The NSPCC review of legislation relating to children in family proceedings

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Foreword

Since the implementation of the Children Act 1989, the landscape of family justice has changed dramatically and it is time to ask ourselves whether the act achieved what we wanted it to. In producing this review, the NSPCC has undertaken a valuable and comprehensive exercise. Its wide-ranging, detailed and inter-disciplinary nature make it important reading for all working in this field.

A particularly important aspect of the review is the voice it has given to children and young people in care, 735 of whom have contributed to the report. Those children were empowered by being given the chance to tell us whether the system is working for them, making this review unique. Their comments provide us with valuable lessons on the importance of stability and permanence, contact with family members, the role of social workers and the degree to which we fail to respect their right to be heard.

Overwhelmingly, those consulted in the conduct of the review believed that the Children Act is good piece of legislation whose effectiveness has been undermined by a chronic shortage of resources, particularly those required to support children and families.

A little over a decade since the Act's implementation, this review comes as a timely reminder and re-affirmation of its key principles and objectives. The report makes some strong recommendations about the resources and training required to ensure that the Act is properly used and reaches its full potential. I hope that the review's findings and recommendations will be given thought and will be considered in the consultation on the Government green paper *Every child matters*. The report also reminds us that our existing strengths must be nurtured and that the value of a well-trained, well-resourced and supported social worker to a child in care is immeasurable. It also provides challenging food for thought in a number of areas, including the way we give children the chance to be heard in proceedings, the special needs of the teenagers and the continuing challenge to reduce unnecessary delays in family proceedings.

Dame Elizabeth Butler-Sloss, DBE
President of the Family Division
September 2003

Introduction

The NSPCC had felt for some time that it was vitally important to review the legislation relating to children and young people in family proceedings. Our aim was to learn how and if the Children Act 1989 is working for the young people who are directly affected by it. The review was designed and overseen by a panel of experts from the legal and academic fields. It sought to obtain the views of professionals working with children and young people and, most importantly, the views of the young people themselves who have personal experience of the effects of the legislation, policies and practices.

Research was carried out in two halves, principally by questionnaire, though supplemented by a consultation conference in the case of the adults. This *Review of legislation relating to children in family proceedings* contains the results of the second half of the research – the adults' responses - together with the panel's recommendations for change. It also reflects the results of the first half of the research – the children and young people's views – though the full version of this is contained in *Your shout! A survey of the views of 706 Children and Young People in Public Care*. The panel has drawn on the results of both sets of responses in formulating its recommendations. The recommendations apply to the jurisdiction in England and Wales.

Further copies of both reports can be ordered from the Publications and Information Unit, NSPCC, Weston House, 42 Curtain Road, London EC2A 3NH. Tel: 020 7825 2775
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About the panel of experts

Panel Chair, Barbara Esam

Lawyer, NSPCC

Barbara Esam is a lawyer with the NSPCC. Her post is focused on campaigning for improvements in legislation and policies affecting children in the civil and criminal jurisdictions and the implications for professional practice. She has worked for the NSPCC for more than 10 years and has managed the NSPCC's policy initiative *Justice for Children*. She was a key contributor to the production of *A Case for Balance*, a video aimed primarily at judges and lawyers which demonstrates good practice when children are witnesses, and the *Young Witness Pack*. The latter aims to help children aged from five to 17 who have to appear in court as witnesses and includes *Giving Evidence: What's it really like?* She is currently co-chair with the Bar Council of a steering group producing a training video for the Bar on the special measures (implemented by the Youth Justice and Criminal Evidence Act 1999) for vulnerable and intimidated witnesses, including children. Barbara has previously held a post as an assistant director of legal services in the law and administration department of an inner-London borough, where she was also the head of the social services legal section. She has worked in private practice specialising in family and child care law and youth justice.

David Hershman QC

St. Philip's Chambers, Birmingham

David Hershman was called to the Bar from Grays Inn in 1981. He completed a pupillage at 2 Fountain Court, Birmingham and became a member of chambers in 1982. David practised in all areas of general common law, becoming more specialised in family law in the late 1980s. He wrote a series of articles for Family Law in 1987 and 1988 and was commissioned to write *Children Law and Practice*, published in 1991. Other publications include *Family Court Practice*, annually from 1995 onwards; *Child Protection Training Pack; Guidance for Family Court Welfare Officers* (for the Home Office); and the *Care Standards Handbook*. In 1996 David was appointed chairman of the Registered Homes Tribunal, which was merged into the Care Standards Tribunal in April 2002. In 2002, he was appointed a Recorder of the Crown Court and a QC. He now practises from St Philip's Chambers in Birmingham (formed from the merger of 2 Fountain Court and other Birmingham chambers) and 1 Mitre Court Buildings, London.

Professor June Thoburn CBE, MSW, LittD

School of Social Work & Psychosocial Studies, University of East Anglia

Professor June Thoburn is a widely respected social work academic. A qualified and experienced child and family social worker, she has been teaching on and researching across the field of child welfare since 1978. She is involved in the training of the judiciary and is frequently asked to provide expert evidence and consultation in complex child care cases. June is a member of Lord Justice Thorpe's advisory committee on inter-pofessional training. From 1991 to 1996 she was

a non-executive member of the East Norfolk Health Authority and is a trustee of the Norfolk and Norwich Families House, which provides a range of family support and child contact services.

Jonathan Whybrow

Solicitor, Howells Solicitors, Sheffield

Jonathan Whybrow is a Children Panel solicitor and a partner and head of family department at a leading legal aid firm. Howells Solicitors is one of the largest firms in the country franchised by the Legal Services Commission and specialising in the law relating to individuals rather than companies. Jonathan represents children and their families in Children Act and adoption proceedings and has specialised in this area of law for nearly 20 years. He has worked for the Law Commission and the Department of Health on the Government's review of child law, which led to the Children Act in 1989 and on the Bill itself as it passed through Parliament.

Special Advisor to the panel, Andrew McFarlane QC

One King's Bench Walk, Temple and Chairman of the Family Law Bar Association

Andrew McFarlane QC is a specialist in law relating to children, with first hand experience of a number of cases before the European Court of Human Rights. He is also a Recorder and a Deputy High Court Judge (Family Division). Andrew is the co-author of *Children: Law and Practice* (loose-leaf text), and a contributor to *Family Court Practice*.

Independent Consultant, Judith Timms OBE, MA (Econ), Dip. Applied Social Studies

Former Chief Executive of the National Youth Advocacy Service and Honorary Research Fellow at Liverpool University.

Judith E Timms OBE is the founder, policy consultant and former chief executive of the National Youth Advocacy Service. She has many years experience as an independent social worker, consultant and childrens' guardian, and she has lectured widely on child care law and practice both at home and abroad. Her many publications include the Department of Health's *Manual of Practice Guidance for Guardians ad Litem and Reporting Officers* (HMSO. 1992); *Children's Representation - a Practitioner's Guide* (Sweet and Maxwell 1995) and (co-author) *Effective Support Services for Children and Young People When Parental Relationships Break Down - a child centred approach for the Calouste Gulbenkian Foundation* (1999). She is an honorary research fellow in the law faculty at the University of Liverpool, a vice-president of the Family Mediators Association and a former chair of the British Association of Social Workers.

Acknowledgements

Many people have made valuable contributions to bring this report together.

Initial consultation with The Rt. Hon. Dame Elizabeth Butler-Sloss, the President of the Family Division has proved invaluable. Dame Elizabeth provided sound advice, proposing a list of key people to speak to at the outset, with a view to laying the groundwork for the research that was to follow.

The responses to the rather onerous questionnaire were extremely gratifying in that they were thorough, detailed and well thought-out. A tremendous debt of gratitude is owed to the many individuals and organisations who took the time and more than a little trouble to complete these questionnaires. Without their hard work we would not have this report to learn from and to share with others.

The panel of experts, who have acted as a steering group for this project together with the special advisor, Andrew McFarlane QC, have all worked with dedication to help analyse the responses and forge the draft recommendations. They have had to fit this time-consuming task into their already very full schedules and have donated their time to the NSPCC. The NSPCC is truly grateful to them for their generosity.

Judith Timms, the independent consultant who has worked on this project on behalf of the NSPCC has gone far beyond the call of duty in her commitment. She has painstakingly read every word of every response and has drawn all the information together into a coherent form for the panel to discuss and comment on.

Everyone has worked as a team, demonstrating through their work that they value children and young people and are determined to get the best possible legislation, policy and practice for the benefit of all children and young people.

Barbara Esam
Chair of Panel
September 2003

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Part One

Background to the review

It is now more than 10 years since implementation of the Children Act 1989 and this seems a timely point to review the civil legislation relating to children and young people. The purpose of the review has been to answer three key questions:

- Has the Children Act 1989 achieved its aims?
- Are there areas in which it should be amended or improved?
- If so, what are they?

The review set out to discover:

- Which provisions in the Children Act are working well and should not be changed
- Proposals for improvements, including any that may be needed to ensure compliance with the requirements of the Human Rights Act 1998 and the United Nations Convention on the Rights of the Child.

Nearly 800 questionnaires were circulated in May 2002 to a wide-ranging inter-disciplinary group of social and legal professionals and voluntary organisations representing the interests of young people, parents and carers in England and Wales. The original deadline for completion was 1 July 2002 but this deadline was later extended to facilitate maximum participation in the review.

The total number of respondents was 205, including 29 respondents representing the larger group memberships of voluntary organisations and seven representing professional associations. The responses were considered and collated by the independent consultant and the review panel. The preliminary results were published at a consultation conference held in London on 10 March 2003. This conference gave the inter-disciplinary audience the opportunity to participate in a process of "consultation in action" by hearing presentations of the findings and by contributing to two of six workshops dealing with: Review of Care Plans; Contact; Youth Justice; Children's Representation; Children's Human Rights; and Delay. Thus, the process of consultation was both reflective, asking people to complete a detailed questionnaire, and dynamic, allowing delegates the chance to discuss the recommendations together and to ensure that the review was placing the appropriate emphasis and balance on the individual recommendations. We were fortunate to be assisted at the conference by Dame Elizabeth Butler-Sloss, the President of the Family Division, and Matthew Huggins and Maureen Mirembe, both of whom have extensive knowledge and experience of public care and corporate parenting and who gave us valuable feedback on the review findings.

Both the review panel, and Dame Elizabeth in her address to the conference, placed great emphasis on the need to rethink our views about how we listen to children and incorporate their views into decision making.

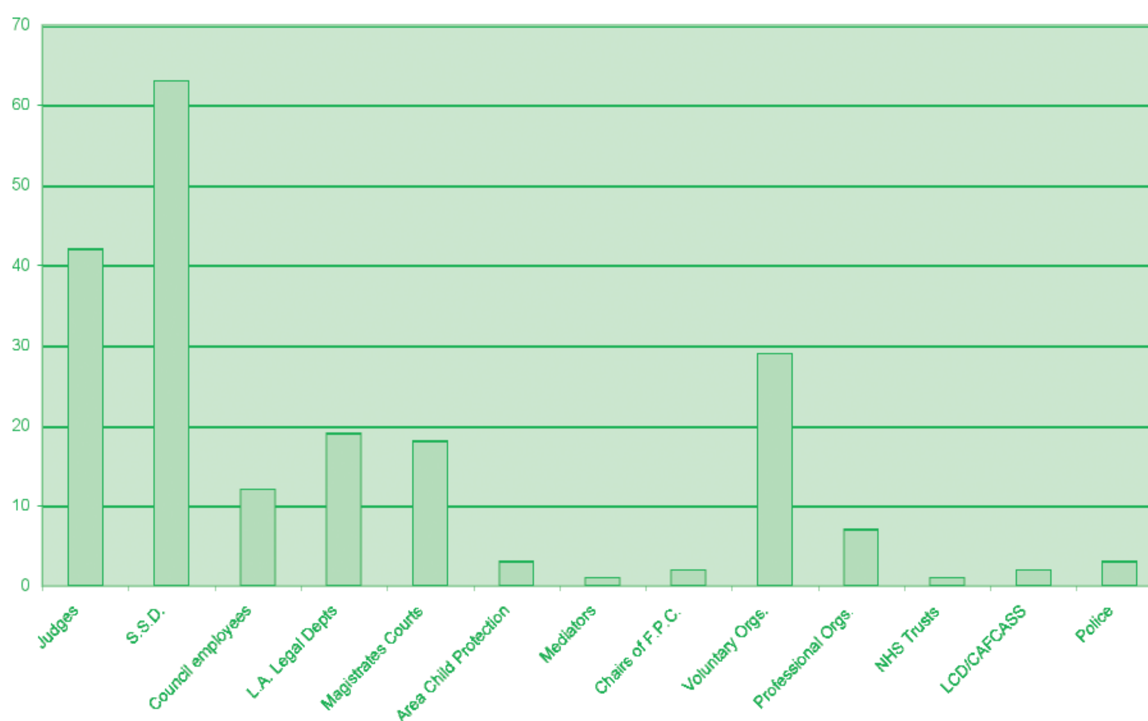
In addition to the process of adult inter-disciplinary consultation, a separate questionnaire for young people was circulated through *Who Cares?,* the Who Cares? Trust's magazine for young people looked after by local authorities. The parallel consultation with young people was carried out in order to ensure that those most affected by the provisions of the Act have a real opportunity to share their experiences of its operation. This questionnaire focused on specific areas relating to involvement in court proceedings, participation in care planning and post care contact with parents, carers, the wider extended family and friends. Encouragingly, more than 700 completed questionnaires were received from young people from all parts of the United Kingdom. The results of this parallel survey (see *Your Shout! A Survey of the views of 706 children and young people in public care,* Judith Timms and June Thoburn. NSPCC 2003) which produced an astonishing response both in quality and quantity, have had a very significant impact on the review recommendations. In particular, Dame Elizabeth stressed the need to look at the "staggering" findings on contact.

Responses to the young people's questionnaire were still being received several months after the consultation officially ended. In order to ensure that the views of all the young people who took the trouble to respond are included and given proper consideration, an additional and updated analysis is being carried out by the authors of the report. An update on *Your Shout!* results is reproduced in Appendix 5.

Profile of respondents

Breakdown of responses by profession

The 205 responses to the adult questionnaire were categorised into 13 occupational groups. The totals for these occupational groups were as follows:



Profession	Number	%
Judges	42	20.8
Social services departments (SSD)	63	31.2
County council employees	12	5.9
Local authority legal departments	19	9.4
Magistrates' court officials	18	8.9
Area child protection committees	3	1.5
Mediators	1	0.5
Chairs of family proceedings committees	2	1.0
Voluntary organisations	29	14.4
Professional associations	7	3.5
NHS primary care trusts	1	0.5
LCD and CAFCASS regional offices	2	1.0
Police	3	1.5
Total	202	100
(missing data = 3)		

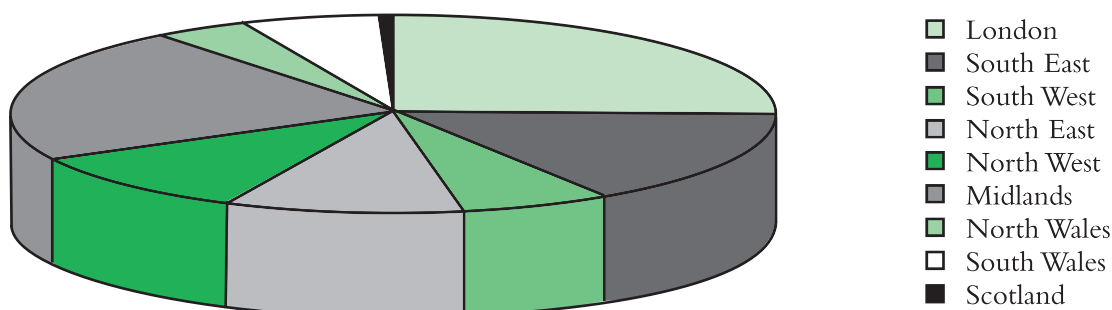
Table 1: Respondents by profession

Confidentiality

Of the 205 respondents, 68 did not want their comments to be attributed.

Geographical spread of responses

Responses were analysed into eight geographical areas of England and Wales. One response was received from Scotland.



Area	Number	%
London	48	23.4
South East	36	17.6
South West	13	6.3
North East	21	10.2
North West	20	9.8
Midlands	46	22.4
North Wales	8	3.9
South Wales	12	5.9
Scotland	1	0.5
Total	205	100

Table 2: Geographical spread of responses

Overview of responses

General

The questionnaires were completed with considerable attention to detail and were returned from all areas of England and Wales. They garnered a wealth of information that has given an up-to-date snapshot of how the Children Act is working in practice, 11 years after implementation. We are enormously grateful to all those who took the time to participate. Some respondents indicated that they would appreciate the opportunity to discuss what they considered the very relevant issues in a more informal workshop or seminar setting and the March 2003 conference provided an opportunity for this.

Sections 1 and 4 of the questionnaire were completed in greatest detail, with some degree of cross-referencing between the two sections.

Some of the points made reflected the everyday concerns of the occupational group to which the respondent belonged. For example, delay was the major concern for the judges, while responses from social services departments reflected their overriding concerns about shortage of resources and the consequent vulnerability of the frontline services.

The questionnaire

The questionnaire, reproduced as Appendix 4, was designed to enable respondents to comment on their particular area of expertise or interest. It consisted of four sections:

- Section one: general matters
- Section two: specific matters
- Section three: key areas for debate
- Section four: additional matters; suggestions for amendment to the Act, if necessary, and opinions about the two aspects of the Act that worked best and the two that worked least well.

Many respondents echoed the point made most succinctly by the Solicitors Family Law Association, when it stressed the importance of differentiating:

- The need for amendments to the Act because the framework of the law needs to be changed
- The need for changes in the process of court proceedings
- The need for changes in the social (and other services) offered to children and families which provide the context for these proceedings.

Part Two

Key recommendations

The overwhelming majority of respondents thought that the Children Act 1989 was a good piece of legislation which had been undermined by substantial deficiencies in the infrastructure of systems and services surrounding it and upon which the Act is dependent for its effective operation. This was the case both at the time of implementation and ever since. The following key recommendations, if implemented, would enable the Act to fulfil its very considerable potential to protect the welfare and rights of all the children and young people who are the subject of proceedings within the family jurisdiction. These key recommendations are drawn from the results of both the children's and the adults' surveys, with particular emphasis on what the children wrote.

1. A comprehensive inter-disciplinary **national training initiative** is needed to re-affirm the provisions and principles of the Children Act 1989. It is clear that some practitioners do not know what is in the Act. This should include a comprehensive "audit" of all legislation and practice guidance that interacts or is likely to interact with the Children Act.
2. The establishment of a **unified family court system** staffed by specialist judicial and welfare personnel.
3. Adequate funding and the commitment of all agencies to the provision of **family support services to families and children "in need" as** required by Part III of the Act.
4. **The voices of children and young people must be heard** much more clearly in all public and private law proceedings. Too often young people feel that they are not being heard. In order for this to change the Children and Family Court Advisory and Support Service (CAFCASS) must function effectivily as an advocate for children, both in court proceedings and as a contributor at national policy level. It is clear from the review findings that this is not currently the case.
5. **Contact** needs a drastic rethink and should be much more child centred in both private and public law. A shocking result of the review is the extent to which children's wishes regarding contact are ignored in private law proceedings and overlooked in public law proceedings. Nowhere is this more evident than in the apparently cavalier manner in which contact between siblings may be terminated.
6. **The needs of teenagers** in especially difficult circumstances are being consistently overlooked, as services focus on the protection of younger children, rather than the support of older children and their families. An initiative is needed to raise national awareness of this problem, along with additional resources to support isolated young people who are at risk of social exclusion.
7. **A Youth Justice Bill** should be introduced to clarify the position of children who offend as children in need within the terms of Section 17 of the Act.
8. The findings support the proposal for a **Children's Commissioner for England** as head of a pyramid of independent advice and advocacy for children and young people in a range of difficult circumstances.

Summary of findings and recommendations

Taken overall, the findings indicate that the Children Act 1989 is seen as a successful piece of legislation and a great improvement on the fragmented and piecemeal legislation that it replaced. This was also the conclusion of the Laming Report that followed the death of Victoria Climbié. The Act successfully unified and co-ordinated existing legislation. It established a set of principles in a framework for decision-making to which the majority of social and legal professionals subscribes and aspires. If some of the aims and objectives of the Act are not being achieved, review respondents say that this is due not so much to faults in the original drafting (which offered the scope for creative and proactive work) as to the limits set on effective implementation. Grossly inadequate resources and problems within the court system itself created these limitations. As the Laming Inquiry pointed out, effective implementation involves all those responsible for the care of children, including all levels of management and corporate bodies. Nevertheless, it is now 11 years since implementation of the Act and it was clear from the responses that there was a consensus around certain aspects of the legislation where either further guidance, amendments to court rules or, in some areas, amending legislation would be appropriate.

It was also clear from the young people's responses that, in spite of the priority that the Act gives to listening to children, the children themselves feel that they are often not listened to or properly informed when decisions are being made. A particular concern is the way in which children's wishes in relation to contact are being ignored, with damaging long-term consequences for the children concerned.

Responses have been collated bearing in mind that one professional group's positive may be another group's negative. An example is the differing views of judges and local authority managers on the lack of court review powers when local authorities fail to implement agreed care plans. In addition, it was worryingly clear from some responses that there were misconceptions about what is actually in the Act and what is possible within the current legal framework. Some suggested reforms are already available under current statute and some overlap, but a full range of recommendations has been included. Following the Solicitors Family Law Association's suggestion, the recommendations are differentiated between the need for changes to: primary legislation; court rules regulations and guidance; and practice directions and necessary support services.

The following areas of proposed reform and/or amendment attracted a very high degree of consensus among the respondents and those who attended the March 2003 conference. The establishment of a specialist family court would not only facilitate and expedite the resolution of extremely complex matters of practice law and policy, but would also provide a proactive basis for the development and co-ordination of an effective network of interdisciplinary support services.

1. SHORTAGE OF SUPPORT FOR CHILDREN AND FAMILIES

One of the major concerns when the Children Act 1989 was implemented was that insufficient resources would be made available to enable the full potential of the Act to be realised. Unfortunately, this has proved to be the case. One hundred per cent of review respondents cited a shortage of resources as a key factor in limiting and undermining support services to children and families. Over and over again, key decisions in children's lives are made according to what is available rather than what is necessary to meet the individual child's needs. Despite the fact that the definition of "children in need" is set out in Section 17 of the Act and that an impressive

range of potential support services are set out in Schedule 2, lack of resources constantly undermines the paramountcy principle, which is the keystone of the Act. The fact that this has been a chronic factor in undermining successful implementation of the Act should not mean that it becomes acceptable by default. The Law Society believes that no local authority social services department has the resources necessary to implement all parts of the Children Act. Shortfalls in resources were categorised as:

- Shortages of direct funding
- Shortages of the physical infrastructure (i.e. courts and other buildings)
- Acute shortages of suitably trained and experienced staff to both maintain and develop necessary services
- Shortages of foster carers to allow respite and Section 20 accommodation as part of family support packages.

These shortages have resulted in a long-standing emphasis on investigating abuse, rather than preventing it by finding ways of improving the care and protection given to children and avoiding impairment to their health and development.

One of the knock-on effects of this emphasis is that many social workers currently in post have never worked in any other way and have little experience of preventive work with children and families. The logical consequence of this is that the concept of partnership with parents has suffered greatly. In the early days, following the implementation of the Act, the number of care order applications dropped and a higher proportion of looked after children was accommodated rather than placed on care orders. Recently the numbers of care orders have been growing and there is less emphasis on providing family support packages including accommodation. The review findings clearly demonstrate the results of 12 years of prioritisation of services aimed primarily at rescue rather than prevention or family reunification. This has impoverished not only the vulnerable children involved but the skills base and professional development of the workforce too.

In relation to interdisciplinary working, although Section 27, arguably one of the most undervalued sections of the Act, facilitates co-operation between health, education, housing and social services departments, as the British Association for Adoption & Fostering (BAAF) pointed out:

> *"In terms of multi-agency working, the wording of the Act does not present an obstacle, but undoubtedly other obstacles do exist, exacerbated by frequent structural and organisational changes within, particularly, health and education services."*

In practice, each local authority has written its own "children in need" document, tailored to set out what it is able to provide rather than what it is statutorily enabled or required to provide. The review panel concurs with Lord Laming's statement that:

> *"The use of eligibility criteria to restrict access to services is not found in legislation or in guidance and its ill-founded application is not something I support. Only after a child and his or her home circumstances have been assessed can such criteria be justified in determining the suitability of a referral, the degree of risk and the urgency of the response."*
> (The Laming Report, Paragraph 1.53)

Indeed, Volume 2 of the Children Act Regulations and Guidance, which deals with family support, makes it clear that the definition of "in need" is deliberately wide, to reinforce the emphasis on preventive support and services to families. It is not acceptable to redefine "in

need" to include, for example, only cases of child protection. The problem is compounded by the fact that there is a mishmash of conflicting legislation regarding financial regulations. The Statutory framework frequently militates against the formation of proper financial partnerships between departments and agencies to the detriment of children and families. An authority wishing to safeguard its resources can all too often, either in individual cases or as an overall policy, use relevant legislation to justify a refusal to fund.

When children are under 16, there is wide discretion to accommodate, provided it is likely to promote the welfare of a child in need. The introduction to the Act and the guidance and regulations in Volumes 2 (family support) and 3 (family placement) all make it clear that accommodation is an essential part of the family support service and could benefit from re-affirmation. For young people over 16, the Act (S.20 (3)) requires local authorities to provide accommodation to a young person in need if it is assessed that the welfare of the young person is "likely to be seriously prejudiced" if the young person is not accommodated. It appears that many social workers and managers are unaware of, or choose to ignore, this provision, which is framed as a duty and not merely as a power, since there is evidence that few young people start to be accommodated when over 16. It may, in some cases, be more appropriate, in consultation with the young person, to provide good quality Section 17 family support services if an assessment indicates that this will be the best way to ensure that his or her welfare will not be seriously prejudiced. However, from the reports of our respondents, it appears that this proper assessment of (a) whether a young person's health or development is likely to be seriously prejudiced without the provision of accommodation, and (b) whether Section 20 accommodation or another service will be most appropriate, often fails to happen. Nor are the consequences of a decision not to provide Section 20 accommodation to a young person assessed as in need routinely monitored.

As well as the shortage of financial resources, there is a national shortage of social workers, who have become progressively more undermined and devalued as they have become increasingly hard-pressed. Many suffer bruising experiences in court proceedings for which they are sometimes ill prepared. The failure to train and support workers adequately has led to a high turnover of staff and provides a disincentive for potential new recruits to take on the very high levels of stress associated with onerous child protection responsibilities. The long-term effect of this has been that the very full potential of the Act in terms of family support and partnership with parents, as set out in Section 17, Schedule 2 and Part III of the Act, has never been fully explored. This is nothing new. Inevitably, in a long-standing situation where support services to children and families are consistently resource limited rather than needs led, large gaps in service provision appear and become more and more significant (See Services for Teenagers below). It then becomes necessary to look at the combined effect of the lack of effective sanctions against local authorities who fail children by not carrying out agreed care plans, highlighted by the case of Re: S ([2002] UK HL10) and the well documented difficulties within CAFCASS (the subject of a highly critical parliamentary select committee of inquiry in 2003) in being able to provide the safeguard of an independent assessment of the child's situation. The sum of these two deficient parts can add up to the risk of dangerous practice.

Associated recommendations

- The establishment and funding of a much wider range of multi-disciplinary support services for children and families involved in the full range of family proceedings should be given urgent consideration and priority. **Action – Department for Constitutional Affairs (DCA), CAFCASS, Minister for Children, National Assembly for Wales, Department for Education and Skills (DfES)**
- The review findings indicated a need for the publication and dissemination of national guidelines on the provision of support services for children in need in England and Wales. These would include guidance on services to the children of asylum seekers, children in prison and specific guidance in relation to services for teenagers, including the circumstances in which accommodation should be provided. **Action – Minister for Children, National Assembly for Wales, DfES guidance**
- There is the need for a formal review of the use of resources for all children in need, whether living with their families or looked after away from home. This should include a comprehensive review of inter-legislative compliance and an overhaul of legislation and guidance to remove barriers to "joined up budgets" and inter agency co-operation. **Action – Legislative review, Minister for Children, National Assembly for Wales, DfES guidance**
- There is a need to review the use of residence order allowances, given that each local authority appears to be operating different criteria for payment. This review should be carried out alongside the development of guidance to accompany the provisions on the payment of special guardianship allowances introduced by the Adoption and Children Act 2002. Consideration should be given to the making of statutory provision rather than relying on guidance for the payment of kinship carers. **Action – Minister for Children, National Assembly for Wales, DfES guidance**
- The constraints of "consent", "exceptional circumstances" and "limited duration" should be removed from Section 16 family assistance orders to allow courts much more flexibility in the use of these orders to provide support to families. **Action – Legislative reform**
- Consideration should be given to the making of statutory provision rather than relying on guidance for the payment of kinship carers. **Action – Legislative reform**
- Guidance should be considered so that the potential of Section 16 family assistance orders can be realised, to assist in the resolution of serious conflict between separated parents and to help them make appropriate contact arrangements which ensure that children are safe. This will require greater priority to be given to the protection of children from the harm which research shows they suffer when there is serious and continuing conflict between their parents, played out around the issue of contact. **Action – Local authorities' children and family support services and CAFCASS to work together to find effective ways of providing short term help under the requirements of an order**
- There should be national inquiries in England and Wales into the major infringement of children's rights occasioned by the constant shortage of the resources needed to meet their assessed needs. **Action – Social Exclusion Unit/Minister for Children, National Assembly for Wales, DfES**
- National initiatives are needed in England and Wales to inform and educate the public about the value of social work and how essential it is that young people are encouraged into the profession. **Action – Office of the Prime Minister, National Assembly for Wales, DfES, General Social Care Council**

2. THE PROBLEM OF DELAY

A detailed analysis of the severity and all-pervasive nature of delay and the problems it causes throughout the system can be found at Appendix One: Delay – causes and cures.

Unnecessary delay exists in all regions of England and Wales and at all levels of court. It is effectively preventing the Act from being implemented in anything like the way originally envisaged. The result is that too many children remain looked after for too long, increasing their distress and the pressure on their families and making it more difficult to achieve long term stability. The question arises as to how this problem can realistically be addressed? When the Children Act 1989 was implemented in October 1991, it was anticipated that cases would be completed within a 12 week timetable. By early 2003, Manchester courts were aiming at a 40 week completion period, while the High Court in London had an 11 month waiting list for hearings. In one home county proceedings are taking up to two years, even for children under the age of two, for whom time can be the major factor in determining their future. Some respondents described the situation as a "national scandal".

The Scoping Study on Delay in Children Act Cases, carried out by the Lord Chancellor's Department in March 2002, concluded that, in respect of delay, the Children Act 1989 legislation did not require major review, but that the operation of the system was in need of reform. The results of our review endorse this conclusion, but the question of what is to be done remains. The current system is insufficiently responsive to adjust to unpredictable variations in regional workloads and the family justice system is severely under-resourced in many areas. Resources that are available are sometimes used in a haphazard and uncontrolled way. The Management of Delay Protocol produced by the Lord Chancellor's advisory committee on judicial case management has given valuable guidance and seeks to establish a time limit of 40 weeks for the completion of cases. This protocol may be welcomed as a constructive step forward, but 40 weeks is still a very long time in the life of a child, and many respondents doubted the ability of courts to meet even this target. In addition, courts must be allowed to retain the flexibility to move matters in a different way and at a different speed if the case demands it, bearing in mind the age and situation of each individual child.

Associated recommendations

- An increase in resources to support children and families, particularly in more complex cases involving drug and alcohol addiction, mental illness and domestic violence, could reduce the need for court applications, improving the functioning of courts and reducing delays. **Action – Minister for Children, National Assembly for Wales, DfES, Statutory and Voluntary Agencies Support Services**
- The implementation of the Adoption and Children Act 2002 provides an opportunity to undertake a comprehensive review and revision of the court rules, regulations and guidance which underpin the operation of the legislation relating to children in family proceedings. It presents an opportunity to harmonise the present bewildering array of forms, some of which are duplicated in overlarge court bundles. It is essential that this opportunity is grasped constructively and with a thorough attention to current practice imperatives. Twin tracking of cases, for example, has been introduced to avoid delay, and the new rules accompanying implementation of the Adoption and Children Act 2002 will need to be integrated and harmonised effectively with the Children Act rules, regulations and guidance, to ensure that proceedings are expedited rather than further delayed. **Action – DCA court rules,**

DfES regulations and guidance and National Assembly for Wales

- The 48 recommendations of the Lord Chancellor's Select Committee Inquiry report into CAFCASS, published in July 2003. should be implemented as a matter of urgency to enable CAFCASS to play its central role in cutting down delay in appointing children's Guardians and reducing the unnaceptably high numbers of vulnerable children waiting for their cases to be heard. **Action – Minister for Children and CAFCASS**
- Examples of good practice, in relation to time tabling and split hearings for example, should be widely disseminated through family court business committees and suitably endorsed by directions from the President of the Family Division, rather than through piecemeal changes to statute. The publication and implementation of the Lord Chancellor's Department's advisory committee on judicial case management in Children Act cases protocol on delay should be accompanied by practical initiatives to highlight best practice. **Action – DCA delay protocol and President's Direction**
- The statements of the children show that many (though not all) longed to be back with their families, or never to have left. (See *Your Shout!*) A further look is needed at guidance on supervision orders so that, wherever possible, children can remain safely at home under supervision and with adequate family support services whilst proceedings are pending. **Action – Minister for Children, National Assembly for Wales, DfES guidance**
- The review endorses the long-felt need for a dedicated family court with harmonised proceedings. This view is reinforced by concerns that as magistrates become more involved in family proceeding, the pressure on magistrates' courts to meet targets for hearings in criminal proceedings may compound and further exacerbate the delays in family proceedings. There is also an increasing awareness of the complexity and sensitivity of many cases. **Action – Legislative change**

3. LACK OF SERVICES FOR TEENAGERS

The paucity of services to teenagers, many of whom have become isolated from their families and denied services as children in need of family support services, including accommodation, is one of the most striking and worrying findings from the review. The indications are that the Act is becoming more of a "Children Act" and less a "Young People Act". The push towards adoption, with the imposition of targets for adoptions from care, provides a focus on the needs of younger children. This can act to the detriment of older children, who may experience unacceptable drift in care followed by effective abandonment in the community at much too early an age. Although local authorities have specific responsibilities for young people leaving care under Section 24 of the Children Act, strengthened by the provisions of the Leaving Care Act 2000, there are many young people who find themselves adrift in the community without adequate support or accommodation. Evidence from the Associate Parliamentary Group for Children and Young People in Care suggests that some local authorities are reducing their liabilities under the Leaving Care Act by supporting young people under Section 17 rather than accommodating them under Section 20. Many are living in unsuitable bed and breakfast accommodation. This is a deplorable approach to the needs of vulnerable 16 to 21 year olds, many of whom need the care a foster placement can give, not just bed and breakfast. Many of this age group appear to have become disenfranchised within their own families through the process of parental separation and family breakdown. The problems are particularly acute for young unaccompanied asylum seekers. Social services are currently breaching their responsibilities to such children by not formally accommodating them with suitable foster

carers. It is a matter of regret that the concept of looking after young people on a voluntary basis under the Section 20 accommodation provisions appears to have gone into abeyance.

Associated recommendations

- A recruitment drive to find suitable foster carers for teenagers as well as investment in supportive semi-independent accommodation is urgently needed. **Action – Minister for Children, National Assembly for Wales, DfES, support services**
- There should be a specific national focus on and a heightened awareness of the needs of this highly vulnerable group. **Action – Minister for Children, National Assembly for Wales, DfES, support services**

4. LACK OF COURTS' REVIEW POWERS

There was a very strong feeling arising from the conference discussion on this subject that local authorities cannot be relied upon to self-report problems in the implementation of care plans. Children involved in care proceedings have a right to a lawyer and a children's guardian to protect their interests before the court. However, unlike many other European countries, children do not have the right to invoke the assistance of the court when plans agreed by the court are not carried out.

There has been increasing concern about this matter since the House of Lords (in Re. S [2002] UK HL10) overturned the earlier decision of the Court of Appeal (in Re. W and B) which had established "starred cases" in which courts were enabled to retain powers of review through the children's guardian beyond the conclusion of the proceedings. The strong feelings that this issue arouses are reflected in the answers to Question 2 in Section 3 of the review (See Specific Matters). There is a clear divide between the responses of the judges and those of local authority managers, with the former being 100 per cent in favour of statutory powers of review, and the latter being 100 per cent against. This divide is itself a cause for concern, providing an additional incentive to find a solution which meets the needs of the children without further exacerbating splits between courts and social services departments. Although many would welcome retaining the children's guardian to monitor implementation of care plans, there was also a recognition that this may be impractical, given the acute shortages of children's guardians in all specified proceedings.

One suggestion was to place a duty on local authorities to notify the court in cases where they are unable to provide the services agreed in the care plan. The court should have a range of remedies for default in care plans, including referral to the Secretary of State, requesting him to consider invoking his powers to order an Inquiry under Section 84 of the Children Act 1989, and possible referral to the Commission for Social Care Inspection which will replace the National Care Standards Commission from 2004. Under the provisions of Section 118 of the Adoption and Children Act, independent reviewing officers may report their concerns to a CAFCASS officer.

It is not clear what the CAFCASS officer will then do and the regulations have not yet been published, but this procedure is seen as highly problematic. First, because "independent" reviewing officers are not independent of their employing authority, so that, as employees, they are bound under their contract of employment by the policies and procedures of their employing authority. This may inhibit them in acting freely in the best interests of an individual

child and they may find themselves under the same constraints as the accountable social workers. Social workers are often unable to advocate in the best interests of individual children because of the need to spread scant resources across all children looked after by local authorities. This problem is compounded by the lack of access to truly independent advocacy services for looked after children. The question then arises as to who it is envisaged will be in a position to protect the child's human rights and if necessary take action on their behalf? The assumption appears to be that this is the CAFCASS officer's role, but it has been made clear by CAFCASS's legal director that such applications (i.e. Applications under the Human Rights Act 1998) are not within the definition of "family proceedings" set out in Section 12 (5) Criminal Justice and Court Services Act, so any such involvement is apparently beyond CAFCASS's statutory powers and duties.

It is arguable that the failure to provide children with an appropriate and accessible procedure to assist them when challenging local authority decision making constitutes a potential breach of Article 6 (the right to a fair hearing) and Article 8 (the right to private and family life). The ninth report of the Joint Committee on Human Rights, in recommending that there should be a Children's Commissioner for England, drew attention to the importance of independence and concluded that:

> *"Existing arrangements for the promotion and protection of children's rights and interests are insufficiently independent from Government to ensure that the rights and interests of all children are fully protected at all times.*
>
> *"Independence is the key value that a children's commissioner would add to existing mechanisms.*
>
> *"A commissioner would encourage more and better listening to children, be a champion for children's interests at the national level of decision making, help children assert their rights in a positive and constructive way and help create a culture of respect for the fundamental principles of the UN Convention on the Rights of the Child.*
>
> *"An independent voice for children could significantly improve the consideration given to children in all areas of policy development."*

When England has its own children's commissioner, it is vital that the person appointed should be outside government and sufficiently independent and knowledgeable to be in a position to challenge the Government where necessary. It should be remembered that there are gaps in the powers of the Welsh, Scottish and Irish commissioners who, for example, have no remit over the Department of Constitutional Affairs. The role of children's commissioner as envisaged in the Laming Report would not be sufficiently robust, independent or powerful to fulfil the necessary criteria. In the meantime it might be appropriate for courts to request the Welsh Children's Commissioner to conduct an independent inquiry into the circumstances in a particular case of default.

Associated recommendations

- Local authorities should be placed under a statutory duty to provide any services specified in the agreed plan with an attendant duty to notify the court and CAFCASS if they are unable to implement a care plan endorsed by the court. The ensuing proceedings would need to be

defined as specified within the meaning of Section 41 (6) of the Children Act 1989. **Action – Legislative reform**

- Courts should be able to impose a list of agreed sanctions on local authorities when they have evidence of local authorities continuing to fail in their duties in relation to children. **Action – Legislative reform**
- The role of the independent reviewing officer, as set out in Section 118 Adoption and Children Act 2002, should be underpinned by regulations which set out criteria for the role and operational procedures which respect the human rights of the children involved. **Action – Regulations accompanying implementation of Section 118 of the Adoption and Children Act 2002**
- There should be a statutory right of access to truly independent advocacy services for all looked after children and children at risk. **Action – Regulations accompanying implementation of Section 119 of the Adoption and Children Act 2002 – DCA**
- There should be a children's rights commissioner for England, established outside government, to whom cases could be referred and who could raise issues of individual children's human rights and childcare law, policy and practice at the highest levels of government, and at the European and international courts if necessary. Although there is already a children's commissioner for Wales, he or she has no remit over powerful government departments such as the Department of Constitutional Affairs. In the case of children in Wales, this means that the Welsh commissioner is not in a position to take up issues regarding the shortfalls in services being provided by CAFCASS. **Action – Government/Minister for Children**

5. HUMAN RIGHTS COMPLIANCE

There were other areas in which the Children Act is not seen as human rights compliant. Examples were: Section 25 Secure Accommodation Orders; the lack of separate representation for children in private law proceedings; the lack of specific inclusion in the Act of young offenders as children in need; the question of whether the Children Act applies to children in prison; the lack of provision for unaccompanied minors coming from abroad; the abuse of children's human rights involved in the use of physical punishment; and concerns that any steps to dismantle the current system of "tandem" representation in public law would constitute a breach of the human rights of the children concerned. Perceived or potential areas of breach are set out in detail in Part Three of this review.

The National Care Standards Commission (NCSC) established under the Care Standards Act 2000 to register and inspect a wide range of social care and voluntary health services, adopted the United Nations Convention on the Rights of the Child in January 2003. The articles of the convention are to be used by all NCSC staff in making decisions that affect any child in any service or establishment regulated by the commission. This is a welcome move towards a far greater awareness of the primacy of children's rights as a framework for decision making.

6. CONTACT

The review findings identify problems in relation to contact in both private and public law proceedings. There are many reasons why contact does not work, some because of parental attitudes or reluctance to work with professionals, some because of professional faults and

chronic shortage of resources.

Public law contact

There is a need to review the provisions of Section 34 (4) and (6) in relation to public law contact arrangements. This need is heavily underlined by the findings of the *Your Shout!* survey, in which the children expressed great unhappiness at their loss of contact with family and friends. Children are experiencing particular difficulties in relation to contact with fathers in public law proceedings. Respondents reported uncertainty about whether Section 34 relates to both direct and indirect contact and it would be helpful if this could be clarified especially in relation to the termination of contact under Section 34 (4). Local authorities are already encountering difficulties in relation to the regulation of email contact dilemmas, which were not thought about 11 years ago when the Act was first implemented. Some felt that the present arrangements were too rigid to meet the child's immediate needs. The problems of finding adoptive parents who understand the value of contact persist, making choice of placements limited and creating tensions between the interests of the children concerned, adoption targets and the wishes of prospective adopters. Much depends on good early planning and the training and recruitment of prospective foster and adoptive parents. A significant change of culture is required to change expectations and practice.

It is interesting and somewhat disturbing that the wide ranging difficulties in maintaining contact with the people they cared about, so vividly described by the children, were not reflected in the adult review. However, both the adults' and the children's findings picked up strongly on the difficulties concerning sibling contact. It seems clear from the findings that there would be strong support for all children to have a statutory right to contact with their siblings. Although the Children Act directed that siblings should be accommodated together (S.23(7)(b)), the response to the children's questionnaire told a different and much sadder story in this respect, with hundreds of young people telling us of their anxiety about siblings from whom they had been separated. (See *Your Shout!*)

Private law contact

Traditionally, the court has been reluctant to intervene in private law family matters. However, contact disputes in private law proceedings and the management of cases in which there are implacably hostile parents are clearly causes of concern and frustration, particularly amongst the judiciary. This may explain why their responses talked in terms of enforcement, with less emphasis on conciliation and mediation – more current when the provisions of the Family Law Act 1996 were being discussed. The Lord Chancellor's family law advisory board's publication *Making Contact Work* has been welcomed and was seen as a valuable focus for discussion. Much will depend on the way in which the Government's response to the report is implemented. It is essential that within this process the wishes and welfare of the children involved receive a higher profile than has previously been the case. The question then arises as to how this can be achieved without placing additional burdens on children already distressed by their parents' separation.

There was concern that the Children Act 1989 is not effective in ensuring the safety of the child when courts consider the granting of residence and contact orders in private law proceedings. The existing provisions do not allow the court to identify those children who may be at risk and whose interests may be in conflict with either or both parents. Nor do they

provide any independent or objective evidence on behalf of the child rather than on behalf of the two adult parties, which might alert the court to situations in which such a conflict of interest might exist.

Families whose problems stem from inter-partner conflict and violence, which may continue after separation in the form of disputes about residence and contact, often find that support is not made available, exacerbating problems between parents and children and increasing the risk of actual or likely harm. Although the Adoption and Children Act 2002 extends the definition of harm to include harm suffered through seeing or hearing ill treatment of another person, there are concerns that there are insufficient safeguards in the legislation to ensure that contact and residence orders are safe for children. The influence of domestic violence still appears to be underestimated.

The review findings identified the fact that there are few support services for informal contact to be carried out outside supervised/court-ordered contact. The case for children and their families to have easy access to a full range and progression of interdisciplinary support services (including parent education classes) was clearly demonstrated, as was the need to develop an infrastructure of services and practice that facilitate (rather than necessitate the enforcement of) contact. An enhanced use of Section 16 family assistance orders was seen as potentially very useful in this context.

There was a widespread concern about the level of emotional abuse currently suffered by many children and young people who are the subject of repeated litigation and whose childhood is marred by disputes about their residence and contact arrangements. In the absence of someone in court to safeguard and represent the child's interests, the courts have little objective evidence on which to base their assessment of risk and to guide their decision-making.

Rule 9(2) and Rule 9(5) of the Family Proceedings Rules 1991 are seen as inadequate to satisfy the majority of respondents, with no reports of cases in which children had been enabled to seek leave under Section 10 to initiate their own applications for Section 8 contact. Once orders have been made, children are locked into arrangements that may not meet their developing needs. The present arrangements take little cognisance of the fact that the welfare of the child should be an ongoing concern, not something that dissipates through passage of time since the making of an order. The review findings endorse the need for the early implementation of Section 122 of the Adoption and Children Act 2002 which add Section 8 orders to the list of specified proceedings where children may be represented and have the benefit of both a children's guardian and a solicitor to safeguard their interests before the court.

Associated recommendations

- An amendment to current legislation is needed, to establish an assumption of reasonable contact between siblings and any other child with whom the child has an established relationship. The provisions should apply in both private and public law proceedings (i.e. proceedings under Section 34 and Section 8 of the Children Act 1989). Further, the necessity for leave to apply for a Section 8 sibling contact order under Section 10 of the Act should be abolished, provided the child is Gillick competent. **Action – Legislative reform**
- The provisions in the legislation relating to siblings should be reviewed to see if there is a way of ensuring that the care plan proposes the best available solution for all siblings in a family. Under the law as it stands, there are occasions when the court chooses the "best"

option for the child whose case happens to be before the court at the expense of others who may be significantly harmed by the court's decision. As a minimum, court rules and guidance should require that, before making a decision about a member of a sibling group, the court should consider the impact of that decision on the wellbeing of other siblings. **Action – DCA court rules, Minister for Children, National Assembly for Wales, DfES guidance**

- A comprehensive review is needed of all contact arrangements for children in public care. **Action – Minister for Children, National Assembly for Wales, DfES**
- The meaning of Sections 34 (4) and 34(6) in relation to both direct and indirect contact needs to be clarified. **Action – DCA court rules, Minister for Children, National Assembly for Wales, DfES guidance**
- Section 122 of the Adoption and Children Act 2002 should be implemented at an early date, with attendant court rules to enable courts to identify which children's welfare and interests may be at risk in contact arrangements. **Action – DCA court rules, Minister for Children, National Assembly for Wales**
- Serious consideration should be given to the need for focused additional investment in the infrastructure that supports the family jurisdiction. This should include looking at the need for additional and appropriate buildings, including family contact centres, a full range of child psychological, psychiatric and therapeutic support services, additional and more widespread availability of specialist residential and community services for disabled children and their families and a national investment in the continuing training and support of the social services workforce. There are many examples of excellent service provision but a marked lack of the co-ordination of approach, which would ensure that every child was given an equal chance to benefit from the full range of services available. **Action – Minister for Children, National Assembly for Wales, DfES support services, DCA, CAFCASS, General Social Care Council, Office of the Prime Minister**

7. CHILDREN WHO OFFEND

One thing the Children Act 1989 did not do was to deal specifically with children as offenders or offer any philosophical or practical reconciliation of the concepts of "troubled" or "troublesome" children. If anything, the divide has deepened, with a common public categorisation of children as either "victims" or "villains".

It is a matter of regret that the Children Act split jurisdictions between care and crime. Many children are involved in both jurisdictions, but they are treated separately. Once children in need commit crimes there is a high risk that the care system washes its hands of them. There was much criticism of the youth offending teams (YOTS). These were intended to be multi-disciplinary teams but over time the number social workers in them has decreased resulting in a reduced emphasis on child welfare issues.

Theoretically, children who offend but who are nevertheless in need should be provided with support as set out in Section17 and Schedule 2, in the same way as any other child in need. In practice there have been many difficulties. Children in need and in prison have been specifically excluded from help from social services by prison officers' regulations. The Howard League for Penal Reform successfully challenged the regulations in its judicial review (November 2002), in which the judge said:

> *"As far as is compatible with the child's status as a prisoner, duties under Part 3 of the Children Act 1989 apply, notwithstanding the fact that the child is serving a sentence."*

The situation in relation to young people who offend, but who are also in need, should be made explicit in the light of this judgement.

Associated recommendations

- An amendment is needed to Section 17 Children Act 1989, to clarify the position of children who offend in relation to their status as children in need. **Action – Home Office, Minister for Children, National Assembly for Wales, legislative reform**
- There should be a new Youth Offending Bill which would fully separate youth justice from the adult system and firmly locate provision for the under-18s within the terms and values of the ChiIdren Act 1989. **Action – Legislative reform**

8. REPRESENTATION OF CHILDREN - the voice of the child in proceedings

There was a very strong message from the review that children are very often still regarded as objects of concern, rather than young people who should properly informed, consulted as to their wishes and feelings wherever possible and accorded such rights to autonomy as are consistent with their age and understanding, bearing in mind the need to avoid burdening those of immature years with responsibilities for decision-making inappropriate to their age. In ascertaining the wishes and feelings of children, practitioners should be clear themselves and honest with children about which information will be shared with others and what can remain confidential. With the advent of increasingly sophisticated computerised systems of identification, referral and tracking across agencies, the question of properly informed consent will become more and more pertinent. If the voices of children are to be properly heard in proceedings they must have confidence in the respect with which their confidences will be treated.

Private law

Children involved in private law and public law proceedings are treated very differently by our courts. Children in private law proceedings, unlike their counterparts in public law proceedings, have no separate rights of representation within those proceedings. This is based on the questionable and sometimes dangerous assumption that provided parents agree, the welfare of the child will be assured. It is hard to justify this dichotomised approach to the two sets of proceedings, particularly, as the review findings demonstrate many children are involved in both sets of proceedings.

The first part of the review was carried out before the passing of the Adoption and Children Act 2002 which, at Section 122, introduced the possibility of separate representation of children in private law proceedings and potentially added Section 8 proceedings to the list of specified proceedings set out in Section 41 of the Children Act. The review findings very much endorse this development and would have proposed a very similar amendment to existing legislation if this had not already taken place. They support the case for an early enactment of the court rules necessary to implement the new provisions. In this context, the review findings are timely and informative. The position of children involved in private law proceedings and in disputed

Section 8 residence and contact applications is looking increasingly problematic and untenable and there is a high level of support for the interests of children in private law proceedings to be separately represented in some way. Many respondents quoted examples of cases in which they would have liked the child to have the benefit of representation by both a solicitor and a children's guardian. The debate should now move on to which children may need separate representation rather than whether or not they should be allowed to have representation at all. The absence of separate representation constitutes potential breaches of Article 6 (the right to a fair trial and equality of arms); Article 8 (the right to family life); and Article 12 (the right to be consulted and represented in decision-making) of the United Nations Convention on the Rights of the Child.

Public law

The perceived deterioration in the quality and functioning of the former guardian ad litem and reporting officer and court welfare services since the establishment of CAFCASS in April 2001 is a matter for serious concern. Waiting lists are now the norm and exist in areas where previously there had been few problems in obtaining reports. Some of the most experienced welfare professionals have been and continue to be lost to a service that can ill afford to lose them. Respondents emphasised the need to preserve the "tandem" system of representation in public law in which children who are the subject of proceedings specified in Section 41 of the Children Act have the benefit of a solicitor and a children's guardian to represent both their rights and their welfare before the court. There were also concerns about respect for the human rights of the children who are the subject of family proceedings.

In this context, and in relation to Section 122 of the Adoption and Children Act 2002, the decision has not yet been made as to whether court rules will state that the hearing at which an adoption order is made is to be included in the Section 41 list of specified proceedings. The severance of all legal ties with the child's family of origin without full representation as a party and without independent advice to the court from the children's guardian is highly likely to be challenged as being incompatible with human rights legislation.

In addition, clarification is needed about the role of the children's guardian when a supervision order is made. Section 12(5) Criminal Justice and Court Services Act (2000) provides for the appointment of a children's guardian when a supervision order is made, but there appears to be very patchy use of this provision.

Private law

- Early implementation of Section 122 Adoption and Children Act 2002 is required. **Action – Minister for Children, National Assembly for Wales, DCA court rules**
- Early publication of the court rules necessary for implementation of this section is needed. **Action – DCA court rules**
- Rules of court should specify the need for family court reporters to see the child to ascertain their wishes and feelings. **Action – DCA court rules**
- All CAFCASS officers (children's guardians and family court reporters) should see the child after court proceedings and ensure that the child understands what the court has decided. **Action – DCA court rules**

Associated recommendations

Public law

- The present system of "tandem" separate representation in public law proceedings must be preserved and current difficulties being experienced by CAFCASS should not be used as a rationale for undermining the rights of children and young people to have their welfare protected, and to be represented in both private and public law proceedings that affect them. **Action – Minister for Children, National Assembly for Wales, DCA**
- The status quo of the current statute and court rules governing the representation of children in public law proceedings should be maintained. **Action – CAFCASS, Minister for Children, National Assembly for Wales, DCA**
- Adoption proceedings should be specified proceedings under Section 41 Children Act 1989. **Action – DCA**
- Guidance should be issued on the children's guardian case management role as set out in Section 41(10) Children Act 1989. **Action – DCA, CAFCASS**
- Clarification is needed of the role of the children's guardian, as set out in Section 12(5) Criminal Justice and Court Services Act 2000, which provides for the appointment of a guardian under a supervision order. **Action – DCA, CAFCASS**

Representation of children's views in administrative forums

The provision of independent advocacy services would help to address some of the concerns about the difficulties in the current operation of Section 26 complaints and representation procedures and the lack of available sanctions to be imposed on local authorities who fail to look after children in their care appropriately. Since the review was carried out, amendments to the Children Act 1989 have been enacted in Part 2 of the Adoption and Children Act 2002. Section 119 of the Act deals with assistance to children and young people initiating complaints and representations under Section 26 of the Children Act 1989. The new provision as it stands does not go far enough in addressing the problems highlighted by the review respondents, namely the lack of access to truly independent advocacy services and the requirement for complaints to be initiated under Section 26 before triggering access to an advocate.

The local authority can never be independent from itself. Implementing the review process is an integral part of its duties and accountability as corporate parent. The concept of the independent reviewing officer is that he/she should not have any accountability for day-to-day management and should not be under any pressure to defend the local authority's own practice or allocation of resources. In this context there are many doubts about the way in which the local authority review system operates. Section 118 of the Adoption and Children Act 2002 provides for the independent reviewing officer to report concerns to a CAFCASS officer who may then bring the matter back before the court. The details of these provisions are awaited. However, even as currently envisaged, the role of reviewing officer can never be seen as either robust or independent enough to obviate the need for young people to have easy access to truly independent advocacy services. There are also concerns that situations in which the independent reviewing officer will refer to CAFCASS are being seen as very few and far between. What is happening is that independent reviewing officers are being used as arbiters of whether or not children should have access to advocacy services. This is not acceptable, as it takes away any control of the process from the children concerned and confirms them as an object of concern

rather than an active participant in a process which respects their rights, including their right to challenge decisions made about their lives.

Associated recommendations

- The court rules accompanying the implementation Section 119 of the Adoption and Children Act 2002 should clearly specify that advocacy services should be independent, together with guidance on the definition of independent services. **Action – DCA court rules, Minister for Children, National Assembly for Wales, DfES regulations and guidance**
- The role of the independent reviewing officer, as set out in the Adoption and Children Act 2002, should be carefully considered before guidance and rules are finalised, to ensure that accountability for decision making will be clear and that the person reviewing the case will be sufficiently independent of day-to-day case management and of sufficient status to exercise independent judgement. Anyone acting as an advocate to the child under Section 119 provisions should have direct communication with this person. **Action – Minister for Children, National Assembly for Wales, DfES regulations and guidance**

9. PRIVATE FOSTERING ARRANGEMENTS

This is an area that appears to have slipped through the net of child protection. Despite the presence of Section 66 of the Children Act 1989 on the statute book, it has been a common perception that that the field of private fostering is outside the regulatory framework. In fact, there is a duty to notify the local authority if intending to foster a child for longer than 28 days (or fewer if intending to foster the child again for a longer period). The current position, however, is that relatives are exempt, so the present regulations would not have helped Victoria Climbié. If the regulations in relation to private fostering are compared to the requirements for childminders under the Care Standards Act 2000, there are very clear discrepancies that require attention.

Associated recommendations

- The recommendations of the Laming Report should receive urgent consideration. **Action – Legislative reform, DCA court rules, Minister for Children, National Assembly for Wales, DfES regulations and guidance**
- An amendment the Children Act 1989 should require all private foster carers to be registered in the same way as childminders. **Action – Legislative reform**

10. CHILDREN, SAFETY AND VIOLENCE

These are issues which were raised by hundreds of the children and young people who responded to the *Your Shout!* questionnaire. The issues of personal safety and exposure to violence for those both in and out of care are clearly very high on children's agenda and their responses are fully discussed in the *Your Shout!* report, published in parallel with this review. The harm done to children through routine exposure to violent and abusive behaviour is still largely underestimated. The issue of violence between adults in the child's household is an area which was not adequately addressed by the Children Act, largely because of its dichotomised approach to the position of children in public and private law proceedings. Respondents felt that insufficient attention is paid by courts to the need to ensure that children are safe when Section

8 contact orders are made. Proper risk assessment procedures could assist courts in determining contact disputes.

Associated recommendations

- There is a need for publication of practice directions and guidance on the establishment of risk assessment procedures in private law proceedings, to ensure that all children are given the same protection as those in public law proceedings. **Action – DCA practice direction, Minister of Children, National Assembly for Wales, DfES guidance**
- Qualifying and post-qualifying training for all multi-disciplinary professionals should include the effects on children of being exposed to physical violence or verbal abuse between adults in the same household. **Action – DCA, Minister for Children, National Assembly for Wales, DfES, General Social Care Council**
- Legislation is needed to remove the existing common law defence of "reasonable chastisement" which justifies corporal punishment by parents and others. **Action – Legislative reform**

11. CHILDREN ACT ORDERS

There was a wide spread of both positive and negative comments about many of the orders available under the Children Act 1989. There was a general appreciation of the range and flexibility of the menu of orders on offer as mediated through the welfare checklist, though there was also a number of misconceptions about what was and was not possible. There was a general consensus about the difficulties associated with the following orders:

Section 31 Supervision Orders are not being used as a sufficiently powerful alternative to full care orders. A review of the relevant rules and guidance is necessary in order to explore ways of encouraging greater use. It should be possible for orders to be made for three years in the first instance and should include a duty requiring social workers to visit children who are the subject of orders and to review the order six monthly, in the same way as a care order.

Section 43 Child Assessment Orders appear to be used rarely and there is a lack of clear research material to inform about their usage (e.g. are they ever used as a threat?). On the other hand, the review produced no evidence that these orders can cause difficulties and they could have a valuable contribution to make in some cases. They could, for instance, be explored as an alternative way of dealing with the interface between child protection and children in need.

Section 16 Family Assistance Orders are widely perceived to be of very limited use, although there is a perception that they could be useful if there were clearer guidance as to when such orders are appropriate. This would obviate the need to adjourn cases to obtain addendum reports. They could, for example, be of much more potential use in private law disputes following parental separation. (See earlier comments on their value as part of family support services for children whose health and development is being impaired as a result of serious conflict about contact arrangements.)

Ex Parte Section 44 Emergency Protection Orders are widely perceived as problematic, involving potential breaches of parental human rights in relation to the requirements of Article 6 and a lack of access to appeal procedures. At the moment there is no facility for bringing cases

back to court within 72 hours. Guidance should be in line with the judgement in the case of PC& S v UK [2002] 2 FLR 631 - namely that the action taken should be proportionate to the emergency.

Associated recommendations

- Information is needed on the current use of supervision orders, with a view to amending guidance in order to encourage increased use in appropriate circumstances. **Action – DCA, Minister for Children, National Assembly for Wales**
- More information is needed about the current use and usefulness of child assessment orders. **Action – DfES**
- Best practice guidance is required on the use of Section 16 family assistance orders in order to increase their use in appropriate cases. Amending legislation may be necessary to give the court greater discretion as to their use. **Action – DCA, practice direction**
- Ex parte emergency protection orders should be used only when absolutely necessary. Guidance compliant with the requirements of the Human Rights Act 1998 and relevant case law should be issued. **Action – Practice direction**

Additional general findings

1. **There is a problem caused by lack of structures as well as services, and an acute shortage of suitably trained and experienced personnel in all parts of England and Wales.** This is an extremely serious problem, the potential implications of which are often underestimated.
2. **The lack of importance and respect which is given to family law generally and the need for a specialist family court is another problem.** As one respondent wrote:

   "For too long family law has been the poor relation in the legal system."

   There is still a lack of recognition of the fact that the requirements of family law work are very different from the requirements of criminal and civil work. Although proceedings are designed to be inquisitorial by nature, they are widely perceived to be adversarial by the parties involved, particularly as they take place in, as another respondent put it, "spectacularly large intimidating Victorian gothic courtrooms".
3. **There is profound concern, not to say alarm, about the quality of services being provided by CAFCASS** and the knock-on effect of this in terms of undermining the capacity of the newly combined service to safeguard the welfare of children involved in both public and private law proceedings. The service has been the subject of a parliamentary select committee of inquiry. Respondents would not wish to see CAFCASS' organisational difficulties used as a justification for non-implementation of Section 122 of the Adoption and Children Act 2002 (or any other legislation that impacts directly or indirectly on children's right to appropriate representation). Nor should they be a reason for cutting down on the duties and responsibilities of the CAFCASS officers, for example, in respect of timetabling of cases and becoming re-involved in cases if it becomes clear that care plans are not being implemented and that changes are detrimental to or contrary to the wishes of the children. The role of CAFCASS in relation to the protection of children's human rights should also be clarified as a matter of urgency. There is profound disillusionment and disappointment about CAFCASS's failure to grasp the opportunities offered by the

establishment of the new combined service. *The Lord Chancellor's Department Select Committee of Inquiry* report published in July 2003 made 48 welcome recommendations for the changes necessary to enable CAFCASS to function effectively. These recommendations should not be overlooked and should be implemented as a matter of urgency.

4. **Today's workforce needs additional training to cope with tomorrow's problems.** Legislation, however good, will be ineffective if practitioners are not using it to full advantage. Moreover the Children Act does not stand-alone and in some cases its relationship to other legislation, particularly in key areas of need, is not readily understood or used to inform or assist young people in establishing their rights. The review findings clearly make the case for a national inter-disciplinary training initiative, associated with the implementation of the Adoption and Children Act 2002. Some of today's workforce has not had the opportunity to benefit from the many, high quality Children Act training packages and courses widely available when the Act was implemented in 1991. At that time 55,000 people received training on the new provisions. Now, as well as the nine helpful volumes of regulation and guidance that accompanied the Children Act, there is a plethora of valuable, but often inaccessible practice guidance disseminated across the websites of different government departments. The result is that as the Association of Lawyers for Children pointed out:

   > *"Those carrying out responsibilities in care cases often do not know how to get the best for children and young people from services dealing with education, health, mental health, housing and education."*

   The training initiative recommended by the review should be accompanied by a comprehensive audit of all legislation and practice guidance that interacts, or is likely to interact, with the Children Act. The resulting compilation should be publicised and disseminated to practitioners as part of the national training programme and should be accessible from one central location or website. Current training initiatives reflect the budgetary constraints experienced by local authorities forced to balance competing priorities. Nevertheless, the review findings demonstrate that there would be considerable potential value in ensuring that the workforce of today and tomorrow are sufficiently well informed to make creative use of the Children Act and linked legislation to improve the wellbeing of children and their parents and carers.

Finally, the review panel hopes that the messages from this comprehensive review will be used constructively to inform the consultation process accompanying the Green Paper *Every child matters,* September 2003, bearing in mind that any legislative or organisational changes will not be effective unless accompanied by a substantial injection of resources.

Part Three

Responses to the questionnaire

General matters

Question 1: Do you consider that the Children Act 1989 is achieving its aims? If not, in what broad areas do you consider amendment necessary?

The majority of respondents considered that the Children Act 1989 was broadly meeting its objectives and was a good piece of legislation which had been hampered in implementation by shortage of resources and the lack of an infrastructure of services to allow it to protect and secure children's futures as effectively as possible. There were, however, some areas about which there was a high degree of consensus and concern:

Shortage of financial and human resources

All respondents reported an acute shortage of resources within the court system and in social service departments, partly caused by recurring funding problems. Respondents cited shortages of judges, expert witnesses, children's guardians, family court reporters and experienced child care social workers and managers. There was also a shortage of physical resources, such as contact centres, specialist respite provision, appropriate provision for vulnerable children and young people and especially those with disabilities or special educational needs. The clear message from respondents was that shortages of resources mean that "children in need become children at risk" as the pinch is primarily felt in the family support services. Shortages of suitably trained and experienced personnel contribute to services that are predominately reactive rather than proactive, and resource limited rather than needs led. One respondent said what was needed was a "healthier and competent" workforce.

Delay

Virtually every response cited delay within the court system as the greatest failure of the Act. The timetable originally envisaged for care proceedings was not achieved in any of the areas covered by the respondents. (Since the survey was conducted, the Lord Chancellor's Department has set up an advisory committee on judicial case management in Children Act cases. The committee has produced a protocol, with the aim of expediting proceedings. The protocol was introduced in November 2003.) *(See Appendix 1: Delay - Causes and Cures)*

Separate representation

Respondents commented on the very different approaches to the separate representation of and consultation with children involved in public and private law proceedings. Children involved in public law proceedings have the benefit of separate representation whilst those in private law proceedings do not. This differentiation was particularly difficult given the lack of risk

assessment procedures and the difficulties of enforcing contact orders in the face of implacable hostility between parents. These concerns have led to fears that children's needs are being sacrificed to parents' wishes.

Lack of support services for 16 and 17 year olds

Widespread difficulties appear to be arising in cases where both the local authority and the parents effectively abandon their responsibilities to provide accommodation and support. Although the responsibilities to those leaving care has been strengthened by the Care Leavers Act 2000, there are many teenagers who remain vulnerable in the community and for whom local authority responsibility has been diluted rather than strengthened. Respondents quoted examples of under-16s being placed in bed and breakfast accommodation when their parents refuse to look after them and local authorities are reluctant to take responsibility. In particular, there is the problem of lack of services for pregnant 16- and 17-year-old girls, who are often passed to adult teams and placed in inadequately checked or unsuitable bed and breakfast accommodation.

Adoptive parents also encountered grave difficulties in obtaining support services for their teenage children. One respondent wrote: *"from what adoptive parents say about their attempts to find help for their 16 and 17 year olds, most of these parents would say 'What services?' There simply are none."*

The status of the children of asylum seekers as children in need and the attendant responsibility of local authorities to accommodate them is also a highly contentious issue.

Local authorities' discretionary powers in relation to children in need

The discretionary powers of local authorities, as set out in Section 17 and Schedule 2 of the Act (support for children and families) are not strong enough. The chronic shortage of funding for support services to children and families means that there are too many areas where local authorities do not exercise their very wide discretion to provide the early support families need. As one respondent put it: *"the fact that the definition of 'in need' is left to local authority discretion must mean that some categories of children are losers in this geographical lottery."*

The lack of powers of review by the court

This lack is perceived as a significant lacuna in the present legislation, although opinions are divided between the legal and the social work professions about the solution to the problem. This division is symptomatic of the delicate and often tense balance that exists in the present division of powers between courts and local authorities.

The shortage of children's guardians

The current functioning of CAFCASS (described as "chaotic" by respondents), following its establishment in April 2001, is another area of widespread concern. There are long waiting lists in many areas of the country. The problems are particularly acute in London.

Sibling contact

Contact between siblings and half-siblings appears to be receiving scant consideration from both

local authorities and the courts. The acute problems in relation to other contacts with family, friends and former carers expressed by the children in *Your Shout!* were not reflected in the adults' responses.

Private law residence and contact disputes

Concerns about contact centred on the difficulties of enforcing and facilitating contact in private law cases where the separating parties were implacably hostile to each other. The 42 judges who responded to the consultation were particularly exercised by these problems.

Arrangements for private fostering

Perhaps not surprisingly after the tragic death of Victoria Climbié, many respondents raised concerns about current arrangements for private fostering.

Differential definitions of significant harm

The Section 31 definitions were perceived as generally helpful, but there were reported difficulties in more complex cases.

Human rights compliance

There are some areas in which the Children Act is not seen as human rights compliant. Examples were:

- Section 25 Secure Accommodation Orders
- The lack of separate representation for children in private law proceedings
- The lack of specific inclusion in the Act of young offenders as children in need
- The question of whether the Children Act applies to children in prison
- The lack of provision for unaccompanied minors coming from abroad
- The abuse of children's human rights involved in the use of physical punishment
- Concerns that any steps to dismantle the current system of "tandem" representation in public law would constitute a breach of the human rights of the children concerned.

Question 2: Child's welfare and rights.

Does the Act achieve an appropriate balance between the rights of the child to have his or her wishes and feelings ascertained and considered and the court's responsibility to give paramount consideration to the welfare of the child?

(a) In public law proceedings
The responses to this question reflect the very positive feelings which respondents had about the "tandem" system of representation of children in public law proceedings, put in place by the Children Act. The advantages of having both the children's guardian and the children's family solicitor are clearly greatly appreciated and seen as one of the successes of the Children Act. It

is, however, also clear that, since the establishment of CAFCASS in April 2001, confidence in the service has declined and what has been seen as strength is now emerging as a major weakness. Delays caused by the lack of availability of guardians and concerns about the quality of reporting are common. The National Association of Guardians ad Litem and Reporting Officers (NAGALRO) expressed profound concerns about the current operation of the service and in particular about the large numbers of experienced guardians who had left the service after the establishment of CAFCASS in April 2001. There are also shortages of family court reporters, leading to delays in the preparation of Section 7 reports in private law proceedings.

There are worrying indications that the two distinct statutory roles of "representing" (children's guardian) and "reporting" (family court reporter) may be becoming blurred into that of one generic CAFCASS caseworker. So far there has been very little of the convergence training needed to ensure that practitioners have suitable training for each task, rather than a crude blanketing of the two roles into one.

NCH took the view that:

> *"The proposed development of generic caseworkers within CAFCASS is not likely to assist, given that the representation of views and the balancing of welfare is a judgement that requires considerable knowledge, experience and investment of time to listen."*

(b) In private law proceedings

Clearly, recent debates about the enforcement of contact orders, the publication of the Children Act Sub-Committee (CASC) report Making Contact Work and discussions around implementation of the Adoption and Children Act 2002 have focused public and professional attention on the situation of children involved in private law proceedings in a way which has not happened before. The judges' responses were significant, in that there appears to be a significant shift from the language of mediation and conciliation to the language of enforcement as a way of dealing with implacably hostile parents. There was also an increased recognition that, as the Grandparents' Association put it "the adult litigants frequently lose sight of the child's interests (if they ever had them in view)" and that some form of separate representation of those interests is necessary.

There was pessimism about CAFCASS' legal services being able to cope with any increased demand in this area. Some social services departments are annoyed that they are being put under pressure to become more involved in preparing Section 7 reports, in an area that they have traditionally avoided because of the additional funding implications. There was a strong feeling that there must be a change of culture as well as change in policy and procedure in relation to children caught up in distressing residence and contact disputes. It seems clear from the responses that the interests of these children cannot always safely be left to parents.

The lack of risk assessment procedures and any independent assessment of the child's situation are also perceived as significant gaps in current provision. Proposals for change include:

- The implementation of Section 64 of the Family Law Act 1998 (which introduced the possibility of separate representation for children in private law proceedings for the first time)
- An extension of the role of children's guardian to Section 8 proceedings
- An increased involvement of CAFCASS legal services (although many doubted the capacity

of the organisation to cope with the increased work load)

- The introduction of independent children's advocates to make sure that children's wishes and feelings are made known to the court.

Since the review was carried out, the representation of children in private law proceedings has been extended by Section122 of the Adoption and Children Act 2002, although the enactment of the requisite court rules will still be needed to determine which children will receive representation.

Question 3: Partnership with parents.

(a) Do the provisions of the Act facilitate flexible multi-agencies services to parents and children in the way they will find most helpful?
The answer to this question was an overwhelming "no". The response from ParentLine Plus was typical of many:

> *"Although respondents commented positively on the existence of Section 27, designed to facilitate inter-agency co-operation, there is no duty on housing, education and health authorities to co-operate with social services departments in identifying common aims and making resources available."*

(b) Are financial and human resources available to ensure that as many children as possible can be brought up safely and have their needs met by their families?
Again, there was an overwhelming "no" to this question. There is evidence from all parts of the country that social services departments are in a state of almost constant crisis in terms of both finance and human resources. Children and family budgets are constantly overspent and many social workers felt that there was too much emphasis on their responsibilities, rather than a shared responsibility with allied services in housing and education. They also felt that too many resources are going to children being looked after and that, in some cases, the making of an order is seen as a gateway to accessing services. As one respondent put it, "social workers are involved in rationing in the same way as every other service", and this involves some difficult decisions in relation to prioritising services. Budgetary constraints also mean that it is impossible to sustain effective services to all children in need. Although Section 17 and Schedule 2 provide an admirable framework for the support of children and families, there was a great deal of support for the view that:

> *"In reality, local authorities have accorded greater priority to parts of the Act which cause greater political and media consequences when ignored than they have to Section 17".*

Question 4: Does the Act encourage the flexible use of respite and short-term accommodation in order to support children in need and their parents?

There is concern about the need to balance the flexible use of respite and short-term accommodation with the long-term effects of the child coming in and out of care. There is a consensus of opinion about the chronic lack of support for the parents of children with disabilities, particularly those who present with seriously challenging behaviour. It appears from the responses that short break respite services for disabled children and for families under stress are very patchy and almost absent in many areas.

Question 5: For children in respect of whom care orders are made, is the concept of care shared between the local authorities in loco parentis and the child's parents/carers working? If not, what are the obstacles?

There was a certain amount of cynicism about the concept of shared care. As one respondent put it:

> *"This is a fiction, local authorities can call the shots and often do not consider parents' views."*

Similarly and worryingly, one judge said:

> *"I cannot call to mind a case where the care shared concept was operative at all."*

Many non-social services respondents thought that the local authorities found it difficult to share. Some respondents suggested that sharing can sometimes work well and, perceptively, one respondent pointed out that the biggest single factor in success is the personalities of the family and social workers involved - relationships must be good to be effective.

Responses suggested that it would be helpful to have clarification of the role of parents and their rights and duties in permanency planning meetings, in reviews, in relation to their rights to use Section 26 complaints procedures and in adoption panel meetings. This clarification, however, is something that could be contained in regulations rather than in the Statute itself.

Question 6: For children living with a parent or relative, but separated from one or both parents and/or siblings, do the provisions of the Act support the family unit whilst ensuring that, unless this is likely to impair their welfare, they remain in contact with the non-resident parent/s and other relatives?

(a) In public law proceedings
It was felt that that the principles implicit in the Act are right, but that the resources available limited implementation. Moreover, practice was confused and, as one respondent said, "judicial decisions are occasionally perverse". Advice to the court is not always perceived as very helpful in this context. The difficulties are in the available network of related services that make contact a reality. It would be possible, for example, to apply aspects of Schedule 2 to support contact, but this was apparently a rare occurrence.

One of the major perceived problems relating to the implementation of provisions of supervision orders with conditions is the lack of enforceability of those provisions. For example, in the case of a supervision order with conditions relating to contact, treatment or assessment, a failure to comply is seen as unenforceable.

It was felt that there are particular problems in relation to sibling contact and contact with half brothers and sisters. Fostering placements often lead to separate placements for the sibling group.

(b) In private law proceedings
There are clearly huge problems in relation to the maintenance of contact with the non-resident parent and the position of children faced with implacable hostility between parents. The Act is seen as vague in relation to private law proceedings. Fears were expressed that whatever contact order resulted, that order was likely to remain in place because of the emotional and

financial constraints involved in taking the matter back to court. Except in very rare circumstances, respondents pointed out that it would be very unlikely that the child would have either the information or the necessary independent representation to be able to intervene in any effective manner (and particularly safe contact). The Act was criticised for failing to adequately address the question of contact between the child and the non-resident parent. Many feel that the provision of financial support for contact centres should be included in the Act.

Question 7: Children should be safe and interventions effective.

(a) Does the language of Section 31 (i.e. significant harm) facilitate the protection of children from ill treatment or neglect? Please say if the threshold definitions work better for some sorts of ill treatment/neglect than for others?

There was overall support for the language of Section 31, although there were reported difficulties in precise operational definitions of all types of harm. It was felt that the importance and impact of emotional abuse is widely underestimated in relation to children involved in private law proceedings. It appears that some local authorities have higher thresholds of intervention than others. Some judges felt that the pre-Children Act wardship approach was superior, especially as now it would be based on an informed view of the welfare checklist contained in the Act. On balance, however, threshold definitions seem to be working, augmented by the current revision of *Working Together*, which was welcomed.

Some local authorities take a dim view of parents' exercise of their parental responsibilities. One respondent summed up the issue thus:

> *"Parents will often not play their part in accommodation agreements and use the provision of accommodation as an opportunity to reject the young person and absolve themselves from exercising their parental responsibility."*

There are also difficulties in families accessing help. It could be the case for example that parents have been forced to abandon their children as the only way to get help. The lack of suitable accommodation for this age group has resulted in many unsuitable bed and breakfast placements, which have not been adequately checked.

(b) Are the services for 16 and 17 year olds appropriate, particularly when the children concerned are not care leavers?

This question generated some of the most emphatic and disturbing responses of the survey. NAGALRO referred to this age group as *"the discarded minority"*. Support services are generally described as *"abysmal"*. There is a particular dearth of resources for those who are disabled or who have learning difficulties, as illustrated by the following comment:

> *"Sometimes the mere fact that an adopter has 'brought in' a child with a disability from another area, thus 'using up' resources in the resident area, is greeted with dismay and disregard, rather than a recognition that the child's needs must be catered for."*

Those who manifest challenging or sexually abusive behaviour are even more difficult to accommodate. There is also a particular problem in relation to the accommodation of young unsupported mothers. The general shortage of services appears to be related to all of this age

group, while those with special or specific needs within it experience particular difficulties in both finding and accessing appropriate services.

There was very strong support for the need to make more explicit the local authorities' duty to provide accommodation for specific categories of children under Section 20. Vulnerable children, especially teenagers, are not receiving the services they need. There were very strong indications that the practice is better with under-14s. One of the most worrying indications from the responses is that some parents appear to be abandoning their responsibilities in relation to their children. This has apparently resulted in higher than necessary numbers of teenagers needing accommodation under Section 20. Such young people have often experienced years of rejection and, for them, services offered appear limited. One worrying response indicated that there are significant inter-agency issues, with some local community and mental health teams, for example, ruling out extensive work with such children "because of the perceived lack of evidence of positive outcomes".

Question 8: Avoidance of delay.

In your experience is there a problem of avoidable delay?

(a) In court proceedings
To say that the answer to this question was "yes" would be to underestimate the strength of feeling and frustration currently being experienced by all court and welfare personnel involved in all proceedings, at all levels. (See Appendix 1: Delay – Causes and Cures)

(b) In local authority decision-making and practice
Again, the answer is a resounding "yes". The responses indicated a high degree of anxiety and anger about the current situation. One district judge spoke for many when he said:

> *"We see local authorities under-funded and under-resourced, we see social workers clearly exhausted by carrying caseloads far heavier than is reasonable. They have no time to gather information and to consider and evaluate that information in order to prepare long term plans for a child in need and/or in danger. They have little time to get engaged in anything other than crisis management. We see CAFCASS in disarray, again under-funded and unable to undertake effectively the task that it was set up to do. Government frequently pays lip service to the needs of the most vulnerable in our society, yet CAFCASS was set up on a budget which would provide just one aircraft to fly over Afghanistan!"*

Question 9: In your opinion, is the Act working as intended to achieve a balance between family autonomy and the State's duty to intervene to secure the well-being of children?

(a) In public law proceedings
Many respondents appeared to feel that the balance is in favour of family autonomy, to the detriment of the child, although this is not supported by the figures on receptions into care and the numbers of cases in which orders are refused. Local authorities were concerned about the increase in challenges to local authorities' decisions by parents initiating proceedings under the Human Rights Act. There were also a number of comments from respondents from social services departments, to the effect that guardians seemed to be in favour of parents' rights rather

than those of children.

(b) In private law proceedings
Traditionally, the state has been reluctant to intervene in private family law matters, but the responses to this question indicated a shift in the traditional view that parents are always reasonable people and can always be trusted to act in the best interest of their children:

> *"If parents were always reasonable people, the state would not have to intervene."*

However, in general, respondents felt that children in private law proceedings are still seen as the possessions of their parents:

> *"Children in private law proceedings have the same protection as pension fund or property disputes."*

It is striking that some professionals in the field appear to be under the impression that there isn't a welfare checklist in private law. This confirms the impression that the welfare checklist is given insufficient prominence within those proceedings. The amendment to the Children Act, contained in Section 120 of the Adoption and Children Act 2002, recognising the links between domestic violence and child protection, has been welcomed.

Question 10: Does the Act achieve the appropriate balance between parental responsibilities and children's rights? If no, are there any changes you would like to suggest? Please answer in terms of:

(a) Public law (please also make any comments on relatives', foster carers' and adopters' rights and responsibilities)
A considerable number of local authority respondents felt that there is still too much emphasis on parental rights, rather than responsibility, although organisations representing parents had an understandably different perception of this. The Act, it is felt, could make far clearer the rights and responsibilities of relatives and foster carers when a care order has been made. More generally, it was suggested that foster carers should receive protection under the law when they have been looking after children for some time and the local authorities are proposing to move the child. This is often done without the foster parents realising that they could object and take action, for example, by applying for a Section 8 residence order, provided that they satisfy the residence qualification.

Many people also felt that there should be a clearer responsibility on foster and adoptive parents to honour contact arrangements and clearer court procedures to monitor this.

There is a strong body of opinion to support the right of looked after children to have a statutory right of access to independent advocacy services.

(b) Private law (please consider in relation to residence and contact disputes)
There were many problems in this area, with respondents commenting on the prevalence and apparent intractability of residence and contact disputes. Many respondents feel that children in private law proceedings are treated as "objects", to be moved around at the convenience of their parents. In the absence of the "satisfaction" hearings, which existed before the implementation of the Children Act, the court may only get to hear about a child if there is a problem as

perceived by one of the adult parties. There was also criticism of the limited government funding available for contact centres and particularly supervised contact centres.

The Women's Aid Federation for England (WAFE) was concerned that the extension of automatic parental responsibility to all unmarried fathers (contained in the Adoption and Children Act 2002) who register the birth of the child jointly with the mother will make it easier for abusive unmarried fathers to track down their victims. Children have a right to be protected during any contact that is ordered; they also have a right to have their wishes given proper consideration by the court. WAFE reported many cases were children are angry because they are being forced to have contact with violent parents and there have been cases where contact has been granted to a Schedule 1 offender. Welcare, a voluntary organisation running contact centres, was concerned that children who attended its contact centres were never consulted about their wishes and feelings in relation to the contact arrangements being made for them.

Question 11: Does the legislation facilitate a consideration of the needs, wishes and feelings of all siblings in a family?

(a) In public law proceedings
The general consensus was that if not a "relevant child" in the proceedings, then a child's needs, wishes and feelings receive scant consideration. Siblings tend to be represented as a group in all proceedings, not as individuals with separate needs and views. In public law, the needs of younger children tend to override those of older siblings, particularly when split placements are being considered. (The *Your Shout!* findings also demonstrate this very powerfully. The continuing importance of contact with family, previous carers and friends has been woefully underestimated.)

Overall, the quality of the representation of the needs, wishes and feelings of all siblings in a family is dependent on the quality of the children's guardian's report, which should accurately reflect the wishes and feelings of all the children in the family.

(b) In private law proceedings
Respondents felt that there is an implied assumption that the *"adult litigants would take proper account of the wishes and needs of all the children, which is often not a well founded assumption"*.

In general, the professional expertise and time needed to gather children's views are currently not available. Much depends on whether the CAFCASS officer is involved (only in a minority of cases) and on the quality of the report prepared. Some respondents doubt whether CAFCASS family court reporters have the necessary skills and experience in communicating with and assessing the needs of children and young people. Others feel that the service is *"patchy"*. It was correctly pointed out that the statutory role of the children's guardian and the family court reporter is different. The children's guardian is an independent representative for the child, with powers to commission expert witness reports, appoint a solicitor on behalf of the child and make representations to the court of the guardian's own volition. The role of the family court reporter is not that of an independent representative, but of a reporter reporting under the courts' direction on aspects of the case which are in dispute between the two parents or adult parties. Reporters can comment on children's situations and wishes and feelings – indeed, good practice demands that they do so – but they have no statutory right to represent the separate interests of children. Recent amendments to Rule 4.11.B of the Family

Proceedings Rules 1991 were not seen as going far enough in this context. This was partly because of a lack of confidence in the efficiency and quality of the CAFCASS service generally.

One respondent summed up the situation in both public and private law proceedings as:

> *"The importance of siblings to children whose relationship with their parents has been damaged (often the case in both public and private law) has been badly underestimated by the Children Act. Children should have rights to apply for contact in both sets of proceedings."*

As far as the adult parties are concerned, one mediator thought:

> *"This is one of the most difficult areas of our work in mediation. The only way to be more effective is for one or two agencies to spend more time with the family to make a full assessment of what is required to support children in relationships with both parents."*

Respondents suggested that children involved in private law proceedings should have access to a range of support services including information, consultation and representation.

Question 12: Assumption of reasonable contact.

In your opinion/experience do contact arrangements work for:

(a) Children in public law proceedings, particularly for those children who are the subject of Section 34 defined contact orders?

Huge resource implications for the local authorities are identified in this question. Many local authorities feel that effective implementation would require proper contact centre provision, accompanied by adequate funding. It is, apparently, a contentious area "ripe for complaint" and the tension that is generated through the process of regulating and supervising can prejudice relationships between parents and local authorities.

Use of Section 34 appears to be very patchy. In South Wales, for example, it is reported that very few Section 34 orders were made.

Problems are arising in relation to shortage of the social services personnel who are needed to supervise or regulate defined contact orders. Children in local authority care frequently ask how they can go about trying to see family and friends and are generally not given sufficient information about how this might be achieved. In addition, problems can arise when children are accommodated and subject to care proceedings, but when no order has been made. In this situation, there is no provision for the resolution of disputes. Much depends on the attitude and commitment of those concerned in each case. However, as the General Council of the Bar response pointed out:

> *"All that can be said is that the terms of the Act provide a forum for decisions to be made about the right order in each case. Making contact work is a whole area for separate debate."*

(b) Children in private law proceedings (please consider this in relation to Section 8 orders and the position of non-residential parents and the cases involving violence and/or serious conflict between parents or other adults in the same household)?

In general, respondents felt that the situation here is far worse than in public law proceedings. There are too few contact centres, particularly supervised contact centres. This is an area in which social services departments are loath to become involved, because of a shortage of resources. Some respondents commented on the lack of independent organisations to assist with contact arrangements and the lack of resources to facilitate contact, unless a family assistance order has been made. The contribution made by independent organisations like the National Youth Advocacy Service and the Child Contact Centre in the Midlands was welcomed by judges. Large numbers of estranged fathers have difficulty in maintaining contact with their children and this is a matter of widespread concern. However, contact provisions can be exploited to endanger and abuse children. Welcare and WAFE gave evidence that contact is often granted against the wishes of the children and were extremely concerned that children are endangered because of some court decisions (e.g. Re.O (contact: Imposition of conditions [1995] (contact almost always in the best interests of the child) and Re.H and R (Child Sexual Abuse) (Standard of proof) [1996] AC 563. (The more serious the allegation, the less likely that the event occurred and therefore the more cogent the evidence needed to establish it.) Legal reform is needed to override what are seen as damaging case precedents.

The National Youth Advocacy Service, the NSPCC, NCH and others maintained that without adequate separate representation in these cases, children may be put at risk.

Judges expressed frustration about parents who use children as a "battleground":

> *"There are and will always be non-residential parents who should be having contact but who don't. There are some cases where contact never works and enforcement has always presented the court with huge difficulties. There is now greater awareness of the dangers of and the links between domestic violence and child abuse and in these cases, case law now assists the court in the relevant principles to be applies in cases of allegations of domestic violence. However, overall this is a highly problematic area in which there is a need for a change of culture. Apparently, there are proposals to develop a different approach which it is hoped will produce general acceptance that in 'normal' cases (i.e. cases not involving domestic violence and concerns about drug abuse etc). There should be an understanding that there should be shared parenting (as opposed to shared residence). This would mean a starting point whereby it is acceptable that the child will spend alternate weekends and half the school holidays with the non-resident parent."*

This programme already exists in America and it is reported that it is hoped to introduce pilot projects into two or three London courts very soon.

Some judges were in favour of children being active participants in decision making:

> *"If children could be left alone by both parents to deal with contact with the non-residential parent then aspects of their health and educational performance and future well-being would be enhanced."*

Question 13: Unifying and co-ordinating existing legislation. Is the Children Act 1989 consistent with other relevant pieces of existing or proposed legislation?

Respondents felt that inconsistencies exist in the following areas:

Children (Scotland) Act 1995
The Children (Scotland) Act has a stronger approach to children's rights and there is an assumption of competence to instruct a solicitor at the age of 12.

Section 6 of the Children (Scotland) Act places a duty on the court to ascertain the wishes and feelings of children involved in private law disputes.

Leaving Care Act 2000
This Act considerably strengthens the duty of local authorities under Section 24 of the Children Act 1989.

Care and Disabled Children Act 2000
This Act emphasises parents' rights to services and some respondents wonder how this equates with the paramountcy principle and the responsibility to consider the wishes and feelings of the child, as required by the Children Act 1989.

The Crime and Disorder Act 1998
The whole ethos of this Act and many of its provisions (i.e. child safety orders) were felt to be in conflict with the ethos and provisions of the Children Act 1989.

The different legislative routes into secure accommodation (i.e. Section 25 and Section 52) were thought to be extremely confusing.

The Adoption and Children Act 2002
The Act is designed to bring adoption legislation into line with provisions of the Children Act 1989. There is a great deal of concern about the pressure imposed by the time-scales set out for achieving *"permanency"* for children. Two main concerns were expressed:

- The timetable will be very difficult to achieve, given the current problem of delays which are endemic within the court system
- The creation of general adoption targets could distort perceptions of the needs of individual children and skew the appropriate decision making processes. As one respondent put it *"political dogma makes poor social policy"*.

Criminal Law
It was felt that there is some incompatibility with criminal law, for example conditions for bail. Often bail is granted without prior discussion about the effect on the child, who may be in contact with the accused. However, it was felt that recent guidance on parallel planning may improve matters.

Part IV of the Family Law Act 1996
There was a consensus that this needs careful cross-referencing in terms of its compatibility with the Children Act 1989.

Homelessness Act 2002
The new duties under this Act should be better known to all professionals, since the regulations made under this Act extend the concept of priority need to:

- 16 and 17 year olds other than those who social services are responsible for accommodating,

as well as care leavers under 21

- People who are vulnerable as a result of violence or threats of violence
- People who are vulnerable as a result of prison, armed forces or care background.

In addition the Association of Lawyers for Children pointed out that:

> *"The relationship with the law on special educational needs and disability also requires wider discussion: the interaction of statements, personal education plans, care plans and pathway plans has not been debated publicly, nor is it well understood. Some local education authorities and social service departments frequently do not know what the other is doing in relation to children for whom both are responsible."*

Question 14: Demonstrating Human Rights Compliance. Is the Children Act 1989 compliant with the Human Rights Act 1998 and the U.N.C.R.C.? If not, please identify areas in which it is non-compliant.

The following were suggested areas of non-compliance:

Article 8 – The Right to Family Life
Recent case law, in which the rights to family life apparently overruled the need to protect the child, has given rise to some concern in local authorities. They fear that the balance between family autonomy and child protection has been weighted in favour of parents.

Article 6 – The Right to a Fair Trial
Ex parte applications for emergency protection orders are thought to be potentially non-compliant with Article 6. Doubts are also expressed in relation to the forced disclosure of documents/reports by parents involved in care proceedings (See Re L [1996] 1FLR 999) and current practice in relation to the disclosure of admissions to the police (See Re EC [1996] 2FLR 725). In addition, there were concerns about freeing applications and care proceedings being heard at the same time (See P, C & S v UK [2002] 2FLR 631).

The question of whether childcare judgements should be given in open court is another contentious area. There is a heated debate about the difference between "secret" and "private" proceedings.

The failure of local authorities to meet the needs of disabled children is seen to be due, in part, to the language of discretion rather than duty in relation to their responsibilities throughout Part III of the Act. (See Bolta v Italy. [1998] 26 EHRR.)

Article 6 – "Equality of Arms" for Children involved in Private Law Proceedings.
Children should not be disadvantaged in relation to other parties to the proceedings. The lack of separate representation of children involved in private law disputes has been strongly criticized. (See Dombo Beheer BV v The Netherlands [1994] 18 EHHR 213)

This principle also applies to the lack of separate representation of children in all adoption proceedings.

Article 6 and Article 8
The lack of court review powers is seen as a significant lacuna in current provision. There is no

effective machinery for protecting the rights of young children who have no parent or guardian able or willing to act for them. (See Re S (minors) [2002]) The role of the looked after children reviewing officer is not perceived as going far enough or being independent enough to comply with obligations in this area.

Article 5 – The Right to Liberty and Security of the Person
Many respondents were concerned about Section 25 (secure accommodation) orders, in spite of the decision in Re K. ([2001] FLR 526). They have continuing doubts about the compliance of S.25 of the Children Act with the Human Rights Act 1998.

Article 3 (freedom from torture or inhuman or degrading treatment or punishment), Article 5 (the right to liberty and security of the person), Article 8 (the right to respect and private family life) and Article 14 (prohibition of discrimination)
Smacking and the failure to give children the same legal protection against assault as adults, because of the defence of "reasonable chastisement", are thought to be in breach of these articles.

Article 14 – Prohibition of Discrimination
The non-application of the Children Act to children in custody was thought to be discriminatory and in breach of their rights under human rights legislation. The local authority should be responsible for these children in their areas, in the same way as they are responsible for any other child.

This article also applies to children involved in private law matters, as they do not have the same rights to be heard in proceedings that affect their lives as their counterparts in public law proceedings.

Children's rights to initiate applications under the Human Rights Act 1998
There is currently a dispute between NAGALRO and CAFCASS about how a child's rights under the Human Rights Act can be promoted, when the information needed to support the Human Rights Act application is privileged in Children Act proceedings. NAGALRO ask the question "Who is prepared to take action on behalf of the child?"

NAGALRO emphasise that *"any steps which might be taken to erode the child's current entitlement for legal and welfare representation in specified proceedings under the Children Act must be strenuously resisted to ensure that there is continued compliance with the H R Act."*

In addition there are potential breaches of Article 12 of the UN Convention on the Rights of the Child caused by the lack of representation: in private law proceedings; in only some adoption proceedings; and in the general lack of services of information, consultation and representation in all proceedings in which decisions are made about children's lives.

The lack of a Children's Rights Commissioner for England was criticised as indicative of an inadequate response to the spirit of both the convention and the Human Rights Act.

Question 15: Is the range of orders available under the Children Act 1989

(a) Adequate? If not, what else would you like to see?

There was a general appreciation of the range of orders available, coupled with a recognition that they were not being used as creatively as the Act had envisaged, or indeed, as the Act currently allows. The problems are not the fault of the Act, but more the fault of the way in which it is being implemented. There were two orders, in particular, which are singled out by many respondents for particular criticism and were described as either *"failures"* or *"a waste of time"*. They were Section 43 child assessment orders and Section 16 family assistance orders. It was felt that both of these orders need redrafting and review, in the light of other changes since 1989.

Section 16 family assistance orders, it was suggested, have much more potential to support families than is currently the case. They could be much more effective in providing support to families if the constraints of exceptional circumstances, limited duration of the order and the requirement for the consent of the parties were removed.

Section 27, designed to facilitate co-operation between local authority departments (housing and education for example) is clearly not being used as envisaged when the Act was implemented. Many respondents commented on the lack of co-ordination and the lack of multi-agency packages of care.

Section 26 complaints procedures were also seen as a problematic area. A common feeling was that they are too complicated and inaccessible for children to use and that they, too, need review in the light of experience.

The unfettered discretion of local authorities, once a care plan has been made, was a source of great concern for those outside social services departments. Many respondents thought that the role of the children's guardian should be extended to cover monitoring and reviewing the implementation of care plans. Those within local authorities, however, see the problems as too much interference from the courts, rather than too little.

Other perceived areas of need include:

- An order to cover children accommodated under Section 20, but effectively abandoned by their parents, to give the local authority parental responsibility without having to apply for a care order (i.e. to cover a situation where immediate medical consent is needed)
- A statutory right to independent advocacy services for all looked after children
- The availability of orders requiring parents of children who are the subject of private law disputes to attend classes on the damage they are doing to children
- A revision of emergency protection orders as apparently, in some areas, police powers to intervene are frequently used instead and seen as providing a more immediate response in emergency situations (e.g. where a mother is threatening removal from hospital or a mother and baby unit)
- A revision of the arrangements whereby permission for medical consent in relation to interim care orders has to go to the High Court (e.g. hepatitis testing)
- Powers of the court to appoint an independent representative for children in private law cases
- Powers of the court, at the first directions hearing, to mandate parent education, mediation

and counselling services, accompanied by effective case management

- A shared parenting order, to replace Section 8 residence and contact orders. The proposal is that parenting is shared in whatever way is best for the child. The base line starting arrangement would share time equally between the parents, to be adjusted to suit circumstances
- An order conferring a statutory right of contact with siblings for all children
- The establishment of a Children's Rights Commissioner for England.

(b) Sufficiently flexible to meet the needs of the children concerned? Please consider in relation to both public and private law proceedings
There was a general feeling that the lack of flexibility lies with practitioners, rather than with the Act itself. The following areas of deficit were identified:

- An order facilitating the transfer of responsibility for care orders across local authorities is needed. At the moment, the first care authority is dependent on the goodwill of the second care authority to carry out the statutory responsibilities
- Supervised contact needs much better definition. What exactly does this mean? What kind of supervision is necessary or required and by whom? This should not involve *"just leaving children at play centres"*
- The current lack of flexibility in the interpretation of Section 17 is thought to impact particularly negatively on children involved in private law disputes, children with disabilities, children who commit offences and the children of asylum seekers.

Question 16: Addressing the needs of a multicultural society. Does the Act meet the needs of the full range of diverse groups of children in Britain today? Please consider this question in relation to:

(a) Black and other minority ethnic groups
The situation generally is thought to have been much improved by the Act. However, as some respondents point out, the family justice system is mainly white and there is still a lack of understanding of many cultural issues.

Local authorities raised questions about the placement of foster children with carers who do not match children ethnically or religiously. There are not enough suitable foster/adoptive parents available, particularly given that children of African and African-Caribbean heritage are over-represented within the care system.

It was suggested that Section 1(3) (d) of the welfare checklist should be amended to reflect some of the changes in the community and society that have occurred in the last 10 years.

There is an acute problem in relation to services to asylum-seeking children who are members of a number of minority ethnic groups. The key question is whether they are children in need in terms of the Act. At the moment they receive little in the way of services.

(b) Disabled children (including learning-disabled children) and those with learning difficulties (including those deemed to have special educational needs)
There was a general feeling that resources are simply not there to meet the needs of disabled children, who were described as hugely under-provided for. Multi-agency packages are

apparently not forthcoming.

The Children Act included children with disability in its definition of children in need (S.17(11)). Local authorities are required to provide services for children with disabilities, designed to minimise the effects of those disabilities and to give children the opportunity to lead lives that are as normal as possible (Schedule 2, Paragraph 9). They are also required to ensure that any accommodation they provide is not unsuitable to the particular needs of the disabled child (S.23(8) and Children Act 1989 Guidance and Regulations Volume 6 Children With Disabilities). Children with disabilities and, therefore, special accommodation needs are doubly at risk in a situation in which they may find themselves unsupported in the community.

Further, the Section17 definition of disability is seen as *"antiquated"*, and needs amendment.

SPECIFIC MATTERS

Question 1: Does the checklist provide an adequate framework for considering the child's welfare? Should any specific points be added, for example, any harm he/she may suffer from being exposed to violence between his/her parents/carers? Any harm he/she may suffer as a result of changes to or loss of contact with any parent, carer, relative or sibling?

Those responding to the question chose to concentrate on the domestic violence question rather than other aspects of the checklist. The majority of respondents supported this proposal, on the basis that domestic violence is one of the highest correlates in child abuse cases and should, therefore, be in the checklist. Other respondents maintained that courts already take domestic violence extremely seriously. The use of the term "harm" rather than the listing of adverse behaviours allows a consideration of the abuse on a particular child.

Many respondents commented on the introduction of the welfare checklist as one of the positives of the Children Act.

Question 2: Given the recent House of Lords decision in relation to "starred" care plans (In Re S. (Care Order): Implementation of Care Plan. UK.HL.10 [2002]) and current practice in relation to care plans, would you suggest any amendment/s to address the problem of the courts' lack of powers to ensure that care plans are implemented as agreed in court?

This question was clearly very topical, provoking some very interesting responses. What was notable was that the responses from the judges were almost 100 per cent in favour of review powers for the court, while local authorities were almost 100 per cent against. The local authority responses also reflected some irritation with one of the more popular proposals, namely to retain the services of the children's guardian for six months after the making of the care order. Local authorities feel that this would further undermine their role in relation to that of the guardian and undermine their statutory powers and duties in relation to looked-after children. The point they make is that situations can change extremely rapidly and plans previously agreed in court can quickly become irrelevant. While this view has some validity, it nevertheless ignores the large body of evidence which indicates that local authorities, on their own admission, continue to fail as corporate parents, with many care plans unimplemented because of lack of resources and personnel. Many who responded are openly critical of the

House of Lords decision in Re S. and remain unconvinced that a local authority reviewing officer would have either sufficient powers or independence to challenge local authority decision-making effectively.

Although many respondents would welcome the idea of keeping children's guardians involved for up to six months after the making of the care order, there was recognition that, given current shortages of guardians and the waiting list for care proceedings generally, this could become a cause of yet more delay. There was a strong feeling that something should be done, given the very real problem. One respondent summed it up thus:

> *"The absolute divide in the Act between the court and the local authority is insupportable. The court is a public authority when making a care order and could arguably be in breach of the European Convention on Human Rights as having no ability to ensure the paramount welfare of the child following the making of that order."*

Others endorse this view. Although the European convention does not require that children's welfare is the paramount consideration, it does require public authorities (including courts) to act in the best interests of children. A respondent wrote:

> *"Failure of the local authority to have an achievable care plan or a failure to implement does not have regard to the paramountcy principle in Section 1(1) of the Act and is arguably a breach of the child's human rights."*

One constructive proposal was that local authorities should be placed under a statutory duty to provide any services that they have agreed to be delivered as part of the care plan. This would work in the same way that local education authorities are under a statutory duty to provide special educational provision that is identified for a child under a statement of special educational need. This would mean that children, parents, advocates, children's rights officers, children's guardians and other concerned parties could apply to a court if the local authority failed to provide the services identified under the care plan. Only identified services and not individual decisions or statements of intent would be set aside, because they can be little more than "wish lists". For example, it is not the local authority's fault if a child fails to settle in a foster home.

This and another proposal, the imposition of a duty on local authorities themselves to return the matter to court if they are unable to implement a care plan endorsed by the court, might provide a constructive way forward, strengthening local authorities in the allocation of additional and specific resources to provide services to children in need under Section17. It is, moreover, a solution that might be reasonably acceptable to both courts and local authorities.

Question 3: As the Act stands there is no provision for "split" hearings. The Children Act Advisory Committee Annual Report 1994/95 gave guidance to the effect that "consideration could usefully be given to whether there are questions of fact within a case which need to be determined at a preliminary stage such as an allegation of physical or sexual abuse."

(a) Do you agree that this or other patterns of split hearings might help to reduce delay? If so, how could guidance be incorporated into the legislative framework?
Opinion was almost equally divided on this issue. Some heralded the proposal as "good news

for lawyers", others thought it would add to delay, while others still pointed out the difficulties of finding hearing time for split hearings. Some areas reported that this is already being tried. For example, in Leicestershire there is an existing pattern of split hearings for the preliminary findings of fact. Obviously, this is not appropriate in all cases.

The answer to this question also raised questions about the extent to which children's guardians are exercising their considerable statutory powers (S.41 (10)) in relation to case management and the direction of the timetable in individual cases. It was clear that the huge problems of delay needed more timetabling direction and case management at every stage and not just in preparation for the final hearing. One respondent suggested that there should be adequate reasons why all parties cannot file statements as to threshold criteria and relevant issues within four weeks of commencement of the cases. Others thought that split hearings would be helpful, subject to judges' continuity and the exercise of judicial discretion. The majority thought that, on balance, this should be left to a president's direction rather than statute.

(b) Would it be helpful for the statute to define when such hearings would be appropriate?
The response to this question appeared to be statute "no", guidance "yes". There were also pleas for any change to be piloted thoroughly, before being introduced, and for decisions to be made in relation to each individual case.

Question 4: Do you have any comments on the likely impact on the Children Act of the provisions in the Adoption and Children Act 2002?

Here comments centred on the potential conflict between the imposition of government targets for adoption of children in care and the responsibility set out in Section 1(1) of the Children Act to give paramount consideration to the welfare of each individual child. NAGALRO's view was that parental rights to be heard and legally represented need to be improved. Children are still not parties to most adoption proceedings. Special guardianship orders should also be specified proceedings, allowing a children's guardian to be appointed. Some would prefer to have seen the whole issue of adoption adjourned until after a comprehensive review of the workings of the care system. Others felt that a review of adoption legislation was long overdue and broadly welcomed many of the provisions. There are however, reservations about the targets and time-scales that are being established. In addition many were concerned about the operation of the adoption register.

The amendments to the Children Act 1989 contained in Part 2 of the 2002 Act have very considerable implications, the continuing impact of which appear not to have been fully appreciated.

Question 5: Do you have any comments to make on the current arrangements for the separate representation of children and their interests in:

(a) Public law proceedings (including adoptions of children from care)?
There was general satisfaction with the statutory arrangements for the representation of children in public law proceedings and confidence in the "tandem" system of representation in which children's guardians and children's panel solicitors work together to provide a balance between children's rights and children's welfare. There was, however, a very high level of concern about the functioning of the service following the establishment of CAFCASS in April 2001. Since then, according to NAGALRO and many others, the quality of the service has deteriorated and

the former role of the official solicitor (now transferred to CAFCASS legal services) is, apparently, no longer working. Many were concerned that CAFCASS does not appear to have the fully trained and experienced children's guardians necessary and there were indications that the quality of some reports is becoming more questionable. There was worrying evidence that children's rights to representation were being filtered through CAFCASS's financial constraints and organisational difficulties. NAGALRO were unequivocal on this point:

> *"Any financial constraints imposed which will inhibit competent children from instructing a solicitor independently while retaining the welfare representation of their guardian and his/her legal representative is to be deplored.*
>
> *"Funding restrictions to inhibit full "tandem" representation for all specified proceedings for all specified proceedings unless a full professional investigation shows this to be unnecessary is also to be deplored (e.g. difficulties regarding S.39 discharge applications)."*

There are already cases in which children's guardians have not been appointed because of their lack of local availability.

In terms of gaps in the current arrangement for the separate representation of children in public law, it is proposed that children who are mothers should have an automatic right to legal representation and that children should have full party status in all adoption proceedings.

(b) Private law proceedings (particularly proceedings under Section 8, Children Act 1989)?
In the words of one respondent *"many cases cry out for it [representation] but do not get it"*. Currently children have no statutory right for representation in private law proceedings although they may apply for leave under Section 10 to initiate orders under Section 8 of the Act. However, as NAGALRO pointed out, the route to legal representation can be disputed and requires clear resolution. At the moment there is no provision for private law representation in the family proceedings courts and, if too many cases move to the High Court, additional delays would ensue. (In February 1993, the President of the Family Division directed that all children's applications should be heard in the High Court.) It is also clear that some judges are refusing applications for children to become parties, but baseline information on this point is not available.

Rules 9(2) and 9(5) of the Family Proceedings Rules 2001 were seen to be inadequate by the majority of respondents, who felt that separate representation was urgently needed. Both the law and the current arrangements are inadequate and this means that children's voices are not generally heard. Recent amendments to the Court Rules (Rule 4.11.B) are seen to be still inadequate in this respect. One judge reported:

> *"Court welfare officers have missed significant issues on cases that I have been part of."*

Another respondent said:

> *"Emotional damage is rife, slow to be appreciated and rapidly leading to a breakdown and damage to the child and parent relationship, to the detriment of the welfare of the child."*

The family court reporter is only involved in a small minority of cases and has the statutory

duty only to enquire and report, not to represent, protect or promote the interests of the child. Although the reporter tries to address the welfare checklist he/she cannot be a party to the proceedings and involvement is usually limited to one specific issue between the parents. He/she cannot instruct or direct but only assist the judicial process.

Children involved in private law proceedings have no real rights and their position is in stark contrast to their counterparts in public law proceedings. Representation is dependent on the discretion of the court in the unlikely event of children being in a position to seek leave under Section 10 to initiate proceedings under Section 8, or on the discretion of CAFCASS' legal department in seeking representation for them under Rule 9.5 of the Family Proceeding Rules 2001. A small number obtain representation through referral to the National Youth Advocacy Service. Representation, and indeed any objective consideration of their wishes or welfare, is therefore effectively dependent on the discretion and goodwill of the adult parties involved and is not a free standing right. The initial part of the review predated the passage of Section 122 of the Adoption and Children Act 2002 in November 2002. This section potentially adds Section 8 orders to the list of specified proceedings in Section 41(6) of the Children Act 1989. Section 122(2) provides for the subordinate legislation necessary for implementation. Delegates to the consultation conference welcomed this significant piece of new legislation.

Appendix 1

Delay – causes and cures

All respondents cited delay as a major factor in undermining effective implementation of the Act. Many expressed their extreme frustration at the scale of the problem. However frustrating for the professionals involved, delay is, above all, an issue for the child who, in becoming the subject of proceedings, enters an unknown world of which he or she has little understanding and less control. In the present situation of extensive and chronic delays in all proceedings at all levels of court, the child runs the risk of having his or her future decided through passage of time rather than on the facts of the case.

In private law, delay runs from the time that the child ceases to see his or her parent(s). In public law, it may run from the time that abuse takes place, although there was a consensus that a reasonable starting point is at the time of the first local authority assessment.

The Children Act 1989 aimed to introduce a 12-week timetable. In practice this target was never achieved in many areas. At the time if the review, care cases were regularly taking longer than 12 months, with an 11-month wait for listing in the High Court in London. In one home county, proceedings were taking up to two years, even when the children involved were under two.

The impact of delay differs from stage to stage in the life of a case. There are clearly great differences in the causes and effects of delay between private and public law proceedings. In private law proceedings, for example, there are often no out-of-court activities that can sometimes act as catalysts to move a case on.

Respondents were almost unanimous in citing the shortage of judges, experienced children's guardians, children's panel solicitors, suitable expert witnesses and competent and suitably trained social workers as key components in the problem of avoidable delay.

For many, the organisational difficulties experienced by CAFCASS and the consequent widespread delays in appointments of children's guardians and family court reporters, coupled with the resistance of the overloaded CAFCASS legal department to take on new cases, is seen as the last straw.

It is also clear that the problems of a poorly trained and poorly managed social care workforce are impacting extremely negatively, not just on local authority decision-making but on decisions in the courts generally. NCH gave a practical example of this:

> *"Lots of social workers fail to complete form E (a request for approval of an adoption placement) and present this to the relevant panel, so children drift in care... Many social workers struggle with completing forms."*

Causes

- The increasing complexity of cases, reflecting the increasing diversity and complexity of society, particularly in inner-city areas
- The increased volume of care orders. This results, in part, from higher thresholds for the provision of family support services and the consequent deterioration in family functioning, making recourse to court more necessary. There is a marked difference in care order applications from similar authorities
- A change of emphasis away from one of the intentions in the Act that, where possible, accommodation and respite care should be integral parts of the family support service, and that care orders should only be applied for when the same results could not be achieved by use of Sction 20 accommodation orders
- A shortage of suitably trained and experienced care judges
- Acute shortages of specialist child and family social workers, resulting in protracted delays in completing assessments
- The need for higher quality social work assessments, prepared before and not after proceedings have commenced
- Shortages of suitably qualified and experienced expert witnesses and an over-reliance on their evidence. There is a need for child and family social workers to be more skilled and knowledgeable, so that they are both competent and confident enough to act as expert witnesses, thus avoiding the need for additional expert evidence, with its attendant delay
- Acute shortages of children's guardians and family court reporters since the establishment of CAFCASS in April 2001, compounding and increasing the delays in both public and private law proceedings
- Poor listing and case management arrangements. There is a need for more proactive children's guardians, who use their statutory case management powers set out in Section 41 (10) effectively to control the timetabling of the case, thus avoiding unnecessary drift
- Poor liaison between courts and children's guardians
- Over-complex legal processes and mechanisms
- The need for an increase in resources for inter-agency support services
- Shortages in funding for family law services generally
- Inadequate court time
- Inadequate courtroom buildings
- The court cannot control the actions of the local authority prior to the issue of proceedings. However, a single scheme of rules and guidance to avoid delay may not be useful, as "one size" does not fit all circumstances
- In private law, there is no impetus for any change in the situation before the first effective court hearing. The whole system acts as a deterrent to positive intervention and the court sometimes exacerbates delay. Families often see courts and lawyers as part of the problem, rather than part of the solution. The issue of proceedings in private law frequently leads to a stand off between the parties, which then creates a fresh set of problems and makes it harder

for the court to unravel the problems

- Local authorities may sometimes apply for an order when, in fact, they do not need one. The result is that these unnecessary cases clog up the system and use up resources. The contrary view was that proceedings can shift attitudes and be therapeutic
- Delay can cause particular problems in a case where there is a young child. A young family may well have been able to stay together if proper assessment and an effective plan for rehabilitation had been available earlier. The delay may mean that the support services needed to carry out effective rehabilitative work are not available at the time they are needed. By the time they are available, the situation may have deteriorated to the point where options that were available to the court some months earlier are no longer available. Delay can establish a new status quo, with a new set of problems created by limited contact. This, in turn, can inhibit a move towards possible rehabilitation
- A suggestion that the use of lower courts might be increased to relieve pressure on other parts of the courts system was seen as problematic. Family proceedings courts may not have the resources for a five-day hearing, magistrates' courts committees do not prioritise family cases and district judges are not used for care cases often enough. The statistical system for recording court use favours the use of district judges on criminal cases, where they may be able to hear eighteen cases a day, rather than care cases where they only be able to hear one
- The local authority grounds for seeking an order need to be clear before the start of proceedings, but this can cause problems. For example, a case can be made even more difficult if it is thought that the local authority has "given up" on the family before it starts proceedings
- Lawyers for parents are perceived to "dance around" for too long over the issue of whether or not the threshold criteria are satisfied. In such cases, there is often insufficient clarity of thought brought to bear at an early stage in preparing the parent's case
- If the start of proceedings is delayed in order to prepare the local authority case, the greater the significance of the question: "Where is the child in all this?"
- Cases involving chronic neglect are particularly susceptible to drift and too often proceedings are not issued until it is too late and a major incident has occurred.

Cures

- More specialist family judges, who are able to stay with a case throughout its life
- More suitably trained and experienced social workers, who are able to act as expert witnesses, thus precluding the need for so much expert evidence and reducing delay
- More children's guardians and family court reporters preferably restored to their pre-CAFCASS "position"
- Better listing and better case management arrangements
- Better social work assessments, with a proper chronology to be prepared before and not after proceedings have commenced
- Better liaison between local courts and children's guardians
- A reduction in the complexity of legal processes and mechanisms
- An increase in funding for family law services generally
- If expert evidence is needed (and the reasons why this is requested should be rigorously

scrutinised), increase the pool of experts that is drawn on so that it is not always the same people who are instructed

- A clarification of whose responsibility it is to bring the case back to court when the timetable slips, including up-to-date guidance to CAFCASS children's guardians on their case management role under Section 41(10) of the Act
- The court should ask at the first hearing: "When can this case be ready?" and then list on that basis, rather than getting a date from the court diary and listing backwards from that date
- Families need to have access to high quality legal advice at an early stage - before proceedings are issued - rather than having to wait for the non-means/merits tested public funding only after the proceedings have been issued. Early legal advice could obviate the need for late legal intervention.

In care proceedings, the local authority should be required to spell out the work that it has already undertaken and to estimate the timetable for any work that needs to be undertaken in a document provided to the court at the start of the proceedings. The local authority must be in a position to state: what it wants; what it wants to do to achieve this; what evidence there is; and what evidence is needed.

It was clear that the huge problems of delay needed more timetabling direction and case management at every stage and not just in preparation for the final hearing. One respondent suggested that there should be adequate reasons why all parties cannot file statements as to threshold criteria and relevant issues within four weeks of the commencement of cases. Others thought that split hearings would be helpful, subject to judges' continuity and the exercise of judicial discretion. The majority seemed to feel that, on balance, this should be left to a president's direction rather than statute. One possible way forward came from the Association of Directors of Social Services in the form of the "Nottingham Protocol".[1] The Management of Delay Protocol developed by the Lord Chancellor's advisory committee on judicial case management gives welcome guidance in this area and establishes a 40-week timetable for the completion of proceedings. It will be introduced in November 2003. Such are the complexities of the problems however that many doubt the capacity of the courts and their personnel to meet these targets without fundamental changes taking in the infrastructure which supports the family justice system. In this context, it is hoped that the contents of this appendix will be helpful.

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[1] *The purpose of the 'Nottingham Protocol' is to reduce delay at every stage of the care proceedings process. The protocol was devised by the family court business committee, as a response to concern about the length of time many care proceedings were taking from application to final outcome. In all but those cases where urgent action was required, the protocol requires assessments to be undertaken before entering proceedings, and a clear view from the local authority at the initial hearing about the purpose of the proceedings and the care plan for the child. The local authority is also expected to produce all witness statements for the initial hearing. The protocol is supported by the* Framework for the Assessment of Children in Need and their Families *(DH 2000) which provides guidance under Section 7, Local Authority Social Services Act 1970, for social services departments and their partner agencies on the assessment of children in need. The protocol was introduced in Nottingham in May 2001. It is intended to be used by all courts dealing with Children Act applications. It is currently being implemented across the city and county and an early evaluation is underway. Some issues have arisen during the review. The family court business committee is considering these, to establish whether amendments to the protocol are necessary. Currently, the President of the Family Court Division is looking at whether the protocol should be introduced nationally. It is considered that the protocol represents best practice in the field, at the present time.*

Appendix 2

Legislation that amends the Children Act 1989

The Act has been amended by the following provisions:

National Health Service and Community Care Act 1990
Courts and Legal Services Act 1990
Broadcasting Act 1990
Children Act 1989 (Commencement and Transitional Provisions) Order 1991
Maintenance Enforcement Act 1991
Registered Homes (Amendment) Act 1991
Criminal Justice Act 1991
Disability Living Allowance and Disability Working Allowance Act 1991
Social Security (Consequential Provisions) Act 1992
Transfer of Functions (Magistrates' Courts and Family Law) Order 1992
Education Act 1993
Probation Service Act 1993
Maintenance Orders (Backdating) Order 1993
Local Government (Wales) Act 1994
Criminal Justice and Public Order Act 1994
Health Authorities Act 1995
Homelessness Act 2002
Children (Scotland) Act 1995
Law Reform (Succession) Act 1995
Jobseekers Act 1995
Education Act 1996
Family Law Act 1996
Children Act 1989 (Amendment) (Children's Services Planning) Order 1996
Crime and Disorder Act 1998
Tax Credits Act 1999
Access to Justice Act 1999
Powers of Criminal Courts (Sentencing) Act 2000
Criminal Justice and Court Services Act 2000
Child Support, Pensions and Social Security Act 2000
Health Act 1999 (Supplementary, Consequential etc Provisions) Order 2000
Children (Leaving Care) Act 2000
Local Government Act 2000
Carers and Disabled Children Act 2000
Care Standards Act 2000
Adoption and Children Act 2002

Appendix 3

Organisations and associations who participated in the review

Association of Lawyers for Children
Association of Shared Parenting
British Agencies of Adoption and Fostering (BAAF)
Bar Council
Boys and Girls Welfare Society (BGWS)
Catholic Children's Society
Child Concern
Children's Rights Alliance for England (CRAE)
Children in Scotland
Diocesan Board for Family Care
End Physical Punishment of Children (EPOCH)
Family Law Bar Association
Family Rights Group
Grandparents' Association
Howard League for Penal Reform
Law Society
National Association of Child Contact Centres
National Association of Guardians ad Litem and Reporting Officers (NAGALRO)
National Association for the Care and Resettlement of Offenders (NACRO)
National Children's Bureau
NCH
NSPCC (Children's Rights Project)
National Youth Advocacy Service (NYAS)
Parentline Plus
Raphael Counselling Service
Solicitors Family Law Association
Sieff Foundation
Voice for the Child in Care (VCC)
WELCARE
Who Cares? Trust
Women's Aid Federation for England

NB. There were three submissions from WELCARE regional offices and two from the National Association of Child Contact Centres.

Appendix 4

The questionnaire

NSPCC review of legislation relating to children in family proceedings

Introduction to the project

It is now over 10 years since the implementation of the Children Act 1989, and this seems a timely point to review the civil legislation relating to children. As well as consulting professional opinion via this survey, we will be consulting with groups of young people who have had first-hand experience of the operation of the key legislation which affects their lives, and also with parents and carers.

The purpose of this questionnaire is to answer three key questions. In general terms has the Children Act 1989 achieved its aims? Are there areas in which it should be amended/improved? If so, what are they? In order to answer these questions the NSPCC has drawn together a panel of experts who are seeking submissions/evidence from all those involved in child care law and practice. The questionnaire is designed to seek views on whether there are any aspects of the legislation that are causing problems or not working out as intended. We want to know about those provisions of the Children Act which are working well and should not be changed, as well as proposals for improvements, or changes needed to ensure compliance with the requirements of the Human Rights Act 1998 and the United Nations Convention on the Rights of the Child. The members of its panel of experts are:

Special advisor

- Andrew McFarlane QC, Chairman of the Family Law Bar Association

Panel of experts

- David Hershman QC, St. Philip's Chambers, Birmingham
- Jonathan Whybrow, Solicitor, Howells Solicitors, Sheffield
- Professor June Thoburn, School of Social Work and Psychosocial Studies, University of East Anglia
- Barbara Esam, Lawyer, Public Policy Department, NSPCC

Independent consultant

- Judith Timms, OBE, Former Chief Executive, National Youth Advocacy Service and Honorary Fellow, Faculty of Law, University of Liverpool

Project Timetable. The data from the questionnaires will be collated and analysed. The results

will be published in a report that will be launched at a conference in December of this year. The deadline for the return of the questionnaire is 1 July 2002. Your co-operation in completing and returning it by this date would be appreciated. You may attribute your response or keep it confidential if you prefer.

The questionnaire is in four sections and is designed to enable you to comment on your particular areas of expertise or interest.

IF YOU ANSWER NOTHING ELSE, PLEASE DO FILL IN SECTION 4.

QUESTIONNAIRE

Would you like your response to be confidential?

☐ YES ☐ NO

Would you like to receive a copy of the report's recommendations?

☐ YES ☐ NO

SECTION I - GENERAL MATTERS

The Aims of the Children Act 1989

- The Act co-ordinated and unified existing legislation in one statute that spans both public and private family proceedings
- The welfare of the child is of paramount importance. A welfare checklist was introduced to assist the Court in reaching conclusions about how best to secure the protection and welfare of each child
- The state should endeavour to work in partnership with parents, young people and those who are important to them
- Children should be safe and court interventions should be effective and kept to the minimum necessary
- Orders should not be made unless the court is satisfied that making the order will be better than making no order at all
- Delay in court proceedings and administrative processes should be kept to a minimum
- Parents have responsibilities towards their children, and their rights as parents derive from these responsibilities – including the right to be consulted and for due consideration to be given to their wishes and feelings. [Under human rights legislation they also have rights as individuals, including the right to a "fair hearing" especially if decisions may be taken which impinge on their right to family life.] Parents should be encouraged to co-operate over their children's welfare with each parent retaining full legal rights following divorce
- Children are themselves the bearers of rights and have a right to be consulted and to have their wishes and feelings considered when decisions are being made. They should be treated as people not objects of concern

- Where possible children should be allowed to grow up in their families of birth. If this is not possible there is an assumption of reasonable contact between the child and his/her family of origin unless it is not in the child's best interests
- The "menu" of orders available for the first time in the Act provides a framework for judicial decision-making that is flexible enough to meet the needs of each individual child, thus creating an "open door" policy designed to obviate the need for wardship proceedings.

There is the opportunity in Section 2 for you to comment in detail on the different parts of the Children Act. In this section we would like your comments, in broad terms, on how well the Act is meeting these aims. There is space for more detailed comments on more specific aspects of the legislation in Sections 2 and 3.

Q1 Do you consider that the Children Act 1989 is achieving its aims as outlined above? If not, in what broad areas do you consider amendment necessary?

Child's welfare and rights

Q2 Does the Act achieve an appropriate balance between the rights of the child to have his or her wishes and feelings ascertained and considered and the court's responsibility to give paramount consideration to the welfare of the child:

(a) in public law proceedings?

(b) in private law proceedings?

Partnership with parents

Q3 In relation to children "in need" living with their families:

(a) do the provisions of the Act facilitate flexible multi-agency services to parents and children in the way they will find most helpful?

(b) Are financial and human resources available to ensure that as many children as possible can be brought up safely and have their needs met by their families?

Q4 Does the Act encourage the flexible use of respite and short term accommodation in order to support children in need and their parents?

Q5 For children in respect of whom care orders are made is the concept of care shared between the local authorities in loco parentis and the child's parents/carers working? If not, what are the obstacles?

Q6 For children living with a parent or relative but separated from one or both parents and/or siblings, do the provisions of the Act support the family unit whilst ensuring that, unless this is likely to impair their welfare, they remain in contact with the non-resident parent/s and other relatives:

(a) in public law proceedings?

(b) in private law proceedings?

Children should be safe and interventions effective

Q7 (a) Does the language of Section 31 (i.e. "significant harm", "likely harm attributable to the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him" and "the child being beyond parental control") facilitate the protection of children from ill-treatment or neglect? Please say if the threshold definitions work better for some sorts of ill-treatment/neglect than for others.

(b) Is the duty to provide accommodation for children in Section 20 working to protect vulnerable children, especially teenagers?

(c) Are the services for 16 and 17 year olds appropriate, particularly where the children concerned are not care leavers?

Avoidance of delay

Q8 In your experience is there a problem of avoidable delay:

(a) in court proceedings?

(b) in local authority decision making and practice?

If yes, please give your views on the causes of and solutions to avoidable delay.

Principle of minimum intervention

Q9 In your opinion, is the Act working as intended to achieve a balance between family autonomy and the State's duty to intervene to secure the wellbeing of children

(a) in public law proceedings?

(b) in private law proceedings?

Parental responsibility

Q10 Does the Act achieve the appropriate balance between parental responsibilities and children's rights? If no, are there any changes you would like to suggest? Please answer in terms of

(a) Public law (please also make any comments on relatives', foster carers' and adopters' rights and responsibilities).

(b) private law (please consider in relation to residence and contact disputes).

Q11 Does the legislation facilitate a consideration of the needs, wishes and feelings of all siblings in a family

(a) in public law proceedings?

(b) in private law proceedings?

Assumption of reasonable contact

Q12 In your opinion/experience do contact arrangements work for:

(a) Children in public law proceedings, particularly for those children who are the subject of Section 34 defined contact orders?

(b) Children in private law proceedings? (Please consider this in relation to Section 8 orders and to the position of non-residential parents and to cases involving violence and/or serious conflict between parents or other adults in the same household.)

Unifying and co-ordinating existing legislation

Q13 Is the Children Act 1989 consistent with other relevant pieces of existing or proposed legislation, e.g. The Adoption and Children Bill, Children (Leaving Care) Act 2000, Part IV Family Law Act 1996 and the Children (Scotland) Act 1995? If not, please identify inconsistencies.

Demonstrating human rights compliance

Q14 (a) Is the Children Act 1989 compliant with the Human Rights Act 1998 and the UNCRC? If not, please identify areas in which it is non-compliant.

(b) What changes (if any) are needed to demonstrate compliance?

A flexible "menu" of orders

Q15 Is the range of orders available under the Children Act 1989

(a) adequate? If not, what else would you like to see?

(b) sufficiently flexible to meet the needs of the children concerned? Please consider in relation to both public and private law proceedings.

Addressing the needs of a multicultural society

Q16 Does the Act meet the needs of the full range of diverse groups of children in Britain today? Please consider this question in relation to:

(a) black and other minority ethnic groups

(b) disabled children (including learning-disabled children) and those with learning difficulties (including those deemed to have special educational needs)

SECTION 2 - SPECIFIC MATTERS

Having asked your views about the aims of the Act, please use the next section to comment on specific Sections with which you are most familiar. Feel free to say "Working well" if you think it is, as well as making suggestions for any changes you consider would be helpful.

PLEASE ATTACH AN ADDITIONAL SHEET OF PAPER IF NECESSARY.

PART I INTRODUCTORY

PART II ORDERS WITH RESPECT TO CHILDREN AND FAMILIES

PART III LOCAL AUTHORITY SUPPORT FOR CHILDREN AND FAMILIES

PART IV CARE AND SUPERVISION

PART V PROTECTION OF CHILDREN

PART VI COMMUNITY HOMES

PART VII VOLUNTARY HOMES AND VOLUNTARY ORGANISATIONS

PART VIII REGISTERED CHILDREN'S HOMES

PART IX PRIVATE ARRANGEMENTS FOR FOSTERING CHILDREN

PART X CHILD MINDING AND DAY CARE FOR YOUNG CHILDREN

PART X1 SECRETARY OF STATES SUPERVISORY FUNCTIONS AND RESPONSIBILITIES

PART X11 MISCELLANEOUS AND GENERAL

SECTION 3

We would like to have your views on some key areas for debate

Q1 Does the checklist provide an adequate framework for considering the child's welfare? Should any specific points be added e.g. any harm he/she may suffer from being exposed to violence between his/her parents/ carers? Any harm he/she may suffer as a result of changes to or loss of contact with any parent, carer, relative or sibling?

Q2 (a) Given the recent House of Lords decision in relation to "starred" care plans (In Re S., House of Lords, March 14, 2002), and current practice in relation to care plans, would you suggest any amendment/s to address the problem of the courts' lack of powers to ensure that Care Plans are implemented as agreed in Court?

(b) Please comment on the current use of Section 26 Complaints and Representation Procedures as an effective or ineffective remedy.

Q3 As the Act stands there is no provision for "split" hearings. The Children Act Advisory Committee Annual Report 1994/95 gave guidance to the effect that "consideration could usefully be given to whether there are questions of fact within a case which need to be determined at a preliminary stage such as an allegation of physical or sexual abuse".

(a) Do you agree that this or other patterns of split hearings might help to reduce delay? If so, how could guidance be incorporated into the legislative framework?

(b) Would it be helpful for the statute to define when such hearings would be appropriate?

Q4 Do you have any comments on the likely impact on the Children Act of the provisions in the Adoption and Children Bill?

Q5 Do you have any comments to make on the current arrangements for the separate representation of children and their interests in:

(a) public law proceedings (including adoptions of children from care)

(b) private law proceedings (particularly proceedings under Section 8, Children Act 1989)

SECTION 4 - ANY ADDITIONAL MATTERS

Q1 Do you think any amendments to the Act are needed? If so, give up to three changes you would like to see.

Q2 What in your opinion are the two aspects of the Act that work best and the two that work least well?

Appendix 5

Update on *Your Shout! - A Survey Of The Views Of 706 Children And Young People in Public Care* by Judith E Timms and June Thoburn.

ACKNOWLEDGEMENT.

The authors and the NSPCC would like to acknowledge an enormous debt of gratitude to the children and young people who took the time and trouble to complete the questionnaire in the hope that by sharing their experiences with us they would contribute to the future welfare of other young people in public care. Their statements were both moving and compelling and have been published in *Your Shout! A Survey of the Views of 706 Children and Young People in Public Care*. We would also like to acknowledge with thanks the assistance of the 'Who Cares? Trust' in disseminating the questionnaire. This update includes additional questionnaires returned in the last few months, taking the total to 735 responses. Our commitment to all these young people is to do our best to ensure that their voices are heard not only in informing our recommendations but in continuing to underpin our efforts to influence law, policy and practice in relation to children and young people. This 14 year old speaks for hundreds of young people in public care:

> *"I just want someone to be there for me, to trust me and love me and just have a laugh and a joke. I think you should see what the foster placement is like before you send a kid there. See what kind of place it's really like and see what the people are like and trust me I've been sent every where. See what decision the child wants to make before you jump to things. Think about what the child wants - it could come out good in the long run."*

INTRODUCTION

What follows is an updated synopsis including additional findings. A total of 735 questionnaires have now been received as a result of our survey of the views of children and young people in public care in England, Wales, Scotland and Northern Ireland. More work is in progress, focusing particularly on the statements of the young people and the supplementary information they have given us.

The *Your Shout!* questionnaire for children and young people in public care was designed to be considered alongside responses to the questionnaire directed at professionals involved in family proceedings, published here. The two questionnaires were designed to explore the extent to which services have incorporated the key principles of the Children Act 1989. Another issue was the extent to which the Government's "Quality Protects" programme has impacted on

[2]*Department of Health (1998), Quality Protects Circular: Transforming Children's Services, Local Authority Circular (LAC(98)28); and Welsh Office (1999), The Children First Programme in Wales: Transforming Children's Services, Circular 20/99, Cardiff: Welsh Office.*

children's services in practice[2]. The "Quality Protects" programme was set up in England in 1998, with a parallel "Children First" programme established in Wales in 1999. The programmes were developed further in *The Government's Objectives for Children's Social Services* that set out eleven key objectives for improving practice[3]. One of the key objectives was the involvement of children and young people in decision-making, a requirement of Article 12 of the United Nations Convention on the Rights of the Child, which states:

> *"States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the view of the child being given due weight in accordance with the age and maturity of the child.*
>
> *"For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."*

The *Your Shout!* questionnaire had, as a key theme, young people's experience of decision-making in court and their participation in their own care plans.

A second major theme was on contact issues and whether young people were seeing enough of the people they cared about and who formed the infrastructure of the lives to which the majority would eventually return. Post-Children Act practice and research has stressed the need to promote contact as the means to successful re-unification of families[4]. This was seen as particularly pertinent at a time when there is considerable discussion of contact issues in both private and public law proceedings and when the question of contact in adoption is also under review, in the context of implementation of the Adoption and Children Act 2002.

A third key theme was safety - both feeling safe and being free from violence and abuse. The rationale was that, given that the over-riding aim of the legislation is to keep children safe and to protect them from harm, then it was appropriate to find out how safe young people felt in public care.

Finally, we asked the young people what, looking back, they would have liked to have been different and what their hopes were for the future. As so often happens when young people are given a real opportunity to participate, the quality and quantity of the response overwhelmed us. We had hoped for a sample of 200, to parallel that of the adult professional respondents. In the event 735 children and young people filled in the questionnaire, in the hope of making an impact on the people who make decisions about children.

SURVEY DESIGN

The questionnaires were distributed through the Who Cares? Trust, which publishes *Who Cares?* the national magazine for young people in public care. The magazine is commissioned by care authorities in England and Wales, as well as Scotland and Northern Ireland where the legislation is

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[3]*Department of Health (1999),* The Government's Objectives for Children's Social Services, *London: Department of Health.*

[4]*See Department of Health (2001),* The Children Act Now: Messages from Research, Studies in Evaluating the Children Act 1989*, London: The Stationery Office, p. 134.*

different. The circulation is 30,000 and includes children and young people in residential care, in foster care, in care but living with their parents, in secure accommodation and in young offenders' institutions. The questionnaires were circulated in the July 2002 edition of the magazine.

There is no way of knowing how many young people actually received the questionnaire via the magazine and thus there is no "response rate". Nor is there any way of knowing how representative are the respondents. The 735 returned questionnaires were from a group of children and young people who were not "pre-selected" by those administering the questionnaire. They were all self-selected and had chosen to give their views and opinions and to share their experiences of public care. Nine of the questions could be completed by ticking boxes, the last two questions left space for the young people's own unstructured replies (the children also had the opportunity to add their comments in some of the earlier questions). Respondents were asked not to fill in their names and addresses, so that the answers would be strictly private and confidential. The questionnaire stressed that spelling and handwriting were not important - it was what the respondent had to say that mattered. Once the questionnaire had been filled in, the young people were asked to put it in the envelope provided and post it by 1 September 2002 to the Your Shout! Freepost address in London.

The response was immediate and prolonged. Completed questionnaires started arriving in August and were still arriving in January 2003. This analysis is based on the results of 735 questionnaires, including 29 responses received since the publication of the original research in March 2003.

Throughout the text and tables, percentages are generally expressed as a percentage of those responding to the particular question. Decimal points are included when this provides a more accurate indication of the order of magnitude of smaller percentages. Charts show the percentage of all respondents, including those who did not answer particular questions.

SUMMARY OF FINDINGS AND RECOMMENDATIONS.

Key findings from *Your Shout!*

- Nearly half of the sample could not name their care authority
- Almost a quarter of children had attended court, higher than expected. Only a quarter of these had a chance to speak to the judge
- More than a quarter of the children did not know what their care plan was
- Well over half of the respondents did not see enough of their father
- More than a third of the sample did not see enough of their mother
- A third did not see enough of their siblings
- Nearly half did not see enough of other family members (including grandparents)
- Over half did not see enough of former foster carers who were important to them
- A quarter did not see enough of their friends
- One in five children responded that being in care did not make them feel safe.

Key themes

- The wish to leave care, although a good proportion did not wish to leave present carers, with whom they were well settled
- Children wanted more contact with significant people in their lives
- Children's goals were relatively modest
- Many children displayed a strong sense of personal morality and family responsibility
- Children displayed a desire to express themselves (perhaps skewed by self-selecting sample).

Key recommendations

- A comprehensive review of all contact arrangements – both direct and indirect – for children in public care.
- An amendment to Section 34 of the Children Act 1989, establishing a statutory assumption of the right to contact between siblings.
- Additional resources to facilitate contact, family support and reunification.
- Increase resources to ensure high quality placements for looked after young people and reduce unnecessary moves in care.
- Funding of programmes to look at safety issues and the long-term impact of violence on children and young people.
- More attention to the dynamics and management of the impact of loss and separation on children in public care.
- Exploration of effective avenues of communication for children who are the subject of court proceedings with the aim of facilitating their participation in decisions made about their lives.

The findings in outline

Profile of the respondents

Sample by sex

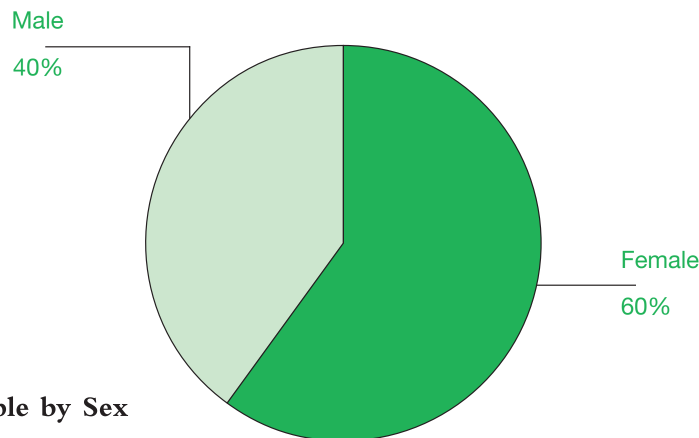

Figure 1: Sample by Sex

Of the respondents, 438 (60%) were girls/young women and 296 (40%) were boys/young men (one child did not specify his/her gender). Thus young women are over-represented among respondents, since the proportion of girls in the looked-after population in England in 2002 was 45 per cent.

Sample by ethnic origin

All except eight respondents gave information on their ethnic origin. Of those who did, 625 (85% of the 727 who gave this information) ticked the "white British" box and 102 (15%) indicated that they were of minority ethnic origin. This is a slightly lower proportion than for the population of children of minority ethnic origin looked after in England generally, which was 18 per cent in 2002.

Table 1: Ethnicity of respondents

White British	625	85%
Black Caribbean	19	3%
Black British	15	2%
Black African	12	1.5%
Pakistani	6	1%
Indian	3	0.5%
British Asian	3	0.4%
Bangladeshi	2	0.3%
Chinese	0	0%
Other	42	6%
Total	727	100%
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Sample by age

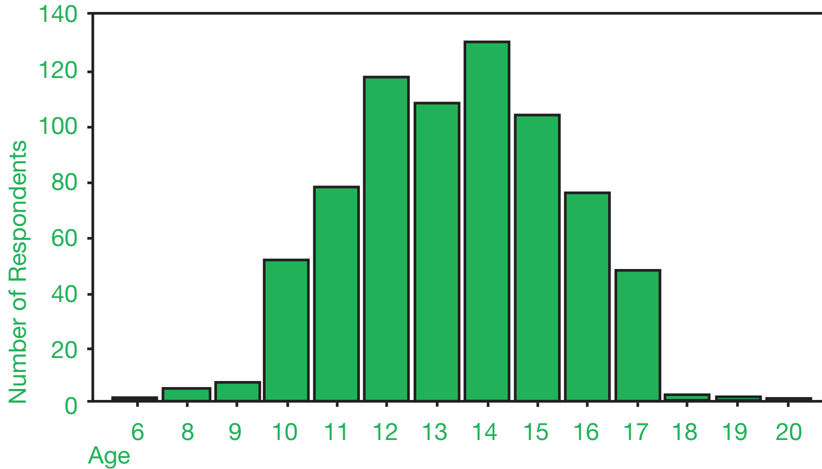

Figure 2: Ages of respondents
(NB. There were no questionnaires completed by 7 year olds within the sample)

Age	Male	%	Female	%	Total	%
6-11	63	21	82	19	145	20
12-14	146	49	208	48	354	48
15-16	66	22	113	26	179	24
17-20	21	7	34	8	55	8
Total	296	100	437	100	733	100
left blank = 2						

Table 2: Age and sex of respondents

The youngest respondent was aged six and the oldest was 20. One child did not specify her age. The mean age was 13, with the majority of respondents being in the 13 to 15 age group. The distribution of ages among the sample is shown in Figure 2.

Health problems and disabilities

Eighty-seven (12%) of the young people stated that they had a disability or long-term health problem that affected daily life.

YOUNG PEOPLE'S EXPERIENCE OF COURT

The majority of children and young people in this survey would have been the subject of a range of different court proceedings, although some would have been accommodated at the request of the parents or themselves. Since the usual position is for a solicitor and the children's guardian to present the child's wishes and feelings to the court and advocate for them, it is somewhat surprising that 174 respondents (24% of the 721 who answered the question) said that they had been to court when asked "Have you ever been to court when decisions were being made about you?" Although when we framed the question we had in mind public law care proceedings, the sample included young people in youth offenders' institutions and secure accommodation. Some respondents, therefore, may have responded in respect of criminal proceedings. It is also possible that a small number would have responded in the context of "their case" having been decided in court rather than actually attending themselves.

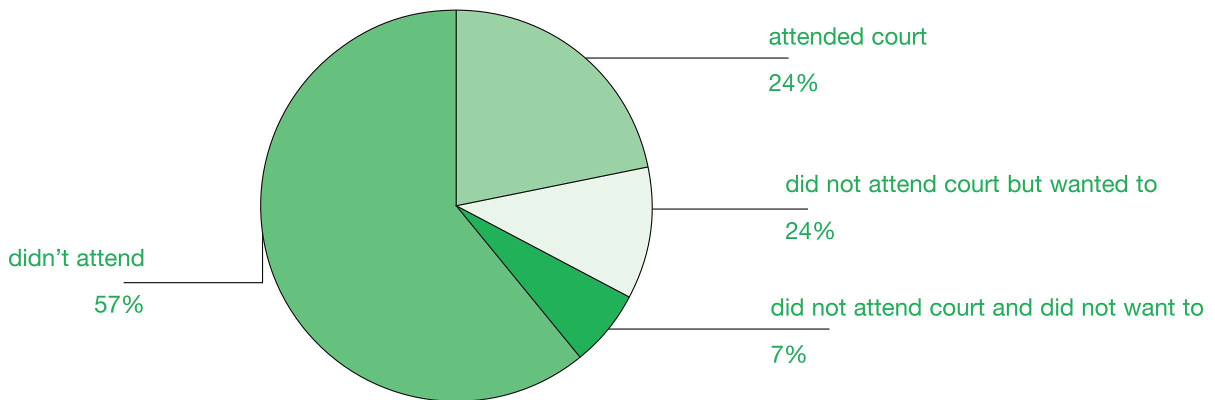

Figure 3: Young people's attendance at Court

	Response	%
I have not attended court	408	57
I have attended	174	24
I would have liked to	90	12
No, I didn't want to	49	7
Total	721	100
left blank = 14		

Table 3: Court attendance as recorded by young people

Table 3 gives the responses as to whether the young person had "Ever been to court when decisions were being made about you?" A higher proportion of those aged 16 or over (39%) had been to court compared with children of a younger age. This suggests that, since 16 year olds are more likely to be involved in criminal activity than other age groups, the figure relating to those who attended court is, to some extent, inflated by those attending youth court. However, the age profile did not indicate that criminal proceedings would account for a majority of those who answered "yes", in that girls were equally represented amongst those who went to court, whilst young men are more likely than young women to attend court because of criminal justice matters. Some (and these are more likely to have been young women) may have attended court to give evidence against an alleged perpetrator of abuse. Girls were twice as likely as boys to say that they did not go to court but would have liked to go. These data are shown in Table 4.

	Male	%	Female	%	Total	%
Went	74	25	100	23	174	23
No: wanted to	23	8	67	16	0	6
No-didn't want to	24	8	25	6	49	6
No	171	59	236	55	407	55
Total	292	100	428	100	720	100
Left blank = 15						

Table 4: Court attendance by sex

It was notable that the responses indicated that, in general, the children did not perceive the court proceedings as an avenue of communication for them to be involved in decision making. Comments about the plans made for them were invariably associated with social services departments rather than the judiciary and the courts.

Children's reports of help received at time of court proceedings

Table 5 presents the views of the children about the help they received at the time of court proceedings.

	Whole sample	%
I got enough help at court	140	41
I didn't get enough help at court	160	47
I didn't get any help at court	42	12
Total responding (left blank = 393)	342	100
I had someone helpful to talk to	280	67
No I didn't	140	33
Total responding (left blank = 315)	420	100
I got enough practical help	223	51
I didn't get enough practical help	214	49
Total responding (left blank = 298)	437	100
Someone explained what was happening	297	64
No one explained	170	36
Total responding (left blank = 268)	467	100
I had a chance to speak to the judge	48	12
I did not get the chance	229	55
I would have liked the chance	86	21
I didn't want to speak to the judge	51	12
Total responding (left blank = 321)	414	100
I was listened to	191	41
I was not listened to	141	31
I don't know	129	28
Total responding (left blank = 274)	461	100

Table 5: Help received at time of court proceedings

The range of people who were helpful to children during court proceedings was wide and inter-disciplinary, with social workers heading a list (mentioned by 30%) that included teachers, the Samaritans and therapists. In terms of practical help, not having enough money and not getting enough help generally featured relatively strongly. This question about practical help elicited 16 categories of people. The five most popular categories were social workers, a named person, solicitors, carers and family members.

The answers to the question about whether they had adequate information were varied and polarised. This indicates that practice is still variable, but that some areas are succeeding in getting relevant information to children.

More than half (57%) of those who responded and who attended court said that they did not have the chance to speak to the judge (including 19% of the court sample who said they

wished they had had the chance to speak to the judge). It was interesting to note that 86 young people (21% of the sample who responded to this question) said they did not have the chance to speak to the judge, but would have liked to do so.

None of the children referred directly to the role of judges in his or her statement. This may say something about how children view their role in the decision making process or it may be more indicative of a lack of opportunity to attend and speak directly to the person making the decisions. The responses suggest that there are children involved in family proceedings who would like to be able to attend court and to speak to the judge and who did not have the opportunity to do so.

Of the 461 children who responded to the question "were you listened to and your rights respected?" 41 per cent answered "yes". Boys were more likely than girls to answer "yes", along with those under the age of 11.

KNOWLEDGE OF THE CARE AUTHORITY

It is clear from the responses that not being listened to is a problem for some whilst in care and that this is exacerbated by lack of knowledge about the way in which young people can influence the decisions taken about them.

Table 10 shows that just under a half did not name their care authority. (Since the respondents were careful in completing the "tick box" parts of the questionnaire, it seems reasonable, here, to include those who left this question blank amongst those who did not know.)

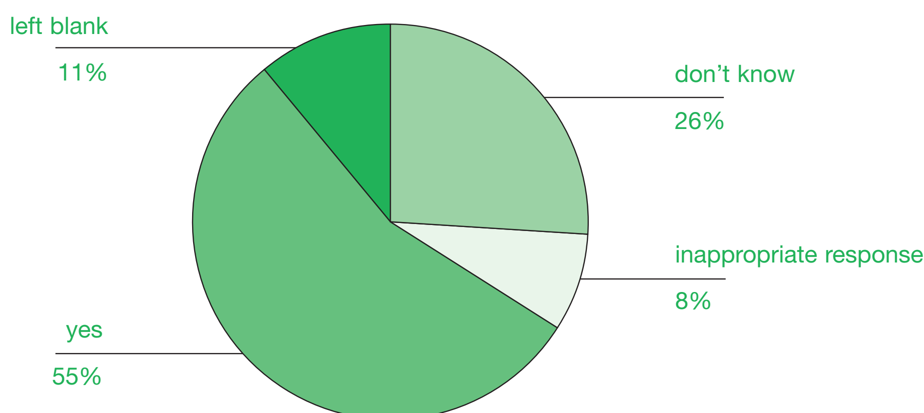

Figure 4: Knowledge of Care Authority

	Response	%
Care Authority known	405	55
Don't know	190	26
Incorrect answer given	62	8
Blank (included in analysis as indicates child did not know)	78	11
Total	735	100

Table 6: Response to the question "Who is your Care Authority?"

Overall, almost half the respondents were not able to name their care authority (i.e. nearly half the sample). Incorrect answers were, for example, the name of a carer or residential home.

Question	Yes	% of those who replied	No/ don't know	% of those who replied	Number responding yes or no/ don't know
Do you know what your care plan is?	508	72	202	28	710
Did you help write it?	236	35	435	65	671
Are you happy with it? (no includes "don't know" and left blank)	409	56	326	44	735
Is there anything you would like to change?	140	23	470	77	610

Table 7: About the respondents' care plans

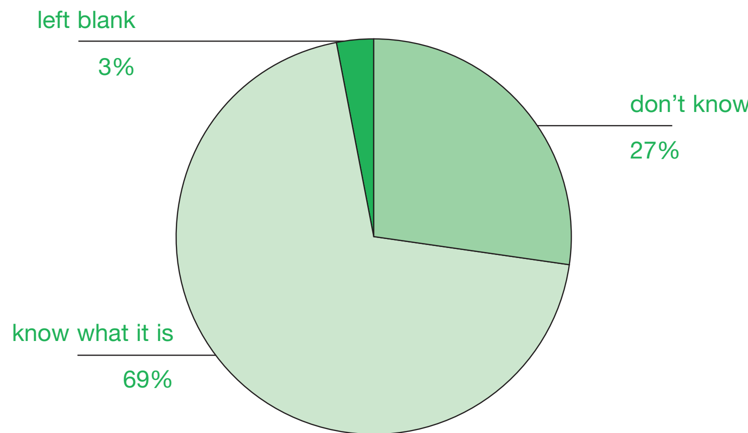

Figure 5: Knows of Care Plan

Of the children who responded to this question 435 (65%) indicated that they did not contribute to the writing of their care plan. This is disappointing given the current emphasis on children's participation in care planning. Moreover, experience tell us that plans have a much better chance of succeeding where the children themselves have been involved in their preparation. It is encouraging that over half of the children (56% – and 81% if only those who answered either "yes" or "no" are included) indicated that they were happy with their plan, especially given the high percentage of young people who did not help with writing it. However, a quarter of the sample did not know whether they were happy with the plan or not, which again is disappointing and perhaps indicates a low level of involvement in the discussions. Of those who responded to this question, 470 (77% of those who responded to this question and 64% of the whole sample) ticked that they did not want to change their plan. The comparatively high level of agreement with the care plans (despite the low level of involvement in the writing and the fact that more than a quarter of the sample did not know what was in their care plan) is an aspect of the findings that will be analysed in more detail.

CONTACT WITH FAMILY AND FRIENDS

Linked with the question of the care plan, as was made clear by many of the written comments,

was the question of continuing contact with birth family members, previous carers and friends. The question on contact was carefully framed to allow those who did not wish to have contact with a particular individual to leave it blank, since it asked the respondents to say if they "see enough of the people you care about and want to see".

Insufficient contact with	Number	% of those who replied	Numbers responding
Mother	267	40	673
Father	375	60	624
Siblings	249	37	667
Other relatives	335	49	682
Friends	206	28	687
Former foster carers	348	55	636

Table 8: Response to the question: "Do you see enough of the people you care about?"

The Children Act 1989 Guidance and Regulations emphasise the importance of maintaining contact between a child and family members and other important people, unless this is clearly contrary to the child's interests. In view of this, the findings suggest that this is an area where practice appears to be poor. Of the children who wanted to see their fathers, 60 per cent did not see enough of them and over a third of the sample did not see enough of their mother or their siblings (40% and 37% respectively). A substantial proportion did not see enough of their significant friends and over half did not see enough of a significant previous carer. It appears that, in contact arrangements, either the children's opinion was not sought or their views were overruled.

SAFETY IN CARE AND EXPOSURE TO CONTINUING HARM

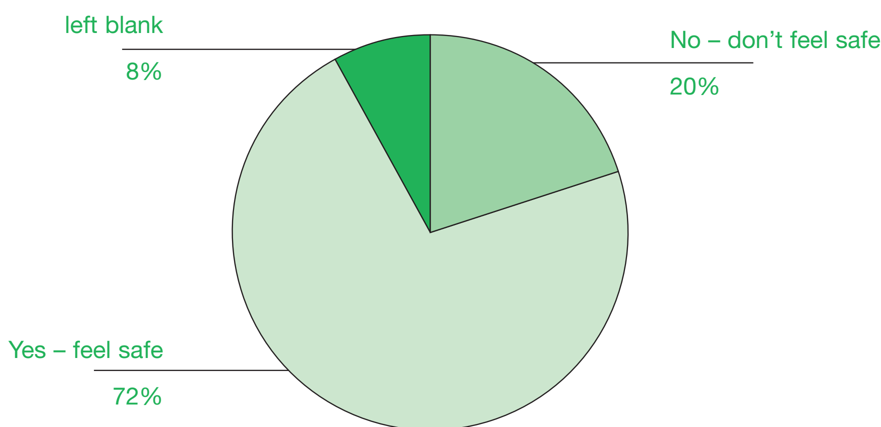

Figure 6: Feeling safe/unsafe in care

Sample	Yes	%	No	%	Total	%
Males	222	80	54	20	276	100
Females	304	76	96	24	400	100
Total responding left blank = 59	526	78	150	22	676	100

Table 9: Response to the question: "Does/did being in care make you feel safe?"

It was reassuring that the majority of children responded that being in care made them feel safe. However, the fact that over one in five did not feel safe in care is a reminder of the importance of ensuring that removing children from significantly harmful experiences in the family home is not the end of the story and that the "balancing" required by the Act must play a constant part of the planning and review process. Whilst some of the responses made it clear that the children still felt at risk of harm from parents, the majority of written responses related to possible harm from other individuals, including current carers. Moreover, some children who now felt safe had been at risk from carer behaviour in the past.

THE CHILDREN'S VERDICT ON THE CHILDREN ACT 1989

There is much in the responses from the young people to indicate that the principles on which the Children Act is based are in line with what they want for themselves. The many comments about sadness at not being able to live with their parents or wanting to return to them indicate that the emphasis on supporting the family unit and providing services to help parents to meet the needs of their children is appropriate. From their comments, some clearly thought that little more could have been done to keep their families together, but a larger proportion of respondents made it clear that they and their families could still be living together if more help had been available.

The young people also gave strong support to the Act's emphasis on consultation with themselves and those who were important to them. Overall, it was encouraging to see that roughly a quarter of the sample had been to court and that a quarter of these said they had spoken to the judge. Traditionally there has been resistance to the idea of involving children directly in care proceedings. This finding indicates that practice may be slowly changing and that judges are more prepared to give children who want to be involved the chance to attend the court hearing and to speak to them.

There are mixed messages about children being enabled to express their views with the expectation that they will have an impact on decisions taken in court and in respect of their care planning. Overall, the evidence points to a "could and indeed must do better" verdict. That applied especially to decisions about whether, how often and where they had contact with family and friends. The neglect of fathers and previous foster carers as people with whom children want more contact should especially be taken on board. Above all, the distress caused by separation from, and inadequate contact with, much-loved siblings should increase the priority given to maintaining sibling contact. This appears to be an area where children's wishes are frequently being disregarded.

There is another significant area in which children's feelings are being overlooked and that is in relation to the grief and anxiety many of them displayed in relation to their experiences of bereavement, loss and separation. The distress, which is an every day reality to them, may not be so clearly visible to those caring for them, yet, as the responses illustrate, it can be a major determinant of their behaviour and happiness in their placement. This remains a challenge for future practice.

The stress caused by delays in the court processes and in identifying carers who could meet their needs was, for many, exacerbated by lack of information about what was going on and who was making the decisions that would so profoundly affect them.

The questionnaire did not specifically ask about the type of placement in which the young people were living, but it was clear from the responses that some had returned home and that others were living with relatives. The children's comments indicate that the emphasis in the Act on supporting relatives in caring for those who cannot be with their birth parents also fits with the wishes of young people.

The emphasis in the Act on placing children with families of similar ethnic and cultural background was also supported by the young people, who gave evidence of racist attitudes and behaviour amongst some carers.

However, the parts of the Act that allow children to be accommodated in order to help them or their parents, or to protect them from harm, are also welcomed by those who completed the questionnaires. Almost four out of five responded positively to the question "does being in care make you feel safe?" and their written comments indicated that many of the young people knew that their needs could not be adequately met or they could not be kept safe in the family home. The high level of violence to which so many of our respondents had been subjected, first at home and then, for an important minority, whilst in care, is perhaps the most challenging aspect of their statements.

For many of our respondents, being looked after has brought substantial benefits. The statements of these children are an important antidote to the negative message often portrayed in the media and by politicians. The majority of the young people wrote of the hurt they still felt about having to be away from home, of the troubles they had had along the way, but also of their love for their carers, their sense of achievement and the strength the care experience had given them. A 12-year-old girl was typical of the majority of responses. She said her foster parents had helped her. She knew what her care plan was and was happy with it. She saw her mother and her siblings often enough, but did not see enough of her father and other relatives. She wrote:

> *"I feel safe in care because I've got a big family around me."*

Looking back at what she would have liked to be different she wrote, *"stayed at home"* but looking forward at how she would like things to be different she said "nothing".

The young people's responses and statements have illuminated our understanding of how the Children Act 1989 works for children. In some areas the survey has been reassuring, but in others it has thrown up key challenges for practice in the next decade, most notably in relation to contact issues. The findings indicate that what is required is not so much amendment of the Act but a reaffirmation of its guiding principles.

References

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4 See Department of Health (2001), *The Children Act Now: Messages from Research, Studies in Evaluating the Children Act 1989*, London: The Stationery Office, p. 134.