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Children Deprived of Their Liberty on 'Welfare' Grounds: A Critical Perspective

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Introduction

Children deprived of their liberty are “an invisible and forgotten group in society” (OHCHR 2017).¹ Despite concerns about illegal, arbitrary or unnecessary detention, and human rights violations, minimal verifiable information or research data exists about them (UNCRC 2014). Children held in secure accommodation on ‘welfare’ grounds, for their own or others’ protection, typically have multiple complex needs as a consequence of poverty, family instability, domestic violence, parental rejection, neglect, abuse or bereavement. Their non-attendance or exclusion from school is common (Gough 2016; Hart and La Valle 2016; RQIA 2011). Many also have inherent developmental, physical or mental health problems (Barry and Moodie 2008; Justice Studio 2014; Sinclair and Geraghty 2008). Generally known to Social Services since early childhood, they are often placed in residential

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care as the challenges posed by their behaviour increase. For some, living in a group setting can act “as a conduit to ... being bullied, sexual exploitation and predatory adult networks, suicide pacts, and exposure to increased criminalisation” (RQIA 2011: 43).

Their level of vulnerability, due to this “broad range of difficult and traumatic life experiences”, has a “significant influence on their engagement with the world around them” (RQIA 2011: 47). Exposed to “extreme danger” and “very unsafe situations ... likely to cause them serious harm” (Gough 2016: 6), they may have been offered services by various agencies but provision is “fragmented” with a “lack of continuity” as they move around the care system (Sinclair and Geraghty 2008: 4). Secure accommodation is perceived as providing “the opportunity to ‘hold’ them” so that engagement work can begin (Hart and La Valle 2016: 46).

Provision is diverse within the UK. In England and Wales children who receive a custodial sentence from the criminal court or are remanded to secure local authority accommodation, or those placed by local authorities on welfare grounds, can be detained in one of fifteen Secure Children’s Homes (fourteen in England, one in Wales), some of which mix welfare and justice referrals. In March 2017, 51% of those in secure homes were placed on welfare grounds (Department for Education 2017). Scotland has five Secure Care Units dedicated mainly to welfare referrals, with 75–80% being detained for their own safety rather than having been remanded or sentenced (Gough 2016: 6). In Northern Ireland, a single Secure Care Centre consists of two small units for welfare placements with a separate Juvenile Justice Centre (JJC) for those on remand or sentenced through the youth justice system.

Across the jurisdictions there is inconsistency in the use of secure placements and a lack of consensus about the purpose or function of secure care (Gough 2016; Hart and La Valle 2016; RQIA 2011). Use of secure accommodation is ultimately determined by the availability of a placement. Goldson (2002: 91) notes that when the “welfare route ... is obstructed, some placing authorities will be inclined to explore the justice route in respect of the same children”; this is a form of “pragmatic criminalisation” to address their “manifest welfare needs”.

According to Northern Ireland's Criminal Justice Inspectorate, "the gatekeeping process for secure care could actually lead to children being placed in the JJC if they did not meet the strict secure care criteria", with "trivial offences" providing "the opportunity to use custody as quasi-care" (CJINI 2008: 5; RQIA 2011).

Contextualised within an overview of international children's rights standards, this chapter draws on consultation with children in Northern Ireland's Secure Care Centre to explore institutional violations. It argues that children's rights standards provide the foundation on which to develop a framework for policies and practices which prioritise 'protection' and 'participation'. Full implementation of children's rights can only be achieved, however, by identifying and challenging the structural inequalities that affect *all* children but particularly the most disadvantaged and vulnerable.

Promoting and Protecting Children's Rights

Children's rights were first codified in the *Geneva Declaration of the Rights of the Child* (1924) adopted by the League of Nations, consolidated in the *United Nations Declaration on the Rights of the Child* (1959). Thirty years later the UN *Convention on the Rights of the Child* (CRC) (1989) was opened for signature and subsequently ratified by every member of the United Nations except the United States. Killkelly (2008: 188–191) considers that the CRC offers "the most comprehensive, legally binding document on the treatment of children". Arguing that the CRC consists of "legal rights or norms which anticipate (or dictate) laws which in many countries do not yet exist", King (1994: 388–390) suggested that it also provides a "powerful moral force which can be deployed to raise the level of awareness about factors affecting children's well-being and ways of improving their welfare and autonomy" without use of direct legal coercion.

The Convention's Articles articulate the principles, provisions and protections to which all under-18s are entitled. Four general principles are fundamental to implementation: (i) non-discrimination; (ii) the 'best interests' of the child as a primary consideration, with provision

of the protection and care necessary to secure their well-being; (iii) the right to life, survival and development; and (iv) the right of the child to express their views in all matters affecting them, with their views given due weight in accordance with their age and maturity.

The CRC recognises important civil and political rights—including rights to privacy, to access appropriate information, and to not be subjected to torture, cruel or inhuman or degrading treatment or punishment—alongside freedoms such as to expression, to thought, conscience and religion, and to association and peaceful assembly. Social and economic rights include: a standard of living adequate for the child's physical, mental, spiritual, moral and social development; the highest attainable standard of health; rest, leisure, age-appropriate play and recreational activities. The right to accessible education includes measures to encourage regular school attendance and to reduce drop-out rates.

Parents or legal guardians retain primary responsibility for the child's upbringing and development, but states should provide appropriate assistance to support child-rearing and ensure development of facilities and services for the care of children. Specific Articles focus on the state's role in providing alternative care where necessary, and the regular review of placements. States are expected to take legislative, administrative, social and educational measures to protect children from physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation while they are in the care of parents or legal guardians. They should also establish measures to protect children from sexual exploitation or abuse, and from using narcotic drugs or psychotropic substances. The Convention prioritises the promotion of recovery and social reintegration, asserting that any restriction of liberty should be a measure of last resort which enables maintenance of family contact.

The UN General Assembly (2010) has produced *Guidelines for the Alternative Care of Children* detailing state obligations to support families, protect children's rights and, where appropriate, provide alternative care which ensures the safety, well-being and development of the child. There are also international standards specific to children deprived of their liberty. The *United Nations Standard Minimum Rules for the Administration of Juvenile Justice—[the Beijing Rules]* (UN General Assembly 1985)—emphasise that states should further the well-being

of children and families through social policy that promotes their welfare. Those in institutions are expected to receive care and protection as well as social, educational, vocational, psychological, medical and physical assistance commensurate with their age, sex and personality. The UN *Guidelines for the Prevention of Juvenile Delinquency*—[*the Riyadh Guidelines*] (UN General Assembly 1990a)—emphasise “a child centred orientation” (Guideline 3), stressing the importance of policies which provide opportunities to meet the varying needs of young people and their personal development, particularly for those who are “demonstrably endangered or at social risk” (Guideline 5a). Affirming that placement in an institution should be a last resort and for the minimum necessary period, these Guidelines establish the criteria that should be applied to authorise institutionalisation (Guideline 46).

The Special Rapporteur on Torture has raised concerns regarding children deprived of their liberty. Noting that “children experience pain and suffering differently to adults owing to their physical and emotional development and their specific needs”, he states that even “very short periods of detention can undermine the child’s psychological and physical well-being and compromise cognitive development” (Méndez 2015: para 33). The UN *Rules for the Protection of Juveniles Deprived of the Liberty*—[*the Havana Rules*] (UN General Assembly 1990b)—explicitly state that deprivation of liberty should be “limited to exceptional cases” (Rule 2). Aimed at “countering the detrimental effects of all types of detention” and “fostering integration” (Rule 3), they establish: educational, health, personal and social entitlements for those detained; requirements governing the use of restraint, discipline and sanctions; and expectations regarding independent inspection, requests, complaints and resettlement processes.

These internationally agreed standards provide the foundation for holding states to account while positively influencing the jurisprudence of international and national courts. Together with secondary sources derived in the jurisprudence of the UN Committee on the Rights of the Child (e.g. in General Comments or Concluding Observations following periodic reviews), these non-binding “soft law” Rules and Guidelines “raise standards through persuasive force, their use in advocacy and campaigning, and by aiding the interpretation of

the Convention and other legally binding instruments” (Hollingsworth 2017: 191). Analysing legal implementation of the CRC in 12 states, Lundy et al. (2012: 4) note that, where the Convention was incorporated into domestic law, interviewees felt “children were more likely to be perceived as rights-holders and that there was a culture of respect for children’s rights”. Significant drivers included a strong NGO sector, key children’s rights advocates and supporters in government or public office, and the process of periodic reporting to the UN Committee (ibid.: 8).

The UK Context

Devolution within the UK has led to jurisdiction-specific legislation and policy. In the mid-2000s, promotion of children’s rights was evident in the strategic frameworks of the devolved administrations in Wales (Welsh Assembly Government 2004), Northern Ireland (OFMDFM 2006) and Scotland (Scottish Government 2008). The precise wording differs in more recent legislation, with Welsh Ministers expected to have “due regard” to the CRC when exercising their functions while their Scottish counterparts have a duty to “give better or further effect to the requirements” of the Convention. Consultation with children is central, together with the promotion of public awareness and understanding about children’s rights, and regular reporting on compliance. However, this political commitment does not fully incorporate the CRC into domestic legislation.

Across UK jurisdictions, specific criteria dictate the use of secure accommodation. A child who has a history of ‘absconding’ and is likely to run away from any other type of accommodation and, if s/he runs away, is likely to suffer significant harm could be placed in a secure facility. Similarly, a child who is likely to self-harm or injure others if in any other form of accommodation fits the criteria.² The Health and Social Care Trust in Northern Ireland, local authority in England or Wales, determines whether these criteria are met and a secure placement is necessary. If the placement exceeds 72 hours the case is referred to the Family Proceedings Court, which may authorise a placement

for up to three months in the first instance and up to six months at any one time in subsequent applications. In Scotland, social workers or other lead professionals considering secure accommodation have to investigate options and discuss these with a named Unit and the local authority Chief Social Work Officer prior to seeking authorisation at a Children's Hearing. Once an order has been issued by the Hearing, the Chief Social Work Officer and the Head of Unit have certain powers and duties regarding whether the secure authorisation is actually implemented.

The statutory framework for restriction of liberty in a secure facility is specified in accompanying regulations.³ In England, Wales and Northern Ireland, these establish that children under the age of 13 cannot be placed in secure accommodation on welfare grounds without Ministerial approval. Taking into account the wishes and feelings of the child (as well as their parents/guardians, the child's independent visitor, and the person managing the secure accommodation), it is expected that regular reviews will consider whether the criteria for a secure placement continue to apply and the placement remains "necessary" or, in Scotland, "in the child's best interests".

Additional guidance clarifies interpretation of the legislation and associated regulations. However, in England, Hart and La Valle (2016: 33–34) found "differences in perception—not just across but within authorities—about when it is time to draw the line" in determining thresholds for secure placements. Northern Ireland guidance stresses that the restriction of liberty must be a last resort, having considered and rejected all else—it should never be used because there is no other placement available, as a result of staffing inadequacies, because the child is being a nuisance, or as a form of punishment (DHSS 1996b: para 15.5). Scotland's guidance emphasises that depriving a child of their liberty "infringes on one of their most fundamental human rights" and "impinges on associated rights to freedom of association and family life", thus placement in secure accommodation "can only be justified because it is in their best interests and/or because it will protect the rights of others" (Scottish Government 2013: para 1.3).

Listening to Children's Voices

Beyond consideration of the 'legal' validity of rights implementation, *critical* analyses also focus on social, cultural, political, economic conditions and how particular circumstances or relationships influence behaviours and attitudes. A key issue is whether rights discourses and implementation have the potential to address structural inequalities rooted in the determining contexts of class, gender, sexuality, age, ethnicity, culture, and abilities. It is within these contexts that differential responses, limited opportunities and the marginalisation of *all* children prevail, but particularly for those in state care or in conflict with the law. Central to understanding the impact of determining contexts are the views and experiences of individuals and specific groups. Qualitative research with children deprived of their liberty on welfare grounds has been minimal. Yet, as the following sections demonstrate, it reveals consistent deficiencies in the implementation of rights.

Secure Accommodation in Britain

Children in secure accommodation in Britain describe experiencing discrimination on the basis of being 'looked after' (Goldson 2002). Some have poor relationships with social workers and feel judged. They consider that they should be able to make personal choices but are disengaged from decision-making processes such as reviews, hearings and care planning. Lack of participation and preparation are common, with children not informed about where they are being taken and then traumatised by admission to secure care. Some are located a considerable distance from their families and local communities, including 'cross border' placements in other jurisdictions, which affects family relationships and contact (Barry and Moodie 2008; Gough 2016, 2017).

While some enjoy the educational provision in secure accommodation—both in its own right and because it relieves boredom—others consider the curriculum too simplistic, repetitive, unlikely to help them gain qualifications and inappropriate to their immediate needs (Barry and Moodie 2008; Children's Rights Director for England 2009).

Leisure opportunities are insufficient, with access to activities restricted by budgets or staff availability and the withdrawal of activities used as a sanction (Barry and Moodie 2008). Professionals have significant concerns about the quality and/or sufficiency of therapeutic provision and Child and Adolescent Mental Health Services [CAMHS] (Gough 2016, 2017; Hart and La Valle 2016; Held 2006; Mooney et al. 2012).

Many young people perceive and experience secure accommodation as punitive, describing isolation on arrival as frightening and distressing. Overly restrictive rules, alongside inconsistencies in approach between staff within units, provoke frustration and anger. Children report a lack of privacy during family visits, limited telephone access, and restrictions on their use of the internet or social media. They express confusion about sanctions, criticising the approaches used—particularly the inconsistent or frequent use of 'time out' and 'single separation', which they consider counterproductive. Some raise concerns over the unjustifiable use of physical intervention and restraint, expressing a lack of confidence that complaints will be satisfactorily addressed. Inadequate preparation and support as they move on from secure accommodation is also an issue, especially if this contributes to subsequent placement breakdowns or repeat admissions (Barry and Moodie 2008; Children's Rights Director for England 2009; Gough 2016, 2017).

The Experiences of Children in Northern Ireland

Within Northern Ireland, the independent Regulation and Quality Improvement Authority [RQIA] is responsible for monitoring the availability and quality of health and social care services. However, its inspection reports on children's homes, including the Secure Care Centre, are not published. This compromises public accountability regarding regime management and operation. As part of the process of periodic review, preparation for the 2015 *Northern Ireland NGO Alternative Report* to the UN Committee on the Rights of the Child included consultation with children held in the Centre during Spring 2015 (Haydon 2016). Group discussions and interviews with a total of 21 children aged 12–17 (15 females, 6 males) illustrated rights

violations as a result of the socio-cultural and institutional contexts in which decisions about their care were made. In these, their entitlements to ‘participation’ and actions being taken in their ‘best interests’ were undermined by a perceived over-emphasis on protection and risk management.

The Culture of Risk Management

The culture of risk identification, reduction and avoidance underpins policy and practice within health, social care and youth justice—from ‘early intervention’ based on assessment of ‘risk factors’ (Haydon 2014) to patient, client, or offender management. As ‘looked after’ children, those consulted were more closely monitored than their peers, leading to harsher responses:

If you’re in care, you’re treated differently. Your social worker’s onto you if you take drugs. Then you’re sent here. Other people are taking drugs, all your mates are taking drugs, and nothing happens to them. They wouldn’t end up in here.

The issue of child sexual exploitation [CSE] was particularly pertinent. According to Marshall (2014: 67), the CSE debate is “skewed” towards a perception that it primarily concerns young people in residential care who go missing, mainly because their activities are so closely monitored and recorded. This can lead to humiliating interventions for young women:

Staff follow you and get the cops to stop your bus. They say things like “This person’s high risk, code red, sexual exploitation”. That’s not right. That should be private, not said in front of everyone on the bus. It’s embarrassing.

Verifying such experiences, care staff reported to Northern Ireland’s CSE Inquiry how they followed young people, stopped buses or trains to remove them, and contacted the police when they felt they had no other option or that the risk was sufficient (Marshall 2014: 84).

Other care experienced young people have discussed being classed as 'missing' when they failed to return to their children's home at the agreed time, or were absent without permission. Understanding the need for police involvement in 'high risk' instances, they noted that the police were "called too often and too readily", believing "there must be more effective ways of managing absconding and risk-taking behaviour" (VOYPIC 2014: 24). A young person's working group informing the Northern Ireland CSE Inquiry commented that "over-reactions" by staff in a care setting "could be interpreted as a worker doing what was best for themselves (e.g. ensuring all possible measures were taken should there be a later investigation) rather than what was best for the young person", proposing that a greater balance should be achieved between bureaucratic reporting and young person-centred responses (Neill and Moffett 2014: 10).

A few of the consulted young women did not agree with their social workers' assessment of risk. Disputing the likelihood of sexual exploitation occurring while she was using 'legal highs', one commented:

They think you'll drop you knickers when you're out of it. People say "When you're conked out, you're a high risk". But who's gonna see you lyin' there, out of it, and want sex with ya? Na, that's not gonna happen.

Another stated:

I know the risks, but I don't feel they are risks. Social workers are nosy. They use information against you. You can't trust them. I understand they're worried, but they feel everything I do is risky. [A secure placement is] more for my own safety from others than for *my* behaviour.

Some young people considered that social workers exaggerated the level of risk to gain a secure accommodation placement. One commented: "Stuff in LAC [Looked After Children] reviews is pure crap—if they can't manage you, they'll do everything in their power to get you in secure". Another affirmed: "They say you've been worse to get you in here, to meet the criteria to get into [Secure Care Centre]." They were acutely aware that secure care was restricted to under-18s: "When you

get to 18 you're thrown out, so they need to think about other ways to manage risk”.

These quotes illustrate a clear disconnect between young people's perceptions of risk and the responses of the professionals working with them. While they may have under-estimated potential risk of harm, young people questioned what they considered 'over-reactive' and intrusive interventions. Their comments highlight how professional emphasis on risk management procedures can appear to take precedence over discussion with the young person about how their needs, and concerns about their safety, could best be addressed.

Determining the 'Best Interests' of the Child

It is evident that the nebulous concept of 'best interests' is difficult for state agencies to implement when children do not share the same level of concern for their personal well-being as that identified by those responsible for their care:

Decisions are made for you about *everything*. But I don't think they're made in my best interests. I wasn't even allowed to go to the shop. I was always reported as missing.

Some young people resented not being able to make the choices they wanted—including decisions that were potentially harmful:

They should listen to me. It's not best for me to be in here ... If I want to go back on herbal ['legal high'], I'll go back on it.

Adults can try and help you, but if you don't want help you should be able to say “Fuck you”. I'd rather be outside [the Secure Care Centre], with someone nagging me, than be in here.

Secure care was perceived as a punishment: “There shouldn't be a place like this. We're not bad people”. This was particularly significant when children who had suffered sexual exploitation were deprived of their liberty while perpetrators remained free. Some argued that secure care should be

abandoned: "You should have meetings ... where secure is off the list of options ... What you need is a support worker, someone to talk to".

Those consulted clearly articulated the support required. They recognised the impact of 'evolving capacities' and the fact that adolescents require assistance: "If they're under 13 ... they don't have the ability to make their own decisions. If they're 13–16 they still need help". They considered early intervention a priority: "They need support and help earlier—when they're still a child ... It's too late when you're 16 or 17, you don't want help then". Also vital to them was identification of the underlying causes of 'problematic' behaviour:

Children are called "brats" if they're behaving badly. They're punished. But there's a reason why they're behaving badly. People should find out the reason. I wasn't bad because I wanted to be. There was stuff going on. I couldn't talk to teachers.

Noting the potential negative impacts of available placements, one young woman talked about being in an intensive residential care home: "... with six other young people who've all got loads of problems—all being together in one place, you're bound to go mad".

International standards assert that deprivation of liberty should be used only as a measure of last resort and for the shortest appropriate period of time. Understandably, children in secure care resented their confinement. They also questioned the value and success of short-term responses to risky behaviour: "They say to me in here that using drugs is a short-term solution. But being put in here is a short-term solution. And it doesn't work".

Young people can spend long periods in secure accommodation, either on consecutive Orders or aggregated over a period of time: "I've been in [Secure Care Centre] 18 months on and off, with 3 months outside altogether". This young woman admitted that she would "go on the herbal and can't cope" when outside, concluding: "If I wasn't in here, like, I'd be dead". However, another perceived repeat admissions as clear evidence that individuals' needs remained unaddressed: "If a young person ends up in [Secure Care Centre] once, I can understand that. But if they keep coming, it obviously isn't working".

Noting the lack of support available during their childhoods, those consulted described how their needs could have been more appropriately addressed through earlier intervention and individualised support in their communities. While temporarily providing a safe, stable environment and access to specialist support, “the timetable for a secure placement is driven by the reduction in risk, not the child’s needs, which means that more fundamental—and lengthy—work on the underlying causes of the child’s difficulties cannot be undertaken” (Hart and La Valle 2016: 9). As those consulted pointed out, secure accommodation is therefore an ineffective short term response. However, children’s perspectives are routinely not sought, or ignored, within policy and practice.

Limited ‘Participation’

All children and young people are affected by limited opportunities for participation, but care experienced children are consistently denied this entitlement. Many of those consulted gave examples concerning their experiences of LAC reviews: “You’re not listened to. I’d get pissed off—people just write stuff down but say nothing”. They were frustrated about the minimal interaction and information sharing:

I didn’t feel listened to, not even a wee bit. You go into a room full of people and they’re talking about you and writing stuff down, and you’re sitting there like a dick. They’re sharing information that I thought was classified—“She’s [having sex] with this one and she’s with that one”, and I’m not with any of them. But that’s my private business, they’re talking about my private business.

Young people were regularly not informed in advance about meetings regarding their referral to secure accommodation:

There had been a lot of talk about secure, but I didn’t know I was coming when I did. It was almost a threat: “If you don’t ... you’ll be going to secure”.

I came into secure on my 17th birthday and didn’t know I was coming in. I didn’t know my case was going to the [Restriction of Liberty] Panel.

They felt their views were not heard in court: "If the social worker says they want you to get three months, you get what the social worker said". A move could subsequently happen very quickly, and a young man described his distress:

I had no idea. I was arguing with staff in [residential care home] about phone top-ups and was told "You're going to secure". I said "When?" and was told "Now". I was greetin' [crying] all the way here. I didn't even cry when I was told I was adopted. But I cried in the car all the way here, for about an hour and a half, in the police car that brought me here. That says something.

Once placed in secure accommodation, their autonomy was minimal: "Every decision is made for you—where you go, when you eat, when you go to bed". Questioning the imposition of bedtimes, one young woman stated:

You should have the right to make decisions for yourself, within boundaries. Like what time you go to bed. In here, if you're 13, your bedtime's half nine. But I wouldn't usually go to bed 'til half 11. That's way too early.

Having commented that his bedtime (10 o'clock) was "the time I'd be going out half the time if I was outside", a 15 year old young man stated wryly: "I don't know why it's so early—it's a secure unit".

Some considered that while in secure care there was no choice over engagement with youth justice agencies or specialist services such as drug and mental health services or projects for those at risk of sexual exploitation. Usually this was included in their 'exit plan': "You have to work with them to come out".

Not generally involved in the decision-making processes leading to their placement in secure care, young people's participation in defining routines and required interventions while detained was also minimal. Contributing to high levels of frustration, this undermined their capacity to consider the support they needed to understand the impacts of difficult or traumatic experiences, manage their feelings and behaviour, stay safe and cope with everyday life.

Lack of Civil Rights and Freedoms

Basic civil rights were consistently violated within secure care. Freedom of association was undermined in a building where doors to every room were locked on entry and exit, despite rooms being off a locked corridor within a secure building. Expressing frustration, one young man commented that he would rather be in the JJC because it was less restrictive:

No-one should be here ... Staff coming to work here should have to spend a day living how we live, so they know what it's like. They should have their keys taken off them so other staff have to let them in and out of rooms. They should know what it's like to have to ask for a key to go for a crap.

In 2015, the Special Rapporteur declared: “the imposition of solitary confinement, of any duration, on children constitutes cruel, inhuman or degrading treatment or punishment or even torture”, whether as a disciplinary or “protective” measure (Méndez 2015: para 44). However, the first 24 hours in secure care were spent “on your own in your room, to settle in—you're kept apart from the others, you're eased into the group”. Those consulted explained that this produced an emotional mix of fear and anger:

When I arrived here I was put into a room. I thought “What have I done to be put out of the group?”

For the first 24 hours you don't have a clue. You go in, you get locked in your room and you're like “What the fuck!”

Isolation was also used in response to challenging behaviour:

You can be put in an empty room—a completely empty room without your clothes or anything, no TV, no radio. They just keep you in there and don't take you out to education or anything. I was in there for eight days once. It does your head in.

Contact with family and friends was limited. There was no access to the internet and mobile phones were confiscated. Staff justified this policy on the basis of protecting young people from harm. Telephone calls

were restricted to two per evening and each young person had a contact list drawn up by their social worker. One young woman expressed annoyance that “You can’t phone your mates ... someone who doesn’t even know you decides who you can talk to”. Constant monitoring and observation inhibited privacy:

There’s no privacy at all in here. Staff sit in the room while you’re on the phone. You can’t whisper to each other, or draw pictures, or pass notes, or anything.

Currently, all my family contact time is supervised by a Social Worker who constantly takes notes while we are talking and, on occasion, interrupts our conversations.

Acknowledging that evening group meetings provided opportunities to raise issues, these were considered an inappropriate forum to make complaints. Some young people were aware of an Independent Representation Scheme operated by an NGO. However, doubts were raised about the effectiveness of complaints procedures: “frankly, they do fuck all” or “they’d make a joke of it”.

Listening to the voices of these young people reveals how measures intended to ‘protect’ them regularly led to breaches of their rights—not only through deprivation of their liberty but also within interactions and interventions which did not prioritise their participation or best interests.

Reaffirming Commitment to Children’s Rights

This overview highlights endemic breaches of international laws, Rules and Guidelines despite independent inspections, the existence of human rights organisations and Children’s Commissioners, a UK National Preventive Mechanism, and periodic reviews by UN Treaty bodies. The following provides the basis for considering the significance of children’s rights discourses.

Rights-Based Interventions: A Critique

According to Hollingsworth (2017: 192), the non-binding Concluding Observations produced by Treaty bodies can “play an important role within domestic political accountability processes”. Courts have, albeit rarely, given “indirect legal effect to concluding observations with which the government had previously failed to comply”. Enforcement mechanisms, however, are weak and compliance is dependent on “diplomacy and political pressure rather than legal sanction”, thus, on “issues about which the government is resolute, or which would be politically unpopular ... the monitoring process can appear futile” (Hollingsworth 2017: 191). For example, Concluding Observations of the UN Committee on the Rights of the Child [UNCRC] (2016) concerning the UK government’s most recent—*fifth*—periodic report include recommendations focusing on measures to reduce the inequalities, discrimination and stigmatisation experienced by children and specific groups (including children in care). While re-affirming the CRC’s general principles, the Committee’s recommendations include reference to: mental and adolescent health, child poverty, school exclusion, child sexual exploitation and abuse, alternative care, secure accommodation, and the use of restraints, detention and solitary confinement.

Debate also continues regarding the strength and effectiveness of the CRC. This concerns the lack of its incorporation into domestic law within the UK and devolved administrations. The only statutorily available human rights instrument which may currently be used in cases of alleged rights violations is the *European Convention on Human Rights* [ECHR], given domestic effect by the *Human Rights Act 1998* and enforceable through the European Court of Human Rights. Hollingsworth (2017: 193) argues that “international standards can be used in litigation to secure immediate advances in children’s rights by providing the basis for legally binding remedies for individuals or groups of children and, when used strategically, systemic change”. As Stanley (2007: 176–177) notes, however, “the broader political context in which rights operate in law cannot be disregarded” and specific groups may have neither the knowledge nor the finances to progress

legal proceedings. This is particularly pertinent for children. In addition, “demand for *legal* remedies for children may provide little more than formalistic responses from governments” which have limited impact on children’s suffering and powerlessness (King 1994: 386), since governments may simply declare their policies as “lawful” within the terms of the CRC (King 1994: 398).

The UN Development Group (2003) affirms that a ‘rights-based’ approach requires building the capacity both of duty-bearers to fulfil their obligations and of rights-holders to claim their rights. As King noted soon after ratification of the CRC, the existence of legislation may not result in significant improvement in children’s lives—especially if “custom, cultural norms or moral principles” undermine the potential for children to be treated equally and with dignity. Within the UK, unequal power relations exist interpersonally (in relationships between children and parents, community members or adult workers), institutionally (where social and material inequalities are reproduced in services and institutions), and societally (where children’s views are disrespected or marginalised). Their subordination to adults, as individuals and as a social group, operates at all levels (see Scraton 1997). Physically and psychologically dependent on adults due to lack of experience (inherent vulnerability), children and young people are ignored, their perspectives are not valued, and they are excluded from decision-making processes (structural vulnerability). Despite the increasingly fashionable use of terms such as ‘agency’ and ‘empowerment’ to describe the resistance of individuals or specific groups to these dynamics, children’s actions are invariably mediated by adult control of time, space, access to resources, and decision-making.

Children in care are generally from the most economically deprived families and communities. While children and parents in these circumstances may benefit from family support initiatives, interventionist emphasis on ‘protection’ and ‘resilience’ cannot overcome persistent, severe, and multiple adversities manifested in on-going family conflict and long-term poverty (Devaney et al. 2012). Labelled ‘deficient’, ‘lacking capacity’, ‘at risk’ or ‘vulnerable’, these children’s routine experiences, capacity to negotiate ‘choices’, and future life chances are

restricted by their socio-economic location. At the same time, as shown above, gendered expectations about sexual behaviour result in different thresholds of concern and judgement regarding ‘risk’. While male sexual vulnerability is under-recognised (Roesch-Marsh 2014), greater anxiety about girls’ vulnerability to risk of sexual exploitation leads to those who ‘go missing’ being more likely than boys to be placed in secure accommodation on welfare grounds. Boys are more often detained through the youth justice system for behaviour defined as posing a threat to others or related to potential involvement in ‘disorder’ or ‘criminal behaviour’ (Held 2006; Hart and La Valle 2016). Girls who commit offences or are deemed to be at considerable risk move more quickly through the welfare and justice systems towards secure care or custody (Gough 2016).

Thus the determining contexts of age, class, gender and sexuality influence perceptions of, and presumptions about, those who engage in ‘risky’ behaviours as well as responses focused on protection and risk avoidance or reduction. Challenging this emphasis on the responsabilisation of individual young people, an alternative approach is the promotion of rights as a political strategy—encouraging and enabling children as rights-holders to claim the social, cultural, economic, civil and political entitlements specified in the CRC and elsewhere while also holding the state and its agencies to account for implementation of their obligations.

In 2017 the UN Secretary General commissioned a global study: “Children Deprived of Liberty” to document the current situation, in all its forms. Having assessed the implementation of applicable international laws and standards, and the effectiveness of existing approaches, this study is intended to identify good practice. Recommendations for action will focus on meeting international obligations, reducing the number of children deprived of liberty, and implementing alternative responses (see OHCHR 2017).

Current reviews in England, Scotland and Northern Ireland into the need for, and use of, secure accommodation within the range of provision for ‘looked after children’ include consideration of the links between secure care, mental health and youth justice. While providing an opportunity for reflection and positive developments, there is a

danger that managerialist agendas—revision of legislation, regulations, guidance, policy, inspection frameworks and standards; the roles and responsibilities of government departments and agencies; relative costs and commissioning processes for different forms of provision; modification of existing facilities and services; staff training, development, terms and conditions—will dominate. In terms of professional practice, establishing appropriate processes for assessment and intervention, or effective 'behaviour management' approaches within open and secure accommodation, are important issues. However, it is essential that the reviews focus on determining best practice for addressing the needs *and rights* of children considered highly 'vulnerable' and involved in potentially harmful behaviours.

Ways Forward

In addition to considering the interpersonal and institutional contexts in which potentially harmful behaviours occur, policy priorities must be re-framed to emphasise the promotion of social justice through intrinsic changes to the distribution of social and economic resources. The CRC and other international human rights standards provide a significant framework for articulating and implementing policy and practice which is inclusive; overtly challenging negative stereotypes, discrimination and stigmatisation while explicitly promoting and protecting children's individual and collective rights.

Childrens' rights should be regarded as entitlements for all under-18s. Neither conditional on adults 'conferring' them, nor transactional through notions of responsibility, they are intended to address the disadvantages, vulnerabilities and unmet needs of individuals and specific groups. Negative stereotypes and assumptions about 'children' (under-12s) and 'young people' (13–18 years old) must be contested. While recognising their need for care and protection, under-18s should be viewed as social actors in all aspects of their lives. Their inherent *and* structural vulnerabilities should be acknowledged. Rather than defining them 'incompetent' or 'irrational', adults need to comprehend children's understanding of their worlds and support them in developing

necessary skills to express their views, negotiate relationships and decisions, 'claim' their entitlements and seek redress for rights violations.

Children's perspectives provide significant insight into what is needed for successful implementation of rights standards and should inform understanding about whether duty-bearers are fulfilling their obligations. Meaningful participation is dependent on the adults living and working with children really listening to them, taking them seriously and acting on their views. There are inevitable tensions involved in achieving a balance between 'participation' and 'best interests' when a child does not recognise potential harms to their own or others' well-being. In discussing these issues, the adults involved need to understand the child's perspectives concerning the role of social workers and other professionals, their comprehension of 'risks', their judgement about potentially harmful activities or situations, and their suggestions regarding appropriate responses when they consistently engage in unsafe practices. As Marshall (2014: 94) states: "children have a right to be protected and ... this will be most effectively secured if their views are taken into account about how matters of care and control should be addressed".

It is vital that children's understanding about, and acceptance of responsibility for, 'unacceptable' or potentially harmful behaviour is distinguished from shaming and punishment. Avoiding stigmatisation and criminalisation, policies should "explicitly recognise that the most challenging young people ... are those requiring the most nurturing" (McAra and McVie 2010: 200). Harmful behaviour by a relatively small number of children and young people can cause concern, fear, intimidation and suffering in communities, including harm to other children and young people. Recognising that challenging behaviour is often symptomatic of unmet needs and/or negative experiences with peers, parents and other community members, the adults involved in children's care, health, education and socialisation are responsible for identifying and addressing the causes of such behaviour. These may include social 'norms' and *adult* behaviours observed and learned by children concerning drink, drug use, sexual harassment, inter-personal and inter-community violence. Also relevant is the broader context of the child care system, including the role and practices of social workers

and the quality of their relationships with children (particularly their capacity to develop trusting relationships while providing regular contact and support). The culture of 'open' residential settings and access to resources are significant (Goldson 2002), as is the scope of provision—from earlier intervention to maintain children in their families and communities to specialist placements and long-term support to meet the needs of vulnerable individuals (see Hart and La Valle 2016; Mooney et al. 2012; RQIA 2011; Sinclair and Geraghty 2008).

For children experiencing multiple disadvantages, the circumstances of their lives can be changed only through supportive policies and practices that extend to their families and communities. This includes access to essential services and an adequate standard of living. Child-centred, holistic, non-stigmatising provision for 'vulnerable' children who require additional support to fulfil their potential and avoid social exclusion is crucial. Community based, this should include practical support and guidance in relation to personal development. Access to education, training and employment opportunities is vital, as is information about welfare benefits and accommodation. Services to address physical and mental ill-health (including substance misuse), and family support to ensure children's care and protection, are basic requirements. Also necessary are adequate play, leisure, youth and community facilities.

Co-ordinated, multi-agency support is required to address the chronic and serious problems experienced by children defined 'in need', alongside intensive specialist interventions for those recovering from the impact of difficult childhoods and traumatic life experiences. Such interventions should involve positive role models and 'significant adults' to support children through the difficulties they experience as they transition to adulthood, rather than short-term interventions (see Martynowicz et al. 2012). Discourses of individual pathology and responsibilisation, exemplified by the rhetoric of young people 'not putting themselves at risk' or 'keeping themselves safe', should be avoided and replaced by a commitment to ensuring each individual's personal, social and educational development. Also significant is the recognition and regulation of adults who encourage harmful behaviours, exploit young people's vulnerabilities, and perpetrate abuse or exploitation.

It is clear that a small number of children will require a ‘safe space’ during periods when they experience extreme vulnerability. They should be fully involved in all decisions concerning their care, protection and resettlement, with their needs agreed and prioritised. Marshall (2014: 8) concludes that the “challenge for society is to provide the kind of structure, safety and quality of care” provided by secure facilities “without depriving young people of their liberty and of the opportunity to develop into individuals who can cope with freedom”. Detention should be exceptional—a last resort to protect the child or others from harm. Otherwise, as international standards establish, it represents an unequivocal breach of children’s rights.

Notes

1. In accordance with Article 1 of the UN *Convention on the Rights of the Child* (CRC), the term “children” is used throughout the chapter to define “every human being below the age of eighteen years”. Children deprived of their liberty include those detained: in custody, for their own/others’ protection, as a consequence of physical or mental disability/ill-health, in immigration detention, or because they are considered a threat to national security.
2. See: *Children Act, 1989*, Section 25(1) in relation to England; the *Social Services and Well-being (Wales) Act 2014*, Section 119; the *Children (Northern Ireland) Order 1995*, Article 44(2); and the *Children’s Hearing (Scotland) Act 2011*, Section 83(6).
3. See Department of Health (1991), DHSS (1996a), Welsh Ministers (2015), and Scottish Ministers (2013).

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