that, of the 34 reported strip searches conducted on under 18s, 7 were recorded in error (i.e. did not happen). Of the 27 searches which did occur, 7 did not have any recorded basis and were inputted retrospectively, and only one was conducted in the presence of an appropriate adult. In 2021 a further strip search on a young person under 18 was conducted as the result of a stop and search.¹⁶¹

The Children's Law Centre is extremely concerned that the PSNI conducts strip searching on children and urge that this practice is ceased immediately. It is a breach of the UNCRC in terms of not being in children's best interests, it is a form of degrading treatment, it breaches the child's right to privacy and raises safeguarding concerns. It also breaches Articles 3 and 8 of the *European Convention on Human Rights* in relation to inhuman and degrading treatment, and the right to privacy. There appears to be **consistent failure to complete records accurately and in a timely manner**, leading to the need for clarification and amendment of figures. It is imperative that this data is published routinely, consistent with the process for publishing 'stop and search' statistics. No data appears to exist publicly prior to the reporting year 2020/21, despite the *PACE Code of Practice* governing the use of strip searching having been in place since 1989.

Statutory protection of anonymity for children

Section 44 of the *Youth and Criminal Evidence Act 1999* contains pre-charge reporting restrictions prohibiting the disclosure of material which "is likely to lead members of the

¹⁵⁹ See: <https://www.theguardian.com/commentisfree/2022/mar/16/police-strip-search-black-girl-school-east-london-racism-misogyny>

¹⁶⁰ Winters, R. (2022) 'NI strip searching of under-18s is "deeply shocking"', *The Detail*, 20 May 2022. Available at: <https://www.thedetail.tv/articles/psni-strip-searching-of-under-18s-is-deeply-shocking>

¹⁶¹ Children's Law Centre submission, November 2022

public to identify” a person who is the subject of criminal investigation. Although the power to commence S.44 was devolved to Northern Ireland in 2010, no commencement legislation has been introduced to protect the identity of children and young people who are the subject of criminal investigations.¹⁶² Thus, there is **no statutory protection of anonymity for children who have been arrested and not yet charged**, some of whom may never be charged. In England and Wales, the *Anonymity (Arrested Persons) Bill*, prohibiting the “publication of certain information regarding persons who have been arrested *until they have been charged with an offence*” (emphasis added), is awaiting its second reading in the House of Lords at the time of writing. If passed, adults in England and Wales will be in a more protected position than children in Northern Ireland.

The right to privacy for the children of alleged offenders is a further issue of concern. NIACRO, an organisation working with the families of those in conflict with the law, has highlighted the impact of news outlets publishing specific information (such as the name of the street or housing development) regarding arrested adults who are parents, with significant consequences for their children.¹⁶³

Access to appropriate information

Equitable access of children to online services and connectivity

Organisations working directly with children and young people are aware of the **significant adverse impact of lack of internet access and digital poverty**. This affects those who live in rural areas, where internet coverage is at best inconsistent and connection is often of poor quality with slow or weak broadband speeds, as well as those living in families which do not have the means to pay for internet connection or associated devices. Although disadvantaged by lack of internet access for some time, COVID-19 lockdowns exacerbated this issue, particularly as children were expected to access education via the internet and their only means of communicating with teachers was online. Maintaining relationships with friends and extended family was also through ‘virtual’ forms of communication. Further, young people have reported that they use the internet more than any other means to access advice and/or support.¹⁶⁴ Lack of internet access compromising their ability to access necessary

¹⁶² See: *Re JKL (a Minor)* [2016] NIQB 99 Colton J, a case concerning a 15 year old with Asperger’s syndrome who was arrested and interviewed by the PSNI as a suspect in an alleged cyber-crime involving the ‘hacking’ of customer details retained by a telecommunication company, who was released on bail but whose details were reported in the media.

¹⁶³ For example, in the case of a child whose mother had been arrested, an article in the local newspaper mentioned their name and the cul-de-sac in which they lived. This left the family vulnerable and the child being targeted in school. The child subsequently stopped attending school for an extended period. The charges against their mother were later dropped, and there was no conviction. NIACRO submission, September 2020

¹⁶⁴ Children’s Law Centre submission, September 2020

support is a particular concern regarding child protection or violations of their rights. Digital discrimination experienced by some children, and failure to ensure equality of access to affordable digital connectivity and technology, is a serious breach of children's rights, including: UNCRC Articles 3, 6, 12, 13, 15, 19, 29 and 31.

Legislation on online harms

Lack of effective protection for children who use social media and access online information are matters of concern. However, the COVID-19 pandemic heightened these concerns as not only were more children online for more time but also they were more dependent on digital technology to conduct a wider variety of activities. The Department of Education launched a new 'Safer Schools' app in an effort to help keep children and young people safe. As a result of increased use and dependency, those who wished to harm children online had greater opportunity to do so.

Risks created by the design of digital services have also been magnified. Two main issues are: (i) exposure of children to cyberbullying, pornographic material, sexting, peer pressure, self-harm/suicide, online gambling, and (ii) the low age of consent (13 years) to personal data being processed. Across the UK, there has been a three-fold increase in imagery showing 7–10 year olds who have been targeted and groomed by internet predators. In 2021, the Internet Watch Foundation (IWF) took action against 252,000 URLs which it confirmed contained images or videos of children being raped and suffering sexual abuse. During the year, IWF analysts investigated 361,000 reports, including tip-offs from the public, of suspected criminal material. This is more than they dealt with in the first 15 years of their existence when, from 1996 to 2011, they assessed 335,558 reports.¹⁶⁵ A Joint Committee of the House of Commons and House of Lords report *Right to Privacy (Article 8) and the Digital Revolution* questioned whether a child aged 13 can give informed consent to their personal data being processed, including how that consent is obtained online, and whether parents are in a position to give informed consent for children younger than 13 years.¹⁶⁶

On 12 February 2020 the UK Government published an initial consultation response to its April 2019 *Online Harms White Paper*.¹⁶⁷ The online protections intended by the Government

¹⁶⁵ IWF (2022) *Three-fold increase of abuse imagery of 7-10 year olds as IWF detects more child sexual abuse material online than ever before*. 13 January 2022. Available at: <https://www.iwf.org.uk/news-media/news/three-fold-increase-of-abuse-imagery-of-7-10-year-olds-as-iwf-detects-more-child-sexual-abuse-material-online-than-ever-before/>

¹⁶⁶ House of Commons and House of Lords Joint Committee on Human Rights (2019) *Third Report of Session 2019*, 30 October 2019

¹⁶⁷ See: <https://www.gov.uk/government/consultations/online-harms-white-paper/public-feedback/online-harms-white-paper-initial-consultation-response>. The Northern Ireland Executive published its own consultation document in March 2019: *Keeping children and young people safe online: an e-Safety Strategy and Three Year Action Plan for Northern Ireland 2019-2022*

include an Age Appropriate Design Code, age verification of online pornography, and a statutory duty of care for online platforms.¹⁶⁸ The **Online Safety Bill** will have an impact across the United Kingdom once it becomes law. Evidence from 2020 suggests that Northern Ireland planned to develop legislation in parallel. Key components of the Bill include introducing new duties for firms which host user-generated content to minimise harmful content, particularly to protect children from legal but harmful content, and also to ensure reporting of child sexual exploitation and abuse content to the National Crimes Agency.¹⁶⁹ NSPCC has called for safety duties together with a culture of compliance in regulated firms through senior manager liability and the publication of risk assessments, Codes of Practice to address child abuse risks via private messaging, and the introduction of a statutory user advocacy body to protect children's interests online.¹⁷⁰

Northern Ireland published an **Online Safety Strategy and Action Plan** in February 2021.¹⁷¹ The Safeguarding Board for Northern Ireland, as the central co-ordinating body for online safety, is responsible for implementation of the Action Plan. An Online Safety Coordinator has been appointed and the first year of funding has been released, leading to implementation of some Year 1 actions. Ensuring that online safety remains a priority for the Department of Health while it faces crises in health and social care is a significant challenge.

E. VIOLENCE AGAINST CHILDREN

Torture and other cruel, inhuman or degrading treatment or punishment

Use of Tasers, attenuating energy projectiles, spit hoods and other harmful devices on children

Despite the CRC's (2016, para 40a) recommendation that use on children of electrical discharge weapons (such as Tasers), Attenuating Energy Projectiles [AEPs] and any other harmful devices should be prohibited, this has not occurred.

¹⁶⁸ See: 5Rights Foundation (2020) *Home Office preparedness for Covid-19 (online harms)*, May 2020

¹⁶⁹ NSPCC submission, October 2022

¹⁷⁰ NSPCC (2002) *Parliamentary Briefing: Report Stage of the Online Safety Bill*. Available at: <https://www.nspcc.org.uk/globalassets/documents/policy/online-safety-bill-report-stage-parliamentary-briefing.pdf>

¹⁷¹ Northern Ireland Executive (2021) *Keeping children and young people safe: an Online Safety Strategy for Northern Ireland 2020-2025*. Available at: <https://www.health-ni.gov.uk/sites/default/files/publications/health/online-safety-strategy.pdf>
Online Safety Commitments to Action [3 Year Action Plan]. Available at: : <https://www.health-ni.gov.uk/sites/default/files/publications/health/online-safety-action-plan.pdf>

CED [Conductive Energy Devices] (i.e., **Tasers**) **have been drawn and fired at children in Northern Ireland**. Between 1 January 2017 and 30 June 2020, Tasers were used by the PSNI on 25 children aged 17 and under.¹⁷² This included a Taser being ‘fired’ at one child, ‘red dotted’ at eighteen children, and ‘drawn’ at six children.¹⁷³ Of particular concern is that in two of the recorded incidents involving children aged 10 and 14, the reason given for use was ‘Accidental’. Despite 18 reported fatalities following discharge of a Taser against individuals by police in the UK between 2006 and 2018,¹⁷⁴ the PSNI classifies Tasers as ‘less lethal’ weapons with a lower test for deployment than plastic bullets [AEPs]. Seventeen people, including 9 children, were killed by plastic and rubber bullets in Northern Ireland during the conflict and it is impossible to report accurately the number of children who were injured.

The PSNI continues to use AEPs in public order situations when children are present. AEPs are not used in other UK jurisdictions. The **police have also used CS Spray against children** including, in a children’s home.^{175 176}

The PSNI introduced **use of ‘spit and bite guards’** - known as ‘spit hoods’ - as a ‘health and safety’ response to COVID-19, despite the absence of evidence that they afford protection to police officers and warnings that the process of fitting hoods and ensuing struggles were likely to generate aerosol particles, exacerbating risk of transmission.¹⁷⁷ PSNI Guidance on the use of spit and bite guards is clear that they could be used on children as young as 10 years old. Between their introduction on 27 March and 30 June 2020 they were used on at least two children,¹⁷⁸ potentially breaching UNCRC Articles 3, 6, 19 and 37 as well as CRC General Comments No. 13 and No. 24. Several organisations have raised concerns about the

¹⁷² Information provided in response to a Freedom of Information request by journalist Peter Moor, November 2020.

¹⁷³ Categories of Taser use include ‘Fired’ - discharged with a live cartridge installed; ‘Red dotted’ - not fired, but deliberately aimed and then partially activated so that a red laser dot is placed on the person; ‘Drawn’ - drawing of a Taser in circumstances where any person would reasonably perceive the action as a use of force: Cooper, L. (2020) *Children’s Rights and Policing: Tasers and children’s rights*, CRAE, p3

¹⁷⁴ See: <https://www.amnesty.org.uk/press-releases/uk-public-should-resist-drum-beat-calls-all-police-carry-taser>

¹⁷⁵ See: <https://policeombudsman.org/Media-Releases/2016/CS-spray-use-against-juveniles-justified-during-Ballymena,Co-Down-and-Derry/Londonderry-incidents>

¹⁷⁶ PSNI ‘use of force’ figures include use of AEP, Taser, Baton, CS Spray, PAVA Spray, Firearm, Dog. According to information provided to Children’s Law Centre (29.9.20), there were 1,438 reports of use of force involving an individual aged under 18 in 2019/20, equating to 10.5% of all use of force reports.

¹⁷⁷ Amnesty International (2020) *The case against the use of spit hoods in response to Covid-19*, 5 November 2020. Available at: <https://www.amnesty.org.uk/blogs/belfast-and-beyond/case-against-use-spit-hoods-response-covid-19-0>

¹⁷⁸ NI Policing Board (2020) *Report on the Thematic Review of the Policing Response to COVID-19*, 12 November 2020, p81

potentially dangerous impacts of spit hoods, calling for their use to be ceased.¹⁷⁹ Prior to their introduction in Northern Ireland, no consultation was conducted with children or the children's rights sector to assess the impact of use on children and young people. Concerns raised by the Northern Ireland Commissioner for Children and Young People, Amnesty International, the Children's Law Centre, Include Youth, the Committee on the Administration of Justice and other organisations within the children's and human rights sectors about use of spit and bite guards on children include: non-compliance with the UNCRC and ECHR; failure to impact assess their use; contradiction with PSNI safeguarding policies and trauma-informed practice; lack of evidence to support need for/ the effectiveness of their use; potential dangers and adverse effects (including breathing restriction, trauma, emotional distress, degradation and dehumanisation).

A Thematic Review of the policing response to COVID-19 recommended that spit and bite guards should be "phased out as soon as possible", with officers instead provided with necessary Personal Protection Equipment, and that their use should "cease by 31st December 2020".¹⁸⁰ This review stated that the PSNI should provide further evidence, complete a public consultation exercise and consider the criteria/ guidance for the use of spit and bite guards, submitting this information to the Policing Board so that the Board could give its view about their use to the Chief Constable.

According to the PSNI's Equality Impact Assessment, between 16 March 2020 and 31 December 2020, spit and bite guards were used 84 times - 6 of the 84 recorded uses (7%) were on children (all of whom were male).¹⁸¹ 40 of the 84 uses (48%) were on people from a Catholic background. In 68 of the 84 uses (81%), the subject reported a disability or the police noted a disability (including mental health disabilities).¹⁸² The PSNI's policy and training on the

¹⁷⁹ See: <https://www.amnesty.org.uk/press-releases/northern-ireland-police-spit-hoods-may-increase-risks-spread-covid-19-psni-should>;

https://redress.org/wp-content/uploads/2019/05/UK-Implementation-of-UNCAT_REDRESS_March2019_Web.pdf

https://yjlc.uk/wp-content/uploads/2020/04/CRAE_POLICING-SPITHOODS_PRINT.pdf

<https://www.iccl.ie/news/cra-spit-hoods-fly-in-face-of-progressive-youth-strategy/>

<http://www.crae.org.uk/news/crae-responds-to-metropolitan-police-announcement-on-spit-hoods/>

<https://www.cypnow.co.uk/News/article/concerns-over-use-of-potentially-fatal-spit-hoods-on-children>

¹⁸⁰ NI Policing Board (2020) *Report on the Thematic Review of the Policing Response to COVID-19*, 12 November 2020, p12

¹⁸¹ See: <https://www.psni.police.uk/sites/default/files/2022-09/Spit%20and%20Bite%20Guards%20Equality%20Impact%20Assessment.pdf>, p37

¹⁸² Ibid

use of spit and bite guards states: “Where officers or staff are aware that a member of the public is under 18, the presumption will be that a Spit and Bite Guard should not be used”.

The Police Ombudsman’s *Review of the Deployment of Spit and Bite Guards by the Police Service of Northern Ireland*, published in October 2021, stated that the use of spit and bite guards on children and young persons should be prohibited.¹⁸³ Similarly, Recommendation 15 from the 2022 *Review of PSNI’s Use of Spit and Bite Guards by the NI Policing Board’s Human Rights Advisor* states that “If an officer is aware the child is under 18 then the Guard should not be used under any circumstances. [Alternatively, where it is possible, only following authorisation from a Superintendent.] If the Guard is used on a child, then the incident of this should be notified to the Police Ombudsman who should review the Body Worn Video.”¹⁸⁴ The Human Rights Advisor’s review highlighted that many spit and bite guard applications have been prolonged, some lasting over 2 hours: “Of the 25 uses on those aged 18 years or under, the length of time was recorded on 21 occasions, with two incidents lasting over 60 minutes and three incidents lasting *over 120 minutes*.”¹⁸⁵ Further, his review highlighted concerns regarding untrained officers using spit and bite guards, particularly in relation to use on people with mental health issues. He raised questions about compliance with the policies set out in Guidance and whether de-escalation techniques were used by officers.

In June 2022, despite clear opposition from NGOs, the Police Ombudsman and the Northern Ireland Policing Board Human Rights Advisor, in June 2022 the PSNI made spit and bite guards available to all frontline officers on a permanent basis.¹⁸⁶ Between 16 March 2020 and 29 August 2022, the PSNI report that there were 17 uses on children and young people aged under 18 (3 times on 14 year olds, 3 times on 15 year olds, 7 times on 16 year olds, and 4 times on 17 year olds).¹⁸⁷ It is Children’s Law Centre’s understanding that, following on from the Human Rights Advisor’s Report, the PSNI intends to develop a Framework regarding the use of spit and bite guards,. There has been no public discussion about this Framework. However, it was confirmed to the Children’s Law Centre in a meeting with the Chief Constable in September 2022, that the PSNI are not going to accept the Human Rights Advisor’s recommendation that: “*If an officer is aware the child is under 18 then the Guard should not be used under any circumstances.*” CLC and other human rights NGOs are concerned that a

¹⁸³ See: <https://www.policeombudsman.org/PONI/files/93/93f9e0e4-2b03-4162-9923-7a1f56589527.pdf>, p4

¹⁸⁴ See: <https://www.nipolicingboard.org.uk/files/nipolicingboard/publications/review-of-the-psnil%E2%80%99s-use-of%20spit-bite-guards-by-the-policing-board%E2%80%99s-human-rights-advisor.pdf>, p64

¹⁸⁵ Ibid, p14, emphasis added

¹⁸⁶ BBC NEWS (2022) *Spit and bite guards: PSNI to use equipment as ‘permanent tactic’*, 16 June 2022. Available at: <https://www.bbc.co.uk/news/uk-northern-ireland-61826982>

¹⁸⁷ Freedom of Information response from the PSNI to Children’s Law Centre, F-2022-02121, September 2022

number of other recommendations made by the Advisor have been accepted with qualifications, rather than unreservedly.¹⁸⁸

Use of pain-inducing techniques and seclusion against children for disciplinary purposes in schools and institutional settings

In December 2021, NICCY published a rights based review on use of restraint and seclusion (collectively known as ‘restrictive practices’) in educational settings, with a particular focus on children and young people with additional needs and/or SEN.¹⁸⁹ This identified legislative gaps in the ‘use of reasonable force’; unclear guidance to schools about initial reporting and recording/ monitoring of incidents; deficiencies in policy regarding the complex support needs of some pupils and collaboration with other professionals such as allied health professionals and social workers. It highlighted deficiencies in the current complaints process in educational settings, notably in relation to the role of the Board of Governors, and in terms of the power imbalance experienced by parents for whom the complaints process is often lengthy, stressful and has limited outcomes. The review specified need for: a clearer and more consistent understanding of restrictive practices in educational settings; practical guidance and training in relation to appropriate use of these practices and alternative therapeutic approaches, particularly in mainstream schools; provision of pastoral support for individuals who have experienced restrictive practices; and improved understanding about the environmental, social and/or emotional support required by children with additional needs – with a focus on acknowledging distressed behaviours as a form of communication requiring a therapeutic response, rather than ‘bad behaviour’ requiring punishment.

One of the key issues is that there is **no mandatory requirement to record use of restrictive practices**, including incidents involving restraint or seclusion, **in educational settings or to inform parents about these incidents when they occur**. Non-verbal children are particularly vulnerable as they cannot tell anyone what has happened when they have been subjected to such experiences.

Use of restraint against children with disabilities in schools and institutional settings

Children in Northern Ireland are entitled to equal protection of their human rights across all settings, whether they are at home, at school, in a health and social care facility or in the community. In recent years parental evidence has highlighted that vulnerable disabled children have routinely been subjected to restrictive practices such as use of restraints and seclusion in locked rooms, in special schools and within mainstream schools. **There is no regulatory framework in place to prevent or severely limit these potentially harmful and**

¹⁸⁸ Children’s Law Centre submission, November 2022

¹⁸⁹ NICCY (2021) *Neither Seen Nor Heard. Rights Based Review on the Use of Restraint and Seclusion in Educational Settings*, December 2021. Available at: <https://www.niccy.org/wp-content/uploads/media/4026/niccy-restraint-and-seclusion-main-report-final-16-dec-21.pdf>

traumatic interventions, or to record and monitor use of restrictive practices where they have been employed. In a report outlining the situation in different UK jurisdictions, one parent campaigner from Northern Ireland shared photographic evidence of her young son, a placid autistic boy who is non-verbal with no physical disabilities, strapped into a wheeled-chair with his legs and upper body restrained.¹⁹⁰ The PPS refused to prosecute this as a criminal matter, thus criminal law did not provide any protection. Social Services regarded it as a school issue, rather than a child safeguarding issue, and closed the case. Education law in Northern Ireland contravenes human rights in that it permits use of “reasonable force” for the purpose of maintaining order and discipline under Article 4(1c) of the *Education (Northern Ireland) Order 1998*. In order to be compliant with human rights protections, force should only be used in a school setting in very limited circumstances to prevent serious physical harm to the child or others.

Concerns about use of restrictive practices in educational settings have been raised by the British Association of Social Workers in Northern Ireland,¹⁹¹ and by the Northern Ireland Human Rights Commission.¹⁹² In May 2021 the Education Committee brought forward a motion calling on the Minister of Education to urgently develop new guidance on the restraint and seclusion of children and young people, particularly those with additional support needs.¹⁹³ The Department of Education subsequently issued interim guidance reminding settings that reasonable force/ restraint should only be used as a measure of last resort; all instances should be recorded; parents/ carers should be informed, with follow-up support provided to the children and staff involved; a child should never be locked in a room, left unaccompanied or prevented from leaving.¹⁹⁴ The Department also conducted a review which recommended legislative change to repeal Article 4(1c) of the *Education (Northern Ireland) Order 1998*.¹⁹⁵ Although a positive development, this has not yet taken place. Significant work

¹⁹⁰ See: <https://krw-law.ie/bbc-interview-with-deirdre-shakespeare/>

¹⁹¹ See:

https://www.basw.co.uk/system/files/resources/basw_ni_policy_statement_on_restraint_seclusion_of_children_young_people_in_schools_educational_facilities_20_may_2021.pdf

¹⁹² See: <https://nihrc.org/publication/detail/submission-ni-committee-for-education-on-the-human-rights-implications-of-current-guidance-relating-to-the-use-of-restrictive-practices-in-schools>

¹⁹³ Education Committee (2021) *Education Committee Calls on Minister to Urgently Develop New Guidance on Restraint and Seclusion*, 24 May 2021. <http://www.niassembly.gov.uk/news-and-media/press-releases/session-2020-2021/education-committee-calls-on-minister-to-urgently-develop-new-guidance-on-restraint-and-seclusion/>

¹⁹⁴ Department of Education (2021) *Interim Guidance on the Use of Restraint and Seclusion in Educational Settings*. Circular Number 2021/13. Available at: <https://www.education-ni.gov.uk/sites/default/files/publications/education/DE%20Circular%2013%20of%202021%20-%20Restraint%20and%20Seclusion.pdf>

¹⁹⁵ Department of Education (2022) *Review of the Use of Restraint and Seclusion in Educational Settings in Northern Ireland*, March 2022. Available at: <https://www.education-ni.gov.uk/sites/default/files/publications/education/DE%20Review%20of%20the%20Use%20of%20Restraint%20and%20Seclusion%20in%20Educational%20Settings%20in%20Northern%20Ireland%20March%202022.pdf>

is required to ensure equal protection for school children under the law. It is vital that non-human rights compliant measures are repealed, and that appropriate regulation, disaggregated data gathering and monitoring are established through statutory requirement to give full effect to human rights protections (particularly under Articles 3, 5, 8 together with Article 14 ECHR).¹⁹⁶

In addition, **the *Mental Capacity Act (NI) 2016, which includes Deprivation of Liberty Safeguards for young people aged 16 and 17 who lack capacity, does not overtly legislate for protections in education settings.***¹⁹⁷ Bar the *Human Rights Act 1998* (Article 5 ECHR), younger children have no domestic legislative protection or regulatory systems in place to safeguard them from restrictive practices or deprivations of liberty in education settings. There is an urgent need for appropriate regulatory and administrative systems to ensure any deprivation of liberty of a 16 or 17 year old is legally authorised (either by a Health Trust Panel or by application to the High Court). Further, domestic legal regulation and monitoring is needed to protect those aged under 16 in education settings or otherwise who are potentially vulnerable to unlawful restrictive practices, including ‘therapeutic holds’ and seclusion.

Corporal punishment

Legal defence of ‘reasonable punishment’, promotion of positive and non-violent forms of discipline

Despite repeated recommendations by the CRC (1995; 2002; 2008; 2016, para 41a) for the UK to prohibit all corporal punishment in the family, the position in Northern Ireland remains unchanged and **there are no plans to repeal** Article 2 of the *Law Reform (Miscellaneous Provisions) (NI) Order 2006* which provides for **the legal defence of ‘reasonable punishment’**. Regardless of compelling international evidence that physical punishment is ineffective in improving children’s behaviour in the long term and, in fact, has an adverse impact on children’s well-being,¹⁹⁸ adults can legitimately assault a child in Northern Ireland.

[ni.gov.uk/sites/default/files/publications/education/Report%20on%20the%20Review%20of%20Restraint%20and%20Seclusion%20in%20Educational%20Settings.pdf](https://www.ni.gov.uk/sites/default/files/publications/education/Report%20on%20the%20Review%20of%20Restraint%20and%20Seclusion%20in%20Educational%20Settings.pdf)

¹⁹⁶ Children’s Law Centre submission, November 2022

¹⁹⁷ This gap in legal protection for those aged 16 and 17 who actually do attract a level of protection was made clear in the case of ML (2021) NI Fam 15 regarding a young person in a locked door classroom surrounded by a fence and under close supervision. Available at: <https://www.judiciaryni.uk/judicial-decisions/2021-nifam-15>

¹⁹⁸ Gershoff, E.T. and Grogan-Kaylor, A. (2016). Spanking and child outcomes: old controversies and new meta-analyses. *Journal of Family Psychology*, Vol.30, Issue 4, pp453-469; Heilmann, A., Kelly, Y. and Watt, R.G. (2015) *Equally Protected? A review of the evidence on the physical punishment of children*, Edinburgh: Children and Young People’s Commissioner Scotland, Children 1st, Barnardo’s Scotland, NSPCC Scotland.

In 2022 NSPCC commissioned a survey about public attitudes to equal protection, building on questions previously developed by the Northern Ireland Commissioner for Children and Young People in a survey about attitudes to physical punishment.¹⁹⁹ In the 2022 survey, under half of the adult respondents (40%) or parents (45%) were aware that the law allows parents and carers to physically punish their child. Only 25% of adults and 23% of parents stated that they thought physical punishment is an *effective* form of discipline. Only 14% of adults and 8% of parents considered physical punishment to be an *acceptable* form of discipline. The majority of adult (65%) and parent respondents (71%) would support legal reform in Northern Ireland to give children equal protection under the law. The majority of adult (70%) and parent (74%) respondents would be more likely to support legal reform in Northern Ireland if they were provided with information and support on how to manage children's behaviour effectively. 72% of adult and 75% of parent respondents would be more likely to support a change in the law if they were assured that parents could physically intervene to protect a child from immediate danger (e.g. running across a road), with 60% of adult and 62% of parent respondents more likely to support a change in the law if the proposed legal change was well publicised.

'Positive parenting' was described in this survey as using '*techniques such as positive reinforcement, time out and other techniques to help deal with children's behaviour*'. Asked if they had ever previously been given information about alternatives to physical punishment, only 33% of parents reported that they had received information on positive parenting. The most common sources of this information were a parent or children's group (42%), schools (27%) and health visitors (26%). For 12% the information came from either a GP or social worker respectively, while 19% could not remember the source.²⁰⁰

Freedom of the child from all forms of violence

Domestic violence

There has been an **increase in the number of domestic violence incidents across Northern Ireland**, many of which directly or indirectly involve children. The PSNI reported 22,142 domestic abuse crimes during the 12 months from 1st July 2021 to 30th June 2022, an increase of 2,519 (12.8%) on the previous 12 months and the highest number recorded in a 12-month period since 2004/05.²⁰¹

¹⁹⁹ NICCY (2017) *Changing Perceptions: Equal Protection for Children*. Belfast: NICCY

²⁰⁰ <https://www.nspcc.org.uk/globalassets/documents/policy/public-attitudes-equal-protection.pdf>;
<https://www.nspcc.org.uk/globalassets/documents/policy/smr-survey-report.pdf>

²⁰¹ PSNI (2022) *Domestic Abuse Incidents and Crimes Reported by the Police in Northern Ireland*. Update to 30th June 2022. 25 August 2022. Available at: https://www.psni.police.uk/sites/default/files/2022-09/domestic-abuse-bulletin-jun_-22_0.pdf, p1

Concerns expressed about children's increased vulnerability and reduced options for support following domestic violence during the COVID-19 pandemic, especially during periods of lockdown, have been realised. During the pandemic there was an unprecedented rise in the number of domestic abuse crimes recorded by the PSNI. From 1st July 2020 to 30th June 2021 the number of domestic abuse crimes rose to 19,036, an increase of 4% on the previous 12 months and almost twice the level recorded in 2004/05. This figure represented one in five of all crimes recorded in that year.²⁰²

Levels of Government funding in Northern Ireland are difficult to determine. **There is no statutory obligation on public authorities to commission specialist domestic abuse services** providing emotional and practical support to help children process their experiences, develop an understanding of healthy relationships, improve their health and safety (such as Children's Independent Domestic Violence Advisors, as in England).²⁰³

The definition of harm in Article 2(2) of the *Children (Northern Ireland) Order 1995* was amended through the *Adoption and Children Act (Northern Ireland) 2022* to take account of the impact of domestic violence on children. However, this statutory recognition of the harm caused to children living in a home where domestic abuse occurs has not been accompanied by a corresponding obligation on Government to address this harm through the provision of sufficient, specialist support services for child victims. In Northern Ireland, support for children who are victims of domestic abuse is piecemeal and dependent on the ability of third sector organisations to fund and provide services. Children's access to support reflects a postcode lottery - an inappropriate and unsustainable position.²⁰⁴

Operation Encompass, a partnership between the Police Service of Northern Ireland (PSNI), the Safeguarding Board Northern Ireland (SBNI), the Education Authority (EA) and schools, is a scheme aimed at supporting children who witness domestic abuse or violence at home. If the police attend a domestic abuse incident where children are present, they contact the child's school before 9am the following morning to enable teachers with responsibility for safeguarding to offer support. Piloted in 2021-2022, 135 schools involved in the early part of the scheme were informed on 400 occasions about such an incident in the five months from February to June 2022.²⁰⁵

²⁰² PSNI (2021) *Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2020/21*. 12 November 2021. Available at: <https://www.psni.police.uk/sites/default/files/2022-08/domestic-abuse-incidents-and-crimes-in-northern-ireland-2004-05-to-2020-21.pdf>, p4

²⁰³ See: CAADA (2014) *In Plain Sight: Effective help for children exposed to domestic abuse*.

²⁰⁴ NSPCC submission, October 2022

²⁰⁵ BBC NEWS (2022) *Operation Encompass: PSNI alert schools to domestic abuse incidents*. 26 July 2022. Available at: <https://www.bbc.co.uk/news/uk-northern-ireland-62295982>

The *Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021* received Royal Assent on 1 March 2021. While ‘child aggravators’ are contained in the Act (ie it may be specified as an allegation alongside a charge of domestic abuse that the offence is aggravated by the person to whom the offence is alleged to have been committed being under 18 at the time, or if a relevant child witnessed the alleged abuse), **children are not treated as victims of domestic abuse in their own right**. Protection is no longer limited to physical abuse - the legislation criminalises a pattern of non-physical abusive behaviour. The new domestic offence will cover behaviour that is controlling or coercive, or that amounts to psychological, emotional or financial abuse of another person. Abusive behaviour may also include sexual abuse and technological or digital abuse. It includes patterns of two or more occasions of physical and/or psychological abuse by a partner, ex-partner or close family member and behaviour that is physically violent, threatening or intimidating. The Council of Europe *Convention on Preventing and Combating Violence Against Women and Domestic Violence* [Istanbul Convention] was signed by the UK Government in June 2012, ratified in July 2022 and entered into force on 1 November 2022.

Violence against girls and women

Having issued a ‘call for views’ on a new *Ending Violence Against Women and Girls Strategy*, a Summary Report of responses was published in August 2022. This noted the **need for mandatory, age-appropriate, inclusive Relationship and Sexuality Education [RSE]** to “help children and young people understand what constitutes healthy relationships, the meaning of consent, and what different forms of abuse look like”.²⁰⁶ As outlined in the **EDUCATION** section, RSE in Northern Ireland is currently inadequate.

Sexual exploitation and abuse

The majority of reported sexual offences continue to be committed against children, particularly girls. PSNI figures show that, on average, in 2020/21 over 5 sexual crimes were committed against a child in Northern Ireland every day. During 2020/21 3,335 sexual offences were reported and 1,949 (58%) of these were against children aged under 18. Recorded sexual offences committed against under-18s more than doubled between 2007/08 and 2020/21. Girls are significantly more likely to be the victim of a recorded sexual offence. Girls were the victim in 1,452 (75%) of all sexual offences recorded by the PSNI in 2020/21 where the victim was aged under 18, and 44% of all recorded sexual offences in Northern

²⁰⁶ Northern Ireland Executive (2022) *EVAWG Strategy. Call for Views. Summary Report*. Available at: <https://www.executiveoffice-ni.gov.uk/sites/default/files/publications/execoffice/EVAWG%20Call%20for%20Views%20Summary%20Report%20August%202022-4.pdf>, p37

Ireland in 2020/21 were committed against girls under 18.²⁰⁷ This trend has continued during 2022. The PSNI statistical bulletin noted in September 2022 that: “Sexual offences have shown an upwards trend, with the most recent quarter (Apr-Jun’22) showing the highest quarterly figure over the last ten years (and also since the start of the data series).”²⁰⁸

The *Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022* amended the *Sexual Offences (Northern Ireland) Order 2008* to **extend ‘abuse of trust’ offences to include sport and religious settings**, securing additional protections from sexual abuse for 16 and 17 year olds by adults in non-statutory roles in these settings who are in a position of trust. **However, limiting focus to religion and sport excludes a raft of other extracurricular activities**, including organised voluntary groups such as Scouts,²⁰⁹ Guides and cadets; music and drama leaders; youth leaders and private tutors. Further, it remains unclear what specific activities will be included within the definition. This is a considerable gap in protection for young people, creating unnecessary legal uncertainty.²¹⁰ The Department of Justice is consulting on specific areas of risk which would necessitate an extension of the law, which closes on 22 December 2022.

Despite a clear recommendation by the CRC (2016, para 45), **implementation of the 2014 Marshall Inquiry: *Child Sexual Exploitation in Northern Ireland* recommendations remains outstanding**. Over the intervening eight-year period, four rounds of progress reports have been published. Serious concerns relating to full implementation of the Inquiry recommendations have been expressed by the Northern Ireland Commissioner for Children and Young People in 2018,²¹¹ the Gillen Review in 2019,²¹² and the Criminal Justice Inspectorate in 2020.²¹³

²⁰⁷ PSNI (2021) *Police recorded crime annual trends 1998/99 to 2020/2*. Excel spreadsheet. Available at: <https://www.psni.police.uk/about-us/our-publications-and-reports/official-statistics/police-recorded-crime-statistics>

²⁰⁸ PSNI (2022) *Police Recorded Crime in Northern Ireland*. Update to 31st August 2022. 29 September 2022, Available at: <https://www.psni.police.uk/sites/default/files/2022-09/crime%20bulletin%20aug%202022.pdf>, p10

²⁰⁹ In 2018 in the Republic of Ireland, Scouting Ireland identified 317 alleged victims and 212 alleged perpetrators of sexual abuse following a review of historical files and the opening of a confidential helpline. As Scouting Ireland is an all-island body, allegations included victims and perpetrators in Northern Ireland (BBC NEWS, 11 December 2018). The *Independent Inquiry into Child Sexual Abuse in England and Wales* heard testimony from victims subjected to sexual abuse in the Scouts and other uniformed bodies (<https://www.iicsa.org.uk/>).

²¹⁰ NSPCC submission, October 2022

²¹¹ NICCY (2018) *Reflections on Government Child Sexual Exploitation Progress Reports (Third and Fourth Composite Reports)*

²¹² Sir John Gillen (2019) *Report into the law and procedures in serious sexual offences in Northern Ireland*

²¹³ Criminal Justice Inspection Northern Ireland (2020) *Child Sexual Exploitation in Northern Ireland: An inspection of how the criminal justice system responds to child sexual exploitation in Northern Ireland*

Reporting and prosecution of all cases of violence, including sexual offences, against children

Despite the CRC's (2016, para 45b) recommendation, serious **concerns remain about current arrangements and practices regarding the prevention and detection of, and responses to, child sexual abuse**. NSPCC research demonstrates that under-reporting of child sexual abuse remains prevalent.²¹⁴ High attrition and low conviction rates for sexual offences remain a persistent feature of the justice system in Northern Ireland. The Child Care Centre, a multi-disciplinary unit specialising in the investigation of child sexual abuse and provision of therapy in Belfast, recorded that less than 5% of cases where they considered that children had been sexually abused resulted in charges being brought by the NI Public Prosecution Service. PSNI figures for 2017/18 show that the charge or summons rate for rape offences where the victim was either a child or adult was just 5.5%.²¹⁵

Child-friendly, multi-sectoral interventions in cases of child abuse

Judge Gillen's 2019 review of the law and procedures in relation to serious sexual offences in Northern Ireland and a 2020 inspection of how the criminal justice system responds to child sexual exploitation²¹⁶ both reflected positively on **the implementation of a multidisciplinary and interagency Barnahus (Child House)²¹⁷ system to tackle child sexual abuse and exploitation in Northern Ireland**. This was a strategic priority in the Department of Justice *Gillen Review Implementation Plan*,²¹⁸ although has not been established to date and there are no plans for such developments. A version of this system is being trialled in other parts

²¹⁴ NSPCC estimates that for every child on a child protection plan or register another eight experience maltreatment or abuse. See: Bentley, H. et al (2017) *How safe are our children?* London: NSPCC

²¹⁵ See: Sir John Gillen (2019) *Report into the law and procedures in serious sexual offences in Northern Ireland*, p462

²¹⁶ Sir John Gillen (2019) *Report into the law and procedures in serious sexual offences in Northern Ireland*; Criminal Justice Inspection Northern Ireland (2020) *Child Sexual Exploitation in Northern Ireland: An inspection of how the criminal justice system responds to child sexual exploitation in Northern Ireland*; Sir John Gillen (2019) *Time for Change: Improving Our Justice System for Child Victims of Sexual Offences*, 22 March 2019. Available at: <https://www.niccy.org/media/3283/floating-along-with-current-events-and-trying-to-steer-sir-john-gillen-22-march-19.pdf>

²¹⁷ See: Council of Europe (2018) *Protection of children against sexual exploitation and abuse: Child friendly, multidisciplinary and interagency response inspired by the Barnahus model*; Haldorsson, O.L. (2017) *European Barnahus Quality Standards: Guidance for Multidisciplinary and Interagency Response to Child Victims and Witnesses of Violence*, Promise Project

²¹⁸ See: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/the-gillen-review-implementation-plan.PDF>

of the UK and is supported by many children’s sector organisations as well as the Northern Ireland Commissioner for Children and Young People.²¹⁹

Protection of child victims and witnesses of violence and sexual abuse throughout legal proceedings

Although the UK Government ratified the *Lanzarote Convention* in 2018,²²⁰ grave concerns about the treatment and re-traumatisation of child victims by the criminal justice system were highlighted in Judge Gillen’s 2019 review of the law and procedures in relation to serious sexual offences in Northern Ireland and a 2020 inspection of how the criminal justice system responds to child sexual exploitation.²²¹ These reviews documented: inordinate delays; lack of advocacy and access to therapeutic intervention; inconsistent application of special measures, including failure to introduce pre-recorded cross-examination. This contravened the CRC’s (2016, para 81) recommendation to introduce pre-recorded video interviews of child victims and witnesses as evidence in court.

Tackling cyberbullying, online sexual exploitation and abuse, gang-related violence and knife crime against children

Online child sexual abuse has increased in scale and complexity. Children are groomed and coerced into sending self-generated imagery, and child abuse imagery is freely shared. Police data suggests that 9,724 online child sex crimes were recorded across the UK in 2020/21.²²²

²¹⁹ Lavoie, J. et al (2022) *Putting the Child at the Centre. Barnahus (Children’s House) – a one door approach to supporting children who have been sexually abused in Northern Ireland*. Belfast: NICCY. Available at: <https://www.niccy.org/media/4070/niccy-report-putting-the-child-at-the-centre-final-feb-2022.pdf>

²²⁰ The *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* - the Lanzarote Convention - takes account of the UNCRC. Article 30 requires that signatories: take all necessary legislative or other measures to ensure that investigations and criminal proceedings are carried out in the best interests and respecting the rights of the child; that a protective approach towards victims is adopted; that investigations and criminal proceedings do not aggravate the trauma experienced by the child; that the criminal justice response is followed by assistance where appropriate and; importantly, that investigations and proceedings involving children are treated as a priority and carried out without any unjustified delay. Article 35 in regard to interviews with a child requires that all measures are in place to ensure that these are undertaken without unjustified delay; occur in premises designated or adapted for this purpose with professionals trained for this purpose; limit the number of interviews; ensure children are accompanied by legal representative or adult of their choice; and that interviews are videotaped and this is accepted as evidence.

²²¹ Sir John Gillen (2019) *Report into the law and procedures in serious sexual offences in Northern Ireland*; Criminal Justice Inspection Northern Ireland (2020) *Child Sexual Exploitation in Northern Ireland: An inspection of how the criminal justice system responds to child sexual exploitation in Northern Ireland*

²²² The NSPCC sent Freedom of Information requests to all police forces in England, Wales, Northern Ireland and the Channel Islands asking for the number of sexual offences against under 18-year-olds that had a cyber-flag attached to them between 1 April 2020 and 31 March 2021.

In Northern Ireland during this period, 16% of police recorded sexual crime against children had an online element.²²³

According to PSNI data published in February 2022, since January 2021 police were involved in 125 searches relating to offences including sexual assault, rape, or sexual communication with a child where any element of the offence was committed online. These searches resulted in 52 arrests. The number of searches and arrests increased by 23% and 18% respectively compared with the previous 12 months.²²⁴ In 2020/21, 197 sexual communication with a child offences were recorded by the PSNI, an increase of 140% from 2017/18. The PSNI stated that the number of children subjected to online sexual abuse could be much higher than reported because it remains an under-reported and often misunderstood crime, with many children unable to raise the alarm to a trusted adult as they may be unaware that they are being manipulated.²²⁵

Globally, internet usage increased significantly during the Coronavirus pandemic.²²⁶ This resulted in increased risk of online harm and technology-facilitated abuse.²²⁷ The UK Government should act immediately to introduce protective and regulatory measures to detect and disrupt child online abuse, as proposed in the UK *Online Safety Bill*. The Northern Ireland Executive must closely monitor the impact of the cross-departmental *Online Safety Strategy and Action Plan [2020-2025]*.

Protecting children from violence by non-State actors involved in paramilitary-style attacks and from recruitment by such actors into violent activities

As a society transitioning from conflict, a number of specific circumstances pertain in Northern Ireland which impact on the safety of children and young people. Despite the CRC's (2016, para 48c) recommendation, **threats, intimidation, exiling and physical attacks against young people accused of 'anti-social behaviour' by paramilitary organisations continue**, particularly in economically deprived areas associated with high levels of conflict-related violence.²²⁸

²²³ PSNI data provided to NSPCC reported that 308 of the total 1,949 recorded sexual offences against under-18s in 2020/21 had a cyber-flag assigned to them.

²²⁴ ITV NEWS (2022) *Police report huge rise in online child abuse in Northern Ireland*. 8 February 2022. Available at: <https://www.itv.com/news/utv/2022-02-08/police-warn-of-huge-rise-in-online-child-abuse>

²²⁵ BBC NEWS (2021) *Reports of online child sexual abuse in NI rise by 80%*. 4 November 2021. Available at: <https://www.bbc.co.uk/news/uk-northern-ireland-59161570>

²²⁶ UNICEF et al (2020) *Coronavirus Disease (COVID-19) and its implications for protecting children online*

²²⁷ Europol (2020) *Catching the virus cybercrime, disinformation and the COVID-19 pandemic*

²²⁸ McAlister, S., Scraton, P. and Haydon, D. (2009) *Childhood in Transition. Experiencing Marginalisation and Conflict in Northern Ireland*. QUB, Prince's Trust and Save the Children;

Demonstrating the localised persistent presence of paramilitaries, 11% of all respondents to the 2021 *Young Life and Times* survey of 16 year olds considered that paramilitary groups had a controlling influence on the neighbourhoods in which they lived. 58% disagreed that this was the case (20% neither agreed nor disagreed and 10% could not choose). A similar proportion (12%) agreed that paramilitary groups created fear and intimidation in their area, with 15% agreeing that paramilitary groups contributed to crime, drug dealing and anti-social behaviour in their neighbourhood and 15% agreeing that young people in their area were influenced too much by paramilitary groups.²²⁹ In terms of personal experiences, 2% of survey respondents reported they had been threatened by a paramilitary group, 1% that they had had to move house because of intimidation, and none had been the victim of a paramilitary beating or any other form of punishment.²³⁰ Lack of disaggregated data collection and monitoring means that the extent of this issue is under-estimated. PSNI statistics for the year January to December 2019 show there were 67 recorded casualties of ‘paramilitary-style’ assaults, of which 5 were aged under 18.²³¹ An additional issue is Loyalist paramilitary involvement in racist violence and intimidation.²³²

During consultations, young people in Republican and Loyalist communities confirmed reports of activity by non-state forces, with **recruitment to paramilitary organisations often occurring through coercion or in lieu of drug debts.**²³³ Research with 16-25 year olds in three

McAlister, S., Dwyer, C. and Carr, N. (2018) *Experiencing Paramilitarism: Understanding the Impact of Paramilitaries on Young People in Northern Ireland*, ARK Research Findings, Number 1

²²⁹ ARK (2021) *Young Life and Times Survey*, Community Safety Module: PMCONT, PMFEAR, PMDRUGS, PMINFYP, PMSAFE, PARLKOUT

²³⁰ Ibid, Community Safety Module: THREATPG, MOVEINT, BEATPG

²³¹ PSNI (2020) *Police Recorded Security Situation Statistics. 1 January 2019 to 31 December 2019*, p1. Available at: <https://www.psnipolice.uk/globalassets/inside-the-psni/our-statistics/security-situation-statistics/2019/december/security-situation-statistics-to-december-2019.pdf>

²³² Winters, R. (2020) Racist intimidation in the Village in south Belfast “going on for years”, *The Detail*, 26 May 2020. Available at: <https://www.thedetail.tv/articles/racist-intimidation-in-the-village-in-south-belfast-been-going-on-for-years>

²³³ Include Youth consultations. See:

<http://www.includeyouth.org/mgmt/resources/include-youth-response-to-niccy-corporate-plan-2020-2023.pdf>;

<http://www.includeyouth.org/mgmt/resources/include-youth-engagement-with-young-people-on-local-policing-review-november-2018.pdf>;

<http://www.includeyouth.org/mgmt/resources/include-youth-response-to-children-and-young-peoples-strategy-2017-2027-de-final.docx>

<http://www.includeyouth.org/mgmt/resources/include-youth-response-to-draft-northern-ireland-policing-plan-2020-2025.pdf>

different locations found that **the most marginalised young people, with complex lives and unaddressed needs, are at most risk of paramilitary violence and exploitation.**²³⁴ In addition to young people being assaulted, the media has highlighted the trauma experienced by other children who witness paramilitary style attacks.²³⁵ Some individuals and families are excluded from their communities as a consequence of paramilitary intimidation. In a submission to the UN Committee Against Torture in 2019, the Northern Ireland Commissioner for Children and Young People called on the UK and Northern Ireland governments to address the role of ‘paramilitary organisations’ in the lives of children and young people.²³⁶

Recruitment of children as informants

When recently questioned about the use of children as Covert Human Intelligence Sources, the **PSNI refused to answer** - responding to a series of questions in a Freedom of Information request submitted by the *Andersontown News* with the comment that “it can neither confirm nor deny that it holds the information” requested about the number of juvenile sources currently on its books, the amount spent on juvenile sources, and resources deployed in providing ‘payments in kind’ to recruits.²³⁷

F. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

Family environment

Childcare services

Lack of a Childcare Strategy and government funding for childcare are ongoing issues of concern. Despite the CRCs (2016, para 51) recommendation, Northern Ireland remains without a Childcare Strategy and underpinning legislation to provide childcare services to all who need them. It has been seven years since a draft Childcare Strategy was produced for consultation and a new Strategy, reflecting changes in provision of family support and fit for purpose, is long overdue. An *Early Learning and Childcare Strategy* is in development. Work to develop this has included a ‘Strategic Insight Lab’, held in Winter 2021, facilitated by the Department of Finance on behalf of the Department of Education. Its findings have not been published to date (end of September 2022). In June 2022 the Department of Education

²³⁴ McAlister, S., Dwyer, C. and Carr, N. (2018) *Experiencing Paramilitarism: Understanding the Impact of Paramilitaries on Young People in Northern Ireland*, ARK Research Findings, Number 1, p8

²³⁵ See: <https://www.belfasttelegraph.co.uk/news/northern-ireland-teenager-shot-in-legs-surrendered-to-armed-attackers-when-he-heard-his-terrified-little-sister-cry-31003876.html>

²³⁶ See: <https://www.niccy.org/media/3278/childrens-commissioners-uncat-joint-submission-march-2019.pdf>

²³⁷ Jackson, M. (2022) Police remain tight-lipped on use of child informers, *Belfast Media*, 2 April 2022: <https://belfastmedia.com/psni-child-informants>

awarded a tender for delivery of independent research into childcare in Northern Ireland, which is due for completion and publication in December 2022. A Stakeholder Engagement Forum is being established by the Department of Education to inform work on the Strategy.

In June 2020, an All Party Group on Early Education and Childcare was established to promote best practice policy and provision in the delivery of early education and childcare in Northern Ireland.²³⁸ On 7 September 2022, the Education Minister provided an update about development of an 'Integrated Early Learning and Childcare Strategy' for Northern Ireland. A core component is a new proposal to offer every child in their pre-school year a minimum of 22.5 hours of pre-school education per week. However, this is not childcare and will not address the childcare needs of working families with children of all ages. The Minister advised that costed options should be ready for consideration by the Executive in March 2023.

The 2021 *Northern Ireland Childcare Survey* with parents and childcare providers found that **the average cost of a full-time childcare place is £170 per week/ £8,840 per year, which equates to 34% of the median household income before housing costs.** 41% of parents (55% of lone parents) use means other than their income - such as savings, loans and/or credit cards - to pay their childcare bill. 45% of parents (54% of lone parents) report spending more than 20% of their overall household income on childcare.²³⁹

69% of parents (73% of lone parents and 87% of parents who have a child with a disability), consider there is **insufficient provision of one or more types of affordable childcare** in their area. Families struggle to afford the childcare they need, with many experiencing financial hardship as a consequence. Lone parents experience greater challenges in accessing and affording essential childcare, leaving families financially insecure and at risk of, or experiencing, in-work poverty. The current childcare infrastructure can present a barrier to accessing work and career progression, particularly for women who have caring responsibilities. When the cost of childcare reaches or exceeds parents' income, some make the decision to leave work. For 34% of households, childcare is their largest monthly outgoing and 44% of parents (58% of mothers) reported that difficulties in accessing or affording childcare have impacted on their ability to work.

84% of **childcare providers** reported that their **outgoings** had **increased** in the past year, while income had increased for just 7%. **71% of providers reported they were either just breaking even, or were making a loss.** Almost a third described their current financial position as 'distressed' or 'struggling', meaning they were at immediate risk of closure or were focused

²³⁸ See: <https://www.employersforchildcare.org/research-and-lobbying/all-party-group-on-early-education-and-childcare/>

²³⁹ Available at: <https://www.employersforchildcare.org/report/northern-ireland-childcare-survey-2021/>

on survival over the next 12 months.²⁴⁰ This situation is not sustainable and investment is required to support provision of high quality, affordable childcare. The childcare system clearly requires fundamental and urgent reform. To date (November 2022), no funding specific to the childcare sector has been allocated to address the devastating impact of the rising cost of living. Rising costs for providers are likely to result in a significant increase in fees for parents.

During the Covid-19 pandemic, unprecedented pressures were placed on childcare providers. Initially required to close access to all but vulnerable children and the children of key workers, from the summer of 2020 providers could open to children from all families (even when schools moved to remote learning during subsequent lockdowns). During this time, providers faced increased costs relating to enhanced cleaning, infection control measures and the requirements of COVID-19 related guidance. For example, group settings were required to operate a ‘pod’ system, keeping children in separate groups and limiting interactions between children and between staff. Many providers experienced a decrease in occupancy as parents worked from home or chose to keep their children at home to minimise their social interactions. In group settings, providers also reported a ‘crisis’ in recruitment and retention of vital staff. Emergency funding was made available to the childcare sector through a series of schemes, including Sustainability Funding and Temporary Closure Funding. By February 2022, approximately £40 million in emergency funding had been provided to the sector, recognising the critical challenges it faced and its essential role in supporting the economy and enabling parents to work.²⁴¹ The Education Minister wrote to the UK Chancellor requesting an uplift in the rate of the Tax-Free Childcare Scheme from 20% to 30% to support eligible families with their childcare costs and relieve some of the current pressures experienced by childcare providers. With the Health Minister, she wrote to the Justice Minister requesting an update on proposals to streamline the AccessNI [criminal record check] process for those working in the childcare sector.²⁴²

Family support

In 2021 Parenting NI conducted a survey of parents, many of whom reported **feeling overwhelmed**. In 5 of the 732 parents who responded reported a low level of emotional and mental health, which obviously has an impact on their parenting. The most commonly identified concerns were their children’s education (50%), concerns about their child’s mental

²⁴⁰ Ibid

²⁴¹ See: <https://www.education-ni.gov.uk/sites/default/files/publications/education/ANNOUNCEMENT%20FROM%20THE%20EDUCATION%20MINISTER%20ON%20EXTENSION%20OF%20COVID.pdf>

²⁴² See: <https://www.education-ni.gov.uk/news/mcilveen-announces-move-towards-225-hours-funded-pre-school-all-children>

health (47%) and fear/ anxiety relating to potential illness or infection from COVID-19 (44%).²⁴³ They identified the top three challenges for parenting today as mental health (53%), technology (52%) and changes in society (33%). Asked what helped them achieve their hopes for their children, 93% of respondents selected ‘good family support’, with 43% selecting ‘strong social networks’ and 31% ‘community support’.²⁴⁴ **87% of parents who responded did not consider that parents ‘get enough support’, and this was particularly the case for parents of children with disabilities.** Parents expressed a desire for a range of supports to meet their needs, the most commonly selected options being online, face-to-face support in a venue, and a support group with other parents.

In a 2022 survey conducted across the UK, 2,073 children, 2,115 parents, and 1,353 grandparents were surveyed to gain their perspectives about the quality of children’s lives.²⁴⁵ Additional survey boosts were undertaken to increase sample size at nation levels. In Northern Ireland 107 children, 191 parents and 137 grandparents were surveyed. The results showed that “too many children face big barriers to fulfilling their potential”. Over half of surveyed parents (56%) and grandparents (60%) in Northern Ireland considered that childhoods today are worse than when they were younger – and a third of children (32%) agreed. The majority, 66% of surveyed parents and 60% of grandparents, considered that the **Government is investing too little in services that support childhoods.** 38% of parents and 40% of grandparents stated that services supporting childhoods in their areas have worsened since 2011. Only 11% of parents and 8% of grandparents considered that local services had improved.²⁴⁶ Action for Children recommended that the Executive should: invest in early mental health and wellbeing services for children; deliver an *Anti-Poverty Strategy* and introduce a child payment; ensure that all families have a right and access to family support that is adequately funded.²⁴⁷

Ensuring both parents share responsibilities for the upbringing and development of their children

A number of situations currently undermine the child’s right to maintain a relationship and contact with both parents when their parents have separated. Separated parents in Northern

²⁴³ Parenting NI (2022) *Big Parenting Survey Findings 2021*. February 2022. Available at: <https://www.parentingni.org/wp-content/uploads/2022/01/Big-Parenting-Survey-2021-FINAL-1.pdf>, p14

²⁴⁴ Ibid, p9

²⁴⁵ See: <https://www.actionforchildren.org.uk/our-work-and-impact/policy-work-campaigns-and-research/policy-reports/report-brighter-future-ahead/>

²⁴⁶ Action for Children (2022) *Securing a better childhood and a brighter future for every child in Northern Ireland*. Available at: https://media.actionforchildren.org.uk/documents/Northern_Ireland_mini-report.pdf?_ga=2.19949628.546801449.1664281199-249891153.1591274127

²⁴⁷ Ibid, p2

Ireland continue to ‘default’ to the adversarial legal system for contact or residency orders. Many re-visit the Family Court, particularly when the parent with whom the child resides is considered in contempt of court by the other parent. Family Proceedings Court statistics for 2019-2020 indicate an increase in applications for contact, the majority (65%) involving children aged under 8.²⁴⁸ High-conflict parental separation resulting in estrangement from one parent can have a significant negative impact on children. Family Mediation NI, an organisation providing early intervention mediation, reports that the majority of first callers are fathers who want to maintain a relationship with their child. Given the child’s right to maintain personal relations and direct contact with both parents on a regular basis, unless this is contrary to the child’s best interests, provision to support children and help parents share parental responsibilities is vital. Key protective factors supporting child resiliency following separation include: shared parental residency, as opposed to sole residency; living with the parent (mother or father) who has the best psychological wellbeing; continued involvement of the non-residential parent, especially with economic support; minimal conflict in the post-separation period; and parenting styles, including parental warmth, responsiveness, authoritative discipline and appropriate monitoring and supervision.²⁴⁹

Government and statutory agencies promote early intervention, particularly regarding child development, education, safety and family support. The *Children’s Services Cooperation (Northern Ireland) Act 2015* was considered a tool to encourage more joined-up policy and focused funding. Yet **funding for family mediation** as an alternative to the Court system is **minimal**. Provision of cross-departmental funding is required for independent family mediation providers to divert parents from the courts and into early intervention mediation which focuses parents’ attention on the needs of the child and improved access, rather than on ‘winning’ or ‘losing’ a court case. Not only would this reduce mediation waiting lists, which can encourage parents to resort back to the court, but also it is considerably less expensive than court costs²⁵⁰ and is likely to reduce government spending on other services in the long term.²⁵¹

Parenting NI, an organisation offering support and information to parents, has raised the issue of parents refusing mental health support as a result of concerns about the potential negative impact on determinations about their ‘fitness to parent’ or future contact with their child. A further concern is that **some children of non-resident parents had contact disrupted or**

²⁴⁸ Family Mediation NI submission, September 2020

²⁴⁹ Sneddon, H. (2013) *Separated Fathers: Fathers, Separation and Co-parenting*. Man Matters Policy Briefing Paper No 3. Available at: <https://www.mhfi.org/manmattersbriefing3.pdf>, p5

²⁵⁰ Ibid, p7

²⁵¹ Family Mediation NI submission, September 2020

stopped during the COVID-19 pandemic, with lack of ‘normal’ court proceedings making it difficult for them to seek recourse when contact arrangements have been breached.²⁵²

Children deprived of a family environment

Services to prevent children from entering alternative care

Rates of children on the child protection register in Northern Ireland remain higher than in other UK jurisdictions and the numbers are increasing. According to the 2020/21 children’s social care statistics, on 31 March 2021 2,298 children and young people were listed on the Child Protection Register (representing 52.1 children per 10,000 population under 18 years of age).²⁵³ While remaining high, in 2020 the number of child protection referrals made between March and June fell sharply from 795 for the quarter ending March 2020 to 629 in the quarter ending June 2020. There is concern that this reflected children in need not being identified during COVID-19 lockdown due to their lack of contact with services (including as a result of Department of Health COVID-19 emergency legislation which reduced the protections afforded to children)²⁵⁴ rather than a genuine decrease in need.

Vulnerable children require targeted support to ensure they have a healthy and happy childhood. Children and young people have highlighted **need for interventions aimed at supporting families to protect children while helping them stay together**, rather than removing children.²⁵⁵ **Adequate early intervention is also necessary for those at the edge of care or in need.**²⁵⁶

A major concern in Northern Ireland is the **need to resource appropriate alternative care for children, with a variety of placement options to meet children’s needs.** Social care statistics demonstrate that the number of children in care has risen annually since 2015/16.²⁵⁷ On 31 March 2021, 3,530 children and young people were in care in Northern Ireland. This was the highest number recorded since the introduction of the *Children (Northern Ireland) Order 1995*, and a rise of 41% in the last ten years. The majority were in foster care placements (81%), 9% were placed with parents, 6% in residential care and 4% in other placements. 21%

²⁵² Parenting NI submission, September 2020

²⁵³ Department of Health (2021) *Children’s Social Care Statistics for Northern Ireland 2020/21*, 11 November 2021, p14

²⁵⁴ Children’s Law Centre (2020) *Children’s Social Care (Coronavirus) (Temporary Modification of Children’s Social Care) Regulations (NI) 2020*

²⁵⁵ RCPCH submission, September 2020

²⁵⁶ The Fostering Network submission, September 2020

²⁵⁷ Department of Health (2021) *Children’s Social Care Statistics for Northern Ireland 2020/21*, 11 November 2021, p6

of those in care had been looked after for less than a year, 31% had been looked after for five years or longer.²⁵⁸

The number of children in care, on the child protection register or referred to social services has been rising steadily since August 2020 (ie during the Coronavirus pandemic).²⁵⁹ Concern expressed in 2020 by the Fostering Network about **social services not being able to recruit and retain adequate numbers of foster carers to meet this increasing need** (particularly in relation to teenagers and sibling groups), leading to increased use of unregulated placements,²⁶⁰ has been realised. Action for Children services report that individual Trusts are routinely circulating lists of 40 children requiring foster placements to independent fostering agencies. Trusts are accommodating teenagers in B&Bs and hotels due to lack of kinship, fostering and residential options. Trusts have been operating RAG (Red, Amber, Green) rating of children in care, opting for quarterly visits to children rated green. Children and young people, families and foster carers regularly complain about the turnover of social workers.²⁶¹ The social worker vacancy rate in September 2022 was 10.5%,²⁶² with rates highest in Children’s Services Family Intervention Teams and Looked After Children Teams, leading to reliance on agency staff and spending of £8.5 million on agency social workers in 2020/21.²⁶³ The British Association of Social Workers Northern Ireland recognises that, “Where there is high staff turnover and reliance on agency social workers on temporary contracts, the relationships which are central to provision of high-quality social work services cannot be formed. As a result, service users are impacted negatively”.²⁶⁴

Placement of children in unregulated alternative care or residential care homes without appropriate safeguards

The number and type of care services outsourced to private, for-profit, companies in other jurisdictions has increased. VOYPIC, an organisation working with care experienced children and young people, has raised concerns that should Northern Ireland implement this strategy,

²⁵⁸ Department of Health (2021) *Children’s Social Care Statistics for Northern Ireland 2020/21*, 11 November 2021, p27, 34, 35

²⁵⁹ Department of Health (2020) *Northern Ireland Children’s Social Services Data during COVID-19*, 16 September 2020

²⁶⁰ The Fostering Network submission, September 2020

²⁶¹ Action for Children submission, October 2022

²⁶² <https://www.health-ni.gov.uk/publications/northern-ireland-health-and-social-care-hsc-workforce-vacancies-september-2022>

²⁶³ See: https://www.basw.co.uk/system/files/resources/basw_ni-a_manifesto_for_social_work.pdf, p2

²⁶⁴ Ibid

there is **potential for the quality of care services not being prioritised when for-profit companies are faced with pressure from shareholders to return a profit.**²⁶⁵

Support for children leaving care

Transition from care can be a daunting experience and many young people - particularly those seeking to access education, training or employment - need a range of support to help them make this transition successfully in ways which enable them to reach their full potential and adequately prepare for adulthood.²⁶⁶ Reported issues include **lack of appointment of Personal Advisors and limited preparation of meaningful Pathway Plans, resulting in children leaving care with no accommodation** and therefore being reported to the Northern Ireland Housing Executive as homeless on their 18th birthday.²⁶⁷ A sizeable cohort continue to experience multiple moves, often within a short space of time, including **placement in a range of unsuitable accommodation not appropriate for their specific needs**. Timely access to appropriate accommodation is essential to providing care experienced young people with stability.²⁶⁸

Adoption and Children Bill, and the strategy for looked after children

After being consulted on in 2017, the *Adoption and Children Bill* was finally passed in the Northern Ireland Assembly with full cross-party support on 15 March 2022. **The *Adoption and Children Act (Northern Ireland) 2022* is intended to reform adoption law, making amendments to the *Children (Northern Ireland) Order 1995* to improve outcomes for looked after children and care leavers.** This includes placing the GEM [Going the Extra Mile] Scheme on a statutory basis, allowing children to stay with foster carers up to age 21 and providing continued stability to enable them to complete their education and gradually gain independence.

A raft of regulations are required to implement this Act in full and the Department of Health is planning to develop these over the 5 year period 2022-2027. Two consultations related to the Act were published on 27 October 2022. The first sought views on proposed transitional arrangements to enable some elements of the Adoption Support Services framework to be implemented as part of the existing scheme for adoption, in advance of full implementation of the Act. These new measures, when commenced, will place a duty on Health and Social

²⁶⁵ VOYPIC submission, September 2020

²⁶⁶ VOYPIC submission, September 2020; Include Youth (2018) *Response to the Department of Health consultation on the Strategy for Looked After Children: Improving Children's Lives*. Available at: <http://www.includeyouth.org/mgmt/resources/include-youth-response-to-improving-childrens-lives-strategy-for-looked-after-children-july-2018.pdf>

²⁶⁷ Children's Law Centre submission, November 2022

²⁶⁸ VOYPIC submission, September 2020

Care Trusts to make arrangements for provision of specified services, including financial support, and introduce the right to an assessment of needs in relation to adoption support services. The second consultation is linked to provision in the Act which extends support available to those preparing to leave/ who have left care until they reach the age of 25. The Department is seeking views on two possible additional amendments to existing Regulations - one relating to assessing the needs of care leavers who are victims of trafficking or are unaccompanied asylum-seekers, the second relating to the matters to be taken into account when considering whether accommodation is suitable for a young person who has left care. Due to time pressures, both consultations were issued without being accompanied by draft Regulations.

However, **foster care in Northern Ireland remains governed by 1996 regulations**. Although new regulations were published for consultation in 2015, these were not approved and remain in draft. Had they received assent, they would have triggered the development of minimum standards for foster care and an inspection process to ensure that foster care provision meets the assessed needs of children.²⁶⁹ Draft foster placement and fostering agencies regulations are currently out for consultation until 23 December 2022, although without a functioning Executive these will not be implemented.²⁷⁰

In 2018 the Departments of Health and Education in Northern Ireland issued a draft Strategy for Looked After Children [LAC] and LAC were a named priority group within the *Outcomes Delivery Plan* developed by civil servants in the absence of a functioning Executive in 2019. In 2021, the Departments of Health and Education finally produced the **Looked After Children Strategy: A Life Deserved: 'Caring' for Children and Young People in Northern Ireland**.²⁷¹

Additional issues

Secure accommodation

The CRC (2016, para 53d) recommended that secure accommodation which deprives children of their liberty should only be used as a measure of last resort and for the shortest possible period of time, with development of alternatives to secure accommodation.

Under Article 44(2) of the *Children (NI) Order 1995*, a Health and Social Care Trust may apply to a magistrate's court to admit a child to secure care: (a) if the child has a history of absconding and is likely to run away from any other type of accommodation and, if s/he

²⁶⁹ The Fostering Network submission, September 2020

²⁷⁰ See: <https://www.health-ni.gov.uk/news/minister-launches-consultation-draft-foster-placement-and-fostering-agencies-regulations-northern>

²⁷¹ See: <https://www.health-ni.gov.uk/sites/default/files/publications/health/doh-lac-strategy.pdf>

absconds is likely to suffer significant harm; (b) if kept in any other type of accommodation s/he is likely to injure her/himself or others. A Multi-agency Panel for Admission to Secure Care was established in 2019, replacing the Restriction of Liberty Panels previously operating in each of the five Health and Social Care Trusts. This Panel considers each application for a secure placement in terms of whether children meet the criteria, prioritising referrals on the basis of those most in need or who pose the greatest risk to themselves or others. Young people should be invited to attend the Panel, or an advocate from VOYPIC can represent the young person's views. **The young person does not have legal representation during this process.** In this context, the process may not be compliant with ECHR Article 6 (right to a fair and public hearing).

Following a review of regional facilities (focused on Woodlands Juvenile Justice Centre, Lakewood Secure Care Centre, Beechcroft In-patient Child and Adolescent Mental Health Unit, and Donard regional residential children's home)²⁷² the Departments of Health and Justice conducted a consultation about the establishment of a Regional Care and Justice Campus, merging the geographically close Juvenile Justice Centre and the Secure Care Centre (with joint governance, management and service model). Concerns about these proposed changes included: the process for placing children; the integration of children and young people with different needs and vulnerabilities; and that the proposals were based on institutionalisation rather than provision of specialised, community-based support and places of safety in local areas.²⁷³ United Nations *Guidelines for the Alternative Care of Children*,²⁷⁴ envisage that states should refrain from institutionalizing children in need of care, protection, education, rehabilitation or treatment. Reinforcing these Guidelines, the 2019 *Global Study on Children Deprived of Liberty* recommended: "States shall develop and implement a strategy for progressive deinstitutionalization which includes significant investments in family and community-based support and services. States should prioritise a closure of large scale institutions and avoid the creation of new institutions".²⁷⁵ In March 2022, it was announced that plans for a Regional Care and Justice Campus would not be progressed. There has been no detail provided regarding community-based alternative accommodation options and support in the form of what was termed 'satellite provision' for detained young people.

²⁷² Archibald, D. (2018) *Review of Regional Facilities for Children and Young People*, Department of Health

²⁷³ Department of Health and Department of Justice (2021) *Establishment of a Regional Care and Justice Campus. Consultation Analysis Report*. June 2021. Available at: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/ecjc-consultation-analysis-report.pdf>

²⁷⁴ *United Nations Guidelines for the Alternative Care of Children*, A/RES/64/142, 24 February 2010

²⁷⁵ Nowak, M. (2019) *Global Study on Children Deprived of Liberty Report*, A/74/136, 11 July 2019, para 127

Many individuals placed in secure accommodation have also experienced detention in custody, or in the regional in-patient child and adolescent mental health Unit, or both.²⁷⁶ Usually vulnerable young people, they have complex needs.²⁷⁷ Young people have expressed concerns about use of secure care. A group consulted about care issues in August 2020 suggested that it merely “puts a lid on them for a while” and does not provide necessary help.²⁷⁸ In recent consultation with young people in secure care, individuals questioned their deprivation of liberty, noting the negative impacts of repeat admissions and being detained in a very restricted environment.²⁷⁹ Further, adequate plans are not always in place to ensure consistency of support to individuals when they leave secure care and return to the community.²⁸⁰

Children of incarcerated parents

Children of incarcerated parents have the right to maintain relations and direct contact while separated from their parents, provided this is in the child’s best interests. However, **families are often not promptly assigned to a social worker so that an assessment can be made regarding suitability of contact when a parent enters custody**, leading to a significant gap in contact. Not only does this have a detrimental impact on a child’s relationship with their parent, but also it affects provision of support to prepare the child/ family for the incarcerated parent’s release from custody and future family dynamics.

NIACRO, working with the families of those in conflict with the law, has raised awareness about **the importance of parents in custody being involved in decisions about their children’s education and care**. For example: through attending case conferences or meetings with teachers via video link; school reports being sent to parents in prison; and longer visits in which parents and children can engage in crafts, play, healthy eating sessions or homework together. In addition to providing more child-centred activities, prison visit scheduling should be more flexible so that visiting times do not clash with school routines or children’s weekend sport/ interest clubs.²⁸¹

²⁷⁶ Archibald, D. (2018) *Review of Regional Facilities for Children and Young People*, Department of Health, p57

²⁷⁷ Haydon, D. (2016) *Promoting and Protecting the Rights of Young People who Experience Secure Care in Northern Ireland*, Children’s Law Centre

²⁷⁸ Include Youth consultation with IY Derry Young People’s Group (August 2020), cited in Include Youth submission, September 2020

²⁷⁹ Haydon, D. (2022) *Rights Here, Right Now: Children and Young People’s Report to the UN Committee on the Rights of the Child*, Belfast: Children’s Law Centre

²⁸⁰ VOYPIC submission, September 2020

²⁸¹ NIACRO submission, September 2020

Opportunities for children to express their views or concerns about loved ones in custody are affected by access to, or engagement with, NGOs providing family support for prisoners. However, **significant numbers of children with an incarcerated parent are unknown to services and therefore do not receive support or advocacy.**²⁸²

G. BASIC HEALTH AND WELFARE

Health and health services

Inequalities in health outcomes and access to high-quality health services for children in disadvantaged situations

[See ‘**Non-discrimination**’ section for information about access to health services for specific groups.]

Northern Ireland’s Department of Health *Health Inequalities Annual Report 2022* demonstrated that **inequality gaps had widened** in relation to eight indicators over the last five years: female life expectancy at birth; prescription of statins; infant mortality rate; teenage birth rate under 20; low birth rate; Primary 1 BMI (obese); Primary 1 BMI (overweight or obese); dental extraction rate.²⁸³ The difference in infant mortality rates 2016-2020 was 5.2% deaths per 1,000 live births in the most deprived areas compared with 3.7% in the least deprived areas. Differences in low birth weight were evident in 2020: 7.5% of live births in the most deprived areas compared with 5% in the least deprived areas. In 2018/19-2020/21, the proportion of Primary 1 pupils whose BMI was considered obese was 7.7% in the most deprived areas compared with 4.7% in the least deprived areas.²⁸⁴

Malnutrition, overweight and obesity among children

The **current framework for preventing and addressing overweight and obesity in Northern Ireland: A Fitter Future for All 2012-2022**²⁸⁵ is due to expire and there is no publicly available information to indicate that there are any plans to renew this Strategy. The Department of Health website states:

“Tackling Childhood Obesity is a public health priority, with 1 in 4 children across the island of Ireland now carrying excess weight. Without action to reverse the trends we’re seeing in our own and our children’s weight and health, the next generation

²⁸² NIACRO submission, September 2020

²⁸³ See: <https://www.health-ni.gov.uk/sites/default/files/publications/health/hscims-report-2022.pdf>, p12

²⁸⁴ Ibid, p30-32

²⁸⁵ See: <https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/obesity-fitter-future-framework-ni-2012-22.pdf>

will be beset with significant ill-health related to overweight and obesity, most of which is potentially preventable.

With research indicating a demand for practical solutions but in small, achievable steps, the campaign messaging will focus on six core actions for parents, on a phased, three-year basis:

- understanding portion sizes for children
- how to manage treat foods like sweets, crisps and chocolate
- being more physically active
- reducing screen-time
- replacing sugary drinks
- encouraging more sleep

The Special Advisory Group on Obesity (SAGO), the *Healthy Ireland Framework* in the Republic of Ireland and the *Fitter Futures for All Implementation Plan* in Northern Ireland form the strategic basis for the campaign.”²⁸⁶

Food insecurity and nutrition

The CRC (2016, paras 67a and b) recommended systematic data collection on food security and nutrition for children, with regular monitoring and assessment of the effectiveness of policies/ programmes to deal with these issues. At a Stormont event in June 2017, several organisations gave evidence about **food insecurity** and ‘holiday hunger’.²⁸⁷ Christians Against Poverty highlighted that parents skipping meals and not being able to provide their children with three meals per day are common among families living in poverty. Organisations working with families noted that those paying for childcare reported having to cut back on other household expenses to meet childcare costs, including buying less fruit and vegetables or parents going without breakfast or lunch to feed their children. The scale of the response needed to tackle food insecurity falls far short of the need experienced by children and families, many of whom suffer in silence and behind closed doors.²⁸⁸

In terms of ‘**holiday hunger**’, it was suggested that more than 100,000 children on free school meals could be at risk of going without food during school holidays (i.e. more than one in four school age children). The Tressell Trust confirmed a spike in those using

²⁸⁶ See: <https://www.health-ni.gov.uk/articles/obesity-prevention>

²⁸⁷ Finlay, E. (2017) *Holiday Hunger Evidence Session*. All Party Group on Children and Young People, CiNI. Available at: http://www.ci-ni.org.uk/DatabaseDocs/nav_1480087_new6383235apgfinafinalreport.pdf

²⁸⁸ Children in Northern Ireland submission, September 2020

foodbanks during the July and August school holidays, with a 17% increase compared with numbers during May and June. Parents from the SPACE project confirmed that financial difficulties are exacerbated during holidays when some parents have a reduced income because they are on term-time contracts and others, particularly lone parents, reduce their hours to care for their children.

Poverty has an impact on nutrition as low income families are likely to be surviving on cheap food lacking the nutritional elements required for growing children. In a survey by the Family Fund of 110 parents of children with disabilities, 79% of families responded that they found it difficult to afford healthy food either 'often' or 'sometimes' in the last 12 months, with almost half (46%) having to miss a meal to prioritise feeding their children. The main reason was the cost of healthy food options on a low budget, especially when children have special dietary and/or sensory needs and/or food intolerances. Respondents reported seeking cheaper but less healthy/filling food, often because of tiredness and the time needed for other caring responsibilities.²⁸⁹ In December 2019 a local charity warned that more than 20,000 children aged under 10 years, an average of two children in every primary class, were "facing Christmas without warmth or fresh food".²⁹⁰

Breastfeeding

*Breastfeeding – A Great Start: A Strategy for Northern Ireland 2013-2023*²⁹¹ is soon due to expire. According to a mid-term review in 2018, Northern Ireland continues to have the lowest breastfeeding rates in the UK.²⁹²

Access to safe abortion and post-abortion care services

In 2018, CEDAW recommended that the UK State Party: "Provide non-biased, scientifically sound and rights-based counselling and information on sexual and reproductive health services, including on all methods of contraception and access to abortion; Ensure accessibility and affordability of sexual and reproductive health services and products, including on safe and modern contraception, including oral and emergency, long term or permanent and adopt a protocol to facilitate access at pharmacies, clinics and hospitals; Provide women with access to high quality abortion and post-abortion care in all public health

²⁸⁹ Finlay, E. (2017) *Holiday Hunger Evidence Session*. All Party Group on Children and Young People, CiNI. Available at: http://www.ci-ni.org.uk/DatabaseDocs/nav_1480087_new6383235apgfinafinalreport.pdf

²⁹⁰ See: <https://www.belfasttelegraph.co.uk/news/northern-ireland/over-20000-northern-ireland-kids-facing-a-cold-and-hungry-christmas-childrens-charity->

²⁹¹ See: <https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/breastfeeding-strategy-2014.pdf>

²⁹² See: <https://www.health-ni.gov.uk/sites/default/files/publications/health/draft-mid-term-review-breastfeeding-strategy.pdf>, p4

facilities, and adopt guidance on doctor-patient confidentiality in this area” (Recommendation 86a, b, c).²⁹³

In 2019 abortion was decriminalized in Northern Ireland by the UK Government, when the Northern Ireland Executive was not in place. The *Abortion (Northern Ireland) (No 2) Regulations 2020* provides a new legal basis for medical professionals to terminate pregnancies lawfully. Consequently, since the start of April 2020, young women in Northern Ireland who have an unwanted pregnancy have been able to access **Early Medical Abortion (EMA) services up to the 10th week of pregnancy**. For those under age 16, safeguarding policies are followed. Doctors report that ‘Gillick’ principles²⁹⁴ have not been an issue since all under 18 year olds seeking abortion have been accompanied by a parent.²⁹⁵ However, abortion is not available after ten weeks gestation and this has an impact on those who may not realise they are pregnant sufficiently early to access EMA. These young women have been forced to travel to other jurisdictions for an abortion, including during the Coronavirus pandemic which put them and anyone accompanying them at risk. Of the 63 terminations of pregnancy carried out in Health and Social Care hospitals in Northern Ireland as an inpatient or day case during 2020-2021, 10 were on women aged 24 and under.²⁹⁶

The openly anti-abortion **Health Minister**²⁹⁷ **has refused to centrally commission abortion services**, insisting that this requires the approval of the five-Party coalition Executive, which has not been functioning, as it is his legal responsibility to refer controversial or significant decisions to other Ministers.²⁹⁸ Individual Health and Social Care Trusts, therefore, have to commission and offer these services on an ad-hoc basis. In May 2022, commenting on approval of new powers which would allow him to speed up the widespread commissioning of abortion services, the [then] Secretary of State for Northern Ireland stated: “My first choice is to see this done where it should be done in the Department of Health, but they have just

²⁹³ CEDAW (2018) *Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/C/OP.8/GBR/1, 23 February 2018.

²⁹⁴ See: *Gillick v West Norfolk and Wisbech AHA* [1985] UKHL 7

²⁹⁵ Goretti Horgan (Ulster University) submission to Children’s Law Centre, September 2020

²⁹⁶ See: <https://www.health-ni.gov.uk/sites/default/files/publications/health/hs-termination-of-pregnancy-stats-20-21.pdf>, p4

²⁹⁷ See: Ferguson, A. (2018) Abortion in Northern Ireland: Where do the parties stand?, *Irish Times*, 7 June 2018. Available at: <https://www.irishtimes.com/news/social-affairs/abortion-in-northern-ireland-where-do-the-parties-stand-1.3522879>

²⁹⁸ See: <https://www.irishtimes.com/news/social-affairs/ni-health-minister-defends-role-as-abortion-services-still-not-commissioned-1.4517186>; <https://www.belfasttelegraph.co.uk/news/northern-ireland/stormont-health-minister-pressed-to-commission-abortion-services-40119659.html>

not done that. It is morally wrong and it is abhorrent that women and girls in Northern Ireland cannot access healthcare they can in the rest of the UK.”²⁹⁹ On 22 June 2022, the House of Commons voted on the *Abortion (Northern Ireland) Regulations 2022* (SI, 2022, No. 554), which made provision for the Secretary of State for Northern Ireland to ensure that the 2018 CEDAW recommendations are implemented. The most recent Secretary of State affirmed that a small team of experts within the Northern Ireland Office is working with the Department of Health to prepare a commissioning plan, and the UK Government will intervene if the Health Minister does not act.³⁰⁰ However, there is no timeline in place and accessing surgical abortions of gestation in the 2nd and 3rd trimesters remains particularly problematic, as is the lack of telemedicine abortion care.³⁰¹ **On 24 October 2022 the Secretary of State announced that the UK Government will commission abortion services for women and girls in Northern Ireland.** The Northern Ireland Office stated: “In the coming weeks, he will meet Chief Executives of Health and Social Care Trusts to ensure these services can be provided. The UK Government has been forced to act three years after the decriminalisation of abortion in Northern Ireland, as the Northern Ireland Department of Health has not ensured the availability of services ... and have shown no indications that they will act to provide them.”³⁰² On 2 December 2022 it was announced by the Northern Ireland Office that the Secretary of State had written to the Department of Health, instructing the Department to formally commission abortion services in Northern Ireland.³⁰³

Alongside a lack of information and centrally-funded services, **harassment and intimidation outside abortion providers are a significant barrier to access.**³⁰⁴ Although legislation creating ‘buffer zones’ in the immediate vicinity of clinics to prevent harassment and intimidation of women by anti-choice activists, passed its final stage in the Northern Ireland Assembly in March 2022,³⁰⁵ this has not been enacted as the Attorney General’s office referred it to the

²⁹⁹ See: <https://www.belfasttelegraph.co.uk/news/northern-ireland/brandon-lewis-approves-powers-to-speed-up-abortion-services-in-northern-ireland-41665401.html>

³⁰⁰ Chris Heaton-Harris (2022) ‘Secretary of State: No excuse for executive not to be formed’, *The Irish News*, 27 September 2022. Available at: https://www.irishnews.com/news/northernirelandnews/2022/09/27/news/secretary_of_state_no_excuse_for_executive_not_to_be_formed-2840810/

³⁰¹ CAJ submission, October 2022

³⁰² See: <https://www.gov.uk/government/news/uk-government-to-commission-abortion-services-in-northern-ireland>

³⁰³ See: <https://www.gov.uk/government/news/uk-government-to-commission-abortion-services-in-northern-ireland>

³⁰⁴ See: <https://www.theguardian.com/world/2022/sep/16/protesters-abuse-campaigners-battling-uk-abortion-clinics-back-off-scotland>

³⁰⁵ See: <https://humanists.uk/2022/03/25/northern-ireland-assembly-passes-buffer-zone-law-to-protect-women-accessing-abortion-services/>

UK Supreme Court. The Supreme Court considered the case in June 2022 and its ruling on whether clause 5(2)(a) of the *Abortion Services (Safe Access Zones) (Northern Ireland) Bill* is ‘outside the legislative competency of the Northern Ireland Assembly because it disproportionately interferes with the rights of persons who wish to express their opposition to the provision of abortion treatment services in Northern Ireland’,³⁰⁶ was announced on 7 December 2022. The Supreme Court reached a unanimous judgment which stated that the restrictions were in pursuit of a legitimate aim (promoting public health) and compatible with the ECHR rights of anti-abortion protesters. The Chief Commissioner of the Human Rights Commission commented that the Bill should receive Royal Assent as a matter of urgency.³⁰⁷

Mental illness and self-harm

Northern Ireland’s Health Minister established the Mental Health Support Fund in 2021, allocating £8.7m to enhance mental health support available through charitable and community organisations across Northern Ireland. In 2022 a further £6.8m funding was allocated in grants,³⁰⁸ including £260,000 to The Rainbow Project in partnership with HEReNI (both LGBTQI+ sector organisations) for investment in growing demand for counselling and mental health services through expansion of existing services to support LGBTQI+ people and their families.³⁰⁹ While a positive development, the breadth of reach this will have is unclear.

Ensuring that children with mental health conditions have prompt access to mental health services

There have been recent initiatives in Northern Ireland regarding mental health, including the 2020 *Mental Health Action Plan*,³¹⁰ the *2021-2031 Mental Health Strategy*,³¹¹ and appointment of a ‘Mental Health Champion’. However, concerns have been raised about how this role was

³⁰⁶ See: <https://www.supremecourt.uk/cases/uksc-2022-0077.html>

³⁰⁷ Siddique, H. (2022) Northern Ireland can create abortion clinic buffer zones, supreme court rules, *The Guardian*, 7 December 2022. Available at: <https://www.theguardian.com/uk-news/2022/dec/07/northern-ireland-abortion-clinic-buffer-zones-supreme-court-ruling>

³⁰⁸ See: <https://www.health-ni.gov.uk/news/mental-health-support-fund-making-real-difference-communities-health-minister>

³⁰⁹ See: <https://www.health-ni.gov.uk/news/rainbow-project-and-here-ni-benefit-ps260000-funding-boost>; <https://www.rainbow-project.org/news/dohmhffunding/>

³¹⁰ See: <https://www.health-ni.gov.uk/sites/default/files/publications/health/mh-action-plan-plus-covid-response-plan.pdf>

³¹¹ See: <https://www.health-ni.gov.uk/sites/default/files/publications/health/doh-mhs-strategy-2021-2031.pdf>

established, its lack of power and independence.³¹² The Year 1 funding plan required £9.59 million funding and only £2 million has been allocated according to a presentation by the Mental Health Champion to the All Party Group on Mental Health. This shortfall will undermine access to services as early years services and early prevention services in the community will lack the investment necessary to match demand. The cost of living crisis, where family incomes are under serious pressure, is likely to increase demand for mental health support. Pressures on parental and infant mental health are a concern. Implementation of an *Anti-poverty Strategy* which recommended a Child Payment would help families in Northern Ireland with the physical and mental pressures facing them. However, without a functioning Executive there has been no action.³¹³

Concerns are growing in relation to the level of funding available to deliver the commitments of the *Mental Health Strategy*. In May 2022 a circular from the Department of Health, *Mental Health Virtual Reference Group Newsletter* stated:

“The Mental Health Strategy Funding Plan, which was published alongside the Strategy, estimated that the cost of implementation would be £1.2bn over 10 years. In light of the significant financial challenges across the Health and Social Care System, it is not possible to fund this level of implementation from within the Department of Health’s existing resources.

While the overall funding for the Strategy has not yet been confirmed, the Department has been using its existing resources to take forward a range of important preparatory activities, alongside the work to complete the key enabling actions that were started in 2021/22. It should be noted that, while this funding allows the continuation of existing projects and other preparatory work, it is not sufficient to take forward actual implementation of the additional Mental Health Strategy actions.”³¹⁴

Despite the CRC (2008, para 57; 2016, para 61b) consistently recommending rigorous investment in Child and Adolescent Mental Health Services [CAMHS], there has been a **long-standing, chronic under-investment in CAMHS**. Despite 2021 Census figures indicating that the under-18 population is approximately 23% of Northern Ireland’s overall population, the *2021-2031 Mental Health Strategy* states: “Currently CAMHS funding is approximately £20-

³¹² Winters, R. (2022) ‘Mental Health Champion’s office “intentionally created” to lack power and independence’, *The Detail*, 30 August 2022. Available at: <https://thedetail.tv/articles/mental-health-champion-s-office-intentionally-created-without-power-or-independence>

³¹³ Action for Children submission, October 2022

³¹⁴ Children’s Law Centre submission, November 2022

25m per year, which is between 6.5% and 8.5% of the total mental health budget.”³¹⁵ It was argued in the *Mental Health Strategy* that the budget for CAMHS “must increase to 10% of the overall mental health budget”.³¹⁶ While this increase is necessary, it would not be sufficient to meet the existing scale of need, or the required structural changes to service provision. The NICCY *Still Waiting* report documented significant issues regarding CAMHS services, including: long waiting times; a postcode lottery in terms of access to services; lack of understanding about services, leading to inappropriate or rejected referrals.³¹⁷

Urgent concerns include: suicide rates which are significantly higher in Northern Ireland than in the other UK jurisdictions (17.8 per 100,000 aged 15-24 compared with 8.1 in England, 9.7 in Wales and 15.1 in Scotland);³¹⁸ increasing incidence of self-harm; increasing anti-depressant prescription rates for 0-19 year olds; self-reported poor emotional well-being;³¹⁹ eating disorders; low levels of self-esteem; bullying, particularly via social media and other online platforms; increased anxiety, particularly in young children; limited policy and practice in the areas of perinatal and infant mental health;³²⁰ high levels of self harm and suicidal thoughts among LGBT young people.³²¹ According to the 2020 *Youth Wellbeing Child and Adolescent Prevalence Study*, one in ten children and young people experienced emotional problems, with significantly higher rates in deprived areas. One in six had a pattern of eating disorder and almost one in ten 11- 19 year olds reported self-injurious behaviours. Anxiety and depression was 25% more common among children and young people in Northern Ireland compared to other UK jurisdictions.³²² In 2021/22, Childline counsellors provided 204,926 counselling sessions to children and young people. The five main concerns that children and

³¹⁵ See: <https://www.health-ni.gov.uk/sites/default/files/publications/health/doh-mhs-strategy-2021-2031.pdf>, p46

³¹⁶ Ibid

³¹⁷ See: <https://www.niccy.org/media/3114/niccy-still-waiting-report-sept-18-web.pdf>

³¹⁸ RCPCH (2020) *State of Child Health. Northern Ireland*, p23

³¹⁹ NICCY (2017) *Child and Adolescent Mental Health in Northern Ireland*. Scoping Paper. Available at: <https://www.niccy.org/media/2810/niccy-scoping-paper-mental-health-review-apr-2017.pdf>

³²⁰ National Children’s Bureau submission, September 2020; NCB (2019) *Development of an Emotional Health and Wellbeing Framework for Children and Young People in Northern Ireland*. Available at: <https://www.iassnetwork.org.uk/sites/default/files/uploads/files/Informing%2520the%2520Development%2520of%2520an%2520Emotional%2520Health%2520and%2520Wellbeing%2520Framework..pdf>

³²¹ Neill, G. and Meehan, D. (2017) *Still Shouting. The needs and experiences of young people in Northern Ireland who identify as lesbian, gay, bisexual and/or transgender (LGBT)*, Cara-Friend/ Youth Action, p14

³²² See: <https://www.health-ni.gov.uk/sites/default/files/publications/health/doh-mhs-strategy-2021-2031.pdf>, p13

young people raised with Childline counsellors were: mental or emotional health; suicidal thoughts and feelings; family relationships; self-harm; sex, relationships and puberty.³²³

Regarding specific groups, recent research on the **mental health of deaf children and young people** in Northern Ireland suggests that deaf children have statistically significant higher prevalence of Depression, Anxiety, Generalized Anxiety Disorder, OCD, Panic Disorder and Separation Anxiety Disorder compared to hearing children. Almost 21% of deaf children reported having at least one psychological condition compared with 12% of hearing children. These findings are consistent with previous studies from other countries, which indicate that deaf children have a higher prevalence of emotional wellbeing issues compared with hearing children.³²⁴ However, currently there is no permanent specialist deaf Child and Adolescent Mental Health Service in Northern Ireland.

Access to **therapeutic services for children in care** continues to be poor, with limited services in all Trusts.³²⁵

According to the *State of Child Health 2020* report,³²⁶ **children with long-term conditions** are more likely to develop mental health problems and have poorer education outcomes.

Strategic commitments to date have focused mainly on service provision for specialist needs in respect of **perinatal mental health care** and CAMHS, which operate to strict criteria. The majority of women experiencing perinatal mental health problems fall within the mild-to-moderate category.³²⁷ Thus, the strategic commitments under Action 29a of the *Mental Health Strategy 2021-31* will not apply to the majority of families affected.

In relation to the new strategic commitment under Action 11: “ensure that the needs of infants are met in mental health services, and meet the needs of vulnerable children and young people when developing and improving CAMHS, putting in place a ‘no wrong door’ approach”, detail is lacking as to how/when this will be implemented. If the commitment is about bringing 0-3s within the remit of CAMHS, details are required regarding the criteria for

³²³ See: <https://learning.nspcc.org.uk/research-resources/statistics-briefings/childline-nspcc-helpline-statistics>

³²⁴ Byrne, B. and McNamee, C. (2022) *The Emotional Well-being of Deaf Children and Young People*. Belfast: Centre for Children’s Rights, QUB.

³²⁵ Action for Children submission, October 2022

³²⁶ See: RCPCH (2020) *State of Child Health 2020. Northern Ireland*. Available at: <https://stateofchildhealth.rcpch.ac.uk/evidence/nations/northern-ireland/>

³²⁷ NSPCC (2018) *Time for action on perinatal mental health care in Northern Ireland*. Available at: <https://learning.nspcc.org.uk/research-resources/2018/time-for-action-perinatal-mental-health-care-northern-ireland>

inclusion (for example, experience of trauma through abuse and neglect). This is crucial given that **babies and very young children** are already at greater risk of maltreatment than older children. Although under 5 year olds make up 27% of the child population, they are disproportionately represented on the child protection register (39% of those on the register).³²⁸ As with strategic commitments to perinatal mental health, the concern is that action to support babies is limited to medicalised approaches. There is limited evidence of commitments to new, preventative and targeted actions being taken to support babies' wellbeing and developmental needs, which require a very different approach to that adopted with older age groups.³²⁹

Northern Ireland does not have a dedicated in-patient eating disorder service and is reliant on hospitals, particularly Beechcroft in-patient Child and Adolescent Mental Health Unit which is not a dedicated eating disorder in-patient setting, to respond. In June 2021, the Department of Health released figures showing that review appointments to eating disorder services for adults and children in Health and Social Care Trusts rose by almost 40% from the previous year: 9,969 appointments during 2019-2020 to 13,792 in 2020-2021. Separate data indicates that the number of 10-19 year olds diagnosed with anorexia nervosa increased from 52 in 2011-2012 to 81 in 2018-2019. However, the number could be significantly higher as it does not include individuals who had not been hospitalized, such as those seeking help in community-based settings or those who chose not to seek help.³³⁰ In addition to an increasing number of young people seeking support for eating disorders, many have to wait a long time before being seen by a specialist. In evidence to the Assembly Education Committee, a representative from the Eating Disorders Association NI reported that in one case a child deemed an emergency had waited 26 weeks. During the COVID-19 pandemic, the age of children contacting the Eating Disorders Association NI was much lower than previously experienced (with several children aged 13 or 14).³³¹ Although anorexia-type symptoms were the most common presentation to the Association, since summer 2021 more children have come forward with bulimia or binge-eating disorders. In addition to more boys seeking help for eating disorders, the severity of illness has also increased, particularly regarding children

³²⁸ Department for Health (2021) *Children's Social Care Statistics for Northern Ireland 2020/21*, 11 November 2021. Available at: <https://www.health-ni.gov.uk/sites/default/files/publications/health/child-social-care-20-21.pdf>, p15

³²⁹ NSPCC submission, October 2022

³³⁰ Meredith, R. (2021) 'Eating disorders: Increase in young teenagers seeking support'. BBC NEWS, 16 September 2021. Available at: <https://www.bbc.co.uk/news/uk-northern-ireland-58551051>

³³¹ See Education Committee Meeting oral briefing from the Eating Disorder Association on eating disorders among school-age children, 15 September 2021. Available at: <https://niassembly.tv/committee-for-education-meeting-wednesday-15-september-2021/>

with autism or ADHD who are not receiving help to manage their autism or ADHD symptoms and then develop eating disorders as they struggle to cope without appropriate support.³³²

Organisations working with young people have reported a significant **increase in the numbers requiring crisis intervention as well as mental health support**, both in emergency and non-emergency situations, **where they have been unable to access vital services**.³³³ In 2018, the Northern Ireland Commissioner for Children and Young People published a comprehensive review of mental health services and support for children: *Still Waiting*.³³⁴ It highlighted a range of issues regarding access to timely and effective mental health support. The system was demonstrably under significant pressure. There were profound difficulties in responding to the scale of need and complexity of issues presented by children and young people in a broader context of chronic under-investment and historical patterns of funding allocation not based on known mental health needs. This affects the availability, accessibility and quality of services provided. In response to an Assembly Question about the number waiting for their first appointment with CAMHS (generally to assess need), the Minister for Health stated that, at 30 April 2022, the figure was 2,223 children and young people. In a follow-up question about the number who had attended a first appointment and were on a waiting list to access the services to which they were referred, the Minister replied that the Department does not routinely collect these figures. Based on a request for this information from each Health and Social Care Trust, he had been informed that there were 221 children on a waiting list in the Belfast Trust; 336 in the South Eastern Trust; none in the Southern Trust; and the Northern and Western Trusts did not provide information.³³⁵ These figures demonstrate lack of routine data collection and disparity between Trusts. The Children's Law Centre has been contacted by young people about the lack of choice available in their mental health care and treatment, with significant differences in available community-based CAMHS provision between Trusts.³³⁶

Mental health is a priority for children and young people. The *Elephant in the Room* peer research noted: lack of safe spaces for young people to talk about mental health and receive useful information and/or support; the poor quality of available mental health information, which is inconsistent and unhelpful; little or no mental health education in schools or colleges; stigma which stops young people talking about mental health and contributes to a 'culture of

³³² Ibid

³³³ NI Youth Forum submission, September 2020

³³⁴ See: <https://www.niccy.org/media/3114/niccy-still-waiting-report-sept-18-web.pdf>

³³⁵ Minister for Health (2022) Response to AQW 1206/22-27 and Response to AQW 1528/22-27

³³⁶ Children's Law Centre submission, November 2022

silence', making the situation worse.³³⁷ Consultations with young people revealed: lack of adequate provision; uneven spread of available support, including only one in-patient adolescent mental health facility with 33 beds which is a long way from the families of many children; time taken to receive medication; the vulnerabilities experienced when transferring from child to adult mental health services and adult provision not being tailored to their age or particular needs.³³⁸ Practitioners agree that mental health is one of the most pressing issues for children and young people, suggesting that the level of poor mental health is under-represented because many do not want to reveal their condition.

Young people are negative about the contribution of schools to supporting children and young people's mental health, claiming that many schools are not equipped to deal with individuals who experience problems, defining them as 'badly behaved'. The Independent Counselling Service for Schools was not initially funded in primary schools, which bought in counselling if required.³³⁹ In November 2021 the Education Minister announced a 'Healthy Happy Minds' pilot to support therapeutic and counselling services in primary schools.³⁴⁰ Lack of confidence, skills and knowledge among school and youth services staff to support children with mental health issues has been identified as a key issue by the National Children's Bureau.³⁴¹

In addition to affecting the emotional and mental health of parents,³⁴² the **COVID-19** pandemic and resultant lockdowns **had a detrimental impact on children's mental health**. Requiring support during and after the crisis, children and young people experienced disruption to many aspects of their lives. This included the closure of schools, lack of daily routine, reduced contact with friends and extended family, and limited access to health

³³⁷ Belfast City Council Youth Forum, NI Youth Forum, Youth@CLC (2018) *Elephant in the Room*. Available at: http://www.niyf.org/wp-content/uploads/2018/12/ELEPHANT-IN-THE-ROOM-A4-V2_.pdf

³³⁸ Include Youth response to the draft *Children and Young People's Strategy 2017-2027*. Available at: <http://www.includeyouth.org/mgmt/resources/include-youth-response-to-children-and-young-peoples-strategy-2017-2027-de-final.docx> and response to the Strategy for Looked After Children: *Improving Children's Lives*, available at: <http://www.includeyouth.org/mgmt/resources/include-youth-response-to-improving-childrens-lives-strategy-for-looked-after-children-july-2018.pdf>

³³⁹ NCB submission, September 2020

³⁴⁰ See: <https://www.northernireland.gov.uk/news/launch-ps5million-healthy-happy-minds-pilot-primary-schools>

³⁴¹ NCB (2019) *Development of an Emotional Health and Wellbeing Framework for Children and Young People in Northern Ireland*. Available at: <https://www.iassnetwork.org.uk/sites/default/files/uploads/files/Informing%2520the%2520Development%2520of%2520an%2520Emotional%2520Health%2520and%2520Wellbeing%2520Framework...pdf>

³⁴² Parenting NI (2022) *Big Parenting Survey Findings 2021*. Available at: <https://www.parentingni.org/wp-content/uploads/2022/01/Big-Parenting-Survey-2021-FINAL-1.pdf>

services.³⁴³ They experienced COVID-related fear and trauma. The pandemic had the most significant impact on those already defined as the most vulnerable.³⁴⁴ A UK-wide survey of 1,854 parents and caregivers during lockdown found that 67% of respondents had concerns about the long-term impact of COVID-19 on their child's mental health. Among those whose children had received mental health support in the previous three months, 83% considered their condition had deteriorated due to the pandemic and 25% stated that their dependant required support but was no longer able to access it.³⁴⁵ Although use of audio-visual technology during the first wave of the COVID-19 pandemic was useful, and many young people appreciate this method of receiving care, drawbacks such as lack of privacy need to be acknowledged and young people should have a choice about how they receive care.³⁴⁶

In contacts to Childline throughout the pandemic, young people sought help with their mental and emotional health in the majority of calls where Coronavirus was mentioned. Over successive lockdowns, many described feeling trapped at home, cut off from usual routines, resources and supports, at times in a context of deteriorating family relationships. Many young people struggled to manage increased feelings of depression and anxiety. They talked about having panic attacks more often, having nightmares or finding it difficult to fall asleep. Feelings of isolation and loneliness were often overwhelming. Some young people who received support for existing mental health concerns told Childline that they either stopped receiving support or their support was reduced. As a consequence, some considered that their mental health was worsening.³⁴⁷ Recent research into the impact of the pandemic on children and their families shows the range of challenges faced by children as a direct result of the pandemic and successive lockdowns. It is clear that the pandemic, and its impacts on children's lives, has placed greater numbers of children at risk.³⁴⁸ In a June 2022 poll of families raising a disabled child conducted by the Family Fund in Northern Ireland, 84% of families stated that the mental health of their disabled children had worsened over the previous 12 months while 68% stated that the mental health of their non-disabled children has also

³⁴³ HSC (2020) rapid review: *The Mental Health Impact of the COVID-19 Pandemic in Northern Ireland*. Available at: <https://www.health-ni.gov.uk/sites/default/files/publications/health/mh-impact-covid-pandemic.pdf>

³⁴⁴ Barnardo's (2020) *New Term, New Challenges, New Opportunities*; Barnardo's (2020) *Mental Health and Covid-19: In Our Own Words*

³⁴⁵ Young Minds (2020) *Coronavirus: Impact on Young People with Mental Health Needs*. Available at: <https://youngminds.org.uk/about-us/reports/coronavirus-impact-on-young-people-with-mental-health-needs/>

³⁴⁶ RCPCH &Us (2020) Voice bank; RCPCH (2020) *Reimagining the future of paediatric care post-COVID-19*

³⁴⁷ NSPCC submission, October 2022

³⁴⁸ Romanou, E. and Belton, E. (2020) *Isolated and struggling. Social isolation and the risk of child maltreatment, in lockdown and beyond*, June 2020. London: NSPCC. Available at: <https://learning.nspcc.org.uk/research-resources/2020/social-isolation-risk-child-abuse-during-and-after-coronavirus-pandemic>

worsened over the same time period.³⁴⁹ Revealing the range of issues they worried about in their day-to-day lives, among children responding to a 2022 Action for Children survey the most common worries were: me or my family catching COVID (47%); pressure from school (42%); my mental health (38%); my physical appearance (37%) and having disagreements with friends (32%).³⁵⁰

Providing therapeutic community-based services for children with mental health conditions

The CRC (2016, para 61d) recommended that therapeutic community-based services should be developed for children with mental health conditions. Yet **some young people with learning disabilities and co-occurring mental health needs are delayed discharge patients. Medically fit to leave, they have experienced significant delays, in some cases several years, before appropriate support packages were made available to enable them to leave the Iveagh Centre, an in-patient facility for 12-17 year olds.** Lack of appropriate accommodation for these young people has been a feature of Children’s Law Centre casework for several years. However, it has been a persistent feature during 2020-2022. The majority of these young people have required provision of bespoke arrangements for accommodation because this does not exist in current housing stock. The need to create such accommodation has prolonged their stay in hospital, clearly breaching their rights. The Children’s Law Centre has been informed through its case work that it would take the Housing Executive between 7-10 years to build a bespoke property for children who are currently delayed discharge. There is an urgent requirement for appropriate accommodation which allows children with complex needs to be discharged from long term hospitalisation.³⁵¹

The Children’s Law Centre has taken a number of judicial reviews representing these young people, in which this issue has been taken before the court in a challenge involving delayed discharge into a community placement appropriate to their needs. ECHR Articles 3, 5 and 8 were engaged and there was reliance on the UNCRC on the basis that their continued detention after they were deemed medically fit for discharge constituted a breach of their rights. The concern is not only that children are detained in an unsuitable setting when they should be discharged to appropriate accommodation, but also that detention may persist until they are no longer children without clear transition arrangements for them as young adults.

³⁴⁹ Family Fund submission, October 2022

³⁵⁰ Action for Children (2022) *Securing a better childhood and a brighter future for every child in Northern Ireland*. Available at: https://media.actionforchildren.org.uk/documents/Northern_Ireland_mini-report.pdf?_ga=2.19949628.546801449.1664281199-249891153.1591274127

³⁵¹ Children’s Law Centre submission, November 2022

The in-patient Iveagh Centre faced a staffing crisis leading to the majority of young people being discharged into the community without appropriate help and support on 16 September 2022. Families were contacted by the Centre and told they needed to collect their children immediately, with no explanation given. This had significant impact on the young people involved. Their discharge should be conducted in a carefully planned, managed manner and they often require a bespoke staff team to meet their needs. Their immediate release from the Centre meant that necessary packages were not in place. For some, this resulted in safeguarding issues within their family homes. One parent described how, thirty minutes after arriving home, her 13 year old daughter began biting her hands and banging her head on the living room floor. After speaking with an independent advocate, she was told to re-admit her daughter to the Centre where emergency staff were in place.³⁵²

There is a lack of appropriate accommodation throughout Northern Ireland for children who require support and management due to their mental health or disability. Although policies may exist, these are aspirational and not translated into actual action and change. This ignores the principle that the children's rights involved are absolute, and that the absence of appropriate action imposes real suffering and/or long term disadvantage.³⁵³

Ensuring that the best interests and views of the child are taken into account in their mental health treatment

The findings of inspections conducted by the Regulation and Quality Improvement Authority [RQIA] regarding children's services are not made public. However, following a 'Freedom of Information' request to the RQIA, *The Detail* analysed the partly-redacted copy of a report about **an inspection of Northern Ireland's in-patient child and adolescent mental health Unit [Beechcroft]** conducted in March 2021. This report revealed that RQIA had raised "serious concerns" about the Unit, noting that insufficient improvements had been made regarding several issues raised by an inspection one and a half years earlier. Repeated failings included: staffing numbers and skill levels; knowledge and training of staff; detention practices used on children; medicines policy and procedures concerning 'medication-related incidents'. The RQIA inspection body **determined that the Unit failed to meet the standards required to deliver safe and effective care.**³⁵⁴ Having been alerted to the RQIA's report, the Commissioner for Children and Young People expressed disappointment that the RQIA had not raised the inspection findings directly with her office, stating that her legal team had

³⁵² See: <https://www.bbc.co.uk/news/uk-northern-ireland-63001857>;
<https://www.belfastlive.co.uk/news/belfast-news/children-discharged-disability-mental-health-25065125>

³⁵³ Monye Anyadike-Danes, QC, submission, October 2020

³⁵⁴ Winters, R. (2022) 'Report finds "very worrying" failings at children's mental health hospital', *The Detail*, 16 March 2022. Available at: <https://www.thedetail.tv/articles/very-worrying-failings-in-beechcroft-belfast-s-under-18s-mental-health-hospital>

previously raised issues with the head of the Unit “as a result of complaints made” to NICCY.³⁵⁵ Although the RQIA inspects the Unit, it does not have regulatory responsibility for the facility because it does not *regulate* either community or in-patient mental health services in Northern Ireland. Thus, the RQIA does not have the power to take enforcement action. It can only make recommendations regarding mental health services, a situation described by the relative of a vulnerable adult with complex needs as a “dereliction of duty” and “regulatory deficit”.³⁵⁶

In *Rights Here, Right Now* consultations with young people in the in-patient child and adolescent mental health Unit, one young person stressed the limited participation experienced by young people detained in the Unit:

*“... Once you’re detained in here, no-one listens to what you say. They say, ‘Yes, we’re listening’ but nothing changes. They don’t really care. It’s meant to be patient-centred care, but it’s not. Your opinion doesn’t matter ... We have to follow a care plan and do what the Consultant says. That’s understandable in some circumstances. But when you say you don’t feel listened to, you’re told ‘You are heard, but we are just not doing what you want’.”*³⁵⁷

Lack of participation was also noted in relation to use of restraint during nasogastric tube feeding: *“If a person needs to be restrained ... I know that needs to happen, but they [staff] don’t have to hurt them. If the person is really upset, they are going to react. In restraint young people aren’t listened to. It may need to happen, but it’s not a nice thing.”* Asked if staff explain what will happen as a result of certain actions: ‘If you do/ don’t do this, we’ll have to do this...’, the young person responded: *“Young people kind of know what to expect, but in that moment they’re really distressed and don’t really care. Things aren’t very well explained, not the process.”*³⁵⁸

Mental health legislation

The CRC (2016, para 61e) recommended that current mental health legislation should be reviewed to ensure that the best interests of the child are taken into account in cases of mental health treatment of children below the age of 16. However, the ***Mental Capacity Act (NI) 2016*** has not yet been fully implemented and excludes under-16s from its scope. For under-16s the *Mental Health (NI) Order 1986* has been retained with some amendments,

³⁵⁵ Ibid

³⁵⁶ Winters, R. (2019) ‘Current oversight of Northern Ireland’s mental health services risks a “dereliction of Duty”’, *The Detail*, 27 November 2019. Available at: <https://thedetail.tv/articles/scrutiny-of-northern-ireland-s-mental-health-services-criticised>

³⁵⁷ Haydon, D. (2022) *Rights Here, Right Now: Children and Young People’s Report to the UN Committee on the Rights of the Child*, Belfast: Children’s Law Centre

³⁵⁸ Ibid

despite this Order being deemed by the 2007 *Bamford Review of Mental Health and Learning Disability* to be, in parts, non-compliant with the *Human Rights Act 1998*. The Northern Ireland Executive was due to conduct an examination of the implications of different provisions for under-16s, but to date this has not commenced.³⁵⁹

There are further **concerns regarding 16 and 17-year olds who do fall within the scope of the *Mental Capacity Act*** as they can be deprived of their liberty and the Act allows for parental consent for this, despite the UK Supreme Court ruling that no parent can consent to the deprivation of liberty of their child.³⁶⁰

Additional issues

Application of the ‘welfare’ principle within healthcare provision

A recent case in Northern Ireland raised significant questions about **application of the ‘welfare’ principle within healthcare** provision.³⁶¹ This concerned the failure of the Health and Social Care Board to fund a private prescription for medicinal cannabis to a child with life-threatening epileptic seizures on the basis that it was contrary to policy to fund private care. The case challenged a blanket approach to policy in circumstances where, notwithstanding Regulation 7(3) *Misuse of Drugs Regulations (Northern Ireland) 2002* (as amended) permits the administration of cannabis-based medication, no doctor was prepared to provide an NHS prescription and yet its administration had been shown to be beneficial by credible senior NHS medical opinion. Brought on the basis of the child’s best interests under the welfare principle in Article 3 of the *Children (Northern Ireland) Order 1995*, it was argued that this should have applied in any decision to follow the policy. The case raised important questions about whether the welfare principle is confined to proceedings in the Family Court and the extent to which ‘upbringing’ should be interpreted to include medical care. It also challenged the extent to which a hard line can be maintained between the funding of publicly and privately delivered healthcare. The case was resolved on a consensual basis, so these issues have yet to be determined.³⁶²

Provision of a specialist psychiatric in-patient Mother and Baby Unit in Northern Ireland

A case, currently at pre-action stage, is being taken to challenge the **failure to provide a specialist psychiatric in-patient Mother and Baby Unit [MBU]** in Northern Ireland for the applicant to care for her baby while she remains in hospital. ECHR Article 3 in relation to mental suffering and Article 8 right to respect for private and family life are relied on. The

³⁵⁹ Children’s Law Centre submission, November 2022

³⁶⁰ *D (A child) [2019]*: Children’s Law Centre submission, September 2000

³⁶¹ *Re BC (a Minor)* – Keegan J, September 2020

³⁶² Monye Anyadike-Danes, QC, submission, October 2020

case concerns a mother with a history of mental ill-health who was diagnosed with postpartum psychosis. She has both been detained in hospital under the *Mental Health (Northern Ireland) Order 1986* and admitted as a voluntary patient during which time her young baby has not been able to stay with her or be brought for visits during COVID-19 'lockdown'. The mother's condition is likely to re-occur in any future pregnancy. This challenge affects the ECHR and UNCRC rights of babies as well as their mothers, since separation at such an early stage of life can impede bonding in addition to impairing the effectiveness of the mother's treatment and thus the quality of their on-going relationship.³⁶³

Northern Ireland is the only jurisdiction in the UK that does not provide a specialist psychiatric in-patient MBU where a woman can care for her baby while she remains in a psychiatric hospital. This deficiency has been well recognized. Fifteen years ago, following publication of the *Bamford Review of Mental Health and Learning Disability*, MLAs were informed by the Chair of the Review that "perinatal mental health is a big challenge; it must be supported by better screening and with better training for those who work in that area" and a 2017 report by the RQIA recommended the establishment of a specialist unit.³⁶⁴ In October 2017, a Department of Health report stated that the Health Minister was committed to reforming hospital and community services, and achieving parity of esteem between physical and mental health services, including proposals for a specialised Mother and Baby Unit.³⁶⁵ However, nothing was done and a progress report published in January 2018 was silent on the topic of perinatal services and proposals for a MBU.³⁶⁶ On 9 April 2019 all political parties in Northern Ireland co-signed a 'Consensus Statement' urgently requesting "the commitment of investment and ring-fencing of funds required to ensure women, babies, families and communities get the care and support they need and deserve". To date a MBU has not been established. Thus, new born and other babies are separated from mothers admitted to general adult psychiatric wards with postpartum psychosis and other serious mental health issues.

In January 2021, the Department of Health announced funding for the establishment of new specialist perinatal mental health teams in each HSC Trust.³⁶⁷ At the time of writing, November

³⁶³ Monye Anyadike-Danes, KC, submission, November 2022

³⁶⁴ Simpson, C. (2022) 'Lives are being lost' amid lack of psychiatric mother and baby unit', *The Detail*. 10 October 2022. Available at: <https://www.thedetail.tv/articles/lives-are-being-lost-amid-lack-of-psychiatric-mother-and-baby-unit#:~:text=In%20May%2C%20coroner%20Maria%20Dougan,birth%20to%20her%20third%20child>

³⁶⁵ Department of Health (2017) *Health and Wellbeing 2026: Delivering Together, 12 Month Progress Report October 2017*

³⁶⁶ Department of Health (2018) *Health and Wellbeing 2026: Delivering Together, Appendix A: Latest Position on 18 Actions as at January 2018*

³⁶⁷ See: <https://www.health-ni.gov.uk/news/swann-approves-funding-new-perinatal-mental-health-delivery-model>

2022, new teams remain at varying stages of development and not all Trusts have established a team. Action 29a of the *Mental Health Strategy 2021-31* includes a commitment to: “Ensure there are specialist interventions available to those who need it. In particular: a. Continue the rollout of specialist perinatal mental health services”.³⁶⁸ The status of a MBU remains unclear. The corresponding ‘key activity’ in the Delivery Plan 2022/23 for the *Mental Health Strategy* is to: “Progress scoping work for Mother and Baby Unit and complete Strategic Outline Case – by 31 Mar 2023”.³⁶⁹

In May 2022 a Coroner stated that a specialist mental health Mother and Baby Unit should be established in Northern Ireland as a matter of urgency. This followed the death of a mother who took her own life in a Belfast hospital in October 2018, two days after she gave birth to her third child while suffering from postpartum psychosis.³⁷⁰ A recent investigation stated that campaigners have warned that women and families are “suffering unnecessarily and lives are being lost due to the lack of a specialist in-patient psychiatric mother and baby unit in Northern Ireland”.³⁷¹ It is more than a decade since the Assembly’s Health Committee accepted the need for a Unit. An open letter from 45 NGOs, including the perinatal mental health group Action on Postpartum Psychosis, was sent to the Health Minister on 10 October 2022 [World Mental Health Day] calling on him to ensure that the development of a Public Health Agency business plan for an MBU is implemented urgently.³⁷²

Recognising the legacy of the conflict in Northern Ireland on children and young people’s mental health

Northern Ireland remains a divided society in which the legacy of the conflict creates additional factors that impact on young people’s mental health. In 2013, the Commission for Victims and Survivors estimated that: 30% of Northern Ireland’s population could be defined ‘victims’ or ‘survivors’ of the conflict (i.e., directly affected by bereavement, physical

³⁶⁸ See: <https://www.health-ni.gov.uk/sites/default/files/publications/health/doh-mhs-strategy-2021-2031.pdf>, p77

³⁶⁹ See: <https://www.health-ni.gov.uk/sites/default/files/publications/health/doh-mental-health-strategy-delivery-plan-2022.PDF>, p15

³⁷⁰ ITV NEWS (2022) ‘Woman’s suicide 48 hours after giving birth was “foreseeable and preventable” Coroner rules’, 27 May 2022. Available at: <https://www.itv.com/news/utv/2022-05-27/we-love-you-familys-pain-as-coroner-finds-new-mums-suicide-preventable>

³⁷¹ Simpson, C. (2022) ‘Lives are being lost’ amid lack of psychiatric mother and baby unit’, The Detail. 10 October 2022. Available at: <https://www.thedetail.tv/articles/lives-are-being-lost-amid-lack-of-psychiatric-mother-and-baby-unit#:~:text=In%20May%2C%20coroner%20Maria%20Dougan,birth%20to%20her%20third%20child>.

³⁷² See: <https://wrda.net/wp-content/uploads/2022/10/An-Open-Letter-to-the-Media-and-to-Northern-Ireland-Health-Minister-Robin-Swann.pdf>

injury, or trauma); 10% of the population had been bereaved; 39% had experienced a conflict-related incident; and levels of Post-Traumatic Stress Disorder were very high.³⁷³ Transgenerational trauma is a reality experienced by many children today.³⁷⁴ In 2014, the *Stormont House Agreement* agreed a bespoke mental trauma service for victims and survivors of the conflict but this has yet to be established. Failure to implement agreements on dealing with the past, or to adhere to international legal obligations under domestic and international law, have had a detrimental impact on families affected by conflict-related violence (particularly violent bereavement). In many families, relatives pass away without their cases being resolved. The outstanding cases are 'passed on' to the next generation, causing particular inter-generational trauma.³⁷⁵ In communities where paramilitaries continue to have influence, young people whose alleged 'anti-social' behaviour has brought them to the attention of paramilitaries are pressured not to speak out nor seek help, while worrying that they remain under threat. Some who have received threats or have been physically assaulted by paramilitaries report feeling angry, living in constant fear, not leaving their home, and being suicidal.³⁷⁶ Paramilitary attacks are traumatic for children both as victims and/or witnesses.

Provision for young people with drug and alcohol issues

Young people and practitioners are aware of the **links between drug/ alcohol use and poor mental health**, expressing concern about the inadequacy of interventions to deal with the drugs problem and to support young people who struggle with alcohol and/or drug misuse and dependency. Media reports suggest that there is a high correlation between drug/ alcohol misuse and self-harm or suicide attempts by young people.³⁷⁷ The casework of organisations working with young people indicates that conditions exacerbated by the use of drugs and alcohol are increasingly severe.³⁷⁸ A significant number of young people targeted in

³⁷³ Hansard, 17 April 2013. Available at: <http://www.niassembly.gov.uk/assembly-business/official-report/committee-minutes-of-evidence/session-2012-2013/april-2013/commission-for-victims-and-survivors/>

³⁷⁴ O'Neill, S. et al (2015) *Towards a Better Future: The Trans-generational Impact of the Troubles on Mental Health*, University of Ulster, for the Commission for Victims and Survivors, March 2015;
McLaughlin (2016) *Children and Young People Engagement Project. Research Report March 2016*, CVS/ Victims and Survivors Forum

³⁷⁵ Relatives for Justice (2018) *Response to the Consultation 'Addressing the Legacy of the Past'*. Available at: <https://relativesforjustice.com/wp-content/uploads/2018/10/Dealing-with-the-Past-Consultation-Doc-Oct-2018-005.pdf>

³⁷⁶ McAlister, S., Dwyer, C. and Carr, N. (2018) *Experiencing Paramilitarism: Understanding the Impact of Paramilitaries on Young People in Northern Ireland*, ARK Research Findings, Number 1

³⁷⁷ See: <http://www.bbc.co.uk/news/uk-northern-ireland>

³⁷⁸ Children's Law Centre submission, September 2020

the communities where paramilitaries retain influence are either drug users or low level drug dealers. Young people have argued that paramilitary threats and attacks can lead to increased drug and alcohol use to help them cope with their fear.³⁷⁹

Action for Children provides supported accommodation for homeless young people and floating support for young people experiencing substance misuse and mental health problems. These young people experience a ‘revolving door’, where **services are not well coordinated and there is a lack of integration between key services (housing, leaving care, criminal justice)**. The Health and Social Care Trusts and Supporting People (policy and funding framework for housing support services) jointly fund services but do not work together effectively to ensure that services are seamless for young people and easy to administer.³⁸⁰

Many young people in custody in Northern Ireland’s Juvenile Justice Centre [JJC] are vulnerable as a consequence of complex alcohol, drug and mental health problems.³⁸¹ In 2019, the Northern Ireland Audit Office stated that “Better evidence about the prevalence and impact of mental health issues in the criminal justice system is required”.³⁸² Inspection reports have stated that self-harm rates are frequently due to children coming off drugs on entering custody.³⁸³ The JJC has attempted to reduce offending by delivering personal development programmes intended to address underlying social issues (topics include: alcohol and drug use, making choices, family relationships, sectarianism, social and life skills, emotions, physical and mental health, citizenship) and programmes relating to specific offences for which children were convicted (eg as car crime, violence or arson).³⁸⁴ Continuity of healthcare is vital, especially for those requiring specialist services following release from custody.

Many **community drug and alcohol services require a direct referral from a healthcare professional**. It is not possible for young people or their families to engage directly with statutory services, leading to an over-reliance on service provision by the community and voluntary sectors.³⁸⁵

³⁷⁹ McAlister, S., Dwyer, C. and Carr, N. (2018) *Experiencing Paramilitarism: Understanding the Impact of Paramilitaries on Young People in Northern Ireland*, ARK Research Findings, Number 1, p2-3

³⁸⁰ Action for Children submission, October 2022

³⁸¹ CJINI (2018) *An Announced Inspection of Woodlands Juvenile Justice Centre*, June 2018, CJINI/ RQIA/ ETI, p46

³⁸² NI Audit Office (2019) *Mental health in the criminal justice system*, 14 May 2019, p46

³⁸³ CJINI (2015) *An Announced Inspection of Woodlands Juvenile Justice Centre*, May 2015, CJINI/ RQIA/ ETI, p27; CJINI (2018) *An Announced Inspection of Woodlands Juvenile Justice Centre*, June 2018, CJINI/ RQIA/ ETI, p26

³⁸⁴ CJINI (2018) *An Announced Inspection of Woodlands Juvenile Justice Centre*, June 2018, CJINI/ RQIA/ ETI, p35

³⁸⁵ Children’s Law Centre submission, September 2020

There is **no dedicated in-patient facility for children with drug and alcohol issues in Northern Ireland**. The regional in-patient child and adolescent mental health Unit (a hospital with a capacity of 33 beds, including two intensive care beds) is not permitted to treat young people with drug and alcohol related issues unless they have a diagnosable mental health condition. During a consultation in this Unit regarding the *Mental Capacity Act (NI) 2016*, young people stated that they did not consider the Unit a suitable place for treatment of drug-related problems alongside those suffering solely from mental health issues.³⁸⁶ Some young people, who do not have a diagnosed mental health issue, meet the criteria for placement in Northern Ireland's Secure Care Centre. Whilst this provides a safe environment, albeit depriving them of their liberty, it does not provide long-term access to the range of services necessary to address their drug and alcohol issues.

The power of drug control has not been devolved to the Northern Ireland Assembly. Currently, the main legislation in force is the *Misuse of Drugs Act 1971*, which does not provide for access to services by those who have drug-related needs. The gateway into the *Mental Capacity Act (NI) 2016* is a lack of capacity in the individual aged 16 or over. Defined in Clause 2 of the Act, "a person lacks capacity in relation to a matter if, at the material time, the person is unable to make a decision for himself or herself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain". It does not matter whether the impairment or disturbance is permanent or temporary, or what is the cause of the impairment or disturbance. Conditions caused by alcohol or drugs fall within this definition and could impair a person's capacity, bringing them within the remit of the *Mental Capacity Act (NI) 2016*. However, the Act's provisions apply only to persons aged 16 and over. For those under 16 the *Mental Health (NI) Order 1986* is the principal legislation governing the compulsory detention in hospital for assessment and treatment of a mental health condition. Article 3(2) of this Order states: "No person shall be treated under this Order as suffering from mental disorder, or from any form of mental disorder, by reason only of personality disorder, promiscuity or other immoral conduct, sexual deviancy or dependence on alcohol or drugs". Therefore, conditions caused by drugs and alcohol are excluded from the Order. A young person can be detained in a hospital setting only if they are also considered to be suffering from a co-existing mental health disorder. This creates considerable challenges for practitioners and those who work with young people as it is often difficult for clinicians to establish whether a mental health condition is caused *by* or is the cause *of* drug/ alcohol misuse. Conditions caused by drugs and alcohol need to be legislated for and children's right to access appropriate clinical health services, including in-patient provision where necessary, ensured.³⁸⁷

³⁸⁶ Children's Law Centre submission, September 2020

³⁸⁷ Children's Law Centre submission, September 2020

Provision for young people with disabilities when they transition to adult services

In June 2022, the Family Fund conducted a poll with families raising a disabled child. All of respondents stated that the **care support available for their disabled children had significantly decreased since the child turned 18**. All stated that social activities available for their disabled children had significantly decreased, and 67% stated that education support had also significantly decreased.³⁸⁸ At a workshop for disabled children, young people and their families, held on 6 September 2022 as part of the current Independent Review of Children’s Social Care Services in Northern Ireland, the transition from child to adult services was frequently raised as an issue requiring improvement. Existing provision was perceived to be “disjointed, with a lack of support for young people once they reach adulthood”. Services were described as “overstretched, with too much pressure on families, social workers, other workers and on the system itself”.³⁸⁹

The RCPCH argues that **children with long-term conditions should be empowered with self-management tools to control their health conditions as they become adults**. This is particularly important as they navigate the transition from child to adult health services.³⁹⁰

Young people with learning difficulties and mental health needs experience limited options when transitioning from children’s services to adult services. This should be a seamless process, ensuring positive outcomes for young people. However, as noted, many families experience a reduction in available services and no longer have access to the services they used previously. Rather than a well-planned process leading to education and day care options reflecting individual needs, provision is often based on what becomes available. This situation is worsened by differing levels of services in each Health and Social Care Trust, leading to complications when children move from one Trust area to another.³⁹¹

Waiting lists, workforce pressures and need for system transformation

In October 2021, publication by NICCY of its *More Than a Number Report* in October 2021 revealed data on the extent and impact of waiting for healthcare experienced by children

³⁸⁸ Family Fund submission, October 2022

³⁸⁹ Children’s Social Care Services Review Northern Ireland (2002) *Summary Report: Workshop on Children and Young People with a Disability and their Families*. 6 September 2022. Available at: https://www.cscsreviewni.net/files/cscsreviewni/2022-10/Summary%20Report%20%20Workshop%20on%20Children%20and%20Young%20People%20with%20a%20Disability%20and%20their%20Families_0.pdf, p7

³⁹⁰ RCPCH submission, December 2020

³⁹¹ Children’s Law Centre submission, November 2022

across Northern Ireland. Previously this information had not been in the public domain.³⁹² The Report highlighted that, **for 43% of those waiting for a first outpatient appointment, their waiting time was >52 weeks at time of publication [2021]**. The longest waiting times were for consultant-led services.

The Report acknowledged **chronic workforce pressures contributing to inefficiencies in the system**. A RCPCH workforce census published in 2019 noted that, to meet standards set out in the *Facing the Future* standards for paediatric care,³⁹³ the number of whole-time equivalent [WTE] consultant paediatricians in Northern Ireland would have to increase to approximately 172.³⁹⁴ In February 2022, responding to a question in the Northern Ireland Assembly, the Health Minister replied that 151.7 WTE consultant paediatricians were employed in Health and Social Care Trusts.³⁹⁵

The *More Than a Number* Report also noted **the need for system transformation**. The *Health and Social Care (Northern Ireland) Act 2022* provided for initial changes towards the ‘future planning model’ and a new commissioning structure in Northern Ireland. In its response to the NICCY Report, the RCPCH highlighted the need to: embed child health experts at commissioning level, similar to new statutory guidance in England; engage with all relevant stakeholders, including children and young people, in how health care is delivered; and prepare for the collection of quality data to use effectively in monitoring trends and improving decision-making in commissioning of services.³⁹⁶ It remains unclear how this will develop.³⁹⁷

Extra Contractual Referrals, Residential and Respite Provision

Use of ‘extra contractual referrals’ to the Republic of Ireland, England, Scotland or Wales **has obvious implications for young people separated from their families** without plans for their return to Northern Ireland. Increasingly, the Children’s Law Centre is aware of families being presented with the option of an extra contractual referral due to the inability of Health and Social Care Trusts to provide residential placements. Investment in extra-contractual referrals does not serve the best interests of children. Recognising the relatively small numbers of

³⁹² NICCY (2021) *More than a Number: A Rights Based Review of Child Health Waiting Lists in Northern Ireland*. Available at: <https://www.niccy.org/media/3976/more-than-a-number-child-health-waiting-lists-in-ni-final-19-october-2021.pdf>

³⁹³ See: <https://www.rcpch.ac.uk/resources/facing-future-standards-paediatric-care>

³⁹⁴ See: <https://www.rcpch.ac.uk/resources/workforce-census-focus-northern-ireland-2019>

³⁹⁵ See: [AQW 28226/17-22](#)

³⁹⁶ See: <https://www.rcpch.ac.uk/news-events/news/rcpch-responds-northern-ireland-commissioner-children-young-people-niccy-report>

³⁹⁷ RCPCH submission, October 2022

children from Northern Ireland requiring specialist provision not available within the jurisdiction, it is suggested that cross-border negotiations and funding should lead to the establishment of specialist facilities shared with the Republic of Ireland (eg for those with eating disorders, those with drug and alcohol issues, those with disabilities or mental health conditions who require specialist residential placements).³⁹⁸

The lack of specialist residential placements within Northern Ireland has also resulted in children with learning disabilities being placed in respite units which have been re-purposed for residential services in at least three of the five Trusts. Consequently, already inadequate respite services have been unable to function. This has placed additional pressure on families who rely on respite for essential breaks from their caring role. In some instances it has resulted in family breakdown. Respite services should resume and be expanded significantly, providing greater choice and availability for carers.³⁹⁹

Standard of living

Child poverty

Following the *St Andrews Agreement*, the *Northern Ireland Act 1998* was amended in 2006 to include Section 28E, which stated: “The Executive Committee shall adopt a strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on objective need”. In 2015 the Committee on the Administration of Justice [CAJ] succeeded in a court case taken against the Northern Ireland Executive for failing to discharge its statutory duty under S28E and adopt such a strategy.⁴⁰⁰ A 2022 judicial review regarding a similar duty to adopt an *Irish Language Strategy* - undertaken on many of the same principles as the CAJ case - found the Northern Ireland Executive had acted unlawfully in not adopting the *Irish Language Strategy*, including because the time to do so once a new Executive formed is not unlimited.⁴⁰¹ This has implications for the adoption of an *Anti-Poverty Strategy* on restoration of the Assembly.⁴⁰²

³⁹⁸ Children’s Law Centre submission, November 2022

³⁹⁹ Children’s Law Centre submission, November 2022

⁴⁰⁰ See:

<https://www.judiciaryni.uk/sites/judiciary/files/decisions/Committee%20on%20the%20Administration%20of%20Justice%20%28CAJ%29%20and%20Brian%20Gormally%E2%80%99s%20Application.pdf>

⁴⁰¹ See:

<https://www.judiciaryni.uk/sites/judiciary/files/decisions/Conradh%20Na%20Gaeilge%27s%20Application%20and%20in%20the%20matter%20of%20a%20decision%20of%20The%20Executive%20Committee%20of%20the%20Northern%20Ireland%20Assembly.pdf>

⁴⁰² CAJ submission, October 2022

In March 2016, the Executive published its 2016-2019 *Child Poverty Strategy* and this was extended to 2022 on the basis of allowing time for key stakeholders to be consulted about whether the *Anti-Poverty Strategy* covering all age groups is sufficient or whether the development of a *Child Poverty Strategy* is also required.⁴⁰³ An Anti-Poverty Strategy Expert Advisory Panel was appointed in October 2020. Its role was to prepare recommendations to the Minister for Communities regarding themes and actions to be included in the *Anti-Poverty Strategy*, identifying gaps in provision the Strategy should seek to address. In March 2021 the Minister published the Advisory Panel's recommendations.⁴⁰⁴ However, progress on the development of an *Anti-Poverty Strategy* has stalled, the stated deadline (end of 2021) has been missed, and **a new *Child Poverty Strategy* has not been developed.**

The CRC's (2016, para 71a) recommendation regarding the eradication of child poverty has not been addressed. Despite targets set in the *Child Poverty Act 2010* to eradicate child poverty by 2020, and a now outdated *Child Poverty Strategy 2016-2019*, **numbers of children living in poverty remain unacceptably high.** Statistics published by the Department of Communities have been disputed as they are based on one year averages rather than three-year averages, as recommended in official advice and used by the Scottish and Welsh governments. Using a three year average, child poverty has hardly changed in the last decade, from 26% in 2004/05-06/07 to 24% in 20017/18 – 19/20.⁴⁰⁵ One in four children (more than 100,000) were growing up in poverty in Northern Ireland before the pandemic. The figures have changed marginally in the decade 2011-2021.⁴⁰⁶

Prior to the COVID-19 pandemic, 4.3 million children were living in poverty across the UK. While the temporary £20 uplift to Universal Credit instituted during the pandemic brought a slight reduction to 3.9 million children, child poverty rates are likely to rise again following the end of this uplift. **It is anticipated that,** as a result of the current cost-of-living crisis and the unprecedented financial strain this is placing on households, **numbers of children living in poverty will increase sharply.** With a rapidly rising cost of living, incomes falling behind inflation, cuts to the benefit system, and the arrival of a recession, there is risk of a sustained rise in child poverty.⁴⁰⁷ Families in Northern Ireland are projected to be among the most

⁴⁰³ See: <https://www.communities-ni.gov.uk/news/minster-announces-extension-child-poverty-strategy>

⁴⁰⁴ See: <https://www.communities-ni.gov.uk/system/files/publications/communities/dfc-social-inclusion-strategy-anti-poverty-expert-advisory-panel-recommendations.pdf>

⁴⁰⁵ Matejic, P. and Birt, C. (2022) *Poverty in Northern Ireland 2022*. 16 March 2022. Joseph Rowntree Foundation. Available at: <https://www.jrf.org.uk/report/poverty-northern-ireland-2022>

⁴⁰⁶ Save the Children (2022) *Ten Years Too Long. A decade of child poverty in Northern Ireland*. Executive Summary. Available at: https://www.savethechildren.org.uk/content/dam/gb/reports/ten_years_too_long_a_decade_of_child_poverty_in_northern_ireland.pdf, p2

⁴⁰⁷ Ibid, p7

affected by rising destitution, defined as extreme poverty levels where households lack resources to purchase basic necessities, with a projected increase in destitution of 67% resulting in approximately 25,000 destitute households.⁴⁰⁸

Poverty has a differential impact on families. Half of all children from lone parent households are estimated to be living in relative poverty.⁴⁰⁹ The Nuffield Foundation notes a significant rise in the number of very young children in poverty.⁴¹⁰ Families with a disabled family member are more likely to be in poverty than those without.⁴¹¹ The June 2022 Family Fund poll carried out with families raising a disabled child in Northern Ireland, found that they pay more for energy, food and groceries: 46% stated that their household debt and borrowings are higher than 12 months earlier; 46% were likely to need to borrow more or go further into debt in the next 6 months; 76% could not afford to replace or repair major electrical goods such as a fridge or washing machine when these were broken; 46% could not afford to keep their homes warm in winter. All families stated that their regular household bills had increased over the previous 12 months. This extended to increases in the cost of weekly food shopping and household energy. Responses to the question, ‘What issue is worrying you most right now?’ included: paying energy bills; paying for electricity, heating and food; debt; the impacts of rising energy and living costs on an already limited budget (eg inability to replace clothing and shoes); the long term stability and mental health of their disabled children; lack of support.⁴¹²

There is growing evidence demonstrating a link between poverty and child maltreatment. The Child Welfare Inequalities Project (2015-17), led by Professor Paul Bywaters and funded by the Nuffield Foundation, found that children in the 10% most deprived areas in Northern Ireland were six times more likely to be on the child protection register, and four times more likely to become ‘looked after’, than children in the 10% most affluent areas.⁴¹³ Early in 2022, an updated evidence review established that “family poverty and inequality are key drivers

⁴⁰⁸ National Institute of Economic and Social Research (2022) *National Institute UK Economic Outlook. Powering Down, Not Levelling Up. Winter 2022*. Available at: <https://www.niesr.ac.uk/wp-content/uploads/2022/02/UK-Economic-Outlook-Winter-2022.pdf>, p35

⁴⁰⁹ See: <https://ifs.org.uk/articles/pre-pandemic-relative-poverty-rate-children-lone-parents-almost-double-children-living-two>

⁴¹⁰ See: <https://www.nuffieldfoundation.org/news/children-under-five-poverty>

⁴¹¹ See: <https://www.irf.org.uk/report/uk-poverty-2022>

⁴¹² Family Fund submission, October 2022

⁴¹³ Bunting, L. at al (2017) *Identifying and Understanding Inequalities in Child Welfare Intervention Rates: Comparative Studies in four UK countries. Single country quantitative study: Northern Ireland*. Available at: https://pureadmin.qub.ac.uk/ws/portalfiles/portal/126821013/NI_Country_Report_Final_Feb_2017.pdf, p12

of harm to children”.⁴¹⁴ The review noted a “contributory causal relationship between the economic circumstances of families and CAN [child abuse and neglect]”⁴¹⁵ Poverty interacts with psychological and social factors; directly through material hardship and structural inequalities and indirectly through parental stress, poor health and poor environments. Stress prevents parents from meeting their children’s material needs and has a corrosive effect on family relationships, manifestly detrimental to children’s wellbeing and placing them at risk of harm. The review observes that “the focus of child protection systems and practice on the behaviour and circumstances of individuals and families deflects attention from social structures and the responsibility of the state – and its potential for preventing – child abuse and neglect”.⁴¹⁶

Impacts of recent social security and tax credit reforms on children

In evidence presented at an event about food insecurity in 2017, 15 of the 28 Locality Planning Groups involving front-line staff from the statutory, voluntary and community sectors working with families in local areas reported that families were experiencing the effects of poverty and economic hardship. This affected their physical, social and mental well-being, with many concerned about the negative impacts of Universal Credit, income tax, housing issues and welfare reform.⁴¹⁷ Following a visit to the UK in 2018, the UN Special Rapporteur on extreme poverty and human rights highlighted the issue of food poverty. He noted that many recent changes to social security support had an impact on children, including how parents were able to afford to feed their children.⁴¹⁸ In 2020 it was reported that regressive welfare reforms, disproportionately affecting large families and lone parents,⁴¹⁹ led to the

⁴¹⁴ Bywaters, P. et al (2022) *The Relationship Between Poverty and Child Abuse and Neglect: New Evidence*. University of Huddersfield. Available at: https://research.hud.ac.uk/media/assets/document/hhs/RelationshipBetweenPovertyChildAbuseandNeglect_Report.pdf, p7

⁴¹⁵ Ibid, p7

⁴¹⁶ Ibid, p8

⁴¹⁷ Finlay, E. (2017) *Holiday Hunger Evidence Session*. All Party Group on Children and Young People, CiNI. Available at: http://www.ci-ni.org.uk/DatabaseDocs/nav_1480087_new6383235apgfinafinalreport.pdf

⁴¹⁸ Alston, P. (2018) *Statement on visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights*, London, 16 November 2018, p13. Available at: https://www.ohchr.org/Documents/Issues/Poverty/EOM_GB_16Nov2018.pdf

⁴¹⁹ Portes, J. and Reed, H. (2018) *The cumulative impact of tax and welfare reforms*, Equality and Human Rights Commission; Save the Children (2021) *Ten Years Too Long. A decade of child poverty in Northern Ireland*. Available at: https://www.savethechildren.org.uk/content/dam/gb/reports/ten_years_too_long_a_decade_of_child_poverty_in_northern_ireland.pdf

proliferation of food banks and a 122% rise in the number of food parcels provided to children.⁴²⁰

As Save the Children has noted, **changes to the tax and benefit system in Northern Ireland and the UK over the last ten years** improved conditions for some families. However, they **have left poorer families worse off, and reduced the level of support for children from social security:**

- The poorest households in the UK have lost 10% of their income as a result of changes to taxes and benefits - on average £1,200 per year.
- Spending on welfare accounts for the same proportion of overall government spending as it did in 2010, but spending on child-related benefits has fallen by a third.
- The benefit freeze, the two-child limit, and changes to disability related benefits have contributed to reduced levels of financial support for children.
- The value of child benefit fell as a consequence of the benefit freeze, and child benefit for a second child is now worth less in real terms than when it was introduced in 1979.
- Even with the introduction of a £20 uplift, the benefit system provides less support for some families, particularly those out of work, than in 2011.
- The decline in social security support is one of the key reasons, alongside housing costs, for the rise of child poverty among in-work families.⁴²¹

The loss of a job, reduction in wages, higher costs of living, and limited access to key services, such as childcare and school, pushed more families into crisis during the COVID-19 pandemic. One consequence of a weakened social security system is that many families require vouchers to help cover the costs of essential items such as food and household products.⁴²²

Current Home Office policy has led to **enforced destitution for asylum seekers whose application for asylum has been refused**. This has significant ramifications for children. It is rare for people to be granted asylum the first time they apply, yet approximately half of appeals are successful. In the interim, refused asylum seekers lose all support, including accommodation, while not being permitted to work or to access homeless shelters. Although this is a reserved matter in Northern Ireland, access to essential services such as health, care, education and housing are devolved to the Northern Ireland Executive.⁴²³

⁴²⁰ The Trussell Trust (2020) *Summary of findings on the impact of the COVID-19 crisis on food banks*, June 2020. https://www.trusselltrust.org/wp-content/uploads/sites/2/2020/06/APRIL-Data-briefing_external.pdf

⁴²¹ Save the Children (2022) *Ten Years Too Long. A decade of child poverty in Northern Ireland*. Executive Summary. Available at: https://www.savethechildren.org.uk/content/dam/gb/reports/ten_years_too_long_a_decade_of_child_poverty_in_northern_ireland.pdf, p4

⁴²² Ibid, p4

⁴²³ PPR submission, September 2020

Homelessness and children's access to adequate housing

The CRC's (2016, para 71f) recommendation that necessary measures should be taken to reduce homelessness, and progressively guarantee all children access to adequate housing, has not been addressed. The Department for Communities reported that, in the first six months of 2022, 3,495 children were classed as being statutorily homeless, 707 (20%) of whom were aged 0-2, 699 (20%) were aged 3-5, 638 (18%) were 6-8, 568 (16%) were 9-11, 458 (13%) were 12-14 and 425 (12%) were 15-17.⁴²⁴ Children and young people have articulated the impacts on their physical and mental health as well as their ability to learn, socialise and play of living in temporary accommodation and overcrowded conditions, of sofa surfing and homelessness.⁴²⁵

Analysis of Northern Ireland Housing Executive data indicates that **the number of households facing homelessness and housing stress is increasing, as is the number of children in these households**. The number of officially homeless households in Northern Ireland rose from 18,062 in May 2018 to 23,978 in March 2022. Further, social housing in Northern Ireland remains overwhelmingly segregated on the basis of religion. Although housing shortage and need exist within both main communities, Housing Executive statistics demonstrate that households on the waiting list, in housing stress, or with Full Duty Applicant homeless status are disproportionately prevalent in areas where households are predominantly Catholic.⁴²⁶

Placement of children in temporary accommodation

Despite the CRC's (2016, para 71e) recommendation, **legislation prohibiting prolonged placement of children in temporary accommodation by public authorities has not been enacted**. According to the homelessness statistics, on 16 July 2022 3,658 households lived in temporary accommodation, within which there were 3,913 children. While 57% of these households had been living in temporary accommodation for less than 12 months, 5% had been in temporary accommodation for 5 years or more. Between January and June 2022, there were 4,910 placements to temporary accommodation. Of these, 1,910 (39%) were to hotels or B&Bs, 870 (23%) were to leased property, and 870 (18%) were to private single lets.⁴²⁷

⁴²⁴ See: <https://www.communities-ni.gov.uk/system/files/publications/communities/ni-homelessness-bulletin-jan-june-2022.pdf>, p8

⁴²⁵ See video made by under-18s from the 'BuildHomesNow' housing rights group in Belfast. Available at: <https://www.youtube.com/watch?v=Sj2wMoy4LQo>

⁴²⁶ Figures from NI Housing Executive responses to Freedom of Information requests by PPR. See: <https://www.nlb.ie/investigations/FOI>

⁴²⁷ See: <https://www.communities-ni.gov.uk/system/files/publications/communities/ni-homelessness-bulletin-jan-june-2022.pdf>, p10

The Children’s Law Centre notes that **there is a lack of supported and semi-supported accommodation to meet the needs of homeless young people in Northern Ireland**. This has led to homeless young people being placed in unsuitable accommodation such as hotels and Bed and Breakfast [B&B] accommodation, in some instances exposing them to serious risk. Baroness Hale, in the case of *R (M) v Hammersmith LBC*, raised concerns about B&B accommodation being used. She stated that it is not suitable for 16 and 17 year olds *even on an emergency basis* (emphasis added).⁴²⁸ In Northern Ireland, 16 and 17 year olds facing homelessness should be assessed under the UNOCINI [Understanding the Needs of Children in Northern Ireland] framework and the Regional Good Practice Guidance on Meeting the Accommodation Needs of Homeless 16-21 year olds. This places responsibility on social services to provide accommodation and support under the ‘Looked After Child’ system to 16 and 17 year olds assessed as homeless. However, key issues include failure to assess young people in a timely manner, and use of unregulated placements such as B&B or hostel accommodation. In addition to the inappropriateness of these placements, the support available often does not meet the complex social, care and health needs of young people placed in such facilities, leading to poor outcomes for them.⁴²⁹ Young people aged 18 and over also require provision of appropriate support to sustain tenancies.⁴³⁰

In 2018, a case⁴³¹ concerned application of the absolute duties of respective Health and Social Care Trusts to provide accommodation to a ‘Looked After Child’ and to a ‘child in need’ under Articles 27 and 17 respectively of the *Children (Northern Ireland) Order 1995*. In particular, this concerned the extent to which these duties are satisfied by the provision of Bed and Breakfast accommodation, which is an unregulated placement. There was also the issue of the timeframe within which duties should be discharged, particularly when a child in the youth justice system requires accommodation to secure bail. Article 5 ECHR (the right to liberty and security) and Article 37 of the UNCRC (the detention of a child being used as a measure of last resort and for the shortest appropriate time) were both engaged. The judge noted that Northern Ireland legislation, unlike legislation in England and Wales, has not been amended to provide that a local authority has a duty to provide ‘*sufficient* accommodation for looked after children’ (emphasis added). Noting that the sufficiency duty is “undoubtedly a matter worthy of debate in Northern Ireland when the availability of services and accommodation for children is under the spotlight”, the judge declined to rule that there was an absolute prohibition on the use of Bed and Breakfast accommodation and to grant specific declaratory relief, on the basis that: (i) the current policy includes clear restrictions upon its

⁴²⁸ Children’s Law Centre submission, November 2022

⁴²⁹ Children’s Law Centre submission, November 2022

⁴³⁰ NI Youth Forum submission, September 2020

⁴³¹ *Re OC (a Minor) and LH (a Minor)* [2018] NIQB 34 - Keegan J

use and (ii) that its use should be rare, restricted and heavily monitored.⁴³² Subsequently, the chair of the RQIA Board, which is responsible for inspecting and monitoring children’s care homes and accommodation, drew attention to the practice of placing children in unregulated accommodation, informing the Board that this “problematic situation” was “verging on crisis”.⁴³³

It has been Children’s Law Centre’s experience that there is also an **insufficient stock of supported and semi-supported accommodation for young people transitioning from childhood to adulthood within the care system**, many of whom have multiple complex needs. Lack of suitable ‘moving on from care’ accommodation for these young people has resulted in inappropriate placements, which in turn has contributed to poor outcomes for these young people. There is a requirement to commission suitable and appropriate ‘moving on’ accommodation for young people leaving the care system.⁴³⁴

There is also a lack of suitable and appropriate accommodation for homeless young people seeking bail from Woodlands Juvenile Justice Centre. Consequently, they are often bailed to unsuitable accommodation such as B&Bs. Most of these young people require support in addition to accommodation. The shortage of suitable placements prevents them from accessing the support they require.⁴³⁵

H. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

Education

Equal access to quality education, and educational outcomes for children in disadvantaged situations

Despite the CRC’s (2016, para 73a) recommendation that efforts to reduce the impact of social background or disabilities on children’s achievement in school should be enhanced, a 2021 report by the Centre for Research in Educational Underachievement [CREU] presents evidence that **educational underachievement remains an issue in Northern Ireland**. Key factors include: socio-economic inequalities leading to disparities in educational achievement based on wealth and class; boys underachieving in comparison to girls; inequalities between and within religiously defined groups; questions about the fairness of assessments related to

⁴³² Monye Anyadike-Danes, QC, submission, October 2020

⁴³³ See: Fagan, M. (2019) ‘Rise in use of unregulated B&Bs, hotels and hostels for ‘looked after’ teens’, *The Detail*, 9 April 2019

⁴³⁴ Children’s Law Centre submission, November 2022

⁴³⁵ Children’s Law Centre submission, November 2022

academic selection and public examinations; and the impact of COVID-19.⁴³⁶ An expert panel, appointed by the (then) Education Minister in September 2020, also published its final report examining the links between persistent educational under-achievement and socio-economic background in 2021.⁴³⁷

For **Travellers**, inequalities span their life course. In terms of children's education, they are more likely to be excluded from school, have lower school attendance, be victims of bullying, and leave without qualifications.⁴³⁸

Roma children have limited pre-school experience and many do not speak English when they first attend school. They have reported that too much emphasis is placed on learning English at the expense of other subjects, with children discouraged from speaking their first language in school. Some report that negative assumptions are made about Roma children's abilities, that they are treated differently and given easier work. Many Roma children stop attending before the school leaving age and few progress to Further Education.⁴³⁹

Care experienced children and young people have highlighted how negative experiences of mainstream education are exacerbated by their learning difficulties not being identified, by problems experienced while in care not being understood by teachers, by a restrictive learning environment and by negative adult/child relationships in schools where challenging behavior often leads to suspension or expulsion.^{440 441}

Provision for **children who may not receive education at school for an extended period of time** is of particular concern. An illustrative case⁴⁴² concerned a 14 year old autistic child with functional dystonia who suffered pain, seizures and spasms. She had a statement of Special Educational Needs [SEN] but, as a result of her condition, was frequently unable to attend

⁴³⁶ See: <https://www.stran.ac.uk/wp-content/uploads/2021/04/CREU-Review-of-Research-2021.pdf>

⁴³⁷ Expert Panel on Educational Underachievement in Northern Ireland (2021) *A Fair Start. Final Report and Action Plan*, May 2021. Available at: <https://www.education-ni.gov.uk/sites/default/files/publications/education/A%20Fair%20Start%20-%20Final%20Report%20and%20Action%20Plan.pdf>

⁴³⁸ See: McVeigh, R. and Joyce, C. (2011) *Taskforce on Traveller Education. Report of the Taskforce to the Department of Education*. Available at: https://dera.ioe.ac.uk/13623/1/taskforce_on_traveller_education_-_report_of_the_taskforce_to_the_department_of_education.pdf

⁴³⁹ Haydon, D. (2015) *Promoting and Protecting the Rights of Roma Children and Young People in Northern Ireland*, Children's Law Centre, p39-42

⁴⁴⁰ Include Youth submission, September 2020; Include Youth response to NICCY Corporate Plan 2020-2023: <http://www.includeyouth.org/mgmt/resources/include-youth-response-to-niccy-corporate-plan-2020-2023.pdf>, p7-8

⁴⁴¹ Haydon, D. (2022) *Rights Here, Right Now: Children and Young People's Report to the UN Committee on the Rights of the Child*, Belfast: Children's Law Centre

⁴⁴² See: *LM and EM* – Keegan J, October 2019

school. These occasions were unpredictable, as was her period of absence. The case concerned a number of challenges including the duty to ensure that a child with special educational needs receives the educational provision they require under Article 16 of the *Education (Northern Ireland) Order 1996* and the duty under Article 86 of the *Education (Northern Ireland) Order 1998* to make “arrangements for the provision of suitable education at school or otherwise than at school for those children of compulsory school age who by reason of illness, expulsion or suspension from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them”. Article 2 of the First Protocol, Article 8 and Article 14 ECHR were engaged. Ultimately, the case was resolved through an agreed package. However, there remains a concern, noted in 2017 by the Northern Ireland Commissioner for Children and Young People in *Educational Inequalities and Inclusion Position Paper*, regarding the adequacy of education for children who cannot attend school due to illness, mental health issues, suspension or expulsion.⁴⁴³

This extends to a lack of support for **children and young people with health needs**, who are taken out of school to attend appointments or who are unable to participate in wider school curriculum activities, thus missing out on education and socialisation with peers due to their health needs. The RCPCH *State of Child Health 2020* report noted that children with long term conditions are more likely to develop mental health problems and may have poorer education outcomes.⁴⁴⁴ Therefore, it is important that these children remain in school as much as possible, with health services working together to co-ordinate care appointments in a ‘one stop shop’ model, particularly where several specialists are involved.

Deafness is not a learning disability, yet **deaf children** are at risk of falling a full grade behind their hearing friends. All categories of deafness, including mild hearing loss, have a negative impact on educational attainment. According to Department of Education data from 2020/21, only 55% of deaf school leavers obtained 5+ GCSEs at grades A*-C2 including English and Maths, compared to 78% of the total school population. This is an attainment gap of 23%. In 2014/15 it was 18%, demonstrating that the situation has worsened in the intervening years.⁴⁴⁵ The majority (91%) of deaf children are born to hearing parents, most of whom have no experience of deafness. 78% of deaf children in Northern Ireland attend mainstream schools where they may be the only deaf child. When early identification of deafness is followed quickly by high quality specialist intervention, deaf children can achieve the same outcomes as other children. A key intervention is the Teacher of the Deaf service, providing specialist support for families in the early years and helping to ensure that deaf learners in

⁴⁴³ See: www.ief.org.uk/wp-content/uploads/2017/08/educational-position-paper-july-2017-final.pdf

⁴⁴⁴ RCPCH (2020) *State of Child Health 2020. Northern Ireland*. Available at: <https://stateofchildhealth.rcpch.ac.uk/evidence/nations/northern-ireland/>, p27

⁴⁴⁵ National Deaf Children’s Society submission, October 2022

school have full access to the curriculum. Without this support, deaf children are more likely to struggle at school, experience mental ill health and have fewer employment opportunities.⁴⁴⁶ However, a 2021 report by the Consortium for Research into Deaf Education on educational staffing and service provision for deaf children found that the number of qualified Teachers of the Deaf in employment has fallen by 24% since an initial survey in 2011.⁴⁴⁷

Since the last reporting period, in Northern Ireland the five Education Boards have been replaced by a single Education Authority. Systemic operational failures have impacted adversely on **children with Special Educational Needs [SEN] and disabilities**. An internal audit carried out by the Education Authority revealed a range of entrenched failures within the Children and Young People's Services Directorate, particularly regarding governance and accountability mechanisms in the area of statutory operations, which has responsibility for determining provision for children with more complex SEN and disabilities.⁴⁴⁸ A report published in September 2020 by the Northern Ireland Audit Office confirmed these operational deficiencies.⁴⁴⁹ Concerns regarding many of these issues have been raised consistently by the Children's Law Centre, both informally and formally through legal action to the Special Educational Needs and Disability Tribunal (SENDIST) and through the courts via Judicial Review (eg regarding delays in making provision for pupils with SEN, including appropriate placements). The Education Authority rarely wins a case at SENDIST. The majority of cases are either conceded by the Authority or withdrawn by parents as they have achieved a satisfactory outcome for their child based on evidence of need.

Responses from the Education Authority to a Freedom of Information request about parental requests for statutory assessment of special educational needs [SEN] within the 2019/20 year provide evidence of a reluctance to conduct statutory assessments (in potential violation of UNCRC Articles 2, 3 and 23). The Education Authority confirmed that it received 881 parental requests for statutory assessment in the 2019/20 financial year. 544 (62%) of these parental requests led to a 'Notice of decision not to make a statutory assessment of educational needs'. Of these 544, 117 subsequently progressed to assessment during 2019/20. 234 appeals were lodged with the Special Educational Needs and Disability Tribunal [SENDIST] in relation to Notices of a decision not to make a statutory assessment. The Education Authority stated that information was not held about how many appeals were conceded by the

⁴⁴⁶ National Deaf Children's Society submission, September 2020

⁴⁴⁷ See: CRIDE (2021) *2021 Report for Northern Ireland: Education provision for deaf children in Northern Ireland*. Available at: <https://www.ndcs.org.uk/media/7460/cride-2021-northern-ireland-report-final.pdf>, p10

⁴⁴⁸ Children's Law Centre submission, September 2020

⁴⁴⁹ NI Audit Office (2020) *Impact Review of Special Educational Needs*. Available at: <https://www.niauditoffice.gov.uk/sites/niao/files/media-files/242135%20NIAO%20Special%20Education%20Needs%20Final%20Lw%20Rs%20%28complete%29.pdf>

Education Authority before a Tribunal took place.⁴⁵⁰ More recently the Authority has started to gather this information as part of the SEND Transformation (improvement) process. Figures demonstrate that the Education Authority has an extremely high fail rate at SENDIST appeals, and the number of appeals has risen significantly in recent years. In 2015/16 there were 145 SEN Appeals (of which only 4 were dismissed), compared with 378 in 2018/19 (of which only 11 were dismissed and 184 were recorded as conceded by the Education Authority). This means that in over 97% of cases, parents obtained a successful outcome for their child by either winning or settling and withdrawing their appeals, indicating poor first instance decision-making which is not evidence-based.⁴⁵¹

The number of children with SEN who require specialist provision is increasing each year. There are insufficient specialist placements available to accommodate these children and their needs. While some children with SEN can attend mainstream schools, this may not be an appropriate placement for all, especially given the current lack of inclusive provision despite the CRPD Committee recommendation that 'mainstream schools foster real inclusion of children with disabilities in the school environment'.⁴⁵² Between October 2021 and September 2022, SEN placement issues were raised 149 times on Children's Law Centre's advice line.⁴⁵³ Increasing numbers of children with SEN, together with more parents and children being aware of their rights, has led to an increase in the number of parents and schools applying for statutory assessments and seeking statements of SEN. However, the Education Authority does not have the capacity to cope with this increased demand. A constant backlog causes further distress to children and their families as they are unable to access the help they need for extended periods of time. The Education Authority timeframe for carrying out a statutory assessment should be 26 weeks maximum. Yet the process has been subject to extensive delays,⁴⁵⁴ with further delays caused by inadequate statements being produced and parents having to apply for appeals/ tribunals. Between October 2021 and September 2022, out of 1,612 education-related queries to the Children's Law Centre's advice line, 1,041 were in relation to SEN and 420 related to Statements of SEN.⁴⁵⁵ These long-term systemic failures, due to chronic underfunding of Children's Services as well as operational deficiencies, have created barriers to inclusion, resulting in reduced access to education for children with SEN and disabilities. The system is based predominantly on

⁴⁵⁰ Education Authority (2021) *Education Authority Freedom of Information Request Response*, Ref: FOI6727.

⁴⁵¹ Children's Law Centre submission, November 2022

⁴⁵² Committee on the Rights of Persons with Disabilities (2017) *Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland*, CRPD/C/GBR/CO1, 3 October 2017, para 53a

⁴⁵³ Children's Law Centre submission, September 2020

⁴⁵⁴ Meredith, R. (2020) 'Hundreds of special needs children have no September place', *BBC NEWS*, 24 June 2020. Available at: <https://www.bbc.co.uk/news/uk-northern-ireland-53152284>

⁴⁵⁵ Children's Law Centre submission, November 2022

resource-centred, rather than child-centred, decision-making. These concerns were clearly illustrated in a 2020 review by the Northern Ireland Commissioner for Children and Young People of SEN provision in mainstream schools.⁴⁵⁶ Funding of £6.1 million has been allocated through the SEND Transformation Project to enable the commencement of an initial phase of improvement projects intended to address these systemic issues. The process of transformation will be complex and lengthy, requiring significant long-term financial investment. In the interim, the educational barriers for children with SEN and disabilities remain extremely challenging given ongoing operational difficulties and compounded by the impacts of the current financial situation.

In relation to **young carers**, the Education Authority states:

“In Northern Ireland there is a ‘blended duty’ across carers’ and children’s legislation - the *Carers and Direct Payments Act (NI) 2002* (particularly Section 4) and the *Children (NI) Order 1995* (particularly Article 17A). This all sits within a children’s rights approach. Section 75 of the *Northern Ireland Act 1998* creates a duty on public bodies to have due regard to promote the equality opportunity between people with dependents and those without. Schools will have a role in considering how this is delivered for Young Carers.”⁴⁵⁷

However, in a recent a survey of young carers in 68 schools across three Trust Areas, Action for Children’s Young Carer Service found under half (43%) of the young carers stated that their school knew of their caring role and only 16% considered their school to be supporting them to balance their caring role with reaching important educational milestones. Young carers not being appropriately identified or supported in schools is a major barrier for their long-term outcomes. Many young carers do not receive appropriate recognition or support from their teachers or other school/ College staff when balancing their education with their caring roles. They require additional help to ensure they are able to develop and learn as successfully as their peers. Teachers and other staff are in a position to identify young carers, support them in the learning environment and direct them to other services where appropriate. Improved partnership with voluntary and community sector organisations offering targeted support to young carers would help achieve these objectives.⁴⁵⁸

⁴⁵⁶ NICCY (2020) *Too Little, Too Late*. Available at: <https://www.niccy.org/media/3515/niccy-too-little-too-late-report-march-2020-web-final.pdf>

⁴⁵⁷ See: Education Authority Supporting Young Carers in School. Available at: <https://www.eani.org.uk/sites/default/files/2018-10/Supporting-Young-Carers-In-Schools-Booklet-Final.pdf>, p9

⁴⁵⁸ Action for Children submission, October 2022

Refugee and asylum seeking children often experience severe disruption to their learning, which continues as they resettle in a new country. They also experience many Adverse Childhood Experiences [ACEs], widely recognised as having potentially harmful and long-term impacts, including on their educational outcomes. There is a lack of research and data on the experience of refugee and asylum seeking children in Northern Ireland. Research conducted with Syrian refugee children and their families outlined some of the challenges they experience.⁴⁵⁹ It highlighted that schools are often poorly equipped to meet the specific needs of refugee students, who may arrive with substantial gaps in their knowledge due to interrupted or minimal previous experience of education. Although they value education, children with limited or negative experiences of school in transition countries, including physical punishment or racial discrimination, understandably may be apprehensive. Some worry about being unable to make friends or communicate their needs to teachers due to language barriers. A number of factors impact on their engagement within schools, including the time of year they arrive and their educational needs. In particular, placements in Special Schools can take longer to secure, especially if a child has complex medical needs. Support for refugee children varies considerably, particularly when addressing language barriers. While some schools have specialist programmes or bi-lingual units, provision in others may involve little more than one hour of additional English classes a week. Differing approaches to support and placements of refugee children result in a postcode lottery in terms of their educational experiences. In a *Rights Here, Right Now* consultation workshop, six young refugee women discussed being “stared at” and feeling that “people in my school don’t take my opinions seriously - because I’m Muslim and wear a hijab”. They considered their right to education was undermined by lack of support and provision in their own language: “We are overwhelmed at school. We struggle with English but still have to take lots of GCSEs that we can’t understand due to the language barrier. We think education needs to be reformed.”⁴⁶⁰

Impacts of COVID-19 on education

The impact of the COVID-19 pandemic has increased educational inequalities, an issue recognised in a report published in June 2020 by the Equality Commission for Northern Ireland.⁴⁶¹

The expectation that children would be educated via **distance learning during the pandemic adversely impacted on economically disadvantaged children**. Many had limited access to necessary equipment or internet connectivity. Parents lacked confidence, knowledge or skill

⁴⁵⁹ Robertson, A. (2020) ‘A New Life for Me’. *Integration Experiences of Syrian Refugee Children and Their Families*, Barnardo’s NI

⁴⁶⁰ Haydon, D. (2002) *Rights Here, Right Now: Children and Young People’s Report to the UN Committee on the Rights of the Child*, Belfast: Children’s Law Centre

⁴⁶¹ See: <https://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/EducationC19-PolicyPosition.pdf>

in relation to home schooling and many families experienced significant tensions about home schooling. Parents who were frontline workers faced practical and emotional challenges both at work and at home. In addition, inconsistent responses by schools and by teachers affected access to quality educational resources and provision.⁴⁶² In June 2020, a rapid response survey about education during school closures found that, among foster carer respondents in Northern Ireland, the level of home learning was extremely varied.⁴⁶³ Children with SEN and disabilities, who were assessed as requiring individual support from qualified staff to access the curriculum, were in many cases unable to understand or connect with teachers, assistants or peers via remote learning.⁴⁶⁴

An exam results ‘U-turn’, in which examination results were replaced by teacher assessments, **was preceded by a high proportion of Northern Ireland students receiving grades lower than those predicted by their teachers.** It has been argued that the algorithm used to calculate the original grades further entrenched education inequalities as children from poorer backgrounds were more likely to have had their grades lowered.⁴⁶⁵

The *Coronavirus Act 2020* enabled the diminution of legal obligations to children with SEN. The Act conferred powers on the Department of Education to dis-apply or modify educational statutory duties. The Department issued *Temporary Modification of Educational Duties Notice (Northern Ireland) 2020*, followed by nine successive similar Notices. Each modified statutory duties in relation to the assessment of, and provision for, special educational needs in Articles 2–21B of the *Education (Northern Ireland) Order 1996* and Regulations 5–22 of the *Education (Special Educational Needs) Regulations (Northern Ireland) 2005*. The ‘absolute duty’ was replaced by a ‘best endeavours duty’. Justifications for the modification of absolute duties were connected to the resource constraints of the Education Authority, whereas the statutory framework rests on the primacy of assessing and meeting the special educational needs of the child.⁴⁶⁶ This legislation was introduced without proper scrutiny. In the absence of equality screening, child impact assessment or consultation, subsequent policies resulted in avoidable and predictable adverse impacts on vulnerable children with SEN and disabilities.⁴⁶⁷

⁴⁶² Parenting NI submission, September 2020

⁴⁶³ Lawson K. and Elliott D. (2020) *Education during the Covid-19 pandemic and transitioning back to school: Experiences of the fostering sector*, The Fostering Network

⁴⁶⁴ Children’s Law Centre submission, November 2022

⁴⁶⁵ See: <https://www.independent.co.uk/news/uk/politics/computer-exam-algorithm-punish-pupils-lower-grades-estimates-a9655846.html>;
<https://www.theguardian.com/education/2020/aug/13/who-won-and-who-lost-when-a-levels-meet-the-algorithm>

⁴⁶⁶ Children’s Law Centre submission, November 2022

⁴⁶⁷ Children’s Law Centre submission, November 2022

Pre-existing issues, such as lack of access to education and disrupted education placement, were exacerbated. Children’s services in education, already depleted by sustained austerity cuts, were unable to cope with the level and type of need that emerged and stopped direct provision. The Children’s Law Centre issued pre-action correspondence and court proceedings regarding a number of children with severe learning disabilities, autism and high levels of distressed behaviour who were at home without necessary services during school closures. These children and their families suffered harm due to loss of the protective factor provided by attendance at specialist schools, alongside the disruption of health and social services supports. They were denied access to any form of education throughout the 2020 spring/ summer lockdown.⁴⁶⁸ There were no contingency plans put in place for future local/ national lockdowns or periods when children were at home during school term for reasons related to the Coronavirus pandemic.

The Notices which diluted legal duties under the SEN legal framework ceased to operate when *Temporary Modification of Educational Duties (No. 10) Notice (Northern Ireland) 2020* was cancelled following the ‘easing’ of lockdown. Yet, these cases raised important issues regarding impacts on the most vulnerable children, the importance of consultation, and mitigation of harm should any future changes to absolute duties be made. This issue is particularly significant for Northern Ireland due to: the higher proportion of children with SEN in this jurisdiction; operational deficiencies within the Education Authority;⁴⁶⁹ the amount of time and resources required for implementation of improvement processes.

The most severely disabled children living in the most vulnerable family situations suffered the greatest impacts and accessed the least help from the education system during the pandemic. When potential support systems emerged in 2020, these were unfit for purpose due to lack of consultation with key stakeholders and often too late as schools were about to close for the summer. Some schools refused to open for vulnerable children, and the Government provided insufficient direction or support to enable opening. Some very vulnerable children were not identified as requiring help, despite being known to services. Others who were identified were unable to avail of any practical help as it was not designed to meet individual needs. Children, their siblings and parents suffered harm to their physical

⁴⁶⁸ Children’s Law Centre submission, November 2022

⁴⁶⁹ See: Northern Ireland Audit Office (2017) *Special Educational Needs*, NIAO. Available at: <https://www.niauditoffice.gov.uk/files/niauditoffice/media-files/Special%20Educational%20Needs.pdf>
Public Accounts Committee (2021) *Report on Impact Review of Special Educational Needs*. Available at: <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/pac/reports/special-educational-needs/report-on-impact-review-on-special-educational-needs.pdf>
NICCY (2020) *‘Too Little, Too Late’ A Rights Based Review of Special Educational Needs Provision in Mainstream Schools*. Main Report. Available at: <https://www.niccy.org/media/3515/niccy-too-little-too-late-report-march-2020-web-final.pdf>

and mental health. Some children were medicated to reduce displays of distress, including distressed behaviour, self-harm and aggression.⁴⁷⁰

To compound matters, extensive **delays in health assessments for children with SEN and disabilities are blocking access to early intervention**. The pandemic exacerbated existing difficulties in accessing education, particularly for those whose parents are unable to afford private assessments. Some children have been unable to access medical appointments for assessments for ADHD/ Autism, or Occupational Therapy, Speech and Language Therapy and ENT [Ear, Nose and Throat] appointments.⁴⁷¹

In 2020, the Equality Coalition produced a briefing in collaboration with its members, more than 90 NGOs and Trade Unions, on how the **return to school** following lockdown over the summer and the subsequent summer break **should have been equality proofed**.⁴⁷²

Since the ending of the lockdowns, key issues have been **potential impacts on educational attainment and children’s mental health** - both areas requiring focus in addition to practical considerations.⁴⁷³ It is not clear what steps have been taken by public authorities to identify level of need and provide effective, specialist support to meet an increase in complex needs and vulnerabilities within the school population. The Secretary of State’s recent statement about the budget in the absence of a functioning government in Northern Ireland raises concerns about lack of ring-fenced funding for such provision.⁴⁷⁴ In this statement, he commented:

“For Education, this Budget provides £2.6bn in funding, which is an additional £286m on top of last year’s spending (after excluding accounting for one-off COVID support in 2021-22). This will protect spending for programmes such as Free School Meals, Home to School Transport, the Extended Schools and Sure Start programmes, all of which support those who need it most. However, even this level of increase will

⁴⁷⁰ Children’s Law Centre submission, September 2020

⁴⁷¹ For example, the Children’s Law Centre worked with the parent of a young child who was on 3 separate waiting lists for Speech & Language Therapy, an ENT appointment to assess the extent of a hearing loss, and assessment for Autism/ADHD. The waiting list in the relevant HSC Trust area was 22 months. The child started mainstream school with no support and no statement of special needs in place. They struggled and displayed signs of distress, including aggression, in the home and were withdrawn at school.

⁴⁷² See: <https://www.equalitycoalition.net/wp-content/uploads/2020/09/Equality-Coalition-briefing-paper-Equality-proofing-the-return-to-school-080920.pdf>

⁴⁷³ CAJ submission, October 2022

⁴⁷⁴ Children’s Law Centre submission, November 2022; See: <https://questions-statements.parliament.uk/written-statements/detail/2022-11-24/hcws385>

require significant reductions in current spending trajectory levels to live within budgetary control totals. This will affect funding for high spend areas such as the Education Authority's Block Grant and the Aggregated Schools Budget. As some costs are demand driven, this will have impacts. However, these are unavoidable given the scale of the overspend risk facing the department. *The required action to curtail expenditure must be taken by all Education spending areas in order to live within budget.*"⁴⁷⁵

School exclusions

The CRC (2016, para 73b) recommended the abolition of 'informal' exclusions. However, **children with SEN and/or disabilities continue to experience 'informal' exclusions.** These include being sent home early from school, educated part-time over a lengthy duration, or having no suitable school placement to attend. Such exclusions are unregulated, potentially amounting to unlawful disability discrimination, and often indicative of unidentified learning difficulties or unmet need. Primarily affecting children who have behavioural difficulties, anxiety disorders, autism or learning disabilities, they are not formally documented or reported, resulting in a lack of available data. In evidence to the Education Committee in June 2020, the Education Authority acknowledged: "We do not have the data; as it stands, we do not know how many children are excluded and to what extent, but we know that there are children who are being informally excluded".⁴⁷⁶ This issue has become more prevalent due to the imposition of financial austerity measures since the last CRC examination in 2016 and a failure to introduce proactive measures to prevent informal exclusions. The policy of inclusion introduced through *The Special Educational Needs and Disability (Northern Ireland) Order 2005* is having an impact, with increased numbers of children with SEN attending mainstream school. However, the resources, attitudinal shifts, training and inclusive practices required to enable equal access to educational opportunities are lagging behind.

Even in relation to formal suspension, which may disproportionately affect protected groups, a right of appeal has been enacted but never been commenced into operation. This is detrimental to the educational rights and outcomes of disadvantaged children.

Bullying in schools

The *Addressing Bullying in Schools (NI) Act 2016* commenced on 1 September 2021.⁴⁷⁷ **However, children from vulnerable groups continue to report experiences of bullying.**

⁴⁷⁵ See: <https://questions-statements.parliament.uk/written-statements/detail/2022-11-24/hcws385>, emphasis added

⁴⁷⁶ See: <http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=22790&evidID=11979>

⁴⁷⁷ See: <https://www.education-ni.gov.uk/publications/circular-202112-addressing-bullying-schools-act-ni-2016-responsibilities-schools-and-boards>

A report detailing findings from the 2014 *Young Life and Times Survey* of 16 year olds in Northern Ireland highlighted that homophobic name-calling was common in schools, with **LGBTI+** young people experiencing homophobic and transphobic bullying and/or harassment.⁴⁷⁸ Research commissioned by the Department of Education into the post-primary experiences of LGBT 16-21 year olds found that 48% of respondents had experienced bullying as a consequence of their sexual orientation and/or gender identity. The main forms of bullying included name-calling, lies or false rumours, being isolated by other pupils and being hit, kicked, pushed, shoved around. 39% of those bullied had reported the bullying to school staff. However, 54% of these young people felt “unsupported” or “very unsupported” by the staff response.⁴⁷⁹ In other research exploring the needs and experiences of LGBT young people, commissioned by the Education Authority and conducted the same year, 68% of respondents had experienced bullying in school because of their sexual orientation/ gender identity, with homophobic and transphobic name-calling or ridicule perpetuated by pupils and teachers.⁴⁸⁰ The Education Authority has produced guidelines: *Supporting Transgender Young People*, but these are non-statutory. Although the existence of transgender identity is recognised, there is no requirement to put provisions in place concerning trans children’s experience of education. Transgender and intersex young people, like those who may experience other forms of gender variant identities, have the same rights as other young people to be protected from bullying.⁴⁸¹

Discussing their experiences of living in Northern Ireland, in 2020 Syrian **refugee children** talked about difficult peer relationships and bullying in school. While a few mentioned racist bullying, others gave examples of racist name-calling, derogatory comments related to their religion, ethnicity, or for wearing a hijab, and perceived exclusion by their wider peer group.⁴⁸²

⁴⁷⁸ Schubotz, D. (2015) *Relationships and Sexuality Education (RSE) and Homophobic and Transphobic Name Calling*, YLT, See also: McBride, R-S. and Schubotz, D. (2017) ‘Living a fairy tale: the educational experiences of transgender and gender non-conforming youth in Northern Ireland’, *Child Care in Practice*, Vol. 23, Issue 3, DOI: [10.1080/13575279.2017.1299112](https://doi.org/10.1080/13575279.2017.1299112)

⁴⁷⁹ Public and Corporate Economic Consultants (2017) *Post-primary school experiences of 16-21 year old people who are Lesbian, Gay, Bisexual and/or Transgender (LGB&T)*, Research Briefing, September 2017, Department of Education, p7-8

⁴⁸⁰ Neill, G. and Meehan, D. (2017) *Still Shouting: The needs and experiences of young people in Northern Ireland who identify as lesbian, gay, bisexual and/or transgender (LGBT)*, Cara-Friend and Youth Action, p20-21

⁴⁸¹ Focus – The Identity Trust submission, September 2020;
See: NI Anti-Bullying Forum (2018) *Supporting Schools when Responding to Bullying Incidents Involving Lesbian, Gay, Bisexual and Transgender (LGBT) Children and Young People*, Effective Responses to Bullying Behaviour: Supplement

⁴⁸² Robertson, A. (2020) ‘A New Life for Me’. *Integration Experiences of Syrian Refugee Children and Their Families*, Barnardo’s NI, p49; 51; 61-62

Refugee young women involved in a *Rights Here, Right Now* workshop in October 2022 described similar experiences.⁴⁸³

Worryingly, the Department for Education has indicated that it **will cease funding to the Northern Ireland Anti-Bullying Forum from 31 March 2023**. For over eighteen years, the Forum has convened statutory and voluntary sector organisations to jointly develop campaigns, resources and training to address bullying. Concerns exist among NGOs as to how this decision may impact on coordinated and consistent approaches to anti-bullying activities in Northern Ireland.⁴⁸⁴

Early childhood care and education

The *School Age Act (NI) 2022*, passed in April 2022, allows parents to defer their child's pre-school or P1 place for up to one year if they were born between 1st April and the 1st July (previously school intake ran from 1st July - 30th June). While this is welcome, the Department of Education currently is **only offering one year of pre-school provision**. For children attending pre-school during the first year of these changes, September 2022 intake, if their parents have decided to defer their P1 place, they will have no pre-school provision for the academic year. In future years too, should a parent decide during their pre-school year that a child is not ready for P1 and defers a P1 place, the child will not be given additional pre-school provision during the deferral year.

Sexual and reproductive health education

In 2016, the CRC (2016, para 65b) recommended that meaningful sexual and reproductive health education should be covered within the mandatory curriculum. In Northern Ireland, Relationships and Sexuality Education [RSE] is taught within the statutory primary school curriculum under 'Personal Development and Mutual Understanding' and within 'Learning for Life and Work' in post-primary schools. **Beyond the statutory minimum content for RSE, schools have flexibility in what they cover**, giving each school the scope to make decisions on meeting pupil needs. The Department of Education's 2015 Circular regarding RSE states that each school is required to develop an RSE policy "which is relevant to the lives of pupils today", **based on the ethos of the school**.⁴⁸⁵

⁴⁸³ Haydon, D. (2002) *Rights Here, Right Now: Children and Young People's Report to the UN Committee on the Rights of the Child*, Belfast: Children's Law Centre

⁴⁸⁴ Children's Law Centre submission, November 2022

⁴⁸⁵ Department of Education (2015) *Relationship and Sexuality Education (RSE) Guidance, Circular Number 2015/22*. Available at: https://www.eani.org.uk/sites/default/files/2018-10/cpsss_circular_2015_22.pdf

The Department of Education Circular states that “best practice” includes “clear linkages and explicit connections” with the “aims, values, ethos, moral and ethical framework” of the school. The teaching guidance and resources provided by the Council for the Curriculum, Examinations and Assessment [CCEA] cover issues including consent, contraception, healthy relationships, internet safety, LGBT matters, social media and self-esteem.⁴⁸⁶ However, regarding ‘sensitive issues’ (eg abortion, same-sex marriage, gender identity, sexual abuse), the CCEA guidance states that “Schools may wish to deal with such issues differently, depending on their distinctive” ethos.⁴⁸⁷ Consequently, particularly in faith-based schools, **important RSE content may be excluded because it does not fit with the school’s ethos.** Further, RSE taught from a faith-based perspective may be adjusted to match the philosophical convictions underpinning a school’s ethos. This may include misleading teaching and information about the physical or mental impact of abortion or that homosexuality is morally unacceptable.⁴⁸⁸ In its inquiry into rights violation of rights as a consequence of restrictive access to abortion for girls and women in Northern Ireland, the Committee on the Elimination of Discrimination against Women [CEDAW] recommended that the State Party should make “age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory curriculum component for adolescents, covering early pregnancy prevention and access to abortion”.⁴⁸⁹

Current RSE provision is inadequate, often failing to connect with the ‘lived reality’ of young people’s lives and experiences, including sexting, family diversity, and LGBTI+ relationships. Existing provision influences how young people understand and conceptualise ‘healthy’ sexual behaviour and relationships. Failure to provide adequate RSE places young people at risk in their negotiation of safe relationships. A narrow framework can lead them to seek information elsewhere, often from ill-informed sources, leaving them vulnerable to harmful

⁴⁸⁶ CCEA (2015) *Relationships and Sexuality Education Guidance: An Update for Post-Primary Schools* (2015). Available at: <https://ccea.org.uk/downloads/docs/ccea-asset/Curriculum/Relationships%20and%20Sexuality%20Education%20Guidance%20An%20Update%20for%20Post-Primary%20Schools.pdf>;

CCEA (2015) *Relationships and Sexuality Education Guidance: An Update for Primary Schools*. Available at: <https://ccea.org.uk/downloads/docs/ccea-asset/Resource/Relationships%20and%20Sexuality%20Education%20Guidance%20%E2%80%93%20An%20Update%20for%20Primary%20Schools.pdf>

⁴⁸⁷ CCEA, ‘*Relationships and Sexuality Education (RSE)*’ Available at: <https://ccea.org.uk/learning-resources/relationships-and-sexuality-education-rse>, p19

⁴⁸⁸ While LGBTI+-specific information is often absent from teaching in a variety of schools, this situation was found to be particularly prevalent in schools with a religious ethos in Britain: Bradlow, J. et al (2017) *The experiences of lesbian, gay, bi and trans young people in Britain’s schools in 2017*, Stonewall/ Centre for Family Research, University of Cambridge

⁴⁸⁹ CEDAW (2018) *Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/C/OP.8/GBR/1, 23 February 2018, para 86d

behaviours.⁴⁹⁰ In its latest Concluding Observations to the UK Government, the Committee on the Elimination of Discrimination against Women recommended that measures should be taken to introduce mandatory, age-appropriate education on sex and reproductive rights, including gender relations and responsible behavior, together with implementation of the 2018 House of Commons Women and Equality Committee Report recommendations on sexual harassment of girls in public spaces, including schools.⁴⁹¹

Teacher education regarding RSE is insufficient, translating into poor delivery, particularly for LGBTI+ young people.⁴⁹² In a 2016 study about the needs and experiences of young people in Northern Ireland identifying as LGBT, 84% of respondents noted they had not received any information or support at school regarding gender identity or sexual orientation.⁴⁹³ This was affirmed by another research project exploring the post-primary experiences of LGBT young people: 55% of respondents stated that issues about sexual orientation or gender identity had not arisen in any of their classes; 38% reported feeling uncomfortable through teachers using inconsiderate or derogatory language, taking a heteronormative approach, and poorly covering LGBT issues; 92% stated that there was insufficient information available in relation to LGBT issues.⁴⁹⁴ In 2019, young people surveyed about RSE described programmes as “unhelpful”, “limited” and “heteronormative”.⁴⁹⁵

In August 2022, across the UK the NASUWT and NSPCC surveyed 1,034 secondary school teachers and senior leaders about teaching sex and relationships education. Almost half: 46% did not feel confident about teaching sex and relationships education. Over a quarter did not feel confident answering difficult or sensitive questions in lessons. The majority: 86% considered that they needed more resources and training, and over half: 57% considered that the level of support from government has been poor. The survey found that many teachers lacked confidence when delivering certain topics covered in sex and relationships education:

⁴⁹⁰ Agnew, E. (2018) *A Critical Analysis of the Emergence, Impact and Regulation of ‘Cyberbullying’ and ‘Sexting’ among Young People in Northern Ireland*, Unpublished PhD thesis, Queen’s University Belfast

⁴⁹¹ CEDAW (2019) *Concluding Observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland*, Adopted by the Committee on its 77th session (18 February – 8 March 2019), para 42b and c

⁴⁹² Dirk Schubotz (QUB) submission, September 2020

⁴⁹³ Neill, G. and Meehan, D. (2017) *Still Shouting: The needs and experiences of young people in Northern Ireland who identify as lesbian, gay, bisexual and/or transgender (LGBT)*, Cara-Friend and Youth Action, p21 Available at: <https://youthcouncilni.org/wp-content/uploads/2017/12/5878-YouthAction-Still-shouting.pdf>

⁴⁹⁴ Public and Corporate Economic Consultants (2017) *Post-primary school experiences of 16-21 year old people who are Lesbian, Gay, Bisexual and/or Transgender (LGB&T)*, Research Briefing, September 2017, Department of Education, p8

⁴⁹⁵ Belfast City Council Youth Forum (2019) *Any Use? Young People’s Opinions on Relationship and Sexuality Education*

40% did not feel confident delivering lessons on pornography, less than a third felt confident delivering lessons on consent and only 19% feel confident delivering lessons on harmful sexual behaviour and sexual harassment.⁴⁹⁶

A Summary Report outlining responses to consultation about Northern Ireland's *Ending Violence Against Women and Girls Strategy* highlighted the need for teachers to be trained to deliver age-appropriate, inclusive RSE which recognises a range of relationships and includes all children.⁴⁹⁷ In line with commitments made in the *New Decade, New Approach* agreement, which restored the government of the Northern Ireland Executive in January 2020 following a three-year hiatus, a Gender Equality Expert Advisory Panel was appointed in October 2020. Its objective was to prepare a report setting out key recommendations to the Minister for Communities, focusing on the themes and actions to be included in a Gender Equality Strategy and identifying gaps in provision. The Panel's recommendations included delivery of 'fit for purpose', mandatory, age-appropriate RSE inclusive of the experiences of all young people.⁴⁹⁸ It also recommended that RSE should be delivered in schools by trained professionals, not teachers, reflecting research with young people that revealed they prefer not to have their teachers deliver RSE because of awkwardness linked to familiarity, an imbalance of power, and concerns about lack of confidentiality.⁴⁹⁹

While there is no legislative provision permitting **parental withdrawal of children from sex education**, the CCEA guidance states that schools are allowed to grant such requests **on the basis that "parents or carers have the right to have their children educated in accordance with their wishes"**.⁵⁰⁰ Thus, some children are denied their right to access RSE. This is particularly concerning in relation to sexual abuse as an abusive parent could exercise the right to withdraw their child from sex education and, by so doing, prevent the child from receiving adequate safeguarding education. Unlike England, where pupils who are three terms or less from their 16th birthday may opt into sex education, there is no right for older

⁴⁹⁶ See: <https://www.nspcc.org.uk/about-us/news-opinion/2022/teachers-sex-relationships-education/>

⁴⁹⁷ Northern Ireland Executive (2022) *EVAWG Strategy. Call for Views. Summary Report*. Available at: <https://www.executiveoffice-ni.gov.uk/sites/default/files/publications/execoffice/EVAWG%20Call%20for%20Views%20Summary%20Report%20August%202022-4.pdf>, p37

⁴⁹⁸ Gray, A-M. et al (2020) *Gender Equality Strategy. Expert Advisory Panel Report*. Available at: <https://www.executiveoffice-ni.gov.uk/system/files/publications/communities/dfc-social-inclusion-strategy-gender-expert-advisory-panel-report.pdf>, p169

⁴⁹⁹ Ibid, p165

⁵⁰⁰ CCEA (2015) *Relationships and Sexuality Education Guidance: An Update for Primary Schools*, p9. Available at: <https://ccea.org.uk/downloads/docs/ccea-asset/Resource/Relationships%20and%20Sexuality%20Education%20Guidance%20%E2%80%93%20An%20Update%20for%20Primary%20Schools.pdf>

pupils in Northern Ireland to request RSE. The Welsh Assembly removed the right to withdraw from RSE entirely, ensuring that, from September 2022, all pupils from ages 3-16 have access to a comprehensive, objective, compulsory RSE curriculum irrespective of background or belief.⁵⁰¹

In 2018, the then Northern Ireland Secretary of State, MP Shailesh Vara, stated that it was his legal duty to introduce compulsory RSE in schools, “to ensure that adolescents have access to age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights, including prevention of early pregnancy and access to abortion”, in line with the 2018 CEDAW recommendation 86d.⁵⁰² Northern Ireland’s Department of Education is responsible for taking forward this recommendation, but has not done so to date. Mr Vara wrote to the Department informing them it was his legal duty to act on RSE in accordance with the statutory obligation in Section 9(1) of the *Northern Ireland (Executive Formation etc) Act 2019*, and if the Department was not prepared to implement the recommendation, he would consider using his powers to intervene.⁵⁰³ Chris Heaton-Harris, the current Secretary of State for Northern Ireland, is under the same obligation to prioritise compliance with the legal duty to implement the CEDAW recommendation.⁵⁰⁴

Human rights education in the school curricula and teacher training programmes

There is **minimal focus on rights, equality, and social justice within the Northern Ireland school curriculum**.⁵⁰⁵ Such topics are generally considered an ‘add-on’ or a distraction from core academic areas, and teaching about them is often undertaken only or mostly as part of externally run initiatives such as Eco-Schools⁵⁰⁶ or the Global Learning Programme [GLP]. GLP operated from 2015 to 2017 in Northern Ireland, promoting education for a fair and sustainable world. The final report about the GLP’s impact recommended policy development encompassing curricular change to improve educational provision in this area,

⁵⁰¹ Northern Ireland Humanists submission, September 2022

⁵⁰² CEDAW (2018) *Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/C/OP.8/GBR/1, 23 February 2018, para 86d

⁵⁰³ BBC NEWS (2022) *Sex education in schools could be made compulsory by NI secretary*, 29 July 2022. Available at: <https://www.bbc.co.uk/news/uk-northern-ireland-62340425>

⁵⁰⁴ NSPCC submission, October 2022

⁵⁰⁵ CAJ submission, October 2022

⁵⁰⁶ See: <https://www.eco-schools.org.uk/>

including content and pedagogy as well as measures which address teachers' concerns about assessment, initial teacher education, school governance and inspection.⁵⁰⁷

Inclusive education for children with disabilities

Specific groups, including those with disabilities, are protected under s75 of the *Northern Ireland Act 1998* and thereby recognised by law to be particularly vulnerable. **Failure to collect appropriate disaggregated data, plus failure to equality screen and deficiencies in the equality screening that does take place**, are resulting in failures to have due regard to the need to promote equality of opportunity - including through provision of inclusive education. Early, effective, evidence-based equality screening of education policies is fundamental to tackling the persistent educational exclusion and under-attainment of disabled children. This process, carried out in compliance with s75 duties, would enable identification of inequalities and the corresponding actions required.⁵⁰⁸

Lack of cooperation between government departments (particularly Education and Health) and children's services providers, including failures to target effective working practices through pooling human and financial resources, **is perpetuating barriers to inclusive education**. The *Children's Services Co-operation Act 2015* imposes the legal duty to cooperate and contains mechanisms by which to achieve child-centred service provision and measurable outcomes which will improve the well-being of children and young people in Northern Ireland. Strategic direction, appropriate deployment of resources and implementation of the duties and powers contained in this legislation are urgently required at an operational level to ensure the right to inclusive education.

Failure of early intervention is a key driver of persistent educational underachievement for children with disabilities. The SEN legal framework and *Code of Practice* provides a robust set of legal rights, with a strong emphasis on early intervention. However, it is well documented by the Children's Law Centre and other agencies working to support children,⁵⁰⁹ in the media, and by the Northern Ireland Assembly Education Committee, that **operational processes to identify and provide for children with SEN and disabilities are deficient**, and have been for

⁵⁰⁷ See: <https://www.centreforglobaleducation.com/sites/default/files/GLP%20Research%20Report%202015-2017.pdf>, p31

⁵⁰⁸ Children's Law Centre submission, November 2022

⁵⁰⁹ See: Northern Ireland Audit Office (2017) *Special Educational Needs*, NIAO. Available at: <https://www.niauditoffice.gov.uk/files/niauditoffice/media-files/Special%20Educational%20Needs.pdf>
Public Accounts Committee (2021) *Report on Impact Review of Special Educational Needs*. Available at: <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/pac/reports/special-educational-needs/report-on-impact-review-on-special-educational-needs.pdf>
NICCY (2020) *'Too Little, Too Late' A Rights Based Review of Special Educational Needs Provision in Mainstream Schools*. Main Report. Available at: <https://www.niccy.org/media/3515/niccy-too-little-too-late-report-march-2020-web-final.pdf>

many years. The Education Authority is undertaking an improvement process to try to ameliorate current deficiencies in the system.⁵¹⁰ But for this to have a positive effect, both in the short and long term, it is critical that service provision for children with disabilities is a Government priority in terms of financial and human resources. At the moment, sustained budgetary pressures within schools and the Education Authority, alongside sustained growth in the numbers and increasingly complex presentations of children with SEN, and larger class sizes, are aggravating existing inequalities.⁵¹¹

In an effort to ameliorate the lack of specialist provision available to disabled children, the Education Authority has opened a number of learning support classes within mainstream schools. However, it is not clear whether this has resulted in improved inclusion for children with disabilities. The Children’s Law Centre is aware that some of these specialist provisions do not extend to older children at the point when they are studying for formal exam accreditation.⁵¹²

Essential enabling resources are often taken away from children with disabilities, in effect removing their ability to access services, to make life choices and to be heard in decisions affecting them. One example from the Children’s Law Centre’s casework was lack of contingency planning and resources to ensure access to a classroom assistant with British Sign Language training to support the learning needs of a deaf child in circumstances where the usual provider was not available. This case identified the systemic need for additional training for classroom assistants, to enhance specialised service delivery for deaf children. In this context, and in the absence of a locally accountable Minister/ devolved government, it is concerning that the Secretary of State for Northern Ireland’s statement about bringing forward a Budget Bill for Northern Ireland warned of financial pressures which would require “action to curtail expenditure ... by all Education spending areas”.⁵¹³

Undue delays in NHS and Education Authority assessments force many parents to undertake private, independent assessments. As a result of NHS waiting lists and refusals by the Education Authority to undertake statutory educational assessments, or delays in these processes, many parents are compelled to self-fund independent educational psychology and speech reports, tuition, private speech therapy or occupational therapy – potentially increasing existing inequalities of access to appropriate provision.⁵¹⁴

⁵¹⁰ See: <https://www.eani.org.uk/parents/special-educational-needs-sen/special-educational-needs-and-disabilities-sen/>

⁵¹¹ Children’s Law Centre submission, November 2022

⁵¹² Children’s Law Centre submission, November 2022

⁵¹³ <https://questions-statements.parliament.uk/written-statements/detail/2022-11-24/hcws385>

⁵¹⁴ Children’s Law Centre submission, November 2022

The capacity of the education workforce, both teaching and non-teaching, to support disabled children has been significantly affected by a sustained programme of austerity cuts. They are being asked to do more and more, with less and less resources. Further, they are reporting to the Children’s Law Centre that they cannot access training opportunities and feel misinformed, demoralised and disempowered. Programmes to support vulnerable groups of children tend to be piecemeal and unsustainable. The education workforce requires proper resourcing, training and support to enable implementation of targeted support for children who experience barriers to inclusive education. This support needs to be sustained and based on need, rather than budget driven. Responding to the needs of the school population requires significant development of capacity within the school workforce.

Legal caseworkers at the Children’s Law Centre are dealing with: increasing numbers of enquiries about disability discrimination in education; increasing numbers of cases where children are not attending school or are attending part-time due to informal exclusion; increasing dissatisfaction relating to special educational provision and access to SEN support services; increasing communication from schools who do not have sufficient training, support or resources to provide inclusive education for children with SEN and disabilities and/or are unable to access appropriate specialist support for vulnerable children from the Education Authority. The Children’s Law Centre is aware of delays, failure of basic legal compliance (such as time limits for finalising statements of SEN), and breakdown in communication with service users (i.e. children, parents/ carers) due to continuous pressure on the system alongside inadequate financial and human resourcing.⁵¹⁵

Additional issues

Use of unregulated ‘transfer’ tests (ie academic selection)

Despite the CRC’s (2016, para 73a) recommendation, the **use of unregulated ‘transfer tests’ (i.e., academic selection)** determines whether children attend a grammar or non-grammar post-primary school. Although academic selection via the so-called ‘11+’ test was abandoned in 2008, the use of unregulated ‘transfer tests’ (AQE and GL) ensures that academic selection continues. Just under half of those in the final year of primary school sit these tests. Although there are plans to merge the GL and AQE tests into a single common transfer test from 2023,⁵¹⁶ this will remain unregulated and academic selection will continue.

⁵¹⁵ Children’s Law Centre submission, November 2022

⁵¹⁶ See: <https://www.belfasttelegraph.co.uk/news/education/new-single-transfer-test-for-p7-pupils-in-northern-ireland-to-begin-in-november-2023-41482737.html>

In 2018/19, 13,101 applications were made using these tests for 9,462 places at 63 academically selective grammar schools.⁵¹⁷ Yet, academic selection has an adverse impact on disadvantaged groups of children.⁵¹⁸ Further, research conducted to inform an emotional health and wellbeing framework for children found that preparation for the transfer test resulted in severe anxiety among young children.⁵¹⁹

COVID-19 heightened anxiety for many children who sat the ‘transfer tests’ as children returned to school after months of ‘home-schooling’ with limited time for preparation. In September 2020, two cases⁵²⁰ were taken challenging decisions by the Education Authority, the Department of Education and two examination boards regarding the 2020 ‘transfer tests’. The issues included whether the 2020 arrangements would exacerbate existing inequalities in education for children, or have a disproportionate detrimental effect on some children, and whether the decisions in relation to these arrangements should have taken into account UNCRC Article 3. ECHR Articles 8 and 14 as well as Article 2 of the First Protocol were engaged. NICCY was given leave to intervene on two issues. First, the extent to which the lack of a level playing field for children to reach their educational potential, exacerbated by the transfer test, had been worsened and the attainment gap widened by closure of schools and resort to online learning, rendering the proposed transfer tests unfair. Second, the role of the UNCRC (in particular Articles 2, 3, 12 and 17 and 28 and 29) as an aid to interpreting the ECHR rights affecting children. The case was resolved by an agreement to provide further time for the post-primary transfer tests, which were taken in January 2021. However, the court recognised the significance of the attainment gap and the disproportionate impact that school teaching arrangements have on children who are vulnerable and already disadvantaged. In the interests of these children, it will be imperative to ensure that inequalities do not become embedded and the existing attainment gap is not continued through a failure to properly assist these children. This is particularly the case for arrangements made for blended and/or on-line teaching; quarantine and/or isolation of children; school closure; and examinations.⁵²¹

⁵¹⁷ See: <https://www.belfasttelegraph.co.uk/news/education/decade-after-end-of-11-plus-transfer-tests-popular-as-ever-with-parents-38890320.html>

⁵¹⁸ CREU (2020) *Educational Underachievement in Northern Ireland. Evidence Summary*. Available at: <https://www.stran.ac.uk/research-paper/creu-2020-evidence-summary/>

⁵¹⁹ NCB (2019) *Development of an Emotional Health and Wellbeing Framework for Children and Young People in Northern Ireland*. Available at: <https://www.iassnetwork.org.uk/sites/default/files/uploads/files/Informing%20the%20Development%20of%20an%20Emotional%20Health%20and%20Wellbeing%20Framework..pdf>

⁵²⁰ *JR115 (a Minor) and JR116 (a Minor)* – Morgan LCJ, September 2020

⁵²¹ Monye Anyadike-Danes, QC, submission, October 2020

Integrated education

The CRC (2016, para 73e) recommended active promotion of a fully integrated education system in Northern Ireland, with careful monitoring of shared education to ensure that it facilitates social integration. However, **school segregation by religion continues** with most Protestant and Catholic children educated separately. Unlike in England and Wales, where selective admissions policies on the basis of religion are explicitly permitted, in Northern Ireland children from different communities attend separate schools largely as a consequence of self-selection. Families from different religious communities choose schools which have an ethos that aligns with their own faith/ community background. According to the most recent figures, in 2021-2022, just 650 children from Protestant backgrounds attended Catholic maintained primary schools, representing less than 1% of the pupils attending such schools (where 73,209 children were Catholic and 4,157 were other Christian religions/ non-Christian/ had no religion or this was not recorded). In post-primary schools, the proportion was less than 2%. In controlled schools, which have a non-denominational Christian ethos but operate as *de facto* Protestant schools, only 8% of primary pupils and 5% of secondary pupils came from Catholic backgrounds.⁵²² While mixing improves intergroup relations - even when single ethos schools have a more diverse pupil intake - children attending these schools are less adept at cultivating friendships between different groups than their counterparts in the integrated system where the priority is to enhance meaningful interactions between groups.⁵²³

Segregation among pupils is often exacerbated by segregation among teachers and governing bodies. The recently passed *Fair Employment (School Teachers) Act (Northern Ireland) 2022* will remove an exemption to equality law that has allowed schools to employ, promote, and remunerate teachers on the basis of religion or belief, where a genuine occupational requirement cannot be demonstrated. The provisions in this Act come into force on a date specified by the Executive Office - if the Executive fails to specify a date within two years, the provisions will come into force automatically on 12 May 2024.⁵²⁴ However, the Act does not address the fact that RE teachers in Catholic schools, including all teachers in Catholic primary

⁵²² Department of Education/ NISRA (2022) *Annual enrolments at schools and in funded pre-school education in Northern Ireland. 2021-2022*. March 2022. Available at: <https://www.education-ni.gov.uk/sites/default/files/publications/education/Revised%2011th%20March%202022%20-%20Annual%20enrolments%20at%20schools%20and%20in%20funded%20pre-school%20education%20in%20Northern%20Ireland%2C%202021-22.pdf>, Table 5

⁵²³ Blaylock, D. et al. (2018) 'Integrating Northern Ireland: Cross-group friendships in integrated and mixed schools' *British Educational Research Journal*, Vol. 44, No. 4, pp643–662. Available at: <https://bera-journals.onlinelibrary.wiley.com/doi/abs/10.1002/berj.3452>

⁵²⁴ Northern Ireland Humanists submission, October 2022

schools, are required to hold a Certificate in Religious Education meeting criteria laid down by the Irish Catholic Bishops' Conference.⁵²⁵

Under Article 64(1) of the *Education Reform (Northern Ireland) Order 1989* it is “the duty of the Department [of Education] to encourage and facilitate the development of **integrated education**, that is, the education together at school of Protestant and Catholic pupils”. The *Belfast/ Good Friday Agreement 1998* committed “to facilitate and encourage integrated education”. Integrated schools balance the proportion of pupils from each community they serve, aiming to recruit 40% Catholic, 40% non-Catholic (Protestant) and 20% other. Pupils, staff and management structures reflect this mix. Pupils from other Christian backgrounds, as well as those with minority faith or non-religious backgrounds, are more likely to attend integrated or controlled - mainly Protestant - schools.⁵²⁶ However, according to the most recent figures, only 7% of pupils in Northern Ireland are educated in 68 integrated schools.⁵²⁷ This contrasts with a high level of public support for integrated education. A 2018 poll revealed that 69% of respondents agreed with the statement: “Every school in Northern Ireland should be integrated”.⁵²⁸ Asked about their choice of school for their children, 56% of 16-year olds responding to the 2019 *Young Life and Times Survey* expressed a preference for mixed religious schooling.⁵²⁹ A 2021 poll conducted with 2,000 people from all areas of Northern Ireland found that 71% of respondents believed integrated education should be the primary model for the education system (including 59% of DUP voters and 72% of Sinn Féinn voters); 73% would support their child's school becoming integrated; and 79% agreed that all schools should aim to have a religious and cultural mix of pupils, teachers and governors.⁵³⁰

An Independent Review of Integrated Education, commissioned by the Department of Education, reported in November 2016.⁵³¹ This should have provided a blueprint for the

⁵²⁵ See: Milliken, M. (2020) *The Certificate in Religious Education*, Transforming Education, Briefing Paper 4, March 2020. Available at: https://www.ulster.ac.uk/_data/assets/pdf_file/0009/536553/Briefing-Paper-The-Certificate-in-Religious-Education.pdf

⁵²⁶ Northern Ireland Humanists submission, September 2020

⁵²⁷ Department for Education (2022) *Overview of Key Education Statistics. Year: 2021/22, School Type: all, Management type: all*. Available at: <https://www.education-ni.gov.uk/sites/default/files/publications/education/School%20Census%20Key%20Statistics%20202122.pdf>

⁵²⁸ Sky Data for Sky News (2018). Available at: <https://view.publitas.com/integrated-education-fund/sky-news-poll-summary-report>

⁵²⁹ See: https://www.ark.ac.uk/y/lt/2019/Community_Relations/OWNMXSCH.html

⁵³⁰ Integrated Education Fund (2021) *71% of people in Northern Ireland believe integrated education should be the norm*. Available at: <https://www.ief.org.uk/2021/08/03/lucid-talk-ief-poll-released/>

⁵³¹ See: <https://www.education-ni.gov.uk/sites/default/files/publications/education/Integrating%20Education%20Report.pdf>

Department to comply with its statutory duty to encourage and facilitate the development of integrated education. However, no time bound targets were set for implementation of the Review recommendations, which included an in-depth audit of demand for places in existing integrated schools and pro-active plans for increasing places available in the integrated sector. The number of pupils attending integrated schools has doubled in the 20 years since the *Belfast/Good Friday Agreement*, and many are over-subscribed. Thus, **existing provision of integrated schools is unable to meet demand**. This is a problem particularly at post-primary level where, in 2019, almost a quarter of Year 8 students who applied for admission to an integrated school were unsuccessful in obtaining a place.⁵³²

The *Integrated Education (Northern Ireland) Act 2022*, introduced as a Private Members Bill, received royal assent in April.⁵³³ It provides an opportunity to further develop Integrated Education through a strategy that measures and aims to meet parental demand. It includes an additional statutory duty to *support* Integrated Education. However, this was not a Government sponsored Bill and, in the absence of effective implementation, may not result in anticipated reform.⁵³⁴ The Act was considerably weaker than the Bill initially laid before the Northern Ireland Assembly. Key amendments to the Bill included: removing a duty for the Government to ‘promote’ integrated education and replacing it with a requirement of ‘support’; and removing a presumption that all new schools would be integrated, instead stating that education bodies should ‘consider integrated education when planning for the establishment of a new school’.⁵³⁵ Further, the new Act does not address the exclusively Christian ethos of Integrated schools. The Northern Ireland Council for Integrated Education states, while “intentionally and proactively developed to encourage more mixing in schools” through educating children “from Protestant and Catholic religious and/or cultural backgrounds, as well as others who identify differently” together every day in the same classrooms, “It is important to note that *Integrated schools are essentially Christian in character*’ although they ‘proactively strive to ensure everyone’s tradition is respected and included’.⁵³⁶

According to S.2a and 2b of the *Shared Education Act (Northern Ireland) 2016*, ‘**shared education**’ is defined as “the education together of (a) those of different religious belief,

⁵³² NI Council for Integrated Education (2020) *NICIE Impact Report 1 April 2019 – 31 March 2020*.

⁵³³ See: <http://www.niassembly.gov.uk/assembly-business/legislation/2017-2022-mandate/non-executive-bill-proposals/integrated-education-bill/>

⁵³⁴ Northern Ireland Council for Integrated Education [NICIE] submission, October 2022

⁵³⁵ Humanists UK (2022) *Blow to future of education as Northern Ireland Assembly votes to weaken Integrated Education Bill*, 20 January 2022. Available at: <https://humanists.uk/2022/01/20/blow-to-future-of-education-as-northern-ireland-assembly-votes-to-weaken-integrated-education-bill/>

⁵³⁶ See: <https://www.nicie.org/what-is-integrated-education/>, emphasis added

including reasonable numbers of both Protestant and Roman Catholic children or young persons, and (b) those who are experiencing socio-economic deprivation and those who are not". This is "secured by the working together and co-operation of two or more relevant providers" (eg in sharing facilities or teachers delivering joint initiatives or classes). Children participating in shared education projects do not attend the same school, where daily they learn, eat and socialise together as they would in an integrated school. The Act places a duty on the Department of Education to "encourage, facilitate and promote shared education". Although shared education contributes to mixing across Northern Ireland's divided communities, it does not address the central issue of segregated education. In many cases, only a selected group of pupils participate in shared education programmes, with the majority excluded from these. The Department of Education reported to the Northern Ireland Assembly that, as of June 2019, 61% of Northern Ireland's primary, post-primary, and special schools were involved in some form of shared education. This involved 87,385 pupils, a quarter of the school population. However, under a third of schools do not engage with shared education.⁵³⁷

Significant funding has been allocated to Shared Education: £25 million under the 'Delivering Social Change Signature Project' (2014-19) and Euro29 million under the 'Collaboration and Sharing in Education Project' (2017-2022).⁵³⁸ The first statutory monitoring report outlining progress in advancing shared education was published in May 2018. While stating that initial evidence suggested that the impact of shared education on promoting good relations and respect for identity, diversity and community cohesion was positive, it stated that the Department "plans to continue to monitor the impact over time to enable firmer conclusions to be drawn".⁵³⁹ Thus, significant funding was made available for shared education without firm conclusions being established regarding its impact.

The 2020 *New Decade, New Approach* agreement, endorsed by the Executive parties, states that current diversity of school types is "not sustainable" and includes a commitment to establish an external, independent review of education provision. In March 2020 the Assembly agreed that the review should take place urgently. The Independent Review of Education in Northern Ireland was established in October 2021, "with a focus on securing greater efficiency in delivery costs, raising standards, access to the curriculum for all pupils, and the prospects of moving towards a single education system". It is expected to deliver a final report by April 2023.

⁵³⁷ Department of Education (June 2020) *Advancing Shared Education: 2nd Report to the Northern Ireland Assembly*, paras 7.4, and 5.21. Available at: <https://www.education-ni.gov.uk/sites/default/files/publications/education/Shared%20Education%202nd%20Report%20to%20Assembly%20June%202020.PDF>

⁵³⁸ See: <https://www.eani.org.uk/parents/shared-education>

⁵³⁹ See: https://dera.ioe.ac.uk/31805/1/Shared%20Education%20-%20Report%20to%20Assembly%20May%202018_2.pdf

Requiring teaching about evolution and prohibiting the teaching of pseudo-scientific theories such as creationism or intelligent design

Although science is a statutory element within the curriculum in Northern Ireland, there is **no requirement to teach children about evolution**. Further, unlike in England - where state-funded schools are precluded from teaching “any view or theory ... as evidence-based if it is contrary to established scientific or historical evidence and explanations”,⁵⁴⁰ there is **no prohibition in Northern Ireland on the teaching of ‘pseudoscientific’ theories such as creationism or intelligent design**. At Key Stage 3, pupils are expected to learn about the environment and human influences, as well as the solar system and universe, and to “develop a sense of wonder about the universe” through considering the complexity, diversity, and interdependence of living things.⁵⁴¹ Neither ‘evolution’ nor ‘natural selection’, however, are mentioned in the minimum content. Some politicians have actively endorsed the teaching of creationism in schools, with one stating that he wished to see it taught in every school in order to “[reach] out to children who have been corrupted by the teaching of evolution”.⁵⁴² UNCRC Article 28, however, includes “the elimination of ignorance” and “facilitating access to scientific and technical knowledge”. This includes children not being exposed to doctrines masquerading as science. The teaching of such theories as fact also undermines the freedom of thought, conscience, religion or belief protected by UNCRC Article 14.⁵⁴³

Delivery of inclusive Religious Education

Religious Education [RE] in Northern Ireland is not inclusive. At present, under Article 21(2) of the *Education and Libraries (Northern Ireland) Order 1986*, all grant-aided schools in Northern Ireland are required to provide Religious Education (RE) explicitly “based on the holy scriptures”. The syllabus has been developed and is overseen by a consortium of nominees representing the four main Christian churches in Northern Ireland (Roman Catholic, Church of Ireland, Presbyterian, and Methodist). There is no representation either of minority faiths nor humanism. Consequently, the RE curriculum is almost exclusively Christian, failing to respect the requirement that, in line with guidance about Article 9 of the *European*

⁵⁴⁰ Department for Education (2014) ‘Academy and free school funding agreement: single academy trust’. Available at: <https://www.gov.uk/government/publications/academy-and-free-school-funding-agreements-single-academy-trust>

⁵⁴¹ CCEA, *Science and Technology: Science, Statutory Requirements*. Available at: <https://ccea.org.uk/downloads/docs/ccea-asset/General/Statutory%20Requirements%20for%20Science%20at%20Key%20Stage%203.pdf>

⁵⁴² Ainsworth, P. (2016) ‘MLA backs event promoting teaching children creationism’, *Irish News*, 21 September, 2016. Available at: <http://www.irishnews.com/paywall/tsb/irishnews/irishnews/irishnews//news/2016/09/21/news/mla-backs-conference-promoting-the-teaching-of-creationism-in-schools-702781/content.html>

⁵⁴³ Northern Ireland Humanists submission, October 2022

Convention on Human Rights, “information and knowledge included in the curriculum is conveyed in an objective, critical, and pluralistic manner”.^{544 545} Not only does this threaten the freedom of thought, conscience, religion or belief, protected by UNCRC Article 14, but also undermines provisions against discrimination outlined in Article 2.⁵⁴⁶ A recent paper argued for the repeal of laws requiring schools to teach Christian-centric RE and to hold a daily act of worship, suggesting that “Church involvement in the drawing up of the RE specification needs to be revised in order that a genuinely pluralistic and inclusive programme of education can be developed, delivered and quality assured in practice”.⁵⁴⁷

In the core RE syllabus, Key Stage 3 includes just one module entitled ‘World Religions’.⁵⁴⁸ Within this, the rationale for teaching about religions other than Christianity is “to develop knowledge of and sensitivity towards, the religious beliefs, practices and lifestyles of people from *other* religions in Northern Ireland” (emphasis added). The implicit assumption is that pupils are Christians learning about other faiths. Humanism is absent from the curriculum, as is discussion about agnosticism or atheism. Failure to teach adequately about beliefs held by a significant proportion of the population conflicts with UNCRC Articles 2, 13, or 14.⁵⁴⁹ As noted in the section on ‘**Freedom of expression, religion, association and peaceful assembly**’, in 2022 a non-religious father and daughter challenged in Northern Ireland’s High Court argued that the exclusively Christian RE syllabus and collective worship breached their freedom of religion or belief under human rights law.⁵⁵⁰ The Court ruled in their favour. At the time of writing (November 2022), the Court had not determined action required by the Department of Education to remedy this situation. However, the judgment clarifies that current RE teaching in Northern Ireland schools is not inclusive and, on this basis, reform is necessary to guarantee that all children are treated equally regardless of background.⁵⁵¹

⁵⁴⁴ European Court of Human Rights (2020) *Guidance on Article 9 of the European Convention on Human Rights. Freedom of thought, conscience and religion*, 13.8.20, p40: para 113

⁵⁴⁵ See: *R(Fox) v Secretary of State for Education* (2015) [EWHC 3404], 25.11.2015. Available at: <https://www.judiciary.uk/wp-content/uploads/2015/11/r-fox-v-ssfe.pdf>, para 39

⁵⁴⁶ NI Humanists submission, October 2022

⁵⁴⁷ Milliken, M. and Roulston, S. (2022) *How education needs to change. A vision for a single system*. Transforming Education 17. 20 September 2022. Available at: https://pure.ulster.ac.uk/ws/files/105744735/Integrated_Education_Fund_TEUU_Report_17_Education_Change_Digital.pdf, p7

⁵⁴⁸ Department of Education (2007) *Core Syllabus for Religious Education*. Available at: <https://www.education-ni.gov.uk/sites/default/files/publications/de/religious-education-core-syllabus-english-version.pdf>

⁵⁴⁹ NI Humanists submission, September 2020

⁵⁵⁰ *In the matter of an application by JR87 and her father for Judicial Review* [COL11833], 5.7.2022. Available at: <https://humanists.uk/wp-content/uploads/COL11833-JR-87-Judgment-dated-05-07-2022.doc.pdf>

⁵⁵¹ Northern Ireland Humanists submission, October 2022

These changes are necessary given the changing demographics in Northern Ireland. The 2021 census showed that one in six of the population (17%) responded 'none' to the question: 'What religion, religious denomination or body do you belong to?'⁵⁵² This figure has nearly doubled in a decade (although how the census question was phrased assumed that people are religious, therefore undercounting the non-religious share of the population).⁵⁵³ In contrast, the annual *Northern Ireland Life and Times Survey* asks: 'Do you regard yourself as belonging to any particular religion? If yes, which?' In 2021, 28% of the population ticked 'No religion'.⁵⁵⁴ In the 2021 *Young Life and Times Survey* of 16 year olds, 41% of respondents stated that they did not belong to any particular religion.⁵⁵⁵

Registration of home schooled children

There is evidence of **increasing de-registrations from school** since the Covid-19 pandemic. In 2017-18, the Education Authority recorded 287 children as home educated. The number rose, both in 2018-19 and 2019-20, but in 2020-2021 it increased sharply to 710 children: 339 of primary age and 371 of post-primary age. In 2021-22, figures rose to 796 (329 of primary age and 467 of post-primary age). It could be assumed that the accurate number is higher as parents are not required to register with the Education Authority if they prefer to home educate their children. However, they are required by law to ensure that their child receives full-time education at home. Parents may choose to educate children at home for a variety of reasons including: religious belief, dissatisfaction with the school system, special educational needs or for "philosophical reasons".⁵⁵⁶

A *Schools Bill* currently passing through Parliament in England includes a proposal that *The Education Act 1996* is amended to include a duty for local authorities to register children not in school in England. This will include home educated children who have never registered at school. There are no plans to introduce a compulsory register of all home educated children in Northern Ireland. However, the Department of Education has indicated that it will follow the progress of the *Schools Bill* with interest and consider whether it would be

⁵⁵² See: <https://www.nisra.gov.uk/publications/census-2021-main-statistics-religion-tables>, MS-B19b

⁵⁵³ Humanists UK (2022) *NI Census shows one in six are non-religious – nearly doubling in just 10 years*, 22 September 2022. Available at: <https://humanists.uk/2022/09/22/northern-ireland-census-shows-big-rise-in-non-religious-to-17/>

⁵⁵⁴ See: <https://www.ark.ac.uk/nilt/2021/Background/RELIGION.html>

⁵⁵⁵ See: https://www.ark.ac.uk/ylt/2020_21/Identity/ANYRELIG.html

⁵⁵⁶ BBC NEWS (2022) 'NI Education: Home schooling triples in five years. 29 June 2022'. Available at: <https://www.bbc.co.uk/news/uk-northern-ireland-61972611>

appropriate to introduce similar legislation and a duty to register all home educated children.⁵⁵⁷

Additional issues

Rest, leisure, play, recreational activities, cultural and artistic activities

Sufficiently resourced policies for implementation of every child's right to rest, leisure, age-appropriate play and recreational activities

Although progress has been made in Northern Ireland over recent years regarding recognition of the value of play and leisure for children and young people, the CRC's (2016, para 75a) recommendation that the rights of the child to rest, leisure, age-appropriate play and recreational activities should be strengthened by adoption and implementation of play policies with sufficient and sustainable resources has not been fulfilled. The *Children and Young People's Strategy 2020-2030* has 8 high level outcomes, including that 'children and young people enjoy play and leisure', although **no clear funding line** has been identified to support its delivery.

Significant investment through the 'Early Intervention Transformation Programme' led to successful implementation of a two-year 'Play Matters' project, raising awareness about the importance of children's play with professionals and stakeholders responsible for planning, designing and managing public spaces. It supported stakeholders to make a positive impact on children's right to play through decisions and actions taken at strategic and operational levels. It also supported local authorities and their partners within Community Planning Partnerships to create more child-friendly public spaces and communities. However, funding for this successful and popular initiative ended in 2019, significantly reducing the Executive's capacity to ensure realisation of children's right to play.⁵⁵⁸

In relation to provision of age-related opportunities for play, anecdotal evidence from Youth Workers suggests that **statutory youth service provision has become much more 'outcomes focused', with content more appropriate for post-primary children.**⁵⁵⁹ This is reflected in the Education Authority's *Quality Assurance Framework*, which fails to mention play. According to Education Authority data regarding provision in 2017, 69.1% of those engaging with the

⁵⁵⁷ NSPCC submission, October 2022

⁵⁵⁸ PlayBoard submission, October 2022

⁵⁵⁹ PlayBoard submission, September 2020

Youth Service (age range 4-25 years) were aged 4-13.⁵⁶⁰ These children do not necessarily gain access to play-based activities that are the most appropriate developmentally for their age group. Lack of focused provision for younger age groups was emphasised in the Chief Inspector's Report (2016-2018).⁵⁶¹ It noted the need to review quality of provision for the 10-13 age group as there was often insufficient planning to meet their specific needs. In a review of 2019-2020 Inspection Reports concerning 14 youth settings, not one mentions play.⁵⁶²

In 2016, the CRC (para 74b) made specific reference to concerns regarding “**Insufficient places and facilities for play and leisure ... and public space for adolescents to socialise**”. Education Authority Youth Services have taken initial steps to address this imbalance, piloting the enhancement of play provision in 2 (of 11) local authority areas through the ‘Youth@Play’ programme.

Emerging research demonstrates the significant **impact of COVID-19 lockdowns on opportunities for children and young people to engage in essential play and leisure**, including self-directed play. In addition to restricting access to activities that support development, learning, good health and wellbeing, children's capacity to develop resilience, new skills, and social connectivity was reduced. Research with 500 children and young people in Northern Ireland also identified concerns relating to the impact of COVID-19 on children's play patterns. There was: an 89% decline in social play, leading to concerns regarding children's opportunities to develop social skills and connections; a 35% decline in active, physical play, potentially increasing childhood obesity and establishing sedentary activity patterns; a 37% increase in technology-focused play, reinforcing sedentary inactivity; and a 43% decline in time spent at play in their local geographical area.⁵⁶³ During 2021, PlayBoard worked with the Department of Education, assisted by COVID Recovery Funding, to deliver ‘Taking Outdoor Play Seriously’ [TOPS] and ‘Positive PlayGrounds’ Programmes.⁵⁶⁴

Ensuring the right to play for children with disabilities

While limited progress has been made by local authorities, the CRC's (2016, para 75b) recommendation regarding play has not been implemented. **Many disabled children are denied their right to play due to a lack of suitable play opportunities and/or attitudinal barriers.** In 2019, a survey undertaken with 424 Northern Ireland families of children with a

⁵⁶⁰ Education Authority (2018) *Statistical and Geographic Report of the EA Registered Youth Service*, 2017 data cycle, p15. Available at: <https://www.eani.org.uk/sites/default/files/2019-02/Youth%20Service%20Statistical%20Report%20-%202017%20Data.pdf>

⁵⁶¹ See: <https://www.etini.gov.uk/sites/etini.gov.uk/files/publications/cir-2016-2018.pdf>, p93

⁵⁶² PlayBoard submission, September 2020

⁵⁶³ PlayBoard submission, October 2022

⁵⁶⁴ PlayBoard submission, October 2022

disability found that in 57% the child was unable to play as often as they would like. The most significant issues identified by families included: lack of inclusive play equipment; lack of appropriate toilet/changing facilities; the travel distance required to access inclusive play opportunities; and the negative attitudes of other play park users.⁵⁶⁵ A joint statement from the Children’s Play Policy Forum and UK Play Safety Forum emphasizes that “those involved in designing and managing play spaces have a key role to play in leading change, in partnership with disabled children, their families and the local community”.⁵⁶⁶

I. SPECIAL PROTECTION MEASURES

Asylum-seeking, refugee and migrant children

Ensuring that all asylum-seeking children are provided with child-friendly services as well as access to health care and education

There are serious concerns about the circumstances and potential rights violations affecting **asylum seeker children and their families** who are **being accommodated in ‘contingency accommodation’** run by Mears Group PLC, a contractor to the UK Home Office whose role is to place asylum seekers and support them while they are in accommodation. In June 2022, more than 200 asylum-seeking children were living in hotels. A Belfast GP stated that many had no access to basic necessities and required greater support.⁵⁶⁷ In April 2022, asylum seekers described the human rights issues facing them to civil society and duty bearers in Belfast.⁵⁶⁸ The Children’s Law Centre and STEP reported on the complexity and urgency of these issues in their joint submission to the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities.⁵⁶⁹ On 13 May 2022, they wrote to relevant Northern Ireland authorities regarding the rights of asylum seeker children living in contingency accommodation, providing a copy of the report and seeking urgent remedial action. PPR and others regularly raised cases of concern with local and UK authorities, but systemic problems have remained. In September 2022, hostel residents began monitoring and reporting on their own human rights situation under the UN Human

⁵⁶⁵ PlayBoard submission, October 2022

⁵⁶⁶ Children’s Play Policy Forum and Play Safety Forum (2022) *Including Disabled Children in Play Provision*. Joint Position Statement. Available at: <https://playsafetyforum.files.wordpress.com/2022/06/including-disabled-children-in-play-provision-2022.pdf>, p1

⁵⁶⁷ BBC NEWS (2022) *Asylum: 200 children living in Northern Ireland hotels*. 20 June 2022. Available at: <https://www.bbc.co.uk/news/uk-northern-ireland-61859719>

⁵⁶⁸ See: <https://nlb.ie/blog/2022-05-it-is-hard-to-be-in-this-system-use-of-hotels-as-contingency-accommodation-part-one>

⁵⁶⁹ Children’s Law Centre and STEP (2022) *Joint Submission to Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities: Rights of Asylum Seeker Children Living in Contingency Accommodation (Hotel Buildings) in NI, run by Mears Group PLC*

Rights Defender framework. At the time of writing, despite continued engagement with a number of departments and ‘arms-length’ bodies, few significant changes or improvements have been made, and **concerns remain regarding the safeguarding of these children, their health, wellbeing and access to services.**^{570 571}

Section 55 of the *Borders, Citizenship and Immigration Act 2009* established a mandatory duty for the Home Office to safeguard and promote the welfare of children in the UK. The provisions of the *Nationality and Borders Act 2022*, and evidence of children being housed in contingency hotel accommodation, raise serious questions regarding the Home Office being in breach of this duty, therefore acting unlawfully.⁵⁷² Contingency accommodation operates as an ‘extra-contract arrangement’, created by an ongoing failure to provide appropriate housing for asylum seeker families. All parties to this arrangement accept that it is unsuitable and potentially harmful to children and pregnant women. It creates, contributes to, and perpetuates a cycle of unmet needs and increased vulnerability. Children’s rights, unlike asylum issues, are not ‘an excepted matter’. The children of asylum seekers, regardless of how they have come to be in Northern Ireland, are entitled to realisation of their rights. The relevant legislation, powers and duties concerning safeguarding, health, education and equality are devolved to the Northern Ireland Assembly. Further, coordinated, inter-departmental and inter-agency activity in the best interests of children is required and provided for under *The Children and Young People’s Strategy 2020-30* and *The Children’s Services Co-operation Act (NI) 2015*.

Based on reports, testimonies, photographs and complaint forms accessed by the Children’s Law Centre and STEP, ongoing risks and potential violations of these children’s rights include their rights to:

- respect for private and family life;
- an adequate standard of living;
- leisure, play and recreation;
- education;
- enjoy the highest attainable standard of health and access to health services.

In relation to pregnant women and children under 3 years, the child’s right to safety, survival and development are put at risk by their adverse living conditions and restrictions.⁵⁷³

In April 2022 it was reported that, since 2014, approximately 190 **separated and unaccompanied children** (usually aged 14-17) had arrived in Northern Ireland. During the

⁵⁷⁰ Children’s Law Centre and PPR submissions, November 2022

⁵⁷² CAJ submission, October 2022

⁵⁷³ Children’s Law Centre submission, November 2022

year 2021-2022 there was a marked increase, with 66 children being received into care - the highest number on record.⁵⁷⁴ This compares with 15 unaccompanied children being identified and referred to health and social care in 2017/18, 25 in 2018/19, and 39 in 2019/20.⁵⁷⁵ Barnardo's NI has been commissioned by the Health and Social Care Board to deliver the Independent Guardian Service, which advocates on behalf of separated, unaccompanied and trafficked children. Originally expected to support approximately 12 children per year, in the first three years (2018-2021) it supported 121 children.⁵⁷⁶ Between April 2021 and March 2022, CLC supported 29 unaccompanied asylum seeking children to apply for asylum.⁵⁷⁷

Despite the CRC's (2016, para 77e) recommendation, **the UK has no provisions for allowing unaccompanied and separated refugee children to sponsor family members to join them in the UK.**⁵⁷⁸ Although UK immigration law permits refugees to sponsor their family members for the purposes of family reunion,⁵⁷⁹ the categories of family members include spouses and minor children. Parents and minor siblings are not included. Between 2010 and 2018, 10,336 separated and unaccompanied children were granted asylum or other forms of protection in the UK.⁵⁸⁰ The UK has adopted family reunion guidance outside narrow Immigration Rules.⁵⁸¹ However, in March 2020, a House of Commons briefing paper stated the Government "anticipates that few applications from parents and siblings of a child with refugee status would fall within the scope of the policy".⁵⁸² In 2016, the President of the UK's highest

⁵⁷⁴ Hooks, J. (2022) Child refugees coming to NI: Meet the couple offering orphaned teen a safe place to call home, *Belfast Telegraph*, 23 April 2022. Available at: <https://www.belfasttelegraph.co.uk/life/features/child-refugees-coming-to-ni-meet-the-couple-offering-orphaned-teen-a-safe-place-to-call-home-41579350.html>

⁵⁷⁵ Devlin, N. (2022) *Newcomer Pupils in Northern Ireland. Briefing Paper*. Belfast: Northern Ireland Assembly, Research and Information Service, p4

⁵⁷⁶ Barnardo's NI (2021) *Northern Ireland Affairs Committee: Inquiry into 'The experience of minority ethnic and migrant children in Northern Ireland'*, June 2021, p3

⁵⁷⁷ Children's Law Centre (2022) *Annual Report 2021-2022*, p8

⁵⁷⁸ Children's Law Centre submission, September 2020

⁵⁷⁹ Immigration Rules, Part 11: Asylum, paras 352A-G. Available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum>

⁵⁸⁰ The Migration Observatory (2019) *Migration to the UK: Asylum and Resettled Refugees*, 8 November 2019, University of Oxford. Available at: <https://migrationobservatory.ox.ac.uk/resources/briefings/migration-to-the-uk-asylum/>

⁵⁸¹ Home Office (2020) *Family reunion: for refugees and those with humanitarian protection*, Guidance. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856915/family-reunion-guidance-v4.0-ext.pdf

⁵⁸² House of Commons (2020) *The UK's refugee family reunion rules: a "comprehensive framework"*, Briefing Paper Number 07511, 27 March 2020. Available at: <https://commonslibrary.parliament.uk/research-briefings/cbp-7511/>

immigration court referred to the operation of “a blanket prohibition” against refugee children being reunited with their families.⁵⁸³ Between 2017 and 2019 there was an unsuccessful attempt, through a Private Members Bill, to introduce legislation that would allow refugee children to sponsor parents and siblings.⁵⁸⁴ In March 2018 members of the House of Lords in support of the Bill spoke of refugee children in the UK “without a single family member there to support them”.⁵⁸⁵ A similar attempt to introduce legislation is currently in process, but is unlikely to succeed. An almost identical provision in the *EU Withdrawal Agreement* was voted down overwhelmingly in January 2020.⁵⁸⁶

Age assessments

The *Nationality and Borders Act 2022* contains provisions for a new ‘National Age Assessment Board’ operated by the Home Office. It is unclear if this will extend to Northern Ireland, where age assessments are currently conducted by social workers.

Administration of child justice

Raising the age of criminal responsibility to at least 14 years

The minimum age of criminal responsibility [MACR] in Northern Ireland is 10. In 2016, the CRC (para 79a) repeated previous recommendations to raise the MACR in accordance with acceptable international standards. A 2011 *Review of the Youth Justice System in Northern Ireland* recommended that the MACR “should be raised to 12 with immediate effect” and “following a period of review of no more than 3 years, consideration should be given to raising the age to 14”.⁵⁸⁷ Although the Department of Justice, in principle, accepted this recommendation, Inspectorate reports monitoring progress in the implementation of Review recommendations noted that this was a matter of sensitivity among members of the public and politicians, concluding: “The lack of consensus on this issue means the recommendation

⁵⁸³ *AT and another* (Article 8 ECHR – Child Refugee – Family Reunification) Eritrea [2016] UKUT 00227 (IAC) [11]. Available at: <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/UK%20AT%20and%20others%2000227%20IAC%20Feb%202016.pdf>

⁵⁸⁴ *Refugees (Family Reunion) (No. 2) Bill 2017-19*. Available at: https://publications.parliament.uk/pa/bills/cbill/2017-2019/0013/cbill_2017-20190013_en_2.htm#l1g1

⁵⁸⁵ *Refugees (Family Reunion) Bill [HL] 2019-21*. Available at: <https://services.parliament.uk/Bills/2019-21/refugeesfamilyreunion/stages.html>

⁵⁸⁶ See: <https://www.politicshome.com/news/article/government-slammed-as-inhumane-for-removing-protections-for-child-refugees-in-brexite-agreement>

⁵⁸⁷ Youth Justice Review (2011) *A Review of the Youth Justice System in Northern Ireland*, Department of Justice, p107

is unlikely to be progressed”.⁵⁸⁸ In 2017, 80% of respondents to the *Kids Life and Times* survey of 5,094 children aged 10-11 stated that the age of criminal responsibility should be set higher, with 48% favouring 14 or 16 years and an additional 16% suggesting 18.⁵⁸⁹ Despite a ‘Raise the Age’ campaign involving organisations working with children and young people, the Northern Ireland Commissioner for Children and Young People, and children’s rights advocates,⁵⁹⁰ **the age of criminal responsibility in Northern Ireland remains set at 10 years.** This contravenes international standards, including the *Global Study on Children Deprived of Liberty* which proposed that States should establish a MACR “which shall not be below 14 years of age”.⁵⁹¹ On 3 October 2022 the Department of Justice launched a public consultation on a proposal to increase the minimum age of criminal responsibility in Northern Ireland from 10 years to 14 years, with a closing date for responses of 23 December 2022.

Ensuring children are not detained with adults

In practice, young people aged under-18 are no longer detained in adult prisons in Northern Ireland, but there is no legislative provision against this occurring in exceptional circumstances. When the 2011 *Review of the Youth Justice System in Northern Ireland* was published, nine young people under the age of 18 were detained in the prison system at Hydebank Wood Young Offenders Centre. As the Review noted, this contravened children’s rights and the Review recommended that the practice of allowing courts to send under-18s to Hydebank Wood should cease.⁵⁹² This recommendation was accepted and by 2012 the Department of Justice reported that there were no longer any under-18s at Hydebank, expressing a commitment that no under-18s would be held in the prison system ‘save in the most exceptional circumstances’.⁵⁹³ In its monitoring of implementation of the Youth Justice Review’s recommendations, the Criminal Justice Inspectorate considered that implementation of the recommendation had been achieved as no children had been placed in Hydebank Wood since 2012.⁵⁹⁴ However, as noted in the 2021 *Tracing the Review* analysis

⁵⁸⁸ CJINI (2013) *Monitoring of Progress on Implementation of the Youth Justice Review Recommendations*, CJINI, p41;

CJINI (2015) *Monitoring of Progress on Implementation of the Youth Justice Review Recommendations*, CJINI, p60

⁵⁸⁹ McAlister, S., Carr, N., Dwyer, C. and Lloyd, K. (2017) *Raise the Age? Children’s attitudes towards the minimum age of criminal responsibility*, ARK Research Update Number 113, June 2017, p3

⁵⁹⁰ See: <http://includeyouth.org/news/story/youth-advocates-say-ten-is-too-young>

⁵⁹¹ Nowak, M. (2019) *Global Study on Children Deprived of Liberty* Report, A/74/136, 11 July 2019, para 109

⁵⁹² Youth Justice Review (2011) *A Review of the Youth Justice System in Northern Ireland*, Department of Justice, Recommendation 16

⁵⁹³ Department of Justice (2012) *Youth Justice Review Implementation Plan*, DoJ, p26

⁵⁹⁴ CJINI (2015) *Monitoring of Progress on Implementation of the Youth Justice Review Recommendations*, CJINI, p44

of developments in youth justice since publication of the 2011 review, ‘It is evident ... that through this “exceptional circumstances” proviso, the government did not wish to permanently close off the possibility of children being detained in the prison estate in the future.’⁵⁹⁵ The fact that this possibility has not been completely removed was considered a cause for concern by some *Tracing the Review* interviewees. Respondents from the Youth Justice Agency stated that when the question of legislation was previously contemplated it was considered too complex to take forward at that time, but suggested that now may be an opportune moment to progress this issue as part of legislative reform.⁵⁹⁶

Effective legal representation and participation throughout the youth justice process

UNCRC Article 40.3b prioritises alternatives to judicial proceedings for under 18s “wherever appropriate and desirable”, with the caveat that human rights and legal safeguards should be fully respected. CRC *General Comment No. 10 on Juvenile Justice* states that diversion “should be a well-established practice that can and should be used in most cases”, outlining safeguards applying to use of diversionary measures. These include: the existence of compelling evidence regarding the child’s involvement in the alleged offence; free and voluntary consent given by the young person; clear identification in law as to which cases diversion can be used; regulation of the discretionary powers of police and others in this regard; access to legal advice by the young person; and no criminal record resulting from the use of diversionary measures.⁵⁹⁷ The ‘Beijing Rules’ and the ‘Tokyo Rules’ also emphasize the benefits of diversionary measures and recommend that, wherever possible, consideration should be given to such measures. The Beijing Rules emphasise the importance of ‘informed consent’ by the young person and opportunities to challenge this consent, noting that consent may sometimes “be given out of sheer desperation on the part of the juvenile”.⁵⁹⁸

Although within the wider youth justice system in Northern Ireland there is a commitment to alternatives to prosecution for children, particularly through restorative approaches, a clear emphasis on diversion *away from* the formal criminal justice system remains under-developed. In 2021/22, diversionary referrals accounted for the largest proportion (45%) of all referrals to Northern Ireland’s Youth Justice Services, followed by Court Ordered

⁵⁹⁵ Carr, N. and McAlister, S. (2021) *Tracing the Review. Developments in Youth Justice in Northern Ireland 2011-2021*, CLC, VOYPIC, Include Youth, NIACRO, QUB Centre for Children’s Rights, p65

⁵⁹⁶ Carr, N. and McAlister, S. (2021) *Tracing the Review. Developments in Youth Justice in Northern Ireland 2011-2021*, CLC, VOYPIC, Include Youth, NIACRO, QUB Centre for Children’s Rights, p65-66

⁵⁹⁷ UN Committee on the Rights of the Child (2007) *General Comment No 10 on Children’s Rights in Juvenile Justice*, paras 24-27

⁵⁹⁸ Office of the High Commissioner for Human Rights (1985) *UN Standard Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules), Rule 4. See also: Council of Europe (2010) *Guidelines on Child Friendly Justice*, para 23

Diversory Youth Conferences (26%) and Earlier Stage Diversions (21%).⁵⁹⁹ Youth Engagement Clinics aim “to keep children who have offended away from the *formal Court environment*, whilst encouraging them to take responsibility for their behaviour and to take up whatever support is seen as necessary: to help prevent further offending behaviour and harm” (emphasis added).⁶⁰⁰ Hosted by the Youth Justice Agency, and delivered jointly with Police Youth Diversion Officers, these can lead to a number of diversory disposals including informed warnings and restorative cautions - both led by the PSNI - and diversory youth conferences organised by the Youth Justice Agency.

Include Youth, an organisation working with young people in conflict with the law, has raised **concerns about existing diversory measures, specifically regarding proportionality, legitimacy, effectiveness, efficiency and rights compliance**.⁶⁰¹ In 2017, the Northern Ireland Audit Office noted that “although well regarded internationally, it has not been demonstrated that [youth] conferencing has reduced reoffending in Northern Ireland”.⁶⁰² Some diversory measures can be accessed only through the admission of guilt and the consent of the child. This is of concern given that many young people find the options under diversory disposals confusing. It is critical that young people do not agree to a diversory disposal without being fully aware of the impact of their decision, especially regarding a criminal record and the implications of admitting guilt on future choices. However, practitioners working with young people have noted that the capacity of some young people to give informed consent and meaningfully participate (eg, in agreeing actions or conditions during diversory youth conferences) is questionable. Meaningful participation in proceedings may also be affected by young people’s mental health issues or learning difficulties.⁶⁰³

Imprisonment as a measure of last resort and for the shortest possible period

The cost of holding a young person in custody remains high. The annual budget of Woodlands Juvenile Justice Centre [JJC] accounted for 49% of the Youth Justice Agency budget in 2020-21. With the small number of admissions, an average daily population of 11, yet no change in the number of staffed places (36), “the cost of holding a young person in custody during 2020-21 was £190,206 (expressed as the cost per place including corporate overheads) or £829,988

⁵⁹⁹ Brown, T. (2022) *Northern Ireland Youth Justice Agency Annual Workload Statistics 2021/22*, 12 September 2022, Department of Justice, p7

⁶⁰⁰ Ibid, p31

⁶⁰¹ Include Youth submission, September 2020

⁶⁰² NI Audit Office (2017) *Managing Children Who Offend*. Available at: https://www.niauditoffice.gov.uk/sites/niao/files/media-files/174770%20NIAO%20Managing%20children%20who%20offend_Fnl%20LowRs_5.pdf, p29

⁶⁰³ Include Youth submission, September 2020

when expressed as the cost per occupant. This has been reasonably consistent since the last inspection [2017].”⁶⁰⁴ The Criminal Justice Inspectorate stated that “Effective detention services for a reduced and potentially further reducing small number of children are needed”, noting that “the current operating costs and model are difficult to justify”.⁶⁰⁵ The decision not to progress the Department of Health and Department of Justice plans to develop a Regional Care and Justice Campus has created uncertainty about future provision.

The CRC’s (2016, para 79d) recommendation to “establish the statutory principle that detention should be used as a measure of last resort for the shortest possible period of time” has not been fulfilled. **Some children are inappropriately detained in the JJC solely as a consequence of lack of alternative accommodation.** A high proportion are admitted under Article 39 of the *Police and Criminal Evidence (NI) Order 1989* [PACE], amended in 1998 to include the JJC as a “place of safety” after arrest. Previous inspections have noted that these placements are used to remove disruptive children from care homes (2008), or in the absence of alternative accommodation “when they presented chronic social problems” (2011), or because no alternative accommodation was available (2015). An inspection conducted in November 2017, noted that “half of the children admitted to the JJC on PACE were released within 48 hours. Many only remained in the JJC for a matter of hours, which suggested custody was not used as a last resort, but because there was no alternative accommodation available at the time of their court appearance”, and “a clear pattern of increased PACE admissions at weekends”.⁶⁰⁶ In addition to the implications for staffing, the Inspectorate repeated previously noted negative consequences: “possible diversionary disposals being bypassed; disruption to the JJC regime; the deterrent value of the JJC being lost; and the personal impact on a child, which could be significant”. Despite the JJC routinely challenging police officers enquiring about a PACE admission to ensure more appropriate placements had been explored, and the development of an inter-agency group to review the operation of PACE procedures and bail conditions for children, the Inspectorate stated “it is highly unlikely that the PACE problem will ever be completely eradicated unless legislation is changed”.⁶⁰⁷ In 2021/22, 165 of the 207 admissions to the JJC were via PACE (78%) - an increase from 63% in

⁶⁰⁴ CJINI (2022) *An Announced Inspection of Woodlands Juvenile Justice Centre. 22-28 January 2022*. September 2022. Available at: <https://www.cjini.org/getattachment/add04a59-88f7-4b99-b3a9-6a8669b65f15/report.aspx>, p21

⁶⁰⁵ Ibid, 4

⁶⁰⁶ CJINI (2018) *An Announced Inspection of Woodlands Juvenile Justice Centre*, June 2018, CJINI/RQIA/ ETI, p13

⁶⁰⁷ CJINI (2018) *An Announced Inspection of Woodlands Juvenile Justice Centre*, June 2018, CJINI/RQIA/ ETI, p13

2017/18.⁶⁰⁸ These children are generally detained for 1-2 days, and only 45% go on to be held on remand or sentenced.⁶⁰⁹

Children in pre-trial detention

The *Criminal Justice (Children) (Northern Ireland) Order 1998* stipulates that a child should be remanded in custody, awaiting trial or sentence, for public protection or if the alleged offence is serious. **Inappropriate use of remand is a long-standing issue in Northern Ireland**, particularly as the majority of those on remand are subsequently bailed and do not go on to serve a custodial sentence. In 2011 the Youth Justice Review stated that “the courts are using custodial remands wrongly – as a kind of ‘short, sharp, shock’ or more benignly to secure the young person’s safety”.⁶¹⁰ **Some young people are held on remand because they have breached unachievable bail conditions⁶¹¹ or are unable to perfect bail due to being homeless.** It is a Social Services’ responsibility to assess and provide such young people with suitable accommodation, which should not include unregulated placements in Bed and Breakfast or Hostel accommodation.⁶¹² The Northern Ireland Human Rights Commission *Annual Statement 2019* considered this an issue requiring urgent attention.⁶¹³ The most recent inspection, conducted in January 2022, found that the JJC “is still being used as a place of safety because there are no available alternatives and children remain in custody because a suitable bail address isn’t available.”⁶¹⁴

⁶⁰⁸ Brown, T. (2022) *Northern Ireland Youth Justice Agency Annual Workload Statistics 2021/22*, 12 September 2022, Department of Justice, p39

⁶⁰⁹ Ibid, p46

⁶¹⁰ Youth Justice Review (2011) *A Review of the Youth Justice System in Northern Ireland*, Department of Justice, p55.

Four years later social workers reported to Inspectors that, in cases where it was difficult to access a secure placement at short notice for a LAC engaged in high risk behavior, “custody became an attractive option in order to keep the child safe”. They also reported that, when a child failed to comply with bail conditions, “staff believed that recourse to the criminal process was their only way of controlling behavior, even though they accepted it probably would not work in the longer term”: CJINI (2015) *An Announced Inspection of Woodlands Juvenile Justice Centre*, CJINI/ RQIA/ ETI, p34

⁶¹¹ The Inspectorate noted in 2015 that few children had less than 3 bail conditions – the average was 5 – and additional conditions were added if the child failed to comply, which was considered counterproductive “because it could set children up to fail”: CJINI (2015) *An Announced Inspection of Woodlands Juvenile Justice Centre*, CJINI/ RQIA/ ETI, p34

⁶¹² Children’s Law Centre submission, September 2020

⁶¹³ NI Human Rights Commission (2019) *The 2019 Annual Statement. Human Rights in Northern Ireland*, December 2019, p31-32

⁶¹⁴ CJINI (2022) *An Announced Inspection of Woodlands Juvenile Justice Centre. 22-28 January 2022*. September 2022. Available at: <https://www.cjini.org/getattachment/add04a59-88f7-4b99-b3a9-6a8669b65f15/report.aspx>, p4

In 2021/22, the proportion of those remanded in custody remained almost a third (32.8%): 42 of the 207 admissions to the JJC.⁶¹⁵ Very few children in the JJC are actually sentenced to custody. In 2021/22, none of the 207 admissions were sentence admissions.⁶¹⁶ While occasionally the JJC holds children charged with or convicted of grave crimes, all 15 in custody during the 2017 inspection “were charged with low level offences of dishonesty and behavioural matters. Only a few were known to the PSNI as prolific offenders, but several had breached conditions of their bail or probation orders”.⁶¹⁷ Nine of the 10 young people held in the JJC on 22 January 2022 were held on remand and most had been granted bail but a suitable address had not been approved.⁶¹⁸ The Inspectorate stated: “Successive reviews and reports, and stakeholders consulted as part of this inspection, continued to highlight concerns about the use of Woodlands [JJC] as a place of safety, the number of children who continued to enter custody because they had no suitable bail address and the low numbers of children who received a custodial sentence after spending periods on remand.”⁶¹⁹ Detention, therefore, is not being used as a measure of last resort.

Disproportionate representation of specific groups in custody

Contrary to the CRC’s (2016, para 79d) recommendation to “ensure that detention is not used discriminatorily against certain groups of children”, **specific groups remain over-represented in custody.**⁶²⁰

The over-representation in custody of **those with mental illness, learning disabilities, speech, language and communication needs** is well-established.⁶²¹ However, relevant data in Northern Ireland’s JJC is not readily available. Outlining the ‘profile’ of those in the JJC, details included in inspection reports do not specify numbers or proportions of children with physical

⁶¹⁵ Brown, T. (2022) *Northern Ireland Youth Justice Agency Annual Workload Statistics 2020/21*, 15 September 2022, Department of Justice, p39

⁶¹⁶ Ibid, p39

⁶¹⁷ CJINI (2018) *An Announced Inspection of Woodlands Juvenile Justice Centre*, June 2018, CJINI/RQIA/ ETI, p15

⁶¹⁸ CJINI (2022) *An Announced Inspection of Woodlands Juvenile Justice Centre. 22-28 January 2022*. September 2022. Available at: <https://www.cjini.org/getattachment/add04a59-88f7-4b99-b3a9-6a8669b65f15/report.aspx>, p6

⁶¹⁹ Ibid, 28

⁶²⁰ McAlister, S., McNamee, C., Corr, M-L., and Butler, M. (2022) *Over-representation in the Youth Justice System in Northern Ireland*, Belfast: QUB and Department of Justice. Available at: https://www.justice-ni.gov.uk/sites/default/files/publications/justice/over-rep%20in%20yjs%20main%20report_4.pdf, p21

⁶²¹ Houston, S. and Butler, M. (2019) ‘More than just a number’: meeting the needs of those with mental illness, learning disabilities and speech and language difficulties in the criminal justice system, *Irish Probation Journal*, Volume 16. Available at: <https://www.pbni.org.uk/wp-content/uploads/2019/12/More-than-just-a-number.pdf>

disabilities, learning difficulties, mental illness, or speech/ language/ communication needs. Yet, it is clear that these issues are significant. A 2018 Inspection report referred to gaps in staff training “in relation to understanding the effects of trauma on children, as well as specialist needs, for example, learning disability and attention deficit hyperactivity disorder”. It reported that almost half of the children had special educational needs requiring additional support with aspects of their learning. The Healthcare team including a Learning Disability nurse. 80% of the children were prescribed some form of controlled medicine; and some children being prescribed high doses of anti-psychotic and anti-depressant medication when living in the community.⁶²² The most recent Inspection report, published in 2022, noted that of the 10 young people in custody on 22 January, 7 had previously been involved with CAMHS or were currently accessing in-reach services.⁶²³ Of 39 young people referred to the in-reach CAMHS from April-September 2021, 23 had a history of ADHD, 85% (33) had traumatic and Adverse Childhood Experiences (ACEs), 87% (34) were engaged in poly-substance misuse, one had a diagnosis of Autism Spectrum Disorder (ASD), and one had an acquired brain injury.⁶²⁴

It is clear from available data that **Looked After Children** are over-represented in custody. In 2021/22, 92 of the 207 admissions to the JJC (44%) were Looked After Children. 36 of the 106 individual children in custody during that year were Looked After Children; 33 were subject to a Care Order and 3 were voluntary accommodated.⁶²⁵ Contact with the justice system for young people in residential care remains an issue of particular concern. Young people in care note differences in the response of care home staff to their behaviour when compared with the response of parents to similar behaviour by children living at home. Many state that parents would not call the police if a young person hit their sibling or broke furniture deliberately. Rather, the young person would be told off and there would be consequences, but the police would not be called. Young people want to see a different approach to challenging behaviour, and for staff in children’s homes to be trained to manage these behaviours with more transparent and respectful approaches. A criminal justice disposal, whether a prosecution or a diversion, should not be regarded as an automatic response to offending behaviour by a looked after child.⁶²⁶ The 2011 Youth Justice Review recommended

⁶²² CJINI (2018) *An Announced Inspection of Woodlands Juvenile Justice Centre*, June 2018, CJINI/RQIA/ ETI, p21; 37; 41; 42; 46

⁶²³ CJINI (2022) *An Announced Inspection of Woodlands Juvenile Justice Centre. 22-28 January 2022*. September 2022. Available at: <https://www.cjini.org/getattachment/add04a59-88f7-4b99-b3a9-6a8669b65f15/report.aspx>, p6

⁶²⁴ CJINI (2022) *An Announced Inspection of Woodlands Juvenile Justice Centre. 22-28 January 2022*. September 2022. Available at: <https://www.cjini.org/getattachment/add04a59-88f7-4b99-b3a9-6a8669b65f15/report.aspx>, p55

⁶²⁵ Brown, T. (2022) *Northern Ireland Youth Justice Agency Annual Workload Statistics 2021/22*, 12 September 2022, Department of Justice, p43

⁶²⁶ See: Include Youth responses to consultations, including: *Response to Pre-Consultation on Improving Children’s Lives*; *Response to Improving Children’s Lives*; *Response to Children and Young People’s Strategy*

that “looked after children should no longer be placed in custody, either through PACE, on remand or sentenced, where this would not have been an outcome for children in the general population”.⁶²⁷

There is also an over-representation of **Roman Catholics** in custody. Following an inspection conducted in 2017, the Inspectorate noted: “It is concerning that, as well as the actual number of Catholic children admitted, their proportionate representation had increased steadily in recent years: from 57% in 2013-14 to 76% in 2016-17”. They highlighted that this was a matter to be addressed by community agencies such as the PSNI, the Public Prosecution Service and the NI Courts and Tribunals Service.⁶²⁸ In the 2022 Inspection, all 10 young people in the JJC on 22 January were Catholic and the Inspectorate noted continued over-representation of children from a Catholic background. This “remained a matter of concern”.⁶²⁹ During 2021/22, 55 of the 106 individuals in custody (52%) self-identified as Catholic, 21 (20%) as Protestant, 7 (7%) had other religions, 10 (9%) had no religious belief, and for 13 (12%) their religion was unknown.⁶³⁰

Use of solitary confinement, segregation and isolation in child detention facilities

Data gathered during the 2022 JJC Inspection showed an **overall reduction in ‘use of force’ incidents** since the introduction in 2017 of a system of accredited physical restraint - known as Minimising and Managing Physical Restraint [MMPR] - from 44 in 2017-18 to 26 in 2020-21. Between 1 April 2021 and 31 December 2021 there were 17 ‘use of force’ incidents. There had been no use of pain-inducing techniques since January 2018 and most incidents in the two years 2020-2021 involved low level or ‘figure of 4’ holds. In the majority of incidents, MMPR had been used to prevent risk of harm to others or to prevent harm to self.⁶³¹

2017-2027; Response to NICCY Corporate Plan 2020-2023. All available at:
<http://www.includeyouth.org/policy/submissions>

⁶²⁷ Youth Justice Review (2011) *A Review of the Youth Justice System in Northern Ireland*, Department of Justice *A Review of the Youth Justice System in Northern Ireland*, Department of Justice, p78

⁶²⁸ CJINI (2018) *An Announced Inspection of Woodlands Juvenile Justice Centre*, June 2018, CJINI/RQIA/ ETI, p15

⁶²⁹ CJINI (2022) *An Announced Inspection of Woodlands Juvenile Justice Centre. 22-28 January 2022*. September 2022. Available at: <https://www.cjini.org/getattachment/add04a59-88f7-4b99-b3a9-6a8669b65f15/report.aspx>, p9; p51

⁶³⁰ Brown, T. (2022) *Northern Ireland Youth Justice Agency Annual Workload Statistics 2021/22*, 12 September 2022, Department of Justice, p42

This compares with 42% of the NI population identifying as Catholic, 31% as Protestant, 7% other Christian, 1% other religion, 17% no religion, and 2% religion not stated in the 2021 Census

⁶³¹ CJINI (2022) *An Announced Inspection of Woodlands Juvenile Justice Centre. 22-28 January 2022*. September 2022. Available at: <https://www.cjini.org/getattachment/add04a59-88f7-4b99-b3a9-6a8669b65f15/report.aspx>, p40

The Inspectorate stated that ‘single separation’ was a behavioural management tool, through which children were temporarily kept apart from other young people in their House Unit, usually confined to their bedrooms. They noted that **“use of single separation appeared high”**: 345 uses in 2020-21 and 236 from April to 31 December 2021. When calculated as a proportion of admissions, the rate of use had increased by 38% from 2017-18 when the previous inspection was conducted. They suggested that this could be explained partly by a single separation log being opened for anyone having to isolate during the COVID-19 pandemic.⁶³²

Inspectors sampled single separation records for the period July-December 2021. They found that single separation was used for a wide range of reasons, including:

- behaviour related, for example, verbal altercation and serious disorder with some following use of force;
- related to COVID-19 protocols (either on admission or due to being symptomatic);
- bail perfected and in room awaiting discharge;
- at the request of the child (eg, returned to room following morning rise and having completed chores);
- feeling unwell; and
- non-attendance at education - this was apparent across several records and was a repeated occurrence for some children.

The duration of single separation ranged from 1 hour 10 minutes to 23 days. In several reviewed files, there was evidence that children were offered opportunities to spend time out of rooms during periods of single separation. The Inspectorate commented that its examination of records “suggested there could be particular needs related to age and disability but there was no evidence in the case file to show how these needs were being met.”⁶³³ It also noted that the records viewed “did not demonstrate a sufficient investigation of the underlying causes of the behaviour resulting in the use of single separation nor the consistent development of individual support plans to chart a route out of it.”⁶³⁴ Further, records reviewed by Inspectors suggested that, for some uses, “single separation was the conventional response and not a last resort, for example, non-attendance at education, COVID-19 protocols and prior to discharge or transfer”. The Inspectorate concluded: “The governance, rationale for use and delivery of single separation was a concern and needed to be improved. Behaviour management should be monitored on a more holistic basis”.⁶³⁵

⁶³² Ibid, 42

⁶³³ Ibid

⁶³⁴ Ibid, p43

⁶³⁵ Ibid, p43-44

During the *Rights Here, Right Now* consultation with young people in custody, young people questioned the expectation of attendance at school in the JJC for those above school leaving age. One stated: “If you don’t go to school, you’re locked in your room with no TV and the electric is turned off ... One time the water was turned off too because I was blamed for breaking the toilets, which I didn’t do.”⁶³⁶

Access to education and health services, including mental health services, for children in detention

The Inspection of the JJC conducted in 2022 included a monitoring visit to the **Education Other than At School [EOTAS] Centre** in the JJC by the Education and Training Inspectorate. It found that, since the previous inspection in 2018, actions implemented with support from the Education Authority, included: the creation and implementation of a strategic development plan; a review of the Key Stage 3 curriculum to meet minimum statutory requirements in levels of progression in cross-curricular skills (communication and using mathematics); widening of the curriculum offered to include ICT, physical education, horticulture, music and personal development; the introduction of personal learning plans to identify specific learning strategies to meet pupils’ complex needs; the engagement of staff in a range of professional learning (including improving the special educational needs provision; trauma-informed, restorative and nurture practice; new literacy strategies; and curriculum planning); updated child protection policies and development of a comprehensive Relationships and Sexuality Education policy; the introduction of an electronic baseline tracking system to record pupils’ progress in literacy, numeracy, ICT, vocational education, PSE [personal, social and emotional development]; the design of key stage curriculum pathways for individuals with a non-determined length of attendance, making use of baseline data to inform planning which meets each young person’s interests, ability and transition needs; a monthly reporting system to Woodlands management and termly reports to referring schools/centres.

The Centre had identified that the majority of young people make steady progress from the baseline assessment undertaken when they enter Woodlands. Practice observed in lessons was characterised by staff engaging positively with young people in their learning through contexts reflecting the individuals’ interests. Staff modelled, guided and supported independent learning, encouraging young people to self-evaluate and review their learning with peers. They motivated pupils well through consistent positive reinforcement. A personalised transition programme had been developed for pupils leaving Woodlands.

Based on the evidence available at the time of the monitoring visit, suggested improvements included: prioritising the collation of data from referring schools/EOTAS Centres, including an escalation system to ensure a response; ensuring pupils develop literacy, numeracy and ICT skills in their vocational education through rigorous monitoring and evaluation; developing

⁶³⁶ Haydon, D. (2022) *Rights Here, Right Now: Children and Young People’s Report to the UN Committee on the Rights of the Child*, Belfast: Children’s Law Centre

the ICT and 'Learning for Life and Work' curriculum, including an emphasis on healthy eating; formalising the teaching arrangements for pupils with medical and other needs who are unable to attend the EOTAS Centre.⁶³⁷

Regarding **access to health services**, generally the standard of health services provided to young people in the JJC was considered by Inspectors to be good and child-centred. Young people's needs were assessed by the health care team on admission, with appropriate referrals being made to provide continuity of care on their release. Nursing care was provided by four regular agency nurses with a range of specialisms, led by a Nurse Manager seconded from the Belfast Health and Social Care Trust. Their work was supported by an Occupational Therapist seconded from the South East Trust. There was daily nursing cover from 8am to 9pm. **All children were screened on admission by a nurse who completed a Comprehensive Health Assessment Tool (CHAT).** An audit of the CHAT system highlighted that **the timeframe for completion was not always met. Nurses did not have direct access to the Northern Ireland Electronic Care Record (NIECR)**, which Inspectors stated should be addressed. Relationships between health care staff and young people were assessed as very good. The young people were observed to have positive lines of communication with the health care team and were aware of how to access health care. Nursing staff were considered to have a professional, dedicated approach to their work, which was person-centred. They had developed initiatives to work in partnership with young people and there was evidence of their involvement in health care planning.

A joint initiative introduced by the health care staff and CAMHS in-reach team to provide a six-week health promotion programme was postponed because of the COVID-19 pandemic. Woodlands used the services of a local general medical practice. Due to COVID-19 restrictions, a weekly General Practitioner (GP) clinic was held remotely. A weekly clinic was also held by a Psychiatrist. In addition to these clinics, nurses could consult with the GP by telephone each day and out-of-hours GP services were also available. In an emergency, young people would be taken to a Hospital Emergency Department. Arrangements were in place with a local pharmacy for daily delivery of medicines.

Access to a COVID-19 vaccination and other routine immunisations was not available (plans were being made for one young person to attend a vaccination clinic during a future period of temporary release). The absence of arrangements to support vaccinations was considered by the Inspectorate to be a missed opportunity to promote the general health and wellbeing of vulnerable young people in custody. In relation to COVID-19, the vaccine status of an individual was the biggest mitigation in respect of isolation after a close contact and following admission. Improved access to vaccinations would have enabled different responses to reduce the time children spent in isolation. The infection prevention and control policy had been reviewed in July 2020, but had not been updated to reflect the ongoing COVID-19 pandemic.

⁶³⁷ Ibid, p63-64

Ophthalmology had been unavailable since the beginning of the COVID-19 pandemic. On admission, nursing staff asked young people about sight problems and Inspectors were advised that there was a process in place to attend ophthalmology if required.

A dental team visited the JJC every two weeks. **Dental emergencies, however, were not always managed in a timely manner.** At the time of the inspection, one young person was receiving regular paracetamol for several days before a dental assessment was undertaken.

Regarding **mental health**, Woodlands continued to part-fund a CAMHS in-reach service, seconded from the SE Trust. This team was available from 9am to 5pm Monday to Friday, there was no emergency/on-call provision within the Service Level Agreement. The team comprised: a Consultant Forensic Psychiatrist (0.5 whole time equivalent), Specialist Clinical Psychologist, a Band 6 CAMHS Nurse and administrative support. However, **members of the CAMHS in-reach team had been redeployed during the COVID-19 pandemic and a specialist Forensic Psychologist position was vacant.** The approach of the CAMHS in-reach team was observed to be therapeutic and responsive, although not all young people admitted to Woodlands were referred or remained long enough to meet the in-reach team. Young people were referred to the service as a result of screening on admission, if they were experiencing mental health issues, or if they were accessing a community CAMHS team.

Between April and September 2021, 39 young people were referred to the in-reach CAMHS team, 13 of whom were released without being seen. The Inspectorate noted that this figure was concerning, particularly when coupled with the in-reach team not having contact with young people for 10 days due to the requirement for them to isolate on their admission. Of the remaining 26 referrals, the majority (22) were accessing community CAMHS teams. Most young people referred to the in-reach CAMHS team during this period were male (34), aged 16 and above (31), white (35) and Catholic (23) - reflecting the profile of young people admitted to custody. Children living in the Southern and Belfast Health and Social Care Trust areas accounted for the highest number of referrals (16 and 12 respectively). Most young people (24) had been living with their birth family and five had been in residential care. The majority of mental health presentations related to depression (20), anxiety and general anxiety disorder (16); 3 related to psychosis.⁶³⁸ The in-reach CAMHS team conducted in-depth mental health assessments and provided ongoing interventions to help resolve young people's mental health problems. Although young people did not attend the weekly multi-disciplinary team meeting at which each young person's case was reviewed, there was evidence in case files that they were involved in discussions about their care and treatment. Young people were positive about their engagement with the CAMHS team and the support provided by them, although **there was a gap in gathering formal service user experience and evidencing the progress made by young people while in custody.**

⁶³⁸ CJINI (2022) *An Announced Inspection of Woodlands Juvenile Justice Centre. 22-28 January 2022.* September 2022. Available at: <https://www.cjini.org/getattachment/add04a59-88f7-4b99-b3a9-6a8669b65f15/report.aspx>, p54

There is no service for young people in the justice system equivalent to the Shannon Clinic. This is a Medium Secure Unit **providing in-patient services for adults requiring intensive psychiatric treatment and rehabilitation in a structured, secure and therapeutic environment.** Providing a service for people throughout Northern Ireland, some but not all of whom may have come through the judicial system, the Shannon Clinic links to mental health services across the region. It is a purpose built, 34-bedded unit, with a range of facilities including a gym, sports hall, workshop, music room, IT suite and café area.⁶³⁹

Additional issues

Delay in the administration of child justice

The impact of delay in the administration of youth justice remains a serious concern. The 2011 Youth Justice Review recommended a reduction in delay in youth cases and for the introduction of statutory time limits for all youth cases. It stated that the issue of delay stood out above all other issues as being in urgent need of reform, referring to the level of delay as “unconscionable”.⁶⁴⁰ Eleven years later, an end-to-end statutory time limit of 120 days from arrest to disposal remains undelivered. Criminal Justice Inspection reports acknowledge that young people are affected more negatively by delay, calling for priority to be placed on reducing delays for young people.

In 2018, an Audit Office report found that court cases in Northern Ireland typically take twice as long as in England and Wales.⁶⁴¹ The Justice Minister has stated that, without extra resources, the courts backlog caused by COVID-19 may not be cleared until 2028.⁶⁴² 2017-2018 data showed that **young people consistently wait longer than adults for their cases to be dealt with in Magistrates’ courts.**⁶⁴³ The 2022 Criminal Justice Inspection report noted that in 2020-2021 the “median time taken for charge cases at Youth Court was 187 days” (a 60%

⁶³⁹ Children’s Law Centre submission, November 2022

⁶⁴⁰ Youth Justice Review (2011) *A Review of the Youth Justice System in Northern Ireland*, Department of Justice, p68

⁶⁴¹ Northern Ireland Audit Office (2018) *Speeding Up Justice*. Available at: <https://www.niauditoffice.gov.uk/files/niauditoffice/media-files/Speeding%20up%20Justice.pdf>, p14

⁶⁴² BBC NEWS (2022) ‘NI courts backlog ‘may not be cleared until 2028’ says minister’. *BBC NEWS*. 3 August 2022. Available at: <https://www.bbc.co.uk/news/uk-northern-ireland-62054242>

⁶⁴³ See: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/case-processing-times-2017-18.pdf>

increase since the previous inspection in 2017-2018) and for summons cases it was 326 days (an increase of 35% since 2017-2018).⁶⁴⁴

Sir Judge Gillen reported that **the greatest delay is in serious sexual offences involving child victims**. In 2017/18, such cases took an average of 986.⁶⁴⁵ On 15th June 2022 the Justice Minister confirmed that, where the main offence was a sexual offence involving a child, the median time taken from the report of an offence until the case was dealt with at Crown Court was 867 days in 2020/21 and 876 days in 2021/22.⁶⁴⁶

Trans/ non-binary young people in custody

The 2022 Criminal Justice Inspectorate report noted that, in recent months, two trans/non-binary young people had been admitted to the JJC. Inspectors were informed that this was now happening more frequently. While Inspectors considered the needs of these young people were being met, they had been released before progressing beyond the isolation unit when decisions would have been required regarding their House placement and ongoing management. Staff felt, and the Inspectors agreed, that this was an area where staff would benefit from additional guidance and training. The Inspectorate recommended that “guidance and training for staff should be provided on the management of transsexual and intersex children”.⁶⁴⁷

Additional issue

Children affected by armed conflict

UNCRC Article 38.4 states that “State Parties shall take all feasible measures to ensure protection and care of children who are affected by armed conflict”. The CRC also recalls the provisions of the *Declaration of the Protection of Women and Children in Emergency and Armed Conflict 1974*, which notes that attacks and inflicting incalculable suffering on children are prohibited and condemned (Article 1) and that all forms of inhuman and degrading treatment, including shootings, committed in the course of military operations are considered criminal (Article 5). Principle 4 of the 2005 *Report of the Independent Expert to Update the*

⁶⁴⁴ CJINI (2022) *An Announced Inspection of Woodlands Juvenile Justice Centre. 22-28 January 2022*. September 2022. Available at: <https://www.cjini.org/getattachment/add04a59-88f7-4b99-b3a9-6a8669b65f15/report.aspx>, p84

⁶⁴⁵ Gillen Review (2019) *Report into the law and procedures in serious sexual offences in Northern Ireland. Part 1*. Available at: https://www.lawsoc-ni.org/DatabaseDocs/new_8655264_gillen-review-report-into-the-law-and-procedures-in-serious-sexual-offences-in-.pdf

⁶⁴⁶ NSPCC submission, October 2022

⁶⁴⁷ CJINI (2022) *An Announced Inspection of Woodlands Juvenile Justice Centre. 22-28 January 2022*. September 2022. Available at: <https://www.cjini.org/getattachment/add04a59-88f7-4b99-b3a9-6a8669b65f15/report.aspx>, p51-52

Set of Principles to Combat Impunity (the Orentlicher Principles) focuses on victims' right to know. It states: "Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate".

In 1981, 15 year old Paul Whitters and 14 year old Julie Livingstone were killed in Northern Ireland in separate incidents by the RUC and the British Army using plastic bullets. **Files on the killings of both children**, held by the British Government, were initially **closed to the public** (until 2059 in the case of Paul Whitters and 2062 in the case of Julie Livingstone) **and the government refused to give their families access to the files.**⁶⁴⁸ In 2019, the Whitters family met with the (then) Northern Ireland Secretary of State about accessing Paul's files. They were told by the Secretary of State that she could not access the files once they had been deposited. This was challenged on the basis of current legislation which allows for departmental access. That challenge resulted in the file of Paul Whitters being released in June 2022. The family of Julie Livingstone is now considering a similar challenge.⁶⁴⁹

⁶⁴⁸ See: <https://www.irishnews.com/news/northernirelandnews/2019/04/19/news/british-government-files-on-plastic-bullets-closed-up-to-additional-50-years-1601186/>

⁶⁴⁹ Pat Finucane Centre submission, November 2022