

'Special Protection' of Children Living Away from Home: Developments in the UK

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Introduction

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to **special protection** and assistance provided by the State.

(UN Convention on the Rights of the Child, emphasis added)

In the United Kingdom, although there has been little research on the extent of abuse of children and young people in residential and foster care, several major inquiries have highlighted the problem of abuse in residential care (Brannan et al, 1993; Hughes, 1986; Kirkwood, 1993; Levy and Kahan, 1991; Williams and McCreadie, 1992). More recently, the extensive abuse which took place in residential establishments in Cheshire and the North-west of England has come to light (Ward, 1997) and there have been major inquiries into the abuse of children in Edinburgh's children's homes (Marshall et al, 1999) and in residential and foster care in Wales (Waterhouse, 2000).

These high profile cases of abuse have led to a number of government reviews of issues relating to the safety of children in the public care (Utting, 1991; Skinner, 1992; Warner, 1992; Kent, 1997; Utting, 1997). Driven in no small part by the scandals and the recommendations made by the inquiries and reviews, there have been major developments in the UK: both directly focused on the 'special protection' of children

living away from home; and more general developments which affect all areas of social care for vulnerable people. Change is also occurring rapidly and even since the abstract for this paper was written, there have been a number of developments, particularly in relation to the establishment of Children's Commissioner.

Listening to Children

The most crucial lesson from cases of abuse in residential and foster care is the need to listen to children and young people. As well as the specific proposals outlined in this section, *Listening to Children* is central to the *Quality Protects* programme in England and Wales (see below). Yet again the Waterhouse report highlighted the need to improve complaints procedures. In England and Wales, the government has issued a consultation document proposing a number of reforms, including: speeding up the complaints process; making it more user friendly; and, giving a right to advocacy to looked after children who wish to make a complaint (DoH, 2000a).

In the Children's Safeguards Review, Sir William Utting describes children's rights services as "one of the most beneficial developments of the last decade" (Utting, 1997, p.111). Since the first children's rights officer was appointed in 1987, an increasing number of local authorities have established such posts or commissioned advocacy services. In *Learning the Lessons*, the UK Government 'recognises how vital it is to listen to children and is committed to encouraging the development and use of high quality advocacy services...' and is undertaking consultation on a proposal that looked-after children who are pursuing a complaint should now have a legal right to an advocate' (TSO, 2000, 22-23).

The collective action of young people in care has also been important in the development of their rights and entitlements (Kent 1997; Utting 1997). In Scotland, *Who Cares? Scotland* and in Wales, *Voices from Care* provide support, advice and a campaigning voice for young people in care. *Black and in Care* has been influential in raising awareness of the rights and needs of black young people (Willow, 1996). In England, following the Utting Children's Safeguards Review, the Government provided funding to establish *A National Voice*, a new group to promote the voice of children in care. These organisations, run by and for young people who are or have been in care, aim to campaign nationally and to advocate for children and young people in care.

There has been an increasing demand for the establishment of the role of Children's Commissioner in the UK. Following the clear recommendation of *Lost in Care* for the appointment of an independent Children's Commissioner for Wales, the Government announced that it would use the *Care Standards Bill* to create this position. The duties of the Commissioner will include: ensuring that children's rights are respected; examining the handling of individual cases brought to the Commissioner's attention; and, publishing reports, including an annual report to the National Assembly for Wales. In relation to England it has been decided not to appoint a Children's Commissioner. It had already

been proposed that a senior post of Children's Rights Director in the new *National Care Standards Commission* (see below) would be established and the Government 'consider that the Director will fulfil a role very similar to that envisaged by Sir Ronald Waterhouse...' (TSO 2000, 19). In Scotland, the role of Children's Commissioner is currently being considered by the Scottish Executive.

Support for Staff and Carers

Lost in Care echoed many of the inquiry reports dealing with abuse in residential care which have highlighted inadequacies in recruitment practice. Warner's detailed recommendations on recruitment and selection (Warner, 1992) should be standard practice. However, the *Quality Protects* programme (see below) has asked councils to report on progress in this area in their *Quality Protects* Management Action Plans. The Department of Health has recently produced a training pack on recruitment and selection for councils (DoH, 2000).

There have also been a number of new legislative safeguards to prevent unsuitable people from working with or fostering children. The Care Standards Act (see below) includes provision for the General Social Care Council to draw up a code of practice for employers. This will emphasise the need for a rigorous approach to recruitment. Recent legislation prevents persons with convictions or cautions for certain specified offences from being considered suitable to foster or adopt children. The Government is also legislating to disqualify certain offenders from working with children and make it a criminal offence for them to seek work with children. The Protection of Children Act 1999 will place the Department of Health's Consultancy Index (a list of health and social care workers deemed unsuitable to work with children) on a statutory footing. Regulated childcare organisations will be required to check the names of anyone they propose to employ in posts involving regular contact with children against the Index and List 99 (a statutory list of teachers deemed unsuitable to work with children). They will not be able to employ anyone in a child care position who is recorded in either source. The Government is also working towards the establishment of a Criminal Records Bureau in England which will provide a single agency for employment vetting purposes and will bring together criminal records, the Consultancy Index and List 99 (TSO, 2000). Similar developments are being progressed in legislation in Scotland.

Training and staff development ensure that practice does not stagnate; and it can prevent poor practice becoming the norm, by encouraging staff to reassess their approaches and procedures. It is the prime means of bringing new ideas and practices into children's homes. Training is essential to good child care practice and ultimately the safety of children (Warner, 1992, p. 113).

Following the reviews and inquiries of the early 1990s, a number of training initiatives have been established; e.g., the Residential Child Care Initiative which aimed to ensure that all officers-in-charge in England and Wales held a professional qualification. In

England, a Department of Health initiative is providing funding to train all residential child care staff in 'Caring for children and young people'. A new induction package for all social care staff is also being developed. A national programme of training for foster carers was also recently funded. In December 1999, the Scottish Executive announced that a £4 million pound initiative to provide comprehensive training for residential child care workers had been awarded to a consortium led by Strathclyde University. The consortium will have the task of co-ordinating and providing relevant, high quality training to staff who look after children in residential care throughout Scotland.

The pay and status of residential child care staff has frequently been linked to issues of institutional abuse. And perhaps unsurprisingly, the Government's response in this area is less than dynamic. *Lost in Care* recommended that there be a "national review of the pay, status and career development of residential child care staff and field social workers to ensure as far as possible that there is a sufficient supply of candidates for such posts of appropriate calibre" (Waterhouse, 2000). The Government stated that on the basis of a workforce summit held in March 2000 to discuss issues affecting the recruitment, retention and status of staff in social care, an initiative is now being planned (TSO, 2000).

The fear of retaliation and dismissal is a real issue for staff in reporting abuse by colleagues. *Lost in Care* again reiterated the need for clear whistleblowing procedures enabling staff to make complaints and raise matters of concern without fear of reprisal. Recent legislation - 'The Public Interest Disclosure Act 1998' - provides protection against victimisation for persons who acting in good faith raise concerns about a wide variety of malpractices both within the organisation and externally, in the public interest. The Government has also stated that the care standards formulated by the National Care Standards Commission will include a requirement for each provider to establish clear whistleblowing procedures (TSO, 2000).

Quality Protects Programme

The Quality Protects programme was launched in England and Wales in September 1998 following the Utting review of safeguards for children living away from home (Utting, 1997). The main elements of the programme are:

- new national Government objectives for children's services which set out clear outcomes for children...;
- an important role for local councillors in delivering the programme,...;
- evaluation of each council's progress and plans through annual *Quality Protects* Management Action Plans; and
- a new children's services grant of £375 m.

(TSO 2000, 6)

While the Government objectives for children's services are wide ranging, three focus specifically on the 'special protection' of children and young people. These include:

- *Objective 1*, To ensure that children are securely attached to carers capable of providing safe and effective care for the duration of childhood;
- *Objective 2*, To ensure that children are protected from emotional, physical and sexual abuse and neglect (significant harm);...
- *Objective 9*, To ensure through regulatory powers and duties that children in regulated services are protected from harm and poor care standards;

(DoH, 1999)

Specific work teams have been set up to take forward the Quality Protects programme and these have been grouped around five themes:

- *Better Governance* (working with elected councillors to deliver quality protects, to develop the corporate parenting role);
- *Listening to Children* (promoting the active involvement of children and young people);
- *Life Chances* (promoting achievement by children in need particularly those leaving care);
- *Improving Placement Choice* (tackling recruitment, retention and improving quality)
- *Establishing the Baseline* (building effective management information and quality assurance).

(Quality Protects Website)

In Northern Ireland, a decision has been made to establish a new child care initiative similar to the *Quality Protects* programme in England (TSO, 2000). A slightly different approach has been taken in Scotland where a *Strategic Framework for Children's Services* which set objectives and performance measures against which progress on the development of children's services can be based. It must be said, however, that initial reaction to the framework has not been enthusiastic.

Regulating Care Services

"The primary function of inspection... is serving the public interest by providing an additional safeguard for vulnerable people" (Utting, 1997). While praising the work of inspectors, Kent and Utting express concern at the complexity of the inspection systems and the fact that while some children's services are subject to several types of inspection, others are not subject to any regular inspection (Kent, 1997; Utting, 1997). They recommend that all services should be brought within the inspection framework and that there should be standardization of formats for inspection reports to allow easier

monitoring (Kent, 1997; Utting, 1997). In England and Wales, the Social Services Inspectorate published standards for residential care to support inspections of residential child care services (Social Services Inspectorate, 1994) and Kent recommends that, for Scotland, "there should be national standards for inspection together with associated Guidance for Inspectors" (Kent, 1997, p. 117).

This agenda has been taken forward through independent national bodies to regulate care services. In July 2000, the Care Standards Act received Royal Assent and set up the *National Care Standards Commission* in England. In July 2000 the Scottish Executive published a policy position paper with the details of the *Scottish Commission for the Regulation of Care* (Scottish Executive, 2000). The *National Care Standards Commission* will regulate; care homes for elderly people and people with disability; children's homes; domiciliary care agencies; private and voluntary health care services; independent fostering agencies; voluntary adoption agencies; residential family centres; and nurses agencies. The *Scottish Commission for the Regulation of Care* will regulate a wider range of services; home care; services to promote the social inclusion of adults; care homes for adults; housing support services; nurse agencies; early education and childcare; care homes for children; adoption services; fostering services; care and welfare in boarding schools and school hostels; and care and welfare in accommodation for offenders.

The Commissions will draw up national standards and will regulate services against these standards in respect of registration of services and de-registration of services. "New services will have to show that they will be able to meet the care standards when they are operational, before being registered for the first time, and will thereafter have to meet the standards" (Scottish Executive, 2000). All care services regulated by the Commissions will be subject to inspection. The Commissions will bring together the staff currently employed by local authority registration and inspection units.

Regulating the Workforce

There has been a long-standing debate in the UK about the need to regulate the social care workforce. Given the lack of regulation of the UK social work profession, both Children's Safeguards Reviews recommended professional registration, either through a General Residential Child Care Register or the establishment of a General Social Services Council (Kent, 1997; Utting, 1997). Driven, then, in no small part by the scandals of abuse in residential child care, this agenda has been taken forward by the new Labour Government. In England and Wales, the White Paper *Modernising Social Services* set out proposals to establish a *General Social Care Council* which would: set enforceable standards of conduct and practice for the whole workforce and publish national codes of conduct and practice; establish a register of individuals in specified groups; and regulate training and approve courses. In July 2000, the Care Standards Act received Royal Assent and set up the *General Social Care Council* for England and the *Care Council for Wales*. Similarly in Scotland a *Scottish Social Services Council* is going to be established and a

policy position paper was published by the Scottish Executive in July 2000 setting out its detailed proposals (Scottish Executive 2000) In England, field social workers will be the first group of workers to be registered and residential child care workers are a priority group for early registration. In Scotland, the specified groups for the first phase of registration are: social workers, all staff in residential child care, all heads of residential care homes, all heads of adult day care services, and registration and inspection staff of the [Scottish Commission for the Regulation of Care] (Scottish Executive, 2000).

Conclusion

As can be seen by the rapid and radical developments in the UK, there has been a real focus placed on the safety, security and growth of children and young people in the care of the state. However, there is no room for complacency. Many of the developments have focused on carers and staff. Research, however, has highlighted that much of the abuse of children and young people in residential and foster care is perpetrated by other children and young people. Bullying is an often hidden torment to children and young people living in residential establishments. It is a major factor identified by young people as contributing to running away from residential care. The sexual abuse of children by other young people is also a very serious concern (Kendrick, 1997). In addition, the spotlight has fallen on children's residential establishments. There is less of a spotlight on other settings, such as hospitals and penal institutions. Providing a safe and caring environment continues to need further action at all levels; in day-to-day practice; in management and planning; and in politics and policy-making at local and national level.

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