

September
2011

*State of
Children's
Rights in
Scotland*

Together

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Executive Summary

¹ Office of the United Nations High Commissioner for Human Rights (1989) *Convention on the Rights of the Child*.

² Together (2010) *State of Children's Rights in Scotland*

The *State of Children's Rights* report 2011 provides a non-government perspective on the extent to which children in Scotland are able to enjoy their rights enshrined in the United Nations Convention on the Rights of the Child (UNCRC)¹. It reflects on the progress made over the past year since the publication of Together's 2010 *State of Children's Rights*² report, discussing what progress has been made and where further efforts are needed.

The report was compiled and produced by Together following wide consultation with children's organisations across Scotland. The consultation involved gathering views and opinions from over 250 professionals working with and for children through seminars held in Ayr, Inverness, Aberdeen, the Scottish Borders and Edinburgh. This was followed by an online survey completed by sixty-one children's organisations working across a wide range of issues including mental health and wellbeing, disability, additional support needs, asylum and domestic abuse. The *State of Children's Rights* report 2011 is a culmination of the feedback received throughout the consultation alongside further desk research into issues that were highlighted as being of particular priority.

Background

The UN Committee last examined the UK government's progress in 2008, making a series of recommendations (known as *Concluding Observations*³) to set out where the UK was falling short of fully implementing the UNCRC. In September 2009 the Scottish Government published *Do the Right Thing*⁴, an action plan addressing some of the UN's *Concluding Observations* and providing a list of twenty one priority actions that it committed to undertake in the short to medium term. The next examination of the UK's progress will take place in 2013-14. The *State of Children's Rights* report can be viewed as a 'halfway mark' to assess progress made in Scotland and to highlight where further action is needed. The Scottish Government is due to publish its midterm report on progress in early 2012.

³ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*

⁴ The Scottish Government (2009) *Do the Right Thing*

Aim

The aim of the report is to reflect on measures taken to improve the implementation of the UNCRC in Scotland over the past year, and to highlight what children's organisations see as being the current key issues. Specifically, the report:

- recommends the next steps that should be taken to improve children's rights in Scotland;
- and
- provides a point of referral against which future efforts can be assessed.

Key Findings

There is a commitment from Scottish Government to improve the implementation of the UNCRC, as demonstrated by its inclusion as an underlying principle in key policies such as *Getting It Right for Every Child*⁵ and the *Early Years Framework*.⁶ Children's organisations report better awareness of the UNCRC among practitioners as a result. Concerns are raised that implementation is not consistent across regions or professions, nor is it necessarily matched by a deeper understanding of the UNCRC's purpose, content and implementation. The Scottish Government's policy commitment must be translated into practice and embedded in the culture of all those working with and for children. Without this many children in Scotland – particularly the most vulnerable – will not be able to enjoy the rights enshrined in the UNCRC.

⁵ The Scottish Government (2010) *Getting It Right for Every Child*

⁶ The Scottish Government (2009) *The Early Years Framework*

Successes

A number of successes are highlighted in the report. These are welcomed by children's organisations with recognition that more needs to be done to ensure consistent practice.

- There is a consensus among children's organisations that there has been significant improvement in understanding the need to ensure that children have the opportunity to share their views and that those views are respected and listened to.
- The Scottish Government's *National Domestic Abuse Delivery Plan for Children and Young People*⁷ has been successful in providing specialist children's workers who have been able to provide support to help children who have experienced domestic abuse, help them make sense of their experiences and to recover from the trauma.
- Children's organisations report an improvement in the understanding of the needs of looked after children within local authorities, with eighteen local authorities now having a corporate parenting policy and/or strategy and others are developing or implementing a similar approach.

⁷ The Scottish Government (2008). *National Domestic Abuse Delivery Plan for Children and Young People*

Recommendations

The *State of Children's Rights* report identifies a number of steps that should be taken to improve the implementation of the UNCRC in Scotland, referred to in the report as 'recommendations'. Although these recommendations are targeted at a number of agencies, the majority are specifically for The Scottish Government. The overarching recommendations are:

- The Scottish Government should seek to incorporate the UNCRC into Scots law in a manner which ensures its fullest implementation before the next report to the UN Committee in 2014.
- The Scottish Government should address inconsistencies in the implementation of the UNCRC across local authorities and professions. It should ensure the principles of the UNCRC are at the heart of policy and practice in work with all children. Particular attention should be given to vulnerable groups, including children living in poverty, those with mental health issues, children with a disability and those affected by domestic abuse.
- The Scottish Government should ensure that the UNCRC is at the heart of all training for professionals working with and for children, firmly embeds its principles and promotes understanding of its provisions. This should include a specific focus on the training of educational professionals and those working with children with additional support needs and/or with a disability. The Scottish Government should ensure its mid-term review of *Do the Right Thing* in 2011-12 takes account of the experiences of children's organisations reflected in this report.

Together is committed to working with its members and supporters over the next year to support and advise the Scottish Government in taking forward these recommendations and will continue to monitor the progress made over the coming year.

Introduction

Together (formerly the Scottish Alliance for Children's Rights) works to secure the rights and needs of all children living in Scotland as enshrined in the *UN Convention on the Rights of the Child* (UNCRC). Our members range from leading national and international non-governmental organisations to local playgroups and individuals, all sharing a commitment to promoting and advocating for children's rights in Scotland. In the past year, we have seen our membership increase significantly from 90 to over 150 children's organisations and professionals.

A key role of Together is to hold Scottish and UK Governments to account on their implementation of the UNCRC. This report, our second annual *State of Children's Rights* report, examines how well the UNCRC is being implemented in Scotland and what more could be done to ensure that children in Scotland are able to access their rights. We revisit many of the issues raised in the *State of Children's Rights* report 2010⁸ as well as bringing up new areas of concern highlighted by our membership.

The aim of the *State of Children's Rights* report 2011 is to provide a non-government perspective on the extent to which the UNCRC is being successfully implemented in Scotland. It assesses the progress over the last year, and since the publication of the UN Committee's *Concluding Observations*⁹ in 2008 and the Scottish Government's Action Plan, *Do the Right Thing*¹⁰, in 2009. It provides a means through which progress can be monitored and evaluated, ensuring that the momentum gathered through the last UNCRC reporting round is not lost and that children's rights are at the heart of the policy agenda. We would encourage the Scottish Government to consider the recommendations included in this report when producing their mid-term progress report on *Do the Right Thing*.

The UN Convention on the Rights of the Child

The UNCRC sets out the basic human rights that children everywhere must have: the right to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life. The four core principles of the UNCRC are non-discrimination; the best interests of the child; the right to life, survival and development; and the right of all children to have their views respected and heard. In 1991, the UK Government ratified the UNCRC, undertaking to implement its principles in UK policy and legislation.

States Parties to the UNCRC are required to submit reports approximately every five years to the UN Committee on the Rights of the Child, which consists of 18 children's rights experts from around the world. State Party reports enable the UN Committee to review the measures taken by the reporting country to ensure the rights enshrined in the UNCRC are enjoyed by all children. The reporting process encourages children's organisations, Children's Commissioners and specialised agencies such as UNICEF to submit reports setting out their assessment of the government's record in implementing the UNCRC.

Although the UK Government holds overall responsibility for the implementation of the UNCRC, the Scottish Government has devolved responsibility for many of the areas covered – specifically health and social care, education, housing, and youth justice – whilst the UK Government retains reserved powers for tax, benefits, immigration and asylum matters.

The UN Committee last examined the UK Government in 2008; making a series of recommendations (*Concluding Observations*) setting out where they believe the UK is falling short of fully implementing the UNCRC. The *Concluding Observations* make 142 separate recommendations that cover many aspects of children's lives.

⁸ Together (2010) *State of Children's Rights in Scotland*

⁹ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*

¹⁰ The Scottish Government (2009) *Do the Right Thing*

Do the Right Thing

In September 2009, the Scottish Government published *Do the Right Thing*, an action plan addressing some of the UN's *Concluding Observations* and providing a list of 21 priority actions that the Scottish Government committed to undertaking in the short to medium-term. In 2011-12 the Scottish Government has committed to publishing a 'mid-term report' to detail its progress in meeting the actions outlined in *Do the Right Thing*.

Consultation for the State of Children's Rights report

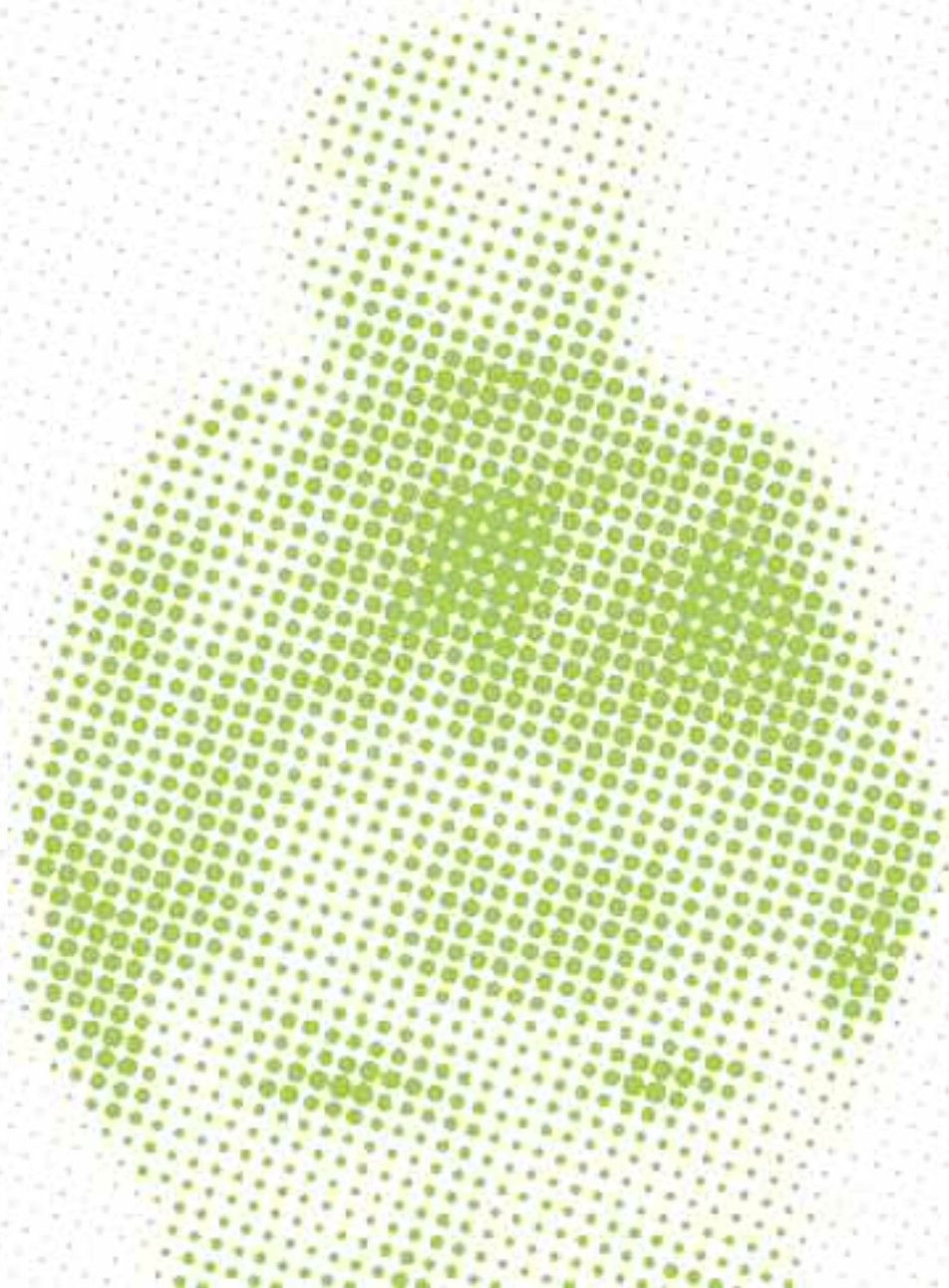
As a coalition of over 150 members, most of whom which work directly with children in Scotland Together is well placed to develop a report into the state of children's rights. To begin the research process, we held a series of seminars across Scotland through which we could consult with a range of children's organisations. These seminars were particularly targeted at regions where representation in Together's membership was low. Specific organisations were invited to attend the seminars with expertise in issues such as mental health and wellbeing, domestic abuse, child trafficking and the use of restraint in residential childcare, to attempt to overcome the knowledge gaps identified in the 2010 report.

The seminars were held in Inverness, Ayr, Aberdeen, the Borders and Edinburgh, and were attended by 252 delegates from across the children's sector. Delegates were from local voluntary organisations (25% of delegates), national voluntary organisations (23%) and local authorities (39%), of which 19% were from education. The seminars provided a forum for professionals to discuss policy and services at a local and national level from a child rights perspective. The discussions that took place have played a key role prioritising issues for further desk research and for inclusion in this report. Following the seminars, Together ran an online consultation throughout June and July 2011 through which children's organisations were asked to comment on specific issues highlighted at the seminars and through the UN Committee's 2008 *Concluding Observations*. Sixty-one children's organisations responded, which included 46 NGOs, 9 local authorities, 2 other statutory organisations and 4 individuals working in the field of children's rights (see *appendix 3* for more information).

Throughout the *State of Children Rights* report 2011 we have included case studies shared by our members that illustrate the benefits of taking a rights-based approach when working with children and how this can improve children's daily lives.

This report is a culmination of the issues raised through our Winter Seminar programme and the online consultation with our members and supporters. Together has been successful in building links with a wider range of children's organisations, particularly in the areas of domestic abuse and mental health and wellbeing. As a result, this report provides a more comprehensive "State of Children's Rights" than the last. However, we still recognise that there are many areas where further research into the implementation of the UNCRC is needed. These areas include juvenile justice, issues facing LGBT children, the children's hearings system and again, the use of restraint in residential settings.

Concerns are being raised across the children's sector that the economic crisis is disproportionately affecting children. There is already evidence to show that some of the most vulnerable children will be hardest hit, particularly children living in poverty and those facing challenges such as exclusion, ill health or disability. It is more important than ever that children's rights are taken into account and that the UNCRC is used to inform both policy and practice. Over the coming year, Together will seek to raise the recommendations outlined in this report on a local, national and international level. We will work with the Scottish Government and other relevant agencies to ensure that children's rights are at the heart of all decisions that affect them. It is our vision that all children in Scotland must be able to fully enjoy their rights as enshrined in the UNCRC.



Chapter

1

General measures of implementation

Case study: *Young carers and participation*

Glasgow Association for Mental Health and Article 12 Scotland

Young carers are young people with all the hopes, dreams and talents of other young people, but who have additional responsibilities. This case study highlights the work carried out by GAMH and Article 12 Scotland with a group of young carers. It shows the importance of supporting young carers to participate and the benefit this can bring to them and others. The project culminated in the young carers producing their own Young Carers Charter of Rights.

GAMH Young Carers Project promotes the emotional wellbeing and mental health of young people aged between 12 and 18 years old who care for or live with an adult who has a mental health problem. The project provides a safe, supportive environment where young carers can mix with their peers and build resilience, confidence and capabilities through physical, social, learning and arts based activities.

The project began in 2009 when GAMH teamed up with Article 12 to support a group of young carers to find out about the UNCRC, explore their rights and become peer educators. Article 12 provided workshops about peer education, communication and facilitation skills, action and event planning.

Young carers then explored the UNCRC under the headings “survival rights”, “protection rights” and “participation rights” and made posters to advertise a right, or group of rights, using creative arts materials, photos and articles from newspapers and magazines. They identified the rights most relevant to their lives and considered how these rights could enhance the lives of all young carers. They also developed their own additional rights, including:

“Young carers have the right ‘to be treated equally... no one should be judged because of their family situations.’”

“Young carers have the right to be spoiled.”

The next stage of the project focussed on informing their peers about the UNCRC. As a group, they planned and delivered a half day event for other young carers. This included an interactive activity where rights were ranked in order of importance. After such a successful day a bigger event was planned for February 2010.

Around 100 people came to this whole day event including families, services and friends. GAMH Young Carers also showcased their achievements in photography, drama, film, dance and songs. The ranking exercise on the UNCRC was repeated and used by the Peer Educators to create a GAMH Young Carers Charter of Rights.

GAMH Young Carers are now busy planning how to share their Charter both locally and nationally for all young carers. It will be available on the GAMH website in a few months time.

Incorporation of the UNCRC into UK and Scots law

UN Concluding Observation

- The Committee remains concerned that the principles of the Convention are not duly taken into account in all pieces of legislation throughout the country and that the State party has not incorporated the Convention into domestic law nor has ensured the compliance of all legislation affecting children with it. The Committee recommends that the State party continue to take measures to bring its legislation in line with the Convention.¹¹

¹¹ Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No.11,12

¹² Save the Children (2011). Governance Fit for Children

The UN Committee on the Rights of Child has twice recommended that the UK incorporate the Convention into domestic law in order to improve its implementation. In the past year many children's organisations, including Save the Children and UNICEF UK, have echoed this call for full incorporation.¹² However, there has been no movement to date by either the Scottish or UK Governments to address these calls.

The trend towards more decentralised government has resulted in political distance between national government and the agencies that are directly responsible for implementation. Children's organisations across all services and regions have raised concern that children's rights can fall between national government responsibility and local authority priorities. There is a consensus that many agencies view the UNCRC as simply aspirational rather than as part of international law. As a result, many agencies assume implementation of the UNCRC is optional rather than mandatory. The incorporation of the UNCRC into domestic law would encourage those working with and for children to recognise it as law and something that has to be followed.

The UK is next due to appear before the UN Committee in 2014; the incorporation of the UNCRC into Scots and UK law before this date would clearly demonstrate a sound commitment to make rights matter for all children.

Rec

Recommendation:

The Scottish Government should seek to incorporate the UNCRC into Scots law in a manner which ensures its fullest implementation before the next report to the UN Committee in 2014.

UN Concluding Observation

- Reinforce adequate and systematic training of all professional groups working for and with children, in particular law enforcement officials, immigration officials, media, teachers, health personnel, social workers and personnel of child-care institutions.¹³

¹³ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4)*. No. 21.

Children's organisations raised a range of issues around the training of professionals, particularly with regard to awareness of the UNCRC and children's rights. Despite some areas of success, such as the continuing professional development of workers within residential child care sector, the consensus is that training of professionals on the UNCRC is extremely patchy, resulting in very different levels of its implementation between professions and local authority areas. Specific issues were raised regarding the lack of systematic child rights training for those working with children with a disability, affected by domestic abuse, with additional support needs and ethnic minorities.

There is a clear need for a consistency in skills, knowledge and understanding of the UNCRC across the variety of roles and professions working with and for children. Together, along with many of its members, responded to the Scottish Government's consultation on the *Common Core Skills, Knowledge, Understanding and Values for the Children's Workforce in Scotland*.¹⁴ The *Common Core* is designed to highlight the important skills, knowledge and values that every worker should have if they work with children and families. A key theme of children's organisations' responses to the *Common Core* consultation was the need for the UNCRC to be firmly embedded in all training. Furthermore, a need was highlighted for training of professionals that are not solely child-focused (for example, those that work with the wider family) so that they recognise the impact of their work on the lives of children. This would include criminal justice agencies alongside other adult-focused services, such as those dealing with parental addictions and mental health.

¹⁴ *Together (2011). Response to the Common Core Skills, Knowledge, Understanding and Values for the Children's Workforce in Scotland*

Rec

Recommendation:

The Scottish Government should ensure that the *Common Core Skills, Knowledge, Understanding and Values for the Children's Workforce* firmly embeds the principles of the UNCRC and promotes understanding of its provisions.

UN Concluding Observation

- The Committee is concerned that there is no systematic awareness-raising about the Convention and that the level of knowledge about it among children, parents or professionals working with children is low. Furthermore, the Committee regrets that the Convention is not part of the curriculum in schools.¹⁵

¹⁵ Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 20.

¹⁶ Scottish Commissioner for Children and Young People (2011). *A Right Blether*.

¹⁷ Centre of Rural Childhood (2011). Article 12: United Nations Convention on the Rights of the Child. Awareness Raising Through Action Based Research.

¹⁸ YouthLink Scotland (2009). *Being Young in Scotland*.

¹⁹ Scottish Commissioner for Children and Young People (2011). *A Right Blether*: (www.arightblether.co.uk/downloads/national_vote_results_summary_2011.pdf): 8.

²⁰ Scottish Executive (2004) *Curriculum for Excellence*.

²¹ UNICEF (2004) *Rights Respecting Schools Awards*.

²² The Scottish Government (2010) *Getting It Right for Every Child*.

²³ The Scottish Government (2009) *The Early Years Framework*.

²⁴ The Scottish Government (2008). *National Domestic Abuse Delivery Plan for Children and Young People*.

On the whole, children's organisations believe that there has been an improved awareness of the UNCRC over the past two years. This has been attributed to efforts by the Scottish Government's children's rights team, *A Right Blether*¹⁶ consultation run by SCCYP, and to research into Article 12 by the University of the Highlands and Islands¹⁷.

Within schools, research shows that there is still limited awareness of the UNCRC among 11 to 16 year-olds, with over one in five (21%) hardly knowing anything at all about it and a third (32%) having never heard of it.¹⁸ SCCYP's *Right Blether* found that just over half (56%) of children and young people up to the age of 21 had not heard of the UNCRC.¹⁹

The *Curriculum for Excellence*²⁰ does not specifically refer to the UNCRC, although the newly established Education Scotland is producing information on teaching about children's rights. UNICEF UK's *Rights Respecting Schools*²¹ is one of several projects that work to embed a rights-based ethos within participating schools. Such initiatives show that it is clearly both possible and beneficial to increase awareness of the UNCRC within schools. This is a role that Education Scotland should take forward, building upon the work already undertaken by Learning and Teaching Scotland.

Awareness has increased in terms of the inclusion of the UNCRC in Government policy (including as an underpinning principle of *Getting It Right for Every Child*²² and the *Early Years Framework*²³) and also in guidelines of some Government agencies, including the UK Border Agency (UKBA). There has also been a significant improvement in the involvement of children in practice development. Examples given include a Reference Group of Looked after Young People involved in training events and consultation within Aberdeenshire Council, and Voices Against Violence, a young expert group of young people with experience of domestic abuse, who have worked with the Scottish Government on the monitoring and implementation of the *National Domestic Abuse Delivery Plan for Children and Young People*.²⁴

However, despite reports of increasing awareness of the UNCRC among practitioners, this is not consistent across the board, nor is it necessarily matched by a deeper understanding of the UNCRC's purpose, content and implementation. Continued work is needed to raise awareness among all those working with and for children, including throughout local authorities and schools, in order to address inconsistencies in knowledge across regions and professions. Among the wider public, more positive promotion of children's rights is greatly needed, and increased awareness and recognition that the principles of the UNCRC are mandatory and not aspirational.

Recommendation:

The Scottish Government needs to build upon its initial success by developing and adequately resourcing a comprehensive strategy to raise awareness of the UNCRC. This strategy should particularly address inconsistencies in knowledge across professions and local authorities.

Rec

UN Concluding Observation

- Adopt a comprehensive action plan to implement the UNCRC in co-operation with public and private sectors.²⁵

²⁵ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4)*. No 15.

²⁶ The Scottish Government (2009). *Do the Right Thing*. Action no. 1.

Children's organisations echoed the findings of Together's *State of Children's Rights* report 2010 in which the production of the Scottish Government's UNCRC action plan; *Do The Right Thing*²⁶ is welcomed. The process through which the Scottish Government consulted with NGOs and children to produce the action plan was particularly heralded. A clear shortfall of the plan is that many of the actions are vague and non-specific. The Scottish Government is due to publish its mid-term progress report in 2011-12 and has been urged by children's organisations to provide greater clarity on how it will take forward the actions in *Do The Right Thing* over the next three years. Children's organisations would like to see a mid-term report that contains specific and measurable objectives for the coming three years, with a clear set of indicators against which progress can be assessed and a clear timescale for action.

Rec

Recommendation:

The Scottish Government should ensure its mid-term review of *Do the Right Thing* in 2011-12 contains clear, resourced and time-specific actions alongside a clear and robust monitoring framework.



Article 3:

The best interests
of the child must
be a top priority
in all actions
concerning children.

Chapter

2

General principles

Case study: *Using the media to tackle discrimination*

National Autistic Society (Scotland) (NAS)

Parents and carers of children with autism alerted NAS Scotland to the limited support available to them during the school summer holidays. The sudden removal of the regular school routine can be very distressing for children with autism. In the vast majority of cases, the entire onus for childcare falls on families, as summer clubs rarely have the expertise to support a child with autism. When embarking on outings with their child, parents cited experiencing abusive language and behaviour from the public, who would mistake the reaction of a child with autism who was anxious, frightened or disorientated as simply “*bad behaviour*”. In response, NAS Scotland ran a successful awareness-raising campaign to increase public understanding of the challenges faced by children with autism.

NAS Scotland is the leading charity for people affected by autism. It provides a nationwide network of support and expertise for the 50,000 people in Scotland affected by Autism Spectrum Disorders. NAS Scotland’s priority is to support adults and children with autism in accessing the same social, educational and employment opportunities that many take for granted. Campaigning is shaped by feedback from members and supporters who are people with autism, their families and carers.

A robust awareness-raising campaign was launched by NAS Scotland, strategically planned to increase public understanding of the challenges faced by children with autism, and the significant improvements in a child’s well-being and mental health that can come with that understanding.

NAS Scotland generated a range of media releases and family case studies from across Scotland. Families featured in news stories in Scottish national and local media, describing the challenges and rewards of caring for a child with autism during the school summer holidays. Extensive press features appeared across Scotland including a 60-minute discussion on BBC Radio Scotland’s ‘Call Kaye’ programme.

NAS Scotland also campaigned for an individual family who claimed to have experienced discrimination during the summer break. The family were asked by management to leave a performance of “Wicked” at the Apollo Victoria Theatre, London. Their 12 year-old son had been enjoying the show and making soft vowel sounds, his only means of communication. The complaint came from the theatre’s sound engineer and not an audience member. Several audience members sought to defend the family against theatre management’s decision. NAS Scotland supported the family in raising awareness of autism and encouraging the theatre to issue an apology. They supplied supporting quotes and contacted media on behalf of the family. Talks are currently progressing well, involving the family, NAS Scotland, the Ambassador Theatre Group and the National Theatre on the creation of an annual ‘Inspiration Day’. Members of the theatre industry will be invited to take part in a range of activities and stimulating discussion, designed to increase awareness and understanding of autism.

The total audience reach for the NAS Scotland’s School Summer Holidays campaign was 1,164 608.

UN Concluding Observations

- Take urgent measures to address the intolerance and inappropriate characterization of children, especially adolescents, within the society, including in the media;
- Strengthen its awareness-raising and other preventive activities against discrimination and, if necessary, taking affirmative actions for the benefit of vulnerable groups of children, such as Roma and Irish Travellers' children; migrant, asylum-seeking and refugee children; lesbian, bisexual, gay and transgender children (LGBT); and of children belonging to minority groups;
- Take all necessary measures to ensure that cases of discrimination against children in all sectors of society are addressed effectively, including with disciplinary, administrative or – if necessary – penal sanctions.²⁷

²⁷ Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 25a, b, c.

As a general principle, non-discrimination is enshrined throughout the UNCRC, ensuring that the rights defined apply to all children without exception. It is the Scottish Government's obligation to protect children from any form of discrimination and to take positive action to promote their rights. Despite this obligation, the discrimination of children in Scotland continues to be a pressing concern.

Children themselves raised the issue of discrimination in their response to SCCYP's *Right Blether*. 37% (27,266) of all voters believed that SCCYP should “*help everyone to include each other, no matter how different we all are*”.²⁸ This is being taken forward by the Children's Commissioner with a particular focus on tackling the discrimination of children with a disability.

²⁸ Scotland's Commissioner for Children and Young People (2011). *A Right Blether*: 7.

Together members and supporters reported that children are routinely discriminated against in their day-to-day lives as a result of their age. Children do not have an equal say in their community, at school or in family life and they are often perceived as troublesome, particularly through the media. The institutionalised discrimination of children is particularly well demonstrated by the UK Government's decision to exclude them from the protection of anti-discrimination law under the *Equality Act 2010*.²⁹

²⁹ Under the Equality Act 2010, the UK Government excluded children and young people from the protection of anti-discrimination law in relation to age in the provision of goods, facilities and services and in the exercise of public functions.

The *Equality Act 2010* came into force from October 2010 with the aim of providing a single, clear legal framework to more effectively tackle disadvantage and discrimination. Despite this, the *Equality Act* does not provide equal protection across all age groups. Excluding children (under-18s) from the protections provided by age discrimination legislation sends out a message that is both negative and confusing.

Children in Scotland submitted a response to the consultation on the *Equality Act* on the exclusion of under-18s from the provisions on age discrimination. They gave examples of how children are discriminated against as a result of their age, such as unequal wages and benefits.³⁰

³⁰ Children in Scotland (2010). *Age Discrimination Consultation Response* (www.childreninscotland.org.uk/docs/AgeDiscrimConsultation.pdf)

Alongside the age discrimination of children, particular concerns were raised about the discrimination of children with a disability, Gypsy and Traveller children, and refugee children. Many children's organisations could provide examples of discrimination in schools, shops and within public services. These examples included discrimination as a result of race, culture, ethnicity and resident status in the UK.

Disability

It is clear that children with a disability face discrimination in their day-to-day lives. Examples were given of children with disabilities not having the same access to healthcare or education as their non-disabled peers.³¹ Difficulties were also raised around accessing buildings such as schools, bathroom facilities and entertainment venues, as well as in using public transport.³² Cases were shared about children isolated from their peers, sometimes through a misunderstanding of the child's behaviour resulting from their disability, and often through the difficulties they encounter in socialising and playing with other children.

The UN Committee's *General Comment No. 9* on the rights of children with disabilities makes the link between play and inclusion explicit: the full inclusion of children with disabilities can only be realised when all children are given the opportunity, place and time to play with one another.³³ However, there is currently no systematically targeted approach in Scotland to ensure all children can realise their right to play, and in many areas, facilities simply do not exist to enable children with disabilities to interact with their non-disabled peers.

Despite such evidence, some organisations (particularly after-school clubs) were able to provide more positive examples of where they have actively supported the integration of children with disabilities into their projects. This was seen as benefiting the children themselves and also taking away the "fear factor" of non-disabled children who realise that apart from the disability, these children have the same hopes and aspirations as they themselves do.

Children and the media

The influence of the media in promoting and reinforcing negative perceptions of children was also referred to by many children's organisations. The media still plays a significant role in perpetuating discrimination against children. A Barnardo's poll of the general public showed that 43% of respondents agreed with the statement "something has to be done to protect us from children".³⁴

Together's members continue to report seeing negative stories about children in the media, and correspondingly few stories about their successes or their positive contributions to their communities. There is a concern that the image of children given by the media is often slanted to make "good copy" rather than being an accurate reflection of the issue. Negative attitudes promoted in the media sustain incorrect assumptions that there is an increase in children's offending behaviour, drinking and substance misuse, as well as an unnecessary and unhelpful fear of children among older people.

There is a feeling from children from ethnic minority communities in particular that they are often spoken "about", spoken "for" (often as victims), or not mentioned at all while the ethnic communities they are part of are often referred to negatively under the headline of "immigration".

³¹ Long Term Conditions Alliance Scotland (LTCAS) and for Scotland's Disabled Children Liaison Project (2011). *I want to be treated the same as my brothers!*

³² Glasgow Disability Alliance (2010). *Rights to Reality Progress Report*

³³ UN Committee on the Rights of the Child (2006). *General Comment No 9, the rights of children with disabilities*

³⁴ Barnardo's/ UK Gov (2008). *Breaking the Cycle*.

Children’s organisations noted continued stereotyping of children with a disability through the media. This was seen to spill over into stigma and discrimination towards children with disabilities by both their peers and by adults. Impairments – both physical and intellectual – were viewed with fear and misunderstanding by those misinformed by the media. This in turn led to bullying and the exclusion of children with disabilities from activities by some of their non-disabled peers.

Despite many responses stating that the media portrays a very negative image of children with a disability, some examples were given, particularly of children on the autistic spectrum, where the media has been helpful in raising awareness and understanding of the issues they face as illustrated in the National Autistic Society case study on page 15.

Gypsy and Traveller children and the media

Amnesty International is concerned at the wealth of evidence showing discrimination against Gypsy Travellers in Scotland and growing hostility and divisions between travelling and settled communities.³⁵ The media has an important role to play in how settled communities gather information and form opinions about Gypsy and Traveller communities and must be held accountable for its contribution to the continuing tensions. Almost without exception the Gypsy and Traveller community is negatively reported on, with terms such as “invasion” and “fear” is regularly used in reporting.³⁶ In a four-month period of analysing press coverage of Gypsy and Traveller communities, Amnesty International found that 45% of stories presented an overtly negative picture of these communities (with 27% positive and 28% neutral) and that the great majority of this coverage takes place without the involvement of Gypsy and Traveller communities. Only 10% of the pieces presented a community voice – in the vast majority of cases Gypsy Travellers were not afforded any right of reply.³⁷

³⁵ Amnesty International (2010). *Response to the Treatment of Gypsy Travellers in Scotland*.

³⁶ Equality and Human Rights Commission (2009). *Inequalities experienced by Gypsy and Traveller communities: A review*.

³⁷ Research carried out by Scottish office of Amnesty International, to be published shortly.



Recommendations:

The UK Government should amend the Equality Act 2010 to provide uniform protection across all age groups, ethnicities and disabilities to ensure it confirms to human rights principles and accepted international norms.

The Scottish Government should continue to challenge the negative portrayal of children in the media by supporting children-led campaigns such as “*Being Young is Not a Crime*” and “*Give Me a Chance*”.

UN Concluding Observations

- The Committee recommends that the State party take all appropriate measures to ensure that the principle of the best interests of the child, in accordance with article 3 of the Convention, is adequately integrated in all legislation and policies which have an impact on children, including in the area of criminal justice and immigration.³⁸

³⁸ Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No. 26, 27.

³⁹ *ZH (Tanzania) (FC) (Appellant) v Secretary of State for the Home Department* (2011)

⁴⁰ Scottish Executive (2006). *More Choices More Chances*

⁴¹ *The Forced Marriage etc (Protection & Jurisdiction) (Scotland) Act 2011*

One of the central principles of the UNCRC is that in decisions affecting children, their best interests should be a “*primary consideration*”. In early 2011, there was a key development in the UK Supreme Court in a case involving the proposed deportation of a mother to Tanzania when her children were British citizens.³⁹ Baroness Hale stated that while all other considerations could outweigh a child’s best interests, “*the important thing...is to consider those best interests first*”. Such strong guidance from the UK’s highest judicial authority should underpin every action taken to promote the rights of children in Scottish Government policy, and in the practice of Scottish courts. In the same judgement, Lord Kerr stated that where a child is, or is likely to be, affected by a decision about a parent, the best interests of the child must take centre stage as a factor that “*ranks higher than any other*”, and may only be trumped by competing claims “*of considerable force*”.

Children’s organisations commented that *Getting It Right*, the *Early Years Framework*, *More Choices More Chances*⁴⁰, and the children’s hearing system have promoted much wider awareness of the best interest principle and the need to place the child’s welfare as a primary consideration. Forthcoming legislation on forced marriage⁴¹ was also welcomed as it will result in forced marriage being recognised as a child protection issue.

Despite this progress, the picture remains mixed across different areas of the country and across different services. There is a general feeling that the best interest principle, although present in policy, can be inconsistent in practice. The impact of the Concordat Agreement between the Scottish Government and CoSLA, and the end of ring-fenced funding for specialist education and social care services has meant that there is a great deal of localised variation in the delivery of support for children. To progress beyond policy into practice, there is a need to encourage a culture change among professionals working with children to ensure they are supported to consistently place the best interests of the child at the centre of all decisions affecting him or her. This culture change needs to be across the board and must be driven by a commitment and leadership from a range of professional bodies to have any real impact on the lives of children.

Particular groups of children were highlighted as raising concerns in relation to implementing the best interests of the child:

Children of prisoners

Despite some progress in recent years, including the establishment of Children and Families Groups at every prison and the development of “*Minimum Standards for Children and Families*”⁴² to cover a child’s visit to a parent in prison, there is still much to do to recognise and mitigate the impact of criminal justice decisions on the lives of children. The best interests of the child involved or affected by the custodial sentence of a parent is still ineffectively safeguarded. A culture change is needed to ensure that the best interests of the child are at the core of all decisions affecting children.

⁴² “The Scottish Government (2009) *Do the Right Thing: For people who work with children or on their behalf. Part 14*

The findings of SCCYP’s children of prisoners report, *Not Seen, Not Heard, Not Guilty*, echoes the responses received through Together’s consultation.⁴³ The rights and wellbeing of the children of offenders are not being regularly considered in deciding whether to imprison or release a parent; there needs to be better co-operation between children and families services, criminal justice and other “*adult*” services. Moreover, the Scottish Prison Service does not yet see child-focused visits as a right of children, but as a “*privilege*” of the prisoner, demonstrating the need for a culture change within the Scottish Prison Service to place children’s rights and wellbeing at its core.

⁴³ SCCYP (2011). *Not Seen, Not Heard, Not Guilty. (Review 2011)*

Children in the criminal justice system

Justice for Children, a reform group chaired by CHILDREN 1ST, regularly encounters instances of children involved in the criminal justice system failing to receive the support and protection to which they are entitled. These include children who are not interviewed in an appropriate manner during a joint investigative interview; children who are not properly assessed for potential communication difficulties; children who are not provided adequate information or support in the lead up to appearing in court to give evidence; and children who are not offered appropriate special measures for giving evidence.⁴⁴ These numerous examples indicate a systemic lack of adherence by professionals at all levels in the criminal justice system to ensuring the best interests of the child, such as vulnerable witnesses or vulnerable accused, are taken into account.

⁴⁴ Children 1st (2008) *Justice for Children Reform Group*

Asylum-seeking children

The best interests principle is now present in legislation⁴⁵ relating to asylum-seeking children, but often fails to be translated into practice. The UK Border Agency’s (UKBA) policy guidelines frequently refer to the best interests of the child⁴⁶ and yet the measures used to ensure immigration control seem to override this principle, particularly with regard to protecting the child victims of trafficking, age assessment and removal and deportation.

⁴⁵ *Borders, Citizenship and Immigration Act 2009. Section 55*

⁴⁶ UKBA (2011). *Processing Asylum Applications from a Child*

Children experiencing homelessness

Housing legislation requires that children’s best interests are taken into account whilst making decisions about homeless applicants. However, this is not always the reality and children are often housed away from their local areas and support networks and schools.

Rec

Recommendation:

The Scottish Government should assess the impact of *Getting It Right* on ensuring the best interests principle is at the heart of practice in work with all children from all backgrounds living in all local authority areas.

UN Concluding Observations

- Promote, facilitate and implement, in legislation as well as in practice, within the family, schools, and the community as well as in institutions and in administrative and judicial proceedings, the principle of respect for the views of the child;
- Continue to collaborate with civil society organizations to increase opportunities for children's meaningful participation, including in the media.⁴⁷

⁴⁷ Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No. 32, 33.

There is a consensus that there has been significant improvement over the past few years in understanding the need to ensure that children have the opportunity to share their views and that those views are respected and listened to. Children's organisations also agree that there is better understanding of the need to support children to understand and participate in decisions affecting them. There are an increasing number of professionals within social work, the police force and the voluntary sector who are actively involving children.

The importance of advocacy services for children was stressed by many children's organisations. Many children have a lack of confidence in an organisation's ability to implement, monitor and sustain positive change in their wellbeing and circumstances. Some children have a fear of people in authority and can be very guarded about sharing their views and experiences. Others may have concerns that their views will be heard and listened to but could lead to negative reactions from their parents or carers. Advocacy services can work to overcome this by building supportive relationships with children and helping to ensure that sharing their views becomes more natural and less threatening. Despite the clear benefits of advocacy, there is concern that there is not enough advocacy provision across Scotland and that real discrepancies remain in the advocacy services available for children in different local authority areas.⁴⁸ Children's organisations stressed the need for advocacy for all children and not just for children in the care system.

⁴⁸ Elsley (2010). *Advocacy makes you feel brave. The Scottish Government*

Children with a disability

Examples of good practice were given of promoting the participation of children with a disability, such as advocacy services specifically for children with a disability available in some areas of Scotland through local authorities and voluntary organisations. Unfortunately, provision of these excellent services is patchy and not available for every child with a disability that encounters difficulties participating in decisions that affect them.

On the whole, there is still great concern that children with a disability do not get the support they need to give their views. Prejudicial assumptions about the level of competence of children with disabilities can too often be made and that those with no verbal communication can be particularly marginalised. Promoting the participation of children with a disability is a skilled task which involves taking time to get to know the child alongside those caring for him or her, and an ability to understand how each individual child communicates. Specialist advocacy services are needed to provide such support and to train other professionals in alternative methods of communication that take into account the needs of children with additional support needs.

Asylum-seeking children

The views of children within asylum-seeking families are not routinely taken into account. These children are usually dependent on their parents' claim and their stories of witnessing what has happened do not get routinely listened to and their views are not routinely sought. Yet the decision made on their parents' asylum application will have a significant impact on their life. When social workers are involved with a family they may not advocate on the child's behalf and will not routinely provide any support for children through reporting visits to UKBA.

Children affected by domestic abuse

In the context of domestic abuse there are real issues for children affected by decisions made by the courts, such as contact between children and the perpetrator. Children's views are not always sought or taken into account when these decisions are being made. Many children report contact as something that causes them significant anxiety and they have concerns that it can be a means through which domestic abuse can continue.

The campaign by Voices Against Violence was heralded as an excellent example of ensuring the voices of children affected by domestic abuse were heard. The project involves eight children, all with first-hand experience of domestic abuse and of different services such as the police, courts, mental health services and housing services. They have been working to find out more about the impact of domestic abuse on children and to share their findings with the Scottish Government and CoSLA to contribute to the development and implementation of the *National Domestic Abuse Delivery Plan*.

Children's organisations reported a lack of voices from children from ethnic minority communities informing policy-makers of their opinions, ideas and attitudes, particularly with regard to violence and domestic abuse. This is also the case for lesbian, bisexual, gay and transsexual young people who experienced domestic abuse. LGBT Youth Scotland's *Voices Unheard* reported a lack of access to services available to young LGBT and how they may be deterred in using gender-neutral services.⁴⁹ This lack of representation was partly attributed to the need for increased work with and within many communities to help create safe spaces for people to explore issues that may be perceived as "taboo". One example of work to tackle this lack of participation is the Shakti Women's Aid *Action Research on Violence* project, which works in north Edinburgh with ethnic minority children to challenge the difficulties around talking about conflict and violence, and discover their thoughts and ideas for dealing with these issues and situations.⁵⁰

⁴⁹ LGBT Youth Scotland (2010) *Voices Unheard Report*.

⁵⁰ Shakti Women's Aid. *Action Research on Violence Project*

Rec

Recommendations:

The Scottish Government should put in place national and local strategies to ensure advocacy support for all children and not just those who fall under the scope of the Mental Health (Care and Treatment) (Scotland) Act 2003⁵¹ and the Additional Support for Learning (Scotland) Act 2004.⁵²

Local authorities and the NHS should deliver high quality advocacy services to all children commensurate with the principles and standards being developed by the *National Steering Group on Advocacy Support for Children and Young People*.⁵³

⁵¹ Scottish Executive. *Mental Health (Care and Treatment) (Scotland) Act 2003*

⁵² Scottish Executive *Additional Support for Learning (Scotland) Act 2004*.

⁵³ The Scottish Government (2010) *National Steering Group on Advocacy Support for Children and Young People*.



Chapter

3

Civil rights and freedoms

Case study: *Positive parenting*

NHS Greater Glasgow and Clyde in partnership with Glasgow City and Renfrewshire Councils

Positive parenting is key to successful outcomes for children. Positive parenting respects the child's best interests as well as considering the needs and resources of parents. Emotional support, practical information and a network of parenting and relationship support can be crucial in helping some families cope. Article 18 of the UNCRC recognises the role of parents and enshrines their right to receive support children's organisations have highlighted. Glasgow's Triple P programme as a successful means of promoting and supporting positive parenting.

The Triple P Positive Parenting Program™ helps parents manage the big and small problems that are part of family life. For more than 30 years, Triple P has helped hundreds of thousands families around the world deal with issues ranging from temper tantrums to disobedience, schoolyard bullying to teenage rebellion. It is already used in 20 countries including Belgium, Sweden, the United States, Australia and Canada.

NHS Greater Glasgow and Clyde, in partnership with Glasgow City and Renfrewshire Councils, is offering Triple P free to local parents in libraries, schools and other venues throughout the area.

A single father from Gorbals declined to take part in Triple P when it was first offered to him because of the stigma of being labelled a bad parent. But the full-time dad to three changed his mind when he found he was struggling. He approached the head of the nursery near his home and was referred to Triple P. He found everything to be simple and relaxed and was relieved he wasn't lectured about parenting.

"It was really informal. We talked through problems and were encouraged to produce an individual parenting plan for our own situations," he said. "It was really positive and non-judgemental."

The father soon noticed big differences at home. *"I was very surprised at the impact it had on me and the children straight away,"* he said. Instead of shouting at his children from other rooms, he spoke with them face-to-face. And he found that time apart was the most effective way to cool tempers.

"Instead of raising our voices and getting upset, I give them a couple of minutes on their own to think about things. Every single time they say 'I'm sorry' and we all have a cuddle."

He has also seen an improvement in his children's manners, with routines and boundaries now followed as agreed. *"Now I can walk from one end of the town to the other just holding their hands. I know they'll behave and wait to cross the road, rather than running away from me."*

He would recommend Triple P to any parent. *"It's made a massive difference to my life."*

UN Concluding Observations

- Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences;
- Actively promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to raising public awareness of children's right to protection from all corporal punishment and to decreasing public acceptance of its use in childrearing;
- Provide parental education and professional training in positive child-rearing.⁵⁴

⁵⁴ Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 42a, b, c, d.

⁵⁵ Together (2010). State of Children's Rights in Scotland

In 2008, the UN Committee on the Rights of the Child reiterated its earlier recommendation that Scotland fully prohibit the physical discipline of children as a matter of priority, and actively promote the non-violent discipline of children. In Together's *State of Children's Rights* report 2010⁵⁵, steps taken by the Scottish Government to promote positive parenting were welcomed, but further recommendations were made that the Scottish Parliament should pass legislation to make all physical discipline of children unlawful, including within the family.

Many children's organisations commented that Scotland has "failed" its children by not passing legislation to make all physical assault unlawful. There is an overwhelming opinion that there will continue to be confusion between what is lawful and unlawful in relation to physical discipline within the family until clear legislation is passed.

Given the number of high-profile child abuse cases in recent years, attitudes towards the physical discipline of children are changing. Research shows that in the past ten years, the prevalence of regular physical discipline of children by adults has reduced significantly, with one study showing a reduction from 10% of children questioned in 1998 to only 2.8% of those questioned in 2009.⁵⁶

Children's organisations reiterated their call to the Scottish Government to challenge public perceptions about what constitutes normal or acceptable behaviour and encourage individuals to take responsibility for helping to protect vulnerable children in their school, street and community. There is a need to remove the barriers that continue to stop people from acting on concerns they might have about a child, enabling society as a whole to challenge negative behaviour towards children, report suspected maltreatment, and ensure professionals act when concerns are raised.

Rec

Recommendation:

The Scottish Government should amend the Criminal Justice (Scotland) Act 2003⁵⁷ to make any form of physical violence against a person under the age of 18 a criminal offence, and to remove the defence of 'justifiable assault'.

⁵⁷ The Scottish Executive Criminal Justice (Scotland) Act 2003.

UN Concluding Observations

- The Committee urges the State party to ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished.⁵⁸

⁵⁸ Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 39.

⁵⁹ Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002

⁶⁰ Steckley and Kendrick (2008) Physical Restraint in Childcare: The experiences of young people and residential workers.

Children's organisations felt that there had been an increased focus on the issue of physical intervention in residential units and a result, the use of positive and non-violent discipline had been promoted.

When restraint is necessary, legislation states that it can only be permitted and used in Scotland as a "last resort" and that physical restraint must not be used for disciplinary purposes.⁵⁹ Children's organisations commented that the application of this legislation – and interpretation of what "last resort" means – can vary depending on individual settings. This is echoed in research into the use of physical restraint in childcare⁶⁰ and it is essential that it is addressed.



Rec

Recommendation:

The Scottish Government should introduce a robust and comprehensive national recording system across all residential settings to provide consistency in monitoring the use of restraint. Systems should include information such as what triggered the incident, the staff involved, ensuring all procedures were followed and that debriefing is undertaken. Information gathered should be used to review policy and guidance.

UN Concluding Observations

- Reconsider the ASBOs as well as other measures such as the mosquito devices insofar as they may violate the rights of children to freedom of movement and peaceful assembly.⁶¹

⁶¹ Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 35.

⁶² Full transcript at: www.scottish.parliament.uk/s3/committees/petitions/or-11/pu11-0602.htm#Col3512

⁶³ Antisocial Behaviour etc (Scotland) Act 2004

In April 2011, the then Minister for Community Safety, Fergus Ewing MSP, made it clear that the Scottish Government does not support the use of mosquito devices.⁶² He confirmed the Scottish Government's intention to meet with the UK Government to discuss approaches to tackling antisocial behaviour. Children's organisations hope that this discussion will result in ending the use of mosquito devices in Scotland completely.

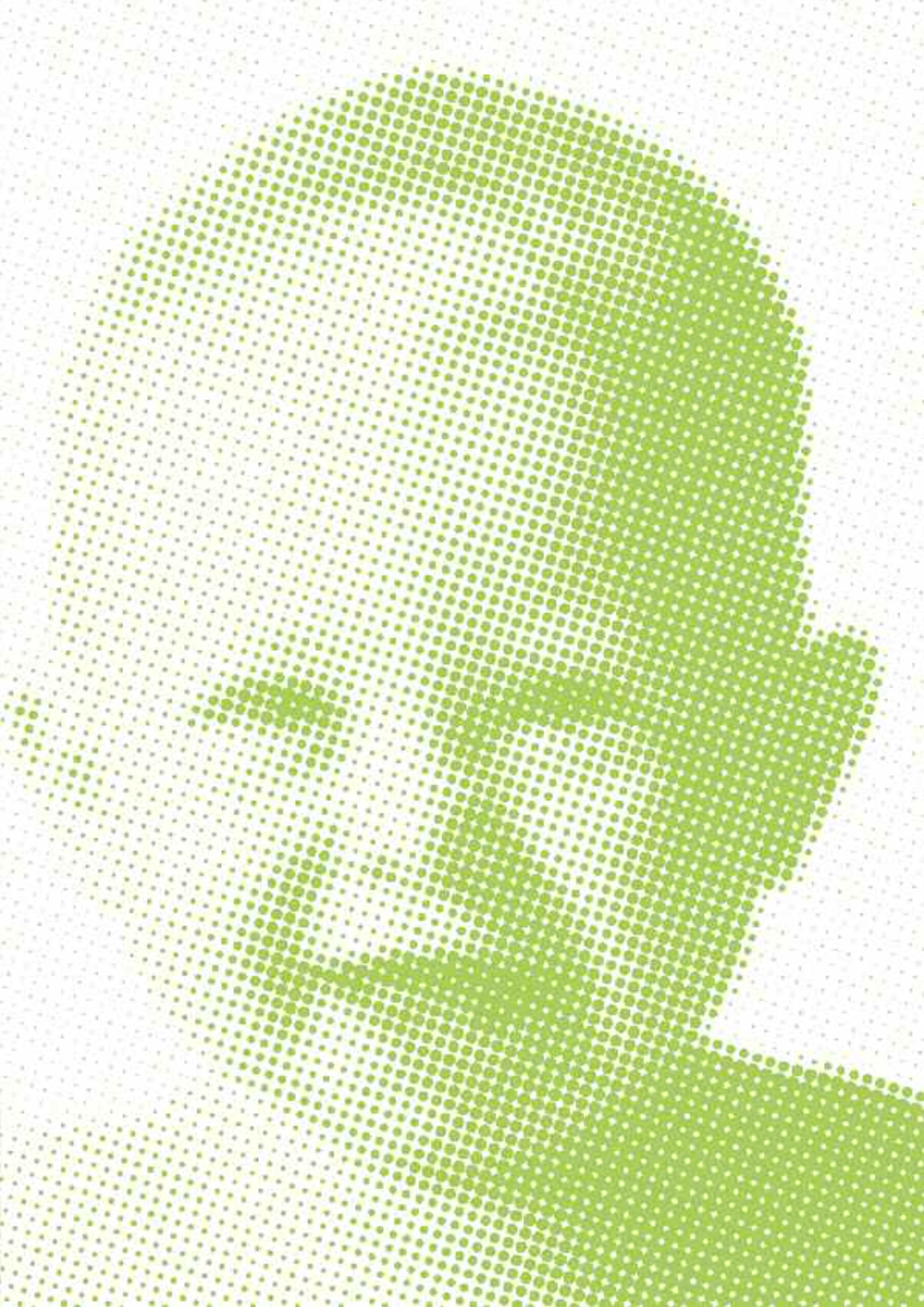
Children's organisations felt that there is now a need to focus attention beyond ASBOs and mosquito devices to consider the wider perception of children as a threat. Although it is recognised that a minority of children do behave in unacceptable ways, the right of children to be in public places should be defended and the two issues not conflated. Endemic problems in Scotland with violence and alcohol use must also be seen as a separate issue and effective measures to tackle this put in place.

Examples were given of children in groups of no more than five being moved on by police using dispersal powers.⁶³ Tolerance of children from shopkeepers has shown no improvement, with frequent signs prohibiting more than two children from entering a shop at one time.

Rec

Recommendation:

The Scottish Government should fulfil its commitment to end the use of mosquito devices by actively exploring and making proposals on bringing legislation to fully ban their use.



Chapter

4

Family environment and alternative care

Article 20:

If a child cannot be looked after by their family, governments must make sure that they are looked after properly by people who respect the child's religion, culture and language.

Case study: Supporting the rights of children affected by domestic abuse

Scottish Women's Aid

Domestic abuse can have a significant lasting impact on children and young people. It is a child's right to feel safe in their own home, to be given opportunities to have an education, to have fun and to have a good standard of living. Domestic abuse takes away all those rights. The National Domestic Abuse Delivery Plan (which ended in June 2011) has funded specialist services for children who have experienced domestic abuse and to help to promote and support their rights.

Domestic abuse can have a significant lasting impact on children, including trauma, emotional and physical distress, disruption to education, as well as issues around loss and separation caused by multiple house and school moves.

Children who have experienced domestic abuse have long been involved in campaigning for specialist services. Scottish Women's Aid launched the 3 year *Listen Louder!* Campaign in 2002, an initiative that aimed to give a voice to children and to encourage policy makers to listen to what they had to say about domestic abuse.⁶⁴ A petition was submitted to the Scottish Parliament by young people asking that gaps in services be addressed. A young person gave evidence to the Petitions Committee and spoke about the importance of having her own specialist support worker.

⁶⁴ Scottish Women's Aid (2002) *Listen Louder!*

Since 2006, Women's Aid groups across Scotland have been funded by the Scottish Government to provide specialist services for children who have experienced domestic abuse. The invaluable specialist support provided through Refuge, Outreach and Follow-On support services has resulted in better outcomes for thousands of children across the country. Such services promote and uphold the rights of children who have experienced domestic abuse. They work to achieve specific outcomes for children, each one supporting them to enjoy their rights under the UNCRC in different ways:

- Feeling safer (*Article 19 – children should be protected from all forms of violence*).
- Having their views taken into account, identifying their own support needs and being supported to represent their views in issues including legal proceedings (*Article 12 – children have the right to say what they think in all matter affecting them, and to have their views taken seriously*).
- Have their social and leisure needs met (*Article 31 – every child has the right to relax, play and join in with a wide range of cultural and artistic activities*).
- Access to education (*Article 29 – education must develop every child's personality, talents and abilities to the full*).

Children have been benefiting from these specialist services for 5 years. With only 6 months funding left, and the end of the National Domestic Abuse Delivery Plan, there are concerns among children's organisations about the future of these successful services. The removal of ring fencing and no centralised funding means there is a real risk that many areas will lose their services and threaten the potential for those children affected by domestic abuse to fully enjoy their rights.

UN Concluding Observations

- Avoid having children taken into alternative care as a result of low parental income;
- Monitor the status of children placed in kinship homes, foster care, pre-adoptive homes and other care institutions, inter alia through regular visitations;
- Assess why so many children with disabilities are in long-term institutional care and review their care and treatment in these settings;
- Facilitate the initiation of contact proceedings for all children separated from their parents and siblings, including those in long-term residential care;
- Take into account the Committee's recommendations issued at the day of general discussion on children without parental care, held on 16 September 2005.⁶⁵

⁶⁵ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4)*. No 45b, e, f, g, i.

⁶⁶ Audit Scotland (2010). *Getting It Right for Children in Residential Care*.

⁶⁷ Audit Scotland (2010). *Getting It Right for Children in Residential Care*.

⁶⁸ Audit Scotland (2010). *Getting It Right for Children in Residential Care*.

⁶⁹ Audit Scotland (2010). *Getting It Right for Children in Residential Care*.

⁷⁰ National Residential Child Care Initiative (2009). *Higher Aspirations, Brighter Futures*.

In general, it was felt that there has been improvement in understanding of the needs of looked after children within local authorities. Eighteen local authorities have a corporate parenting policy and/or strategy, and others are developing one or implementing a similar approach.⁶⁶ Many local authorities report that this renewed focus has helped develop a better understanding of the duties and responsibilities of the local authority and its partner agencies. However, implementation of corporate parenting strategies was reported to be at an early stage, echoing findings from an Audit Scotland report on the issue.⁶⁷ Children's organisations were only able to provide anecdotal evidence of related benefits rather than being able to identify any significant outcomes.

Outcomes for looked after children still remain a serious concern. For example, educational attainment is significantly worse for looked after children than for the population as a whole⁶⁸, particularly for those looked after at home. Only 19% of looked after children go into further education, training or employment when they leave school, in comparison to 60% of all school leavers. Children's organisations also referred to the increased likelihood of looked after children experiencing mental health issues and homelessness.

Children's organisations echoed the findings of Audit Scotland's 2010 report on children in residential care⁶⁹ stating that care planning for looked after children needs to improve. Many organisations highlighted the need to focus care planning on long-term as well as short-term outcomes, including specific action plans to achieve these outcomes. The *Getting It Right* approach was embraced by children's organisations, who agreed with the National Residential Child Care Initiative report that *Getting It Right* "will ensure consistency of assessment across professional and authority boundaries, and should facilitate earlier intervention based on an early identification of how to improve outcomes".⁷⁰ The *Getting It Right* approach is seen as a way of helping to tackle feelings of uncertainty and anxiety about the future among looked after children.

Concerns were raised about the availability of funding for residential care. Local authorities are operating on ever decreasing budgets and children's organisations felt that this is likely to impact adversely on the availability and provision of services for looked after children. Again, this is a concern raised in the Audit Scotland report.

Transition to adulthood

Children's organisations stated that there are still too few services for care leavers to support them into both accommodation and employment. Vulnerable children may not be classed as vulnerable adults when making the transition to adult services so they do not get services or the level of support they need. No disaggregated data is available on the transition to adulthood other than the percentage of young people with pathway plans and pathway co-ordinators.

Rec

Recommendation:

The Scottish Government should take forward the recommendations of Audit Scotland's *Getting It Right for Children in Residential Care*⁷¹ report. This includes putting in place a framework to improve care planning of looked after children, and the monitoring and evaluation of policies affecting looked after children to see what impact they have in improving long-term outcomes.

⁷¹ Audit Scotland (2010) *Getting It Right for Children in Residential Care*.

4.2

Young Carers

⁷² The Scottish Government (2010). *Getting It Right for Young Carers*

Following the launch of *Getting It Right for Young Carers*⁷² children's organisations report a significant increase in awareness of the needs of young carers, particularly in relation to service planners, managers, health practitioners and social workers. There is now a need to ensure this heightened awareness cascades down to professionals across other services, including teachers and support workers. There is a call for teacher training on the needs of young carers to become mandatory rather than voluntary. Those who currently attend training are often already more aware of and interested in issues for young carers. Although this is commended, it is also important that those who have little insight into the needs of young carers have their professional perspectives challenged.

There is significant disparity in service provision for young carers across different local authorities in Scotland. Some children's organisations report a real lack of provision in their area and that the services that do exist are heavily dependent on local communities and fundraising to continue operating.

Rec

Recommendation:

The Scottish Government, CoSLA and the NHS should continue the full local implementation of *Getting It Right for Young Carers* in the face of funding cuts and ensure that young carers receive appropriate and timely support across all local authorities.

UN Concluding Observations

- Establish mechanisms for monitoring the number of cases and the extent of violence, sexual abuse, neglect, maltreatment or exploitation, including within the family, in schools and in institutional or other care;
- Ensure that professionals working with children (including teachers, social workers, medical professionals, members of the police and the judiciary) receive training on their obligation to report and take appropriate action in suspected cases of domestic violence affecting children;
- Strengthen support for victims of violence, abuse, neglect and maltreatment in order to ensure that they are not victimized once again during legal proceedings;
- Provide access to adequate services for recovery, counselling and other forms of reintegration in all parts of the country.⁷³

⁷³ Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 51.

⁷⁴ The Scottish Government (2008). *National Domestic Abuse Delivery Plan for Children and Young People*

The Scottish Government's *National Domestic Abuse Delivery Plan for Children and Young People*, published in 2008, included the provision of significant funding for specialist children's workers in each local authority area.⁷⁴ This includes refuge workers, follow-on support workers and outreach workers. These workers have provided invaluable support to children throughout the duration of the *Delivery Plan*, providing specialist support and improving outcomes for those who received services. This support has proved essential in helping children who have experienced domestic abuse make sense of their experiences and recover from the trauma of domestic abuse. Now the funding for implementing the plan has ended, children's organisations have raised concerns about the continuity of these posts, particularly in light of the removal of ring-fenced funding.

Another success of the Delivery Plan has been the *CEDAR* pilot (Children Experiencing Domestic Abuse Recovery) a community programme working with children and their mothers, aiming to rebuild relationships that have often been damaged by domestic abuse.⁷⁵ An evaluation of the pilot has found that the *CEDAR* programme improves outcomes for children and their mothers, both through the support provided by the workers and the peer support offered through a community programme.⁷⁶ Due to the end of the *Delivery Plan*, funding for *CEDAR* has ended.

⁷⁵ Scottish Women's Aid (2010) *Children Experience Domestic Abuse Recovery*.

⁷⁶ Scottish Women's Aid (2010). *Through the Eyes of a Bairn*.

⁷⁷ *Domestic Abuse Resources and Training for Schools in Scotland*: www.dartsscotland.org

⁷⁸ www.saferglasgow.com/services/reducing-violence-against-women/assist.aspx

Scottish Women's Aid worked in partnership with the Scottish Government to develop a set of *Common Core Messages* in order to ensure a consistent response to domestic abuse and to inform service delivery and training. However, children's organisations report that children still consistently talk about the need for schools to better understand domestic abuse and its impact on children and their education. The development of an online resource for schools will hopefully help to raise awareness of education practitioners.⁷⁷

Other initiatives have been supporting children affected by domestic violence. Through the *Assist project*⁷⁸, linked to the specialist domestic abuse court in Glasgow, children received advocacy support during the court process and beyond. However, due to the high levels of demand for the services, not all children who needed the service received it.

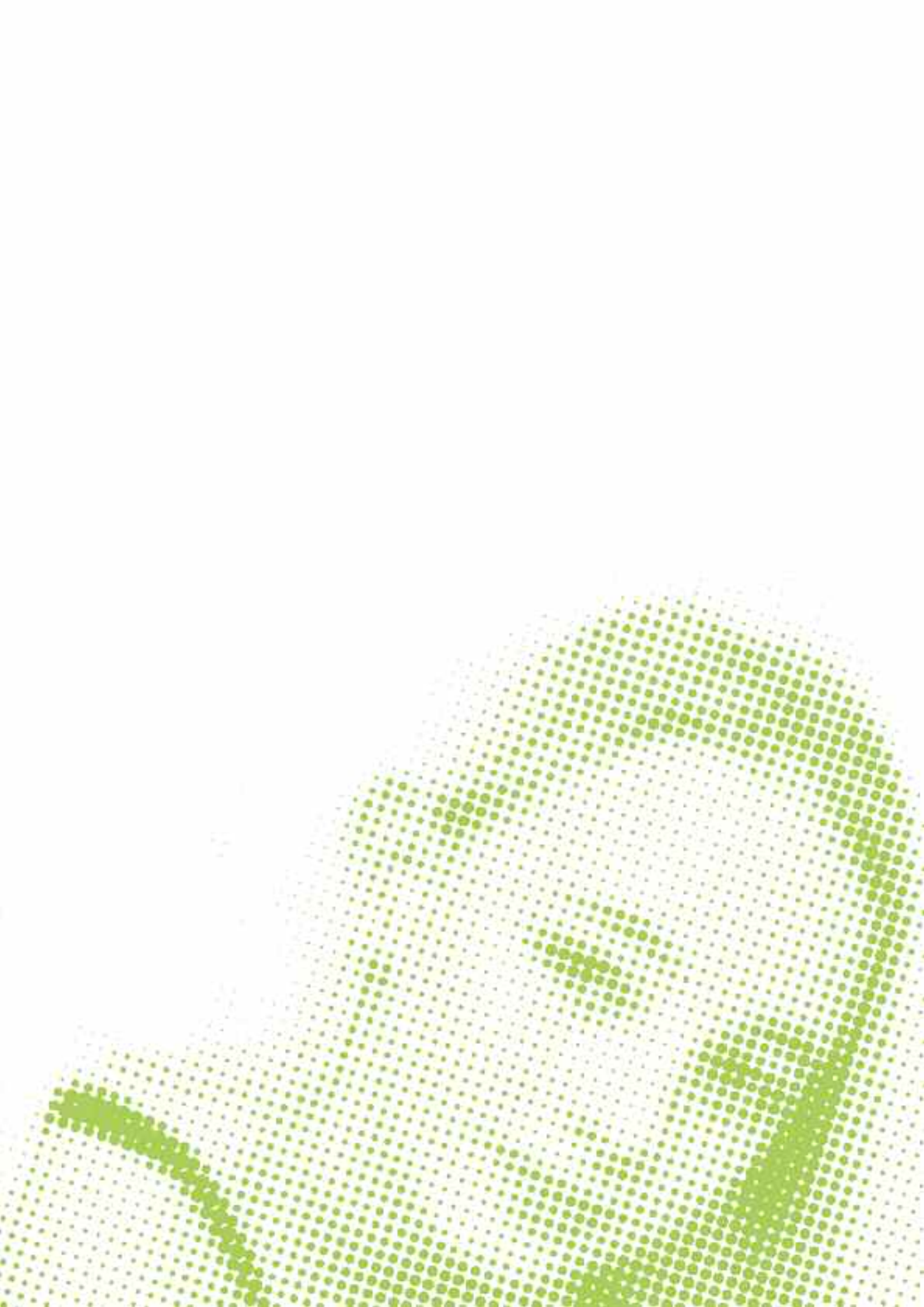
There is concern that the children who come into contact with services are the "*tip of the iceberg*" and that there is a massive hidden population of children living with domestic abuse in Scotland. The outreach services provide by Women's Aid groups through the Children's Service Women's Aid Fund have gone some way to reaching out to these children. Childline's new Scottish Schools project, which involves volunteers working in schools to raise children's awareness of abuse in its various forms, was also mentioned as another means of reaching out to these children.

The *Delivery Plan* has undoubtedly gone a long way to meeting the support needs of children experiencing domestic abuse. The Scottish Government is urged to consider how tackling domestic abuse and ensuring the provision of specialist services can remain a priority now that the *Delivery Plan* has ended.

Rec

Recommendation:

The Scottish Government should ensure that tackling domestic abuse remains high on the policy and funding agenda. Priorities of the three-year *National Domestic Abuse Delivery Plan for Children and Young People* should be embedded into the core work of the Scottish Government, with adequate funding and resources provided to ensure its continued success.



Chapter

5

Basic health and welfare

Case study: *Supporting the wellbeing of children*

The Place2Be

The impact of a bereavement, family breakdown or domestic abuse can have a traumatic and life-changing affect on children's behaviour as well as their future potential. The Place2Be is a universal initiative run by teams of counsellors within schools in areas of significant economic deprivation. As a national rapid-response service it works to improve the emotional wellbeing of children, their families and the whole of the school community. Since 1994, 5000 children and their families in Scotland have been supported by The Place2Be, providing services for parents, carers and school staff in order to strengthen their communication, interaction and support for children.

The Place2Be has provided services to schools in order to improve and support the emotional wellbeing of children coping with far reaching problems such as bereavement, family breakdown, domestic violence, trauma and bullying. Many of the children who use the service demonstrate poor educational attainment and show early signs of anti-social and challenging behaviour. The Place2Be works to significantly reduce the impact of far reaching problems on children's learning and individual potential.

Tom, an eight year old from one of the Place2Be schools was referred for weekly counselling due to family problems. With little acknowledgement or support from his parents, Tom was regularly being treated unkindly by his older brother, who was occasionally violent towards him. His brother made allegations of sexual abuse against his parents which prompted an investigation by the social services. Tom used his one-to-one counselling sessions to express his concerns about home, and more particularly, about his brother. This was the first time in which Tom's worries had been heard and recognised.

During this ordeal, Tom was temporarily fostered. Through The Place2Be's support, he was able to get a placement away from his brother. Because The Place2Be works with children and their parents inside schools, its services are accessed easily and without stigma. The intervention has a proven effect on children's academic progress, mental health and emotional wellbeing. The investigation found no evidence of abuse and both boys were returned home. Again with The Place2Be's support, the problems Tom had with his brother were addressed, and resources were provided in order for Tom's brother to work on his own issues.

The Place2Be not only supports the children concerned, but the parents, family and the school community to ensure that the right changes are established for the long term.

UN Concluding Observations

- Adopt and adequately implement the legislation aimed at achieving the target of ending child poverty by 2020, including by establishing measurable indicators for their achievement;
- Give priority in this legislation and in the follow-up actions to those children and their families in most need of support;
- When necessary, besides giving full support to parents or others responsible for the child, intensify its efforts to provide material assistance and support programmes for children, particularly with regard to nutrition, clothing and housing.⁷⁹

⁷⁹ Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 65a, b, c.

⁸⁰ Save the Children (2011). *Severe Child Poverty in Scotland*

There has been no progress in reducing the number of children living in severe poverty since 2004/05.⁸⁰ Children's organisations work with a wide range of children trapped in the cycle of poverty and recognise a wide range of contributing factors. The primary factor highlighted by children's organisations was the poverty of children living in workless households. However, other factors were raised such as health issues, disability, children whose parents have no recourse to public funds and living in rural communities. Although there is a range of activity aimed at helping parents access the labour market, childcare is a serious barrier for many parents in terms of affordability, availability and quality.

Despite overall levels of homelessness falling by six per cent over the last five years, there has been a seven per cent rise in the number of families with children who are being made homeless. However, this is dependent on individual service providers being proactive in recognising need, raising awareness and providing appropriate support. This provision is not consistent across the service providers. More than one in 10 (128,000) children live in fuel poverty in Scotland. The number of fuel-poor households with children rose by 23% in the last year because fuel costs rose faster than incomes.⁸¹

⁸¹ The Scottish Government (2010) *Scottish House Condition Survey: Key Findings for 2009*

The majority of children in poverty come from lone parent families, and about 90% of lone parents are mothers. They are the second largest group of homeless households, accounting for 24% of all homeless households despite only representing five per cent of all households in Scotland. Nearly half (47%) of all homelessness amongst families with children is caused by domestic abuse or harassment outside the home. However, at a Scottish Government level, there is still very little discussion of the significant barriers that women face in the job market, for example the gender pay gap and occupational segregation. An understanding these gender-based barriers is the only way to significantly improve the lives of women and children in Scotland.

⁸² The Scottish Government (2011) *Child Poverty Strategy*

Child poverty strategy

In March 2011, the Scottish Government produced the first *Child Poverty Strategy for Scotland*⁸² (a requirement of the *Child Poverty Act 2010*) to set out its commitment to tackling poverty and the socio-economic disadvantage of children. Children's organisations welcome much of the strategy, such as the recognition that tackling child poverty effectively requires support in a number of areas including early years, parenting, education, health, income, advice and support, and housing. The focus on tackling the causes of poverty over the long-term has been particularly welcomed.

However, children's organisations have raised a number of concerns about the strategy. These include:

- The lack of specific actions and timescales;
- Ineffective monitoring and evaluation processes (and indicators) in place to understand the extent of success in improving the standard of living for children in poverty;
- The lack of a gender focus within the strategy, without which the strategy will not be effective in addressing child poverty.

Welfare reform

Despite efforts being made to tackle child poverty at the Scottish level, there are serious concerns that the Welfare Reform Bill currently going through UK Parliament will disproportionately impact children and families. Modelling by the Institute of Fiscal Studies predicts that child poverty will increase in the next few years. The reduction in the number of children living in poverty in between 1999 and 2004/05 are widely attributed to the material assistance provided by the UK Government through the tax credit system.⁸³

The welfare reform proposals also single out disabled people with an estimated £9.2 billion out of £18 billion in benefit savings coming from households containing a disabled adult or child. The premium paid to families with a disabled child will be cut by 50% when the proposed new Universal Credit replaces existing benefits.⁸⁴ Children's organisations have raised concerns that the reforms to the UK welfare system, alongside cuts in public spending, will both increase the numbers living in poverty and the depth of poverty they experience.

⁸³ Institute for Fiscal Studies (2010) *Child and Working-Age Poverty to 2013-14*

⁸⁴ Scottish Campaign for Welfare Reform (2011)

Rec

Recommendation:

The Scottish Government should produce an implementation plan for the Child Poverty Strategy that includes actions, targets, timescales, and robust monitoring, evaluation and reporting processes to assess the extent of success in improving the standard of living for children in poverty.

UN Concluding Observations

- Take all necessary measures to ensure that legislation providing protection for persons with disabilities, as well as programmes and services for children with disabilities, are effectively implemented;
- Provide training for professional staff working with children with disabilities, such as medical, paramedical and related personnel, teachers and social workers;
- Develop a comprehensive national strategy for the inclusion of children with disabilities in the society;
- Undertake awareness-raising campaigns on the rights and special needs of children with disabilities, encourage their inclusion in society and prevent discrimination and institutionalization.⁸⁵

⁸⁵ Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 53a,c,d,e

Children's organisations continue to raise concern about the lack of support and resources available to enable children with disabilities to enjoy their rights under the UNCRC, with particular concerns around their right to participate and have their views heard. Training was highlighted as a specific issue, with organisations unable to access or afford training to enable them provide the specialist support needed for children in their care.

⁸⁶ www.seemescotland.org.uk

Other than the See Me campaign⁸⁶, which challenges stigma around mental health issues, there have been no government-led public awareness campaigns to promote the inclusion of disabled children or improve their access to healthcare or education.

Education

Specific issues were raised with regard to education. Training for teachers and support staff in mainstream schools on additional support for learning, equalities and inclusion is not adequate. Only five local authorities in Scotland provide mandatory training on equalities and inclusion, and none provide mandatory training on specific learning disabilities.⁸⁷ This results in children not being properly supported to learn in mainstream education, with parents forced to make the decision to educate their child in specialist settings. Another consequence of this lack of training is that a child with a disability is twice as likely to be excluded as a child without a disability.

⁸⁷ ENABLE Scotland (2011). Bridging the Training Gap

⁸⁸ *Action for Sick Children Scotland (2011). Petition to Scottish Parliament*

The rights of children who are absent from school due to ill health are not protected in the same way across all areas in Scotland.⁸⁸ Furthermore, access to schools for some children remains problematic, with one of Together’s members reporting a child with a disability being unable to access his school, despite it being accessible according to DDA requirements.

Recent changes to Careers Advice have helped improve the support available to children with disabilities making the transition from school to employment or further education, by extending it after they have left school. However, children with disabilities are still twice as likely not to be in education, employment or training as their non-disabled peers. They are also more likely to leave school with fewer qualifications than their non-disabled peers, even where they have no intellectual impairments.



Recommendations:

The Scottish Government should produce a national strategy for children with disabilities;

The Scottish Government should work with relevant bodies to co-ordinate a national child rights training programme for professionals working with children with disabilities. This should include introducing mandatory training on inclusion, equalities and learning disability for all staff involved in the education of children (as outlined in ENABLE Scotland’s petition to the Scottish Parliament),⁸⁹

The Scottish Government should review the national guidance on absence from school due to ill-health (as called for in Action for Sick Children’s petition to the Scottish Parliament).⁹⁰

⁸⁹ Petition at: www.petitionbuzz.com/petitions/enablescotland/each

⁹⁰ Petition at www.ascscotland.org.uk/default.asp?page=46

UN Concluding Observations

- The State party should further promote baby-friendly hospitals and encourage breastfeeding to be included in nursery training⁹¹.

⁹¹ Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 59.

⁹² www.feedgoodfactor.org.uk

⁹³ More information at: live.unicef.org.uk/babyfriendly

⁹⁴ The Breastfeeding etc (Scotland) Act 2005 makes it an offence to prevent or stop a person in charge of a child feeding that child milk in a public place.

The Scottish Government's breastfeeding campaign, the *Feedgood Factor*⁹² was welcomed by children's organisations as there is still much progress needed to encourage breastfeeding in Scotland. UNICEF UK *Baby Friendly Initiative*⁹³ was also welcomed, with all hospitals in Scotland now working towards Baby Friendly accreditation.

Despite such initiatives, the proportion of breastfed babies remains low in comparison to other European countries and is also far more prevalent among older, economically advantaged, better-qualified mothers. Most NHS Boards aim to increase the percentage of breastfed babies and figures indicate that this percentage continues to increase, albeit at a fairly slow rate.

Children's organisations reported that the message of the importance of breastfeeding is not getting across to vulnerable mothers. Methods of promoting breastfeeding need to take account of the fact that there are low levels of literacy amongst this group – given this, written leaflets may not be effective. More support classes need to be more available. Although legislation is in place to make it an offence to prevent or stop a mother from breastfeeding her child in a public place⁹⁴, mothers still report being asked to stop breastfeeding in public and private places and of feeling intimidated by people staring at them.

Rec

Recommendation:

The Scottish Government should build on the Feedgood Factor campaign to specifically target more vulnerable mothers and those with low levels of literacy, linking into Family Nurse Partnerships and the UNICEF UK Baby Friendly Initiative to share good practice.

5.4

Health inequalities

UN Concluding Observations

- The Committee recommends that inequalities in access to health services be addressed through a coordinated approach across all government departments and greater co-ordination between health policies and those aimed at reducing income inequality and poverty⁹⁵.

⁹⁵ Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 53.

⁹⁶ The Scottish Government (2010) *Growing Up in Scotland - Health inequalities in the early years*

⁹⁷ Joseph Rowntree Foundation (2011). *A review of poverty and ethnicity in Scotland.*

There are significant disparities in healthcare across Scotland.⁹⁶ In terms of health outcomes, Growing Up in Scotland has not found any obvious reduction in health inequalities in the early years over recent years. There is evidence that economically disadvantaged groups report poorer health than less disadvantaged ones, and that poverty can exacerbate poor health and delay access to health services.⁹⁷

Other examples of health inequalities given by children's organisations include disparities in the size of health visitor caseloads, the level of support available for children with a disability, and differences in the levels of support available in rural and urban settings.

Rec

Recommendation:

The Scottish Government should make a commitment to tackle the health inequalities gap among children by updating the *Better Health, Better Care*⁹⁸ action plan to set out actions, timescales and monitoring and evaluation processes that clearly assess long-term change.

⁹⁸ The Scottish Government (2007) *Better Health, Better Care action plan*

5.5

Mental health

UN Concluding Observations

- The Committee recommends that additional resources and improved capacities be employed to meet the needs of children with mental health problems throughout the country, with particular attention to those at greater risk, including children deprived of parental care, children affected by conflict, those living in poverty and those in conflict with the law.⁹⁹

⁹⁹ Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 57.

¹⁰⁰ The Scottish Government (2005). *Mental Health of Children and Young People: A Framework for Promotion, Prevention and Care*

The Scottish Government has committed that by March 2013 no one will wait longer than 26 weeks from referral to treatment for specialist child and adolescent services (CAMHS).¹⁰⁰ However, there is an overwhelming opinion among children's organisations that the current provision of CAMHS is inadequate. Although the quality of CAMHS is generally thought to be good, it is hugely under-resourced, leading to long waiting lists that can cause more damage to the child as well as longer, and ultimately more expensive, treatment.

The numbers of children admitted to adult psychiatric wards in Scotland has increased despite a specific target to reduce this.¹⁰¹ This is due to a lack of sufficient beds in appropriate settings and a lack of clinicians trained in the care of adolescents; it is also likely to vary depending on the child's age and where they live. Children's organisations report that a child in an adult ward is less likely to receive specialist services or take part in social activities and may often have their education disrupted.

Asylum-seeking children

A particular concern raised by a number of organisations was in relation to the support available for asylum-seeking children with mental health problems. COMPASS – an NHS Greater Glasgow and Clyde service providing and building the capacity of mental health services for refugees and asylum-seekers – has long waiting lists and many children who need psychological help have to remain without.

Children of prisoners

Children of prisoners show three times the rate of serious mental health issues as their peers.¹⁰² However, the majority of these children often remain unidentified and unsupported. Some voluntary sector services are attempting to address this gap (such as the Lighthouse Foundation in Ayrshire and Relationships Scotland), but the need far outstrips the availability of support. Furthermore, it is challenging to offer such support in a non-stigmatising way. Families themselves are largely unaware of the impact imprisonment can have on children, especially where parents and carers try to hide a family member's imprisonment from a child.

Ethnic minority communities

Children from ethnic minority communities with or at risk of mental health issues can have a particular challenge in accessing support. Mental health can be a “taboo” or misunderstood issue among some members of ethnic minority communities. Confidentiality can be an issue for young people using mental health services, particularly where there are language issues (where family members may be used as interpreters) or perceptions that family may be insulted or offended if not involved.

¹⁰² *Murray, J. (2005) The effects of imprisonment on families and children of prisoners*



Recommendation:

The Scottish Government should ensure the targets set for NHS boards in *Mental Health of Children and Young People: A Framework for Promotion, Prevention and Care* are met. Particular attention should be given to services for vulnerable groups such as asylum-seeking children, children of prisoners and children from ethnic minority communities.

Chapter

6

Education, leisure and cultural activities

Case study: UN Committee announces a 'General Comment' on the right to play

International Play Association

A General Comment (GC) is an official UN document which is sent to the 192 countries of the world which have signed the Convention on the Rights of the Child. The aim of a General Comment is to increase accountability and guide implementation in an area of the Convention in which governments are seen to be falling short. Since 2008, the International Play Association has been making the case to the UN Committee for a General Comment on play (article 31). Earlier this year, the Chair of the Committee announced its decision to do so.

In 2008 the International Play Association (IPA) along with 8 international partners began making the case to the UN Committee for a General Comment on play. IPA embarked on this endeavour after evidence from their worldwide membership, and from the UN Committee itself, led to article 31 becoming known as one of the 'most neglected' and 'least understood' articles of the Convention.

Although 'play' is only referred to specifically in article 31, it is at the core of all major theories of children's development and well-being and hence is a central dimension of many articles of the convention. For example, the connections between the components of article 31 and prevention and protection, health, education and participation, are clear.

The General Comment will help to bring an understanding of article 31 that positions it more centrally within the fuller context of the Convention's overall perspective, as part of the condition of the complete care and protection of children.

The General Comment will also provide an opportunity for better understanding of play amongst both professionals working for children and the general public. There will be guidance on implementation, for example effective cross-sectoral approaches, lines of tracking progress and of reporting.

The power of this General Comment (like the other General Comments) will come from the readiness of communities of interest in each country to draw their Government's attention to its messages and to highlight the implications for their policies and practices. Lively, critical debate of how we provide and plan for the components of article 31 separately and in conjunction with each other is necessary, so that the outcomes intended by the article are translated to the Scottish policy context.

The General Comment on play is likely to be published in 2013. The 13 existing General Comments can be downloaded from the UN Committee website at <http://www2.ohchr.org/english/bodies/crc/comments.htm>

UN Concluding Observations

- Strengthen children's participation in all matters of school, classroom and learning which affect them.¹⁰³

¹⁰³ Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 67g.

Ensuring children are involved in decision-making in schools and with regard to their learning is an essential part of implementing the UNCRC in Scotland. While there are some excellent examples of children's participation in schools and learning, the consensus among children's organisations is that this is not general practice across the board and there is much scope for improvement. Barriers that hinder children's participation include a lack of resources, trained staff, equipment, and time, and a lack of an appropriate environment for children to share their views.

Within *Curriculum for Excellence* the principles of actively engaging children in setting goals for their own learning have been clearly articulated. Enquire, the Scottish advice service for Additional Support for Learning was highly commended by a number of children's organisations for raising awareness of the rights of children with a wide range of additional support needs, and highlighting good practice in how they can be involved in their own learning and support.

Despite such improvements, some children are still not given the opportunity to participate as an active partner in their learning and support. Children's organisations reported examples of children having little input into their *Individualised Education Programme* (IEP), with its purpose neither being explained to the child nor sufficient discussion taking place to enable the child to give their view on its contents. Enquire's publication for children, *What's the Plan?*¹⁰⁴, was highlighted as a key resource to help explain learning plans to children and its use should be encouraged more widely.

¹⁰⁴ Enquire (2010). *What's the Plan? Your Education and Support*.

Children with additional support needs including learning disabilities and/or autism may struggle to be an active partner in learning unless they are given adequate support. They may require, for example, a visual timetable or extra help in sequencing tasks or additional time given to complete tasks. If such support is not provided, the child will experience difficulty in learning. Children from asylum-seeking families can face particular difficulties as they do not always have access to ESOL classes or additional language support, and can often be expected to pick up the language as they go along.

UN Concluding Observations

- Use the disciplinary measure of permanent or temporary exclusion as a means of last resort only, reduce the number of exclusions and get social workers and educational psychologists in school in order to help children in conflict with school.¹⁰⁵

¹⁰⁵ Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 67d.

¹⁰⁶ The Scottish Government (2010). Statistical Bulletin Summary Statistics for Schools in Scotland

¹⁰⁷ The Scottish Government (2011). Included, engaged and involved part 2: a positive approach to managing school exclusions

The number of recorded exclusions from school has been falling year on year since 2006/07.¹⁰⁶ Children’s organisations commended the wide range of measures put in place by the Scottish Government to tackle exclusions, including the launch of the new guidance for local authorities on school exclusions launched in March 2011¹⁰⁷. Statistics show that the most vulnerable children, including those who are looked after and looked after away from home, those with additional support needs or those living in deprivation are still far more likely to be excluded than others. Additionally, these statistics hide the number of children who have been “*informally excluded*”, such as being put into separate classes for “*challenging behaviour*” or moved to a part-time timetable.

The number of children with learning disabilities being excluded remains unacceptably high. Children with an additional support need are five times as likely to be excluded and children with a disability are almost twice as likely. Children’s organisations attribute this to a lack of mandatory training on how to support a child with additional support needs in the classroom. Teachers need to be able to understand the reasons for a child’s challenging behaviour in order to be able defuse difficult situations. Specific additional support needs such as being a young carer, or having dyslexia or autism, were given as examples by children’s organisations of cases where a child’s confidence, sense of achievement and realisation of potential can be transformed if their needs are more effectively recognised and met.

Rec

Recommendation:

Local authorities should ensure that all school staff are given the training and resources needed to effectively provide support for any child with additional needs, as required by the Education (Additional Support for Learning) (Scotland) Acts 2004 and 2009.

UN Concluding Observations

- Continue and strengthen its efforts to reduce the effects of the social background of children in their achievement in school;
- Invest considerable additional resources in order to ensure the right of all children to a truly inclusive education which ensures the full enjoyment to children from all disadvantaged, marginalized and school-distant groups.¹⁰⁸

¹⁰⁵ Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 67a, b.

Poverty

There is still a striking gap in educational achievement between children living in poverty and their classmates. Low income in a family is a strong predictor of low educational performance. Inequalities in educational outcomes become apparent from the early years, with children living in poverty arriving at school with significant disadvantages. Evidence has shown that children's attainment is already structured by social class at 22 months.¹⁰⁹ By the age of three, children in poverty in Scotland are lagging nine months behind their better-off peers in terms of cognitive development, social skills and school readiness. Inequalities associated with poverty and area deprivation widen by the time a child leaves primary school. Evidence has shown that the impact of poverty on attainment levels is more extreme by the age of 10. By the time the most disadvantaged children leave school, there is a considerable gap in attainment.

¹⁰⁹ Feinstein (1999)

It is clear that the education system is not meeting the needs of the poorest children. However, despite the clear recommendation from the UN Committee, there has been no explicit policy focus or comprehensive strategy to reduce educational inequalities or improve educational outcomes for children from disadvantaged backgrounds since 2007. The policy approach has instead focused on advancing educational outcomes for all pupils.

Children with additional support needs

Children with additional support needs often still do not enjoy equal access to education. Across the board there was a call for more investment in the training of teachers to work with these children, including the recruitment and training of specialised teachers where needed. There was also a call to ensure that education authorities make up-to-date technologies readily available, with staff trained to use them, to support children with additional support needs in the classroom. Specific calls included using the NDCS Deaf Friendly Teaching Guide¹¹⁰ as part of the initial teacher training package to ensure that education providers can communicate effectively with deaf pupils.

¹¹⁰ National Deaf Children Society Deaf Friendly Teacher Training Pack can be downloaded from: www.ndcs.org.uk/family_support/communicating_with_a_deaf_child/communicating.html

Children absent through illness

Although legislation is in place, the Concordat means that the Scottish Government is not able to ensure that all local authorities are providing equality of education to children absent from school through illness as is their legislative duty. Anecdotal cases were shared of children in adjacent hospital beds getting different educational provision due to the reality that different local authorities pay for different levels of hospital teaching.

Rec

Recommendation:

The ambition of *Curriculum for Excellence* is to provide an education that is tailored to the needs of the individual pupil. Local authorities should put in place measures to ensure that this principle is put into practice and that social background and/or additional support needs do not hinder a child's access to a full education.

UN Concluding Observations

- Intensify efforts to tackle bullying and violence in schools, including through teaching human rights, peace and tolerance.¹¹¹

¹¹¹ Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 67f.

¹¹² The Scottish Government (2009) National Approach on Anti-Bullying for Scotland's Children and Young People

The Scottish Government's continued funding for respectme, Scotland's Anti-Bullying Service, was welcomed as an effort to combat bullying among children. respectme has worked with over half of Scotland's local authorities to review and develop new policies in line with the *National Approach on Anti-Bullying for Scotland's Children and Young People*¹¹². In an external evaluation, it was found that *"the approach developed by Respectme and delivered through partnerships...does contribute to children feeling safe, respected and included and contribute to their emotional and mental health"*.

However, despite such activity, bullying is still widespread in Scotland's schools. Children's organisations report that bullying is often related to equalities issues, being a particular problem for children with a learning difficulty, refugee and asylum-seeking children, children with a disability, children living in poverty and children identifying as lesbian, bisexual, gay or transgender. Organisations feel that school anti-bullying policies are not always effective and that more needs to be done to put the policies into practice. Although increasing effort is being put into bullying prevention, not enough is done when a case of bullying is encountered.

Some children's organisations are able to evidence that many school anti-bullying policies are not working. For example, in an ENABLE Scotland survey, 93% of children reported being bullied both in and out of school. 93% of children with learning disabilities have been bullied, with half being bullied persistently for more than two years.¹¹³ Children's organisations state that bullying also needs to be recognised as an issue outside of the school gates.

¹¹³ Enable (2007). *Speak Up*

Rec

Recommendation:

Schools should review their anti-bullying policies at least every three years (following respectme guidance¹¹⁴) to ensure that they are working in practice, prioritise engaging pupils in this review and make use of respectme's free anti-bullying training for staff.

¹¹⁴ Guidance for reviewing anti-bullying policies available at: www.respectme.org.uk/Reviewing-your-anti-bullying-policy.html

¹¹⁵ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4)*. No 67f.

UN Concluding Observations

- The State party should pay particular attention to provide children, including those with disabilities, with adequate and accessible playground spaces to exercise their play and leisure activities.¹¹⁵

The availability of green spaces, safe spaces and opportunities for play and recreation are of real importance in the quality of the lives of children and their families, and can have significant effect on their physical and mental wellbeing. Children's organisations report that many children still face barriers to playing outside and that children with a disability and those living in poverty are those least likely to be able to access safe, accessible play spaces.

Children's organisations stated that little progress has been made to ensure that playground facilities are inclusive and accessible. The Scottish Play Policy Forum is made up of 30 key children's organisations that work together to develop and deliver policy initiatives that promote play and specifically inclusive play across Scotland. The Forum believes that inclusive play is still reliant on the efforts of key individuals and resources locally. Until there is a national strategy with enforceable requirements, it is unlikely that inclusion in children's play can be successfully mainstreamed.

A survey conducted for Playday 2010 helped to illustrate the restrictions faced by children wanting to play outside where they live. It showed that safety concerns and a lack of play spaces limited children's freedom to play outside where they live.¹¹⁶ In October 2010, a report commissioned by the UK Government stated that "*Health and Safety Laws are often misinterpreted making play areas "uninspiring play spaces that do not enable children to experience risk. Such play is vital for a child's development and should not be sacrificed to the cause of overzealous and disproportionate risk assessments"*".¹¹⁷

Play Scotland has developed a number of initiatives with the Scottish Government and through the Go Play Fund to improve play opportunities for children. This includes improving opportunities to access play spaces and working to produce a high-level statement promoting the benefits of risk in play.

¹¹⁶ Play England / ICM Research (2010). *Playday 2010 Opinion Poll*

¹¹⁷ Lord Young (2010). *Common Sense, Common Safety*

Rec

Recommendation:

The Scottish Government should put in place a national strategy, particularly targeting children with additional support needs and those living in poverty, to ensure that every child in Scotland has somewhere safe, accessible and challenging where they can play.

Article 22:

If a child is a
refugee or seeking
refuge, governments
must ensure they
have the same rights
as any other child.

Chapter

7

Special protection measures

Case study: Age assessment of asylum-seeking children

Scottish Refugee Council

Very often separated children arrive in Scotland from war-torn and unsafe countries without any identification or documentation. They have no family with them to say how old they are; they may never have held an ID card or passport and may never have known their date of birth or age.

In fact, in very many countries children's births are not even recorded. But because their age is crucial in determining which systems they must enter to gain protection, a process is needed to establish it. This process is called age assessment, and at the moment is led by social workers. Until now, however, there has been no standard way of assessing age – meaning children risk being classed as adults and thrust into the unforgiving asylum system, rather than being directed into social care. In 2008, the UN Committee called for “the benefit of the doubt” to be given in age-disputed cases of separated children and for the government to “seek expert guidance on how to determine age”.¹¹⁸

Scottish Refugee Council has long called for a holistic, standardised age assessment to be rolled out across Scotland that assesses age but also looks at need and vulnerability.¹¹⁹ There is no Scottish case law on age assessment, nor is there any guidance or training in age assessment available.

There was a clear need to raise awareness of the issue and to attempt to provide a practical tool and set of guidance. To do this, Scottish Refugee Council sought help and advice from Glasgow City Council's social work department, whose dedicated staff have conducted the vast majority of the age assessments in Scotland (as Glasgow accommodates the largest number of separated children).

As the project developed, Scottish Refugee Council commissioned an independent social work consultant to undertake the creation of a very specific assessment framework in collaboration with Glasgow City Council leads. This has been a hugely rewarding and fruitful collaboration and it is hoped that the entirely new and innovative tool and comprehensive guidance will shortly be piloted in Glasgow and one other local authority outside the central belt.

The project has involved many other key stakeholders including the Scottish Government, COSLA and the Scotland's Commissioner for Children and Young People, who have all been very supportive of the project. Specialist legal representatives and health leads have also been involved. The whole process of putting the tools and guidance together has successfully highlighted issues surrounding age assessment but also around the needs and best interests of separated children who are caught up in the complex world of asylum.

¹¹⁸ Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 71e.

¹¹⁹ For more information, see Scottish Refugee Council article at: <http://bit.ly/srcageassessment>

UN Concluding Observations

- Intensify efforts to ensure that detention of asylum-seeking and migrant children is always used as a measure of last resort and for the shortest appropriate period of time;
- Ensure that the United Kingdom Border Agency (UKBA) appoints specially-trained staff to conduct screening interviews of children;
- Consider the appointment of guardians to unaccompanied asylum-seekers and migrant children;
- Provide disaggregated statistical data in its next report on the number of children seeking asylum, including those whose age is disputed;
- Give the benefit of the doubt in age-disputed cases of unaccompanied minors seeking asylum, and seek experts guidance on how to determine age;
- Ensure that when return of children occurs, this happens with adequate safeguards, including an independent assessment of the conditions upon return, including family environment;
- Consider amending section 2 of the 2004 Asylum and Immigration (Treatment of Claimants etc.) Act to allow for an absolute defence for unaccompanied children who enter the UK without valid immigration documents.¹²⁰

¹²⁰ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4)*. No 71a-f.

¹²¹ *Together (2010) State of Children's Rights in Scotland*.

In *Together's 2010 State of Children's Rights* report, there was a great deal of focus on unaccompanied asylum-seeking children.¹²¹ As well as recognising their particular vulnerabilities and need for support, children's organisations were also keen to stress that asylum-seeking children within families also have very acute needs that must be taken into account by Government, local authorities and professionals working with children.

Many children's organisations expressed alarm at the scale of the UKBA funding cuts to the Scottish Refugee Council in April 2011. Funding for the Scottish Refugee Council's drop-in service, which offers advice to asylum seekers and refugees in Glasgow, was cut by 62%; the grant for the orientation and support service for new arrivals was halved; and funding for the Refugee Integration and Employment Service will end in September 2011. Although it is too early to say what effect these cuts have on the lives of asylum-seeking children, there is no doubt that the cuts will have a serious impact on the services available to these children and their families.

A number of specific issues were raised with regard to the rights of asylum-seeking children:

Training of case owners

¹²² UKBA (2011),
*Processing Asylum
Applications from a Child*

UKBA's new guidance for caseworkers, *Processing Asylum Applications from a Child*¹²², is to be commended for its explicit and detailed references to the principles of the UNCRC and reference to recent case law on children's best interests. However, evidence from children's organisations shows that the principles of UKBA policy and guidance are yet to be realised in UKBA practice. They recommend that the UKBA involves organisations such as the Scottish Refugee Council, British Red Cross and Freedom From Torture in the training of case owners, including real-life scenarios facing children, to ensure that the case owners fully understand specific issues and considerations in cases involving children.

Reporting

Although UKBA states that it is an exception for children to have to report to immigration authorities, a number of children's organisations gave examples of children being required to report at UKBA's Brand Street office in Glasgow. One organisation stated that children from eight of the 10 families that they work with have to report on a regular basis. Some children are given their own IS96 reporting cards, which mean in theory that they could be liable to detention at any time. As well as disrupting their education, children find reporting extremely traumatic and it has a significant impact on their mental and physical wellbeing.

Availability of legal representation

There are significant concerns about the availability of legal representation to asylum-seeking children. Only one law firm in Glasgow has specific funding to work with children which is partly subsidised through independent trust funding. There was a call for specific funding to be made available by the Scottish Government to provide legal representation for asylum-seeking children, along with a call for the Law Society Scotland to introduce an accreditation scheme similar to the Immigration and Asylum Accreditation scheme run by the Law Society in England, in order to ensure a quality standard among legal professionals.¹²³

¹²³ www.lawsociety.org.uk/productsandservices/accreditation/accreditationimmigrationasylum.page

Age-assessment

It is important that the age of children seeking asylum is assessed quickly on their arrival. If they are not identified as children they are routed through the adult process, housed with adults, and miss schooling and crucial support. They may even face detention. The current age-assessment procedure for asylum-seeking children in Scotland is still not acceptable, with many different practices taking place and no Scottish case law to set precedent. Social workers have simply gained experience through conducting age-assessments rather than by being guided by a set of principles. There is also a serious conflict of interest in that they not only conduct the age-assessment process but also have a responsibility for financing and accommodating asylum seeking children.

In collaboration with Glasgow City Council, the Scottish Refugee Council has developed and is piloting a new tool and set of guidance to help to determine the age of children who are seeking asylum. The tool provides a template to assist social workers to assess age on a number of factors, and to formally request contributions from other professionals to weigh the evidence and come to a conclusion. It is embedded in comprehensive guidance that prompts the social workers to consider multiple factors, for example country guidance information and trafficking indicators. It has been developed very much in line with *Getting It Right* principles and makes several explicit references to the UNCRC.

The Home Office is yet to confirm it will accept the guidance. However, if the planned pilot is successful and its use is accepted by UKBA, it is very much hoped that CoSLA and Scottish Government will accept the tool and guidance and assist in its wider roll-out across Scotland.

Guardianship

The Scottish Guardianship Service for unaccompanied asylum-seeking children was commended by a number of children's organisations who stated that it has made a huge improvement to many separated children's lives. The guardians were highly praised for helping to make the asylum process more child-friendly, for example by making sure interpreters are physically present and that any interview setting is child-friendly. An independent evaluation is currently being undertaken and the first annual evaluation report will be published by October.

Rec

Recommendations:

UKBA should ensure that its guidance for caseworkers around the best interests of the child is followed in practice. This should include addressing the number of children who have to report regularly to UKBA, enabling improvements to be made to the age assessment of separated children and minimising the period in which children are placed in the new style pre-departure accommodation.

The Scottish Government should take steps to ensure that adequate high quality specialised legal representation is in place for children seeking asylum and for protecting and representing the victims of child trafficking.

The Law Society Scotland should develop a quality standard for professionals working with asylum seekers and refugees similar to the Immigration and Asylum Accreditation run by the Law Society in England.¹²⁴

¹²⁴ www.lawsociety.org.uk/productsandservices/accreditation/accreditationimmigrationasylum.page

UN Concluding Observations

- Provide the necessary resources for an effective implementation of the Anti-trafficking Action Plan. It also recommends that the State party ratify the Council of Europe Convention on Action against Trafficking in Human Beings and implement its obligations by ensuring that child protection standards for trafficked children meet international standards.¹²⁵

¹²⁵ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4)*. No 76.

¹²⁶ Home Office and Scottish Executive (2007). *UK Action Plan on Tackling Human Trafficking*

¹²⁷ SCCYP (2011). *Scotland: A safe place for child traffickers?*

¹²⁸ UK Government (2011). *Human Trafficking: The Government's Strategy*

In 2007, the *UK Action Plan on Tackling Human Trafficking*¹²⁶ was published, making a commitment to ensure that professionals have the tools and expertise needed to identify, protect and support child victims of trafficking. In April 2009, the *UK National Referral Mechanism (NRM)* was introduced to take this forward. However, the NRM has been described as 'unfit for purpose' by the Anti-Trafficking Monitoring Group and has been criticised on a number of issues, including being too closely aligned to the asylum process. This criticism has been echoed by children's organisations, who have called for a review of the NRM in order to find more child-friendly ways of dealing with trafficking.

In May 2011, SCCYP published a scoping study into the nature and extent of child trafficking in Scotland, *Scotland: A safe place for child traffickers?*¹²⁷ This report makes a number of recommendations for the UK Government, the Scottish Government, local authorities, police forces and UK Border Agency in Scotland, which have been fully supported and endorsed by children's organisations across Scotland. Since the publication of SCCYP's report, the UK Government published its *UK Anti-Trafficking Strategy*.¹²⁸ This strategy does not include Scotland so there is now an even greater emphasis for the Scottish Government to take action and develop its own anti-trafficking strategy.

Rec

Recommendations:

The UK Government, Scottish Government, local authorities, police forces and UKBA should take forward the recommendations outlined in SCCYP's *Scotland: A Safe Place for Child Traffickers?* Report, specifically looking at streamlining the identification process and developing procedures whereby child specialists lead the investigation into the identification of child trafficking.

The Scottish Government should lead on developing an anti-trafficking strategy for Scotland.

UN Concluding Observations

- Raise the minimum age of criminal responsibility in accordance with the Committee's General Comment no 10.¹²⁹

¹²⁹ Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4). No 78a-h.

¹³⁰ The Scottish Government figures indicate that there was only one such prosecution in the last five years; cited in: McCallum, Frazer (2011), SPICe Briefing: Children and the Criminal Justice System, Edinburgh: Scottish Parliament Information Centre.

¹³¹ Section 41 of the Criminal Procedure (Scotland) Act 1995.

¹³² At time of writing, the Scottish Government was preparing the relevant regulations. It is expected that the list will be broadly based on the list relating to retention of DNA samples from children's hearings cases in The Retention of Samples etc. (Children's Hearings) (Scotland) Order 2011.

The Criminal Justice and Licensing (Scotland) Act 2010 introduced a minimum age for prosecution at 12, meaning that it is no longer competent to prosecute any child under 12 years of age in the criminal courts.¹³⁰ The age of criminal responsibility is defined in the UNCRC as "a minimum age below which children shall be presumed not to have the capacity to infringe the penal law". This remains unchanged at 8 years old¹³¹, one of the lowest in Europe.

As a consequence, children aged 8-11 years who are alleged to have committed an offence can still be referred to the Children's Reporter on the offence ground. Such a referral has consequences that are generally associated with criminal prosecution, including a criminal record which may have to be disclosed in later life. The ban on prosecutions against children under 12 is therefore a welcome, but insufficient step.

The issue of how to best deal with children's offending and addressing their support needs re-emerged during the parliamentary passage of the Children's Hearings (Scotland) Act 2011. Again the age of criminal responsibility was left untouched, but significant changes were made to the consequences of a child's referral to the Reporter on the offence ground. Under the new legislation, which is expected to come into force in autumn 2012, a child's referral on the offence ground (where accepted by the child and relevant person or established at court) will be recorded as an 'alternative to prosecution' rather than a conviction, and this will only happen where the offence is one of a list of violent and sexual offences specified in secondary legislation.¹³² In practice, this is likely to mean that a significant share of children who are going through the children's hearings system because of their offending will no longer be given a criminal record and have this disclosed in later life in Disclosure Scotland certificates.

While the law in this area has now become rather complex, there has been some significant and welcome progress in reducing the number of children who are criminalised and face often damaging consequences of childhood or adolescent offending well into adulthood. Concern has been expressed that the particular mechanism adopted in the 2011 Act may continue to criminalise some children, including children under 12, for low-level offending, which is considered disproportionate.

Rec

Recommendations:

The Scottish Government should keep the effects of the new legislation under review and continue to work with its partners on preventing and intervening early to address the underlying causes of children's offending through informal measures and, where necessary, the children's hearings system. It should further review its position on the age of criminal responsibility, which remains one of the lowest in Europe.



Chapter

8

Summary of Recommendations

Summary of recommendations

General measures of implementation

Incorporation of the UNCRC into UK and Scots law

- The Scottish Government should seek to incorporate the UNCRC into Scots law in a manner which ensures its fullest implementation before the next report to the UN Committee in 2014.

Training of professionals

- The Scottish Government should ensure that the *Common Core Skills, Knowledge, understanding and Values for the Children's Workforce* firmly embeds the principles of the UNCRC and promotes understanding of its provisions.

Awareness of the UNCRC

- The Scottish Government needs to build upon its initial success by developing and adequately resourcing a comprehensive strategy to raise awareness of the UNCRC. This strategy should particularly address inconsistencies in knowledge across professions and local authorities.

UNCRC action plan

- The Scottish Government should ensure its mid-term review of *Do the Right Thing* in 2011-12 contains clear, resourced and time-specific actions alongside a clear and robust monitoring framework.

General principles

Non-discrimination

- The UK Government should amend the Equality Act 2010¹³³ to provide uniform protection across all age groups, ethnicities and disabilities to ensure it confirms to human rights principles and accepted international norms.
- The Scottish Government should continue to challenge the negative portrayal of children in the media by supporting children-led campaigns such as "*Being Young is Not a Crime*" and "*Give Me a Chance*".

Best interests of the child

- The Scottish Government should assess the impact of *Getting It Right* on ensuring the best interests principle is at the heart of practice in work with all children from all backgrounds living in all local authority areas.

Participation and respect for the views of the child

- The Scottish Government should put in place national and local strategies to ensure advocacy support for all children and not just those who fall under the scope of the Mental Health (Care and Treatment) (Scotland) Act 2003¹³⁴ and the Additional Support for Learning (Scotland) Act 2004.¹³⁵
- Local authorities and the NHS should deliver high quality advocacy services to all children commensurate with the principles and standards being developed by the *National Steering Group on Advocacy Support for Children and Young People*.¹³⁶

¹³³ The UK Government, Equality Act 2010

¹³⁴ Scottish Executive, Mental Health (Care and Treatment) (Scotland) Act 2003

¹³⁵ Scottish Executive Additional Support for Learning (Scotland) Act 2004.

¹³⁶ The Scottish Government (2010) National Steering Group on Advocacy Support for Children and Young People.

Civil rights and freedoms

Corporal punishment

- The Scottish Government should amend the Criminal Justice (Scotland) Act 2003¹³⁷ to make any form of physical violence against a person under the age of 18 a criminal offence, and to remove the defence of 'justifiable assault'.

Restraint

- The Scottish Government should introduce a robust and comprehensive national recording system across all residential settings to provide consistency in monitoring the use of restraint. Systems should include information such as what triggered the incident, the staff involved, ensuring all procedures were followed and that debriefing is undertaken. Information gathered should be used to review policy and guidance.

Freedom of movement and peaceful assembly

- The Scottish Government should fulfil its commitment to end the use of mosquito devices by actively exploring and making proposals on bringing legislation to fully ban their use.

Family environment and alternative care

Looked after children

- The Scottish Government should take forward the recommendations of Audit Scotland's *Getting It Right for Children in Residential Care* report. This includes putting in place a framework to improve care planning of looked after children, and the monitoring and evaluation of policies affecting looked after children to see what impact they have in improving long-term outcomes.

Young carers

- The Scottish Government, CoSLA and the NHS should continue the full local implementation of *Getting It Right for Young Carers* in the face of funding cuts and ensure that young carers receive appropriate and timely support across all local authorities.

Domestic abuse

- The Scottish Government should ensure that tackling domestic abuse remains high on the policy and funding agenda. Priorities of the three-year *National Domestic Abuse Delivery Plan for Children and Young People* should be embedded into the core work of the Scottish Government, with adequate funding and resources provided to ensure its continued success.

Basic health and welfare

Poverty

- The Scottish Government should produce an implementation plan for the Child Poverty Strategy that includes actions, targets, timescales, and robust monitoring, evaluation and reporting processes to assess the extent of success in improving the standard of living for children in poverty.

Children with disabilities

The Scottish Government should:

- Produce a national strategy for children with disabilities;
- Work with relevant bodies to co-ordinate a national child rights training programme for professionals working with children with disabilities. This should include introducing mandatory training on inclusion, equalities and learning disability for all staff involved in the education of children (as outlined in ENABLE Scotland's petition to the Scottish Parliament),¹³⁸
- Review the national guidance on absence from school due to ill-health (as called for in Action for Sick Children's petition to the Scottish Parliament).¹³⁹

¹³⁸ Petition at: www.petitionbuzz.com/petitions/enablescotland/each

¹³⁹ Petition at www.ascscotland.org.uk/default.asp?page=46

Breastfeeding

- The Scottish Government should build on the *Feedgood Factor* campaign to specifically target more vulnerable mothers and those with low levels of literacy, linking into Family Nurse Partnerships and the UNICEF UK Baby Friendly Initiative to share good practice.

Health inequalities

- The Scottish Government should make a commitment to tackle the health inequalities gap among children by updating the *Better Health, Better Care*¹⁴⁰ action plan to set out actions, timescales and monitoring and evaluation processes that clearly assess long-term change.

¹⁴⁰ The Scottish Government (2007) *Better Health, Better Care* action plan

Mental health

- The Scottish Government should ensure the targets set for NHS boards in *Mental Health of Children and Young People: A Framework for Promotion, Prevention and Care*¹⁴¹ are met. Particular attention should be given to services for vulnerable groups such as asylum-seeking children, children of prisoners and children from ethnic minority communities.

¹⁴¹ The Scottish Executive (2005) *Mental Health of Children and Young People: A Framework for Promotion, Prevention and Care*.

Education, leisure and cultural activities

Participation in school and learning, and exclusions

- Local authorities should ensure that all school staff are given the training and resources needed to effectively provide support for any child with additional needs, as required by the *Education (Additional Support for Learning) (Scotland) Acts 2004 and 2009*¹⁴².

¹⁴² The Scottish Government *Education (Additional Support for Learning) (Scotland) Act 2004, 2009*.

Equality in education provision

- The ambition of *Curriculum for Excellence*¹⁴³ is to provide an education that is tailored to the needs of the individual pupil. Local authorities should put in place measures to ensure that this principle is put into practice and that social background and/or additional support needs do not hinder a child's access to a full education.

¹⁴³ Scottish Executive (2004) *Curriculum for Excellence*

¹⁴⁴ Guidance for reviewing anti-bullying policies available at: www.respectme.org.uk/Reviewing-your-anti-bullying-policy.html

Bullying

- Schools should review their anti-bullying policies at least every three years (following respectme guidance¹⁴⁴) to ensure that they are working in practice, prioritise engaging pupils in this review and make use of respectme's free anti-bullying training for staff.

Play spaces

- The Scottish Government should put in place a national strategy, particularly targeting children with additional support needs and those living in poverty, to ensure that every child in Scotland has somewhere safe, accessible and challenging where they can play.

Special protection measures

Asylum-seeking and refugee children

- UKBA should ensure that its guidance for caseworkers around the best interests of the child is followed in practice. This should include addressing the number of children who have to report regularly to UKBA, enabling improvements to be made to the age assessment of separated children and minimising the period in which children are placed in the new style pre-departure accommodation.
- The Scottish Government should take steps to ensure that adequate high quality specialised legal representation is in place for children seeking asylum and for protecting and representing the victims of child trafficking.
- The Law Society Scotland should develop a quality standard for professionals working with asylum seekers and refugees similar to the Immigration and Asylum Accreditation run by the Law Society in England.¹⁴⁵

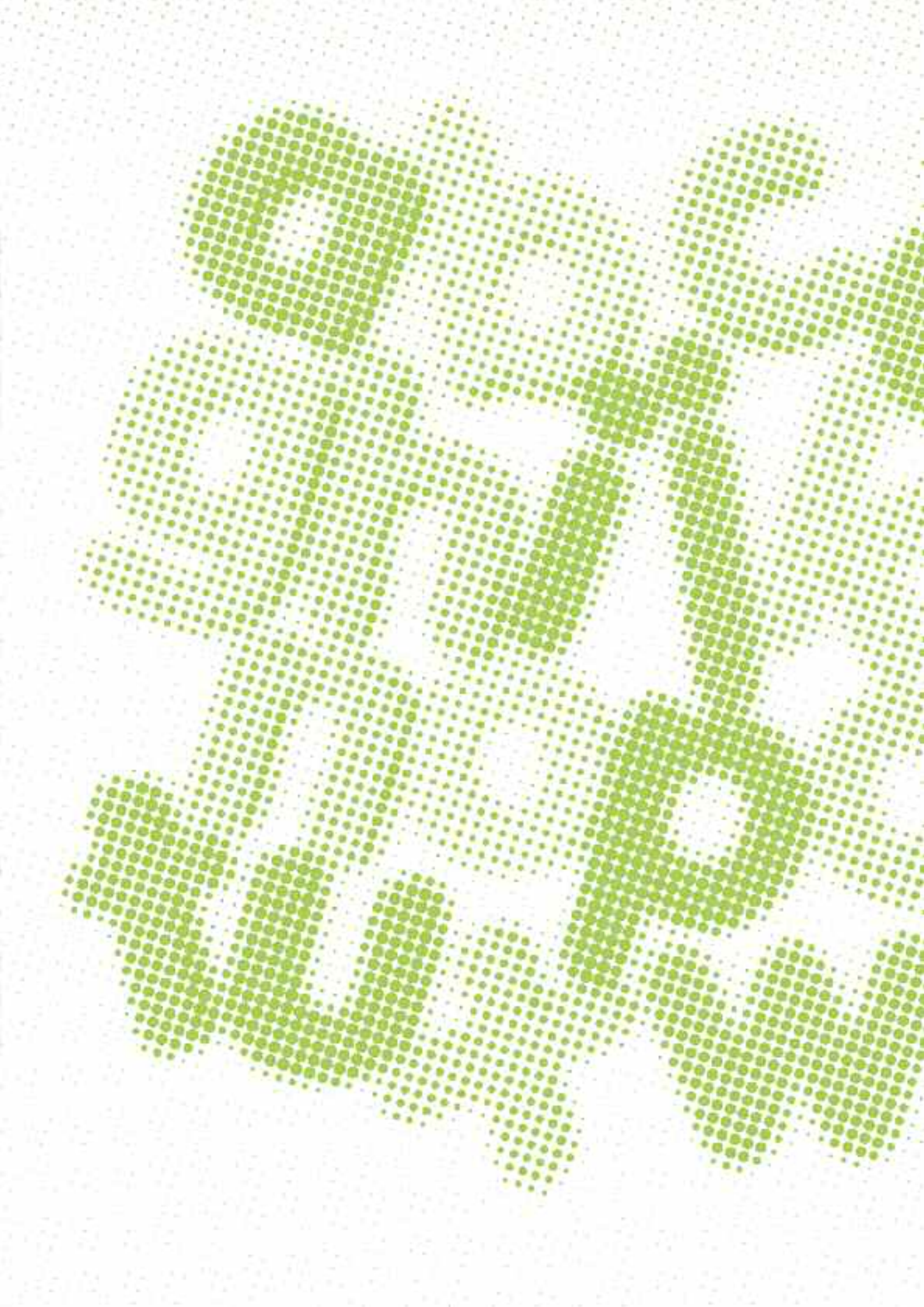
¹⁴⁵ www.lawsociety.org.uk/productsandservices/accreditation/accreditationimmigrationasylum.page

Child trafficking

- The UK Government, the Scottish Government, local authorities, police forces and UKBA should take forward the recommendations outlined in SCCYP's *Scotland: A Safe Place for Child Traffickers?* report, specifically looking at streamlining the identification process and developing procedures whereby child specialists lead the investigation into the identification of child trafficking.
- The Scottish Government should lead on developing an anti-trafficking strategy for Scotland.

Age of criminal responsibility

- The Scottish Government should keep the effects of the new legislation under review and continue to work with its partners on preventing and intervening early to address the underlying causes of children's offending through informal measures and, where necessary, the children's hearings system. It should further review its position on the age of criminal responsibility, which remains one of the lowest in Europe.



Appendices

1-4

Appendices

Appendix 1: UN *Concluding Observations* 2008

The following list contains the *Concluding Observations* from the UN Committee on the Rights of the Child in 2008 relating to the areas identified by Together members and supporters as areas of priority. Questions in the online State of Children's Rights survey were related to each *Concluding Observation* listed. Children's organisations were asked to only respond to those *Concluding Observations* that are of direct relevance to their area of expertise. The State of Children's Rights report 2011 is based on their responses. Only *Concluding Observations* referred to in this report are included in this appendix. For the full list of *Concluding Observations* for the UK, please visit www.togetherscotland.org.uk.

General measures of implementation

UN *Concluding Observations* 11 and 12 – Incorporation of the UNCRC into UK and Scots law

- The Committee remains concerned that the principles of the Convention are not duly taken into account in all pieces of legislation throughout the country and that the State party has not incorporated the Convention into domestic law nor has ensured the compliance of all legislation affecting children with it. The Committee recommends that the State party continue to take measures to bring its legislation in line with the Convention.

UN *Concluding Observation* 21 – Training of professionals

- Reinforce adequate and systematic training of all professional groups working for and with children, in particular law enforcement officials, immigration officials, media, teachers, health personnel, social workers and personnel of child-care institutions.

UN *Concluding Observation* 20 – Awareness of the UNCRC

- The Committee is concerned that there is no systematic awareness-raising about the Convention and that the level of knowledge about it among children, parents or professional working with children is low. Furthermore, the Committee regrets that the Convention is not part of the curriculum in school.

UN *Concluding Observation* 15 – UNCRC action plan

- Adopt a comprehensive action plan to implement the UNCRC in cooperation with public and private sectors.

General principles

UN Concluding Observation 25 – Non-discrimination

- Take urgent measures to address the intolerance and inappropriate characterization of children, especially adolescents, within the society, including in the media;
- Strengthen its awareness-raising and other preventive activities against discrimination and, if necessary, taking affirmative actions for the benefit of vulnerable groups of children, such as Roma and Irish Travellers' children; migrant, asylum-seeking and refugee children; lesbian, bisexual, gay and transgender children (LGBT); and of children belonging to minority groups;
- Take all necessary measures to ensure that cases of discrimination against children in all sectors of society are addressed effectively, including with disciplinary, administrative or – if necessary – penal sanctions.

UN Concluding Observations 26 and 27 – Best interests of the child

- The Committee recommends that the State party take all appropriate measures to ensure that the principle of the best interests of the child, in accordance with article 3 of the Convention, is adequately integrated in all legislation and policies which have an impact on children, including in the area of criminal justice and immigration.

UN Concluding Observations 32 and 33 – Participation and respect for the views of the child

- Promote, facilitate and implement, in legislation as well as in practice, within the family, schools, and the community as well as in institutions and in administrative and judicial proceedings, the principle of respect for the views of the child;
- Continue to collaborate with civil society organizations to increase opportunities for children's meaningful participation, including in the media.

Civil rights and freedoms

UN Concluding Observation 42 – Corporal punishment

- Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences;
- Actively promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to raising public awareness of children's right to protection from all corporal punishment and to decreasing public acceptance of its use in childrearing;
- Provide parental education and professional training in positive child-rearing.

UN Concluding Observation 39 – Restraint

- The Committee urges the State party to ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished

UN Concluding Observation 35 – Freedom of movement and peaceful assembly

- Reconsider the ASBOs as well as other measures such as the mosquito devices insofar as they may violate the rights of children to freedom of movement and peaceful assembly.

Family environment and alternative care

UN Concluding Observation 45 – Looked after children

- Avoid having children taken into alternative care as a result of low parental income;
- Monitor the status of children placed in kinship homes, foster care, pre-adoptive homes and other care institutions, inter alia through regular visitations;
- Assess why so many children with disabilities are in long-term institutional care and review their care and treatment in these settings;
- Facilitate the initiation of contact proceedings for all children separated from their parents and siblings, including those in long-term residential care;
- Take into account the Committee's recommendations issued at the day of general discussion on children without parental care, held on 16 September 2005.

UN Concluding Observation 51 – Domestic abuse

- Establish mechanisms for monitoring the number of cases and the extent of violence, sexual abuse, neglect, maltreatment or exploitation, including within the family, in schools and in institutional or other care;
- Ensure that professionals working with children (including teachers, social workers, medical professionals, members of the police and the judiciary) receive training on their obligation to report and take appropriate action in suspected cases of domestic violence affecting children;
- Strengthen support for victims of violence, abuse, neglect and maltreatment in order to ensure that they are not victimized once again during legal proceedings;
- Provide access to adequate services for recovery, counselling and other forms of reintegration in all parts of the country.

Basic health and welfare

UN Concluding Observation 65 – Poverty

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

UN Concluding Observation 53 – Children with disabilities

- Take all necessary measures to ensure that legislation providing protection for persons with disabilities, as well as programmes and services for children with disabilities, are effectively implemented;
- Provide training for professional staff working with children with disabilities, such as medical, paramedical and related personnel, teachers and social workers;
- Develop a comprehensive national strategy for the inclusion of children with disability in the society;
- Undertake awareness-raising campaigns on the rights and special needs of children with disabilities, encourage their inclusion in society and prevent discrimination and institutionalization.

UN Concluding Observation 59 – Breastfeeding

- The State party should further promote baby-friendly hospitals and encourage breastfeeding to be included in nursery training.

UN Concluding Observation 53 – Health inequalities

- The Committee recommends that inequalities in access to health services be addressed through a co-ordinated approach across all government departments and greater coordination between health policies and those aimed at reducing income inequality and poverty.

UN Concluding Observation 57 – Mental health

- The Committee recommends that additional resources and improved capacities be employed to meet the needs of children with mental health problems throughout the country, with particular attention to those at greater risk, including children deprived of parental care, children affected by conflict, those living in poverty and those in conflict with the law.

Education, leisure and cultural activities

UN Concluding Observation 67 – Education

- Strengthen children's participation in all matters of school, classroom and learning which affect them.
- Use the disciplinary measure of permanent or temporary exclusion as a means of last resort only, reduce the number of exclusions and get social workers and educational psychologists in school in order to help children in conflict with school.
- Continue and strengthen its efforts to reduce the effects of the social background of children in their achievement in school;
- Invest considerable additional resources in order to ensure the right of all children to a truly inclusive education which ensures the full enjoyment to children from all disadvantaged, marginalized and school-distant groups.
- Intensify efforts to tackle bullying and violence in schools, including through teaching human rights, peace and tolerance.
- The State party should pay particular attention to provide children, including those with disabilities, with adequate and accessible playground spaces to exercise their play and leisure activities.

Special protection measures

UN Concluding Observation 71 – Asylum-seeking and refugee children

- Intensify efforts to ensure that detention of asylum-seeking and migrant children is always used as a measure of last resort and for the shortest appropriate period of time;
- Ensure that the United Kingdom Border Agency (UKBA) appoints specially-trained staff to conduct screening interviews of children;
- Consider the appointment of guardians to unaccompanied asylum-seekers and migrant children;
- Provide disaggregated statistical data in its next report on the number of children seeking asylum, including those whose age is disputed;
- Give the benefit of the doubt in age-disputed cases of unaccompanied minors seeking asylum, and seek experts guidance on how to determine age;
- Ensure that when return of children occurs, this happens with adequate safeguards, including an independent assessment of the conditions upon return, including family environment;
- Consider amending section 2 of the 2004 Asylum and Immigration (Treatment of Claimants etc.) Act to allow for an absolute defence for unaccompanied children who enter the UK without valid immigration documents.

UN Concluding Observation 76 – Child trafficking

- Provide the necessary resources for an effective implementation of the Anti-trafficking Action Plan. It also recommends that the State party ratify the Council of Europe Convention on Action against Trafficking in Human Beings and implement its obligations by ensuring that child protection standards for trafficked children meet international standards.

UN Concluding Observations 78 – Age of criminal responsibility

- Raise the minimum age of criminal responsibility in accordance with the Committee's General Comment no 10

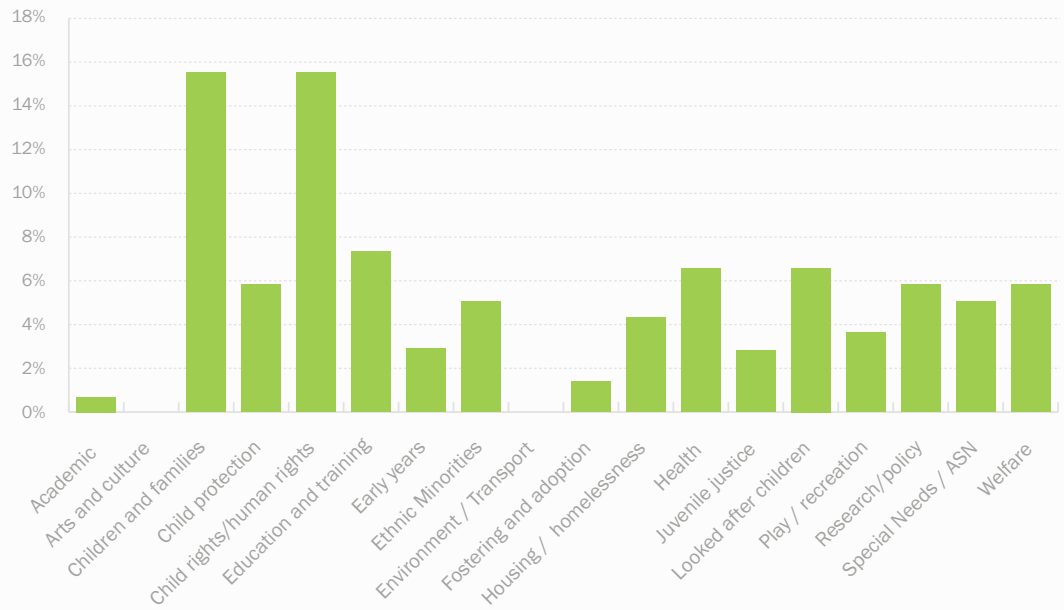
Appendix 2: Summary of *Do the Right Thing* actions

Do the Right Thing is Scottish Government's UNCRC action plan, published in September 2009 in response to the UN Committee's *Concluding Observations* of 2008. It sets out a list of priority actions to improve children's rights in 21 areas of work between 2009-13 and referred to throughout this report. A summary of each action is below. For more details on each action, refer to *Do the Right Thing*. It can be downloaded from: <http://www.scotland.gov.uk/Publications/2009/08/27111754/25>

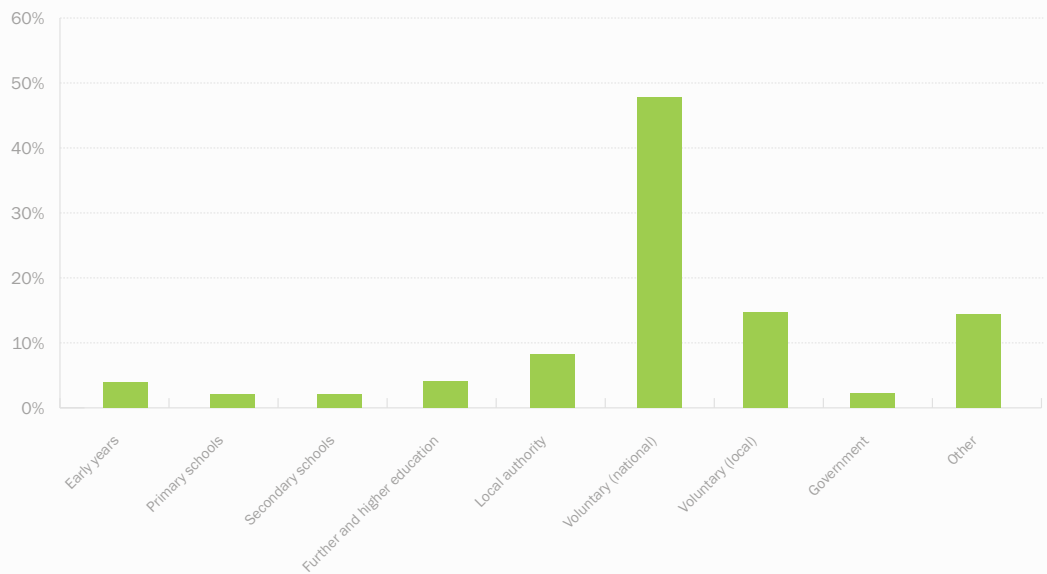
- Action 1.** Ongoing Monitoring of the UNCRC in Scotland and development of UK-wide work
- Action 2.** Promoting children's rights in the Scottish Government
- Action 3.** Promotion and awareness raising of UNCRC, including training of professionals who work with children
- Action 4.** Tackling negative perceptions of children and young people
- Action 5.** Gypsy/Traveller children and young people
- Action 6.** Advocacy services for children and young people
- Action 7.** Participation of children and young people in schools
- Action 8.** Mosquito Devices
- Action 9.** Promote Positive Forms of Parenting
- Action 10.** Young Carers
- Action 11.** Improve outcomes for looked after children and young people
- Action 12.** Children of Prisoners
- Action 13.** Private Fostering
- Action 14.** Children with Disabilities
- Action 15.** Improve outcomes for teen parents
- Action 16.** Support the delivery of the *Curriculum for Excellence* Education and wellbeing experiences and outcomes
- Action 17.** Child Poverty
- Action 18.** Play
- Action 19.** Better support for unaccompanied asylum seekers
- Action 20.** Child Trafficking and Sexual Exploitation
- Action 21.** 16 and 17 year olds in the youth justice system

Appendix 3: Contributing organisations

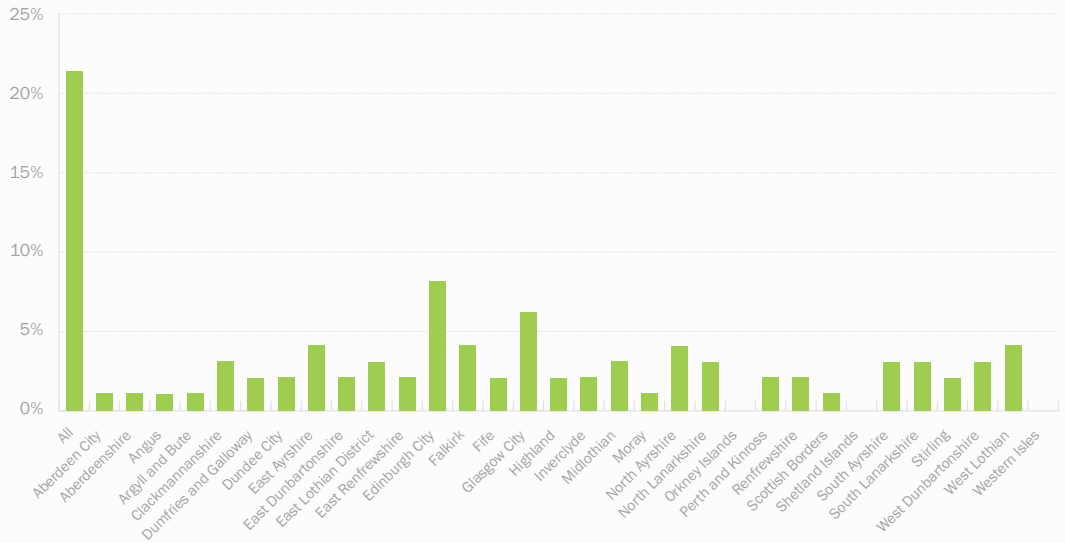
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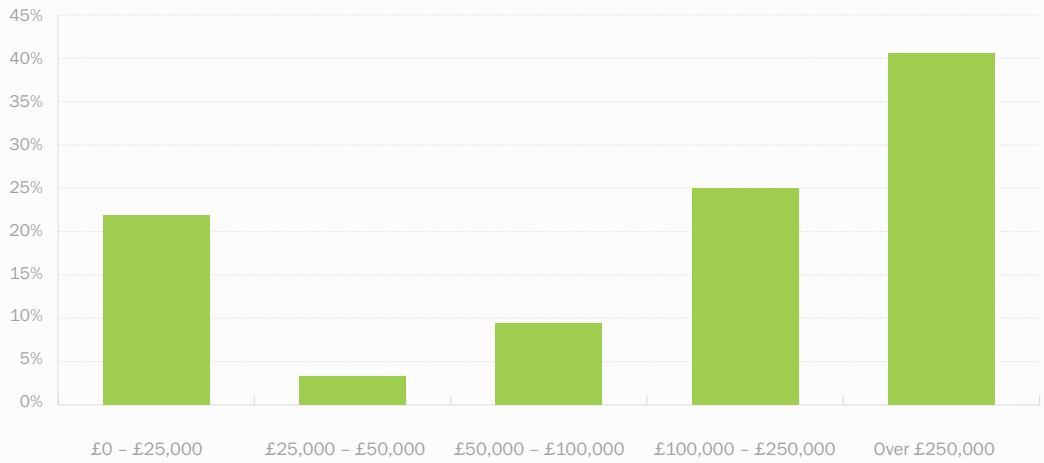
Type of organisation



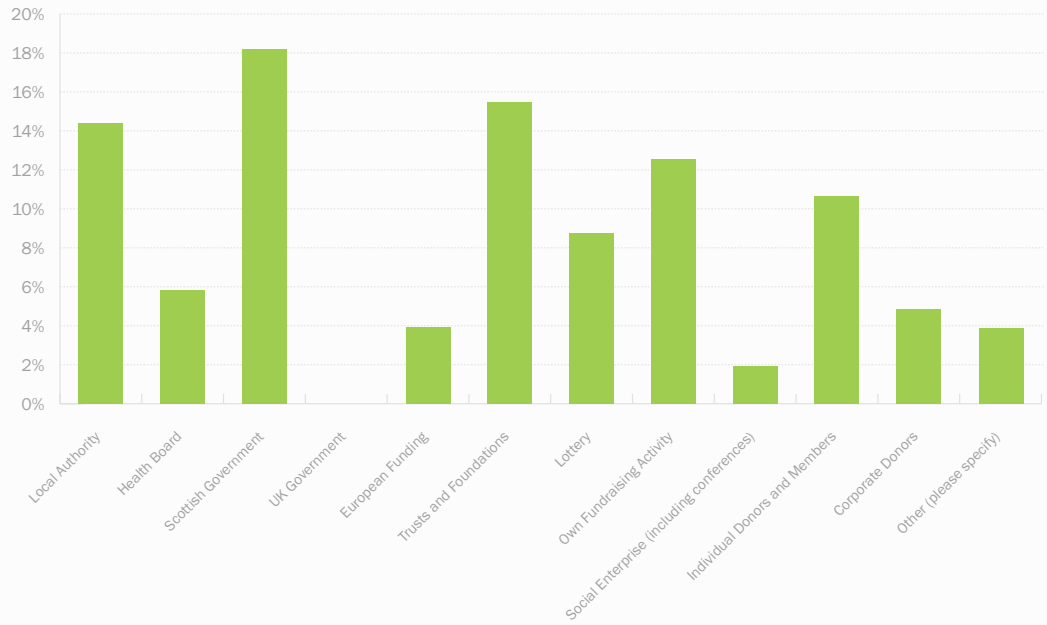
Local Authority Area



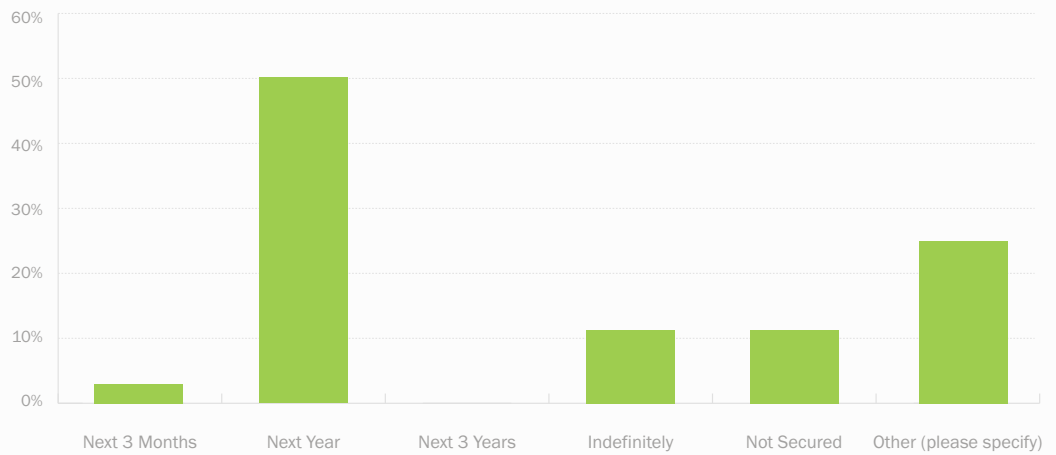
Turnover



Income Source



Income Security



Appendix 4: Credits

Thanks go to the following organisations for sharing their experiences to inform the preparation of this report:

Contributing Children's Organisations

Aberdeen Council of Voluntary Organisations)	International Play Association
Action for Children	IPA Scotland (International Play Association: Scotland Branch)
Action for Sick Children (Scotland)	Kidz Stop Nursery and Out of School Clubs
Adlerian Society and Institute for Adlerian Psychology	National Autistic Society Scotland
Article 12 in Scotland	National Deaf Children's Society (NDCS) Scotland
Amnesty International	PEACE Childcare
British Red Cross	Play Scotland
Caledonia Youth	Quarriers
CHILDREN 1ST	Rathbone
Children in Scotland	respectme, Scotland's Anti-Bullying Service
Children's Parliament	Save the Children UK
Corner Young Peoples Health and Information Service	Scottish Refugee Council
Dyslexia Ayrshire	Scottish Women's Aid
ENABLE Scotland	Shakti Women's Aid
Engender	Shelter Scotland
Families Outside	Skye and Lochalsh Community Care Forum – Young Carers
Freedom from Torture Scotland (Medical Foundation)	The Place 2B
Glasgow Association for Mental Health	UNICEF UK
Highland Children's Forum	YouthLink Scotland
Inclusion Scotland	

Other contributors

Aberdeen City Council	Highlands Council
Aberdeenshire Council Children's Rights Service	Scottish Borders Council
Glasgow City Council	South Ayrshire Council

And many others who did not wish or were unable to be credited.

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‘Working to promote the
full implementation of
the UN Convention on
the Rights of the Child
in Scotland’
September 2011



together

Scottish Alliance for
Children's Rights

Together

Scottish Alliance for Children's Rights
Prospect House
5 Thistle Street
Edinburgh
EH2 1DF

www.togetherscotland.org.uk
info@togetherscotland.org.uk
0131 225 8864

Charity Registration no: SC029403
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