

P4P COUNTRY INFORMATION ON CHILD PROTECTION SYSTEMS	
COUNTRY	Northern Ireland
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1. GENERAL DESCRIPTION OF CHILD PROTECTION SYSTEM AND PARTICULAR RISK GROUPS

Legislative basis

The Children Order (Northern Ireland) 1995, provides the legislative framework that governs the response to, and services provided for, children in need of support, at risk of harm and for those who have suffered abuse and harm. For children in need of support, the legislation imposes a general duty on Health and Social Care Trusts in Northern Ireland to provide a range of services for children defined as 'in need' in their locality. Articles 17, 17A, 18, 18A, B, C and D (under Part IV of the Children Order) and Schedule 2 (1-12) set out the main Trust responsibilities for children defined as 'in need' as well as those it accommodates.

Article 17 of the Children Order outlines that a child becomes defined as 'in need' if: (a) they are unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for them of services by an authority under this Part; (b) their health or development is likely to be significantly impaired, or further impaired, without the provision for them of such services; or (c) they are disabled. 'Family', in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he or she has been living.

Article 17A relates to children who are carers and states that if: (a) a child ("the carer") provides or intends to provide a substantial amount of care on a regular basis for a person aged 18 or over; (b) the child requests an authority to carry out an assessment for the purposes of determining whether he is to be taken to be in need for the purposes of this Part; and (c) the authority is satisfied that the person cared for is someone for whom it may provide social care, the authority (i) shall carry out such an assessment; and (ii) taking the results of that assessment into account, shall determine whether the child is to be taken to be in need for the purposes of this Part.

Once defined as 'in need', the Trust, under Article 18(1-9) has a duty to safeguard and promote the welfare of children and young people by, insofar as it is consistent with that duty,

promoting their upbringing by their families by providing a range and level of personal social services appropriate to those children's needs. With respect to the provision of such services, Article 18 establishes that: a child's family could provide the services (Article 18(3)); Trusts shall facilitate others (such as voluntary organisations) to provide support services (Article 18(5)); the types of service could include giving assistance in kind and, in exceptional circumstances, cash (Article 18(6)); that prior to provision of services the Trust shall take account of the child and their circumstances and that (Article 18(8)); and that services provided could be unconditional or subject to forms of repayment except where the family is receipt of certain welfare benefits (Article 18(7), (9)).

Article 18A relates to assessments of carers of disabled children. It establishes that: (1) Where (a) the carer of a disabled child who has parental responsibility for the child requests an authority to carry out an assessment of the carer's ability to provide and to continue to provide care for the child; and (b) the authority is satisfied that the child and his family are persons for whom it may provide services under Article 18, the authority (i) shall carry out such an assessment; and (ii) shall take the results of that assessment into account when deciding what, if any, services to provide under Article 18. Under Article 18(2) the same duty is imposed for authorities carrying out their own assessments and those under section 2 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (c. 53). Article 18C relates to provisions for direct payments to a person with parental responsibility for a disabled child, a disabled person with a parental responsibility for a child, a disabled child aged 16-17 years. Article 18D establishes the right to information on the part of carers that informs them of their right to an assessment under Article 17A or 18A.

Schedule 2 Children (NI) Order 1995 imposes a duty on Trusts to: identify the extent to which there are children and young people in need in their locality; publish information about services and to make sure that those who may benefit from services are aware of them and draw up a children's services plan; maintain a register of disabled children in their locality; assess whether a child is in need under Children Order legislation where there may also be an assessment being carried out under other statutory provision; through provision of services to prevent neglect, abuse and reduce the need for care proceedings to bring children and young people into care; provide accommodation for another to protect a child; provide services for disabled children; take steps to prevent the need for care proceedings; provide a range of services to children and young people while living with their families including advice, guidance, counselling, social and cultural activities, home helps, help with travel costs and

access to family centres; and in providing services; provide family centres; maintain children at home; and take account of the different racial groups to which children, young people and their families belong.

Where family support services fail to ameliorate concerns and where children are at risk of/have been abused/neglected, the Children Order (Northern Ireland) 1995, makes provision. In Article 66, Children (Northern Ireland) Order 1995, it states that where an authority: (a) is informed that a child who lives, or is found, in the authority's area (i) is the subject of an emergency protection order; or (ii) is in police protection; or (b) has reasonable cause to suspect that a child who lives, or is found, in the authority's area is suffering, or is likely to suffer, significant harm, the authority shall make, or cause to be made, such inquiries as it considers necessary to enable it to decide whether it should take any action to safeguard or promote the child's welfare'.

Policies, guidance and procedures

The initial point of contact with social services (for those who self-refer and for referrals from other agencies) will be with a Gateway team. Gateway teams were introduced following recommendations made in an earlier¹ Inspection report. They represent one point of contact in all Trusts for all referrals and are based on 13 principles designed to improve accessibility, assessment processes and accountability. The Gateway teams have been complemented by the development of the Family Support and Intervention Service that receive family support cases from the Gateway teams. A new common assessment framework known as UNOCINI has also been introduced² and structures assessments to take account of three interrelated domains (the needs of the child; parenting capacity; and the family within the broader context of extended family, community and society). The policies and procedures set out the management of referrals to social services³.

The Gateway Service receives referrals, which could be for support and assistance or where there are concerns about the protection, safety, welfare and well-being of a child. 'Thresholds of intervention'⁴ determine the needs of the children. Four 'Levels of Need' are outlined. **Level**

¹ SSI/DHSSPS (2006) *Our Children and Young People – Our Shared Responsibility: Inspection of Child Protection Services in Northern Ireland*. Belfast: SSI/DHSSPS.

² DHSSPS (2011) *UNOCINI Guidance. Understanding the Needs of Children in Northern Ireland*. Belfast: DHSSPS.

³ ACPC (2005) *Area Child Protection Committees' Regional Policy and Procedures*. Belfast: DHSSPS; and DHSSPS (2017) *Cooperating to Safeguard Children*. Belfast: DHSSPS.

⁴ DHSSPS (2008) *Family and Child Care Thresholds of Intervention*. Belfast: DHSSPS.

1 refers to children and families who use universal services and may require occasional advice, support and/or information. **Level 2** refers to children and young people who, in addition to universal services, may need access to community support services. **Level 3** refers to children and young people who have complex needs that may be chronic and enduring. These are generally identified as children 'in need' within the meaning of the Children (NI) Order 1995, including some of the children, who are 'in need of' safeguarding. **Level 4** applies to children in the greatest need – children in need of rehabilitation with critical and/or high-risk needs; children in need of safeguarding (including those in care); and children with complex and enduring needs.

Following receipt of a referral a social worker in a Gateway team, a decision is made on the priority level of the referral. Those cases that fit with Level 4 threshold of need receive the highest priority and those with Level 1-2 receive lower priority. On completion of an initial UNOCINI assessment⁵ the following options could be applicable: case closure; referral onwards to the family intervention and support team; instigation of child protection procedures (which include a child protection investigation and the convening of a case conference); instigation of child protection and looked after child procedures which result in the removal of a child from their family home by way of an application to court for a legal order⁶.

For those cases where ongoing family support is decided upon it is likely that the Gateway team will have completed the initial family support pathway plan, which is followed up and developed by the Family Intervention team. Family support pathway plans are then further developed within the Family Intervention team. A range of services, voluntary and Trust based, can be accessed. These include: day care; after schools' clubs; summer schemes; food vouchers; counselling; home visitors who provide home based, practical family support; and parenting classes.

For those at risk of harm/ or having suffered harm, neglect and abuse, and/or where family support services fail to ameliorate concerns and where children are at risk of/have been abused/neglected, the Children Order (Northern Ireland) 1995, makes provision. Article 66,

⁵ DHSSPS (2011) *UNOCINI Guidance. Understanding the Needs of Children in Northern Ireland* Belfast: DHSSPS.

⁶ DHSSPS (2008) *Gateway Service-Processes. Guidance for Northern Ireland Health and Social Care Trusts*. Belfast: DHSSPS.

Children (Northern Ireland) Order 1995, states that where an authority: (a) is informed that a child who lives, or is found, in the authority's area and (i) is the subject of an emergency protection order; or (ii) is in police protection; or (b) has reasonable cause to suspect that a child who lives, or is found, in the authority's area is suffering, or is likely to suffer, significant harm, the authority shall make, or cause to be made, such inquiries as it considers necessary to enable it to decide whether it should take any action to safeguard or promote the child's welfare'.

The Co-operating to Safeguard Children⁷ and the Regional Child Protection Policy and Procedures⁸ give procedural effect to the legislative requirements. With regards to the procedures for managing child protection referrals⁹, these are received and initially processed by the newly formed Gateway teams. Under a child protection investigation, an initial UNOCINI assessment¹⁰ is completed within 15 days. The child involved must be seen within 24 hours from receipt of the referral and there must have been a strategy discussion (or if possible a strategy meeting) within 24 hours. Depending on the information that emerges from home visits and liaison with other professionals, a multi-disciplinary case conference may be called also within 15 days of receipt of the referral. The case conference is a multi-disciplinary forum where concerns are shared through the provision of reports and through verbal feedback, the significance of those concerns weighed up, analyzed and decisions made about whether a child's name should be placed on the child protection register, under what category and agreeing the elements of the child protection plan.

The social worker should provide the case conference with a report. Other professionals should also provide reports and these all should be shared with the parents at least 1 working day before the conference. Parental attendance at the case conference is strongly encouraged as is that of the child/young person where they are deemed to be of an age, maturity and level of understanding. They can bring a person to support them. There is the possibility of parents being excluded from the whole case conference (or part thereof). If this is the case the parent must receive the reason in writing. The parents should be advised in writing of the outcome of the child protection case conference within 14 days of the conference being

⁷ DHSSPS (2017) *Co-operating to Safeguard Children*. Belfast: DHSSPS.

⁸ ACPC (2005) *Area Child Protection Committees' Regional Policy and Procedures*. Belfast: DHSSPS.

⁹ DHSSPS (2017) *Co-operating to Safeguard*. Belfast: DHSSPS; ACPC (2005) *Area Child Protection Committees' Regional Policy and Procedures*. Belfast: DHSSPS; DHSSPS (2008) *Gateway Service – Processes. A Guide for Northern Ireland Health and Social Care Trusts*. Belfast: DHSSPS.

¹⁰ DHSSPS (2011) *UNOCINI Understanding the Needs of Children in Northern Ireland*. Belfast: DHSSPS.

convened. Minutes should be circulated within 14 days of the conference and their receipt acknowledged within 7 days. Parents can complain to the conference Chairperson about the process, outcomes and decisions reached. Review child protection case conferences take place on a regular basis, the first being held within 3 months of the initial case conference and then 6 monthly thereafter.

A child protection case conference decides on whether a child's name should be placed on a child protection register. Categories are confirmed, suspected or potential physical, sexual abuse or neglect. A child's name may be registered under more than one category. A child protection case conference also agrees a child protection plan. This gives details of the key roles and responsibilities of each professional involved in the case in relation to an agreed action plan. It therefore involves outlining the expectations of the parents particularly what help is to be provided to them, by whom, when, where, how often and why.

The child protection plan involves outlining the roles and responsibilities of the other involved professionals including the case coordinator making a visit to the child and their family no less than once every 4 weeks. If a child has been removed from the family home (either by way of a legal order or voluntarily – see below) then the child protection plan includes details of contact arrangements. The implementation and progress of the child protection plan is reviewed through core group meetings (these being coordinated by a case coordinator and the first of these should be held within 10 working days of the initial case conference) and regularly thereafter. Parents and children should be invited to comment on the child protection plan, should have a copy of it and should sign it as an indication that they understand it and are prepared to work with it. Failings in the plan may lead to a case conference being called and a review of the progress being made.

A child's name is removed from the child protection register through the case conference. De-registration does not mean that support services should be automatically and immediately withdrawn because the child may still be deemed as a child 'in need' under Article 17 Children (NI) Order 1995. The regional policy and procedures also detail arrangements when children on the register move area, move out of the jurisdiction and/or go missing. Arrangements are designed to allow for the sharing of information to protect children who may fall 'under the radar' because of frequent house moves for example. For some children and young people, a decision is made to apply to court for a legal order in respect of that child and they come into

care.

The journey of a care or supervision order application through court is set out in new guidelines¹¹. The Guide, which was originally introduced in 2009, emerged in response to concerns regarding delays in decision-making and cost effectiveness. It emphasizes strong judicial management in cases and timely decision-making by way of pre-proceeding meetings between parents, the Trust and solicitor, early identification and agreement on core issues. A central aim is to reduce the time it takes the court to come to a final decision in a case¹². At the point of pre-proceedings Trusts are expected to write to parents to inform them of the concerns and their intention to apply for a care order. Parents are invited to attend a pre-proceeding meeting at which they can have their solicitor present to explore the concerns and to continue to work with the Trust to address them. Children are not entitled to independent legal representation at the pre-proceedings meeting and from anecdotal evidence in interviews with some stakeholders' children are notable by their lack of physical presence and/or voice in these meetings. Following the pre-proceedings meeting and if the Trust pursues their application an initial directions hearing will take place this being held within 8 days of the application being lodged at court. Subsequent hearings involve the Trust presenting reports (with supporting reports by other professionals if necessary) that outline evidence of harm to the court and the intended care plan for the child. The guardian ad litem, as an officer of the court, plays a proactive role in the timetabling of the case for final hearing, instructing experts and in facilitating meetings to establish common areas of agreement before the case proceeds to the final hearing.

There are various legal options that include: with the agreement of the parents under Article 21 Children (NI) Order (1995); via an emergency protection order applied for by the Trust under Article 63 Children (NI) Order (1995); via a police protection order applied for by police under Article 65 Children (NI) Order (1995); and by the Trust applying for a care order to share parental responsibility with the Trust under Article 50 Children (NI) Order (1995). Applications for orders to court to remove a child from home or to keep a child in care involve satisfying

¹¹Children Order Advisory Committee (2012) *Guide to Case Management in Public Law Proceedings*. Belfast: COAC.

¹² It is worth noting that in England, in response to the Family Justice Review, the government has drafted the Children and Families Bill (2013) that once implemented will mean that: a time limit of 26 weeks will be imposed when courts are considering care proceedings applications, that there is a focus on the child's needs rather than parents' rights; and that there should be greater access to mediation – see <http://www.education.gov.uk/a00221161/>.

three core elements namely that: the threshold for significant harm has been met; that alternative care is the best option for the child when all other options have been considered and ruled out; and that the care plan agreed for the child is in the child's best interests. Under this legislation, threshold criteria are defined as that which constitutes significant harm. There is no clear, definitive definition of 'significant' and each case is decided based on the evidence available – that being the actual factual evidence of harm; the level of risk; its impact on the health and development of the child; and to whom the harm can be attributed. Harm is defined in Article 2(2) Children (NI) Order (1995) as ill treatment or the impairment of health or development. While only one of these conditions needs to be satisfied, proceedings may refer to all three. Ill-treatment is defined under Article 2(2) as including sexual abuse and forms of ill-treatment that are not physical, as for example emotional abuse. Health is defined as physical or mental health and development as physical, intellectual, emotional, social or behavioural development. Under Co-operating to Safeguard Children¹³, a case management review system has been established. While individual reports are not published, an overview by Devaney *et al.* (2013¹⁴) highlights that most children live in families characterised by problems such as domestic violence and abuse, substance misuse and mental health problems and that young age was a significant vulnerability factor. These children, in risk groups, are considered next.

Children in families with substance abuse

The exact numbers of children and young people living in these circumstances in Northern Ireland is not known, however based on UK surveys, estimates are that it is approximately 1 in 11 children. The 'Regional Hidden Harm Action Plan'¹⁵ calls for the development of preventative and early identification strategies based on a scoping review and availability of baseline data. The interface between this and mental health problems is emphasised, as often there is a degree of overlap.

Children with familial and/or personal mental health issues

The service framework for 'Mental Health and Wellbeing'¹⁶ that is based on the whole family model, indicates that parents with mental health issues should be supported in their parenting

¹³ DHSSPS (2017) *Co-operating to Safeguard Children*. Belfast: DHSSPS.

¹⁴ Devaney, J., Hayes, D., Bunting, L. and Lazenbatt, A (2013) *Translating Learning into Action: An Overview of Learning Arising from Case Management Reviews in Northern Ireland 2003-2008*. Belfast: QUB/NSPCC/DHSSPS.

¹⁵ DHSSPS (2008) *Regional Hidden Harm Action Plan. Responding to the Needs of Children Born to and Living with Parental Alcohol and Drug Misuse in Northern Ireland*. Belfast: DHSSPS.

¹⁶ DHSSPS (2011) *Service Framework for Mental Health and Wellbeing*. Belfast: DHSSPS.

role. Critical to the delivery of non-stigmatizing services is good signposting, screening and assessment as it is known that parental mental health is a risk factor for children being 'on the edge of care' and coming into care. Regarding children and young people who may end up 'in need' by their own mental health issues 'epidemiological evidence suggests that 20 per cent of children will develop a significant mental health problem.'¹⁷ Research indicates that most of these children and young people will not need to access mental health care services or receive a formal diagnosis¹⁸. However, for those that do, an extensive Northern Irish research review¹⁹, commissioned as part of the 'Bamford Action Plan'²⁰ has indicated a series of gaps in service provision. They recommend: a full survey of the mental health needs of children, young people and their carers in Northern Ireland; further research regarding help seeking interventions, the factors that contribute to poor mental health; and more research regarding the effectiveness of parenting support programmes.

Children in families with domestic violence and abuse

The 'Tackling Domestic and Sexual Violence and Abuse Action Plan'²¹ that provides a joint action plan in response to both the 'Tackling Violence at Home Strategy'²² and the 'Tackling Sexual Violence and Abuse Strategy'²³ addresses, among other issues, the vulnerability of children and young people living in situations where there are incidents of domestic violence and abuse. A recent publication from Women's Aid²⁴ outlines a spectrum of services ranging from preventative work in schools and communities through to supporting mothers to care for their children and the provision of refuge accommodation and additional support services.

Children involved in offending

¹⁷ RQIA (2011) *Independent Review of Child and Adolescent Mental Health Services (CAMHS) in Northern Ireland*. Belfast: RQIA.

¹⁸ MacDonald, G., Livingstone, N., Davidson, G., Sloan, S., Fargas, M. And McSherry, D (2011) *Improving the Mental Health of Northern Ireland's Children and Young People: Priorities for Research*. QUB/PHA.

¹⁹ MacDonald, G., Livingstone, N., Davidson, G., Sloan, S., Fargas, M. And McSherry, D (2011) *Improving the Mental Health of Northern Ireland's Children and Young People: Priorities for Research*. QUB/PHA.

²⁰ DHSSPS (2009) *Delivering the Bamford Vision. The Response of the Northern Ireland Executive to the Bamford Review of Mental Health and Learning Disability. Action Plan 2009-2011*. Belfast: DHSSPS.

²¹ DoJNI and DHSSPS (2012) *Tackling Domestic and Sexual Violence and Abuse Action Plan: April 2012-2013*. Belfast: DoJ/DHSSPS.

²² NIO and DHSSPS (2005) *Tackling Violence at Home. A Strategy for Addressing Domestic Violence and Abuse in Northern Ireland*. Belfast: DHSSPS.

²³ NIO and DHSSPS (2008) *Tackling Sexual Violence and Abuse. A Regional Strategy 2008-2013*. Belfast: DHSSPS.

²⁴ Women's Aid Federation Northern Ireland (2012) *Our Place –Safe Space Directory of Children and Young People's Services in Northern Ireland*. Belfast: Women's Aid Federation NI.

Children involved in offending are recognised as a group with particular needs. In Northern Ireland a separate youth justice system, established under the Justice (Northern Ireland) Act (2002) operates. The principle aim of the youth justice system as set out in statute is ‘to protect the public by preventing offending by children’. The paramountcy principle is reflected in revised legislation (Justice Act (Northern Ireland) 2015), but the extent to which public protection and paramountcy intersect or conflict is an open question. The parameters of the youth justice system are guided by the minimum age of criminal responsibility (MACR) and the age of criminal majority (ACM) – ages 10 and 18 respectively. The low minimum age of criminal responsibility in Northern Ireland, as elsewhere in the UK has been the subject of some critique (e.g. UK Children’s Commissioners, 2015; UNCRC, 2016). Research with children and young people indicates that they have limited awareness of the age of criminal responsibility or the consequences of involvement in the criminal justice system (McAlister et al, 2017). One of the implications of a low MACR is that children face the possibility of being drawn into the criminal justice system at a young age, and that they may face negative consequences as a result (e.g. the acquisition of a criminal record). In this context, arguably the child’s problematic behaviour is foregrounded rather than considerations regarding their care and protection. Proponents in support of raising the MACR contend that this would serve to prioritise the welfare and needs of children (Goldson, 2013).

In the international context, evidence concerning extended youth transitions and the potential vulnerability of young people as they move from children to adult systems has led to calls for extending the parameters of youth justice systems (Pruin and Dunkel, 2015). In Northern Ireland the Youth Justice Review (2011) recommended that transitional arrangements should apply for children moving from juvenile to adult custodial settings, in light of the complex needs evident amongst this population.²⁵ Evidence from inspection reports and research with children and young people shows a high proportion of children detained in custody are care experienced and have mental health and/or special educational needs (Martynowicz et al, 2012; McAlister and Carr, 2015; Spain and McCaughey, 2017). Despite repeated criticism, the juvenile justice centre is still used as a ‘place of safety’ when police cannot bail a child to a suitable address (CJINI, 2015; Spain and McCaughey, 2017).²⁶

Children and policing

The Youth Justice Review (2011) included a number of recommendations aimed towards prevention and early intervention in relation to offending. Issues regarding community confidence in the police, a legacy issue of political conflict, were also recognised. In this vein a recommendation was made that children and young people should feature more prominently in police planning processes at strategic and local levels. The most recent Policing Plan (NIPB, 2017) includes a strategic measure to increase young people’s confidence in policing. The plan also identifies children who are subject to sexual exploitation or abuse and children who go missing as a particularly vulnerable group who may be subject to repeat

²⁵ It should be noted, however, that while the existing practice is that children under 18 are detained in a Juvenile Justice Centre specifically catering for this age group, there is provision in legislation allowing under 18’s to be detained in prison, under ‘exceptional circumstances’. Practically this is taken to mean where there is an assessed ‘security risk’, but while the provision exists the most recent inspectorate report indicates that it had not been used (CJINI, 2015).

²⁶ Police stations are considered unsuitable places of safety for children. Under Police and Criminal Evidence (PACE) procedures, police have the authority to place a young person in the Juvenile Justice Centre, pending court proceedings. Most PACE admissions to the JJC occur at the weekends (CJINI, 2015; Spain and McCaughey, 2017).

victimisation, and an area where police need to work collaboratively with other partners.

Children of prisoners

According to Moore *et al.* (2011)²⁷ it is difficult to provide an accurate figure for the number of children in Northern Ireland who have a parent in prison but estimate this this affects approximately 1,500 children. The recent 'Family Strategy'²⁸ indicates a commitment to address these issues by setting out a strategy for families of prisoners as to what they can expect at different points on the journey from the community into custody and during their rehabilitation back into the community. The strategy develops the role of the Family Support Officers (FSO) and child centred visits (CCVs).

Disabled children

In addition to the provisions of the Children (NI) Order 1995, the Carers and Direct Payments Act (NI) 2002 amends section 18 of the Children (NI) Order 1995 by creating an additional clause, Article 18B, that relates to the provision for direct payments for services accessed by carers of a disabled child. The Autism Act (NI) 2011 amends the Disability Discrimination Act (DDA) (1995) with regards to the definition of disability and also places a duty on the Department to prepare a strategy in relation to autism and in so preparing consult with all departments and gather from each Trust data on prevalence rates. In Northern Ireland, there is research that highlights the challenges faced by families who have a disabled child due to social isolation, financial challenges and practical/emotional demands.

Separated children and child trafficking

A Northern Irish briefing by Webb and Toner (2011) highlights: difficulties in gaining an accurate picture of numbers given the lack of a centralized database; the lack of coordination between agencies; and poorly coordinated approaches. Another report²⁹ highlights 'the lack of ethnic monitoring by statutory bodies (despite the section 75 duty). Other concerns include: families being held in detention centres prior to being returned to their home country; and difficulties for families and children gaining access to statutory and support

²⁷ Moore, L., Convery, U. and Scraton, P. (2011) *Children with Imprisoned Parents*. <http://www.humanrights.dk/files/pdf/Full%20report%20Children%20of%20Imprisoned%20parents.pdf>

²⁸ Northern Ireland Prison Service (undated) *Family Strategy 2010 (To include updated 2012 Action Plan)*. Belfast: NIPS.

²⁹ Geraghty, T., McStravick, C. and Mitchell, S (2010) *New to Northern Ireland: A Study of the Issues Faced by Migrant, Asylum Seeking and Refugee Children in Northern Ireland*. Belfast: National Children's Bureau and the Calouste Foundation.

services.

2. ANALYSIS OF CHILD PROTECTION SYSTEM ACCORDING TO THE 10 PRINCIPLES OF INTEGRATED CHILD PROTECTION SYSTEMS

1. Every child is recognised, respected and protected as a rights holder, with non-negotiable rights to protection.
2. No child is discriminated against.
3. Child protection systems include prevention measures.
4. Families are supported in their role as primary caregiver.
5. Societies are aware and supportive of the child's right to freedom from all forms of violence.
6. Child protection systems ensure adequate care
7. Child protection systems have transnational and cross-border mechanisms in place.
8. The child has support and protection
9. Training on identification of risks
10. There are safe, well-publicised, confidential and accessible reporting mechanisms in place

Note: Refer to the reflection paper from the 9th European Forum on the Rights of the Child for an elaboration of these principles (available in Dropbox WP2). Your review can be based on monitoring reports, ombudsman and inspection reports and reports to the UN Committee on the Rights of the Child and the Committee's observations). Some of the principles will feature more prominently than others in the analysis. Key questions to consider are:

- Is the existing model rights-based?
- Are children enabled to participate?
- To what extent has feedback from children been collated as part of any monitoring systems?
- To what extent is data on violence against children available and is it disaggregated and are children's opinions documented?
- Are there gaps and weaknesses in the system?
- Are there particular groups that are not adequately provided for?

Child protection and family support

Family support is premised on early intervention and prevention and is designed to prevent children from becoming neglected, harmed and abused. Such services are particularly important in a Northern Irish context, where a recent comparative analysis of multiple deprivation measures within the United Kingdom (Abel et al, 2016) found that Northern Ireland is the most deprived area of the United Kingdom, with 37% of the population living in an area that is within the 20% most deprived across the UK and where an analysis of data-sets for children in need suggests that deprivation and social exclusion are key drivers for referral to children's social services (Hood et al, 2016).

Given the extent of need within Northern Ireland and the cost of delivering more intensive services, the rationale for earlier intervention approaches is clear and reflected in several

policy developments. 'Our Children, Our Pledge', the strategy for children and young people in Northern Ireland from 2006 to 2016 (OFMDFM, 2016), set out an outcome framework to improve the health, achievement, safety, well-being, societal contribution and rights of all children and young people in the country. This has since been built on through other policies including Families Matter (DHSSPSNI, 2009); Healthy Child, Healthy future (DHSSPSNI, 2010); Learning to Learn: A Framework for Early Years Education and Learning (DENI, 2012) Transforming Your Care: Vision to Action (HSCB, 2013), and Making Life Better (DHSSPSNI, 2014). The Children's Services Co-operation Act (2015) requires co-operation among children's authorities in Northern Ireland to contribute to the well-being of children and young people, which has been in part a response to criticism of services in Northern Ireland for tending to operate in an isolated manner, with a lack of joined-up working to identify and meet needs at an early stage for children, young people and families (Devaney et al, 2010).

A central goal of family support approaches is viewed as providing parents and families with the skills and confidence required to be active agents in achieving better outcomes. The impact on families of the lack of access to family support services has been commented upon by the judiciary in Northern Ireland. Of note is the judgment of Weir J in *Belfast Health & Social Care Trust v SM [2010]*³⁰ who stated:

What is badly needed is more practical day to day support from people with practical parenting skills, probably more mature people who may have raised their own families and thereby learned from their own successes and mistakes. An investment in recruiting support of this type would be both effective and cost-effective in maintaining families within the community and avoiding the costly involvement of the care system. This form of "upstream" intervention obviously cannot hope to prevent every mishap or tragedy but it would help to keep children to receive "good enough" care where ideally, they belong, living in their own families. An outcome of permanent removal of children from their families is, too often, as much an indictment of a failed system as it is of inadequate parents.³¹

The ramifications of lack of a lack of appropriate support is also detailed in another judgment. In *Homefirst Community Health and Social Services Trust v SN [2005]*³², Sheil LJ in determining

³⁰ *Belfast Health & Social Care Trust v SM [2010] NIFam 10 (28 June 2010).*

³¹ At para 28.

³² *Homefirst Community Health and Social Services Trust v SN [2005] NICA 14 (15 March 2005)*

whether a mother was unreasonably withholding her consent to a freeing order³³ for adoption emphasized the difference that appropriate assistance could have made:

If the Trust in the present case had been fully cognizant of SN's rights under Article 8 of the European Convention, this court considers that it should have given [the mother] a further opportunity to prove herself by undergoing the further suggested therapeutic work in early 2003. That regrettably was not done thereby depriving her of the opportunity to prove that JN could be returned safely to her care. Having regard to the real progress, which she had made in her life, despite not having the benefit of the further suggested therapeutic work, there was some real prospect that she might succeed in so doing, although that would take some time to establish.³⁴

However, due to the time, which had passed, this was no longer an option:

Time has now inevitably moved on and this court has to look at this application in the light of matters as they now stand, bearing in mind that JN has now been happily settled with Mr. and Mrs. K for nearly three years and was only in the care of his mother SN for the short period of four months immediately following his birth on 3 April 2001. This court considers that it is now in the best interests of JN that he should be freed for adoption and that SN, his mother, is withholding her consent unreasonably.³⁵

In concluding, the judge stated:

In considering any further steps, which may be taken in relation to the future of JN, it is incumbent upon the Trust and all others involved therein complying with the obligations imposed on them by Article 8 of the European Convention.

Most recently in Northern Ireland, the government in conjunction with a philanthropic organization has funded an Early Intervention Transformation Programme (EITP). Based on a collaborative preventative model which uses partnership working to work towards three central goals: equipping parents with the skills needed to give their children the best start in life; supporting families outside of the statutory system when problems first emerge; and positively addressing the impact of adversity on children by intervening both earlier and more

³³ A freeing order is an order freeing a child for adoption under the Adoption (NI) Order 1987, which terminates the parental responsibility of the birth parent(s) or others and gives the Trust sole parental responsibility.

³⁴ At para 29

³⁵ At para 29.

effectively to reduce the risk of poor outcomes later in life; the programme has three work streams that deliver a range of interventions to families. Research is ongoing to determine the effectiveness of these supports.

Child protection and right to private and family life

The delivery of child protection services is a challenging area given the balance that professional must navigate between protecting children and respecting private and family life. Several considerations regarding human rights issues come into play in child protection cases before court namely: the parameters to state intervention; use of experts and delay; weight given to the views of the child; parent and child involvement in decision making. Each is considered in turn.

Parameters regarding interference in private and family life

The parameters regarding interference in private and family life are set out by Lady Hale, an influential family court judge who sits in the Supreme Court; the highest court in the UK. In *Re J (Children) [2013]*³⁶ she reminds us that ‘There are therefore three questions to be answered in any care case: first, is there harm or a likelihood of harm; second, to what is that harm or likelihood of harm attributable; and third, what will be best for the child?’. These questions have been the subject of a range of cases in the House of Lords and the Supreme Court³⁷. A child may be protected, not only if they are suffering harm because of a lack of reasonable parental care, but also if it is likely that they will do so in the future³⁸.

The House of Lords has twice held that the mere possibility, however real, that another child may have been harmed in the past by a person who is looking after the child with whom the court is now concerned is not sufficient. There must be a clearly established objective basis for such interference. Without it, there would be no ‘pressing social need’ for the state to interfere in the family life enjoyed by the child and his parents, which is protected by Article 8 of the ECHR. Reasonable suspicion is a sufficient basis for the authorities to investigate and even to take interim protective measures, but it cannot be a sufficient basis for the long-term

³⁶ *Re J (Children) [2013] UKSC 9* (20 February 2013).

³⁷ see for example: *In re M (A Minor) (Care Orders: Threshold Conditions) [1994] 2 AC 424*; *In re H (Minors) (Sexual Abuse: Standard of Proof) [1996] AC 563*; *Lancashire County Council v B [2000] 2 AC 147*; *In re O (Minors) (Care : Preliminary Hearing) [2003] UKHL 18, [2004] 1 AC 523*; *In re B (Children) (Care Proceedings: Standard of Proof) (CAFCASS intervening) [2008] UKHL 35, [2009] AC 11*; and *In re S-B (Children) (Care Proceedings: Standard of Proof) [2009] UKSC 17, [2010] 1 AC 678*.

³⁸ *Re J (Children) [2013]*, para 4.

intervention, frequently involving permanent placement outside the family, which is entailed in a care order.³⁹ Lady Hale further argued that:

A real possibility that something has happened in the past is not enough to predict that it will happen in the future. It may be the fact that a judge has found that there is a real possibility that something has happened. But that is not sufficient for this purpose. A finding of a real possibility that a child has suffered harm does not establish that he has. A finding of a real possibility that the harm, which a child has suffered, is "non-accidental" does not establish that it was. A finding of a real possibility that this parent harmed a child does not establish that she did. Only a finding that he has, it was, or she did can be sufficient to found a prediction that because it has happened in the past the same is likely to happen in the future. Care courts need to hear this message loud and clear.⁴⁰

The importance of this judgment is that it sets out the legal basis for social services intervention into family life and emphasises the requirement for unequivocal evidence as opposed to speculation and assumption. The duty imposed on Trusts to intervene in the lives of families and children is driven by the paramountcy principle (the welfare of the child being the overriding consideration) but in all actions Trusts must intervene in a way that is legitimate, proportionate to the evidence available and that can be justified. It is then for the court to determine whether the application before the court meets the threshold for significant harm. Generally, as indicated above, where a decision to place a child in care has been made in terms of a need to protect the child from danger, the existence of a danger should actually be established.⁴¹ In making such a decision, a variety of factors may be relevant such as whether, by remaining in the care of its parents, the child would suffer abuse or neglect, educational difficulties and lack of emotional support, or whether the child's placement in public care is necessitated by their state of physical or mental health.⁴² However, these must also be 'sufficient'.

To illustrate the balance that must be achieved between protecting children and respecting the rights of all involved, *AR v Homefirst Community Trust* [2005]⁴³ concerned an application for a care order due to the mother's longstanding alcohol problems. When it became known

³⁹ *Re J (Children)* [2013], para 4.

⁴⁰ At para 49.

⁴¹ *Saviny v Ukraine 2008*, (no. 39948/06), judgment of 18 December 2008 para 50 and see also *Hasse v Germany*, para 99.

⁴² *Saviny v Ukraine 2008*, para 50; *Wallova and Walla v Czech Republic no.23848/04*, 26 October 2006.

⁴³ *AR v Homefirst Community Trust* [2005] NICA 8 (16 February 2005).

to the social services that Mrs. R was pregnant with J, a child protection case conference was held at which it was decided that the baby's name should be placed on the child protection register under the categories of 'potential emotional abuse' and 'potential for neglect'. On the day after the baby was born the trust applied for an emergency protection order and within a few days of his birth J was removed from the care of his mother. On appeal, the mother argued that the actions of the Trust in seeking a care order that effectively prevented her from having contact with her child or the opportunity to establish that she is or could become capable of caring for her child, violated her Article 8 rights. She also argued that the High Court, in making the care order, likewise acted in breach of those rights and that neither the Trust nor the High Court had sufficient regard for the nature of the rights that arise under Article 8 of the ECHR and made no proper evaluation of those rights in balancing them against what were perceived to be the best interests of the child.

The Court of Appeal were of the view that the Article 8 rights of the mother in this case and the positive duty to take measures to facilitate family reunification, had not been properly considered. Specifically, that whilst acting with 'entirely worthy motives'⁴⁴ they were unaware of the requirements of the ECHR in relation to the parent.⁴⁵ It was further argued that:

It is true that Mrs. R, because of her alcoholism and lack of insight, had been unable to care for her children in the past but there were several factors that called for a different view to be taken of her capacity to care for J. In the first place, she had remained sober for a significantly longer period than with her previous pregnancies. She had displayed a much greater insight into her difficulties than before... and she had the support of her mother that had previously been withheld. It was unquestionably true that there remained a significant risk of her lapsing again into drinking but it was equally undeniable that there was a chance that she would not. While that chance remained, her child should not have been taken from her.

It was indicated by the Court of Appeal that a lack of training for Trust staff on the implications of the ECHR had a profound effect on the outcome of the case. The importance of social workers taking cognisance of people's Article 8 rights was highlighted. Kerr LCJ, commenting on the Trust's application for a care order and a mother's subsequent

⁴⁴ Ibid, at para 103.

⁴⁵ Ibid, at para 103.

appeal stated:

In all the great volume of written material generated by the Trust in this case we have been unable to find a single reference to Article 8. If the Trust had addressed the issue of Mrs. R's convention rights (as it certainly should have done) there would surely have been some mention of this in the papers. We are driven to the conclusion that the Trust did not consider the question of the appellant's Article 8 rights at any stage. For the reasons that we have already given, we have concluded that the appellant's Article 8 rights were infringed. The Trust's procedures were not efficacious to protect her convention rights. Quite apart from that consideration, however, we consider that it is a virtually impossible task to ensure protection of these rights without explicit recognition that these rights were engaged. Where a decision maker has failed to recognise that the convention rights of those affected by the decision taken are engaged, it will be difficult to establish that there has not been an infringement of those rights.

Use of expert witnesses and delay

The courts have highlighted the importance of expert evidence in care proceedings, but have also highlighted that the instruction of experts can be a major cause of delay. *In Re: K and S [2006]*⁴⁶ for example, Gillen J noted that:

The fact of the matter is that in Northern Ireland not only is there a shortage of experts but those who are available are very busy and often cannot undertake the task allotted by the court within the timeframe set down by the judge. The court is then faced with three choices, all unsatisfactory. The first is to wait for the expert, thereby infringing the principle that delay in determining the case is contrary to the interests of the children and adds to the stress on the parties and the children concerned. Secondly to try and find another expert (who is likely to be in the same position or may not be as good) and thirdly to abandon the idea of expert evidence altogether. The solution perhaps is rigorous case planning. In the very early planning stages courts must identify the type of assessments likely to be necessary on the assumption that the court finds the facts in a particular way⁴⁷

The implications of the dispute around legal aid funding cuts and remuneration costs raises

⁴⁶ *In Re: K and S [2006] NIFam 11 (09 October 2006).*

⁴⁷ Para 7(e).

crucial questions around the appointment of legal experts, who represents children in legal proceedings, and the quality and level of service that they would receive. A further related issue in child protection cases is the weight that is given to children’s views during court decision-making.

Weight given to children’s views

A vital element of the process is communicating with children to facilitate meaningful child participation in conformity with Article 12 UNCRC, which gives children the right to express their views on all matters affecting them and for their views to be given due weight in accordance with the age and maturity of the child. In Northern Ireland, some Judges do see children and young people in chambers at their request and with a representative (usually their guardian ad litem). Significantly, the Court has stated that in assessing the necessity of any proposed measure in the context of placement proceedings, the domestic court must demonstrate that it has had regard to, inter alia, the age, maturity and ascertained wishes of the child, the likely effect of the child in ceasing to be a member of his original family and the relationship the child has with relatives.⁴⁸

In Northern Ireland, Gillen J has repeatedly stressed in the Northern Irish courts (citing Article 12 UNCRC) that ‘a child’s fundamental rights, including the right to be heard, must be respected in all forums’⁴⁹ He has also noted that a child’s ability to give informed views will necessarily vary according to the individual intelligence and maturity of the child concerned and the circumstances of the case; accordingly, there is no set method for ascertaining those views. In *Dona (a pseudonym) (No.7)*⁵⁰ (*Application to discharge care order*) [2011] NIFam 8 (6 June 2011) however, the judge stated that the wishes and feelings of the 14-year-old child was important, though not necessarily determinative and, in this case, was ‘unable to give any significant weight to Dona’s wishes and feelings’ because she ‘is naïve in her assessments.’⁵¹ Similarly, in *F and T (Care proceedings: Residence)* [2011]⁵², Stephens J, in considering the wishes of the children in relation to an interim care order and care plan, adopted the analysis of Gillen J in *Re E* [2005]⁵³ at paragraph 24(iii):

Whilst recognising the increasing importance of the child’s views with

⁴⁸ *Ageyevy v Russia*, no. 7075/10, judgment of 18 April 2013, para 135.

⁴⁹ *J (Children), Re* [2013] UKSC 9 (20 February 2013).

⁵⁰ *Dona (a pseudonym) (No.7) (Application to discharge care order)* [2011] NIFam 8 (6 June 2011).

⁵¹ At para 35.

⁵² *F and T (Care proceedings: Residence)* [2011] NIFam 1 (10 February 2011).

⁵³ *Re E* [2005] NI Fam 12.

increasing maturity it should also be recognised that the child's views should not be elevated above his welfare and best interests. It is not for nothing that welfare is described as paramount.

The importance of recording children's views has been highlighted in several cases. For example, in *Re C and others [2009]*,⁵⁴ Morgan J highlighted two broad approaches adopted by the courts in this process. The first is an interview, often involving police, where the objective is to obtain information for use in subsequent criminal or other proceedings. Morgan J highlighted that experience in this regard has indicated that the form of the questions and the subtlety of the child's response are critical to the understanding of what is being communicated. In those circumstances, a videotape of the interview is invariably obtained. That enables the court and those not a party to the interview to form judgments about the responses. A second type of interview is the therapeutic interview where the objective is to enable the child to discuss the issues at hand. Generally, these are not taped. There the approach to questioning is different and on occasions may even involve a prompt to help the child deal with the issue. Morgan J noted that such interviews are generally of little assistance to the court because the weight given to them should reflect the possibility that the child is led into the answer, the possibility of misinterpretation of the answer and the absence of any independent check on the interpretation conveyed by the interviewing witness.⁵⁵

In *Re L and M (Minors) [2008]*,⁵⁶ which concerned an appeal by the parents of a Health and Social Services Trust's application for a Care Order following allegations of sexual abuse, Treacy J criticised the failure of the social worker to videotape the interview with the child in relation to. He noted that there was a lack of policy concerning recording of interviews in the authority in question. In allowing the appeal, he stated:

If the court is being asked to rely on the word of others as to what the child said and did and to evaluate what weight is to be attached to this it will usually be necessary to comply with the best practice of videotaping the investigative non-therapeutic sessions. The unjustified and self-imposed failure to do so will almost certainly mean⁵⁷ that when such evidence represents the core of a Trust case it is unlikely, save in exceptional circumstances, that the Trust will be able

⁵⁴ *Re C and others [2009] NIFam 4 (6 February 2009)*.

⁵⁵ At para 17. See also *Re D (Child Abuse: Interviews [1998] 2 FLR 10*.

⁵⁶ *Re L and M (Minors) [2008] NIFam 10 (02 July 2008)*,

to discharge the burden of satisfying the court that sexual abuse has occurred.⁵⁷

Parent/child involvement in the LAC decision making process and care plans

Whilst there are no explicit procedural requirements under Article 8 ECHR, the Court has made clear that the decision-making processes involved with any measures relating to the interference with family life must be fair and ensure due respect for the interests safeguarded therein. Thus, importance is attached to whether ‘the applicants have been involved in the decision-making process, seen to a degree sufficient to provide them with the requisite protection of their interests.’⁵⁸ To this end, the involvement of parents in administrative proceedings and the appeals process, and legal representation has often been enough to satisfy this requirement.⁵⁹

Furthermore, child and parental involvement is of crucial importance and is closely scrutinized by the court following the guidance laid out in the Guide to Case Management in Public Law Proceedings and wider legal obligations.⁶⁰ In some cases, such as in the instance of emergency orders, the Court recognises that it may not always be possible, because of the urgency of the situation, or even desirable if those who have custody of the child are the source of immediate threat to the child, to involve parents in the decision-making process. Nonetheless, the Court must be satisfied that there existed circumstances justifying the removal of a child without any prior contact or consultation.⁶¹

With regards to the content of care plans in Northern Ireland, the court is concerned to ensure that the plan is in the best interests of the child, that it balances the right to family life with the need for state intervention and that state intervention is a necessary, proportionate and justified response based on the evidence available. In *Yousef v The Netherlands [2003]*⁶², the European Court of Human Rights stated:

⁵⁷ At para 24.

⁵⁸ *Hasse v Germany*, no 11057/02, judgment of 8 April 2004, para 94. See *W v UK* judgment of 8 July 1987, Series A, no 121, para 64; *T.P and K.M v UK* no 28945/95, judgment of 10 May 2001, para 72.

⁵⁹ See for example, *Dolhamre v Sweden*, no. 67/04, judgment of 8 June 2010, para 117.

⁶⁰ See for example, see for example decisions concerning disputed care orders in *Re: C1 & Others [2009] NIFam 4* (6 February 2009), *In the Matter of J (Care Order) [2008] NIFam 11* (1 August 2008), *Re: JH (Judicial Review) [2013] NIQB 28* (8 March 2013), *A v A Health and Social Services Trust & Anor [2011] NICA 32* (4 July 2011), *In the Matter of JR (Care Order: Rehabilitation [2010] NIFam 18* (22 November 2010), *Re: H (Care Order: Contact) [2009] 2 FLR 55*).

⁶¹ *Hasse v Germany*, para 95.

⁶² *Yousef v The Netherlands [2003] 1 FLR 210 at 221*, para 73.

The court reiterates that in judicial decisions where the rights under Article 8 (of the European Convention) of parents and those of a child are at stake, the child's rights must be the paramount consideration. If any balancing of interests is necessary, the interest of the child must prevail.

Regarding that decision of the ECtHR, Kerr LCJ stated in *AR v Homefirst Community Trust* at paragraph 95:

Although the court must treat the child's welfare as paramount, this does not mean that it should exclude from its consideration other factors such as the Article 8 rights of the parent. While these cannot prevail over the welfare of the child, they must be considered. A decision to delay the arrangements for J would, of course, have carried the risk of prejudice to him but set against that risk must be the consideration that, in general, a child should be with his natural parent. While according J's welfare the paramountcy of importance that it required, we do not consider that this pointed overwhelmingly in the direction of a care order being made.

The grounds upon which decisions are made and care plans developed are far from straightforward. In *Re C and B [2001]*⁶³, the Court of Appeal in England and Wales allowed an appeal against a care order made in respect of the two youngest children of a family, the youngest being a new born child. Here, it was held that although there was no immediate harm to the two younger children, there was evidence, which entitled the judge to find that there was a real possibility of future harm. However, the action taken must be a proportionate response to the nature and gravity of the feared harm. At paragraph 31 of her judgment Hale LJ said:

[O]ne comes back to the principle of proportionality. The principle has to be that the local authority works to support, and eventually to reunite, the family, unless the risks are so high that the child's welfare requires alternative family care. I cannot accept Mr. Dugdale's submission that this was a case for a care order with a care plan of adoption or nothing. There could have been other options. There could have been time taken to explore those other options.

Contact and the right to family life

A critical part of the care plan relates to arrangements for contact between the child and their

⁶³ *Re C and B [2001] 1 FLR 611.*

family, which the Trust has a duty to promote so long as this is in the best interests of the child. Several cases have been taken forward to the European Court of Human Rights in relation to contact with children in care and access restrictions. It is now well-established in ECHR case law that ‘the mutual enjoyment by parent and child of each other’s company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8’.⁶⁴ Whilst the decision to restrict contact is viewed as an interference of this right, the Court’s decision has often turned on whether this is in accordance with the law, satisfies a legitimate aim, and is necessary in a democratic society.

It is important to note that, once a child has been taken into care, further limitations to the right to family life will be assessed with stricter scrutiny as these ‘entail the danger that the family relations between the parents and a child are effectively curtailed’. Severing all parental links with a child cannot be justified in exceptional circumstances or by the overriding requirement of the child’s best interests since such a measure would ‘cut a child from its roots’.⁶⁵ Limitations of contact with children has been found to be justified in cases where children’s health and development have already been harmed by the lack of care in their home, the negative impact of subsequent meetings of the child with their parents, and where the children have expressly stated that they did not want additional contact.⁶⁶ As such, much will be made of the nature of the parent-child relationship. The importance of contact has been highlighted:

The possibilities of reunification will be progressively diminished and eventually destroyed if the biological parent and the child are not allowed to meet each other at all, or only so rarely that no natural bonding between them is likely to occur.⁶⁷

Placement options

Under the Children (NI) Order (1995) and once a legal order is obtained, the Trust has a duty to: provide accommodation for children and safeguard their welfare (Articles 26, 27); ensure that they are placed near home, and that siblings are accommodated together, and that where a child is disabled, the accommodation is suitable to the child’s needs (Article 27(8) and

⁶⁴ *K and T v Finland*, para 151. See also *Levin v Sweden*, no.35141/06 2012, judgment of 15 March, para 7.

⁶⁵ *Johansen v Norway*, no. 17383/90, judgment of 7 August 1996, para 64; *Kutzner and Germany*, no. 46544/99), judgment of 26 February 2003, para 67. see more recently, *Levin v Sweden* 2012, para 60

⁶⁶ *Levin v Sweden*, 2012, para 64, 66.

⁶⁷ *K and T v Finland*, para 155, 179.

(9)); give due regard to those wishes and feelings, having regard to the child's age and understanding, and the child's religious persuasion, racial origin, and cultural and linguistic background (Article 26(2) and (3)); support the child to live with a parent, relative or friend; promote contact between children it is looking after and their parents, relatives, friends and other people connected with them, so far as is practicable and consistent with the children's welfare (Article 29); review the case of each child they are looking after at regular intervals; and ensure that there is an established procedure for considering any representations and complaints made by children and young people, parents, other carers and anyone else with interest in the child.

According to the European Court, the removal of a child from their family into care should normally be a temporary measure, 'to be discontinued as soon as circumstances permit' with the aim of reuniting the natural parent and child.⁶⁸ The Court has variously laid down that:

The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weight on the competent authorities with progressively increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interest of the child.⁶⁹

The timescale of a care order is crucial since:

After a considerable period of time has passed since the child was originally taken into public care, the interest of a child not to have his or her *de facto* family situation changed again may override the interests of the parents to have their family reunited.⁷⁰

Whilst the Court has not provided extensive detail on what kind of placement should be considered, it has stated that there must be prior consideration of possible alternatives before a care order is implemented.⁷¹ In a recent case the applicant argued that his son had been placed with a foster parent against his wishes and had expressed preference for his son to continue to be cared for at a foster care centre until his release from prison.⁷² The Court agreed with the domestic court's decision that the child's best interests would be better

⁶⁸ *Saviny v Ukraine*, 2008, para 52 *Olsson v Sweden*, no 1, judgment of 24 March 1988, Series A no 130, para 81).

⁶⁹ *K and T v Finland*, 2001, para 178.

⁷⁰ *K.A v Finland*, no 27751/95, 14 January 2003, para 138.

⁷¹ *K and T v Finland* at para 166; see also *Kutzner v Germany*.

⁷² *Mircea Dumitrescu v Romania*, no. 14609/10, judgment of 30 July 2013.

served by a temporary placement with a foster parent and which offered better prospects of ensuring the child's education and well-being in comparison with a foster care centre.⁷³

The Court has been particularly critical of instances where children have been placed in care some distance away from their families and where siblings have been separated as in *Saviny v Ukraine* where not only were the children separated from their family, but placed in different institutions. Two of the children were placed in another city, some distance away from where their parents and siblings resided.⁷⁴ This criticism is based on an earlier case where the children had been placed separately, a long distance from each other and their parents. In this instance that Court argued that the reasons given by Government for not placing the children together (one of the children was assessed as having special needs) was not sufficient to justify the distance that separated them. Subsequently, the implementation of the care decision was found to give rise to a breach of Article 8.⁷⁵

3. GOOD PRACTICE EXAMPLES

Note: Provide any examples of good practice models. The focus of our analysis of good practice is on 'participation'. The Lundy model of participation can be used to assess good practice (available in Dropbox WP2). If possible provide examples of good practice with particular vulnerable groups. Remember that these examples will be used to inform the development of training resources.
(Parts 2 and 3 should be approximately 10 pages)

Family support

A key concern in the provision of family support services relates to families' views of the services they are engaged with. Families are often concerned about accepting help which might be viewed as stigmatizing and they often have a limited role in evaluating the help they receive. In Northern Ireland, new services delivered under the Early Intervention Transformation Programme (<https://www.health-ni.gov.uk/articles/early-intervention-transformation-programme>) have attempted to address these issues. The aim of EITP is to improve outcomes for children and young people in Northern Ireland through establishing a range of early intervention approaches. One service, which represents a model of good practice, within the EITP, is the Early Intervention Support Service. There are five EISS teams in Northern Ireland, one in each of the Health and Social Care Trusts. Their aim is to work with families at level 2 on the thresholds of need, these being families with support needs that sit

⁷³ *Mircea Dumitrescu v Romania*, para 81.

⁷⁴ *Saviny v Ukraine 2008*, para 59.

⁷⁵ *Olsson v Sweden No.1, no. 10465/83 judgment of 24 March 1988, para 81*).

outside the statutory social services framework and where early intervention will have a preventative function – preventing deterioration of problems and/or possible referral to statutory social services.

Families requiring additional support are referred to EISS only with the agreement of the family. The family is contacted by a non-statutory family support worker within 10 days and families wait no longer than 4 weeks before being allocated a worker. In collaboration with the support worker, the family agrees the areas where support is needed and the best approach to meet these support needs. Workers, trained in several evidence based interventions, deliver short term interventions. Families fully participate in evaluating their own progress and outcomes using an outcomes star. The Outcomes Star measures progress made by families towards a selection of goals including relationships, mental health, work, self-esteem and responsibilities. Initially, the Family Star, My Star or Teen Star is chosen and completed collaboratively with the family. Each Star contains a number of domains which are scored on a ladder scale rated 1 – 10, although Teen Star is rated 1 – 5. As the intervention was time-limited, two or three areas were chosen to work on with the families. Once the families decided which areas to work on, the domains are scored and plotted on the Star diagram. The remaining domains are assigned the tops score of 5 or 10. The same process is engaged with at the end of the 12 weeks intervention to measure change. A report on the impact of the service (Winter et al., 2018) has found that parents and children valued their relationships with the support workers who they felt delivered a non-judgemental, flexible and responsive service and where the focus of the input was co-designed in a partnership relationship between the family and the support worker. Families (parents and children) valued the outcomes star because it facilitated their active participation in review and evaluation and, as a visual aid, was strengths based.

Child protection

The Co-operating to Safeguard Policies and Procedures (DHSSPSNI, 2017) focus on the delivery of a child protection system that is child centred, that understands their needs and that respects their rights. That the voice of the child should be heard, listened to, taken seriously and taken into account at all stages of the child protection process is made explicit in the policy document. At the point of referral and during the initial assessment phase, social workers are charged with the responsibility of involving children and seeking their views on the areas of concerns. While this, at policy level, can be sighted as an example of good

practice, there is no information and/or research as to how this takes place in practice. What is known is that social workers have requested training on how to involve children in assessment work.

Once an assessment has been completed and if a case conference and/or other statutory meeting is called, the voice of the child should be central to those formal decision-making processes because it is simply not possible for anyone to determine the best interests of the child (article 13) without knowing and taking seriously the views of the child (article 12). Again, while good practice is noted at the policy level, there is no information/evidence/research as to how many children are involved in formal decision making for a, how and in what ways their views are expressed and how and in what ways these views are taken into account and the impact (if any) those expressed views might have on decision-making.

If a child's case comes before the court, a guardian ad litem is appointed. Article 60 Children (Northern Ireland) Order 1995 provides that, in any case involving specified proceedings, the Court shall appoint a guardian ad litem for the child concerned unless satisfied that it is not necessary to do so in order to safeguard his or her interest. The guardian ad litem is appointed in accordance with rules of Court and shall be under a duty to safeguard the interests of the child in the manner prescribed by such rules. Similar provisions in relation to adoption cases are contained in Article 66 of the Adoption (Northern Ireland) Order 1987. The duties of the guardian ad litem include: representing the child before the Court on what is his or her best interests; and ensuring that the child's wishes and feelings are made clear to the Court. This system, which allows for the independent representation of children in public law court proceedings, is a model of good practice. While there is a six month snap shot report of the ways in which children's views are represented in court (some of these being noted for their innovation and creativity), there is no research/evidence that maps this overall and there is no evidence regarding the training needs of guardians ad litem and how these are met.

More broadly within the judiciary, a recent review of Family Justice in Northern Ireland, published in 2017 by Lord Justice Gillen, has outlined a comprehensive set of recommendations for change to the system going forward. To address delay in decision making of children's cases the review recommends: the establishment of one family court (to replace the tiered system that currently exists and where transfers of children's cases between courts costs time and money); and improved access to mediation services to promote collaborative problem solving and to avoid cases coming before the court. Based on the UNCRC, its provisions being explicitly referred to in the Review report, and to ensure that

children's views are consistently and thoroughly represented in court proceedings the review acknowledges the: work of the Northern Ireland Guardian ad Litem Agency (Gillen, 2017, p. 146); the benefits of involving children more fundamentally in court proceedings by face-to-face meetings between them and Judges (Gillen, 2017, p. 147); and that this should be normalised in court processes in Northern Ireland with Judges giving active consideration as to whether a child should be interviewed personally by the Judge; and that all Judges should receive training in child development and interviewing children (Gillen, 2017, p. 148).