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# Young People at Residential School: Rights, Communications and 'Complaints'

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## ABSTRACT

Children and young people at residential schools are among the most vulnerable and marginalized of societal groups. While increasingly research has focused upon the everyday worlds of these children and young people, there has been an absence of research in Scotland that has examined the complex matrix of children's human rights, complaints processes and advocacy, exploring children and young people's understandings about those key themes and the institutional relations affecting their daily lives. Situated within a theoretical and contextual framework informed by institutional ethnography and children's human rights, this thesis provides an account of young people's understandings about rights, 'complaints' and advocacy, illustrating key textual constituents of adult dominated institutional relations influencing those understandings.

The thesis begins from the standpoint of young people at residential school, acknowledging young people as expert knowers of their own experiences and claiming that these experiences are located within multifarious intersections of social, generational and institutional relations. Young people revealed in the research that they had little or no knowledge about their rights and that they preferred to discuss their concerns - their 'complaints' - with people they know and trust. Young people also disclosed that they had little contact with formal advocates and a poor understanding about advocacy services and the residential school's internal complaint process. By mapping institutional factors affecting young people's knowledge and understanding, this research has illuminated the multifaceted complaints process environments located within social care, health, education and legal contexts, explicating the systemic barriers to hearing the concerns of young people about possible rights violations.

As researcher, I argue that it is essential for young people at residential school to *understand* their rights to claim rights violations and seek resolutions to possible rights infringements. Secondly, complaints process definitions need to be informed from a rights-based perspective and coordinate with young people's own understandings about what constitutes a 'complaint'. Defining complaints and implementing complaints processes from a human rights perspective, together with ensuring young people have trusting relationships with known advocates in their everyday worlds, is imperative for determining young people's access to complaint processes and ensuring young people fully realize their entitlements. This research shows how institutional texts – unseen and unknown to young people – exist in ways that may actually interfere with this objective and prohibit the implementation of young people's participation, protection and provisions rights. By extending our knowledge of young people's everyday worlds beyond the scope of what is readily apparent in the ordinary ways in which we live our lives, this research has identified sites of potential change within the system of institutional texts, making it possible to effect change that will facilitate, rather than obfuscate, the implementation of young people's human rights.

# CONTENTS

Acknowledgements, Author's Declaration

<b>1</b>	<b>INTRODUCTION: LOCATING CHILDREN</b>	<b>8</b>
1.1	Introduction	
1.2	Children in the social world	
1.3	Institutional ethnography: a theoretical approach	
1.3.1	Institutional ethnography: standpoint	
1.3.2	Social organisation and social relations	
1.3.3	Differing perspectives on 'knowing': locating the power	
1.3.4	Institutions, texts and textual practices	
1.3.5	Professional involvement in children's lives	
1.4	Structure of the thesis	
<b>2</b>	<b>CHILDREN AND THEIR HUMAN RIGHTS</b>	<b>29</b>
2.1	Introduction	
2.2	Children and their human rights	
2.2.1	UN Convention on the Rights of the Child	
2.2.2	European Convention on Human Rights and the <i>Human Rights Act (1998)</i>	
2.3	Rights, residential establishments and risks	
2.4	Rights violations and 'complaints'	
2.5	Advocacy	
2.5.1	Definitions	
2.5.2	Advocacy for children	
2.5.3	Contributions to the public discourse	
2.6	Conclusion	
<b>3</b>	<b>CHILDREN'S HUMAN RIGHTS: IMPLEMENTATION AND MONITORING</b>	<b>65</b>
3.1	Introduction	
3.2	Implementing and monitoring the UNCRC	
3.3	UNCRC external monitoring: complaint processes and the international human rights context	
3.4	UNCRC external monitoring: state reporting	
3.5	UNCRC internal monitoring: national human rights institutions	
3.5.1	National human rights institutions for children	
3.6	UNCRC internal monitoring and implementation: localised complaint processes	
3.7	Conclusion	

## **4 RESEARCH DESIGN 105**

- 4.1 Introduction
- 4.2 The research question: the ‘problematic’
- 4.3 Research objectives
- 4.4 Situating the research: qualitative distinctions
- 4.5 Merging the theoretical and methodological
- 4.6 Generalizability
- 4.7 Research methods: data collection
  - 4.7.1 Interviews and recruitment
  - 4.7.2 Interviews: obtaining informed consent
  - 4.7.3 Interview process
  - 4.7.4 Texts
- 4.8 Research method of analysis
- 4.9 Ethical considerations

## **5 YOUNG PEOPLE’S VIEWS: UNDERSTANDING RIGHTS 127**

- 5.1 Introduction
- 5.2 Understanding UNCRC Rights
- 5.3 Research findings
  - 5.3.1 Young people’s knowledge about rights
  - 5.3.2 Sources and resources
  - 5.3.3 Advocacy
  - 5.3.4 Disseminating UNCRC information: domestic regulatory provisions
  - 5.3.5 Disseminating UNCRC information: central government policy
  - 5.3.6 Disseminating UNCRC information: domestic human rights legislation
- 5.4 Conclusion

## **6 YOUNG PEOPLE, RIGHTS AND COMPLAINT DEFINITIONS 161**

- 6.1 Introduction
- 6.2 Children’s rights, complaint processes and defining ‘complaint’
- 6.3 Research findings
  - 6.3.1 Young people at residential school: defining ‘complaint’
  - 6.3.2 Mapping complaint definitions: young people’s everyday lives
  - 6.3.3 Mapping complaint definitions: beyond the residential school environment
  - 6.3.4 Mapping complaint definitions: the Children’s Hearing System
- 6.4 Conclusion

<b>7</b>	<b>YOUNG PEOPLE COMMUNICATING ‘COMPLAINTS’</b>	<b>201</b>
7.1	Introduction	
7.2	Communicating a ‘complaint’	
7.3	Research findings	
7.3.1	Young people at residential school: communicating a ‘complaint’	
7.3.2	Mapping communication: young people’s everyday lives	
7.3.3	Mapping communication: beyond the residential school environment	
7.3.4	Mapping communication: the Children’s Hearing System	
7.3.5	‘Knowing’ the complaint process: conjecture and experience	
7.4	Conclusion	
<b>8</b>	<b>CONCLUSIONS AND REFLECTIONS</b>	<b>237</b>
8.1	Introduction	
8.2	Research summary	
8.3	Research implications	
8.4	Reflections	
8.5	Further research	
	<b>TABLE 1</b>	<b>225</b>
	<b>APPENDICES</b>	<b>255</b>
	<b>REFERENCES</b>	<b>259</b>

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This thesis is dedicated to my son Jonathan

## **AUTHOR'S DECLARATION**

I certify that I am the sole author of this work.

Nancy Marie Bell

# 1

## INTRODUCTION: LOCATING CHILDREN

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### 1.1 INTRODUCTION

In its broadest sense, this thesis explores topics relating to children and young people's human rights<sup>1</sup>, expressions of concern, complaints processes<sup>2</sup> and advocacy – all within the context of a residential school<sup>3</sup>.

Children do have rights. They have the right not just to be sheltered and cared for and protected from abuse, but also to be treated as moral agents in their own right, with intentions, purposes, and visions of the world that we should not presume are identical to our own. (Ignatieff, 2000: 108)

My research begins from the standpoint of young people at residential school in Scotland. Initially, my personal experiences and what I learned through talking to young people in government care and/or receiving public services defined my own standpoint as a researcher. In my role working at a Children's Commission as manager of a complaints process for young people, I observed how infrequently they

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<sup>1</sup> Children and young people, used interchangeably throughout the text depending upon the context, are defined according to the UN Convention on the Rights of the Child's Article 1 as persons below the age of 18 years. For a definition of 'human rights' see chapter 2.

<sup>2</sup> Throughout this thesis, the terms 'complaints process' and 'complaints procedure' may be used interchangeably.

<sup>3</sup> 'Residential school' within the context of this thesis denotes those schools where young people are referred and placed for welfare and educational reasons. Many young people at these residential schools live in State care.



used complaints processes, such as those located within their local communities and those made accessible by the children's commission's own external process. I also learned through talking with young people and their advocates that many young people were unhappy with the public services they received from government ministries and believed that their rights, as defined under local government legislation in accordance with key UN Convention on the Rights of the Child (UNCRC) principles, were breached.

Young people at residential schools throughout Scotland are significant recipients of public services. For these same young people, residential schools are their homes and the State is their corporate parent. Many young people participating in this research were placed at their residential school under varying circumstances, which included through the Children's Hearing System<sup>4</sup> and other referral processes. Some young people remained under their parents' guardianship, attending as day students, while other young people were placed in residential units at the school under guardianship arrangements recognising the State as maintaining parental authority<sup>5</sup>. Within that complex environmental, social and political context, young people at residential school live as active, social agents engaged in and influenced by the social world around them – a social world not unfettered by conflict, concerns and 'complaints'<sup>6</sup>.

My growing awareness at the children's commission - that young people were not using complaints processes established for hearing concerns about public services and their lives in government care - did not accord with what was 'supposed to happen' for young people due to the existence of mechanisms such as legislation defining young people's rights<sup>7</sup>, internal complaints processes within their own communities and the children commission's external complaints process. The actions of young people did

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<sup>4</sup> Children's Hearing System: In operation in Scotland since 1971, the Children's Hearing System has responsibility for children and young people under 16, and in some cases under 18, who commit offences or who are in need of care and protection.

<sup>5</sup> 'Looked after' children are defined in the Children (Scotland) 1995 Act ('the Act') as those children 'who are being provided with accommodation, who are the subject of supervision requirements, or who are under Child Protection Orders or warrants' (Section 17(6)). To facilitate state responsibility for these young people, the Act imposes certain duties on those service providers employed by local authorities and mandated with providing direct public services to children.

<sup>6</sup> 'Complaints': As this word is commonly used in association with complaints processes, it will be used throughout the thesis. It is a contentious word, however, that may obstruct productive and healthy communications rather than facilitate them. There is a current international initiative underway that proposes that a more neutral word 'communications' replace the word 'complaint' in the development of an optional protocol for the UNCRC.

<sup>7</sup> References to young people's 'rights' within this thesis are meant as human rights, including 'children's rights' given special consideration in such human rights instruments as the UN Convention on the Rights of the Child.

not reflect the implementation of human rights principles such as young people's right to express their views and participate in administrative proceedings (see UNCRC, article 12). My own experiences, combined with a noticeable gap in the literature about young people's experiences with expressing their concerns while attending residential school in Scotland, led me to approach my research with a 'sense of a problem, of something going on, some disquiet, and of something there that could be explicated' (Smith, 1999: 9).

Only children can tell the rest of the population how they perceive the world, which problems and concerns they feel are important and why. (Miljeteig, 2005: 412)

During this research, I had the opportunity to speak to adults who had lived in children's residential establishments when I worked as a researcher on a review into the systemic factors contributing to the abuse of children living in residential care throughout Scotland between 1950 and 1995<sup>8</sup>. While the effects of child abuse – human rights violations – and the consequences of failing to hear children's concerns are well-documented, it was apparent to me during these conversations that many people experience devastating effects throughout their lifetime which, in turn, has a wider familial, generational and societal impact. This experience reaffirmed my belief that it is critical to hear concerns – 'complaints' about possible rights violations – from young people receiving public services, to address those concerns as quickly as possible and to take measures to ensure young people's human rights are respected.

This research began from the standpoint of young people at 'Nona' residential school<sup>9</sup> - it began by exploring young people's understandings about their human rights, how they define 'complaint' and how, or to whom, young people prefer to express their concerns about matters important to them in their everyday worlds. From the outset I recognised the possibility that these young people had positive experiences to describe, however, this research was not designed to elicit information about those experiences. Rather, the research sought to explore themes relating to young people's rights and concerns, extending beyond the standpoint of young people to explicate how young people's understandings are socially organised and mediated by dominant

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<sup>8</sup> See Shaw, T. (2007). *Historical Abuse Systemic Review: Residential Schools and Children's Homes in Scotland 1950 to 1995*. Edinburgh: Scottish Government.

<sup>9</sup> The actual name of the residential school attended by the young people participating in this research has been changed to protect the young people's privacy and anonymity.

institutional relations utilising text-based forms of organisation affecting young people's lives in official and authoritative ways (Smith, 2005).

This research relies upon institutional ethnography, a method of inquiry with its origins in the work of a Canadian sociologist, Dorothy Smith. While Smith's pre-eminent work, as a sociologist and as a feminist, was reflected in her initial formulation of a sociology from the standpoint of women, marginalized from the larger intellectual, political and cultural world, it is now described as a sociology for people. 'Though it starts from where we are in our everyday lives, it explores social relations and organisation in which our everyday doings participate but which are not fully visible to us' (Smith, 2005: 1). By drawing from institutional ethnography, this research aims to extend our knowledge beyond what is visible within the everyday worlds of young people at residential school to the less visible - to those external factors unknown and unseen that affect young people's everyday worlds. By mapping the external ways in which young people's lives are coordinated, it is possible to discover the institutional relations within which young people's lives are embedded, to explicate the textual bases of institutions entering into the organisation of social action and to expand our knowledge beyond the ordinary ways in which we know our everyday worlds (Smith, 2005).

It is recognised within this research that adults responsible for children's services play an essential role in the social relations in which young people's everyday lives are embedded and that texts are implicated in direct professional practices. Time constraints and the complexity of incorporating these adults' standpoint in this research, however, precluded a detailed examination of these experiences, which have been more widely researched than young people's standpoints. At the same time, my observations made during many visits to the residential school and my discussions with many service providers contextualised and informed the subsequent analysis in ways that were not possible without this engagement, opening the door, as well, to further research possibilities.

I introduce this thesis by examining the topic of children in the social world followed by institutional ethnography as a theoretical approach.

## 1.2 CHILDREN IN THE SOCIAL WORLD

Conceptions of children and childhood are deeply rooted in social, historical and cultural contexts (Hill and Tisdall, 1997). Historically, Phillipe Aries's study of childhood influenced perspectives of childhood through claims that concepts of childhood did not emerge until the 17<sup>th</sup> century (Archard, 1993). Criticisms of Aries's work followed (see Wilson, 1980; Pollock 1983; Veerman, 1992; Cunningham, 1995), leading to the recognition that '[e]ach society and social group has devised its own distinct way of managing the differences, similarities and continuities between childhood and adulthood' (Hill and Tisdall, 1997: 19). Increasingly, researchers have recognised children's own diverse lives, situated within complex social worlds, as worthy of study, noting the influences of age, gender, ethnicity and class (Hill and Tisdall, 1997).

Concepts of childhood have informed researchers' approaches to their studies, with child psychology dominating UK research agendas in the 1960s. These research agendas were largely based upon quantitative research and informed by adult understandings, or perceptions, of children and childhood as progressing through developmental stages that were pronounced through the work of such theorists as Freud, Erikson and Piaget (Hill and Tisdall, 1997). In the early 20<sup>th</sup> century, a Polish-Jewish doctor, pedagogue and author, Janusz Korczak, had written about the importance of communicating with children and balancing children's entitlements to respect, for example, with educator's intentions (Koren, 2001).

During the 1970s and 1980s sociologists began to challenge the notion of children as passive recipients of socialization and as objects subsumed within family, resulting in a 'new' paradigm of childhood (Hill and Tisdall, 1997). Later, in the 1990s, Qvortrup (1994) was influential in identifying modern childhood as clearly distinct from adulthood while James and Prout (1997) argued several points: childhood is socially constructed, children's experiences are shaped by the cultural and structural context, children actively contribute to their social worlds and childhood experiences are affected by factors such as gender, ethnicity and class. Researchers such as Tesson and Youniss (1995) opted for a blending 'to offer an account of the interplay between individual agency and social structure' (Hill and Tisdall, 1997: 13).

In her contribution to the debate about childhood, Tomlinson (2008: 37) examined how concepts of childhood were shaped by political and economic influences, concluding that '[c]hildren have been commonly viewed as the victim, investment or threat'. Tomlinson (2008) argues that such perspectives bring children to the political agenda without involving them in political discussions rather than seeing children as independent citizens with their own voice, further postulating that non-compliance with the UNCRC undermines children's participatory involvement in their political and economic lives due to the differential in political status between children and adults. To effect change, Tomlinson (2008) states that it is essential to situate children at the centre of political and economic agendas, to identify what contributes to their well-being and to use concepts of childhood properly to shape service provision for children.

Moss's (2008) research focused upon children who face barriers to services or who may be excluded from accessing mainstream services, finding that within the inequities between children and their different experiences, there are particularly vulnerable groups of children who emerge, such as children with disabilities, refugee and traveller children, sexually exploited children and children in government care. Moss (2008: 51) concluded that social divisions among children exist alongside a 'hierarchy of social values associated with certain social positions', which children themselves reflect in their language and which are reinforced through divisions in access to children's services. Moss (2008) argues that, as a consequence, the human rights of vulnerable children are undermined and their access to services diminishes through discriminatory policy and practices.

In using the UNCRC to inform her research, Welch (2008) explored the relationship between children's rights and service provision for children, concluding that the way childhood is constructed and children are perceived influences the manner in which service provision responds to children's rights. Welch (2008) claims that there are potential conflicts that may exist between 'liberty' rights and welfare rights, which need to be acknowledged in order to provide children's services that incorporate rights falling within both themes to ensure children are recognized as full members of society. It is critical when promoting children as bearers of human rights, and when providing public services to children, to also recognise the tensions inherent in childhood constructions to integrate children's liberty and welfare rights in better ways (Welch, 2008).

Mayall (2002) contends that childhood, as a category, is permanently situated within the social order and must be considered when researching how the social order works.

I argue that those inhabiting childhood have a particular take or viewpoint on their status in relation to adult status, and that study of how their experiences may be accounted for by societal factors amounts to arguing that a child standpoint (analogous to a women's standpoint) is important for contributing to a proper account of the social order. (Mayall, 2002: 8)

It is a view that acknowledges the contributions sociologists have made to the study of childhood contributing, for example, to the recognition of children as a social group, distinguished from adults and engaged in their own social relations with adults in their daily lives (Mayall 2002). Sociologists have informed child research by documenting and recording children's lives, through children's own expressed experiences, and by highlighting concerns about the nature and quality of childhoods (Mayall, 2002). In making her contributions to child research, Mayall (2002: 24-25) argues that it is essential to 'take account of how children themselves experience and understand their lives and social relationships, and use this information to develop a child standpoint'. Mayall (2002) elaborates on Smith's (1988) theoretical feminist position to draw comparisons between women and children's social groups.

Women's relationships, at least in feminism, are structured by gender, children's by intersections of generation and gender. But women and children are both subject to patriarchy; those in power regard both groups as social problems; both suffer from denial of their rights; both groups find it hard to make their points of view heard and respected. So it is important to develop a specific child standpoint. To do this, we have to consider young people's experiences and knowledge in relation to the ideologies, policies and practices which organize their lives through relations of ruling (Smith, 1988: 97). (Mayall, 2002: 137)

Mayall (2002) states that taking this approach requires consideration of the intersections between generation and gender at key focal points within young people's everyday lives. 'It means considering commonalities (and diversity) in children's accounts, as constructed at intersection of agency and structure' (Mayall, 2002: 137). Young people claiming rights violations and young people's participation in complaints processes, for example, have significant implications for the relationships between young people and adults, who may perceive changes in social relations as undermining their power and dominance over children.

Franklin (2002: 19) argues that ‘being a child continues to express more about power relationships than chronology, although the two are intimately intertwined’. When societal attitudes shift toward recognising young people’s rights, professional practice directed at young people will also shift toward increasingly recognizing young people as active social agents (Roche, 2002). In her recognition of young people as ‘**participant** [author emphasis] agents in social relations, and childhood as a social group fundamentally implicated in social relational processes’, Mayall (2002: 1) examined the ‘processes in relations between social position’ ultimately affecting young people who frequently find themselves in social relations with adults in perceived, and real, positions of power. Mayall (2002) reasons that power relations between adults and children are often defined by an adult ontology through which the complexity of social relations is defined and understood. This relationship sits uneasily alongside the discourse of children’s rights.

Power and rights are not generally popular words. Adults prefer to talk about their care and authority or the need for firm control, rather than their power over children. Child power is still a less popular term. This happens when power is seen as something to be divided rather than shared, like the slices of a cake when the more power one person has, the less everyone else has. (Griffith, 1996 in John 2003: 48)

Variant forms of power, inherent within institutions such as residential schools, potentially render young people ‘powerless’, unless structures exist on an organizational level to challenge the exercise of adult power that overlooks children’s needs. While organisational structures committed to human rights often sit outside institutions steeped in their commitment to maintaining existential social relations and power imbalances, institutionalising human rights can redefine structures of power by formalising ‘proclaimed intentions’ (Cattrijsse *et al.* 2002). While the institutionalisation of human rights may possibly sustain the social order within institutions, ‘the institutionalization process has, historically, turned out to be crucial for struggles to change extant relations and structures of power’ (Cattrijsse *et al.* 2002: 27).

Freeman (2002: 352) argues that to adopt a ‘common sense of humanity’ approach requires that ‘we must examine and reveal the standpoints we have considered to reach this claim of universal standpoint’, as the straight appeal to the common sense of mankind ‘cannot lift us out of the complexities of multiple, conflicting communities and their power relations, and the ways in which they vastly complicate the workings

of the enlarged mentality'. Good judgement is aided by expanding our imagination to access a common humanity 'that transcends our immediate experience', while recognising that we are limited by our own knowledge and experience (Freeman, 2002: 352). Drawing from Kant, Freeman (2000) states that the notion of a shared common humanity derives from liberal enlightenment, characterised by an attempt to see the world from all perspectives and an 'enlarged mentality' ultimately leading to good judgement about mankind.

### **1.3 INSTITUTIONAL ETHNOGRAPHY: A THEORETICAL APPROACH**

This research adopted institutional ethnography as its theoretical method of inquiry. Institutional ethnography has its origins in Smith's writings centred upon a theoretical approach to seeing the everyday world of individual experiences as organised by 'ruling relations' defined by Smith (1990a: 14) as a 'total complex of activities, differentiated into many spheres, by which our kind of society is ruled, managed, and administered'. Smith (2005), in describing institutional ethnography as an 'alternative sociology', also characterizes institutional ethnography as 'sociology for people'. In contrast to sociologies that investigate people as objects while seeking to explain their behaviour, institutional ethnography creates an entry point 'into discovering the social that does not subordinate the knowing subject to objectified forms of knowledge of society or political economy' (Smith, 2005: 10).

Institutional ethnography allows this research to contribute to a deeper understanding about how 'the system', defined as 'connections of activities performed locally and coordinated translocally, contributing to their organization of local practices' (Smith, 2005: 37), affects young people's understandings about rights and complaints. Extending beyond what is locally observable, or understood, in this research takes us to seeing texts, such as regulatory, policy and procedural texts, as contributors to the shaping of local understandings. Adopting institutional ethnography as a method of inquiry, in turn, requires a systematic reading of the research data in a way that allows us to 'see' and interpret the texts, together with the voices of young people at residential school, within a theoretical framework.

Institutional ethnography, both as a theoretical and methodological approach, assumes that we exist in a social world as social beings by virtue of our interconnected activities. The social ontology that institutional ethnography seeks to explore is



revealed as it makes evident the forms of social organisation that exist in people's everyday lives and our participant involvement in phenomena that appears to stand apart from our lives (Smith, 2005). Mayall (2002: 4) calls for a sociology of childhood, that is, one intended to 'help improve the social and political status of childhood'. By adopting institutional ethnography as a theoretical and methodological approach in this research, the social and political organization of young people's everyday lives is explicated, helping us to understand better why young people 'say what they say' about their rights, complaints and advocacy.

Originally a feminist research strategy, institutional ethnography sought to make 'visible' what was previously made 'invisible' by dominant ideological forces and to give women, including their concerns, a voice in order to provide a more accurate, fuller account of society by including them (Nielsen, 1990 in DeVault, 1999). It has evolved as a theoretical approach not limited to topics concerning women, however, as it also provides the inquiry tools for extending into the broader investigations of social life and how it is actually organized. As a form of inquiry, institutional ethnography renders 'visible' those external processes affecting marginalized and invisible groups, such as young people, who share the experience of women's subservience. Institutional ethnography operates as 'a theorized way of seeing and knowing that re-orientates people in their everyday world' (Campbell and Gregor, 2002: 11), allowing institutional ethnographers to 'see', and to understand, how something works through mapping critical external elements located within everyday life. It originates from a standpoint within an institutional order that offers the guiding perspective upon which an examination of that order will be based (Smith, 2005).

It begins with some issues, concerns, or problems that are real for people and that are situated in their relationships to an institutional order. Their concerns are explicated by the researcher in talking with them and thus set the direction of the inquiry. (Smith, 2005: 32)

The word *institutional*, as it is used in institutional ethnography, directs the researcher's attention to the way that distinctive functions, such as those associated with providing services to children and families, are situated within complex ruling relations (Smith, 1987). Institutional, unlike the concept of bureaucracy characterized by a prescribed form of social organization, refers to the way in which different work processes and conceptual orders combine and intersect. For purposes of my research, therefore, institutional is a concept that defines how legislation, policy and procedure,

directed at young people attending a residential school, are linked as a 'functional complex' (Smith, 1987) by the interchange with other work processes occurring within, and outwith, the residential school.

Theory, combined with professional and organizational work routines such as those prescribed by complaints processes, is coordinated through ideologies 'developed to provide categories and concepts expressing the relation of local courses of actions to the institutional function ...providing a currency or currencies enabling the interchange between different specialized parts of the complex and a common conceptual organization coordinating its diverse sites' (Smith, 1987: 160). It is what binds professional practices, for example, to each other and the functions of the organisations with which they are associated.

Institutional ethnography extends beyond traditional ethnographic approaches which include techniques such as interviewing and observing in a fieldwork tradition, to incorporate a commitment to an investigation and explication of how 'it' actually is, of how 'it' actually works, of actual practices and relations (Smith, 1987). Extending beyond mere description, the researcher must also explicate how the situation arises and continues as social relations. The concept of social relations, as it is used in this context, understands people's activities as components, and contributors to, an ongoing series of courses of action 'in which what people do is already organized as it takes up from what precedes and projects its organization into what follows' (Smith, 1987: 183). The notion of *ethnography*, situated in this broader theoretical and methodological context, commits us to an exploration, description and analysis of a complex of social relations not conceived in the abstract but approached through the standpoint of a particular person or persons (Smith, 1987). Within this approach, institutional ethnography presumes that these social relations, tied to institutional processes, are coordinated by ideological concepts and categories that define the relationship between the professionals' actual work and the institutional function.

Institutional ethnography facilitates an exploration into how young people's understandings about their rights, 'complaint' definitions and ways of expressing their concerns are socially organized within their everyday worlds of an institutional setting - a residential school - and how those understandings are conceptualized as constituted of social relations. While young people - as participants in these social relations -

may, or may not, know one another, their localized, everyday experiences are, however, concerted. Institutional ethnography, as a theoretical approach, does not commit to theoretical explanations as much as it relies upon certain theorized ways of examining the actualities of our everyday worlds (Campbell and Gregor, 2002).

### **1.3.1 Institutional ethnography: standpoint**

Institutional ethnography takes up the standpoint of those who are being ‘ruled’, such as young people at residential school, and attempts to make explicit those socially organized forces that help us to understand why those who are being ruled have the experiences they say they do. In her original feminist writings on this topic, Smith (1987: 107) stated that taking up the standpoint of women in research ‘creates the space for an absent subject, and an absent experience that is to be filled with the presence and spoken experience of actual women speaking of and in the actualities of their everyday worlds’. In adopting a historical perspective, Smith (1987: 87) argued that women’s standpoint had been excluded from textually mediated discourses about the everyday world, through a ‘ruling apparatus’ defined as that ‘familiar complex of management, government administration, professions, and intelligentsia, as well as the textually mediated discourses that coordinate and interpenetrate it’.

From her own position as a sociological researcher, Smith (1999) later argued that sociology itself has tended to subdue the everyday experiences of people’s ordinary knowledge about their own worlds.

At each historical point, the society objectified in sociological discourse crystallizes the invisible presences and concerns of its makers; at each historical point, it sanctifies through such objectification the institutionalized exclusions, as subjects, from the discourses of power, of women as a social category, of people of colour, and of members of non-dominant classes. Sociology’s constitutive conventions are organizers of those relations among ourselves and among ourselves in relation to others. They have their political effect. (Smith, 1999: 68)

People falling within these categories, which include young people, do not create dominant discourses nor do they participate in ruling, making it necessary for sociologists to examine people’s lives ‘from the inside’ and from their multiple standpoints in order to offer alternative accounts of people’s everyday lives (Smith, 1999). The effect is to contribute to a knowledge that may revise social relations such

that they take account of how people's lives are socially organized and affected by external dynamics operating beyond their control (Smith, 1999).

Including children as research subjects and participants, rather than objects of enquiry, has been shown...to reveal many novel aspects of the situations, settings and issues they were asked about. These are in danger of remaining invisible when research relies only on adult accounts. By engaging children in research they have been shown to have a 'standpoint', from which social life often appears differently from how it looks from an adult perspective. Of course any one child sees and speaks from multiple, combined and intersecting positions – of gender, class, ethnicity, disability and so on. However, within this diversity there appear also to be commonalities between children. (Prout, 2002: 68)

Mayall (2002), drawing upon Smith's work, argues for the notion of a 'child standpoint' in which the researcher begins by 'looking up' as opposed to 'looking down'. Mayall claims that taking account of childhood experiences permits researchers to integrate that knowledge with adult perspectives about how the social order works. In quoting Smith (1988), Mayall suggests that 'it is through studying the daily social activities and relations of those outside the relations of ruling that one can make clear how the social system is put together, reproduced and transformed' (Mayall, 2002: 136). This research begins from the standpoint of young people at a residential school and develops this standpoint by taking account of young people's understandings. By employing key theoretical concepts informing institutional ethnography, the research seeks to explicate institutional legalities, policies and procedures, or 'relations of ruling', that organise young people's lives and alter their understandings in unseen ways.

### **1.3.2 Social organisation and social relations**

Institutional ethnography aims to illustrate the actual social processes and practices organizing people's everyday experience from a standpoint in the everyday world (Smith, 1987). It is an approach based upon a theoretical assumption that rather than seeing the world as chaotic, institutional ethnographers see everyday life as organised through purposeful coordinating of people's activities (Campbell and Gregor, 2002). From this perspective, institutional ethnography employs socially organised activities within everyday life to explore problems arising within the coordinated spheres of daily activities. And, it is texts that connect these daily activities to the 'translocal of

the ruling relations' (Smith, 2005: 119). People's own decisions and actions and how they are coordinated with outside events, often with texts as conduit, are part of social relations. It is the interplay of social relations, of people's ordinary activities being concerted and coordinated purposefully, that constitute social organisation (Campbell and Gregor, 2002).

The concept of social relation is one that analyses the intersection of people's activities that may be known or unknown to one another (Smith, 1987). It is also a concept recognizing people's activities as previously organized and projecting into those activities that follow (Smith, 1987). Social relations, as used within institutional ethnography, distinguish themselves from the usual type of relations between people insofar as they are not constructed as relations nor do they happen to people but rather people participate in social relations in unforeseen and unintended ways.

People participate in social relations, often unknowingly, as they act competently and knowledgeably to concert and coordinate their own actions with professional standards or family expectations or organizational rules. (Campbell and Gregor, 2002: 31)

In acting in this way, we draw upon our own knowledge to engage with our everyday worlds, although as we move through our actions the social relations affecting our actions may be invisible (Campbell and Gregor, 2002). By theorizing connections operating within people's lives, institutional ethnography makes visible these social relations which, in turn, allow us to clarify the mysterious and puzzling aspects of everyday life (Campbell and Gregor, 2002).

### **1.3.3 Differing perspectives on 'knowing': locating the power**

Within institutional ethnography, research participants are described as 'knowing subjects', and while the researcher begins from the standpoint of the knowing subject, the research focuses upon 'exploring and explicating what s/he does not know – the social relations and organization pervading her or his world but invisible in it' (Smith 1999: 5). The knowing subject remains in the actual - tied to a particular configuration of the everyday world (Smith, 1999). According to Darville (1995), the knowing we possess is 'grounded somewhere' while Campbell and Gregor (2002) argue that an important indigenous knowledge is located within our own experiences. In her discussion about 'knowing', Smith (1990a) draws attention to the difference

between ‘knowing’ as it arises from a person’s direct experience and ‘knowing’ as it arises from organizational factual accounts constituted as objective representations of events. Adults in organizational work settings, for example, shift ‘knowing’ to ‘knowledge’ through socially organized and coordinated practices – practices that structure knowledge production (Smith, 1990a).

The production of knowledge is often a complex organizational and technical process that gives the knowledge produced its distinctive shape. That social and technical organization is not apparent in the final product. Thus, a textually mediated reality incorporates the social organization of its production and the courses of action separating it from people’s lived actualities. Furthermore, its character of knowledge involves the knower’s own constitutive practices of reading and interpretation. Objectivity is accomplished through her practical knowledge of its social organization. (Smith, 1990a: 63)

In attempting to make sense of abstractions such as power, knowledge, policy and so on, institutional ethnography focuses the researcher on the intersection of knowledge and power in the everyday world, explicating how their coordination organises people’s experiences and what happens to them. In this research, the theoretical aspects of ‘knowing’ and ‘knowledge’ apply within different contexts: to the research participants as ‘knowing subjects’ and to the texts (reports, legislation, policy and processes), analysed from the perspective of what ‘knowledge’ they embody and what relations of power are evident.

Institutional ethnography (see discussion below) holds that texts have the power to shape and coordinate people’s activities – to obligate people to act in particular ways (Campbell and Gregor, 2002). Regulatory, policy and procedural texts, in particular, operate from a position of power, coordinating the actions of workers in varying geographical locations despite individualised situations and needs (Smith, 2005). The purpose of institutional ethnography is to make explicit how texts mediate social relations and organisation from where the power is located (in the regulatory, policy and procedural texts, for example) that ‘authorise and subsume the local particularities resulting from the work of translation’ (Smith, 2005: 199).

### 1.3.4 Institutions, texts and textual practices

In institutional ethnography, texts have central importance as they create an essential link between everyday, local experience and the ‘translocal organisation of the ruling relations’ (Smith, 2005: 119). By mapping textual connections the research focus shifts from individual perspectives to institutional discourses that de-personalize and objectify through the imposition of power inherent in institutional regimes (Smith, 2005). As texts are a central component, directly or indirectly, in the everyday lives of young people at residential school, exploring text-based ‘ruling relations’ allows us to see how service providers actions may be shaped and how these actions may determine young people’s own understandings.

Smith (2005: 165) defines texts as ‘forms of writing, speaking or imaging that are replicable and hence can be read, heard, and watched by more than one individual, in different places, at different times’. Texts are associated with power; they have the capacity to organise, control and direct work, such as work associated with the provision of public services (Smith, 2005). Ruling relations utilise texts to develop and embed institutional discourse within texts in ways that reflect a hierarchy authority (Smith, 2005). Front-line services, for example, are directed through texts originating at a ‘department’ level while departments, in turn, are beholden to the regulatory framework and their own department administrative policies (Smith, 2005). It is inevitable that disjuncture will exist between the ‘artificial realities of institutions and the actualities that people live’ (Smith, 2005: 187) in ways that may distort the actual experiences of those individuals who are subjected to institutional actions (Smith, 2005).

Texts play an important role in combining and coordinating activities that otherwise might appear discrete and isolated; they are situated in and structure the social relations (extended social courses of action) of individuals’ everyday worlds. Texts enter into and order courses of action and relations among individuals.

I mean to see them [texts] as being like speakers in a conversation; that is, though deprived of the possibility of hearing and responding to us, as nonetheless present and active in ‘speaking’ to us as our reading activates them. Our reading operates the text; in our reading, it becomes active. The artifice of the text detaches it from the local historicity of living and activity, or seems to do so. But its making was work done in actual settings by one or more people

and as part of a course of action, whether of an individual, a group, an organization of some kind, or of an extended social relation concerning the activities of many. (Smith, 1999: 135)

The texts themselves have a material presence and are produced in an economic and social process which is part of the political economy (Smith, 1990b: 162). Texts are, of course, activated by people. Within children's services, which include such professions associated with health, social services, law and education, professional workers generate documents, or texts, on a regular basis as part of their practice informed by texts represented as policy and practice guidance. One of the central themes in institutional ethnography is the 'phenomenon of textually mediated communication, action, and social relations' (Smith, 1990b: 209) and the way in which texts, as objectified forms of socially organized knowledge, permeate every aspect of our daily lives, including our professional practice. Smith (1990b: 61-62) notes that 'the primary mode of action and decision in the superstructures of business, government, the professions, and the scientific, professional, literary, and artistic discourses is utterance-verbal and, more importantly, textual'. Adults providing services to young people, by virtue of the nature of their work, are invariably connected to the 'superstructures' Smith has identified.

Knowledge is generated in a predetermined manner through the social organization of ruling practices (Smith, 1990a). In this way, adults providing services to young people, for example, adhere to routine and authorized practices, which are endorsed in ideologically 'known' terms. While service providers are competent at doing the work involved, the texts structure their accounts according to their professional mandate, the organizational agenda and the type of services provided (Smith, 1990a). The voice of the objectified service recipient - filtered through the professional voice representing the service recipients' account - is also subsumed in the process. Knowledge about young people and what young people know is mediated by objectified textual accounts that subordinate and eclipse their voices (Smith, 1990a).

Adults providing services to young people do not work in isolation from one another but rather are connected through these socially organized practices, which structure original events, or policy initiatives, to conform to their present involvement. The 'knowledge' that is developed through textual practices suppresses or subdues the voices of 'knowing subjects', such as young people, leaving them behind and



rendering them powerless while the texts move forward as objective and authoritative (Smith, 1990a). The information in the texts and 'knowledge' becomes organizationally known in a way that creates 'virtual realities' directing interpretative reading practices.

The realities to which action and decision are oriented are virtual realities vested in texts and accomplished in distinctive practices of reading and writing. We create these virtual realities through objectifying discourse; they are our own doing. Employing them, we separate what we know directly as individuals from what we come to know as trained readers of texts. (Smith, 1990a: 62)

Institutional ethnography endorses a theoretical approach wherein textualised accounts, such as those reflected in complaints processes, are recognised as official and bureaucratic, directing managerial and professional practices (Campbell and Gregor, 2002). As a consequence, these textual accounts may overlook the 'embodied knowing' of young people, which can be presented as an alternative to accepting external authoritative knowing and which is also relevant to the process of knowing (Campbell and Gregor, 2002). It will become evident in later chapters that this theoretical approach has implications for the 'knowing' of young people at residential school and 'knowledge' reflected in institutional texts associated with rights, complaints processes and advocacy.

Institutional ethnography suggests that the significant role of texts has been undervalued, particularly in sociological research, and Smith (1990b), in particular, credits the field of ethnomethodology with recognizing the text as a fundamental component of social relations. The text, as Smith (1999: 7) explains, 'directs attention to, and takes up analytically, how what people are doing and experiencing in a given local site is hooked into sequences of action implicating and coordinating multiple local sites where others are active'. Interpretative practices that 'activate' these texts are viewed as properties of social relations and do not arise through any one individual's initiative. In recognizing the text as a constituent of a particular social relation, we become drawn to how its production is socially organized in a prior phase in the social relation and distinguished from the work of a particular author. By increasing the visibility of texts and making apparent their relationship to the formal organization, the organizational process itself becomes visible (Smith, 1999). In this way, researchers explore texts, through textual analysis, as a way to deepen their

understanding about local settings, including the experiences and activities of people located in them.

If we have not seen the text as an active constituent of organizational process, it is, I think, because we are ourselves so habituated to its use, to its appearance before us in that simple moment of engagement in which we seek to find out what it says and take what we have learned from it as our resource, rather than addressing that process as a topic. The text comes before us without any apparent attachments. It seems to stand on its own, to be inert, without impetus or power. But in the situations of our everyday life as contrasted with our scholarly activities, we find the text operative in many ways. (Smith, 1990b: 122)

Institutional ethnography, therefore, proposes a research process aimed at explication. Researchers conduct inquiries that allow them to make texts visible as constituents of social relations and show invisible determinations that affect the everyday lives of people. Texts reveal individuals' socially organized activities, happening within those everyday lives and ordered through text-mediated discourse and ruling relations. In that way, the material text creates a link between local professional activities and more generalized, organizational relations.

The conceptual importance of experience lies in providing a real-life context against which, for instance, to reflect on administrative practices and their powerful effects on people's lives. In a project of this sort, the researcher explicates how administrative textual practices transform the *experienced* local and particular into standardized forms such that it can be ruled. Seeing textual practices as themselves real and experienced offers the researcher a course of practical action to explore. That is, once she sees that people follow special work processes to produce administrative texts - that opens up a different view of 'ideology.' Administrative practices can be explored as courses of organizational action that construct everyday life into something different from how it is experienced. (Campbell and Manicom, 1995: 7-8)

By seeing legislation, policy and locally produced texts as active components socially organising young people and adult experiences, this thesis illustrates how those texts organise work practices existing within the institutional worlds that affect the everyday lives of young people at residential school. By adopting institutional ethnography as a theoretical approach, it is possible to begin in the activities of those young people, as 'expert knowers' of their own experiences, and extend beyond their local situations into sites where power is held.

### 1.3.5 Professional involvement in children's lives

Individual service provider responsibilities for young people at residential school are often inhibited by the complexities associated with working within institutional structures (De Montigny, 1995). Sound professional practice is often equated with solid organizational work requiring the professional person, such as social workers, residential care workers and complaints officers, to manage both their professional work and the work of the institutions that employ them (De Montigny, 1995). Professionals, with competing responsibilities and obligations, are also employees working for agencies and organizations requiring them to adhere to legislative mandates, policies, standards, and organizational directives (De Montigny, 1995). With the professional agenda linked textually to an organizational agenda, incompatibilities can arise between professional and organizational practice. This, in turn, raises questions about the role and influence of organizations on professional practice.

De Montigny (1995: 46) suggests that professions, such as social work, operate through organizational work processes which construct 'the coherence, visibility, and warrant of activities as professional work performed on behalf of the organization'. Smith (1987) discusses the methodological significance of the organisational and professional work combination, observing that institutional processes actually organize the responsibilities of professionals who work in bureaucratic settings such as social work, education and residential care environments - a consideration relevant to the 'totality' of work processes as they exist.

Addressing the institutional process as a work organization in this sense means taking as our field of investigation the totality of work processes that actually accomplish it: hence it means going beyond the functional boundaries as these are defined by its ideological practices to explore those aspects of the work organization that are essential to its operation. For these are an integral part of its operation, whether they are recognized or not and whether or not they might be considered positive (or functional) in relation to its objectives. (Smith, 1987: 165-166)

According to De Montigny (1995), the illustrative ideology of the social work profession offers a set of conceptual tools for organizing practice and for managing a situated work process. In addition, 'the art of producing a professional identity allows a person to insert himself or herself into discursively organized and warranted

relations of power and authority' within institutional settings in which professional work is functionally ordered by ideological practices operating within (De Montigny, 1995: 48-49).

Swift (1995: 36), too, stresses the significance of ideology and its influence on practices and institutions, arguing that the concept of practice requires a 'broad definition of work, including those activities of practical reasoning, speech and writing' through which the tasks of providing services are both produced and accomplished within an institutional setting. This concept of work incorporates 'processes that both produce and are ordered by the social relations of the institutional process' (Smith, 1987: 166). Smith's (1987) view encourages us to identify the processes that produce and order the extended involvement professionals have with each other and the lived experiences that people observe and describe. Texts, as a constituent of these processes, often invite scrutiny for that very reason.

#### **1.4 STRUCTURE OF THE THESIS**

The themes introducing this thesis, children's social world and institutional ethnography, constitute an essential part of this research. Other themes, such as those focused upon children's human rights, 'complaints' and advocacy, are explored in chapters 2 and 3 as underpinning the research's central theoretical and contextual aspects. Chapter 4 elaborates on the research design with specific mention made about how institutional ethnography – as the chosen method of inquiry - was relied upon to reach the research objectives. The following three chapters - chapters 5, 6 and 7 - represent the research analysis, drawing from the theoretical and the contextual to reveal young people's accounts along with those external factors socially organising their understandings in ways that are often unseen and unknown. The final chapter summarises what has emerged from the research, categorises research implications, reflects on key messages and identifies future research needs.

# 2

## CHILDREN AND THEIR HUMAN RIGHTS

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### 2.1 INTRODUCTION

The following two chapters broadly elaborate upon topics relating to young people, their human rights, complaints, advocacy and residential care. Within each of these areas, it is acknowledged that there is a massive literature that could not be fully explored within the confines of these two chapters, however, the primary intent is to demonstrate the main themes within each area to inform better the subsequent analysis and conclusions that follow.

While historically there has been, and continues to be, debate about whether all human rights apply to children, this thesis begins from a place that accepts children have human rights which ‘are inscribed in the hearts of people; they were there long before lawmakers drafted their first proclamation’ (Robinson, 2005). Human rights are defined as those rights marked by key characteristics that cannot be waived or denied, impose obligations, are universal and ‘focus on the inherent dignity and equal worth of all human beings’ (United Nations High Commission for Human Rights, 2008: 8). Children’s human rights, reflected in numerous international and domestic legal

instruments, are rights that afford special consideration to children on the basis of their unique and vulnerable status.

Children's rights are an integral part of human rights. The whole human rights program of the United Nations is of direct relevance to children inasmuch as the ultimate aim of the program is the well-being of every individual person in national as well as international society. But even more, the whole human rights endeavour may be said to be built on the foundation of care and love for children and respect for their rights. (van Boven, 1982: 157 in Koren, 2001)

In institutional ethnography, the researcher's commitment to exploring what actually happens to people, who live their experiences and who are willing to talk about them, means that the researcher must understand that research accounts are often viewed as 'authoritative', necessitating that she consider how the research literature itself is socially organised and her own position in relation to what is discovered. The researcher delineates her research stance through the development of a conceptual framework which the researcher considers most relevant to the topic under study (Campbell and Gregor, 2002). The conceptual framework informing this research reveals my standpoint as a researcher committed to the protection and promotion of human rights, including the rights of young people at residential school.

Within institutional ethnography, researchers are expected to uncover the extent of research knowledge about the research topic - in this instance, the matrix of rights, complaints processes and advocacy - while maintaining a research interest in how the research's focus is socially organised. The conceptual framing of the research requires the researcher to consider what is known about the topic under study and also what is required to discover about the topic to make apparent its social organisations (Campbell and Gregor, 2002). In proceeding in this way, the process also begins to illustrate 'how the issue of knowing emerges as a contested aspect of research - that, in institutional ethnography, is made explicit' (Campbell and Gregor, 2002).

## **2.2 CHILDREN AND THEIR HUMAN RIGHTS**

The special place of children in society is recognised in the original Universal Declaration of Human Rights (1948) and pervades the whole framework of international human rights standards (van Boven, 1982: 157 in Koren, 2001). Ignatieff (2000: 2) suggests that, by working 'their way deep inside our psyches', human rights go beyond legal instruments to situate themselves as 'expressions of our

moral identity as a people'. The concept of rights, in general, derived from the historical teachings and writings of legal and political philosophers who debated this concept in liberal and, more recently, radical traditions. Debate about the evolving concept of children's rights has been intertwined with historical ideologies about how 'child' and 'childhood' were, and are, defined by adults. Historical social constructs did not always serve children's best interests, as children were often silenced due to their perceived insignificant position in society – children perceived, perhaps, as adults 'becoming' rather than as autonomous beings. While the children's rights movement began in the mid-19<sup>th</sup> century, with an article about children's rights appearing in 1852 (Freeman, 1992), society didn't begin to engage in a discourse about children's rights until the 1960s when the new liberalism or welfarism made it possible directly to address the issue of children's rights (McGillivray, 1992).

A children's rights discourse emerged from a discussion largely focused on child protection, exemplified by the protectionist approach, and was challenged later by the liberationist movement advocating self determination for children (see Archand 1993; Franklin 2002; Hill and Tisdall, 1997). Proponents of children as 'autonomous beings' advocated within this children's rights discourse encouraged conceptions of children as subjects of rights rather than as objects 'owned' by their parents. The early development of children's rights discourse paralleled the evolution and social construction of child welfare in that it tended to be informed by the same ideological constructions and focused on child protection. Child welfare, which has been described as a system dealing with 'serious problems of care' (Swift, 1995: 38), remained largely preoccupied with protection and intervention although in recent years there has been increasing emphasise on young people's participatory involvement due, in part, to the UNCRC, certain provisions in the domestic regulatory and policy framework as well as child-led research.

Underlying both philosophical and historical developments, however, was society's concern for the child in terms of the child's usefulness to society, with the 'investment motive' largely informing the dialogue about children's rights (Freeman, 1992). In later years, the children's rights discourse began to expand its philosophical analysis of the child and childhood as social constructions when the liberationists introduced new ideas and ways of thinking about children: for example, that children required the right of self-determination to become emancipated, while others argued for denying children self-determination and for the exercise of children's rights by 'caretakers'

(Archard 1993). Over the years, children's rights debate continued to highlight two particular concepts – nurturance and self determination – and with the former dominating public debate and social policy, inherent challenges arose within the framework of children's human rights that placed obligations on adults to protect and nurture children while also recognising children's participatory rights in matters that concerned them.

Increasingly, the international community has taken on this challenge, recognising children as subjects of rights, acknowledging that human rights exist for all people, including children, and identifying that those rights do not need to be given or deserved<sup>10</sup>. According to Newell (1998), there are societal moral, legal and practical justifications for promoting and protecting children's rights. Moral obligations require societies to recognise that children have 'equal status to adults as members of the human race. They are individuals – not possessions of parents, not products of the State, not people-in-the-making'; it is incumbent upon governments to recognize the moral rights of children as individual citizens (Newell, 1998: 271). In addition, legal obligations exist under international law for those States, including the United Kingdom, which ratified the UNCRC to implement the UNCRC provisions while the practical considerations for ensuring that children's rights are protected and promoted are several:

- Children's dependence on adults makes them extremely vulnerable and prone to abuse;
- Children are significantly affected by government policies, such as those related to health, education and child protection;
- Societal changes have a disproportionate impact on children, contributing to their need for special attention;
- Children lack the vote and have no significant role to play in the political process which tends to result in their alienation from the political world;
- There are financial and social costs of failing to promote the development of healthy, happy children (Newell, 1998: 273).

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<sup>10</sup> This tendency is reflected in the growth of human rights instruments relevant to children's lives. The focus on children's rights gained momentum with the United Nations Declaration of the Rights of the Child in 1959 followed by the UN Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples (1965), the UN Convention on the Rights of the Child (1989) and UN Declaration on the Survival, Protection and Development of Children (1990). In addition, the European Convention on the Exercise of Children's Rights was adopted by the Council of Europe in 1996 and makes reference to states obligations under the UNCRC. The most ratified human rights instrument for children, however, is the UN Convention on the Rights of the Child.



The international recognition of these factors has led to formalised children's international human rights instruments, beginning with the Declaration of the Rights of the Child, passed in 1924 by the Assembly of the League of Nations. The UNCRC, however, has emerged as the most predominant human rights instrument for children with its world-wide ratification and endorsement.

### **2.2.1 The UN Convention on the Rights of the Child (1989)**

The UNCRC, the most widely accepted human rights convention in the world, recognizes the human rights of children (up to 18 years of age). Negotiated over a lengthy period of 10 years, the UNCRC is significant in its challenges to traditional notions of childhood and how societies view children, directing perspectives of parents 'owning' their children and children as 'possessions' toward seeing children as subjects in their own right. Furthermore, the UNCRC seeks to promote the concept of children as both 'being' and 'becoming' future citizens within the universality of human rights afforded to all individuals. While children's human rights are reflected in various international human rights instruments, the UNCRC, in particular, addresses children's specific entitlements, organized according to four predominant principles: there must be no discrimination (article 2), a child's best interests must be a primary consideration (article 3), a child's survival and development must be ensured (article 6) and a child's views must be considered in all matters affecting the child (article 12).

The UN Committee on the Rights of the Child<sup>11</sup> (UN Committee) has emphasized that States implementing the UNCRC must have regard for the entire UNCRC and that there is no hierarchy of rights attributed to particular articles (Hodgkin and Newell, 2000). Freeman (2000: 277-278), in his analysis of the UNCRC, places the UNCRC articles within several key areas such as general rights (including the right to express one's views and receive information), protective rights, civil rights, development and welfare rights and 'special circumstances' rights. Within these groupings, the UNCRC brings attention to the significance of family, culture and tradition alongside protecting and ensuring children's harmonious development within a participatory

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<sup>11</sup> UN Committee: Established in 1991, this elected committee of 10 international representatives exists in accordance with UNCRC article 43. Acknowledged as experts in human rights and nominated in personal capacity, these members are considered solely accountable to children. This Committee reports on its activities every two years to the UN General Assembly through the UN Economic and Social Council.

framework. Freeman (2000: 288) has argued that the right of children to express their views in all matters affecting their lives (article 12) is ‘perhaps the most important provision in the Convention’.

Koran (2001) described children’s right to determination, to express their views freely on all matters affecting them and to participate in judicial and administrative processes as ‘crucial’. Children’s participatory rights reflect a principle that has perpetuated the notion that the ‘best interests’ principle (article 3) should be based upon what children think, in combination with adult positions about what is ‘best’ for children (Koran, 2001). Children’s rights under the UNCRC impose obligations on States, parents and other adults while also *creating opportunities* for children in their daily lives, such as the opportunity to express their views about matters important to them, to receive information and to participate in decision-making processes (Koran, 2001). ‘The right to respect, the right to participation, and the right to information are closely related’ (Koran, 2001: 246).

While children’s ‘participatory rights’ are sometimes interpreted as relating specifically to article 12, this article and article 13 together affirm the value of children as individuals within their own right, with the right to acquire information and freely express their views about matters important to them, including through their involvement in judicial and administrative processes. Children’s general participatory rights, or ‘self-expression articles’, as well, extend beyond articles 12 and 13 to include many other articles<sup>12</sup>. There is an extensive literature on children’s participation (too exhaustive to address within the confines of this thesis) that recognizes the entitlements of children to participation in their everyday lives and to the fullest extent possible in ways informed by the concept of children’s ‘evolving capacities’. This concept, embedded in the UNCRC, has significant implications for children wishing to exercise their rights.

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<sup>12</sup>These include: article 9 (separation from parents), article 21 (adoption), article 37 (torture, degrading and deprivation of liberty), article 40 (administration of juvenile justice) (see Hart, 1998). The ‘evolving capacities’ articles, in addition to articles 12 and 13, encompass article 14 (freedom of thought), article 15 (freedom of assembly), article 17 (access to information), article 23 (special support for disabled children) article 29 (education for personal fulfillment and responsible citizenship) and article 31 (leisure, play and culture) (Hart, 1998). In describing children as active subjects of rights, Flekkoy (1997, p. 62) referred to article 13 – freedom of expression - and ‘other civil rights to freedom of thought, conscience and religion’ (Article 14) and freedom of association (Article 15) as underlining children’s status as individuals with fundamental human rights.

The Convention recognises that children in different environments and cultures who are faced with diverse life experiences will acquire competencies at different ages, and their acquisition of competencies will vary according to the circumstances. It also allows for the fact that children's capacities can differ according to the nature of the rights to be exercised. Children, therefore, require varying degrees of protection, participation and opportunity for autonomous decision-making in different contexts and across different areas of decision-making. (Lansdown, 2005: ix)

Lansdown (2005) argues that children's evolving capacities must be understood and explored through three conceptual frameworks - developmental, participatory or emancipatory and protective - that will ultimately be affected, as well, by legal frameworks that determine the age at which children acquire certain rights. The exercise of children's rights is linked to their emerging autonomy, a fundamental component of democratic traditions and embedded in political and civil rights that ensure individual liberties (Lansdown, 2005). It is a challenging concept, Lansdown (2005) argues, as it relies upon individual competencies and decision-making abilities that children often forfeit until they are judged as having capacity to assume such responsibilities as determined by adults and the law. Article 5, in association with article 12, 'stresses that children are entitled to support, encouragement and recognition in taking decisions for themselves in accordance with their wishes and capacity, as well as in the context of their family and community' (Lansdown, 2005: 4).

In many places in the world, there has been a notable gap between the UNCRC entitlements children possess and the realities of their everyday lives (see Pinheiro, 2007). According to Freeman (2000), there has been a backlash against children's rights in which general rights critics have made several arguments about the weaknesses inherent in taking a rights-based approach to societal issues. These arguments include, for example, the notion that rights are 'vague and indeterminate', drawing attention from 'the real abuses, the imbalance of power, economic disparities, social oppression and focuses instead on symbolic abstractions' (Freeman, 2000: 279).

Rights...have the capacity to be elements of emancipation, but they are neither a perfect nor exclusive vehicle for their emancipation. [They] can only be operative as constituents of a strategy for social transformation as they become part of an emergent 'common sense' and are articulated with social practices. (Hunt, 1990: 325 in Freeman, 2000: 280)

Opponents to children's rights, in particular, have argued that there are 'too many rights' for children and insufficiently identified responsibilities, linked to the argument that children's rights undermine families and parental entitlements to make decisions for their children, which raises the question about whose autonomy and right to dignity is being upheld (Freeman, 2000). Archard (1993) notes that critics of children's rights suggest it proposes an 'all or nothing' tendency, maintaining the separation between the childhood and adulthood worlds, and that children's rights discourse is 'morally impoverished' because it lacks an ethical view of the world that emphasises the caring interdependence of parent-child relationships. Archard (1993) argues in opposition to the all or nothing approach, stating that children's lack of certain adult rights did not equate with no rights for children at all, and that it is possible for rights and caring relationships to co-exist, with rights creating obligations for parents who did not have loving relationships with their children.

UNCRC critics argue that the UNCRC largely presents a westernized notion of childhood represented by a Eurocentric version of childhood originating from developmental psychology. In response, Freeman (2000) proposes that the UNCRC does not recognize all children as the same and that it is important to address newly identified subjects under developing UNCRC Protocols. He suggests that as the current UNCRC does not go far enough to capture all issues relevant to children, there remained 'new rights to be debated, new features of existing rights to be tested and examined, and new child groups to be emphasized...there is a need for revision, reform and innovation' as it cannot be presumed that the UNCRC formulation years ago can meet the needs of future children<sup>13</sup> (Freeman, 2000: 282). While critics of the concept of children's rights abound, Freeman (2007) argues that the debate about children's rights is healthy and necessary.

[T]he opponents have not yet toppled political initiatives of which the UN Convention is only the best-known example. The case for children's rights will prevail. We have to believe this because out of it will emerge a better world for children and this will redound to the benefit not only of children but of all of us. (Freeman, 2007: 19-20)

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<sup>13</sup> In 2002, the UN Special Session on Children took place resulting in a Declaration and Plan of Action of the General Assembly Special Session on Children and supporting the Millennium Declaration and achievements of the 'Millennium Development Goals'. This session focused world attention on societal need to respect the principles of children's human rights, including children's participatory rights in which children are actively involved in decision-making at all levels and in planning, implementing, monitoring and evaluating all matters affecting the rights of the child (Special Session of the UN General Assembly on Children, 2002).

### **2.2.2 European Convention on Human Rights and *Human Rights Act* (1998)**

While the UNCRC is one of the most pre-eminent UN human rights instruments focusing upon children, the European Convention on Human Rights (ECHR) also has significance for children although it was not written with children as its central focus. The ECHR is a regional human rights instrument, generated by Council of Europe member states in 1950 in the aftermath of post-war concern about civil and political rights. Some specific rights that overlap with the UNCRC include article 8 (the right to respect for family and private life, for home and correspondence) and article 10 (the right to freedom of expression and freedom to receive information without interference). The European Court of Human Rights has adopted their acknowledged responsibility for treating the ECHR as a ‘living instrument, not a dry text’ (Drew, 2000: 5) in which the delicate issues of interpreting the ECHR from children’s perspective must be balanced alongside adults’ rights under it and child law, for example, the *Children (Scotland) Act 1995*.

Within the United Kingdom, the *Human Rights Act 1998* gives further effect to rights articulated within the ECHR and makes it possible for UK citizens to challenge rights violations under this legislation in domestic courts (Drew, 2000). Lyon (2007: 152) questions, however, why so little attention has been centred upon promoting children’s enforceable rights, as guaranteed by the ECHR through the *Human Rights Act 1998*.

There...appears to be a critical lack of confidence, which must be addressed urgently, amongst those working within both governmental and non-governmental organisations in understanding the application of the Convention articles and the ways in which the HRA might work to the benefit of children, as well as some misunderstanding of the potentially extensive ambit of ECHR rights, as interpreted by the European Court of Human Rights and the domestic courts... The lack of the promotion by the State of awareness amongst children, not only of the UNCRC but also of the ECHR, in itself puzzled the UNCRC. (Lyon, 2007: 152)

While the ECHR does not refer specifically to children’s rights, such as those identified under the world-wide instrument, the UNCRC, the Council of Europe has taken various steps to promote children’s rights throughout Europe, including the introduction of the European Convention on the Exercise of Children’s Rights (1995).

This thesis draws attention to the potential significance of the ECHR and the *Human Rights Act 1998* to young people's everyday lives. It was not possible, however, within the confines of this research to incorporate an analysis of these legal instruments into the larger analysis informed by the UNCRC.

### **2.3 RIGHTS, RESIDENTIAL ESTABLISHMENTS AND RISKS**

While young people throughout Scotland possess human rights regardless of their personal circumstances and where they reside, young people living outside their family home, such as young people at residential school, are entitled to special considerations under the UNCRC.

A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. (UNCRC, article 20.1)

This UNCRC article has relevance to those young people living in residential establishments, identified within Scotland under different names such as residential units, children's homes, secure accommodation and residential schools. Young people from complex social and economic environments, many with special care and protection needs, are placed at residential schools in Scotland where young people living in residential units experience varying degrees of restriction placed upon their freedom while residing in open support units, closed support units and secure accommodation. The educational environments for all young people at the residential school are located on-site, managed by educational staff with varying degrees of interactions with residential care staff about young people. While the regulatory, policy and procedural framework requires the provision of adequate social care, health care, justice and educational services to young people at residential school, these young people experience a high degree of vulnerability associated with circumstances inherent in their residential placement and guardianship arrangements.

Historically, the direct experiences of young people at residential schools, informed by young people's views, were seldom the focus of research (Hill, 1999). Growing awareness of these young people's vulnerability has increasingly led researchers, voluntary organisations and governments to investigate these young people's experiences, to improve those experiences and to promote better outcomes (Pinheiro,

2007; Clough, 2006; Kendrick, 2004). Certain young people at residential schools experience abuse and poor outcomes associated with their health, education, economic and social status as they grow older. The risks encountered by young people may be complicated, as well, by young people's pre-care and pre-placement vulnerability arising from family contact being problematic for young people subjected to abuse within their own family environment (Clough, 2006; Hill, 2000; Sinclair and Gibb, 1998). The Stockholm Declaration on Children and Residential Care (2003) reiterates State UNCRC obligations to young people in residential environments; these obligations include 'regulating and monitoring any...institutions for children in public care in line with agreed international and national standards and the CRC'.

Despite these efforts, growing awareness and obligations, however, young people in residential establishments throughout the world continue to experience rights violations associated with their UNCRC protection, provision and participatory rights (Pinheiro 2007). There has been a growing concern about the abuse of young people in residential establishments, reflected in the high-profile public inquiries within the United Kingdom over the years that have exposed physical, sexual and emotional abuse within institutions leading to legislative, policy and procedural changes throughout the country. Baxter (2003) identified the difficulty that little systematic data collection and research has been done in the UK on institutional child abuse, although American research found that young people living in residential environments were more vulnerable than young people in families and, secondly, under-reporting of institutional child abuse was common (Kendrick, 1998). Within that context, Stein (2006) suggests that the prevalence of abuse and the types of abuse within residential care is largely unknown, although research conducted in the early 1990s identified that abuse did exist (see Grimshaw and Berridge, 1994; Gallagher *et al.* 1996).

Child abuse is endemic throughout all societies, in all spheres of life, and while the term can be elusive to define, Sen *et al.* (2007) suggest there are five general categories: physical injury, sexual abuse, non-organic failure to thrive, emotional abuse and physical neglect. The term 'institutional child abuse' extends that definition to a broader one incorporating overt or direct abuse, programme abuse and system abuse (Gil, 1982; Kendrick, 1998; Sen *et al.* 2007). Gil (1982) places institutional child abuse within a wide spectre of possibilities and defined as:

...any system, programme, policy or procedure or individual interaction with a child in a placement that abuses, neglects, or is detrimental to the child's health, safety, or emotional or physical well-being, or in any way exploits or violates the child's basic rights. (Gil, 1982: 9)

The reference to institutional child abuse in Gil's (1982) definition as including a violation of children's rights predates the UNCRC, which encapsulates the special human rights children have in more concrete ways than other human rights instruments. Programme abuse is internal to an institution (Gil, 1982) and, while viewed as acceptable to staff, may be seen by outsiders as abusive (Baxter, 2003). System abuse is perpetuated by a massive, complex child care system that is under-resourced, stretched beyond capacity and unable to guarantee safety to all children in State care (Gil, 1982). Despite these three categories, however, public inquiries and research have tended to focus upon direct abuse to individuals rather than system or programme abuse (Baxter, 2003). Other types of abuse that may occur within residential environments include peer abuse and organised abuse, characterised by the purposeful, targeted abuse of children in institutional settings (Baxter, 2003; Sen *et al.* 2007).

Pinheiro (2007) equates 'violence' against young people with how child abuse is often defined, drawing from article 19 in the UNCRC prohibiting 'all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse'. The definition of violence against young people in the report is also informed by the World Report on Violence and Health (2002).

[T]he intentional use of physical force or power, threatened or actual, against a child, by an individual or a group, that either results in or has a high likelihood of resulting in actual or potential harm to the child's health, survival, development or dignity. (Pinheiro, 2007: 4)

Colton (2002: 34) argues that despite the proliferation of public inquiries into institutional child abuse, 'remarkably little serious attention has been paid to the possible factors associated with the abuse of children and young people in residential institution', claiming that future service provision has been the focus. Research in recent years has attempted to fill that gap by identifying risk factors for young people in residential environments. The factors identified include: repeat perpetrators, physical and social isolation, the denial of abuse, poor management and organisational accountability, poor supervision/status/training/qualifications of residential care staff



and the conditions under which they worked and the lack of awareness about gender and sexuality issues (Colton, 2002; Baxter, 2003; Sen *et al.* 2007). Colton (2002: 36) suggests that beyond those factors '[i]neffective management and accountability contributes to residential caregivers becoming a law unto themselves, and the development of distinctive institutional cultures', noting that a 'cult of silence' had arisen at residential environment where it was found that staff had abused children in their care (Waterhouse, 2000). Pinheiro (2007) found that there was a heightened risk of violence for children in institutional settings from staff as well as other children.

Sen *et al.* (2007) noted the depersonalisation and dehumanisation effects of staff burnout with staff experiencing increasingly negative attitudes towards children as a result (see Stein, 2006). Within such institutional cultures, in which bullying and sexual abuse may co-exist as abuses of power, Colton (2002: 37) argues that young people in those environments 'lack value and worth in the eyes of the wider community; they are easily stereotyped and this affects the resources made available for their care'. Stigmatization, isolation and de-socialisation place young people at much greater risk of being exposed to further violence and in some case becoming perpetrators of it (Pinheiro, 2007: 175). Pinheiro (2007) also identified inadequate staffing as a risk factor for children along with the low priority given to residential care, the mixing of different levels of vulnerability and the lack of proper monitoring and oversight.

Oosterhoorn and Kendrick (2001) identified communication difficulties as a risk factor, particularly for children with disabilities. While all children may become victims of abuse, children with disabilities are particularly vulnerable according to adults working with this group of children and these adults suggest that these children may lack an understanding about what constitutes abuse, presenting a major difficulty in relying upon children to report abuse (Oosterhoorn and Kendrick, 2001). Staff working with children with disabilities identified themselves as most able to protect children, however, they also indicated that their ability to determine abuse would more likely originate from physical, behavioural or mood indicators rather than children communicating about abusive situations (Oosterhoorn and Kendrick, 2001). This research highlights the need for appropriate training and increased coordination between social work, health and education (Oosterhoorn and Kendrick, 2001). Other areas of concern relating to residential child care may include shortages of placements,

lack of planning, quality of care and restraints (Scottish Institute for Residential Child Care, 2004).

Kendrick *et al.* (2004) found that many young people in residential care experienced poor outcomes relating to their health care. Concerns about the overall quality of care for young people led to several government initiatives, including the registration of care services and the social care workforce. Poor quality of care included a noticeable gap in mental health provision for young people with disabilities due to inadequate mental health services provision and the perception that disability and mental health was a concentrated area of expertise (Kendrick *et al.* 2004). While young people in government care experience a high level of mental health problems, mental health services have not adequately served this vulnerable group although the need for mental health services for young people was recognised by government (Kendrick *et al.* 2004).

Carlile (2002) observed that young people in government care risk developing 'problematic lifestyles' associated with prostitution, drug taking, alcohol abuse and few contacts with health services leading to less success in education and a higher incidence of suicide. Carlile (2002) found there were no routine ways of tracking the health of young people in government care and proposed that less effective healthcare likely existed for young people who needed it the most. A survey of the mental health of young people in government care in Scotland aimed to identify prevalence rates within three categories of mental disorder: conduct disorder, hyperactivity and emotional disorder (Meltzer *et al.* 2004). Among young people aged 5 to 17 years old, the survey found that 45% were assessed as having a mental disorder, two thirds of children reported having at least one physical complaint with children in residential care reporting a higher percentage of hospital visits than children in other placements and more police contact (Meltzer *et al.* 2004). The study also revealed the social impairment of these young people, with implications for friendships, involvement in leisure activities and educational outcomes, and their adverse consequences on others and the extent to which services were used, taking account of risk factors such as lifestyle behaviours (Meltzer *et al.* 2004).

Young people at residential school have poor outcomes relating to their education achievements and experience certain educational disadvantages with the result that their education is not as good as it needs to be (HM Inspectors of Schools and the

Social Work Services Inspectorate, 2001: 3). These young people tend to lag behind their peers in educational attainment, leave school with fewer qualifications and risk greater numbers of school exclusions (HM Inspectors of Schools and the Social Work Services Inspectorate, 2001). Meltzer *et al.* (2004) found that a significant percentage of young people in government care (50-60%) had difficulty with core subjects (eg., reading, maths), 59% were behind in their intellectual development while the young people furthest behind were young people in residential care in the 11 to 15-year-old age group.

Among all young people in government care, 33% had ‘officially recognised special educational needs’ and only young people in residential care reported that they did not spend time with their friends (Meltzer *et al.* 2004). HM Inspectors of Schools and the Social Work Services Inspectorate (2001: 3) found ‘too many instances where local authorities failed to carry out their duties to ensure that all children looked after away from home have care plans and placement agreements as specified in the legislation’, affecting the quality of education young people received and outcomes, leading the report to conclude that significant improvements were required.

Despite the best intentions of caring adults, the reality of young people’s lives in residential care is that they are not free from risks of human rights violations nor do they realise all their entitlements. The full extent to which young people experience breaches of their human rights, and what young people themselves may claim as rights violations, is largely unknown as young people have lacked support and structures for hearing their concerns in ways that work for them. Complaints processes, which historically have associations with human rights institutions, are identified as one mechanism for allowing young people to give voice to their concerns, claim rights violations and for monitoring rights implementation (see following sections). Whether complaint processes, as they currently exist, can be relied upon to address the human violations of young people at residential school is the subject of this thesis.

## **2.4 RIGHTS VIOLATIONS AND ‘COMPLAINTS’**

According to Pinheiro (2007), young people are speaking out about the violence they experience – in schools, family homes, institutions and communities.

Throughout the Study process, children have consistently expressed the urgent need to stop all this violence. Children testify to the hurt – not only the physical, but ‘the hurt inside’ – which this violence cause them, compounded by adult acceptance, even approval of it. Governments need to accept that this is indeed an emergency, although it is not a new emergency. Children have suffered violence at the hands of adults unseen and unheard for centuries. (Pinheiro, 2007: 5)

UNICEF (2005) claims the UNCRC does not elaborate upon what constitutes good practices, prevents abuses, establishes responsibility and determines accountability in relation to young people living outwith their family environments although, in the past, the UN Committee has recommended that the UN establish guidelines for such children. Colton (2002: 38) observes, however, that ‘[t]he abuse of children in public care clearly involves the transgression of human rights’. Many challenges remain for implementing the UNCRC and for ensuring that children’s involvement within society encapsulates economic, political, social and moral agendas. Lansdown (2002: 285) argues that the worldwide endorsement of children’s rights has not translated into law, policy and practice and ‘the gulf between the rights rhetoric and the realities of children’s lives remains considerable in most countries in the world’. The UN Committee’s response in 2002 to the UK’s periodic report (see chapter 3) contained 78 recommendations to make laws, policy and procedures within the UK more compliant with UNCRC requirements.

We want a world fit for children, because a world fit for us is a world fit for everyone. (Special Session of the UN General Assembly on Children, 2002)<sup>14</sup>

At the 1990 World Summit for Children, 71 states agreed to prioritize children’s rights while the 1993 World Conference on Human Rights reiterated the principle of ‘First Call for Children’, declaring that the implementation of children’s rights must be a priority. In 2002, the Special Session of the UN General Assembly on Children convened to review international progress since the World Summit for Children in 1990 and to regain a global commitment to children’s rights. It was the first time a United Nations session had focused exclusively on children, who were included as official delegates. Despite this international endorsement for children’s rights,

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<sup>14</sup> Two young person delegates aged 13 and 17 years old delivered this message from the Children’s Forum to the United Nations General Assembly Special Session on Children in May 2002. It was the first time in United Nations history that young people addressed the General Assembly, making their presentation after a three-day session during which 404 young delegates discussed issues concerning the rights and well-being of children.

Freeman (2002a: 114) asserts that it is essential not to be complacent about children's rights, demonstrating where domestic legislative change is needed in some areas, where practice needs to be monitored better and 'where greater thought has to be given to protecting the interests and furthering the rights of children'. The UNCRC has promoted children as rights bearers, however, it is evident that massive violations of children's rights continue throughout the world including in institutions such as residential schools where children reside (Pinheiro, 2007).

Specific United Nations standards have been developed for children in conflict with the law<sup>15</sup> including standards<sup>16</sup> adopted in 1990 which complete the 'framework of prevention, case management and social rehabilitation of children' (applying to some, but not all, residential schools) (Pinheiro, 2007: 179). Pinheiro (2007) states that social policy best practices today reflect the UNCRC and other human rights obligations, with aims to support children in their family environment and ensure their access to mainstream health care, education and social support services. While domestic regulatory, policy and procedural framework is essential for addressing rights violations, such as violence against children in institutions and other forms of alternative care, this framework may require new legislation or amending legislation consistent with the UNCRC and other human rights instruments (Pinheiro, 2007; UNICEF, 2005). Legislation, policies and procedures must also reflect States obligations to protect children, which may include ensuring that staff are screened, institutions registered, children's care recorded and reporting procedures exist with effective monitoring and accountability as key factors to ensure institutions do not operate as closed settings (Pinheiro, 2007).

Family access when it is in the child's best interests along with public scrutiny by non-government organisations, human rights institutions, lawyers, the media and other elements of civil society, while protecting the privacy of children, may protect and promote children's rights (Pinheiro, 2007).

Effective monitoring and reporting systems by competent bodies should be established in law, with the power to demand ongoing information on conditions, and to investigate and redress all forms of violence... **Guarantees that the**

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<sup>15</sup>Such as the Standard Minimum Rules for the Administration of Juvenile Justice ('the Beijing Rules'), adopted in 1985, which provide guidance on the administration of justice so children's rights are protected and their developmental needs met (Pinheiro, 2007).

<sup>16</sup>See the UN Guidelines for the Prevention of Juvenile Delinquency ('the Riyadh Guidelines') and the UN Rules for Juveniles Deprived of their Liberty ('the JDL Rules').

**voices of children and their families will be heard should have a basis in law**, [author emphasis] rather than just guidance or institutional procedural manuals. **Legislation must ensure that simple, accessible, independent and safe complaint mechanisms should be provided to children in institutions** [author emphasis]. Children and their representatives should also have access to an appeals process if they are not satisfied with the response to their complaint. (Pinheiro, 2007: 205)

There are factors that make a positive difference to young people in government care, including the realisation of children's UNCRC rights without discrimination and a particular emphasis on article 12 (Scottish Executive<sup>17</sup>, 2006). The Scottish Executive's articulated vision for young people in Scotland reflects many UNCRC core principles, including that young people should have their voices heard, attain high standards of physical and mental health through accessible services and experience positive learning (Scottish Executive, 2006). The Scottish Executive does not provide information, however, about what avenues are available to young people who may not realise this vision and who experience rights infractions.

Alston and Tobin (2005) state there is a need for a systematic focus on what is required to establish adequate legal and institutional foundations at various levels to ensure young people's UNCRC rights are respected, promoted and implemented. Regional recognition of children's rights through instruments such as the African Charter on the Rights and Welfare of the Child<sup>18</sup> and the European Convention on the Exercise of Children's Rights has reinforced the UNCRC as an important international human rights instrument while imposing further state accountability. According to Alston and Tobin (2005: ix), '[a]ccountability is the lynchpin of the international human rights regime' and while the concept is subject to varying interpretations, it is sought primarily within domestic settings through mechanisms such as complaints processes. Among the criteria necessary for safeguarding young people from abuse, for example, Kendrick (1998a) identifies the need to listen to young people, adding that a culture needs to exist in which young people are able to complain and in which 'complaining' is viewed as a positive contribution to service development (Gulbenkian Foundation, 1993 in Kendrick, 1998a).

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<sup>17</sup> In 2007, the Scottish Executive name changed to Scottish Government subsequent to the national election.

<sup>18</sup> This children's human rights instrument, unlike the UNCRC, has a complaints mechanism associated with it.

Historically, there have been challenges to hearing the concerns of young people who reside in residential schools, with barriers to hearing the voices of those children, particularly in relation to the physical, sexual and emotional abuse they have suffered (see chapter 6).

Complaints by children were...stifled: few resident children made complaints of abuse. Those who did complain were generally discouraged from pursuing complaints and recording of complaints was grossly defective. The suppression of complaints is a common characteristic of enclosed, inward looking, organisations which reject criticism, are unreceptive to new ideas, and encourage routines and patterns of practice that are rigid and conservative. (Colton, 2002: 37)

In their examination of complaints procedures for young people in government care, Wallis and Frost (1998) found that complaints procedures in England developed from a children's rights and protectionist framework although in arguing that complaints procedures should exist to protect young people's participation, protection and provision rights, their research determined that 'the emphasis was on complaints relating to issues of protection or provision rather than participation in decision-making' (Wallis and Frost, 1998: 31). Despite this emphasis, other researchers, such as Lyon (1997) observe that 'it is only as adults that those who have lived in care feel safe to complain' (quoted in Wallis and Frost 1998: 9), raising questions about the effectiveness of such a framework. Wallis and Frost (1998) argue that it is essential for young people to receive advocacy support when they want to use complaints processes, claiming that young people value advocacy and children's rights officers where they exist as available to young people. They emphasise the significance to young people's welfare that young people believe it is possible to complain and that they will be listened to (Wallis and Frost, 1998).

Other researchers (see Aiers and Kettle, 1998; Cousins *et al.* 2003) made associations between children's rights and complaints processes although this prevailing research did not extend to arguing that complaints processes for young people in residential schools, as an illustration, must be viewed as processes informed by human rights principles (see chapter 3). According to the UN Committee, however, complaints processes for young people in residential care need to exist as processes intended to implement and monitor young people's rights while offering redress to young people who experience rights violations (Hodgkin and Newell, 1998). Pithouse and Crowley (2007a) argue that there is a 'significant shift' needed in attitudes towards children's

rights and advocacy while drawing attention to the association between children's rights, advocacy and complaints.

Mainstreaming advocacy...would stem from and connect with a children's rights discourse that seeks to promote a view of children as children and citizens first, and not defined solely by their vulnerability. Shifting the balance of complaints and advocacy from a narrow adult-oriented focus around welfare issues to a more child-centred and child-led process that promotes authentic voice and rights would be a benchmark of civic and institutional progress as well as something our children should grow up expecting. We shall see. (Pithouse and Crowley, 2007a: 211)

Complaints processes for young people at residential schools can serve a multitude of purposes. Aiers and Kettle (1998) argue that four aspects of the complaints procedure for young people determine the procedures' effectiveness: protection, the right to be consulted, participation and improved service provision. These researchers make specific reference to UNCRC article 12 as stipulating that young people have the 'right to be consulted about all aspects of their lives' (Aiers and Kettle, 1998: 8) – a statement that may be interpreted to include consultations about complaints processes and how they are structured.

Over time the presence of an active and committed CRO [children's rights office] within the department [social work] can encourage a gradual change of culture within children's residential units towards ideas of children's rights. There can be greater acceptance not only of the right of young people to make choices and decisions in their daily life, but also to legitimately challenge staff when young people object to certain forms of treatment, practices and policies. (Aiers and Kettle, 1998: 8)

Despite recommendations that complaints processes exist for young people in government care, there is evidence to indicate that young people are reluctant to use such processes. In Northern Ireland, young people in residential care may access local authority complaints processes for making challenges relating to 'certain forms of treatment, practices and policies' (Kilkelly *et al.* (2004: xxii), however, these researchers also found that young people were not using those processes. 'Despite the evidence that children do not avail of adult type services and require child-specific ones, there is a lack of child-sensitive procedures and information in NI' (Kilkelly *et al.* 2004: 23).



Kilkelly *et al.* (2004) also identified specific problems associated with complaints processes for young people such as the unavailability or inaccessibility of complaints processes (Kilkelly *et al.* 2004: 23). According to Kilkelly *et al.* (2004), young people did not know where to go to access the information they needed in a child-friendly form or to get advice, advocacy or support. Kilkelly *et al.* (2004) also found that non-government organisations (NGOs) expressed concern that young people in government care and custody are not aware of existing complaints processes and, where complaints processes do exist, those young people have little confidence in them.

Burton (1998) suggests that a large percentage of ‘wrongs’ within residential care do not get uncovered as few complaints advance beyond the preliminary stage of the formal complaint process, which he argues may inhibit young people from complaining through processes designed to serve institutional interests. Burton (1998) claims that many local authorities (and large providers of social care) altered their complaints procedures such that it was more difficult to make a complaint than if no procedure had existed.

The common response to someone voicing a concern is to present them with ‘the complaints procedure’, which includes filling in forms, timescales, letters of acknowledgement, complaints panels, appeals, etc. Such a procedure is daunting to most complainants, so when asked if they wish to make a formal complaint, they very soon back off. Organisations which operate like this are using the system to protect themselves. (Burton, 1998: 245)

Kilkelly *et al.* (2004) reported one NGO representative as stating that young people never or rarely made a formal complaint when ‘in custody’, questioning the information young people had received about the complaints process, how it worked, how easy it was to use and the literacy skills of some young people. Based on their research, Kilkelly *et al.* (2004) identified that some young people may be reluctant to use a complaints process because they feared reprisals or the urgency of their problem would not be addressed in a timely way. Kilkelly *et al.* (2004) conclude that few complaints procedures meet young people’s needs and that the procedures need to be more child-accessible. In addressing the topic of advocacy services for young people in residential placements, Kilkelly *et al.* (2004: xxii) state that ‘[c]omplaints procedures and remedies for violations of children’s rights are not adequately accessible to children and young people and there is a clear need for more independent

advocacy services for looked after children, children in the criminal justice system, children in private family law proceedings and unaccompanied minors’.

In Scotland, the Scottish Commission on the Regulation of Care (Care Commission) (2004) reported on young people’s views about *National Care Standards* and the safeguarding of their rights in residential care, finding that most complaints to the Care Commission are made by family members and not young people living in care homes. Many complaints made by family members not upheld, unlike the results for complaints about other care homes (Care Commission, 2004).

[T]here is a direct correlation between the low number of complaints the Care Commission received with the results of the independent consultation which revealed that young people did not know about complaints procedures, the National Care Standards or the Care Commission. (Care Commission, 2004: 27)

Most young people in residential care knew about their placement’s complaints process, however, although the majority of young people believed the complaints processes were flawed (Care Commission, 2004). Many young people also reported that their views were not adequately respected and that complaints processes were difficult to access (Care Commission, 2004).

How care units deal with complaints needs to be examined further. When the young people became more aware of the standards and the Care Commission’s role, they made further comments. No one knew that they could make a complaint directly to the Care Commission. The fact that we have received so few complaints from young people supports this. This clearly shows that there is still much to be done in raising people’s awareness of the Care Commission and its role with young people. (Care Commission, 2004: 36)

The Care Commission (2004) did not refer to advocacy for young people who wanted to access their local or the Care Commission’s complaints process. In their research, Cousins *et al.* (2003) argue that health and social services trusts needed to engage in ‘pro-active’ complaints publicity and consultation programmes with children, with particular attention paid to vulnerable groups of children such as those children in residential and foster care. Cousins *et al.* (2003) conclude that advocacy services should be made available to all young people who wanted access to them.

## 2.5 ADVOCACY

The following section examines how advocacy is defined, the role of advocacy as a service to children accessing public services, such as residential school services, and the contributions of public inquiries within Scotland to the topic of advocacy for children in government care.

### 2.5.1 Definitions

Advocacy definitions, functions and relationships with rights and complaints processes are dependant upon their context. In general terms, Pithouse and Parry (2005) grouped advocacy into four predominant approaches: individual self-advocacy, collective/peer advocacy, citizen advocacy and professional advocacy. In subsequent research, Pithouse and Crowley (2007a) concluded that advocacy's ultimate goal for children is self-advocacy. Models of advocacy tend to fall into two predominant areas – those centred upon individual concerns and those focused on 'cause-based' issues advocating for systemic change (Pithouse and Crowley, 2007a; Dalrymple, 2004). Dalrymple (2004) argues that defining child and young person advocacy, as distinct from adult definitions, is dependent upon concepts of childhood and vulnerability, suggesting that 'social mechanisms' themselves can lead to vulnerability for children and young people.

In the provision of services 'expert' knowledge in relation to vulnerable young people is used to control and act upon them as targets of intervention (Sohng, 1998). By standing alongside them advocates are challenging dominant discourses about the nature of childhood and thus are confronting the monopoly of knowledge by 'experts' about the capacity of young people to speak for themselves. (Dalrymple, 2004: 5)

Creegan *et al.* (2006: 1) defined advocacy for young people accessing the Children's Hearing System as 'the provision of information, explanations, support, simple encouragement to participate, or direct advocacy by way of representation'. Dalrymple (2004: 5) extends this definition by suggesting that advocacy for young people is about empowerment and that advocacy can be used as a tool to challenge adult and institutional oppression of young people who, in some circumstances, may require support 'to come to voice'. Cousins *et al.* (2003) argue that advocacy objectives need to include empowering individuals, achieving social justice and

creating social change. These researchers adopt Bateman's (1995) proposition that in an unequal society, advocates can turn needs into rights, informed by five advocacy principles such as those reflected in UNCRC articles 12, 2, 17 and 21.

### **2.5.2 Advocacy for children**

Few children and young people participating in research in Scotland, Wales and England understand what advocacy means and what they can expect from advocacy services (Walker and Maquire, 2001; Dalrymple, 2004; Pithouse and Crowley, 2007b). However, 'there was general support for having someone who would help put across their point of view, stick up for them and make sure they got a fair deal' with consensus that an advocate would be 'easy to talk to, good at listening and tenacious in pushing for what young people needed and/or wanted' (Walker and Maquire, 2001: 26).

While formal children rights and national advocacy services are advanced as important safeguards for children in care, children consistently report that they prefer advocates whom they know and trust, such as their carer or social worker, and with whom they can establish a long term relationship (Walker and Maquire, 2001; Creegan *et al.* 2006; Pithouse and Crowley, 2007b). Social workers are identified as potential children's 'champions', however, young people in residential care also report that social workers lack time and that social workers are too remote geographically to advocate for them. As a result, young people prefer a direct relationship with an advocate who will challenge care staff and managers (Walker and Maquire, 2001).

Creegan *et al.* (2006) explored two topics relating to advocacy: the views of children and professionals about advocacy in the Children's Hearing System and how advocacy within the Children's Hearing System, child welfare and youth justice compared with each other. This research found that children frequently identified their social workers as persons to provide advocacy, with some children reporting that their relationships were based on trust and respect and other children identifying that they had less positive relationships with social workers (Creegan *et al.* 2006). The adults whom children recognised as possible advocates included keyworkers, befrienders, counsellors and community support workers (Creegan *et al.* 2006). According to Creegan *et al.* (2006), children wanted their family members present at their Children's Hearings although the potential for this advocacy role was limited.

The research found that while few children participating in the research had received advocacy support from independent advocacy support services, those children who had received such support reported positive experiences (Creegan *et al.* 2006).

[T]he best advocates will have a big heart, big ears for listening, a big mouth for getting heard, and good shoes to get to where they've got to get...my ideal advocate would listen, have satellite ears, a big brain and uses his head. He has open and fiery eyes but he's not angry, he gets attention (FG2). (Pithouse and Crowley, 2007b: 23)

In research commissioned to inform a Welsh Assembly initiative to improve advocacy and complaints services to children and young people, Pithouse *et al.* (2005b) examined the provision of advocacy services within health, education and social care provision. These researchers found that many children did not understand advocacy roles although the researchers also determined that children with some understanding of advocacy wanted 'rapport' with their advocate among other qualities (Pithouse *et al.* 2005b). Pithouse *et al.* (2005b) found that an adult-dominated aspect to complaints systems for children and limited involvement of advocacy in supporting young people who made complaints although the researchers also identified that children valued the relationship between advocacy and complaints.

In doing their research, Pithouse and Crowley (2007b: 23) determined that the advocate qualities children identified as important to them were compatible with national standards in advocacy requiring that advocacy services are 'age-appropriate, children's rights-oriented, accessible and independent'. These researchers concluded that from the perspective of children, two key challenges exist: the emotional complexity of the advocacy relationship and making advocacy services widely known to children (Pithouse and Crowley, 2007b: 23). In an earlier study related to this topic, children expressed reservations about advocacy services, unless it resulted in changes for children who would become disillusioned with it otherwise (Walker and Maquire, 2001). Children identified that it was important for advocates to know about children's rights (although there was no specific mention of advocates supporting children who wanted to access complaints processes) and for advocacy services to be flexible (Walker and Maquire, 2001).

In her research, Dalrymple (2004) examined how advocacy was constructed by young people, advocates and commissioners of advocacy services, arguing that if advocacy

was constructed in an ‘adult proceduralised’ way, advocacy would compromise its potential to challenge the structures that denied young people participatory decision-making opportunities about matters affecting their lives. Dalrymple (2004) observed that while young people in government care had access to independent advocacy services, their knowledge about those services was limited despite their need for advocacy services as an identifiable but powerless group denied fundamental rights. Young people, in particular, reported on the importance of independence and the nature of their relationship with their advocate (Dalrymple, 2004).

Dalrymple (2004) found that children identified independence as an essential element of advocacy although it was also seen as a potential barrier to creating a ‘culture of advocacy’, leading Dalrymple (2004) to conclude that all adults involved in young people’s lives need to have a shared and committed understanding of what constituted advocacy. Dalrymple (2004) argues that advocacy is constructed by many stakeholders who may challenge young people’s ability to influence systems and is controlled by professionals who subscribe to protectionist discourses that oppress children (Dalrymple, 2004). While advocacy, informed by a rights discourse, can facilitate young people’s influence on decision-making processes and enhance their confidence, advocacy services must be designed from children’s perspectives to change radically policy and practice while challenging discourses that maintain young people’s status as a minority group (Dalrymple, 2004).

Pithouse and Parry (2005a), contributing to an organisational perspective on advocacy, identified challenges faced by social services providing advocacy services to young people in government care in Wales. These researchers found that case-based advocacy approaches to young people in government care needed to incorporate a wide participation strategy for hard-to-reach young people. Pithouse and Parry (2005a) also determined that while there were innovation services with committed staff, there were also problems linked to factors such as independence, limited capacity, inconsistency, negative effects from competition and the lack of a strategic overview.

Ultimately the acid test will be whether such services in the future can offer a matrix of rights, advocacy and participation that can help local and national government achieve consistency in their aims to improve outcomes for children in Wales. (Pithouse and Parry, 2005a: 54)

In subsequent research, Parry *et al.* (2006) reported on difficulties encountered by complaints officers responsible for social services complaints processes in Wales, such as those instances in which independent advocacy services were involved. These researchers highlight the tensions inherent in potentially competing and overlapping discourses informing complaints officers' roles – these discourses include the needs and protection discourse (underpinning social work practice) and the children's rights and entitlements discourse, often claimed by advocates as substantiating their own participation in the complaints process (Parry *et al.* 2006). Discourses of risk may also enter the complaints process domain, informing line staff and managers' approaches to advocacy, along with competition for scarce resources (Parry *et al.* 2006). The researchers found that this context led to concerns expressed by complaints officers about the low number of child-led complaints (Parry *et al.* 2006).

Similarly, complaints officers were concerned by the ambivalence towards, if not rejection, of advocacy by some social workers and managers as well as a tendency towards resolving issues without recourse to procedures and where children and young people were not actively informed about or encouraged to make complaints. The role of advocates to voice unambiguously the child's wishes rather than moderate these wishes to accommodate a welfare agenda was perceived to be a legitimate function by a minority of front line staff only (see also Templeton and Kemmis, 1998) (Parry *et al.* 2006).

Pithouse and Crowley (2007a) investigated complaints to social services involving young people and young people's relationship with advocacy services within this context. In finding that young people valued advocacy support when making complaints, Pithouse and Crowley (2007a) also found that it could be challenging for young people to identify advocates and that young people considered advocacy independence from local authorities an essential criteria.

[Young people] valued independent services for giving them time, resources and information, for listening to them, and for support and staying with them throughout the process – key characteristics of a good advocate (see Noon, 2000)... The sense of close involvement by an advocate in helping the complaint progress was a key determinant in the young people's overall satisfaction with the process of making a complaint. The [young people] tended to view the relationship as almost one of friendship, and for that reason quite different from their relationships with other care professionals. (Pithouse and Crowley, 2007a: 209)

Carlile (2002), a review arising from Waterhouse (2000) in Wales which identified that children with mental health problems were abused in inpatient psychiatric placements, noted the importance of child-friendly, accessible and advocacy supported complaints processes for children. Carlile (2002) made specific reference to ‘children in need and those cared for away from home’, highlighting UNCRC article 20 for its relevance for this particular group of children.

A child temporarily or permanently deprived of his or her family environment, or in whose best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. (UNCRC, article 20)

In addition to recommending that NHS complaints procedures are strengthened, made accessible and child-friendly, the review also stated that ‘there should be competent, independent, trained, accessible, informed and funded children’s advocates available to all children in the NHS’ and that the NHS and health boards should appoint children’s complaints officers to act in children’s best interests’ (Carlile, 2002: 104-105). In response to Carlile (2002), Utting (1997) and Waterhouse (2000), the Welsh Assembly convened a Task Group to make recommendations for future advocacy services. Resulting in a New Service Model<sup>19</sup> for delivering advocacy services to children in Wales, this model recognised the inter-relationship between health, social care and education concerns and the need for a streamlined, advocacy-supported complaints process for children. The draft New Service Model proposes key principles, such as ‘independent’ and ‘accessible’, to guide advocacy services, a ‘significant cultural shift’ and ‘capacity building’ (Welsh Assembly, 2007a). In her research, Lansdown (2005) identified developmental, participatory and protective concepts as relevant to understanding capacity building and linked those concepts to government obligations under the UNCRC.

In general terms, independent advocacy across Scotland is identified increasingly as an essential component of social inclusion, as it facilitates hearing and acting upon the views of individuals accessing public services while involving individuals in decision-making processes affecting them and their communities (Advocacy Safeguards Agency, 2004). There are still significant gaps in independent advocacy provision, however, for children and young people, older people, people with dementia, physical disabilities and ethnic minorities (Advocacy Safeguards Agency, 2004). The invisible

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<sup>19</sup> New Service Model: Under consultation at time of writing.



groups falling outside major client groups - homeless people, people with a substance abuse problem, those leaving prison and other marginalised individuals - represented the largest gap in advocacy (Advocacy Safeguards Agency, 2004). While collective advocacy is significant, Advocacy Safeguards Agency (2004) found there was little increase in the statutory emphasis on collective advocacy, which needed to be reviewed. Advocacy Safeguards Agency (2004) concluded that independent advocacy was required for responding to individuals' needs and for individuals falling outwith the 16-65 age group (Advocacy Safeguards Agency, 2004).

Pithouse and Crowley (2007a), in their focus on child-initiated or child-led complaints to social services and the advocacy role, found that investigations into child abuse within residential care, in particular, have shaped policy relating to complaints and advocacy in Wales. Investigative reports identifying the importance of listening to young people and taking their concerns seriously to ensure their safety contributed to legislative changes which provide young people with the statutory right to advocacy when making a complaint (Pithouse and Crowley, 2007a). As the following section illustrates, public inquiries in Scotland have also reinforced the message that it is important to listen to young people, provide advocacy support and make complaints processes accessible, however, as this research illustrates, no substantive policy and legislative changes have occurred that make advocacy a legal entitlement for young people in government care or that link advocacy, complaints processes and rights.

While government advocacy guidance in Scotland states that independent advocacy provides a safeguard for vulnerable young people (and adults) and empowers citizens, it also notes the major gaps in independent advocacy and identifies the need for different models and approaches (Scottish Executive, 2000). The guidance makes particular reference to 'Modernising Community Care: An Action Plan 1998' in which there was a recommendation for greater advocacy services for young people in government care due to young people's vulnerabilities linked to their age, dislocation, social isolation and other vulnerabilities, such as limited personal power and resources (Scottish Executive, 2000).

Children's rights officers and the national advocacy organisation may provide independent advocacy to young people in care as a complement to existing safeguards, as individuals have 'rights in law' and may be unaware of their rights (Scottish Executive, 2000). In making specific reference to the *Human Rights Act (1998)* and

the *Disability Discrimination Act (1995)*, as legislation enabling individuals to pursue an action under the ECHR, the guidance notes the support role that independent advocacy could take for those individuals wanting to pursue claims under this legislation (Scottish Executive, 2000). There is no specific mention of the UNCRC, however, or advocacy support for young people wanting to access complaints processes in accordance with their UNCRC article 12(2) right to participate in administrative proceedings.

### **2.5.3 Contributions to the public discourse**

References to children's rights, complaints and complaints processes have arisen within the context of public inquiries focused upon investigations of abuse experienced by children in specific residential care environments, which, in turn, have led in some instances to nation-wide systemic reviews into residential care for children, shifts in policy direction and new legislation. Butler and Drakeford (2003: 1) argue that inquiries into 'scandals', such as abuse within residential care settings, can illuminate public policy development and that there is a symbiotic relationship between 'scandals', public policy and the inquiries established to review 'what happened'. Many public inquiries into institutional child abuse, in examining issues relating to the safeguarding of young people also recognised the importance of safeguarding young people's *rights* (see Skinner, 1992; Finlayson and Newman, 1993; Kent, 1997). In the *Children's Safeguards Review*, Sir William Utting described children's rights services as 'one of the most beneficial developments of the last decade' (Utting, 1997: 111).

Influential public reports in Scotland came into existence subsequent to the United Kingdom's ratification of the UNCRC and at a time when young people's rights were beginning to receive special consideration. Several publications, such as Skinner (1992), Finlayson and Newman (1993) and Kent (1997), specifically refer to the UNCRC with Skinner (1992) making the most explicit observations about young people's rights, drawing attention to the correlation between protecting and promoting young people's human rights and their safety and well-being. These publications, along with Marshall *et al.* (1999), contributed to the wider public discourse about young people in government care, their human rights, complaints, complaints processes and advocacy, to a limited degree influencing policy and legislative changes in their wake.

Skinner (1992), in conducting a systemic review of residential child care, promoted the UNCRC as a general framework for guiding agencies in their development of statements and charters for young people. Rights-based principles, such as principles that young people should expect to be ‘treated with respect and dignity’ and ‘as individuals with their own unique relationships, experiences, strengths, needs and futures’ were fundamental principles needed to inform residential care practice (Skinner, 1992: 21). ‘Rights and responsibilities’ were identified as constituting one of the eight fundamental principles informing residential care practice, with complaints process included within the same principle.

Young people, children and their parents should be given a clear statement of their rights and responsibilities. They should have a confidential means of making complaints. They should be involved in decisions affecting them and in the running of the home. Their rights should be consistently respected. (Skinner, 1992: 21)

In an implicit reference to children’s rights officers as young people’s formal advocates, Skinner (1992: 44) supported the specialization of children’s rights officer role as one providing a ‘useful background for children’s rights’, promoting good practice in residential child care, and providing ‘an appropriate way of handling the vast majority of complaints and concerns’. Skinner (1992) emphasized that residential staff, acting as advocates for young people, should have knowledge about young people’s rights, particularly ‘statutory rights’, recommending that each local authority make funding available for a regional advocacy agency and ensure that all young people in care have access to such an agency (although he did not elaborate on the agency’s primary function, particularly in relation to young people’s rights). Young people valued the advocacy organization as it ‘reduces their sense of powerlessness, because they can see occasional results of their advocacy and because it provides opportunities to share their experience and feelings about being in care’ (Skinner, 1992: 44).

One local authority in Scotland appointed Finlayson and Newman (1993) to submit a report focused upon responding to complaints from young people in government care. This remit followed the criminal conviction of a former residential child care officer employed by the local authority’s social work department. Finlayson and Newman (1993) investigated how the local social work department could ensure that young

people in residential care did not experience any ‘**violation of their rights** [author emphasis] to safety, privacy or denial of good standards of care’ (Finlayson and Newman, 1993: 7). These authors identified the UK as a signatory to the UNCRC and its particular significance for children in care, noting that the local authority had taken various steps to implement the UNCRC through their proposed appointment of a children’s rights officer, their family charter (recognising young people’s rights) and their association with the national advocacy organisation ‘development officer’.

Finlayson and Newman (1993: 59) concluded that there was a ‘need to continue the present readiness within the Department to hear children and to recognize their rights as individuals including their right to take advantage of the complaints procedure’.

Historically children had no rights or very few...the general recognition of children’s rights has been enhanced by the UN Convention. That convention is recognized by the Directorate and practitioners within the Social Work Department. The rights of young people as individuals and not ‘objects of concern’ is recognised in the Cleveland and Orkney reports. The rights are recognised in the legislation relating to Complaints Procedure and in particular to the priority which is given by [the local authority] in regard to the operation of the Complaints Procedure. (Finlayson and Newman, 1993: 59)

In a reference to advocacy, Finlayson and Newman (1993: 59) stated that there was a ‘need for a consistent and sensitive procedure for the investigation of complaints and of appropriate individual support for any child through the complaints process’, supported by principles behind complaints procedure. Young people’s views as expressed to Finlayson and Newman (1993) highlighted concerns that too many people associated with formalized roles and unknown to young people may not be effective at hearing from young people who do not have an established, trusting relationship with them.

In its focus on children’s rights officers as advocates, however, Finlayson and Newman (1993) suggested that children’s rights officers should provide information about rights and responsibilities to young people, raise the profile of a young person’s rights perspective in planning and service delivery and assist young people with their concerns and complaints. In focusing on the children’s rights officer’s role in relation to complaints, Finlayson and Newman (1993) stated that a children’s rights officer needed to be known by young people in care, observing that while it was important for young people to know their children’s rights officer, it was questionable whether a

children's rights service could be delivered in a 'meaningful way' (Finlayson and Newman, 1993).

Kent (1997), who conducted a national systemic safeguard review, made reference to the UNCRC when he drew attention to the enhancement of young people's rights through the UNCRC. Kent (1997) suggested that promoting young people's rights offered a positive approach to fostering safety, without stating what informed those rights, and made the critical observation that the 'idea' of young people's rights focused service provision on young people by requiring service providers to question their attitudes, practice and behaviour. Kent (1997) offered an extensive analysis of advocacy, referring to various roles and services that may support young people, noting, for example, that the local authorities' children's rights officer posts, sitting alongside voluntary child care organizations, could provide joint advocacy, support and representation for young people. On the other hand, Kent (1997) saw the primary advocacy function of children's rights officers and national advocacy officers as taking forward concerns and complaints young people may have and advancing young people's views at hearings.

[Children's rights officers] are able to take up children's complaints and concerns. Often they find that complaints can be sorted out quite informally, and in a way that makes the children feel satisfied by ensuring that matters do change. If a complaint must be taken forward formally, they are able to support the child or young person when there is a need to do so. Other staff often start out feeling defensive about Children's Rights Officers, but come to see the value of them, particularly because of the difference they can make to the atmosphere in an establishment when something is sorted out. Children tend to be positive about Children's Rights Officers, seeing them very much as a person on 'their' side. (Kent, 1997: 81)

In discussing a national advocacy agency function, Kent (1997) placed a particular emphasis on its responsibility for raising issues about particular residential establishments, assisting with inspections and for representing a corporate view of young people, while suggesting that the children's rights officers, as an expanded service, provided a separate and distinct service of representing individual interests. Kent (1997) identified additional forms of advocacy - institutional structures - such as children's ombudsman offices, children's councils and commissioners for children. In recognizing the complexity of advocacy and its preventive link to abuse, Kent (1997) argued that self-reporting (self-advocacy), ombudsman and advocacy workers have the potential to stop or prevent institutional abuse in combination with other factors.

Specifically, Kent (1997: 103) supported the generation of a 'network of about 15 full-time Children's Advocates and Advisors, born of the Children's Rights Service, to be deployed throughout Scotland with appropriate clerical help with independence and location outside local authorities but included in an 'existing organization'. In his recommendations, Kent (1997) focused on advocacy services associated with a helpline and a national youth advocacy agency together with formal roles such as concerning children's rights officers, befrienders and independent persons although the report also promoted self-advocacy for young people. Kent (1997) asserted it was not possible to assume that social workers with competing obligations would represent young people's views, as their advocates, while remaining professionally obligated to advocate for young people's best interests and recommended that every young person without an identifiable guardian have a befriender or independent person appointed to maintain regular contact with the young person (see recommendation 46).

To safeguard young people, Kent (1997) advised there should be an 'Appointed Person' to visit places where young people live away from home (see recommendation 43), such as an 'Independent Visitor' fulfilling the role of 'external eyes' who would also hear concerns from young people and link them with advocacy services (see recommendations 44 and 45). In a departure from promoting formal advocacy roles and structures, however, Kent (1997) also introduced an interesting notion of adult support for persons who become a young person's confidante.

A child may choose to confide in an adult without professional status, such as the unit's cleaner; when that happens, the adult should be supported as the child's confidant so that he or she can continue to be of use to the child. (Kent, 1997: 73)

Marshall *et al.* (1999) explored factors related to abuse within children's homes located within a single local authority in Scotland. These investigators made little direct reference to the UNCRC, although there were implicit and explicit references to specified entitlements. In its one reference to the UNCRC, Marshall *et al.* (1999: 262) stated that 'the UNCRC requires local authorities to regard the welfare of children as a primary consideration in all matters concerning them'. Marshall *et al.* (1999) examined the principles upon which the local authority based its obligations to young people under its jurisdiction. Without stating what informed the ten principles identified, Marshall *et al.* (1999: 114) mentioned three principles that loosely align

with UNCRC articles such as ‘protection of vulnerable children’, ‘listening to children’ and ‘keeping children within their own families when it is safe and appropriate to do so’.

In also promoting children’s rights officers as advocates, Marshall *et al.* (1999) suggested that children’s rights officers may be the most important *safeguard* that existed from the local authority’s perspective. A subsequent recommendation captured its approach to advocacy support to young people by stating that ‘one suitable, independent person to whom the child would feel confident about expressing concerns’ was important, recommending a full time national youth advocacy agency worker post for the local authority and, significantly, that young people receive financial support for attending relevant agency meetings (Marshall *et al.* 1999). Marshall *et al.* (1999) addressed the complexities surrounding advocacy, referring to informal advocates, such as families, domestic staff and volunteers, and formal advocates, such as children’s rights officers and national advocacy agency workers, emphasising the importance of relationships. In recommendation 84, for example, Marshall *et al.* (1999: 276) suggested that ‘increased efforts should be made to inform young people that they can invite a representative of *their* choice to the children’s hearing, and to encourage them to do so’.

## **2.6 CONCLUSION**

This chapter has examined conceptual topics pertaining to key research themes essential for informing the research ‘problematic’: children’s human rights, complaints, advocacy and residential care. In doing so, the chapter has revealed the interplay between children’s agency and their human rights, including those rights specified in the UNCRC. In its evolution of a discourse originating in a protectionist approach, predominant children’s rights discourse has merged with concepts of childhood that recognises children as autonomous beings in their own right with the same entitlement to freedom of expression, for example, as adults (see article 10 in the European Convention on Human Rights).

The UNCRC has particular relevance for those young people in residential schools with article 20.1, for example, proclaiming that children deprived of their family environment shall be entitled to ‘special protection and assistance’. As the literature reveals, these young people face particular risks and challenges due, in part, to their vulnerability and complicated by their pre-care and pre-placement experiences (see

Pinheiro, 2007; Clough, 2006; Kendrick, 2004). Despite what research has informed us about risks and challenges for young people attending and living in residential schools (see Colton, 2002; Baxter, 2003; Sen *et al.* 2007; Pinheiro, 2007), certain young people continue to experience abuses and poor outcomes – human rights violations – to an extent that is largely unknown (see Carlile, 2002; Baxter, 2003; Kendrick *et al.* 2004; Meltzer *et al.* 2004).

Complaint processes are seen as one mechanism for making human rights violations apparent and allowing redress to be sought, and obtained, in response to human rights transgressions (see Aiers and Kettle, 1998; Wallis and Frost, 1998; Cousins *et al.* 2003; Alston and Tobin, 2005; Pinheiro, 2007; Pithouse and Crowley, 2007a). There are challenges, however, for young people wanting to access complaints processes (see Burton, 1998; Kilkelly *et al.* 2004; Care Commission, 2004). While advocates who can assist young people with complaints processes and are valued by young people (Pithouse and Crowley, 2007b), many young people do not understand advocacy roles (Pithouse *et al.* 2005b).

Young people's right to express their views with advocacy support has its challenges (see Pithouse and Crowley, 2007a). It can be difficult for young people to identify advocates, particularly those advocates who are independent from the organisations responsible for the complaints process (Pithouse and Crowley, 2007a). The Scottish Executive (2000) claims that children's rights officers and the national advocacy organisation can provide independent advocacy for young people in State care as an adjunct to other safeguards, however, within Scotland, there are gaps in independent advocacy services for certain marginalized or 'invisible' groups, including children and young people (Advocacy Safeguards Agency, 2004).

Many public inquiries into child abuse have highlighted the need to safeguard young people's rights recognising, as well, the vital role that advocates, such as children's rights officers, and complaint processes play in contributing to this objective (see Skinner, 1992; Finlayson and Newman, 1993; Kent, 1997). The following chapter, therefore, examines the relationship between complaints processes and rights together with the obvious implications for children at residential schools.



# 3

## **CHILDREN'S HUMAN RIGHTS: IMPLEMENTATION AND MONITORING**

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### **3.1 INTRODUCTION**

This chapter places this research within its human rights context. It elaborates on themes particular to implementing and monitoring the UNCRC, including the role of the UN Committee, national human rights institutions and complaints processes. The chapter draws particular attention to the domestic and international role complaints processes have played, and continue to play, as mechanisms that permit individuals to claim rights violations while monitoring human rights implementation and infractions.

### **3.2 IMPLEMENTING AND MONITORING THE UNCRC**

The UNCRC requires signatory States to fulfill their obligations and implement its provisions, with the UN Committee and States assuming duties that require them to monitor such implementation.

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available

resources and, where needed, within the framework of international co-operation. (UNCRC, 1989, article 4)

The UN Committee's overall monitoring may be carried out in various ways, which include State reporting, NGOs' involvement and scrutiny by UNICEF, as a specialised United Nations agency. The UN Committee exists to guide and monitor UNCRC implementation by States although, in turn, States are expected to conduct their own internal monitoring of UNCRC implementation. The UN Committee monitors implementation primarily through its reporting processes and periodic reviews although it also engages in 'pre-sessional' working group processes whereby it receives information from independent human rights institutions (which include children's commissions and children's ombudsman offices), NGOs and children and young people to inform its work. The UN Committee considers evidence submitted to it regarding individual States and releases reports constituting its 'concluding observations' on each State it has evaluated for its compliance with the UNCRC.

To ensure a State's proper UNCRC implementation, as the UN Committee intends the UNCRC to be interpreted, the UN Committee has produced 'Guidelines for Initial Reports' in which it stipulates that all domestic legislation should be compatible with the UNCRC and that policy affecting children at all levels of policy making should be coordinated (Hodgkin and Newell, 2002). The UN Committee also issued 'Guidelines for Periodic Reports', which groups the States' reporting requirements into eight clusters, including a cluster entitled 'General Measures of Implementation' (Hodgkin and Newell, 2002). The UN Committee expects detailed State reporting on wide-ranging implementation measures such as legislative and administrative action taken. In its Reporting Guidelines (1996), the UN Committee, in reference to article 12, make specific reference to ways in which children should inform legislative, judicial and policy decision-making. Within this context, the UN Committee highlighted the role of complaints, as a method for informing children's views.

Please indicate how the views of the child obtained through public opinion, consultations and assessment of **complaints** [author emphasis] are taken into consideration in the legal provisions, and in policy or judicial decisions. (UN Committee, 1996, para 47)

The UNCRC itself has no complaints process that enable individuals, or their representatives, to allege violations of UNCRC rights by the State. There is an

international organised effort underway, however, to lobby the UN for an optional protocol that will address what some organisations view as a necessity (see following section).

In fulfilling its duties, the UN Committee makes periodic ‘General Comments’ such as those addressing States’ obligations under ‘General Measures of Implementation’ and independent national human rights institutions. In its General Comments referring to UNCRC article 4 - States’ responsibilities to take ‘all appropriate legislative, administrative and other measures’ for promoting children’s rights - the UN Committee advised that to ensure that children’s rights become ‘real’ for children, States need to ‘engage all sectors of society and, of course, children themselves’ (UN General Comment No. 5, 2003). The UN Committee has also stated that it is fundamental to ensure that all domestic legislation is fully compatible with the UNCRC and that the UNCRC’s principles and provisions directly applied and appropriately enforced. The UN Committee identified a wide range of measures needed for effective implementation, including the development of special structures and the ‘monitoring, training and other activities in Government, parliament and the judiciary at all levels’ (UN Committee General Comment No. 5, 2003: 2).

[T]he Committee believes that economic, social and cultural rights, as well as civil and political rights, should be regarded as justiciable... The development of a children’s rights perspective throughout Government, parliament and the judiciary is required for effective implementation of the whole Convention and, in particular, in the light of ...articles in the Convention identified by the Committee as general principles. (UN Committee, General Comment No. 5, 2003: 3)

‘General principles’ include article 2 (no discrimination), article 3(1)(best interests), article 6 (survival and development) and article 12 (views). In its specific reference to economic, social and cultural rights, however, the UN Committee qualified its statement by stating that measures to implement this requirement ‘shall be undertaken to the maximum extent of their available resources and, where needed, within the framework of international cooperation’ (Hodgkin and Newell, 2002). Although the UNCRC articles falling within these categories remain unspecified by the UN Committee, Hodgkin and Newell (2002) propose there are civil and political rights in all the UNCRC articles. Hodgkin and Newell (2002) also suggest that general implementation articles extend beyond article 4 to include article 2 (to respect and ensure rights to children without discrimination) and article 3(2) (to ensure child

protection and care as is necessary for well-being). The UN Committee itself associates article 4 with article 42 (to make the UNCRC widely known to children and adults) and article 44(6) (to make the UNCRC reports widely known).

The UN Committee also recognised States' need for internal monitoring structures to ensure proper and full UNCRC implementation (UN General Comment No. 5, 2003).

Few, if any, government departments have no effect on children's lives, direct or indirect. Rigorous monitoring of implementation is required, which should be built into the process of government at all levels but also independent monitoring by national human rights institutions, NGOs and others. (UN Committee General Comment No. 5, 2003)

The UN Committee identified general internal monitoring measures that States may adopt, such as law reform (which should include consideration of effective remedies for children and their representatives if children's rights are breached) and independent national institutions for children's rights, such as children's ombudsman offices and children rights commissioners. In addition, the UN Committee has highlighted the importance of 'focal points' within national human rights institutions alongside children's rights-focused permanent institutions and structures within government to ensure coordination, implementation and systematic monitoring of the UNCRC's implementation (UN Committee, General Comment No. 2, 2002).

It is difficult, if not impossible, to measure, assess and compare UNCRC implementation from a global perspective. UNICEF (2004) examined the general process of UNCRC implementation across European regions, considering UNCRC changes and focusing on national legal and institutional reforms. The study aimed to 'encourage cross-fertilization of experiences and the replication of good practices and to advance the cause of children's rights', to contribute to the follow-up to the Declaration and Plan of Action of the General Assembly Special Session on Children and to support the Millennium Declaration and achievements of the 'Millennium Development Goals' intending to benefit governments, the UNCRC committee, UNICEF and other national, regional and international actors in furthering the UNGASS<sup>20</sup> plan of action (UNICEF, 2004: vii). Through examining general measures of UNCRC implementation, UNICEF (2004) identified legal and

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<sup>20</sup> UNGASS: United Nations General Assembly Special Session on Children.

institutional reforms at the national level, which were directed at implementing the UNCRC.

UNICEF (2004: viii) reviewed 62 State experiences, focusing on countries that had two reports examined by the UNCRC committee and concentrating on national experiences related to three general aspects of implementation: ‘the process of law reform; the establishment of independent human rights institutions for children; and the development of permanent governmental structures for coordinating implementation’. UNICEF (2004) found that in the area of law reform, there has been significant progress with many States making reference to children’s rights in legislation and national constitutions and with evidence to suggest links between law reform and children’s services although it also found that law reform is a lengthy, complex process. States highlighted the importance of linking legal reform to institutional restructuring, government and other body initiatives, resource allocation, monitoring, research, community outreach and capacity building (UNICEF, 2004).

UNICEF (2004) also found that some States had established coordinating mechanisms at national and local levels, noting that coordination was essential for making governments ‘work for children’ and that flexibility among models was necessary. Independent national institutions for children’s rights had been established by law in numerous countries with more than 60 institutions established throughout the world since the early 1990s; some institutions existed to protect children’s rights while others established protection as a core element within their broader mandate to protect human rights (UNICEF, 2004). Independence of these institutions and their relationship with governments was a central, emergent issue (UNICEF, 2004).

The effectiveness of the various types of independent national institutions for children and their suitability for different kinds of societies is a subject which requires further study and analysis. The progress that has been made in establishing networks between national institutions, both at the regional level and globally, is a valuable step towards the exchange and evaluation of experiences and methodologies. (UNICEF, 2004: 19)

### **3.3 UNCRC EXTERNAL MONITORING: COMPLAINTS PROCESSES AND THE INTERNATIONAL HUMAN RIGHTS CONTEXT**

The existence of complaints procedures for claiming and monitoring human rights violations has its origins in international human rights instruments. United Nations

standards established through international treaties have altered international law and the relationships among States and the status of individuals within those States who can make complaints directly to the United Nations. Human rights complaints procedures exist as mechanisms for making complaints about human rights violations to the United Nations (United Nations High Commissioner for Human Rights, 2008).

There are three predominant ways in which such complaints may be made: in petition form as individual complaints under international human rights treaties, as individual communications under special procedures and through the '1503 procedure' (United Nations High Commissioner for Human Rights, 2008). Each complaints mechanism has a defined procedure that must be adhered to, for example, individual complaints of human rights violations can be made through five core UN human rights treaties, while complaints made under special procedures and the '1503 process' fall within the Human Rights Council's <sup>21</sup> jurisdiction to address. The only United Nations human rights convention that does not have a complaints process is the UNCRC.

There are other ways within the international realm for individuals to allege human rights violations. The European Court of Human Rights, for example, exists to ensure that States respect the rights and guarantees established under the ECHR, which was entered into force in 1953. It acts as a role model for other regional conventions, embodying a human rights system recognising civic and political rights and freedoms (but not economic, social and cultural rights). Any person may apply to the European Court of Human Rights to claim rights violations, after exhausting all domestic remedies, and the violation must have been allegedly committed by a state signatory to the ECHR (Muller, 2002).

Under Article 34 of the ECHR...complaints alleging a violation of the Convention may be submitted to the Court by individuals, groups of individuals and non-governmental organizations. This is the only international procedure in which a human rights court can be directly accessed by individuals instead of undergoing the usual preliminary admissibility examination by a body of state representatives (such as the former European Commission of Human Rights). (Muller, 2002: 29)

The European Social Charter also has a collective complaints system adopted under a Council of Europe protocol entering into force in 1998 as part of the revitalization process of the European Social Charter. Churchill and Khaliq (2004: 454) critically

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<sup>21</sup> Human Rights Council: Replaced the Commission on Human Rights in 2006.

examined the practical operation of this complaints system, concluding that despite the system's five year operation, 'there is still relatively little experience with its practical operation' although there are some indicators of 'serious concerns'. According to Churchill and Khaliq (2004), only one third of the State parties to the Charter had accepted the complaints system for reasons that did not appear clear to them.

Nevertheless, it is desirable, in principle, that the collective complaints system should become generally accepted and used as a compliance mechanism: this will strengthen its legitimacy and probably result in more complaints, thereby helping to increase knowledge of the Charter. (Churchill and Khaliq, 2004: 454)

Weib (2002) argued that the existence of complaints processes signals the importance of the individual and their status before the law. In 2007, however, the Commissioner for Human Rights, Thomas Hammarberg, stated in a speech<sup>22</sup> that children had initiated few complaints that have been addressed by international and human rights instruments (Hammarberg, 2007).

This is certainly not because breaches of children's human rights are rare. We know the extent and severity of them from the reporting procedures under the UN Convention on the Rights of the Child and other instruments, including regional ones. These mechanisms are not well known to children or to those working with and for them. We are not aware of any mechanism that has carried out a review to consider what could be done to increase their genuine access to children and to make them child-friendly (Hammarberg, 2007).

In making recommendations about how complaints processes for international human rights instruments could be made 'genuinely' accessible to children 'and their representatives', and child-friendly in their functioning, Hammarberg (2007) recommended that children should know that complaints processes exist, be granted access at any age without parental consent and engage in processes that protect their best interests. Among the various recommendations made, Hammarberg (2007) also advocated for the fast-tracking of complaints 'with an understanding of children's sense of time and the urgency of remedying breaches of their rights while they still are in their childhood'.

Unlike the UNCRC which has no individual or collective complaints process, the African Charter on the Rights and Welfare of the Child has a complaints process managed by the African Committee of Experts on the Rights and Welfare of the Child,

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<sup>22</sup> Speech given at a conference entitled 'International Justice for Children', September 17-18, 2007 in Strasbourg.

established by the ACRWC (an institution of the African Union with the mandate to promote and protect rights enshrined in the ACRWC). The Committee had its first session in 2001. In contrast to the UN Committee, the African Charter on the Rights and Welfare of the Child (1999) authorizes its Committee to receive 'communications' (article 44) and to investigate any matter relating to State implementation of the charter (article 45). In the absence of a complaints process's monitoring function, therefore, the UN Committee relies exclusively upon State reports (see UNCRC article 44) to monitor UNCRC implementation. Article 44 obligates States to report on the measures they have taken to implement the UNCRC, which, as a process, places little responsibility on the State signatories to monitor effectively those implementation measures.

While it does not have its own complaints process, unlike other UN conventions such as the Convention on the Elimination of Discrimination against Women, the UN Committee has lent its support to complaints processes *within* States as an effective way to implement the UNCRC principles in their determination that these procedures may offer protection to young people while also facilitating their participatory rights (Hodgkin and Newell, 1998). Freeman (2000) argues, however, that if international children's rights have a future, then the UNCRC itself must be scrutinized and the UN Committee must have more powers.

But I would go further than this and allow for inter-state complaints, and for complaints by individuals who consider themselves aggrieved by shortcomings in the laws and practices of their own country. The model of the European Convention on Human Rights is instructive. The sight of children hauling their own states before an international court would be particularly gratifying. There is talk of a Protocol allowing for international petition, but we have no reason to believe we will see this in the near future. (Freeman, 2000: 290)

International complaints mechanisms, as monitoring strategies, exist under other international treaties, allowing individuals to make complaints about violations of human rights by States after exhausting domestic measures<sup>23</sup>. As the UNCRC has one predominant mechanism for monitoring its implementation of children's rights, namely, the State reporting system required under UNCRC article 44, a group of

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<sup>23</sup> For example, see the Covenant on Civil and Political Rights and the Convention on the Elimination of All forms of Discrimination against Women.



agencies<sup>24</sup> presently support an international initiative to establish an Optional Protocol for a UNCRC complaints, or ‘communications’, procedure.

These international agencies argue that after 18 years the UNCRC still fails to ensure that the basic human rights of millions of children are being addressed and that a complaints procedure would strengthen the UNCRC’s enforcement, providing children and their advocates with a method for pursuing breaches of all the rights guaranteed by the UNCRC (Children’s Rights Information Network, 2008). A complaints procedure allows individuals, groups or their representatives, claiming that their rights have been violated by a State that is a party to a convention or covenant, to bring a communication before the relevant committee, provided that the State has recognised the competence of the committee to receive such complaints (CRIN, 2008).

In referring to the equality principle, the agencies suggest that young people face discrimination if the UNCRC is the only international human rights treaty with mandatory reporting that has no complaints procedure allowing children to allege rights violations, noting that a complaints procedure is currently being drafted for the International Covenant on Economic, Social and Cultural Rights while all other instruments have one (CRIN, 2008). The international agencies also claim that a complaints procedure would allow children and their advocates to appeal when domestic or regional remedies fail or do not exist (CRIN, 2008).

A complaints, or communications, mechanism would put pressure on States to implement the UNCRC and to provide effective remedies at national level (CRIN, 2008). While young people, and their advocates, may access other complaints mechanisms established under other international instruments to claim rights violations; those instruments do not cover, separately or together, the full range and detail of rights in the UNCRC (CRIN, 2008). Furthermore, communications or complaints made on behalf of children to the other bodies are not considered by a committee with special expertise on children’s rights (CRIN, 2008).

These predominant arguments reinforce young people’s right to express their views in accordance with article 12 by claiming that a UNCRC complaints procedure would

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<sup>24</sup> These agencies include local, national, regional, and international bodies, including NGOs and human rights institutions in various locations throughout the world.

enable young people to exercise their participatory rights by making complaints directly or with advocacy support (CRIN, 2008). A complaints or communications procedure would strengthen State accountability to the UNCRC, particularly when ‘domestic complaints mechanisms fail to provide an effective remedy for the violation of a child’s rights, or do not exist’ (CRIN, 2008). For those reasons, this consortium of international bodies are calling for the development of an Optional Protocol for the UNCRC which would provide for a communications or complaints procedure, drafted by an ad hoc working group to ensure it safeguarded children’s rights<sup>25</sup> (CRIN, 2008).

### **3.4 UNCRC EXTERNAL MONITORING: STATE REPORTING**

After ratifying the UNCRC in 1991, the UK government submitted its initial report in 1994, with the UN Committee responding in 1995. In 1999, the UK government submitted its second periodic report, with an update in 2002, and the UN Committee released their concluding observations in 2002. In 2007, the UK government again provided the UN Committee with its third periodic report and, at the time of writing, the UN Committee had not responded (see UK Government Periodic Report to the UN Committee on the Rights of the Child, 2007). Throughout these processes, various individuals, NGOs and other organisations also participated in making submissions to the UN Committee (UK Government Periodic Report to the UN Committee on the Rights of the Child, 2007).

The UK government’s reports to the UN Committee, informed by children and non-government agencies’ contributions, contain specific references to Scotland (and Northern Ireland and Wales) which are informed by direct contributions from Scotland (UK Government Periodic Report to the UN Committee on the Rights of the Child, 2007). These reports offer insights into government and NGO perspectives on State compliance with implementing the UNCRC, in some instances making specific mention of young people in government care and complaints (UK Government Periodic Report to the UN Committee on the Rights of the Child, 2007).

The initial 1994 UK report addressed the topics of complaints and young people in government care, although the report referred specifically to England whereby young people had access to local authority complaints processes regulated to ensure that a

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<sup>25</sup> The UN Committee discussed this proposal for an Optional Protocol at their meeting held March 2008.

‘representative procedure’ existed with an ‘independent element’ to it. Within this context, the 1994 UK report stated that voluntary organisations and children’s homes were required to have complaints processes. In particular reference to Scotland, the 1994 UK report commented that children in Scotland could make complaints ‘against’ education authorities, school boards and the Secretary of State although there were no particular statements about young people in government care, complaints processes or advocacy.

In the 1999 UK report, there were references to the government in England/Wales accepting the ‘general principles’ of the Utting Report entitled *People like us: the review of the safeguards for children living away from home* in which it stated that children needed ‘effective avenues of complaint’ and access to independent advocates. The 1999 UK report also stated that independent persons existed to assist young people with making complaints and that young offenders had access to complaints procedures. There was no reporting by Scotland in the 1999 UK report that specifically addressed the topics of complaints and young people in government care.

In 2000, the NGOs sector, representing approximately 150 organisations in Scotland, published their alternative report to the UN Committee (Morrison and McCulloch, 2000). This report called upon the Scottish government to establish a children’s commission (which subsequently happened in 2005) to ensure the government adopted a coherent approach to children’s rights and to ensure legislation complied with the UNCRC (Morrison and McCulloch, 2000). While the report recommended that the Scottish government establish a children’s commission, it did not address the relationship between the children’s commission and complaints processes. This report indicated, however, that NGOs were concerned about access to advocacy services for young people in foster care and with special needs, finding that ‘children lack information about the law and associated judicial and administrative processes’ (Morrison and McCulloch, 2000: 16).

[T]here remains a concern across the NGO sector that education, social work and health sector services have failed to address adequately the child’s right to express an opinion and have it taken seriously. NGOs call on the Scottish Executive to develop a clear strategy, supported by resources, in relation to the development of processes and structures which facilitate the expression of children’s views. The right of the child to express an opinion and to have that opinion taken seriously must apply to all children and these rights must be enshrined in law (Morrison and McCulloch, 2000: 30).

There was no direct reference to specific administrative processes that would enable young people to claim breaches of rights and seek remedies. On the other hand, there was an indirect reference to complaints processes within NGOs recommendation 19 which referred to the Kent Report (1997) and Marshall *et al.* (1999), both reports in which complaints processes are featured. The NGOs recommended that the government adopt a strategic and monitored approach to implementing the recommendations within those two reports (Morrison and McCulloch, 2000: 31). In the 2002 UK update report, the UK government noted that a Children's Rights Director existed in England for young people in government care to address their rights and complaints. It also reported that the Ombudsman system for health and social services was under review in England with the intent of making advocacy and complaints processes more accessible to young people with no analogous initiatives underway in Scotland reported at that time.

The UN Committee responded through its 'Concluding Remarks' by expressing concern that the UNCRC provisions and principles containing broader and more specific principles for young people had not been incorporated into domestic law and that no formal process existed to ensure compliance with the UNCRC (United Nations, Concluding observations, 2002).

The Committee notes that the devolved administrations have introduced some legal reforms to ensure compatibility with the Convention such as ensuring that the education system in Scotland complies with article 12...but remains concerned that the State party does not ensure that its legislation is compatible with the Convention throughout its territory (United Nations, Concluding observations, 2002, para 8).

The UN Committee encouraged the UK to fulfil these obligations to ensure, among other things, that 'provisions and principles of the Convention are widely applied in legal and **administrative** [author emphasis] proceedings' (United Nations, Concluding observations, 2002, para 9). The UN Committee also recommended UNCRC training and wider dissemination of the UNCRC, noting that UNCRC implementation required a central mechanism to coordinate implementation among all levels of government (Concluding observations, 2002, para 12) and encouraged a participatory, open implementation process that took account of vulnerable groups of children (United Nations, Concluding observations, 2002, para 15). In stating that the UN Committee endorsed the plans for Scotland to establish an independent human

rights commission for Scotland, the UN Committee made specific recommendations for the UK to:

Establish independent human rights institutions with a broad mandate and appropriate powers and resources all across the State party and at the national level, in accordance with the Principles relating to national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134, annex), to monitor, protect and promote all the rights of the Convention for all children. They should be easily accessible to children, able to determine their own agenda, **empowered to investigate violations of children's rights in a child-sensitive manner and ensure that children have an effective remedy for violations of their rights** [author emphasis];

**Ensure that every child deprived of his or her liberty has access to independent advocacy services and to an independent, child-sensitive and accessible complaint procedure** [author emphasis] (United Nations, Concluding observations, 2002, para 62).

In 2007, the UK submitted its periodic report to the UN Committee with Scotland making a direct contribution to the UK report for the first time (UK Government Periodic Report to the UN Committee on the Rights of the Child, 2007). Under the heading 'measures taken to harmonise national law and policy with the provisions of UNCRC' within its report, the Scottish Executive (2007) stated that the UNCRC has not been incorporated into UK or Scots law, thus the UNCRC is not legally binding in Scotland. As the UNCRC established international standards, however, it is government policy 'to reflect the provisions of the Convention wherever possible in the development of policy and legislation' (Scottish Executive, 2007). The ECHR, on the other hand, is integrated into Scots law through the *Human Rights Act 1998* and the *Scotland Act 1998* with Scottish legal cases citing the UNCRC (Scottish Executive, 2007).

The Human Rights Act requires public authorities to comply with ECHR, while the Scotland Act provides that actions of Scottish Ministers and Acts of the Scottish Parliament that do not comply with ECHR are unlawful. Many of the provisions in ECHR are similar to those in the UNCRC and, while these rights are general rather than being solely for children, they are of benefit to children (Scottish Executive, 2007: 12).

In its report, the Scottish Executive (2007) made particular reference to national human rights institutions, noting that Scotland's Commissioner for Children and Young People (SCCYP) was appointed in 2004 and another, the Scottish Commission

for Human Rights (SCHR), was being established<sup>26</sup>. The report described the role of SCCYP<sup>27</sup>, noting SCCYP functions to: promote and safeguard children's UNCRC rights; promote awareness and understanding about children's rights; review law, policy and practice compliance with children rights; promote best practice; and undertake research relating to children's rights (Scottish Executive, 2007). SCCYP must adopt a participatory approach to her work with children, paying attention to those children who lack opportunity to make their views known (Scottish Executive, 2007). While SCCYP may conduct formal investigations into rights issues affecting all children or groups of children in Scotland, she is not empowered under the legislation to investigate rights issues, including those associated with service provision and affecting individual children for which there are established procedures through existing statutory agencies and, ultimately, the Courts (Scottish Executive, 2007). Furthermore, SCCYP cannot investigate matters reserved to the UK Parliament while the English Commissioner has power to undertake inquiries in Scotland into reserved matters, including circumstances relating to individual children if there are public policy concerns affecting other children (Scottish Executive, 2007).

Plans existed for the establishment of the SCHR under legislation taking effect in December 2006 and the Scottish Parliament had started the process of appointing a Commission chair (Scottish Executive, 2007). The Scottish Executive (2007) reported on SCHR's mandate to 'promote understanding and awareness of, and respect for, human rights', emphasising the ECHR but with a remit 'to cover all international human rights instruments ratified by the UK, including the UNCRC' and to establish a monitoring role'. While the SCHR acquired other powers under legislation, however, those powers did not extend to investigating individual complaints about rights violations (Scottish Executive, 2007). It was anticipated that the SCHR would work closely with the SCCYP and the newly established Commission for Equality and Human Rights, a UK wide institution with an office in Scotland (Scottish Executive, 2007).

There are legal options for infringement of rights together with mental health and additional support needs tribunals for specific rights violations (Scottish Executive, 2007). In some instances, certain rights infringements are accompanied by a right of

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<sup>26</sup> At the time of writing, the Scottish Human Rights Commissioner was appointed and the SHRC was coming into existence.

<sup>27</sup> See Chapter 5 for more information about Scotland's Commissioner for Children and Young People

appeal to a court, for example, from a Children's Hearing panel decision while it is also possible to request judicial reviews when government and public bodies 'acted beyond their power' (Scottish Executive, 2007).

For other rights, complaints can be made to public bodies in Scotland such as the Executive, the Care Commission, local authorities and the National Health Service which have complaints mechanisms in place as part of their customer service. The Executive for example encourages children and those working with or for them to bring matters to the attention of Ministers and the Children's Rights team if they have concerns that a child's rights have been infringed.

If concerns about rights remain following these complaints, recourse can be had to the Scottish Public Services Ombudsman (SPSO) who investigates complaints of maladministration or service failure on the part of Scottish public authorities. Data from SPSO indicates that in 2005-06 a small number of complaints were made by, or on behalf of, children. The Ombudsman is keen to raise awareness of her work amongst children and to make it easier for all - including children - to make full use of complaints procedures. (Scottish Executive, 2007: 26)

The Scottish Executive (2007) reiterated SCCYP's role in conducting investigations into rights matters affecting children. In stating that the 'Executive is committed to the principle that children have the right to participate fully in decisions which affect them. Advocacy services are crucial to making this a reality', the Scottish Executive (2007) reported that it funded an independent, rights-based national advocacy service for children in public care. Commissioned research, which assessed children's experiences of advocacy support and participation in the Children's Hearings System, found that the Children's Hearing System provided for children's participation in ways that are equivalent or better than other countries' proceedings, however, it also determined there are limitations in the Children's Hearings System and ongoing barriers to children's participation (Scottish Executive, 2007).

The research also found that while there is an implicit commitment to provide advocacy for children in the Children's Hearings System, the extent to which this commitment is made explicit varies as children may have had varied experiences, both positive and negative, over time which affected the extent to which they were able to participate in their hearings (Scottish Executive, 2007). Children's needs and wishes changed at various stages of the hearing process and over time (Scottish Executive, 2007). As a result, providing advocacy support needed to be seen as a process involving a combination of people who assumed different roles and performed a range of tasks rather than as a role invested in one dedicated professional (Scottish Executive, 2007).

While NGOs within Scotland had reported to the UN Committee in previous years, at the time of writing the anticipated NGO report was not available.

### **3.5 UNCRC INTERNAL MONITORING: NATIONAL HUMAN RIGHTS INSTITUTIONS**

The UN Committee has endorsed national human rights institutions (NHRIs) as ways for States to conduct internal monitoring of UNCRC rights implementation (see General Comment No. 5, 2003; Concluding Remarks, 2002). Since 1990 NHRIs have expanded throughout the world, which Kjaerum (2003) attributes to the growth of democratisation although generally the NHRIs are accepted and valued as partners in promoting and protecting human rights (International Council on Human Rights Policy, 2005). Kjaerum (2003: 5) argues, however, that human rights culture was not taken seriously until the mid-1990s when ‘human rights were recognized as important building blocks in the new democracies’, linking the political rhetoric.

Out of this development grew the need for a new type of organization mandated to monitor and raise awareness and understanding of human rights, and to play a catalytic role in creating a culture of human rights. (Kjaerum, 2003 : 5)

Initially, the new development occurred in Africa, Asia, Eastern and Central Europe and then spilled over into Western Europe when human rights and domestic politics and law interfaced (Kjaerum, 2003). Human rights formed part of foreign policy during the Cold War and then shifted to become integrated with domestic legal bodies (Kjaerum, 2003:5). The idea of establishing NHRIs can be traced back to the second session of the UN Economic and Social Council in 1946 where it was decided to invite member states to ‘consider the desirability’ of promoting local bodies in the form of ‘information groups or local human rights committees’ to function as vehicles for collaboration with the UN Commission on Human Rights’ (Kjaerum, 2003:6). It wasn’t until 1991, however, that the First International Workshop on National Institutions for the Promotion and Protection of Human Rights was held, followed by a World Conference on Human Rights in 1992 which led to the 1993 ‘Paris Principles’ resolution in 1993.

[T]he World Conference on Human Rights reaffirmed the important and constructive role played by national institutions for the promotion and protection



of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information and in education in human rights. (UN General Assembly Resolution 48/134, 1993)

Initially endorsed by the UN Commission on Human Rights, the UN General Assembly adopted the Paris Principles in December 1993. In making their declaration, the UN resolution encouraged member states to strengthen their NHRIs and to find effective ways of addressing violations of human rights ‘as enumerated in the Vienna Declaration and Programme of Action and relevant international instruments’ (UN General Assembly Resolution 48/134, 1993). The ‘Paris Principles’ define principles expected to guide the work of NHRIs, stating that these institutions ‘shall be vested with the competence to promote and protect human rights’ with a broad mandate to examine and report, independently, on ‘any situation of violation of human rights which it decides to take up’ (UN General Assembly Resolution 48/134, 1993). The Paris Principles are the principal source of normative standards for NHRIs, applying to all institutions regardless of type or structure.

The UN resolution also refers to ‘additional principles concerning the status of commissions with quasi-jurisdictional competence’ in which it is stated that a ‘national institution may be authorized to hear and consider **complaints** [author emphasis] and petitions concerning individual situations’ (UN General Assembly Resolution 48/134, 1993). In carrying out this function, the Paris Principles impose certain obligations on NHRIs, which include using conciliation to encourage an ‘amicable settlement’, on the basis of confidentiality, and informing individuals making the complaint about their rights and remedies available to them, and promoting access to such remedies (UN General Assembly Resolution 48/134, 1993). Within this context, the Paris Principles state that NHRIs should also assume responsibility for ‘transmitting [complaints] to any other competent authority within the limits prescribed by law’ and make recommendations to competent authorities if changes to laws, regulations or administrative practices are required, particularly if they lead to difficulties for the person attempting to assert their rights (UN General Assembly Resolution 48/134, 1993).

In linking the role of NHRIs to regional and international human rights instruments or mechanisms, Kjaerum (2003:19) argues that such institutions ‘can become the focal point for submitting individual complaints to treaty bodies’. While the Paris

Principles are vague in relation to economic, social and cultural rights, it is apparent that these rights are increasingly recognised within the United Nations and various human rights instruments. To address this vagueness, in 2001 the Commonwealth Secretariat issued a book on best practices for NHRIs after a world-wide consultation process leading to the direction that ‘with respect to general complaints procedures, the enabling legislation of a national human rights instrument, specifying the subject matter of admissible complaints, should include civil, political, economic, social and cultural rights in addition to various vulnerable groups’ (Kjaerum, 2003: 15).

Apart from best practices, one of the conclusions is that a way of fulfilling the responsibility to protect and promote economic, social and cultural rights would be to encourage Governments as well as non-state actors to adopt a rights-based rather than a needs - or welfare-based approach in dealing with these issues. (Kjaerum, 2003: 15)

Key elements of NHRIs are independence and pluralism (Kjaerum, 2003). ‘One of the ways in which national institutions differ from traditional ombudsman institutions is in relation to the pluralist representation in the governing structures’ (Kjaerum, 2003:8) although the human rights ombudsman sits in the grey zone. While the concept of a NHRI is specific in that it defines that institution in terms of the promotion and protection of human rights, no two institutions within and across States are exactly the same, despite similarities that can be identified with the result that NHRIs are distinct from others in their administrative rather than judicial orientation (United Nations High Commissioner for Human Rights, 2008). NHRIs themselves, however, exist as various types that are categorised on the basis of their mandates, organisational structure or the political and legal traditions governing their operation (International Council on Human Rights Policy, 2005).

Over the past decade or more one of the most important developments in the human rights field in general has been in relation to the creation of national human rights institutions, which include ombudsman offices, national human rights commissions, hybrid institutions combining ombudsman and commission characteristics, human rights commissions with a focus on particular issues, parliamentary human rights bodies, and national humanitarian law-focused bodies. (Alston and Tobin, 2005: xi)

As a general rule, NHRIs have on-going, advisory authority in respect to human rights at the national and/or international level (United Nations High Commission for Human Rights, 2008). These objectives are pursued either in a general way, through

opinions and recommendations, or through the consideration and resolution of complaints submitted by individuals or groups (United Nations High Commissioner for Human Rights, 2008). In some countries, the Constitution will provide for the establishment of NHRIs, however, more often such institutions are created by legislation or decree (United Nations High Commissioner for Human Rights, 2008). While many NHRIs are attached, in some way or another, to the executive branch of government, the actual level of independence which they enjoy will depend on a number of factors including membership and the manner in which they operate (United Nations High Commissioner for Human Rights, 2008).

The majority of existing NHRIs can be grouped together in two broad categories: 'human rights commissions' and 'ombudsmen' while another less common, but no less important construction is the 'specialized' NHRIs which function to protect the rights of a particular vulnerable group such as ethnic and linguistic minorities, indigenous populations, children, refugees or women (United Nations High Commissioner for Human Rights, 2008). Human rights commissions are concerned primarily with the protection of nationals against discrimination and with the protection of civil and other human rights, with their work defined through legislation. They tend to have a broad remit, which includes preventing discrimination and the protection of civil and political rights, with some commissions also protecting and promoting social, economic and cultural rights (Innocenti Research Centre, 2001: 2). This work is done in different ways, which include examining policy, promoting awareness and education, and using complaints processes (United Nations High Commissioner for Human Rights, 2005b).

**One of the most important functions vested in a human rights commission is to receive and investigate complaints** [author emphasis] from individuals (and occasionally, from groups) alleging human rights abuses committed in violation of existing national law. In order to properly carry out its tasks, the commission will usually be capable of obtaining evidence relating to the matter under investigation. Even if only used rarely, this power is important in that it guards against the possibility of frustration through lack of cooperation on the part of the person or body complained against. While there are considerable differences in the procedures followed by various human rights commissions in the investigation and resolution of complaints, many rely on conciliation and/or arbitration. In the process of conciliation, the commission will attempt to bring the two parties together in order to achieve a mutually satisfactory outcome. If conciliation fails to resolve the dispute, the commission may be able to resort to arbitration in which it will, after a hearing, issue a determination. (United Nations High Commissioner for Human Rights, 2005b: 4)

Ombudsman offices are sometimes distinguished from human rights commissions, although the discrepancies may be negligible. ‘Ombudsman’, a Scandinavian term which has been adopted into English, ‘has become the word for a person or an office which deals with complaints from a defined, circumscribed group of people or individual members and which speaks on behalf of that group to improve conditions for individuals within the group as well as for the group as a whole’ (Flekkøy, 2002: 404). Often at odds with authorities, an ombudsman ‘serves as an independent, non-partisan agent, spokesperson, arbitrator or referee, ensuring that government ministries and others fulfil legislative purpose by suggesting measures for improvement’ (Flekkøy, 2002: 404). While an ombudsman cannot reverse or revoke administrative decision, that person can investigate, criticise and make public recommendations for improvement although action related to such issues can take place ‘behind the scenes’ (Flekkøy, 2002).

The primary function of an ombudsman office is to protect the rights of individuals who believe they are victims of unjust acts on the part of the public administration (United Nations High Commissioner for Human Rights, 2007). Accordingly, the ombudsman will often act as an impartial mediator between an aggrieved individual and the government (United Nations High Commissioner for Human Rights, 2007). Typically, ombudsman offices are established to address complaints about public administration matters concerning health care or prisons, for example, although the term is also used to describe institutions with a wider mandate to protect and promote children’s rights (Innocenti Research Centre, 2001).

The ombudsman receives complaints from members of the public and will investigate these complaints provided they fall within the ombudsman's competence...While any citizen who believes that his or her rights have been violated may submit a complaint to the ombudsman, many countries require that the complainant first exhaust all alternate legal remedies. (United Nations High Commissioner for Human Rights, 2005b: 5)

In general terms, specialized institutions are established to promote government and social policy which has been developed for the protection of a particular group (Innocenti Research Centre, 2001). For the most part, these institutions perform functions similar to human rights commissions and ombudsmen offices described above. Specialised institutions are usually authorized to investigate instances and patterns of discrimination against individuals in the group and against the group as a whole (Innocenti Research Centre, 2001). While generally able to investigate

complaints brought by a member of the group against another person or against a government body, these organisations are, like other NHRIs, rarely empowered to make binding decisions or to initiate legal action (Innocenti Research Centre, 2001).

As well as providing material and consultative assistance on an individual and collective basis, such organisations may be responsible for monitoring the effectiveness of existing laws and constitutional provisions, acting as consultants to parliament and executive government branches (Innocenti Research Centre, 2001). Such institutions may be established as ‘equalities institutions’, designed to protect the rights of vulnerable groups of people – minority groups, women, people with disabilities, children – and to prevent discrimination against those groups in the exercise of their rights (Innocenti Research Centre, 2001).

When NHRIs are mandated to receive complaints, those institutions should have broad powers to deal with them (International Council on Human Rights Policy 2005). A measure of the institution’s effectiveness is whether ‘complainants’ can expect NHRIs to have authority to deal with bodies against which complaints are made and secure compliance with any recommendation, while complaints procedures should be simple, accessible, affordable and speedy (International Council on Human Rights Policy, 2005). With complaints serving a monitoring function, no relevant public body should be excluded from their jurisdiction (International Council on Human Rights Policy, 2005).

Preferably, NHRIs should be able to receive complaints about the actions of private bodies, such as businesses. An institution’s jurisdiction should certainly apply when private bodies have been assigned responsibility for public functions, such as provision of basic utilities, health services, education or custodial and law enforcement activities... NHRIs should be able to receive complaints or petitions from a broad range of parties, including complainants who are not directly affected. Recognising that some people may find it difficult (or be reluctant) to lodge complaints with an official body, civil society organizations should be permitted to make complaints on their behalf, provided they have received prior consent from the direct victims or their representatives. (International Council on Human Rights Policy, 2005: 21)

The UN Committee does not monitor individual or collective breaches of rights within States, however, it does require States to ‘provide information on remedies available in cases of violation of the rights recognised by the Convention’ (see United Nations CRC/C/58, Guidelines for Periodic Reports). Among the general internal monitoring

measures that States may adopt are independent national institutions for children's rights, which may take the form of children's ombudsman offices, children's right commissioners, 'focal points' within NHRIs and children's rights-focused permanent institutions (UN Committee General Comment No. 2, 2002).

### **3.5.1 National human rights institutions for children**

In the late 1990s, the UN Committee and the former High Commissioner for Human Rights advocated for establishing national human rights institutions (NHRIs) for children that they foresaw as filling various functions, including protecting, promoting and monitoring child rights implementation. Lansdown (2002: 288) argued, as well, that 'the human rights of all people are important and justify specialized institutions to monitor and protect their realisation', recognising that children, for example, may find it more difficult than others to realise their rights. Despite widespread endorsement for NHRIs in general, as evidenced by their proliferation around the world, there remains no clear consensus, however, about what constitutes such an institution and whether its mandate must address children's human rights (Innocenti Research Centre, 2001). NHRIs with a general remit to protect and promote human rights, while not preventing children from accessing their services, do not often address themselves to issues specific to children (Innocenti Research Centre, 2001).

Few, if any, promote their services in ways that enable children to learn about them or to take advantage of their services. In addition, their remits may not acknowledge that the issues facing children and adults may be quite different. Many of the rights violations experienced by adults are perpetrated by the state. For children, however, the perpetrators are just as likely to be parents, guardians and other powerful people in their lives. There is, therefore, a strong case for the establishment of institutions that have an explicit remit to promote and protect the rights of children – a case that is strengthened by the principles of the CRC. (Innocenti Research Centre, 2001: 4)

Since its inception, the UN Committee has recommended States create independent NHRIs with an inherent mandate to address issues specific to children (Hodgkin and Newell, 2002). In 1999, the United Nations Commissioner for Human Rights reported to the UN Committee on the emphasis she placed upon 'supporting the establishment of national institutions for the promotion and protection of human rights' and suggested that those institutions consider their role in relation to child rights (Hodgkin and Newell, 2002: 77). The UN Committee, in promoting the establishment of NHRIs, emphasised the importance of their independence from government to

facilitate adequate monitoring, promotion and protection of children's rights. The UN Committee advised those institutions to adopt the Paris Principles and, in its Concluding Observations to various States (including the UK), the UN Committee made reference to children's access to complaints procedures for claiming rights violations, linking those claims with NHRIs (Hodgkin and Newell, 2002).

[T]he Committee recommends, further, the establishment of an independent monitoring body with responsibility for monitoring implementation of the Convention, in accordance with the Paris Principles, either as part of the Human Rights Commission or as a separate body such as a children's ombudsperson. The Committee recommends that consideration also be given to providing a mechanism through which children can make complaints of abuses of their rights. (Hodgkin and Newell, 2002: 77)

Hodgkin and Newell (2002) stated that the UN Committee queried the level of independence of monitoring bodies, remarking that NHRIs needed to be free to set their own agenda (UN Committee General Comment No. 2, 2002).

Independent national human rights institutions (NHRIs) are an important mechanism to promote and ensure the implementation of the Convention, and the Committee on the Rights of the Child considers the establishment of such bodies to fall within the commitment made by States parties upon ratification to ensure the implementation of the Convention and advance the universal realization of children's rights. (UN Committee General Comment No. 2, 2002)

The UN Committee, in its general guidelines for periodic reports, require States to provide information on 'any independent body established to promote and protect the rights of the child', advising that such institutions should be developed in accordance with the Paris Principles (UN Committee General Comment No. 2, 2002) and providing States with reasons why independent institutions need to exist.

- Children's developmental status means they are particularly vulnerable to human rights violations;
- Their opinions are still rarely taken into account;
- Most children have no vote and cannot play a meaningful role in the political process that determines government's response to human rights;
- Children encounter significant problems in using the judicial system to protect their rights or to seek remedies for violations of their rights;
- Children's access to organizations that may protect their rights is generally limited. (UN Committee General Comment No. 2, 2002)

According to the UN Committee, it is essential that promotion and protection of children's rights - including children's civil, political, economic, social and cultural

rights - is 'mainstreamed' with provision made for complaints processes that are child-friendly in design, accessible and well-publicized to children (UN Committee General Comment No. 2, 2002; Hodgkin and Newell, 2002).

NHRIs must have the power to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by children. In order to be able to effectively carry out such investigations, they must have the power to compel and question witnesses, access relevant documentary evidence and access places of detention. **They also have a duty to seek to ensure that children have effective remedies – independent advice, advocacy and complaints procedures – for any breaches of their rights** [author emphasis]. When appropriate, NHRIs should undertake mediation and conciliation of complaints. (UN Committee General Comment No. 2, 2002, para 13)

The concept of NHRIs for children began in Norway, which was the first country to establish an ombudsman for children in 1981. Since that time, Lansdown (2002) has argued that there is a strong case for developing NHRIs responsible for monitoring and promoting children's rights and for ensuring that children are a priority within government. While healthy societies depend upon children's healthy development and active participation in their lives, public policy has not served children's interests despite their involvement as heavy users of public services specifically, but not always, related to education, health, childcare and child protection (Lansdown, 2002). Children have no access to voting privileges, lobbies that influence government agendas or the media, and often face difficulties using the legal system to protect their rights (Lansdown, 2002). On that basis, Lansdown (2002) purports that responding to children's concerns, their claims about rights violations and remedying those violations requires special arrangements such as the mechanisms used by adults to exercise their rights – mechanisms that are largely unavailable to children (Lansdown, 2002). Too often, children are seen as requiring adult protection rather than as subjects of rights (Lansdown, 2002).

While parents are normally the most significant advocates for their children's rights, children's economic, social and emotional dependency renders them particularly vulnerable to abuses or neglect of their rights by those responsible for their care. In seeking to safeguard the human rights of children, governments not only have responsibilities in the public arena but must also adopt a pro-active commitment to intervening to protect children from the actions and inactions of parents, families and other carers. (Lansdown, 2002: 290)



Flekkøy (2002), as well, argues that children have unique needs requiring respect, special measures, opportunities to participate and means by which to advocate on issues important to them, particularly as they are subjected to legislation that either indirectly or conditionally acknowledges their rights (Flekkøy, 2002).

### ***Primary functions***

While the UN Committee, the UN High Commissioner and others have argued consistently for the need for NHRIs to promote, protect and monitor children's rights, discussions have also occurred about what primary functions those institutions should have. In general terms, the main functions of NHRIs for children have been identified as: influencing policy makers and practitioners to take greater account of children's human rights, promoting respect for human rights, raising awareness of children's rights and ensuring that children have a means of redress when their rights are violated (Innocenti Research Centre, 2001; Miljeteig, 2005; Alston and Tobin, 2005).

According to Miljeteig (2005), the main functions of NHRIs should be independence, a clear mandate and powers, necessary resources, accountability, accessibility for children, collaboration with other agents and remedies for breaches of children's rights. Miljeteig (2005) also identified the need for independent NHRIs for children to monitor UNCRC implementation, ensure the law and public policies reflect children's interests, promote respect for children's views, advocate for children and raise awareness about children's rights. As children are a vulnerable group necessitating special measures to promote and protect their rights, NHRIs for children can represent 'a space for children where they can present their views, raise their concerns and file their complaints' (Miljeteig, 2005: 4).

When establishing NHRIs for children, it is important to consider those issues concerning children's rights that existing institutions cannot effectively address and, secondly, the degree of political will and sources of support for creating initiatives needed to address issues (Radda Barnen, 1996). Other factors to consider may include legislation requirements, resources needed, what agency or institutional affiliates might exist, how the mandate is defined, what basic functions should exist, the degree of investigative powers and the legal measures required to enforce powers (Radda Barnen, 1996). It is essential to consider the mandate of existing structures promoting

human rights within various countries, the historical context, the political context and the situation of children (Alston and Tobin, 2005).

The Paris Principles can inform key functions for NHRIs for children, which may include influencing policy makers and practitioners to respect children's human rights, promoting respect for children's views, educating about children's rights and ensuring that children have an effective means of redress when their rights are violated (Alston and Tobin, 2005). Flekkøy (2002) recommends that guiding principles inform NHRIs for children; these principles should define themselves as: representing children's voices, maintaining political and financial independence, making the NHRIs accessible to children and the wider population. These institutions should also situate themselves close to decision-making bodies affecting children's lives, work at all governmental/non-governmental levels and operate from a legally based mandate (Flekkøy, 2002).

Alston and Tobin (2005) argue that NHRIs for children that address, promote and protect UNCRC rights must include children's civil, political, social, economic, and cultural rights. In this regard, the UN Committee has identified four key principles to inform NHRIs' work in their analysis and implementation of children's UNCRC rights: article 2 (all rights can apply to all children without discrimination), article 3 (the best interests of the child must be a primary consideration in all actions affecting children), article 6 (children have the right to life and to survival and development to the maximum degree possible) and article 12 (children have the right to express freely their views on all matters concerning them; to have those views taken seriously; and to participate in administrative/judicial proceedings) (Alston and Tobin, 2005). The challenge for NHRIs relates to how these rights translate into reality for children (Alston and Tobin, 2005).

Lansdown (2002: 294) argues that NHRIs for children need to be independent and informed by children's views 'on all matters of concern to them' through a commitment to article 12.

Children have not traditionally been viewed as subjects of rights and insofar as they are considered at all in the human rights field, they take a fairly low priority. While many of the rights of children are those shared by adults, children have additional rights by virtue of their youth and vulnerability – the right to be listened to and taken seriously, the right to protection from sexual

abuse, the right to alternative care if unable to live with their family, protection in the process of adoption. (Lansdown, 2002: 294)

Moreover, NHRIs for children can represent themselves as the agents that translate children's experiences, perspectives and concerns into policy change (Statement of Independent Human Rights Institutions for Children Mid-term Review of the UN Special Session for Children, 2007). As children's 'right to be heard is a procedural right that is fundamental to the exercise of substantive rights, applying to decisions that affect individual children and to matters that affect them as a group', NHRIs for children can promote article 12's implementation by 'establishing structures through which children's views could be directly and effectively represented to other bodies' and by 'monitoring compliance with article 12 in all aspects of children's lives – in education, in the family, in local municipalities, in decisions relating to health care, and promoting the necessary legal reform to ensure its effective implementation (Innocenti Research Centre, 2001: 5-6).

Alston and Tobin (2005: 34) focus on roles and responsibilities of key players involved in enhancing children's rights accountability as well as principle international developments 'which pose a significant threat to the viability of the models of accountability which the international community has so far succeeded in building', which the authors argue have arisen from the process of decentralization and increased power of non-State actors. Alston and Tobin (2005) examined the categories of NHRIs and specialized children's rights institutions, noting that these institutions are described as key actors in enhancing children's rights accountability. In their exploration of NHRIs for children, Alston and Tobin (2005: 39) stated that their report is 'premised upon the assumption that the most important locus of attention for the implementation of the CRC must be the national and local levels within the States. In other words, accountability is to be sought principally and primarily within the domestic, rather than the international, setting'. Alston and Tobin (2005) argue quality domestic institutional structures must exist to hold national and local governments, as well as other key players, accountable for failures to make certain that children's rights are respected.

Children in most countries have only limited access to complaints mechanisms, the legal system and courts to protect their rights. Responding to children's concerns and remedying violations of their rights requires special arrangements.

The mechanisms that are employed by adults to exercise their rights are largely unavailable to children and may, in any case, be unsuitable. (Innocenti, 2001: 3)

Children must have an effective means of redress when their rights are violated such as access to mechanisms that allow them to claim breaches of rights; one of the most essential functions for NHRIs is to ensure access to such procedures exists for children (Innocenti, 2001). Some NHRIs for children have the remit to address individual complaints made by children or their representatives, along with other functions, while other children's institutions have adopted a broader approach by promoting the rights of children as a group (Innocenti, 2001). While stating that there is no singular approach, NHRIs for children may adopt one of two general models in which NHRIs respond to individual complaints (in addition to carrying out other functions) or, alternatively, they do not respond to individual complaints but 'encompass a broad remit to promote the rights of children as a group, rather than receive individual complaints' (Innocenti, 2001: 7).

All human rights institutions operate with limited financial and human resources, and it is important to decide how those limited resources can be mobilized to best effect. For example, a commitment to undertaking individual casework may leave the institution with no time to fulfil its broader advocacy agenda. Efforts might be better targeted in pressing for localized complaints mechanisms. However, it is important that every institution has the ability to investigate individual cases where an important principle is at stake, or where there is no way in which a child can achieve justice. (Innocenti, 2001: 7)

The United Nations Handbook on National Human Rights Institutions highlights essential characteristics required for independent human rights institutions for children to ensure proper functioning; these traits include independence, a clear mandate, comprehensive and adequate powers, accessibility, collaboration and accountability. These institutions should undertake 'formal investigations where concern has been expressed either by children themselves, or by interested adults, that the rights and interests of children are being abused or neglected' (Innocenti, 2001: 5). The concepts of rights, accountability, complaints and monitoring are intertwined.

When children utilise complaints processes, NHRIs can provide public agencies and governments with information about children's views, helping children to realise their right to be heard and to participate in decision-making that affects their lives (Radda Barnen, 1996). By addressing complaints, NHRIs 'supervises gaps left by other

mechanisms for protecting rights of children, helping children find solutions to real-life problems which might otherwise remain unresolved' (Radda Barnen, 1996: 31). In arguing that there is a 'distinctly human rights-based dimension to the concept of accountability', Alston and Tobin (2005: 33) focus on government's accountability to their citizens for upholding and promoting human rights.

Those same governments are also accountable to the international community through the various reporting, complaints and other mechanisms designed to establish a system of checks and balances on government conduct, in so far as it affects respect for human rights (Alston and Tobin, 2005: 33).

Lansdown (2002) argues, however, that while NHRIs for children may ensure that children have access to mechanisms for claiming rights violations and seeking redress, these institutions should not investigate individual complaints from children as these functions may overwhelm other tasks. Lansdown (2002) observes that NHRIs for children that have adopted responsibility for individual complaints while functioning in other jurisdictions have found the work resource intensive, deflecting from strategic work with long-term impact. In purporting that NHRIs for children are not the best structures for making complaints procedures available to children, Lansdown (2002) states that there are existing complaints systems which might result in duplication if children's rights commissions adopt that role and which should be available and service related within locations where children might need them (Lansdown, 2002). Miljeteig (2005) agrees with this position.

It should be noted here that handling individual cases could be extremely resource demanding, and might be impossible to include in an ombudsman office with limited resources. It might also blur the principal and overall perspective that an ombudsman needs to have if the focus is too much taken up by case handling. (Miljeteig, 2005: 8)

NHRIs required to investigate individual complaints report that they are 'overloaded', making it difficult for them to promote and protect children's rights in a general way and to support effective implementation of the UNCRC (UNICEF, 2004).

While neither the Paris Principles nor the Committee's General Comment 'require' national institutions to investigate all individual complaints and cases that come to them, both stress that the institution must be able to address any situation of violation of human rights and that it must have special powers to do so. It is vital that independent institutions, whether or not they investigate

individual cases for themselves, have the necessary power to review and report on whether these existing bodies are able to provide effective remedies for children. (UNICEF, 2004: 13)

Whether NHRIs address individual complaints or not, these offices need to maintain a watchful eye on societal forces that constitute rights violations or prevent children from realising their rights, making their observations known to governments and the public (UNICEF, 2004). Individual complaints can inform ‘principal or general initiatives to amend legislation or to remove other factors that result in violations of children’s rights’ (UNICEF, 2004: 8). In other words, whether they have their own complaints procedures or not, NHRIs need to establish themselves as institutions that ensure mechanisms exist to challenge individual violations of children’s rights (Innocenti, 2001). In particular, NHRIs can monitor the accessibility, effectiveness and usage of existing complaints procedures, which may involve examining why children fail to use complaints processes (Innocenti, 2001; Lansdown, 2002).

Monitoring complaints processes may involve assessing how to improve complaints procedures in all institutions, and lead to advocating for effective models, access to independent advocacy, adequate resources, dissemination of information and publicity about complaints procedures and improved training for staff (Innocenti, 2001; Lansdown, 2002). In narrowing this role, NHRIs may review the accessibility and effectiveness of all forms of advocacy, including advocacy functions associated with children’s access to the courts and other such institutions responsible for responding to individual complaints from children or those representing children (Innocenti, 2001). NHRIs may also identify gaps in how complaints procedures function, questioning whether children are able to allege rights violations in the juvenile justice system, in public care, in schools, in the family or in relation to health care (Innocenti, 2001). In promoting the availability of complaints procedures to ensure that all individual violations of rights can be challenged by children, NHRIs can analyse outcomes from children’s complaints to identify patterns of concern and use these patterns to inform policy proposals and recommendations for change (Innocenti, 2001; Lansdown, 2002).

## **Challenges**

There are a number of arguments against establishing NHRIs for children. One argument claims that creating NHRIs generates an unnecessary level of bureaucracy

for an unwarranted independent body (Innocenti, 2001). Other arguments suggest that it is better to appoint a Minister for Children to designate funds for children's services, that there are NGO's working independently on children's behalf and that other groups, such as women, people with disabilities and the elderly, need special bodies (Innocenti, 2001). It is suggested that NHRIs for children interfere with parents' rights and parents are responsible for their children, that children have needs rather than rights and that it is questionable as to whether government would want to establish a body that may hold it accountable, particularly as some societies have no tradition of independent institutions (Innocenti, 2001).

These arguments are met with the response that child groups are particularly vulnerable, as they have no entitlement to vote, limited access to the legal system and media and are particularly vulnerable to adult power (Innocenti, 2001). 'They often lack the means to exercise their rights and need powerful advocates if their rights and interests are not to lose out to the interests of others' (Innocenti, 2001: 13). There has been very little research done, however, that has evaluated the effectiveness of NHRI for children and no systematic analysis of legislation enabling NHRI to determine to what extent they are compliant with the Paris Principles, with the exception of Norway and Sweden (UNICEF, 2004). The UN Secretary General's End-Decade Review, 'We the Children', called for such evaluations. While ENOC<sup>28</sup> has begun a process of accreditation, at the time of writing there was no global process. As there is growth and projected growth in such institutions, 'it is important that growth is informed by rigorous evaluation of what works best, in terms of legislation, types of advocacy and involvement of children. This will help to create and sustain independent human rights institutions for children' (UNICEF, 2004: 13).

The Norwegian government asked the Ministry of Children and Family Affairs in 1993 to evaluate the Ombudsman for Children, in place since 1981 without prior evaluations. The Ombudsman for Children reported that the majority of enquiries related to procedural rights associated with legislative matters, court or administrative decisions (Ombudsman for Children in Norway, 2008). Many enquiries, including singular complaints, were referred to 'competent offices' although the Ombudsman reserved entitlement to address situations of monumental principle value as those situations provided guidelines for monitoring children's rights in practice as well as

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<sup>28</sup> ENOC: European Network of Ombudsman for Children

highlighting areas that need change of legislation (Ombudsman for Children in Norway, 2008). The Ministry committee found that the Ombudsman for Children raised the political profile of children, increased awareness about children's rights, disseminated information about rights, contributed to better laws and promoted a children's international agenda (Ombudsman for Children in Norway, 2008). The Ministry committee also recommended that the Ombudsman spend less time on 'individual cases' and more time on general matters reflecting key principles, noting that the Ombudsman had an important role to play in coordinating professional and political processes (Ombudsman for Children in Norway, 2008).

In Sweden, the office of a parliamentary ombudsman was established in 1809 while a national children's ombudsman was created in 1993 by government as a UNCRC implementation measure. In 1998, the Swedish Government appointed a one-person committee to review the Children's Ombudsman's role and to advise on how the Ombudsman's office could be made more effective (European Network of Ombudsman for Children, 2008). The committee recommended strengthening the Children's Ombudsman's role by focusing on actively promoting and monitoring the UNCRC (European Network of Ombudsman for Children, 2008). From the perspective of this one-person committee, the Children's Ombudsman had been very effective at upholding children's rights when she had the opportunity to represent them, drawing upon children's experiences and views (European Network of Ombudsman for Children, 2008).

In particular, the committee stated it was essential for the Children's Ombudsman to be independent from government, political parties, NGOs and others, noting the tension that exists when the Ombudsman was government-appointed (European Network of Ombudsman for Children, 2008). The committee proposed a mandate confirmed by law and the opportunity for the office to determine its own tasks (European Network of Ombudsman for Children, 2008). It also suggested that children actively inform the process of change within the office, inform rights implementation and that the Children's Ombudsman assess implementation of existing legislation from a rights-perspective (European Network of Ombudsman for Children, 2008). While the committee made other recommendations for the Children's Ombudsman role, there was no reference to complaints or complaints processes within the context of rights violations (European Network of Ombudsman for Children, 2008).



Miljeteig (2005:1) conducted a study intended to ‘contribute to the field of knowledge concerning rights based work for children’, beginning from a place that accepted that children’s independent offices needed to exist to protect children’s rights.

Even with a relatively clear mandate formulated in a specific law, and formal independence from the government, evaluations have shown that it is only through practice that the clear profile of the ombudsman and his/her office has been established.... Ombudsman must never compromise children’s rights. (Miljeteig, 2005: 2)

Miljeteig (2005: 3) noted that the concept of ‘ombudswork’ for children, introduced in early stages of children’s ombudsman discourse, broadened the ombudsman concept to make it adaptable to a range of contexts, underscoring ‘that an effective implementation and monitoring of children’s rights depends on the combined efforts of government and civil society’. Miljeteig (2005) argued that this approach ‘dilutes the concept’ by diverting attention from the legal underpinning and independence of the children’s ombudsman office, suggesting that an independent NHRI for children needed to be established by law and funded to ensure independence while, at the same time, acknowledging that many countries do not have the necessary resources and may need to address children’s rights within more universal human rights institutions.

Miljeteig (2005: 26) found that while the ‘idea’ of a children’s ombudsman was relatively well known throughout the world, ‘what lies behind the concept and what are the criteria for an office to qualify as an ombudsman seems to be far less known even within institutions or organizations that have a focus on children’s rights’. The study speculated that this ambiguity existed within government, inter-governmental organisations and non-governmental organisations, which might be explained by such factors as the evolution of the concept over time, the variety of institutions implementing and monitoring children’s rights (many with overlapping and similar mandates), and the ‘lack of documented experience that could advise the further use of the concept both in practical and theoretical terms’ (Miljeteig, 2005: 26).

In general, Miljeteig (2005: 26) noted that there had been virtually no evaluation of ombudsman offices except of the Division for the Rights of the Child in the Ombudsman Institution of the Federation of Bosnia and Herzegovina (2001) and in Norway and Sweden, arguing there was a need for evaluations for these reasons:

- The concept is unclear and there is a need to reduce the ambiguity around the children's ombudsman role;
- Various models need to be assessed to determine 'what works best';
- As there is substantial growth in these institutions, 'specific knowledge drawn from experience would be the best guidance in the establishment of new independent institutions for the protection of children's rights.

Miljeteig (2005) concluded that despite the variations in States' experiences, independent NHRIs for children have an important contribution to make in highlighting and promoting respect for children's rights and, secondly, that advocacy is needed to promote such institutions which can be vulnerable.

### **3.6 UNCRC INTERNAL MONITORING AND IMPLEMENTATION: LOCALISED COMPLAINTS PROCESSES**

Within Scotland, there is an inter-relationship between domestic legal processes (including the Children's Hearing System), the provision of public services to young people, administrative processes associated with those services and protection of young people's human rights. The Scottish Public Services Ombudsman, in an indirect reference to the association between complaints processes and human rights, made specific mention of the links between human rights, promoting the law and principles of good administration.

The Council of Europe also recognises the central importance of Ombudsman institutions in the promotion of the rule of law, the protection of human rights and in ensuring that public services are delivered with due regard for the principles of good administration. The right to good administration is enshrined within the European Union's Charter of Fundamental Rights. (Indeed, candidate countries wishing to join the Union are asked as part of the accession process to demonstrate that they have an independent and accountable Ombudsman with the power to receive, investigate and resolve grievances from citizens related to their fundamental rights). (Scottish Public Services Ombudsman, 2007: 9)

It is known that young people in institutions have experienced rights violations in the past and that those violations continue today, as evidenced in the ongoing proliferation of international research, reports and public inquiries (see Chapter 2). The UN Committee has emphasised the crucial role played by effective complaints procedures, particularly in relation to protecting children and ensuring their participative rights<sup>29</sup>.

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<sup>29</sup> See Report on the tenth session, October-November 1995, CRC/C/46, paras. 220 and 226.

Children need access to complaints procedures in relation to all aspects of their lives, in the family, in alternative care, in all institutions, services and facilities relevant to them. The Committee has expressed concern at the lack of complaints procedures for children, in particular in relation to ill-treatment in institutions and the family: The Committee is concerned about the occurrence of maltreatment and cruelty towards children in and outside the family and suggests that procedures and mechanisms be developed to deal with complaints by children of their maltreatment or of cruelty towards them....The lack of adequate recourse and complaints procedures for children, victims of cruel treatment, including domestic violence, for cultural as well as material reasons, is also a matter of concern. (Hodgkin and Newell, 2002: 171)

In promoting complaints procedures within States, the UN Committee has recommended that such procedures exist within NHRIs<sup>30</sup>, alternative care institutions, in schools and in circumstances whereby children experience violence and other forms of abuse within and outwith their family homes. Specifically, the UNCRC Committee has noted that complaints procedures are required for implementing articles 12 (expression of views) and 19 (protection from violence and abuse). The UN Committee makes an association between children's rights, independent complaints processes and children in institutions (Hodgkin and Newell, 2002).

The Committee recommends that the State Party provide additional training, including in **children's rights**, for social and welfare workers, ensure the periodic review of placements in institutions and establish an **independent complaints mechanism** for children in **alternative care institutions** (author emphasis). (Hodgkin and Newell, 2002: 171)

In its Guidelines for Periodic Reports, the UN Committee also requests that States adopt the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (UN Rules, 1990) as providing relevant standards for implementation, particularly as it has various provisions relating to complaints mechanisms for young people admitted to institutions requiring, for example, that young people have the opportunity to make complaints to institutional directors, without censorship, to other individuals in responsible positions and to receive a response 'without delay' (UN Rules, 1990). The UN Rules (1990) also require that young people should receive a 'written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal

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<sup>30</sup>While there is a Children's Commission and Human Rights Commission in Scotland, neither institution has individual complaints procedures for young people who want to claim breaches of rights and seek remedies.

assistance’ (Hodgkin and Newell, 2002: 556). Information should be conveyed in a manner that young people understand (Hodgkin and Newell, 2002). UN Rule 25 states, among other things, that young people should be helped with understanding methods of seeking information and making complaints, ‘and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention’ (UN Rules, 1990).

Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements. (UN Rules, 1990)

The UN Committee stated that these should be clearly applied to all institutional placements for children (Hodgkin and Newell, 2002: 172). In its 1995 report on the administration of juvenile justice, the UN Committee made particular reference to children in contact with the justice system (which can be interpreted to include the Children’s Hearing System in Scotland), finding that young people were often denied the right to make complaints when they experienced rights violations, including ill-treatment and sexual abuse<sup>31</sup>. In response to their concerns, the UN Committee made detailed recommendations concerning children’s access to complaints procedures following its General Discussion on ‘Violence against Children’<sup>32</sup>.

In its Guidelines for Periodic Reports, as well, the UN Committee requests information from States under article 1 (definition of a child) on ‘the minimum legal age defined by national legislation’ for ‘lodging complaints and seeking redress before a court or other relevant authority without parental consent’ (Hodgkin and Newell, 2002: 172). In particular, the guidelines ask for information about the existence of complaints procedures, whether young people can make complaints directly or through an advocate and what remedies exist for young people (UN Committee Guidelines for Periodic Reports, para.88).

Children in institutions are especially vulnerable, often isolated from independent adults; disabled children may also be particularly vulnerable, because of communication and other difficulties. Children’s complaints, and their evidence when cases come to court, must be taken seriously, in line with the Convention. Difficulties for children in challenging exploitation in court and having their evidence taken seriously have concerned the Committee. (Hodgkin and Newell, 2002: 464)

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<sup>31</sup> See Report on the tenth session, October/November 1995, CRC/C/46.

<sup>32</sup> See Report on the twenty-fifth session, September/October 2000, CRC/C/100.

An international conference, attended by representatives from governments, NGOs and international agencies, focused upon problems relating to child institutionalisation and children in public care in Central and Eastern Europe and the Commonwealth of Independent States. The conference resulted in the 'Budapest Statement' – a call for action to address concerns as expressed by the participants. The participants agreed upon the importance of young people in vulnerable circumstances, such as those young people 'deprived of parental care', realising their rights through complaints processes.

Children's rights must be guaranteed by establishment of formal mechanisms and channels for their participation in decision-making and opportunities for complaints and redress. (Report of the Regional Conference on Children Deprived of Parental Care: Rights and Realities, 2000: 11)

Human Rights Watch established a Children's Rights Division in 1994 to monitor human rights abuses against children around the world and to campaign to end them (Becker, 2001). In its role as a NGO, this agency investigates human rights abuses against children, including the use of children as soldiers, child labour, child torture, violence against street children, institutional conditions, corporal punishment, mistreatment of refugee and migrant children, child trafficking, discrimination against children and sexual violence against children (Becker, 2001). Becker (2001) reported on Human Rights Watch investigations into violence against children, which included interviews with children in 18 countries throughout the world.

Among the various rights violations examined, the investigation focused upon State violations of children's rights 'in institutions – like schools – that are state run or supported' (Becker, 2001: 4). One recommendation to the United Nations and to national governments that all forms of violence against children should be abolished and that violence against children should be properly investigated (Becker, 2001). Training programmes in children's rights should exist for teachers, principals, police, staff working within institutions and for other people who work with children while national governments should make certain that children have an awareness and understanding about their human rights (Becker, 2001). It is also important to 'establish effective and confidential complaints procedures for children and their families; ensure that complaints are properly and thoroughly investigated by an independent outside authority' (Becker, 2001: 6).

Human rights abuses relating to young people in residential schools may take many forms falling within the broad UNCRC categories of protection (such as violence against young people), provision (such as inadequate education or health care services) and participation (such as denial of young people's free expression of their views and participation in administrative proceedings). Muller (2002: 5) argues, therefore, that complaints procedures are needed to 'translate children's rights into reality' although, according to this author, these procedures do not 'guarantee the protection of children's rights' as this protection must be assisted through domestic legislation and mechanisms 'such as the appointment of ombudsman' and through the 'social, political, economic and cultural development of the society'. This research also illustrates that advocacy, or representation, for young people in vulnerable situations is essential to ensuring they are able to claim breaches of rights and seek appropriate redress (Muller, 2002).

### **3.7 CONCLUSION**

In placing this research within a human rights context, this chapter has elaborated on the relationship between rights and complaints processes, drawing attention to the apparent implications for young people at residential schools. The chapter illustrates how complaint processes, as administrative proceedings, may contribute to implementing young people's provision, protection and participatory rights under the UNCRC while providing a vehicle through which to monitor the UNCRC's implementation on a broader level (see UN Committee, 1996; UN Committee, General Comment No. 5, 2003). The existence of complaint procedures for claiming human rights violations, and monitoring human rights implementation, have an association with international human rights instruments (see United Nations High Commissioner for Human Rights, 2008) and national human rights institutions (although the UNCRC remains the only core international human rights instrument without a complaints procedure).

The UK government, with contributions from Scotland, has submitted reports to the UN Committee in compliance with its obligations as a signatory to the UNCRC. It is apparent from each report that the Scottish government has overlooked the role of complaint processes and, in particular, their relationship with the rights of young people at residential schools. While NGOs across Scotland did not specifically

address complaint processes in their reports, they have expressed concern about access to advocacy services for some young people and the lack of information about various judicial and administrative processes for young people (Morrison and McCulloch, 2000).

In the past, the UN Committee has encouraged the UK to embed the UNCRC principles more widely in its legal and administrative proceedings and, in particular, to establish independent human rights institutions with a broad mandate that includes investigating children's human rights violations, ensuring that children have an effective remedy for such violations and granting children deprived of their liberty access to independent advocacy services and complaints procedures (United Nations, Concluding Observations, 2002). In response, the Scottish Government established the Scottish Commissioner for Children and Young People and the Scottish Human Rights Commission although neither organisation has the mandate to provide advocacy services to individual children or to respond to individual complaints about possible rights violations.

Historically, NHRI have existed to protect and promote human rights, which has included receiving and responding to complaints about possible human rights violations. The Paris Principles, in particular, define normative standards for NHRIs and impose obligations upon NHRIs to use conciliation to achieve 'amicable' settlements in the resolution of complaints. NHRI for children have been viewed as 'a space for children where they can present their views, raise their concerns and file their complaints' (Miljeteig, 2005: 4) although in recent years there has been the recognition that this mandate presents many challenges in practice for these institutions (see Lansdown, 2002). Lansdown (2002) suggests that complaint processes already exist for young people and queries whether NHRIs for children should duplicate that role.

Complaint processes associated with public services, including those processes within residential schools, are situated within a complex regulatory, policy and procedural framework governing public services provision. This situation does not negate the significance of complaint processes but rather emphasises the need to ensure that this complexity is recognised – from the perspective of young people who may want to access those processes for claiming human rights violations and seeking remedies (see Scottish Public Services Ombudsman, 2007). As young people in institutions are

particularly vulnerable, it is a UN requirement and widely recognised that these young people must have access to independent complaints processes to ensure the implementation of their rights (see UN Rules, 1990; Report of the Regional Conference on Children Deprived of Parental Care: Rights and Responsibilities, 2000; Becker, 2001; Hodgkin and Newell, 2002; Muller, 2002).

It is within the context of the foregoing two chapters that the ensuing chapters report on the research methodology utilised, findings, analysis and conclusions reached in addressing the research problematic. These chapters examine the salience of young people's rights and texts within the context of Nona residential school, focusing upon an explication of the complex textual environment in which the texts are seen as contributing to and shaping young people's socially organised understandings about their rights, complaints and complaint processes.



# 4

## RESEARCH DESIGN

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### 4.1 INTRODUCTION

Institutional ethnography, a theoretical and methodological approach, informs the method of inquiry utilised when conducting this research. This chapter begins by describing the research ‘problematic’ and extends to discussing the research objectives, institutional ethnography’s relationship with qualitative research, generalizability, research methods (data collection and analysis) and ethical considerations.

### 4.2 THE RESEARCH QUESTION: THE ‘PROBLEMATIC’

Institutional ethnography - the social organization of knowledge - originates with the identification of a ‘problematic’ in the everyday world that affects the lives of actual people and explores how those people’s experiences are shaped by forces beyond their local and visible world. The concept of ‘problematic’, while motivated by individuals’ problems or concerns, does not define the research direction; researchers may be concerned, for example, about discriminatory practices towards marginalized

groups or environmental issues (Smith, 2005). 'Formulating a problematic out of such concerns and experiences means going beyond them to develop a project for inquiry which, while it may be oriented by such interests, must not be constrained by them or adopt their prejudgments. It means creating a project of exploration' (Smith, 2005: 40). In an institutional ethnography approach, the researcher may begin by talking to those individuals affected by the researcher's concern, 'learning from them sometimes more than they realize they knew about how they participate in an institutional process' (Smith, 2005: 40).

From there the institutional ethnographer develops a project of research into those aspects of the institutional process that are relevant to the issues of concern and appear in how people talk of what is going on in their lives. Developing a problematic in institutional ethnography translates actualities of people's doings from forms of organization implicit in the everyday world into the forms of discursive representation in which they can be subjected to inquiry. (Smith, 2005: 40)

The 'problematic' in this research begins where young people at residential school are located in their everyday world, adopting the standpoint of young people who are subject to the 'socially-organised exercise of power that shapes people's actions and their lives' (Campbell and Gregor, 2002:32). The research extends beyond young people's localized environments to discover the social organization that governs their worlds through the complexities of relations. This proceeds to an examination of texts (such as legislation and policy) which are implicated and constituted as influencing people's actions, shaping the experiences of young people and service providers without their knowledge.

The concept of problematic is used here to direct attention to a possible set of questions that may not have been posed or a set of puzzles that do not yet exist in the form of puzzles but are 'latent' in the actualities of the experienced world. The questions themselves, the inquiry, the puzzles, and perhaps the issues are the means of developing the problematic as an inquiry. (Smith, 1987: 91)

Smith's notion of 'latent puzzles,' arising out of a problematic, resonated for me as I considered my own experiences within the context of the literature informing my research interest and illustrating the challenges in making complaints processes accessible and meaningful to young people.

### **4.3 RESEARCH OBJECTIVES**

To understand better why young people at Nona residential school ‘said what they said’ about human rights, complaints and advocacy, I used the views of those young people as an entry point to explore how official and authoritative texts, constructed as international instruments, domestic legislation, and policy at all levels, actively coordinate the social relations within which young people, service providers and others participate. In doing so, it is possible to see how young people’s lives are affected by institutional ruling relations and in what ways. The research aims to:

- Provide an account of young people’s knowledge about their rights at Nona residential school;
- Provide an account of how young people at Nona residential school define ‘complaint’, how they prefer to express their concerns and their understanding about how the residential school’s complaints process ‘actually’ worked;
- Extend our knowledge about the relationship between these young people’s understandings and institutional processes, or ‘systems’, which may ultimately have value when applied to other vulnerable groups in similar-type institutional environments;
- Extend our knowledge about how external forces, such as legislative, policy and procedural texts, shape how young people come to understand and experience their rights, which knowledge may help to identify better ways to ensure the implementation of young people’s rights at residential school.

### **4.4 SITUATING THE RESEARCH: QUALITATIVE DISTINCTIONS**

In determining what research design is suitable for a particular research problem, Creswell (1998) states that the design must be embedded within a philosophical and theoretical framework.

The philosophical or theoretical lenses range from broad perspectives, such as epistemological and ontological assumptions, to ideological stances, such as postmodernism and critical perspectives, to more narrowly defined ‘theories’ (Flinders & Mills, 1993) composed of propositions and hypotheses found in the social and human sciences. (Creswell, 1998: 73)

These lenses may be incorporated or challenged by feminist perspectives, ethnic models of inquiry or cultural and childhood studies (Denzin and Lincoln, 1998). My own ontological, epistemological and methodological assumptions as a researcher informed both my research problem and the research methodology I adopted – institutional ethnography. These assumptions reveal that rather than a positivist approach to social research that assumes it is possible to make precise measurements of people's lives in its conduct of 'objective' research, I embrace social constructivist and interpretivist traditions. These traditions are concerned predominately with subjective reality, changing the material world and orientated in their concerns toward how the social world is 'interpreted, understood, experienced, produced or constituted' (Mason, 2002: 3).

Within this tradition there are various research design schools available to researchers, such as traditional ethnography, grounded theory and symbolic interactionism. Institutional ethnography distinguishes itself from these other approaches in several ways. Traditional ethnography attempts through the triangulation of data to provide an accurate account of a studied situation while grounded theorists and symbolic interactionists strive to explore and explain the perspectives of individuals studied. Researchers adopting these approaches focus upon explaining how those people studied live their everyday lives, at times identifying external causes and effects affecting those lives. Institutional ethnography, however, 'relies on discovery and demonstration of how ruling relations exist in and across many local settings, organizing the experiences informants talk about' (Campbell and Gregor, 2002: 89); it is a method of inquiry that I considered most appropriate for identifying external influences on people's experiences.

#### **4.5 MERGING THE THEORETICAL AND METHODOLOGICAL**

There are no 'natural' boundaries within ethnographic studies beyond what is established through research practicalities (Smith, 2005).

Hence, a major source of 'control' over the natural expansions of ethnography into neighboring terrains is the political orientation and concerns of the researcher and those she is working with. It is this concern that regulates the researcher's focus of relevance. (Smith, 2005: 42)

While this political orientation can be viewed as bias, potentially affecting the research's outcome, institutional ethnography seeks to serve those individuals whose standpoint informs the direction of the research. In doing so, the research 'must produce accurate and faithful representations of how things actually work; it must be truthful' (Smith, 2005: 42). The illumination of young people's understandings inevitably involved the participation of young people in my research process. While in a traditional sense there is an abundance of research available to describe adult participation in a research context, in recent years the literature on children's participation has grown dramatically as increasingly researchers seek children's views. Historically, researchers conducted their studies in artificial environments for children and did not solicit children's direct views about their experiences but rather relied upon standardized quantitative methods and adults as principal informants about children's lives.

Since the late 1980's, a research interest in obtaining children's views directly and listening to them describe their 'stand alone' experiences, as separate from adults, has emerged and begun to dominate the qualitative research agenda. A paradigm shift occurred which 'has involved the repositioning children as the subjects, rather than the objects of research' (Christensen and James, 2000: 3). The ensuing and growing broader debate about childhood - how we view children and how it is studied - has significant implications for research's methodological direction. The way I conceive childhood shapes the research I do and how I do it.

Including children as research subjects and participants, rather than objects of enquiry, has been shown...to reveal many novel aspects of the situations, settings and issues they were asked about. These are in danger of remaining invisible when research relies only on adult accounts. By engaging children in research they have been shown to have a 'standpoint', from which social life often appears differently from how it looks from an adult perspective. Of course any one child sees and speaks from multiple, combined and intersecting positions - of gender, class, ethnicity, disability and so on. However, within this diversity there appear also to be commonalities between children. (Prout, 2002: 68)

With this paradigm shift in researching children, methodological issues have arisen which have implications for many researchers studying children from a variety of different disciplinary and epistemological positions - psychology, history, phenomenology, sociology, anthropology and from the standpoint of applied research involved in a variety of policy areas. The varied and multidisciplinary approach to

studying children parallels the increasingly accepted notion among researchers that children make valuable contributions to research about social issues.

Children's active participation in their social life is at least as important as mapping the variables that shape their lives... Children's own meaning-making activities, with and alongside adults and other children, is a key to understanding how they respond to their social circumstances... There is merit in understanding children's lives because their present being matters as much as their future becoming as the next generation of adults. (Christensen and James, 2000: xi)

The increasing recognition of children as social actors within their own right and worthy of direct study, points the way to a growing inclusion of children's participation in research, which may include the mapping of children's lives within their broader contexts. This research approach amalgamates the broader structural order of childhood with children directly voicing how they live their everyday lives. As children have not often had their views taken seriously or experienced having those views disregarded by adults, when researching children it is essential to pay attention to the importance of a 'practical engagement with the local cultural practices of communication' used among children in order to better understand their experiences (Christensen and James, 2000: 76).

Harden *et al.* (2000), as well, reminds us that 'children's lives are largely bound by adult surveillance' (Harden *et al.* 2000: 2) and that 'there is no free and autonomous realm of childhood outside the social relations in which childhood in general, and particular individual childhoods are forged' (Scott *et al.* 1998 in Harden *et al.* 2000: 2). It is an implication requiring us, as researchers, to extend beyond what children say to understand better those social relations within which children's lives are embedded. Debates about whether children are 'becoming adults', 'equal but different' from adults, and are members of another 'culture' have huge implications for how a researcher chooses to employ particular research strategies. My own epistemological assumptions about childhood, grounded in the notion that children are social actors, affected my qualitative research strategy and how it was employed.

Smith argues that 'everyday experience cannot deliver a full understanding of the conditions which produce that lived experience' (Harden *et al.* 2000: 7) and that in order to understand fully children's everyday experiences, it is essential to attend to how those experiences are socially organized. This viewpoint is compatible with a

theoretical concept in which children are viewed as social actors and in which the broader contexts of children's lives, including family, school, and neighbourhoods, are seen as 'structural' forms and processes shaping their experiences (Prout, 2002). Smith (1990a), who recognizes a research interest as a problem to be identified, concludes that research must extend beyond mere description. The researcher must also explicate how the situation arises and continues as social relations. The concept of social relations, as it is used in this context, understands people's activities as components, and contributors to, an ongoing series of courses of action 'in which what people do is already organized as it takes up from what precedes and projects its organization into what follows' (Smith, 1987: 183).

It is an investigation in which the direction of looking is reversed. The institutional ethnographer takes up a point of view in a marginal location; she 'looks' carefully and relatively unobtrusively, like any fieldworker, but she looks from the margins inward - toward centers of power and administration - searching to explicate the contingencies of ruling that shape local contexts. Through this conscious reorientation, she aims to produce knowledge for, rather than about, those in some particular location. Her analysis is an 'insider's critique' (Smith 1990a, p. 204), rooted in but extending beyond a local setting. (DeVault 1999: 48)

'Texts', such as regulatory, policy and procedural documents, play an important role in combining and coordinating activities that otherwise might appear discrete and isolated. One of the central themes in institutional ethnography, therefore, is the 'phenomenon of textually mediated communication, action, and social relations' (Smith, 1990b: 209) and the way in which texts, as objectified forms of socially organized knowledge, permeate every aspect of our daily lives, including professional practice (Smith, 1990b).

Elaborating on this notion, Smith contends that texts should be understood as 'speakers in a conversation' that readers enter when they engage with a particular text. Smith claims that knowledge, and the use of knowledge in textual form, coordinates activities among professionals and within organizations (Smith, 1990b). Rather than assuming that words and ideas arranged in textual form can stand alone, the notion of a conversation implies *a relation that is being enacted* among writers and readers in which the text, too, is consequential and, as Smith (1990b) suggests, *active*. Institutional ethnography makes use of Smith's theory of the social organization of knowledge (Smith, 2005) to query the factual reading of such texts. It is this type of knowledge that is integral to understanding and explaining children's experiences.

## 4.6 GENERALIZABILITY

Institutional ethnography bypasses the issue of whether the study of a single case can be connected to a broader, more general statement about a societal issue or a subgroup of individuals or connected to a scholarly discourse. According to Smith (1987: 157), ‘the relation of the local and particular to generalized social relations is not a conceptual or methodological issue, it is a property of social organization’. In using a particular situation as a point of entry, it becomes the ‘locus of an experiencing subject or subjects, into a larger social and economic process... The problematic of the everyday world arises precisely at the juncture of particular experience, with generalizing and abstracted forms of social relations organizing a division of labor in society at large’ (Smith, 1987: 157). As the properties of social relations organize our everyday world, we often have difficulty seeing how the locally experienced is connected to the more generalized character of its social organizations.

The generalized character of such local social organization is determined by the generalized social relations (of the market) to which it is articulated... Investigating the everyday world as problematic involves an inquiry into relations that are themselves generalized through exploration of the character of those relations from the standpoint of everyday experience. (Smith, 1987: 159)

I have chosen to locate my research in a particular location – Nona residential school – and from the standpoint of certain young people in order to explicate what is potentially relevant to other young people and the wider residential child care sector within which this residential school is situated.

## 4.7 RESEARCH METHODS: DATA COLLECTION

Within institutional ethnography<sup>33</sup>, data collection focuses upon what contributes to a ‘project of exploration’, beginning in interviews and exploring what people understand, then moving beyond what is gleaned from those interviews ‘into those

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<sup>33</sup> ‘Institutional’, as it is used here, is a concept that defines how legislation, policy and procedure are linked as a ‘functional complex’ by the interchange with other work processes occurring within, and outwith, the residential school (Smith, 1987, see chapter one). This definition is distinct from the term ‘residential institution’, which is often used synonymously with residential school to denote a location where young people reside and receive their education on-site.



aspects of the institutional process that are relevant to the issues of concern' as exemplified by what the interviews reveal (Smith, 2005: 40). While the starting point of this research is anchored in young people's understandings, the research projects beyond the young people's localized setting to an exploration of the institutional order to discover its social organisation (Smith, 2005). As the problematic focuses on the 'territory to be discovered', there is an emphasis on what constitutes the institutional complex, how institutions work and what ruling relations exist that help us to better understand young people's experiences.

Within qualitative research, there are a number of methods and approaches available to the researcher that may include: interviews (individual and group), observational techniques, focus groups, diaries, case studies, and document gathering. Institutional ethnography, as a theoretical and methodological approach, typically requires the researcher to obtain data through methods such as interviews, participant observation and document gathering, although any method of data collection considered relevant to the research objective is acceptable. In institutional ethnography, the researcher is interested in the particular conditions affecting a subject person's everyday lived experience. 'The inquiry is always about circumstances located in the world of the subject, even if it is outside the subject's experience and knowledge' (Campbell and Gregor, 2002: 59), which, in turn, has implications for data collection.

There are two levels of data collection in institutional ethnography. 'Entry level' data is data that informs the research about individuals, their immediate setting and their experiences, including the interactions that occur (Campbell and Gregor, 2002: 60) while 'level two' data extends the research into the broader setting. As the research goal is to explicate the experiences of individuals, level two data is any data that is useful for this explication. The techniques used in institutional ethnography are similar to those practices employed by ethnographers in general and may include interviews, observations, and collection of textual material. Institutional ethnography requires the researcher, however, to emphasize or focus upon whatever data is useful for their subsequent analysis.

The methods of data collection used in this included:

- Interviewing young people, 13-15 years old, with varied experiences and backgrounds (individual and group interviews);

- Document/text gathering: Legislation, policy, guidance, forms and public information about complaints processes available to young people and adults (see Appendix B).

It is accepted within institutional ethnography that there are strengths to all methods available to the researcher and that the focus is upon the collection of relevant data necessary to inform the research objective. In this research, the interviews with young people, which imply the ‘presence and doings of others caught up in and participating in relations that coordinate their doings’ (Smith, 2005: 43) served as an entry point into the primary focus of this research – an exploration into external textual factors inherent in the regulatory workings of institutions and an explication of their social organisation. This approach aims to make these regulatory workings observable, revealing the ‘distinctive institutional forms of coordination’ (Smith, 2005: 44).

#### **4.7.1 Interviews: recruitment and setting**

My process for locating young people willing to participate in my research began at the residential school, identified by me as a place geographically accessible to the university community and described to me as ‘open’ to research interests. The young people attending and living at the residential school originated from various local authorities throughout Scotland. The residential school provided a continuum of services to young people, which included intensive support and on-site education for residential and day students.

In establishing criteria for whom I might recruit to participate in my research, I decided upon asking young people between 13 and 15 years of age (the largest age group represented at the school) and from three local authorities (the two largest placing authorities and the host authority). By the conclusion of my interviewing process, I had interviewed 16 young people on one occasion and, of those 16 young people, I re-interviewed 12 with the result that I conducted 28 interviews lasting approximately one hour each. Many young people participating in the research did not know each other and/or had not known each other prior to their placement at the residential school.

I had the opportunity to interview one young person on three occasions when he decided to join another interview I was having with a young person who lived in the

same residential unit. In some instances, I did not have the opportunity to explore fully all the research topics during the first interview so the second interviews provided me with the opportunity to ensure I canvassed all research themes with each young person. The second interviews also offered young people the opportunity to clarify, add to, verify or re-state any information they provided during their first interview.

The young people who agreed to participate in my research had been placed at the residential school through the Children's Hearing System for care and protection and offending reasons or attended the residential school as day students. All young people met the criteria I had established; some young people living at the residential school were close geographically to their families while other young people were placed at some distance from their parents, relatives and friends. The young people interviewed who lived at the school varied in their experiences, which ranged from young people who attended as day students while living with their families to young people who had lived at the residential school for six months to young people who had lived for ten years in government care, experiencing other residential schools and foster care placements.

During the time I interviewed these young people, some of them moved from one residential unit to another which meant that when I re-interviewed them, they had experiences of different residential units within the same residential school. Some young people resided in 'closed support units', some lived in 'open units' and some lived in a unit for young people with specialized therapeutic needs.

I had many informal contacts with young people attending, with their consent and as an observer, their morning residential school assemblies, school council meetings, drama and music classes. At their invitation, I also had the opportunity to have meals with young people in their residential units and to visit the various sites within the residential school where they spent time, such as the education unit and the gym.

#### **4.7.2 Interviews: obtaining informed consent**

The process for obtaining informed consent for the participant interviews proved extremely complex and time-consuming. Initially, I attended the residential school to speak to senior managers about my intended research and to obtain general consent

from the residential school's chief executive to approach young people about participating in my research. The senior managers, in turn, informed the unit managers and depute managers about my proposed research. I then worked with a key residential school contact – a person who helped me identify the young people meeting my criteria (see above), their names and the residential unit where they lived. This contact asked young people if they would be willing to meet with me and, after obtaining young people's agreement, I traveled to the residential school to meet with each young person.

Prior to my visit, my contact informed the unit managers who authorized our meeting. At our initial meeting, I introduced myself to the young people, explained my research and provided written and verbal information that would enable them to decide whether they wanted to participate in the research. I provided each young person a sheet of paper that allowed them to tick a box indicating that they did, or did not, want to participate in an interview and explained that they could also make a decision about the research at a later date. Subsequent to my initial meeting, I returned to the residential school to interview those young people willing to contribute to my research.

After young people agreed to participate in the research, with the residential school's assistance I sent letters and consent forms to all the young people's parents (enclosing stamped, self-addressed envelopes) and to the relevant 'gatekeepers', such as the social work departments and education departments for three local authorities. When I met with young people for their first interview, I re-introduced myself and reiterated the purpose of the research along with other information necessary to ensure that they provided informed consent. All the young people signed consent forms at that time. While institutional ethnography acknowledges that interviews may happen at any time during the inquiry process, the interviews for this research took place throughout an eight month period.

#### **4.7.3 Interview process**

I interviewed the young people at the residential school in their residential units, always in a place of privacy, known to the residential unit staff and sometimes within view of the residential staff when I interviewed young people in closed support units. In institutional ethnography, it is important for the researcher conducting an interview

to encourage the participant to describe ‘what actually happens’ as opposed to the expected account of what should or is supposed to happen. In my interviews, I was guided by a small number of open-ended questions intended to encourage the young people to reveal their ‘actual’ understanding about rights, their ‘actual’ complaint definitions, how they would ‘actually’ prefer to express concerns about matters important to them and how they ‘actually’ understood the residential school’s complaints process worked. If the young people did not want to answer questions, I did not pursue those questions further.

While it was apparent that all the young people had experienced some unhappiness about some aspect of their lives at the residential school, not all young people had experience with making a ‘formal’ complaint using the residential school’s formal complaints process. In this instance, I asked the young people to describe their understanding about the process of making a complaint – what they believed about how the complaints process was ‘supposed to work’. What young people described as their experiences and understanding contributed to the subsequent analysis guided by the theoretical approach ‘that as people bring into being whatever happens, what they do and what they understand and can tell about are shaped through organized processes’ (Campbell and Gregor, 2002: 78). While my inquiry during the interview process focused upon young people’s actual understandings, it recognized as well that the young people participating in the research lived in their residential units as observers and conduits of other young people’s understandings and experiences. The information these young people contributed to my research was used to discover and illuminate linkages within and across boundaries of settings (Campbell and Gregor, 2002: 79).

I adopted an approach to my interviewing that researchers utilizing institutional ethnography suggest might better be called ‘talking to people’ (DeVault and McCoy in Campbell and Gregor, 2002: 77). The purpose of interviews in institutional ethnography, whether talking to an individual or a group, is to ‘investigate widespread and discursive processes’ (Campbell and Gregor, 2002: 77) and, as a result, the interviews did not need to be structured or standardized in some way. As there is an attempt to develop an understanding about how activities are coordinated in various locations, the researcher learns more about the topic as the inquiry proceeds, which in turn directs the researcher to those people who need to be interviewed.

The literature on child research queries whether interviewing children requires ‘special techniques’ or whether adult strategies also apply to children. Some researchers, drawing from the developmental model, suggest that children are ‘less competent’ than adults and special considerations require researchers to address children’s perceived lack of reasoning and communication abilities. Studies of childhood, however, suggest that researchers need to find ways of communicating that respect and understand children’s culture and their own unique ways of communicating (Mayall, 2002; Prout, 2002) while also recognizing some of the particular challenges arising. In earlier studies with children, researchers tended to ask questions from a structured or semi-structured format, with the researcher’s approach adapted to meet a particular child’s needs.

Researchers have started to explore a broader range of techniques which include a conversational style approach to interviewing associated with an unstructured, or informal, interview in which the interviewer has a general area of interest or concern and encourages the conversation to situate itself within this area (Robson, 2002). In conducting my interviews, I attempted to adapt to the personalities of the young people, some of whom were very quiet and some of whom were quite boisterous. I found a conversational style of interviewing most effective as it allowed me to choose spontaneously questions relevant to each young person and their individual experiences, which only became apparent during the interview. At the same time, I was guided in my approach by what information I needed that was most relevant and pertinent to my research.

Institutional ethnographers are encouraged to use a conversational technique when interviewing research participants. Mykkalovsky (2002) suggests that by using this technique the researcher is able to clarify her understanding about the topic or information received as the conversation unfolds and the researcher’s understanding develops. This approach contrasts with the structured, or semi-structured, way of asking a prepared set of questions and looking for specific answers to those questions. By taking a conversational approach, researchers may confirm their own understanding about what participants have said by ‘checking back’ with participants - the experts - about the researcher’s own understandings (Campbell and Gregor, 2002). The views of all participant help the research visualise the emerging larger context (Campbell and Gregor, 2002).

There is, however, relatively little research available about conversational techniques with children (Hill, 1996). Mayall (2002) is one researcher who explored the notion of a 'research conversation' as a means of data collection with children during her study, adopting a technique whereby the researcher's beginning strategy involved allowing the children to direct the conversation (Mayall, 2002). In taking this approach, Mayall (2002) attempted to capture children's knowledge about their daily lives and about what children identified as important in a context within which children believed their lives were controlled by adults. By enabling children to direct the agenda and control the conversation's pace and direction, children participating in her study explored topics that helped her to understand 'what mattered' to them (Mayall, 2002).

Mayall (2002: 13) argues that an advantage of conversations with children is it helps 'adults tap into one of the means whereby, through talking with each other, children firm up knowledge, and learn more about aspects of their social worlds'. Mayall (2002) also suggests that conversations are a method for acquiring data for policy-oriented work.

Analysis of children's own understandings of the social conditions of childhood is an important precondition for considering what policies are appropriate to enable children to lead satisfying lives. Children's understandings both complement and reinforce macro-studies (Qvortrup, 1994; Therborn, 1996; Sgritta, 1997) in indicating that their rights are poorly recognized, and that social policies should directly address children's interests, rather than, simply, adults' interests. (Mayall, 2002: 134)

While I offered the young people participating in the research an opportunity to participate in group interviews, two young people chose to be interviewed with each other and the remaining young people requested individual interviews or interviews with an adult present. Hill (1996) introduces the notion of 'group conversations' whereby small groups are encouraged to address a limited number of themes. He suggests, however, that prior to a group interview it is important for the group to receive information about the purpose and format of the proposed discussion and that during the interview the researcher should ensure the questions asked are straightforward and open-ended (Hill, 1996).

From time to time the researcher needs to create opportunities to clarify with the group what key points are emerging and to assess the degree of support for different

viewpoints (Krueger, 1994 in Hill, 1996). In this research, I conducted a 'group interview' with young people who chose to have other people attending; they all received information about the research before I began the interviews. As I had previously conducted individual interviews with the two young people who had asked to be together, those young people had developed an understanding through their initial interview process about the interview's purpose and likely discussion format.

One of the challenges to the conversational style of interviewing young people, whether individual or group, is that young people may go beyond the limits the researcher has identified for access purposes (Mayall, 2002). To address this potential problem, it is helpful to include young people in designing the agenda for discussion, within the parameters of the research objective, and to determine whether prompts are needed to stay connected with the subject matter (Hill, 1996). As I did not engage the young people in designing the research or the interview agenda, I found I needed to ask questions that re-focused our discussion when the young people became diverted talking about matters unrelated to the research. Hill (1996: 133) also argues that many of the same factors affecting adults in interviews need to be present for young people 'such as the need to establish rapport, ensure confidentiality or pose questions clearly and concisely' or otherwise relevant data will not emerge.

Other barriers to eliciting data from a conversational approach to interviewing may include young people's perception of power differentials and their tendency to subscribe to beliefs that contrast with their actual behaviour. It is essential during the interview process for the researcher to clarify her understanding about what young people, and adults, 'actually do' in addition to what they believe they 'should do' (Hill, 1996; Campbell and Gregor, 2002); I found in my own experience that the young people were susceptible to 'trying to please' me as researcher and to providing the 'right answers'.

During my early research design phase, I had considered the strengths and weaknesses of group and individual interviews with young people, reflecting on the possibility that group interviews might address the power dynamic inherent in our adult-child relationship (see ethical considerations). Upon asking each young person how they would prefer to be interviewed – on their own (with a support person, if desired) or in a group – most young people chose the individual interview while the remaining young people had individuals attend whom they chose.



#### **4.7.4 Texts**

It is understood in institutional ethnography that texts are considered both ‘entry level’ and ‘level two’ data to be gathered in conjunction with interview and observational data. In general, the texts analyzed for this research included: written information for young people at the residential school about the residential school’s formal complaints process, residential school policy, information in the public domain about complaints processes, government policy, legislation and key public reports (see Appendix B). I chose to examine texts I considered relevant to young people’s experiences and to the focus of this research.

#### **4.8 RESEARCH METHOD OF ANALYSIS**

In conducting an analysis using institutional ethnography, the researcher begins by pulling together the ‘story’ to be told from the data collected; it is a story already made apparent as the researcher engaged in the data collection process. In part, the researcher’s approach is informed by the conceptual framework which incorporates the dynamic of social relations in everyday life, guiding the search for data and the subsequent analysis. The data collected represents how young people understood certain topics within the context of their everyday worlds, coordinated by external forces that may, or may not, have been visible to them.

My political commitments as researcher, such as my belief in human rights, may have appeared to bias the data selection, altering the research analysis and outcome.

But institutional ethnography is not an experimental approach; if it is to serve those whose standpoint it undertakes as its starting point, it must produce accurate and faithful representations of how things actually work; it must be truthful. Political commitment here enforces the researcher’s responsibility to get it right. Others’ decisions to act may draw on her or his findings; hence, the latter must be as good as she or he can make them if she or he or others are going to rely on them in action or organizing. (Smith, 2005: 42)

During the analysis stage of institutional ethnography, therefore, the researcher establishes the connections, revealing what individuals say and textual associations in ways the reader can see and understand (Campbell and Gregor, 2002). Throughout the analysis, the presentation of the results demands different knowledge than is generally

available to adults and children alike in order to explicate their social status and structural position (Mayall, 1994: 11 in Harden *et al.* 2000). The key aspects of analysis guiding the researcher doing institutional ethnography are that social relations lie at the core of the research interest and, secondly, that it is essential to examine what the data say about young people's understandings. During the analysis stage, as well, I developed the 'big picture' in a way that extended beyond any particular account or the totality of what the young people knew and could relate.

Throughout the analysis, as researcher I had the opportunity to see, or 'map', how broader influences structured young people's understandings about their rights, complaints and advocacy. The explication of data in this way is distinct from other methods of identifying themes or theorizing the data as institutional ethnographers are attempting to illuminate those everyday experiences individuals may have by explicating institutional relations in which institutional texts play a central role. The goal, as indicated earlier, is to reveal the social relations of the setting.

This kind of analysis uses what informants know and what they are observed doing for the analytic purpose of identifying, tracing and describing the social relations that extend beyond the boundaries of any one informant's experiences (or even of all informants' experiences). Translocal and discursively-organized relations permeate informants' understandings, talk, and activities. An institutional ethnography must therefore include research into those elements of social organization that connect the local setting and local experiences to sites outside the experiential setting. Analysis in institutional ethnography is directed to explication that builds back into the analytic account what the researcher discovers about the workings of such translocal ruling practices. (Campbell and Gregor, 2002: 90)

In my analysis of the institutional texts, such as those generated locally and within a regulatory, policy and procedural framework, I stayed closely to what could be found in the text itself (Smith, 2006). The mapping of texts in relation to each other, what they represented within each one and how they affected young people's everyday worlds reveals the macro-social level of organisation extending beyond the everyday world of knowledge and experience affecting young people's understandings and subsequently their actions (Smith, 2005). In this research, I explored specific themes – rights, complaints and advocacy – with young people, and used that information to inform the text analysis and to identify textual relationships with young people's understandings. In doing so, the unseen power of large-scale institutions was made

explicit, distinguishing this research approach from other research centred upon micro-level experiences.

## 4.9 ETHICAL CONSIDERATIONS

There is some debate in the literature about whether young people require ‘special consideration’ as research subjects and whether ethical issues arise that may not exist when conducting research involving adults. While some academics argue that young people warrant special consideration for legal, moral and practical reasons in the broader world, researchers are divided about whether special considerations arise for young people in relation to the ethical issues arising within a research context. The conduct of research that begins from the standpoint of young people and explores their experiences presupposes a participatory approach to research – an approach in which the researcher has direct contact with young people. As the direct participation of young people in research has become increasingly prevalent in recent years, researchers have examined more closely the broader ethical implications and arrived at varied conclusions.

Research methods and ethics are inextricably linked. Harden *et al.* (2000: 7) suggest that ‘while ensuring children’s rights in the research process is clearly a delicate matter (Alderson 1995), there is no simple formula to persuade us that research with children always carries a greater ethical burden than any other’. According to these researchers, the main ethical issues should not revolve around ‘children’s innate difference but relate to children’s social location as subordinate to adults’ (Harden *et al.* 2000: 7). They question whether there should be an immediate association between children and ethics while Hill (1998) argues that one predominant ethical issue concerns the very topic of children’s participation in research in the first instance.

According to Hill (1998), the researcher must make key decisions about the extent to which children are involved in the research design, the data analysis and final reporting – all decisions relating to possible ethical issues. And, while these issues parallel the decisions a researcher must make when adults participate in research, Hill’s (1998) work suggests that there are complex aspects to key decisions involving children that do not necessarily exist for adult participants. Beyond the ethical issue of how children are involved in research, Hill (1998) states that there are three

additional primary categories encapsulating the ethical issues involved: consent and choice, possible harm or distress, and privacy and confidentiality. While these ethical issues may be present for adults participating in research, Hill (1998) suggests that the nature of the issues and how they are considered may differ.

Kendrick *et al.* (2008: 80-81) address the ethical issues arising when conducting research on the perspectives of young people in residential care, questioning dominant discourses portraying young people as ‘victims or villains’. In exploring the topic of ethics in child research, Kendrick *et al.* (2008) adopt the sociological approaches to childhood in which power relations between children and adults are acknowledged (minority child) and in which children are active social citizens with needs, rights, strengths and competencies (social structural child). Both these approaches share a common centrality that recognises young people’s agency and voice, which is linked to the ethical perspective that young people have a right to be heard (Kendrick *et al.* 2008).

Some of the complex ethical issues that arise for young people in residential care identified by Kendrick *et al.* (2008) relate to information, consent and choice about research participation in addition to confidentiality, privacy and safety (Kendrick *et al.* 2008). In hoping to improve young people’s lives in residential care through changes in policy and practice, Kendrick *et al.* (2008) conclude that it is important to address ethical issues from a cautionary perspective. ‘The negotiation of children’s time and space must be approached carefully, with due consideration of their rights and wishes; and sensitivity to their preoccupations and priorities’ (Kendrick *et al.* 2008: 91). Human rights principles can assist with the identification and justification of dilemmas arising in child research ethics (Bell, 2008).

The University of Glasgow research ethics committee granted ethical approval for this research to proceed after their criteria for obtaining such approval was met. The following ethical considerations were also informed by the Glasgow Centre for the Child and Society’s research code of ethics for child research (2005), of which I was principle author. This involvement led to my improved understanding and application of research ethics within child research in general.

***The purpose of the research:*** This research intends to provide a voice for young people at residential school who are often ‘unseen and unheard’ in matters concerning

their everyday worlds. The research also aims to contribute to a wider body of knowledge about how young people's knowledge and experiences are constructed by external forces - institutional relations - unseen and unknown by them. These objectives make it possible to see how those institutional relations - the regulatory, policy and procedural framework - can be directed at promoting the best possible outcomes for young people wanting to express their concerns and at ensuring young people realize their rights. In the short term, research participants may or may not directly benefit – an issue largely dependent upon the residential school and other service providers' receptivity to the research outcomes. In the mid-to-long term, other young people at residential schools and vulnerable populations may benefit if the research informs systemic and cultural changes.

***Inclusion and participation:*** The inclusion and participation of young people at Nona residential school was determined by several factors such as: the ages of young people at the residential school, the availability, understanding and willingness of young people to participate in the research, their home local authority and the interest of 'gatekeepers' in facilitating accessibility to young people. No young person was excluded from participating in the research unless he did not meet the criteria, made necessary by the complex, time-consuming task of obtaining informed consents. The gatekeepers in this research were numerous and included parents, social workers, local authority departments (social work and education), residential staff and residential managers. It was not readily apparent that any gatekeepers prevented access to the young people.

***Disparities of power:*** It was difficult to assess how much the gatekeepers in the young people's lives influenced their decision to participate in the research. To make it easier for young people to tell me they did not want to participate in the research, I provided each young person with a small form upon which they could tick a box indicating their willingness or unwillingness to participate. I also advised young people that they did not need to make a decision about participation on our first meeting and that, if they chose to participate, they could refuse to answer any question and/or withdraw from their interview at any time. Young people decided: whether a support person attended their interview; the identity of their support person; whether the interviews were tape-recorded; whether they answered questions and continued their participation after the interview started; the interview length; and when the interview took place.

***Free and informed consent:*** At the beginning of my research process, I met with some gatekeepers (residential school managers, the chief executive officer and other staff) to explain my research and subsequently distributed written information to all gatekeepers. I also provided information in a child-friendly form to all young people who might have been willing to participate in the research. I explained the research to young people at my first meeting with them and before asking them to decide about whether they wanted to participate in the research. When I met with young people to interview them, I explained the research, once again, and asked them to sign a consent form, which I also discussed with them before proceeding with the interview. I also obtained consent for young people's participation in the research from their placing local authorities (social work and education departments), from their parents and, in the absence of parents, from young people's social workers pursuant to organizational requirements.

***Confidentiality and privacy:*** The names of young people participating in the research and other details that might reveal what residential school they attend have been kept confidential. It was apparent to residential school staff and managers, however, who I interviewed although no staff member or other adults attended the interviews unless requested to do so by young people. To avoid unnecessary intrusion into the private lives of young people, I met with them at their residential units at their convenience and did not disclose my role to other young people. All research data have been stored in locked cabinets, with access limited to myself as researcher.

***Protection from harm or distress:*** During the interview process, I made efforts to avoid asking questions that might have distressed the young people who contributed to my research. At the same time, I advised all young people that if they revealed anything to me that suggested they might have been harmed or faced risk of harm that I would need to discuss with them the next steps and that I would likely need to communicate their disclosures to the relevant person. In one instance, I reported a concern to the residential school's complaints process manager who also was responsible for the residential school's child protection procedure. This report took place subsequent to a discussion I had with the young person who agreed to my contact and the process I followed.

# 5

## YOUNG PEOPLE'S VIEWS: UNDERSTANDING RIGHTS

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### 5.1 INTRODUCTION

The analysis in the next three chapters begins with a 'sense of a problem, of something going on, some disquiet, and of something there that could be explicated' (Smith, 1999: 9) as described in the previous chapter. The literature informing this analysis reveals that many young people do not know about the UNCRC, lack confidence in making their concerns known to adults and often do not use complaints processes for claiming their rights and seeking remedies for rights violations. Yet, epistemological assumptions about childhood, grounded in the notion that children are social actors, are reflected in the UNCRC and in the recognition that it is essential for young people to develop their own awareness and understanding about their entitlements.

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike. (UNCRC article 42)

To demonstrate how 'knowledge and power come together in the everyday world to organise what happens to people' (Campbell and Gregor, 2002: 12), such as young people at residential school, the following analysis provides an account of young

people's understandings about their rights<sup>34</sup>, complaints and advocacy by using 'entry level' data. The analysis extends to investigating 'level two data' – texts such as the regulatory framework, policy statements and local procedural texts – that shape young people's understandings, determined by actual social processes and practices engaging young people in the social relations organising their lives (Smith, 1990b).

This analysis is informed by a theoretical underpinning which acknowledges that the realization of young people's rights within residential institutions, through such mechanisms as complaints processes, is an effective way to ensure that young people's agency as rights bearers is valued. While the realization of young people's rights is fraught with interrelated challenges steeped in power dynamics inherent in such institutional environments, young people's rights in such places need not exist as an abstract concept or as unattainable principles.

This chapter begins by situating the analysis within relevant literature and moves to provide an account of what young people participating in this research understand about their rights within the context of their everyday lives. The analysis extends to an exploration of those texts considered relevant to the dissemination of UNCRC information pursuant to article 42: the domestic regulatory framework and central government policy. It is argued that these textual factors operating at a general level structure institutional action at the local level in ways that ultimately affect how young people develop their understandings and knowledge about the UNCRC (Smith, 2005).

## **5.2 UNDERSTANDING UNCRC RIGHTS**

Hodgkin and Newell (2002: 611) observe that 'rights are of little use to individuals unless individuals are aware of them'. The UN Committee, in its guidelines for States periodic reporting on their UNCRC implementation, identifies those measures required to inform the UN Committee about whether States are meeting their obligations pursuant to article 42 (CRC/C/58, para. 22). These measures, for example, require States to demonstrate the extent to which they have translated the UNCRC into various languages, generated widespread awareness of UNCRC principles and

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<sup>34</sup> The term 'rights' is a direct reference to UNCRC rights. During the interviews with young people, I did not make specific reference to UNCRC rights but rather used the generic term 'rights' to provide young people with the opportunity to describe the word 'rights' in any way that was meaningful to them.



provisions, and committed to educating public officials and professional groups working with children by incorporating the UNCRC into their training curricula, codes of conduct or regulations (CRC/C/58, para. 22).

The UN Committee assesses other implementation criteria, such as whether States promote UNCRC understanding by the mass media and involve NGOs in awareness and advocacy campaigns about the UNCRC, providing them with necessary support (CRC/C/58, para. 22). States may illustrate children's participation in activities related to raising awareness about the UNCRC (CRC/C/58, para. 22). In their alternative report to the UN Committee in 2000 (see Chapter 2), NGOs in Scotland reported that learning about the UNCRC needed to occur within their own sector, stating it was not known to what extent many of the smaller and more locally based voluntary sector agencies know about the UNCRC and how it might affect their role (Morrison and McCulloch, 2000: 9). The NGOs also highlighted the need for the Scottish Executive (now Scottish Government) to determine the level of understanding among children and adults within Scotland (Morrison and McCulloch, 2000).

NGOs call on the Scottish Executive to assess current levels of knowledge about the UN Convention in Scotland and subsequently to develop appropriate information, means of dissemination and support for learning about the Convention for both adults (lay and professionals) and children. (Morrison and McCulloch, 2000: 9)

In its 2007 periodic report to the UN Committee, the Scottish Executive identified measures it had taken to promote the UNCRC within Scotland, acknowledging that international law bound the United Kingdom to the terms of the UNCRC. While acknowledging that the UNCRC 'has not been incorporated into Scots law so it does not have direct effect', the Scottish Executive claimed that it 'seeks to reflect the aims of the Convention in its policies and legislation wherever possible' (Scottish Executive, 2007). The report stated that the Scottish Executive had responded to the UN Committee's concerns outlined in its 2002 Concluding Observations that the Scottish Executive did not adequately consult with children by adopting the following measures: working with voluntary sector agencies, the Children's Commissioner, the Children's Parliament, and eliciting children's views on children's rights through a one-day conference also attended by policy makers, local authorities and other statutory and voluntary sector organisations.

The consultation by the Children's Parliament showed that among the 8-13 age group there was little knowledge about the UNCRC or the concept of rights in general. (Scottish Executive, 2007)

In Canada, the Senate Committee on Human Rights examined Canada's obligations under the UNCRC and whether Canada's legislation, as it applied to children, met State obligations under the UNCRC (Standing Senate Committee on Human Rights, 2007).

Our committee has heard numerous witnesses express concern about the lack of awareness, both in government, in Parliament, and among the public, of the Convention on the Rights of the Child and the rights enshrined in it. Throughout our hearings, we became aware there is very little knowledge about the Convention outside academic and advocacy circles. Even the reporting process to the UN Committee on the Rights of the Child has been unable to change this... In government, even among those dedicated to protecting children's rights, knowledge of the nearly 20-year-old Convention is spotty at best. (Standing Senate Committee on Human Rights, 2007: 195)

Upon meeting with young people from various backgrounds and who lived across Canada, the Senate Committee learned that children were unaware of the UNCRC and the rights enshrined within it. A student from a community in Eastern Canada met with the Senate Committee.

[A]bout a week ago [I was asked] to come here [and told] I would have to read the Convention on the Rights of the Child. I was, like, well, what is that, because I had never heard of it before. I felt badly admitting that - because I am an elitist in my school. I am very involved in the school, I maintain high marks, and I try to be involved in the community. Yet, someone like me who knows so much about what is going on, at least in my community, knew nothing about my rights, as set out in the Convention on the Rights of the Child... That is a big part of education and empowering youth. How can we feel motivated and empowered to implement our rights into our own lives if we do not even know them? That is something that we have to work on together - us as youth and you guys as the big shots. We have to work on that, so we can be empowered to put them into place in our own lives. (Standing Senate Committee on Human Rights, 2007: 196-197)

The Senate Committee observed that when the UNCRC is understood by so few people, it rarely filters down to protect the people who need to benefit from it. The Senate Committee reported that witnesses said that to implement the UNCRC, individuals needed to know how particular rights affected their lives and how the non-observance of rights could significantly alter lives (Standing Senate Committee on Human Rights, 2007: 197). 'Witnesses observed that for children learning about their

rights is often a transformative experience', noting that individuals who were unaware of their rights were prevented from working towards ensuring the realization of their rights (Standing Senate Committee on Human Rights, 2007: 197). In its conclusions, the Senate Committee stated there was a need to educate Canadians about the importance of children's rights and a rights-based approach within society in general (Standing Senate Committee on Human Rights, 2007: 197). The UN Committee, as well, identified the implications for children when adults in children's lives failed to understand children's rights.

If adults around children, their parents and other family members, teachers and carers do not understand the implications of the Convention, and above all its confirmation of the equal status of children as subjects of rights, it is most unlikely that the rights set out in the Convention will be realized by many children. (UN Committee, General Comment No. 5, para 66)

In their research, Kilkelly *et al.* (2004) also found that there was a widespread and serious lack of general awareness about the UNCRC throughout Northern Ireland. These researchers noted a significant gap about children's rights that existed among children, their families and people associated with statutory, NGO and professional bodies working directly and indirectly with children (Kilkelly *et al.* 2004). According to this research, there was a paucity of information about children's entitlements in several areas. The research found that children did not have access to adequate information in child-friendly forms - a serious problem for children in the criminal justice system, looked after children, lesbian, gay, bisexual and transgendered children and children with disabilities (Kilkelly *et al.* 2004: xii).

In general, these research findings made strong statements about the state of rights awareness within Northern Ireland, suggesting that there were few informed people from whom children could obtain information about their rights and that other potential sources were possibly inadequate (Kilkelly *et al.* 2004: xii). While the research found that young participants lacked awareness about their rights, it also demonstrated that adults working with children did not adequately provide young people with sufficient information about their rights and that the children did not have adequate access to child-friendly information provided on a sustained basis to ensure adequate understanding (Kilkelly *et al.* 2004: xii). Kilkelly *et al.* (2004) also illustrated how many adults in advocacy positions lacked an awareness and understanding about rights, making it harder for children in Northern Ireland to learn from the adults who had responsibility for providing such services to them.

In their study of children's advocacy services in Wales, Pithouse and Parry (2005) found that adults providing advocacy services to children in government care did not receive adequate funding nor did they have sufficient independence from those structures commissioning their services, resulting in difficulties with providing advocacy services to 'hard-to-reach' children. This situation existed despite the Welsh Assembly Government's guidance issued through national standards informed by the UNCRC article 12 and the *Human Rights Act 1998*. These research findings have implications for children wanting, or needing, to acquire information about their rights from children's rights services established to provide advocacy support to children in government care. Pithouse and Crowley (2007: 20) found that many children participating in their study did not know where to access information about rights 'particularly in relation to making complaints about services they received. On this point, young people appeared to be more confident about their right to make a complaint at school. There was much more uncertainty about their right to complain about health, social services and the police'.

Peterson-Badali *et al.* (2008: 117) found that children with 'maltreatment histories', living in government care, have some understanding about their rights although this understanding 'is informed by the particular concerns and perspectives that emerge from their unique circumstances'. These researchers discovered that those rights children identified as important included rights made known to children through their everyday experiences *and* aspiring rights that children identified; rights conceptions were influenced by children's everyday contexts rather than 'historical circumstances' (Peterson-Badali *et al.* 2008). While children participating in this research indicated their participatory rights are significant to them, issues relating to their protection and provision rights tended to dominate Peterson-Badali *et al.* (2008). In noting the absence of research in this area, Peterson-Badali *et al.* (2008) proposed that future research take place.

### **5.3 RESEARCH FINDINGS**

Cleland and Sutherland (1998: 257) argued that 'principles enshrined in the [UNCRC] should have effect, not only in law and its administration, but at the level of policy making and **implementation**' [author emphasis]. What young people understand

about their UNCRC rights informs us about whether those rights have been implemented in accordance with articles 42 and 13. The following section begins by reporting on what young people participating in this research stated about their rights, locating rights information and advocacy as an entry point into a predominant analysis of those texts deemed most relevant to young people's understandings and the theme of disseminating rights information. The intent of the research remains; it is to begin with the young people's standpoint and explore those social relations in which young people's lives are embedded and yet which may not be fully visible to them and others.

By focusing predominantly upon the texts, the analysis moves the ethnography beyond young people's everyday understandings to drawing texts into their everyday worlds. In doing so, the analysis takes up the theoretical aspect of institutional ethnography in which texts, which are sometimes taken for granted, are seen as components of ruling relations participating in our daily lives as 'speakers in a conversation' (Smith, 1999: 135). An examination of the texts allows for the explication of the key role that texts play in coordinating and influencing the work practices of those individuals who provide services to young people. An exploration of the institutional texts allows us to connect into the intersections between the public and private in the provision of services to young people (Smith 2005) and to see how those texts may impact upon their experiences and, ultimately, their understandings.

### **5.3.1 Young people's knowledge about rights**

The research evidence shows that most young people had little knowledge about their rights, while the young people attending the day school revealed that they had no knowledge. Most young people had some awareness of the word 'rights' but they had limited knowledge about how rights related to their direct experiences at the residential school, varied experiences with the form and content of rights information they received, if any, and often couldn't recall who had provided them with information about their rights. Nor did any young person associate the word 'rights' with the UNCRC.

- I: And did anyone talk to you about what rights you have when you're here [at the residential school]?*  
*YPB: No.*  
*I: No. Do you know what they are?*

YPB: No.

I: *One of the questions I want to ask you about is whether anyone has ever talked to you about children's rights - what your rights are when you're here at the school?*

YPC: *Yes when I first came in.*

I: *They talked to you when you first came in?*

YPC: *Yes.*

I: *And do you remember what information you got?*

YPC: *Not really, no.*

I: *Was it written information or did someone talk to you?*

YPC: *They were talking to me.*

It is conceivable that this young person would forget information he had received during one conversation held during a time that can be traumatic for young people making the transition to their new residential school. This young person's lack of understanding about his rights, along with the lack of awareness other young people exhibited, meant that no young person directly associated their rights with their social care, health or educational entitlements while at the residential school. No young person indicated he had a right to receive information that would assist him with understanding his rights and the options available to him if he had concerns. A few young people associated the word 'rights' with their 'right to complain' which, in turn, those young people linked with their right to fill in the complaint *form* used for the residential school's complaints process.

I: *Did people talk to you about rights?*

YPD: *Mhm.*

I: *Do you remember what they told you?*

YPD: *They gave me a rights officer, complaint form, an' eh, telt me telephone numbers and everything's there that you can write doon on a bit o', ken, on the complaint form and a' things like that.*

The 'right' identified by this young person equates with his right to complain within a specific context and in a particular way, possibly with the support of a 'rights officer', whom he associated with the residential school complaints process. In a later interview, however, this young person stated that his children's rights officer had visited the young person's residential unit once and did not speak to him but rather he reported that the children's rights officer spoke only to the residential staff. This young person did not identify any particular rights associated with the residential school's complaints process nor did he request information from the children's rights officer at any time. While most young people defined a complaint as about 'anything', implicitly capturing possible rights violations, none of the young people

identified that they had the right to participate in the residential school's complaints process, the right to information about the process, or the right to 'complain' using judicial and administrative processes outwith the residential school's complaints process (pursuant to article 12(2)).

- I: The other questions I want to ask you are about rights. I'm interested to know if anyone has talked to you about children's rights for example, or what rights you have. Is that a word that you're familiar with? So you nodded your head meaning yes. Who would have talked to you about it?*
- YPS: It was in ma welcome pack. When ah wis welcomed tae [this unit] an' welcomed tae [name], the other unit ah wis in.*
- I: There's a pamphlet or something, some information that tells you?*
- YPS: Yes.*
- I: And did you read through it?*
- YPS: Yes.*
- N: What did you think?*
- YPS: [This unit] was rubbish but the [other unit] one was good.*
- I: Oh really. Why do you think [this unit] book was rubbish?*
- YPS: It tells ye stuff, right. An' then staff'll say naw.*
- I: Oh really?*
- YPS: That's not right an' that. But there's a couple of things on the welcome pack that we're allowed to do. But staff say we're not allowed to do.*
- I: Did anyone ever sit down or talk to you about the rights information that you read?*
- YPS: Naw.*

This young person, who lived in two residential units within the residential school, discovered that rights information was different between the two units, raising questions about the nature of rights information disseminated in these and the other units and the degree of consistency within the information. It was apparent from the interview that this young person had an interest in learning about his rights, having read through the information provided in written form, however, his understanding about what he read and his experience in the residential unit did not correlate for him. He was unable to learn about how rights information in the residential unit welcome book directly affected his experiences in his everyday world.

In general, the young people did not associate the 'right to complain' with their right to express their views in a forum that suited them or any participatory structure, such as a care plan review. Most young people suggested that the implementation of their participatory rights depended upon their relationships with the professionals involved and whether those professionals made themselves accessible to young people by listening to and respecting their views. The risk of young people 'not knowing' or

understanding their rights is that responsible adults were prevented from fully ‘knowing’ what rights issues concerned young people.

One young person who had lived in care for approximately ten years, in contrast to the majority, spoke confidently about his understanding of his rights and specifically referred to his ‘right to have ma say an’ stuff’, unlike the other young people interviewed.

- I: So when you first came to the school, did you learn about your rights?*  
*YPA: Ah knew ma rights before ah came in this school.*  
*I: Oh did you? And how did you learn?*  
*YPA: Because ah was in a different home from this one.*  
*I: ...And who told you when you were there?*  
*YPA: Just people would come up an’ ah spoke to the staff about it.*  
*I: Are rights something you know about?*  
*YPA: Ah know a lot about ma rights, yeah.*  
*I: So...what do you know about rights?*  
*YPA: Ah’ve got the rights to contact ma social worker, ma family or ah’ve got the rights to respect an’ to have ma say an’ stuff. Ah’ve got the right tae keep in contact wi’ family, rights such as phone calls an’ stuff.*  
*I: So can you tell me who told you about your rights [at the residential school]?*  
*YPA: Well, ma children’s rights officer came to see me an’ gave me a children’s rights book to read.*  
*I: And when did that happen?*  
*YPA: About two or three months ago.*  
*I: And when did you come to the school?*  
*YPA: A year and a half ago. Nearly two.*

This young person stated that he used the children’s rights book provided to him by the children’s rights officer for reference.

### **5.3.2 Sources and resources**

The research explored whether young people had any knowledge about adults who could provide them with information about their UNCRC rights and what textual information young people might find accessible for informing them about UNCRC rights. During the research interview process, young people demonstrated a familiarity with the word ‘rights’ although they lacked knowledge and understanding about what the word meant and how it might relate to their everyday lives. As a result of this apparent confusion, most young people lacked a uniform understanding about what service providers could provide information, either in written or verbal form, and



where young people might obtain UNCRC information they considered pertinent and accessible.

A few young people recalled that they had seen written information about their rights in the residential school's individual unit welcome packs they had received when they moved to their unit. Some residential students recollected that the residential school staff had reviewed the welcome pack contents with them, which included information about rights, while other young people stated they had reviewed the unit welcome packs on their own or not at all. One young person living in a mainstream unit stated that he had seen information about children's rights posted on the young person's board in his residential unit. The information on the bulletin board that this young person referred to consisted of a UNCRC poster with a summary of rights on it.

*I: And it sounds like you got information when you first came here.*

*YPE: Yep.*

*I: About rights. Do you have anything in writing about it?*

*YPE: Yeah.*

*I: You do?*

*YPE: It's up on top o' there so everyone can see it. On the board down there.*

*I: A list of what your rights are?*

*YPE: Mhmm.*

Another young person, attending the residential school as a day student and living at home, stated that while he had no current understanding about his rights, he would use the internet as a resource for rights information. Another day student stated 'I remember having a couple of meetings [when starting at the school] but I don't remember anything about children's rights' while one day student stated that he didn't know anything about his rights nor had he received any written or verbal information explaining rights to him. A young person from a different day unit, however, recalled that his unit manager had met with him, together with his mother, and provided him with verbal information about rights that he said he couldn't recall. All the day students reported varying experiences about the dissemination of rights information to them despite their common experiences of being associated with the same unit within the residential school.

Most young people indicated that they would ask the residential staff, particularly their key workers, about their rights if they had questions or wanted information

although one young person said he would contact his social worker if he had any questions.

*I: Do you think that your social worker knows about your rights while you're here?*

*YPF: Uhuh.*

*I: Ok and what about the staff, do you think they know?*

*YPF: They have to know; part of their job to know.*

One young person said he learned about rights from other young people and from a children's rights booklet belonging to another young person. One young person made an assessment about the quality of rights information available to him when he reported that he thought the information in his current residential unit welcome book was 'rubbish' while the information in his previous unit welcome book was good.

*I: Did anyone ever sit down and talk to you about the rights information that you read?*

*YPG: Naw. Other boys in here's got a rights officer. I've not. Ah've not been told about rights.*

*I: You haven't?*

*YPG: Naw. I learned off other boys.*

In general, the young people participating in the research clearly demonstrated a lack of awareness about the UNCRC and about how to obtain information to inform their understanding about their participatory, protection and provision rights. The results from the young people's interviews suggest that despite UNCRC article 42, this article had not been implemented sufficiently to ensure that these young people at residential school developed an awareness and understanding about the UNCRC in a manner that would, in turn, permit them to realize those entitlements fully while at the residential school. A possible consequence for the young people participating in this research was that they were unable to claim their rights or express concerns about possible rights violations.

### **5.3.3 Advocacy**

While few young people stated they had received visits from their children's rights officers, no young person could name his children's rights officer and only one young person could remember receiving written information from a children's rights officer. A national advocacy agency provided contracted services on site for two days each week, however, no young person could name that contracted worker or the agency's

regional workers and many young people didn't recognize the advocacy agency's name. All the young people reported they had not received written information from the advocacy agency about their rights nor could they indicate where such information might be obtained.

*I: Have you seen your children's rights officer?*  
*YPH: Aye.*  
*I: Recently?*  
*YPH: Recently, no.*  
*I: No?*  
*YPH: No.*  
*I: When was the last time do you think?*  
*YPH: When I was in [the other unit] and that was a good, it was near enough a year now.*  
*I: A year ago?*  
*YPH: I think.*  
*I: What about [the advocacy agency] – have you heard about [the advocacy agency]?*  
*YPH: Aye – I've no' really seen much of them either.*  
*I: Do you know who the worker is?*  
*YPH: No.*

The result that young people had little or no knowledge about the two advocacy services – the children's rights services and the national advocacy services – suggests that these services had difficulty meeting their obligations to ensure young people became knowledgeable about their rights. The outcome of this research also suggests that the residential school did not adequately ensure that young people received these services and that the residential school may have assumed an adequate level of advocacy service provision to these young people without conducting a service evaluation informed by direct input from young people.

#### **5.3.4 Disseminating UNCRC information: domestic regulatory provisions**

The following analysis examines the predominant domestic regulatory framework informing the provision of residential services to young people, identifying what, if any, statutory provisions make direct reference to disseminating UNCRC information to young people. The regulatory framework chosen as most relevant to this research includes: the *Children (Scotland) Act 1995* (1995 Act), the *Regulation of Care (Scotland) Act 2001* (2001 Act) and their associated regulations, guidance and standards.

The 1995 Act and its accompanying *Regulations and Guidance* (1995 Act:RG) govern the provision of services to young people placed at residential schools. The 1995 Act, which came into full force on April 1, 1997 accompanied by four volumes of *Regulation and Guidance*, is the primary domestic legislation addressing welfare and justice issues that concern young people who live in government care. The 1995 Act: RG exists as a statutory instrument designed to provide explicit information about how the Scottish Government expects local authorities, residential schools and the Children's Hearing System to fulfill their duties to young people (1995 Act: RG). Neither the 1995 Act or its *Regulations and Guidance*, however, begin with a section on 'guiding principles' or a section stating that service providers must 'have regard to any relevant provisions of the United Nations Convention on the Rights of the Child' (see *Commissioner for Children and Young People Act 2003*, Section 5(2)). This legislation lacks a definitive statement about the UNCRC, raising issues about whether it fully complies with the UNCRC and whether, in turn, it adequately provides for the dissemination of UNCRC information.

Managers of residential establishments must prepare a statement of functions and objectives, which 'might' incorporate Skinner's (1992) eight principles (1995 Act:RG). While the required statement of functions and objectives provides an opportunity for residential establishments to refer to the UNCRC directly within such a statement, there is no statutory obligation to do so. One of the eight Skinner principles, entitled 'Rights and Responsibilities' (Skinner, 1992), is quoted directly in the 1995 Act:RG.

Children and their parents should be given a clear statement of their rights and responsibilities. They should have a confidential means of making complaints. They should be involved in decisions affecting them and the running of the home. Their rights should be consistently respected. (1995 Act:RG, section 23)

While this paragraph represents the spirit of UNCRC articles 42 and 13, there is no clear obligation to provide such a statement, to refer to the UNCRC nor does accompanying guidance exist about how the word 'rights' must be interpreted. Within section 23, for example, there are statements that range from the specific ('they should have a confidential means of making complaints') to the general ('children and their parents should be given a clear statement of their rights and responsibilities'). The lack of a specific reference to the UNCRC makes the interpretation of this section, and

what is meant by ‘rights’, difficult for service providers to interpret. The following section 24 appears as an adaptation of recommendation 16 within Skinner (1992), which recommendation acknowledges that children need to understand the ‘practical arrangements’ for exercising their rights.

The home or responsible organization should produce a statement of the rights and responsibilities of children residing in their establishments and convey to children the practical arrangements for them to exercise their rights and responsibilities – notably rights to be involved in decisions about their own lives and the running of the home, their access to a general practitioner, who may, or may not, be the visiting GP, other health professionals and independent advocates. The home or responsible organization should identify the rules of the home and the responsibilities of the children, for instance in maintaining good behaviour. Staff should foster a culture in which children are encouraged to express their views. (1995 Act:RG, section 24)

Again, it is not apparent from this paragraph what informs its content – the section suggests a narrow, and very specific, interpretation of young people’s rights at the residential school. The introduction of the word ‘responsibilities’, such as maintaining ‘good behaviour’, implies that the section may not intend the word ‘rights’ to be associated with the UNCRC. While the earlier Skinner (1992) principles were innovative and instrumental in advancing the concept of rights within the 1995 Act:RG, the 1995 Act:RG do not sufficiently embed UNCRC articles 13 and 42 and make clear what principles are needed to inform a ‘statement of rights’ provided to young people at the residential school.

Young people at the residential school may attend under the supervision of local authority social work departments, which have qualified duties under the 1995 Act to implement relevant statutory provisions, often through direct social worker involvement. In partial recognition of its duties under UNCRC articles 13 and 42, the 1995 Act:RG impose a duty on local authorities to ensure that children (and their parents) receive a ‘clear statement of their rights and responsibilities’ although it is not apparent what ‘rights’ this section refers to. It is not explicit within this provision how local authorities must disseminate ‘rights’ information, regardless of how it is interpreted, to young people at residential school.

The predominant legislation informing the care young people must receive when attending a residential school is the 2001 Act, which arose from a White Paper entitled *Aiming for Excellence: Modernising Social Work Services in Scotland*. This

legislation has particular relevance for young people residing at or attending residential schools, however, it does not refer explicitly to the UNCRC, other human rights instruments or to the distribution of rights information. The 2001 Act's section 5 obliges Scottish Ministers to prepare and publish *National Care Standards* (NCS), through a consultation process with young people. The NCS do not mention the UNCRC nor require dissemination of rights information to young people living in residential care environments.

In an implicit reference to the UNCRC, however, the NCS state that 'they reflect the strong agreement that you have **rights** [author emphasis] and that your experience of receiving services is very important and should be positive' (Scottish Commission for the Regulation of Care, 2005: 6). While the main principles and 'rights' referred to in the introduction and providing the framework for the NCS are described as: 'dignity, privacy, choice, safety, realising potential and equality and diversity', it is not apparent what informs the identification of these rights, whether they have their origins in the UNCRC and what obligations exist to ensure that information about those principles and rights is disseminated to young people (Scottish Commission for the Regulation of Care, 2005).

The NCS contain generalized statements affirming that young people possess rights and that they know about their rights and responsibilities (Scottish Commission for the Regulation of Care, 2005). It is unclear from these statements what 'rights' are referred to, what informs the reference to 'rights', how young people are to 'know' about them and what constitutes young people's 'responsibilities'. Standard 9 makes statements ranging from the general, such as '[y]ou know that staff understand the rights of children and young people and know what this means in practice' to specific pronouncements (Scottish Commission for the Regulation of Care, 2005: 29). It is a difficult standard to measure as it requires young people to assess what *staff understand* about 'rights' and how *staff implement* 'rights' in practice, without explaining what informs young people's 'rights'. While standard 9 states that 'staff explain your rights and responsibilities in a way that you can easily understand', it is not clear what 'rights' will be explained to young people and what staff understand about young people's entitlements (Scottish Commission for the Regulation of Care, 2005: 29).

The NCS stipulate that young people must have access to information about their local children's rights officer and other representative services, in a form understandable to young people, without stating that young people must have access to information about the UNCRC (Scottish Commission for the Regulation of Care, 2005: 43). There is no reference in the NCS to the statement on rights that residential schools must provide to young people under the 1995 Act:RG. Furthermore, the NCS recognize that children's rights services may not exist in all local authorities, limiting young people's access to information about their rights.

In anticipating that young people may not understand what 'advocate' or 'children's rights officer' means, and what services they can provide, an 'advocate' is defined as 'person who assists a child or young person to put forward their views or makes their case on their behalf' while a 'children's rights officer' is defined as 'a social worker employed by the local authority to **safeguard the rights** [author emphasis] of all children and young people living in the local authority area' (Scottish Commission for the Regulation of Care, 2005: 44). There is no connection made between advocate and children's rights services as services disseminating rights information or the acts of safeguarding young people's UNCRC entitlements and disseminating information about the UNCRC. The definitions, in other words, neglect to stipulate that an advocate or children's rights officer can, and should, provide information about the UNCRC to young people in accordance with articles 13 and 42.

Young people at residential school often have contact with the *Children's Hearing System* (CHS). By stating that 'States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention' (UNCRC article 4), questions arise as to whether the CHS fulfils its obligations, as a legislative and administrative process, in a manner that is compliant with article 4 and whether it has a statutory duty under domestic legislation to implement articles 42 and 13. The 1995 Act stipulates that it is informed by three primary principles with origins in the UNCRC, namely: young people's welfare is paramount, young people's views must be taken into account and courts/Children's Hearings must adhere to the principle that making an order should only occur when it is better than not making an order (Cleland, 1995: 7-8). There is no statutory requirement, however, that key roles associated with the CHS – the roles of children's hearing panels (Panels), children's principle reporters (Reporters) and

safeguarders – have responsibility for ensuring that young people in contact with the CHS are informed about the UNCRC.

The CHS's unique role is that its Panels are mandated to make decisions concerning the care requirements of young people who offend and young people against whom offences are committed. In carrying out these responsibilities, the Panels must consider the young people's welfare as paramount (see 1995 Act, Section 16). While young people not only have a right to attend 'all stages' of their own Panel, subject to certain provisions within the 1995 Act, they have an obligation to attend (see 1995 Act, Section 45). The 1995 Act provisions, however, do not ensure that the Panels provide young people with information about the UNCRC in accordance with articles 42 and 13. The Reporters, as well, are key figures within the CHS who determine young people's involvement in the hearing process. While under the 1995 Act young people are referred to the CHS by Reporters when it is deemed that compulsory measures of supervision may be necessary, this legislation lacks specific legal requirements that will ensure Reporters inform young people about the UNCRC.

The Panels, or a Sheriff, may appoint a safeguarder – a person designated to 'safeguard the interests of the child in the proceedings' (1995 Act, Section 41(1)). The 1995 Act makes the safeguarder appointment consistent with implementing UNCRC article 3 (the 'best interests' principle). Tisdall *et al.* (2002: 390) state that safeguarders 'make a report on a child's best interests and this is interpreted to include children's views' although, again, there is no statutory provision requiring that safeguarder representations of children's interests is informed - partially or in full - by children's views nor are safeguarders required to ensure children receive information about the UNCRC within this context. Furthermore, there is no statutory requirement for safeguarders to provide information, in general, about the UNCRC to children as required under UNCRC articles 13 and 42.

While there is a theoretical opportunity for young people to acquire UNCRC information and experience the implementation of their rights through their participatory involvement in the CHS, as required under articles 13 and 42, there are no statutory obligations associated with the CHS that ensure the dissemination of UNCRC information. The implication for young people who do not receive information about the UNCRC, such as their participatory rights (see chapter 2), is



that they may not claim those entitlements or recognise rights violations that they may want to remedy through complaints processes.

### **5.3.5 Disseminating UNCRC information: central government policy<sup>35</sup>**

As stated earlier, the UN Committee highlighted that it is essential for States to make certain that domestic legislation is compatible with the UNCRC and, secondly, that there is coordinated policy between and within all levels of government (Hodgkin and Newell, 2002: 53). As there is a dynamic interplay between domestic legislation and central government policy, domestic legislation needs to embed UNCRC principles and standards to ensure such policy development is compatible with the UNCRC while central government policy can be instrumental in guiding legal interpretations that reflect UNCRC principles and influence new legislative developments. Central government policy, it is argued, assumes a substantive role in directing how, or if, local governments will reflect UNCRC principles within their policies affecting the lives of children, such as those at residential school. Situated within this context, this section maps Scottish Government policy statements made within key reports and initiatives since 1997 (when the *Children (Scotland) 1995 Act* was enacted), examining those statements for references to the UNCRC and, more specifically, to the dissemination of UNCRC information.

At the time of Scottish devolution in 1997, a Minister for Children's Issues in the Scottish Office initiated and developed a *Child Strategy Statement* 'to ensure the Scottish Office Departments identified and took proper account' of children's interests when developing policy (Scottish Office, 1997; reissued 2000). This statement described the legislative and policy context, aligned with emerging key issues, for the renamed Scottish Executive departments to consider when developing policy affecting children's lives. When established, the Scottish Parliament and Scottish Executive identified children's issues as a key priority and took up the *Child Strategy Statement* by using it to inform subsequent initiatives, including the goal of defeating child poverty in Scotland.

In its adopted form, the *Child Strategy Statement* obligates central government departments to consider policy impact on children prior to implementation, thereby

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<sup>35</sup> For purposes of this research, 'policy' is defined as statements made within central government reports.

signalling that children's issues must exist as a priority (Scottish Office, 1997; reissued 2000). This policy initiative made a clear and explicit statement that the UNCRC would inform the Scottish Executive direction in meeting its obligations to young people, providing direction as to how departments could meet this target (Scottish Office, 1997; reissued 2000). In promoting the *Child Strategy Statement*, the Scottish Office stated that taking account of children's views is one way to inform the possible impact of policies on children before those policies are implemented (Scottish Office, 1997; reissued 2000).

Within the *Child Strategy Statement*, in a section entitled 'The Legislative and Policy Context', the UNCRC is described as 'one of the primary pieces of legislation' underpinning the Scottish Executive's objectives and its commitment 'to implementing all its articles through policy and practice development, subject to the interpretation and reservations made to that Convention' (Scottish Office, 1997, reissued 2000, para 7). The *Child Strategy Statement* referred to minimum standards the UNCRC identified within the realm of children's civil, political, economic, social and cultural rights, suggesting that the standards could be categorized into three substantive areas in relation to provision, protection and participation rights (Scottish Office, 1997; reissued 2000). As a mechanism to implement the strategy, the Scottish Executive advised it was appropriate to consult directly with children, possibly with advocacy agencies, but cautioned against permitting the consultation results to consist of adult interpretations of children's views (Scottish Office, 1997; reissued 2000). There was no reference in the *Child Strategy Statement*, however, to UNCRC article 42 or disseminating UNCRC information.

In 2001, the Scottish Executive released a report entitled *For Scotland's Children: Better Integrated Children's Services* (2001 Report), which commented on the need for adults to view children as 'active agents' while also acknowledging children's 'best interests', human rights and entitlements as service users.

In the best of recent research and in the good professional practice identified in this report there is a **developing view of the child as an active agent** [author emphasis] in their world and a commitment to empowerment as a key in any change or recovery process. A view is emerging across policy and practice that every child is an individual, that their best interests demand that we view their lives holistically and that in doing so we articulate and accord them a set of **intrinsic human rights** [author emphasis] as well as rights as service users. (Scottish Executive, 2001: 42)

Issued subsequent to the *Children (Scotland) Act 1995* enactment in 1997, this 2001 Report lent support to the *Child Strategy Statement* by providing direction to policy makers and practitioners to define and engage in rights-based approaches to service provision, broadening the scope of policy and service provision (Scottish Executive, 2001). The 2001 Report stipulated that the United Kingdom, as a signatory to the UNCRC, was obliged to promote and implement provisions that support views of young people as citizens with rights.

The UK's commitment to the United Nations Convention on the Rights of the Child should mean that a view of the child as a citizen with rights is being actively promoted and implemented by Government and by service providers across sectors. (Scottish Executive, 2001: 19)

This 2001 Report observed that the voluntary sector had expressed concern about the implementation and monitoring of the UNCRC, noting that the Scottish Executive and 'political spectrum' recognised that 'we' need to improve commitments to children at the Ministerial level, 'child-proof' policy at all government policy levels and examine the need for a children's commission office (Scottish Executive, 2001). The 2001 Report asked 'how broadly is the concept of children's rights shared and understood?' and 'how good are we at monitoring and implementing the key policy frameworks for children and young people which we have adopted?' (Scottish Executive, 2001: 46). While there was no direct reference to disseminating UNCRC information, the Scottish Commissioner for Children and Young People office, established in 2005, subsequently assumed that responsibility under its statutory mandate.

The Scottish Executive undertook a major review into child protection arrangements in Scotland following the horrific death of 3-year-old child in 2000. In 2001 the Scottish Executive announced its review as one intended to promote the reduction of abuse and neglect of children and to improve services to children who may have been abused or neglected. A multi-disciplinary team began the review, which involved employing a number of children's charities to obtain young people's views and to incorporate those views into the report. The review was informed, as well, by international perspectives on child protection 'to provide the Child Protection Review with information and ideas from other countries to stimulate learning and thinking about how the Scottish system and approach to child protection might be improved' (Report of a Seminar, 2002). In response to its inquiry, the Scottish Executive

published a report entitled *It's Everyone's Job to Make Sure I'm Alright': Report to the Child Protection Audit and Review* (2002 Review).

All children in Scotland deserve to be cared for and protected from harm and to grow up in a safe environment where their **rights** [author emphasis] and needs are respected (Scottish Executive, 2002: 2).

The 2002 Review stated that while professionals focused on children's 'best interests', they often did not consult with young people to determine those 'best interests' and that young people's views were often not fully considered at case conferences or were presented through third parties (Scottish Executive, 2002). According to the 2002 Review, young people interviewed by adults from voluntary agencies indicated that professionals did not always listen to them (Scottish Executive, 2002). The 2002 Review concluded that many adults and young people lacked confidence in the child protection system and were reluctant to report their concerns about abuse or neglect, with many children not telling adults they are being abused (Scottish Executive, 2002). The 2002 Review made several recommendations, including one that made a specific reference to children's rights.

Local authorities' plans for integrated children's services, as the overarching plans and drivers for all local children's services, should develop positive childhood initiatives. These should be led by a **children's rights** [author emphasis] rather than a public service perspective and should promote every child's rights to life, health, decency and development. **The Executive should support this with a public campaign** [author emphasis]. (Scottish Executive, 2002, Recommendation 10)

In 2004 the Scottish Executive developed and published two documents entitled *Protecting Children and Young People: The Charter* (Charter) and *Protecting Children and Young People: Framework for Standards* (Framework), products of the previously-mentioned child protection audit and review. The Charter, commissioned by the Scottish Executive and developed by the non-governmental agency Save the Children, resulted from consultation with 83 young people, input from professionals and other related research during 2003. The Charter evolved from interviewing young people 'who have experienced the need to be protected and supported – but what they are saying is how any child facing difficulty could expect to be treated (Scottish Executive, 2004a: 4).

The Scottish Executive promoted the Charter, consisting of 13 statements from children, as a message for all adults, including service providers, about what is relevant to children for protection. A statement in the Charter indicates that ‘the United Nations Convention on the Rights of the Child (UNCRC) sets out the wider rights of all children and young people’ (Scottish Executive, 2004a: 4). The Charter pledged that those helping young people would ‘share information to protect [them]’ (Scottish Executive, 2004a: 3), however, there is no reference to ensuring that young people receive information about the UNCRC. When the Scottish Executive produced the Charter in April 2004, the Framework was also developed for children, adults and agencies to support putting the Charter principles into practice. In promoting the Charter, the Framework made a particular reference to the UNCRC and its principles, noting that the UNCRC principles inform the statements in the Framework (Scottish Executive, 2004b).

All children and young people in Scotland have the right to be cared for and protected from harm and to grow up in a safe environment in which their rights and needs are respected. The welfare of children is paramount. (Scottish Executive, 2004b: 9)

The Framework’s preamble states that its evidence resulted from consideration of research findings, child death reviews, consultations with key stakeholders and legislation (Scottish Executive, 2004b). The Framework itself, according to the Scottish Executive, was intended to sit within a broader framework of development initiatives directed at improving child services and standards along with proposed multi-disciplinary inspections (Scottish Executive, 2004b). This Framework, in particular, emphasizes the role parents, schools and youth groups have to play in safeguarding and protecting young people from harm while stressing a multi-disciplinary approach and the ‘fundamental duty of care’ all adults have towards young people (Scottish Executive, 2004b: 5).

The Scottish Executive claimed that the approach to raising awareness, identifying and instituting good practice along with proper procedures would continue throughout the ensuing two-year period (Scottish Executive, 2004b). In identifying the relevant legislation and regulations informing this initiative, the Framework states that ‘legislation and practice in child protection are underpinned by principles derived from Articles of the UNCRC ratified by the UK Government in 1991’ (Scottish Executive, 2004b: 26). The principles identified are that:

- each child has a right to be treated as an individual;
- each child who can form a view on matters affecting him or her has the right to express those views if he or she so wishes;
- each child has the right to protection from all forms of abuse, neglect or exploitation. (Scottish Executive, 2004b: 26)

While the second principle constitutes an overarching participatory principle, it may have been clearer if the Framework had fully endorsed all participatory principles within the UNCRC, including young people's right to receive information and to participate in judicial and administrative proceedings. Against the backdrop of its stated principles, the Framework describes its functions as to:

- make it clear what children and their families can expect from those professionals and agencies responsible for the protection of children reflecting commitments made to children in the Charter;
- set out the practice required from those agencies and professionals to deliver against those commitments;
- provide a framework for agencies' own evaluation of their performance; and  
help inform the development of multi-disciplinary inspections of child protection services. (Scottish Executive, 2004b: 7-8)

Amongst these stated functions, however, there is no function described as disseminating information about the UNCRC.

Also in 2004, the Scottish Executive issued their report entitled *Getting it Right for every Child: A Report on the Responses to the Consultation on the Review of the Children's Hearing System* (2004 Report). Within this 2004 Report, the Scottish Executive outlined a number of objectives that the Children's Hearing System should be trying to achieve, which included such objectives as engaging 'with the child and seek[ing] the child's and parent's views'; respecting young people's 'rights' and making the system compatible with the 'European Court of Human Rights/United Nations Charter' (Scottish Executive, 2004c). While according to the 2004 Report, 88% of respondents to the consultation indicated they agreed with these objectives, there was no reference to the UNCRC or to ensuring the dissemination of information about the UNCRC.

In 2006, the Scottish Executive generated a report entitled *Extraordinary Lives: Creating A Positive Future For Looked After Children and Young People in Scotland*

(2006 Report), which report centred upon children in government care. This 2006 Report makes specific reference to the UNCRC.

Attention to the rights of children evolved in the 20th century. They were set out in the United Nations Convention on the Rights of the Child (1989), which came into force in the United Kingdom in 1991. All of the rights contained in the Convention are meant to be enjoyed by every child without discrimination. The Convention is a wide-ranging document, which includes concerns about the welfare of children and child protection as well as giving voice to citizenship claims on behalf of children. Article 12 has particular importance for looked after children...

Ensuring that looked after children are heard and consulted about all aspects of their lives remains a critical challenge, vital for their current and future welfare and happiness. (Scottish Executive, 2006, para 4, 5)

While this 2006 Report clearly endorses the UNCRC, it must be inferred that it is critical to disseminate information to young people about the UNCRC as there is no explicit statement to that effect.

### **5.3.6 Disseminating UNCRC information: domestic human rights legislation**

This section begins by examining human rights legislation, enacted in Scotland subsequent to other key domestic legislation affecting young people's lives, and limits itself to exploring whether such legislation reflects UNCRC article 42. In arguing that there is a need to ensure 'first and second level' compliance with article 42 by making the regulatory framework compatible with what is required under the UNCRC, the analysis examines the *Human Rights Act 1998* (HRA 1998), the *Scotland Act 1998* (SA 1998), the *Commissioner for Children and Young People (Scotland) Act 2003* (CCYPA 2003) and the *Scottish Commission on Human Rights Act 2006* (SCHRA 2006) as the pre-eminent 'umbrella' human rights legislation within Scotland informing how other legislation, such as the 1995 Act, should be interpreted. While it can be argued that the very existence of domestic human rights legislation can be seen as implementing article 42, questions arise as to whether the obligation to disseminate UNCRC rights information is embedded within human rights legislation.

Freeman (2002) argues that English law does not always uphold the freedom of expression right for children, for example, citing how schools often place restrictions on children's freedom while Lansdown (2002: 283) observes that the 'widespread

formal endorsement of the human rights of children... is rarely matched by a corresponding translation of rights into law, policy and practice'. Cleland and Sutherland (1996: 255), as well, argue that 'Scots law falls short of the standards set out in the [UNCRC] in a number of respects'. While general law and policy relating to children's lives may not adequately reflect UNCRC standards, questions arise as to whether domestic *human rights* legislation enacted in Scotland captures UNCRC principles as this is the law that informs how other legislation must be interpreted and that may inform whether amendments are required to make child-related legislation compatible with UNCRC standards. Human rights legislation also has implications for how policy is developed and for how practice evolves - factors ultimately affecting young people's everyday lives at residential school.

The CCYPA 2003 is the most precisely articulated legislation recognizing children's rights under the UNCRC and the legislation that specifically makes reference to the Commissioner's duty to 'promote awareness and understanding of the rights of children and young people'.

4. Promoting and safeguarding rights
  - (1) The general function of the Commissioner is to promote and safeguard the rights of children and young people;
  - (2) In exercising that general function the Commissioner is, in particular, to-
    - (a) promote awareness and understanding of the rights of children and young people;
    - (b) keep under review the law, policy and practice relating to the rights of children and young people with a view to assessing the adequacy and effectiveness of such law, policy and practice;
    - (d) promote, commission, undertake and publish research on matters relating to the rights of children and young people. (CCYPA, 2003)

In promoting rights awareness and understanding, the Commissioner must undertake these functions having 'regard to any relevant provisions of the United Nations Convention on the Rights of the Child' and, in doing so, take account of the views of children 'on all matters affecting them' with 'due allowance being made for age and maturity' (CCYPA 2003, Section 5(2)). It is significant that SCCYP exists within Scotland under this legislation as human rights institutions - human rights commissions, ombudsman offices and children's independent offices - have been endorsed by the UN and the UN Committee as essential for protecting and promoting



human rights (see Paris Principles; UN General Assembly, 1993; Hodgkin and Newell, 2002).

It has become increasingly clear that independent institutions dedicated to the promotion and monitoring of children's rights are essential to the creation of cultures which take those rights seriously. (Lansdown, 2002: 285)

In the expressed intent within the CCYPA 2003 to promote and protect the rights of all young people, the duties for implementing its statutory provisions rest with the Commissioner who must use her remit to change the attitudes of direct service providers and policy makers while encouraging compliance with UNCRC principles largely through educational means. This approach includes promoting rights awareness among children and others, involving children in her work and consulting with organizations that work on children's behalf. The Commissioner's mandate also requires her to review legislation, policy and practice through a child rights lens and to evaluate their effectiveness in promoting children's entitlements.

A strict interpretation of the CCYPA 2003 suggests that the Commissioner may scrutinize such legislation as the HRA 1998 and the SA 1998, possibly requiring amendments to ensure that the principles within those acts are consistent with the UNCRC. It is evident that there is compliance, and the potential for compliance, with articles 42 and 13 on several levels. The CCYPA 2003's very existence promotes UNCRC awareness while the CCYPA 2003 itself makes explicit provision for disseminating UNCRC information and provisions within the CCYPA 2003 explicitly require UNCRC implementation through which children will learn about their entitlements.

The HRA 1998 does not contain sections similar to the CCYPA 2003 in which specific duties arise in relation to disseminating information about the UNCRC or the ECHR. The HRA 1998, however, through its very existence can be seen as promoting awareness and understanding about certain rights affecting the lives of all persons living within Scotland without making direct reference to the UNCRC. As domestic legislation, the HRA 1998 is guided by the ECHR, which does not specifically refer to children's rights or the UNCRC, although ECHR principles inform any decisions a court may make in its consideration of allegations arising under the HRA 1998. Fortin (2002: 133) remarks that the 'Human Rights Act provides an exciting challenge for all those who work closely with children'. The HRA 1998 makes reference to a

principle, loosely compatible with UNCRC article 42 and article 13, that recognises the importance of individuals receiving information without, however, making explicit reference to the entitlement to receive information about human rights embedded within international human rights conventions such as the UNCRC.

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. (European Convention on Human Rights, Article 10)

While the entitlement to receive information *may* be interpreted to include children's right to receive information about the UNCRC, and their other entitlements such as those prescribed in law, without an explicit provision it is possible this obligation may be overlooked. At the same time, the HRA 1998 refers to ECHR articles that provide overriding state obligations such as article 14 'Prohibition of Discrimination' and article 17 'Prohibition of Abuse of Rights', which presumably give weight to young people's entitlements, including but not limited to, their 'freedom of expression' and their entitlement to receive information about the UNCRC under the HRA 1998 *and* article 13 of the UNCRC.

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the convention. (ECHR, article 17)

At the time of writing, the SCHRA 2006 existed as new legislation in the implementation stage and a new Scottish Human Rights Commission was being established. Under SCHRA 2006 the Commissioner has a general duty to 'promote awareness and understanding of, and respect for, human rights' (SCHRA, 2006, Section 2(2)), which the SCHRA 2006 states are Convention rights within the meaning of the HRA and 'other human rights contained in any international convention, treaty or other international instrument ratified by the United Kingdom' (SCHRA, 2006 Section 2(2)(b)). Under this legislation, the Scottish Human Rights Commissioner may promote this general duty through various means: by publishing or

general dissemination of information, by providing advice or guidance, through research and by providing education or training (SCHRA, 2006).

While there is no direct reference to distributing information about the UNCRC, this section could be interpreted as one requiring the Commissioner to promote awareness and understanding of the UNCRC, a duty that is compatible with the Commissioner's responsibilities under the CCYPA 2003. Similar to the CCYPA 2003, the SCHRA 2006 requires the Commissioner to 'monitor the law of Scotland and the policies and practices of public authorities' (SCHRA, 2006, Explanatory Notes) and to recommend changes if necessary, indirectly influencing the dissemination of rights information. Again, by its very existence this legislation raises awareness about the existence of children's human rights.

The SA 1998 is the legislation granting the Scottish Parliament the authority to make laws within Scotland, including any laws affecting the lives of children at residential school. While the SA 1998 does not directly refer to the UNCRC, the SA 1998 does contain two sections that make specific reference to 'Convention Rights' and that place explicit duties upon the Scottish Parliament and the Scottish Executive in relation to human rights.

29(1) An Act of the Scottish Parliament is no law so far as any provision of the Act is outside the legislative competence of the Parliament.

(2) A provision is outside that competence so far as any of the following provisions apply –

(d) it is incompatible with any of the Convention Rights or with Community Law.

And:

57(2) A member of the Scottish Executive has no power to make subordinate legislation, or to do any other act, so far as the legislation or act is incompatible with any of the Convention Rights or with Community Law. (The Scotland Act, 1998).

The SA 1998 is not explicit about what constitutes 'Convention rights' although the HRA 1998 defines 'Convention rights' as the rights and fundamental freedoms articulated within the ECHR (see HRA 1998, Section 1) and lists those rights in the HRA 1998's Schedule 1. By implication, it appears that the SA 1998 does not use the term 'Convention Rights' to include the UNCRC – a commentary on the lack of significance given to those 'Convention Rights' most relevant to children. On the

other hand, since the CCYPA 2003 was enacted subsequent to the SA 1998, imposing duties to promote understanding and awareness about the UNCRC, it is possible that the 'Convention rights' reference in the SA 1998 may be interpreted to incorporate the UNCRC. Again, by its very existence this legislation may be interpreted as raising awareness about human rights although, unlike the CCYPA 2003, HRA 1998 and the SCHRA 2006, it is not explicit about existing human rights nor does it require the dissemination of information about human rights.

This legislation, which predates the CCYPA 2003, sits alongside the CCYPA 2003's legislative mandate to review legislation and policy through a child rights lens informed by the UNCRC. The SA 1998 may be reviewed by the Scottish Commissioner for Children and Young People and the Scottish Human Rights Commissioner, both of whom may find that the SA 1998 incorporates tensions within its own provisions - tensions reflected in sections that are not compatible with the UNCRC - and that those sections are also incompatible with other, and more recent, human rights legislation. If the SA 1998 requires Parliament and the Scottish Executive to pass laws that are compatible with the ECHR, and the ECHR is explicit about person's entitlements to freedom of expression and to receive information, including information about the UNCRC, then presumably all legislation and policy within Scotland that is relevant to children must comply.

## **5.4 CONCLUSION**

An underlying assumption in this chapter is that young people, as social actors, need to develop an awareness and understanding about their rights, as articulated by the UNCRC for example, for those rights to benefit them to the fullest extent possible (Hodgkin and Newell, 2002). It follows that unless young people understand their entitlements, and experience their implementation, young people may be prevented from claiming rights violations and seeking remedies for rights infractions. By beginning from the standpoint of young people at residential school, the research discovered that the majority of young people participating in this research knew little or nothing about their rights and that they lacked an understanding about the relationship between their rights and their everyday worlds. These findings are consistent with studies in other countries (see Standing Senate Committee on Human Rights, 2007; Kilkelly *et al.* 2004; Pithouse and Crowley, 2007).

While there was evidence that some young people at residential school received verbal and textual rights information, it was not apparent from young people's reports that this information originated from the UNCRC, and most young people could not recall what the information actually represented. Some young people knew about textual 'rights' information, located in their unit welcome books or in a poster on their unit wall, however, this awareness did not equate with their *understanding* about the information, the UNCRC or how young people might realise, and claim, their rights in their everyday lives. It is reasonable to conclude, therefore, that there was insufficient dissemination of UNCRC information to these young people in ways that they could understand and relate to their daily experiences and that adults with responsibilities for young people may not have possessed an adequate understanding about their obligations under the UNCRC.

It was also apparent from the research that dissemination about 'rights' information occurred primarily within the residential school, with young people receiving little or no information about the UNCRC from outside sources, such as social workers, children's rights and advocacy services. The research showed that most young people participating in the study lacked a uniform understanding about where they might have obtained UNCRC information they considered pertinent and accessible; they found it difficult to identify a broad range of adults who could have provided information either in written or verbal form. Some young people identified social workers as persons from whom they could possibly obtain information about their rights while young people knew very little about the services often relied upon as instrumental in disseminating rights information, such as children's rights and advocacy services. Young people's failure to receive information about the UNCRC, in ways meaningful to them, may have prevented them from claiming breaches of rights and, more specifically, from accessing complaints processes to seek redress for rights violations.

It was evident from this research that young people at residential school had varying understandings about their rights, which appeared to depend upon such factors as the residential unit they resided in, their interest in learning about rights, their time in residential care, the accessibility of UNCRC information and the initiative of adults in making that information meaningful and relevant to the everyday lives of young people. It should not be presumed, therefore, that young people accessing children's services, experiencing the Children's Hearing System and being placed at residential school have a well-developed, enhanced understanding of key UNCRC principles and

how they relate to their immediate worlds. From the reported experiences of these young people, it is possible to conclude that young people need to acquire knowledge about the UNCRC throughout their childhood and from daily encounters in their private and public worlds to facilitate a developing awareness about the UNCRC so that they are not entirely dependent upon the adults around them, who may or may not have a vested interest in enhancing their understanding.

It is significant that few young people participating in this research knew about children's rights services, the national advocacy organisation and the individuals associated with those services. Independent advocacy may act as a safeguard for young people denied access to UNCRC information by direct service providers concerned about the perceived 'power' given to young people informed about possible rights violations. While service providers may want to restrict young people's access to UNCRC information to prevent young people from making claims about breaches of rights, independent advocates can ensure that young people receive the information they require and provide enhanced support to young people. The particular role of independent advocacy in disseminating UNCRC rights information in meaningful ways to young people may complement or enhance the distribution of such information by social workers, residential staff, educators and other services providers. It is disconcerting, therefore, that young people taking part in this research had little or no relationship with advocates representing independent advocacy services. The lack of a regulatory framework mandating that children's rights and advocacy services must exist, and must be accessible to young people at residential schools, however, restricts this role as evidenced by what young people reported during the research.

The regulatory framework examined does not specifically refer to the UNCRC, require dissemination about the UNCRC, provide clear guidance on training required for those adults with responsibility for disseminating information or provide criteria describing how adults can ensure a reasonable level of UNCRC understanding among young people at residential school. As the analysis highlighted, there is a noticeable gap between the practice of disseminating UNCRC information, the regulatory framework provisions and the UNCRC disseminating/implementation articles, suggesting that the regulatory framework provisions are not compliant with the UNCRC or sufficiently robust to ensure proper dissemination of UNCRC information

to young people. The lack of specific reference to the UNCRC within key statutory instruments responsible for children's services and the Children's Hearing System, as illustrated by the analysis, makes it unclear to residential schools and local authorities, responsible for generating and distributing statements on rights, what 'rights' information needs to be disseminated.

It is also apparent from this research that the domestic regulatory framework most relevant to young people's daily lives establishes *powers* relating to the dissemination of rights information and to its critical dimension - advocacy services - but not *duties*, with the result that young people at residential school do not have a domestic legal entitlement to receive information about the UNCRC, to receive information about how to *exercise* their rights or to access independent advocates (who can inform young people about the UNCRC). The research indicates that the regulatory framework directly affecting children's services is not entirely compatible with significant Scottish Government policy statements, published in recent years and informing the development of children's services provision. In recent years, however, the Scottish Government has introduced human rights legislation within Scotland which potentially has a key role to play, through its associated commissions, in raising these issues while ensuring the distribution of human rights information. The *Commissioner for Children and Young People (Scotland) Act 2003* and the *Scottish Commission on Human Rights Act 2006*, in particular, contain explicit statutory provisions for ensuring the dissemination of information about human rights while also providing the statutory authority to influence legislative changes that may alter policy and practice at the local level.

States throughout the world have highlighted the importance of linking legal reform to institutional restructuring, government and other body initiatives, resource allocation, monitoring, research, community outreach and capacity building (UNICEF, 2004). UNICEF (2004) found that some States had established coordinating mechanisms at national and local levels, finding that harmonization was essential for making governments 'work for children' and that flexibility among models was necessary (UNICEF, 2004). As subsequent chapters will show, young people's lack of understanding about their rights has consequences for young people's experiences with expressing their concerns, for complaints processes intended to respond to those concerns and for service providers who must interpret and implement the statutory instruments in ways that are compatible with the UNCRC. This lack of understanding

may constitute a possible barrier to hearing the voices of young people, including those voices reflecting concerns about everyday matters important to young people. Young people cannot claim their rights or allege violations of rights without knowing what those rights are; young people who fail to realise fully their rights may experience sustained rights infractions, possibly unknown and unseen to those individuals with the power to make a difference in young people's lives.

The UN Committee has emphasised the need to ensure domestic legislation compatibility with the UNCRC and the coordination of child policy at all levels of government (Hodgkin and Newell, 2002), and yet these research findings are consistent with Lansdown's (2005) observation that there is a continuing disjuncture between government's obligation to promote UNCRC implementation and practice affecting young people's everyday worlds. In its broadest sense, therefore, this research shows the regulatory framework operating at a general structure level coordinates institutional action at the local level in ways that ultimately affect how young people develop their understandings and knowledge about rights. The research also reveals how policy at the general structural level is not coordinated with the regulatory framework, which ultimately affects how policy and practice are interpreted at local levels. From this understanding, it has been possible to identify sites of change – places where legal, policy and practice reform is required to ensure dissemination of UNCRC information to all young people at residential schools in ways that will enhance their understanding about how those rights affect their everyday worlds.



# 6

## YOUNG PEOPLE, RIGHTS AND COMPLAINT DEFINITIONS

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### 6.1 INTRODUCTION

According to Hodgkin and Newell (1998), the UN Committee makes several references to complaints processes<sup>36</sup>, with the UN Committee particularly noting that complaints processes are required for implementing articles 12 (expression of views) and 19 (protection from violence and abuse).

Children need access to complaints procedures in all aspects of their lives – in the family, in alternative care, in all institutions, and in services and facilities relevant to them. The Committee has expressed concern at the lack of complaints procedures for children, in particular in relation to ill-treatment in institutions and in the family. (Hodgkin and Newell 1998: 155)

Complaints processes, however, may serve a multitude of functions; such processes may ensure UNCRC implementation, monitor such implementation, facilitate claims for rights violations and remedies and contribute to service provision accountability.

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<sup>36</sup> See, for example, UN Committee Report on the tenth session, October-November 1995, CRC/C/46, paras. 220 and 226.

There is recognition within human rights discourse that complaints processes, such as those located within residential schools, need to be associated with protecting, monitoring and implementing young people's rights (see chapters 2 and 3). Within this theoretical and contextual framework, the following chapter provides an account of how young people participating in this research defined 'complaint', extending to an analysis about how 'complaint' is defined within domestic legislation, policy and local texts.

Young people's expression of their concerns - their 'complaints' - is embedded within young people's UNCRC participatory rights to express their views, to receive information and to participate in judicial and administrative processes (which include complaints processes). Young people's 'right to complain' is equivalent to young people's participatory right to express their views about breaches of their rights. Complaints processes at residential schools, where vulnerable and marginalized young people receive public services, are devolved from human rights institutions that lack the mandate within Scotland to hear individual complaints about possible rights violations. How 'complaint' is defined, therefore, ultimately determines whether opportunities exist for young people to claim breaches of rights and seek redress for rights infractions.

## **6.2 CHILDREN'S RIGHTS, COMPLAINTS PROCESSES AND DEFINING 'COMPLAINT'**

In their public report into complaints processes within a local authority in Scotland, Finlayson and Newman (1993) observed that the UNCRC had enhanced general recognition of children's rights and that rights were associated within the legislation with complaints procedures. Finlayson and Newman (2003: 59) concluded that there was a 'need to continue the present readiness... to hear children and to recognize their rights as individuals including their right to take advantage of the complaints procedure'. Finlayson and Newman (2003: 49) observed, however, that 'those who struggle to find an operational definition of a complaint, are dealing with a real problem', commenting that it was not helpful solely to associate complaints with a formal process. In discussing what boundaries should define a complaints process, Finlayson and Newman (1993) proposed that it should be any allegation of abuse, anything a young person wanted to make a complaint about and any matter not resolved in informal discussions. In recognition of difficulties in defining complaints,

Finlayson and Newman (1993) recommended that the local authority should clarify which matters or issues raised by young people needed to be processed as formal complaints.

It is not helpful to isolate ‘complaints’ as something which can only be dealt with in a formal Complaints Procedure format – the response which could be caricatured as ‘I am not dealing with this, if you have a complaint to make, use the Complaints Procedure’. (Finlayson and Newman, 1993: 50)

Other public reports in Scotland queried the distinction between ‘informal complaints’ and ‘formal complaints’, recognising the arbitrary nature of formal complaints processes which placed restrictions upon definitions of complaints and the potential confusion arising from determining the proper ‘category’ for complaints. These public reports did not make a directly refer to complaints processes as mechanisms for implementing children’s rights and facilitating their claims to rights violations.

The use of formal complaints procedures is bound to remain very limited. In any particular field formal complaints are a very small percentage of total complaints and faults. Informal complaints, therefore, need to be carefully listened to and passed on to the person who has the authority to deal with it. Allegations of physical or sexual abuse by staff, whether made as formal complaints or not, should always be handled by staff outwith the home. (Skinner, 1992: 42)

It is helpful to think of a pre-complaint stage – staff, including care staff and teaching staff in independent boarding schools, should be trained in handling complaints. Policies should be more specific about what constitutes a serious complaint to be handled formally and other complaints to be handled informally. This begs the question of what is serious and agencies must determine this... Again the issue of professionalism in judgement versus a dependency on procedures is important. (Kent, 1997: 101)

While the public reports acknowledged that young people’s ‘complaints’ may not fall neatly inside the remit of a formal complaints process, they did not make clear recommendations about how agencies with formal complaints processes should define a ‘formal’ complaint nor did the recommendations stipulate ‘who’ should decide what constituted a ‘formal’ complaint. Kent (1997) did, however, emphasise the significance of ‘professional judgment’ rather than reliance on complaints procedures. Skinner (1992) made the observation that a wide range of young people’s concerns and complaints could arise and that *formal* complaints processes might be unable to address those concerns due to definitional limitations.

Marshall *et al.* (1999) distinguished between ‘identifying and expressing concerns’ and ‘dealing with difficulties’ through formal complaints processes. This report, centred upon ‘how allegations relating to the safety of looked after children are investigated’, stated that child protection guidance required that any abuse allegations were addressed under child protection procedures, taking precedence over formal complaints processes and disciplinary proceedings (Marshall *et al.* 1999: 156). By implication, abuse allegations were not defined as ‘complaints’ for purposes of accessing the formal complaints processes, which Marshall *et al.* (1999) recommended should only proceed after a child protection investigation was concluded.

In their examination of complaints procedures for young people in care, Wallis and Frost (1998) observe that complaints procedures in England developed from a children’s rights and protectionist framework, with the implication that complaints were defined from a rights perspective, although in arguing that complaints procedures should exist to protect young people’s participation, protection and provision rights, their research found ‘the emphasis was on complaints relating to issues of protection or provision rather than participation in decision-making’ (Wallis and Frost, 1998: 31). Despite this focus, however, other researchers, such as Lyon (1997), observed that ‘it is only as adults that those who have lived in care feel safe to complain’ (quoted in Wallis and Frost, 1998: 9), raising questions about the effectiveness of such a framework.

In addition to Wallis and Frost (1998), various researchers (Aiers and Kettle, 1998; Cousins *et al.* 2003; Pithouse and Crowley, 2007) made associations with children’s rights and complaints processes although the research did not extend to demonstrating that complaints processes for children in residential schools, for example, must be viewed as processes devolved from human rights institutions and informed by human rights principles (see chapter 3). By their very nature, complaints are associated with conflict which inevitably adds to the heightened vulnerability of young people in residential schools and which may threaten the realization of young people’s rights unless measures exist to ensure that those rights are protected, including when young people engage with the complaints process itself (see chapter 3). Complaints processes for young people in residential care need to be defined as processes intended to implement and monitor young people’s rights while offering redress to young people who experience rights violations (see chapter 3, Hodgkin and Newell, 1998).

In an indirect reference to complaint definitions, Aiers and Kettle (1998) argued that four aspects of the complaints procedure for children determine the procedure's effectiveness: protection, consultation opportunities, degree of participation and effects on service provision. UNCRC article 12 exists as an expressed entitlement that children have the right to be consulted about every aspect of their lives (Aiers and Kettle, 1998), including elements of their lives that relate to complaints processes and how 'complaint' is defined. While these authors made an implicit rather than explicit statement about the relationship between children's rights and complaints processes, their suggestion about a 'gradual change of culture within children's residential units toward ideas of children's rights' infers that complaints processes for young people at residential school must define 'complaint' in ways that ensure those young people have the opportunity to allege rights violations and claim redress through the complaints process (Aiers and Kettle, 1998: 8).

While there is little evidence in Scotland about how young people at residential school define complaints, this topic has been researched with and for young people in other jurisdictions and by academics, voluntary organisations and government bodies with statutory responsibilities for ensuring that complaints processes exist for young people in residential care. In England, Wallis and Frost (1998), for example, examined how complaints might be defined in written texts for young people, finding that there was little information in the local authority leaflets given to young people for 'complaints about children's services' and that leaflets did not identify issues young people might complain about if they wanted to use the local authority complaints process.

Wallis and Frost (1998) found that what constituted a 'complaint' was required to fall within the parameters of a complaint about the provision of children's services. In their targeted examination of investigated complaints records relating to young people in care, for example, Wallis and Frost (1998: 38) determined that the majority of young people's complaints related to protection issues, including assaults by staff and bullying, or provision, such as denial of food or poor after-care support and that young people were less likely to complain about their participation rights, such as a lack of consultation about their placements. These researchers concluded there was 'little concrete guidance on what are appropriate issues to complaint about' and 'there were differences between young people's and adults' views of what were appropriate issues for a formal complaint', with young people clear that they should be able to use the

complaints procedure for complaints about bullying with adults stating that the complaints procedure for this type of complaint was not effective (Wallis and Frost, 1998: 39).

Wallis and Frost (1998) also found that young people looked to adults for guidance on what constituted a complaint, specifically in relation to their provision rights and that when young people identified their concerns to adults that ‘this provided an opportunity for adults to influence young people’s perceptions of what was a legitimate complaint’ (Wallis and Frost, 1998: 32). In a later study, Frost and Wallis (2000: 126) argued that young people needed adequate information about complaints processes, access to complaints processes in written and verbal ways, and ‘guidance about whether the issues which concern them constitute a complaint’. Also in England, Aiers and Kettle (1998: 21) examined young people’s experience of gaining access to the complaints procedure in residential care, noting that access to the complaints procedure was influenced by adults’ own understanding about how complaints were defined. Aiers and Kettle (1998: 21) discussed the ‘conceptual and practical confusion amongst staff as well as users about when a grumble becomes a complaint and gets treated as such’.

There is no nationally accepted definition of a ‘complaint’ and no guidance on when an informal complaint should be considered formal. (Simons, 1995 in Aiers and Kettle, 1998: 21)

In finding that many complaints officers found it difficult to determine what constituted a complaint, the authors noted that complaints officers tried to define ‘complaint’ in their annual reporting although they concluded that it remained difficult for residential workers to differentiate between ‘an expression of dissatisfaction’ and a ‘complaint’ (Aiers and Kettle, 1998: 23). Sometimes complaints were also defined on the basis of what was *not* a complaint, as explained in an annual report.

One of the questions we have been asked most often this year is ‘What is a complaint?.....(It is) ‘an expression of dissatisfaction with the quality of service provided by the department or with the failure to provide a previously agreed service, or with the attitude or behaviour of members of staff.’ (K.SSD)  
‘A complaint is not dissatisfaction with the general level of available resources, a court decision, or with the policies determined by the social services committee and the county council.’ (A.SSD) (Aiers and Kettle, 1998: 22)

These researchers found that young people in residential care, on the other hand, adopted a broader version than staff of what constituted a complaint from their perspective.

‘Absolutely anything’ (young man, aged 17).

‘Anything you think hasn’t been done right’ (young woman, aged 17). (Aiers and Kettle, 1998: 25)

Aiers and Kettle (1998: 26) reported that a very small number of young people utilized complaints process and the majority of young people had not made any formal or informal complaints, ‘despite the number of dissatisfactions which continued to upset them’. It was a finding substantiated, they stated, by a ChildLine survey in which children in residential care expressed ‘serious worries’ that were ‘rarely expressed through the complaints procedure (ChildLine, 1995 in Aiers and Kettle, 1998: 26). These researchers also found that while nearly all young people’s complaints, or issues, were related to individuals or internal matters, advocacy agencies reported that young people also wanted to complain about external decisions such as those decisions made by social work departments or decision-makers making placement decisions. In one example, a young person had complained about field and residential care staff failing to consult with him about a placement move while another young person expressed concern about lack of adequate funding for his residential placement (Aiers and Kettle, 1998).

In her research, Bridge (2001a: 225) noted that ‘the complaints rarely concerned a single incident or issue. Rather they represented a growing list of grievances over time, some of which could not be substantiated having neither witnesses nor adequate documentation to provide proof.... [t]hemes about contravention of legislation were always present’. In responding to a 2004 public consultation<sup>37</sup>, the Children’s Right Director in England found that ‘[m]any of the younger children we spoke to saw ‘complaining’ as what you might simply say any day if you didn’t like something, and not as anything to do with a “procedure” to be followed for more important things’, with many young people of all ages further saying they found the distinction between an ‘informal’ and ‘formal’ complaint very confusing (Morgan, 2005: 6).

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<sup>37</sup> In 2004 a public consultation in England occurred in response to the report ‘Getting the Best from Complaints: Social Care Complaints and Representations for Children, Young People and Others’ in which various organisations responded to the governments proposed changes to the complaints procedures for children wishing to make a complaint under the *Children (Leaving Care) Act 2000*, *Adoption and Children Act 2002* and the *Health and Social Care (Community Health and Standards) Act 2003*.

In asking young people for examples about what they should be able to complain about, young people identified topics such as: care leaving support, age limits, foster carers, placements, problems at school and a ‘grown up bully’ (Morgan, 2005). Young people tended to associate ‘informal’<sup>38</sup> with a less serious complaint rather than a staged process (Morgan, 2005).

We were told that not everything important is covered by complaints procedures. Some family issues were difficult to complain about, but they caused you a lot of worry. For example, one situation not covered by complaints procedures was where the plan was for one brother or sister in a family to be adopted, but not the other – so you could be left with social services plans that would stop you from being real brother and sisters, and there was nothing you could do about it. (Morgan, 2005: 11)

In Wales, a Children’s Commissioner was appointed under legislation with duties for ensuring the safeguarding of children’s rights and welfare by monitoring complaints processes, local authority whistleblowing procedures and advocacy arrangements. The Commissioner’s initial related report identified that young people expressed a particular concern about bullying and yet local authorities varying interpretations of their statutory responsibilities under the *Children Act Guidance* meant that local authorities were uncertain about whether bullying could be addressed through their complaints process (Children’s Commissioner for Wales, 2003).

To the children and young people with whom we spoke, making a complaint or representation predominantly meant telling about things that were a problem or that made them unhappy. The significance of being listened to and heard was clear according to their definitions. The types of things they said they might want to complain about included a broad variety of issues in the personal realm, or even a more global level. Many issues were specific to their situations as children in need or looked after by local authority, but others echoed concerns expressed by young people in general. (Children’s Commissioner for Wales, 2003: 49)

Among its many conclusions and observations, the Children’s Commissioner for Wales report (2003: 12) identified that ‘children and young people expressed concerns about issues such as privacy, consultation, participation, being able to express their views and on feeling confident that their views were heard and considered seriously’. In an earlier study, Hill (1999) reviewed research evidence about young people’s

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<sup>38</sup> In England and Wales, young people in government care who want to make complaints are required to proceed through a staged process, which uses the terms ‘informal’ and ‘formal’ complaint to distinguish the stages.



views concerning the main problems and worries they experienced in a broad setting. The main issues that young people identified as important to them, according to Hill (1999), related to loss, bullying, family or peer conflict while young people appeared less concerned about issues that concern adults such as those relating to drugs and abduction.

Subsequent to the 2003 report, the Children's Commissioner for Wales directly interviewed young people about complaints procedures, integrating their views with local education authorities' responses (Children's Commissioner for Wales, 2005). The Commissioner's interviews with 96 young people from 'all over Wales' centred upon three main issues, including young people's 'understanding and experience of complaints in general working towards an agreed definition' (Children's Commissioner for Wales, 2005: 8). This report, framed within the context of UNCRC articles 12 and 13, argued that '[t]he right to express our views becomes particularly important when we perceive that things are going wrong or we are dissatisfied with a service' (Children's Commissioner for Wales, 2005: 6). Young people defined 'complaint' in many ways:

'When you tell on somebody.'  
'When somebody bothers you and you speak up.'  
'An issue that you're not happy about'  
'Speaking out about something you don't like or want to change.'  
'Speak when something is wrong.'  
'Telling someone in authority when someone treats you unfairly.'  
'A moan about an issue.'  
'A procedure that people go through.'  
'You complain so it can be sorted out.'  
'When something is not right...'  
'Someone grassing on someone...'  
'When I don't think something is nice and I say so...'  
'A complaint is when you are not happy...'  
'When you don't like what the other person is doing...'  
'Not getting what you expected'. (Children's Commissioner for Wales, 2005: 8)

Young people identified some agreed definitions for complaint:

'When someone bothers you and you speak up.'  
'It's the start of a procedure that looks at an issue that someone might have with something or someone.'  
'A complaint is the first step to making things better by having the confidence or guts to speak out about something that's wrong or something that bothers you.'  
'You're unhappy with something or disagree with something and want action taken on it'. (Children's Commissioner for Wales, 2005: 9)

In their earlier research, Aiers and Kettle (1998) had found that while young people tended to complain about those issues they believed they had a right to complain about, young people were often unaware about what standard of care they could expect, limiting their ability to claim entitlements. The researchers also found that young people were not ‘actively and systematically’ asked for their views and about their concerns (Aiers and Kettle, 1998). In general, the local authority complaints process for young people was unresponsive and inflexible, with young people uncertain about their right to complain and viewing the complaints process as intimidating (Aiers and Kettle, 1998). In relation to how complaints were defined, and how young people might define complaints, these researchers noted that ‘we were conscious that the majority of young people we spoke to were unaware of, or lacked the confidence, to take on the ‘system’ over bigger, policy issues’ (Aiers and Kettle, 1998: 27).

The Care Commission<sup>39</sup> in Scotland, after determining young people’s views on whether service providers were meeting the national care standards and the effectiveness of safeguarding young people’s rights in residential environments, found that many young people reported they felt their views weren’t adequately respected and that complaints processes were difficult to access (Scottish Commission for the Regulation of Care, 2004). Staff behaviour, the quality of care and lack of information about that care were common elements in complaints against care homes for young people (Scottish Commission for the Regulation of Care, 2004).

Young people expressed general concerns about the quality of their care and more specific concerns about their safety, with one half of young people stating they felt unsafe, others indicating they didn’t feel safe always and a ‘small number’ revealing that they never felt safe (Scottish Commission for the Regulation of Care, 2004). Young people expressed concern about safety in the presence of other young people and a couple of young people said they felt unsafe due to staff (Scottish Commission for the Regulation of Care, 2004).

Concerns about safety were raised frequently. Some did not feel safe all of the time and others did not feel safe at any time. Threats to safety came from other young people, sometimes families, and very occasionally from staff. The most

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<sup>39</sup> The Scottish Commission for the Regulation of Care is also known as the ‘Care Commission’.

common reason for feeling unsafe was problems with other young people. Bullying and intimidation in units is unacceptable and strategies must be put in place to tackle this. (Scottish Commission for the Regulation of Care, 2004: 38)

MacLardie *et al.* (2007: 62) reported that '[t]he line between what constitutes a complaint, a criticism and a comment is, at times, a fine one: 'I have not had to complain I have had concerns... I wouldn't register it as a complaint, just concerns' (Relative of care home resident). Pithouse and Crowley (2007), drawing from their study relating to children, complaints processes in social services and advocacy, identified differences between what children-expressed concerns were and what adult-led complaints focused upon.

Children were more likely to complain in relations to matters of personal care, contact with kin and effective communication with staff – seemingly more to do with the emotional and relational side of care and wellbeing... Children's complaints, perhaps predictably, seem to connect to some unhappiness about how or were they are being cared for and their relationship with significant others... When describing what motivated [children] to complain to the social services, most stated that it was 'not being listened to' or 'not being taken seriously'. (Pithouse and Crowley, 2007: 207-208)

The definition of a *complaints procedure* can be elusive; complaints procedures address complaints as defined and determined by organizational agendas associated with public and private services. In the international world of human rights instruments, however, individual complaints procedures are broadly defined as processes that permit individuals to claim rights violations and seek remedies. The current international campaign for a UNCRC optional protocol (see chapter 3) advocates for a complaints, or communications, procedure associated with the UNCRC. Within that context, for example, a complaints procedure is defined as a process that allows individuals to claim rights violations by a particular state before an independent UN Committee, after all domestic legal remedies have been attempted (CRIN, 2008).

Within Scotland, Crerar (2007: 86) defined 'complaints handling' by public services as 'the investigation of complaints about public services carried out by a range of commissioners, ombudsmen and other public bodies with specific roles and responsibilities'. Crerar (2007) stated, for example, that the Scottish Public Services Ombudsman described 'complaints handling' as an essential activity linked to external scrutiny.

## **6.3 RESEARCH FINDINGS**

The following section reports on the analysis and findings of this research as it relates to how complaints are defined. Informed by a rights-based perspective, this section provides an account of what young people at the residential school reported about how they defined ‘complaint’, followed by an analysis that locates these views within a broader textual context in which complaints process definitions - those directly related to young people’s everyday lives - are examined. The subject texts include the residential school’s pamphlet and policy on complaints and relevant sections within the domestic regulatory framework. The analysis also maps complaint definitions located within policy and procedural texts and associated with complaints processes for education services, health, police and the Children’s Hearing System, all of which are public services young people may encounter during their time at the residential school.

Once again, young people’s understandings about how complaints are defined provide an initial entry into the broader explication of textual factors that are often unseen and unknown by them. By making the analysis of these texts the primary focus, it is possible to see the texts as ‘ethnographically...integral to institutional organisation’ and ‘to trace connections that might otherwise be inaccessible’ (Smith, 2006: 181). A study of these texts does not stand alone, but rather it must be viewed as opening ‘into the interconnections of the ruling relations’ (Smith, 2006: 181) which ultimately affect how services are provided to young people and how they experience the world of residential school life.

### **6.3.1 Young people at residential school: defining ‘complaint’**

The young people participating in this research described how they would define ‘complaint’. One young person defined a ‘complaint’ as ‘when somethin’s getting’ out of hand an’ you want to talk about it’. Another young person said he didn’t know how to define ‘complaint’ but then changed his response and said it was ‘filling out the form’ and ‘getting your opinion in about something that is bad’. This same young person also said that he thought a complaint ‘could be about anything’. Other young people, on the other hand, associated the word ‘complaint’ with filling out the residential school’s complaint form.

*Complaint means to me if somebody's hurt you or abused you or there's something wrong with your dinner and you've already told the kitchen staff but they're not doing anything, then that's when you fill in the complaint form. You fill out a complaint form for your safety and other peoples' safety, just in case it happens again (YP A).*

*Complaint? That means you, like if any member of staff, for example, hits ye or anything like that, you can complain about them. Ye dinna need tae gie it [the complaint form] tae them (YP B).*

*Puttin' in a complaint about something or somebody (YP C).*

Young people in this research who defined a complaint as 'being about anything' expressed views consistent with other young people's contributions to the definition (see Clarke, 2005). Some young people in this research, however, made specific associations between a complaint and abuse and the residential school's complaints process and filling in the residential school's complaint form. Other young people limited their complaint definitions to issues relating to their care environment and did not expand these to include issues relating to their educational, health care or justice-related experiences, despite their inevitable involvement with these core services.

It was apparent that the official and authoritative status of the residential school's complaints process – represented through the complaint form – contributed to the social organisation of young people's understanding and knowledge about what constituted a 'complaint' within their residential school context. As many young people participating in this research had no direct experience with their residential school's complaints process, young people's observations about how residential staff interpreted and defined 'acceptable' complaints may also have shaped young people's understandings about how complaints were defined for purposes of accessing the residential school complaints process.

While many young people's expectations were consistent with UNCRC article 12(1), such that they should be able to express their views 'about anything', on the other hand, some young people placed parameters around this entitlement and did not associate their right to express their views with their right to participate in the complaints process as an administrative proceeding (article 12(2)), their right to receive information (article 13) or their right to seek redress for possible rights violations (article 12). The shaping of young people's understandings, by external forces unseen by them, potentially limited the expression of young people's views

about any matter concerning them and possibly explains why the residential school complaints system registered an average of one complaint per month from young people. While it is conceivable that low numbers of young people had few concerns that needed to be addressed through the complaints system, research and public inquiry reports have found that barriers exist to young people making complaints with the result that complaints processes are not used by young people to their fullest extent possible. The outcome of this research suggests that the young people at the residential school may not have been claiming rights violations or realising their entitlements due to how ‘complaint’ was defined and interpreted by young people and adults alike.

### **6.3.2 Mapping complaint definitions: young people’s everyday lives**

This section maps complaint definitions associated with the residential school’s complaints process, examining the residential school’s complaints process pamphlet for young people and the residential school’s policy for staff on its complaints process. Informed by a rights-based perspective, the analysis extends to exploring key elements of the domestic regulatory, policy and procedural texts specific to complaint definitions.

#### ***Residential school complaints process***

The residential school produced a pamphlet for young people entitled ‘Your Right To Complain’, intended as information for young people about the residential school’s complaints process.

We want you to be happy, safe and secure while you are being looked after by [the residential school]. If you feel you are NOT, this guide will tell you how to complain about [the residential school]. If you feel unhappy, scared or worried about something then you have the right to discuss your concerns with an adult that you feel able to talk with... This guide will tell you how to do this.

The first sentence can be interpreted as reflecting principles associated with the UNCRC although the pamphlet contained no explicit reference to the UNCRC or to the statement on rights that young people may have received under statutory provisions (see chapter 5). The pamphlet’s title contained the word ‘right’, which was used again when the pamphlet stated that young people had ‘the right to discuss [their] concerns with an adult that [they] feel able to talk with’. While the entitlement to

‘discuss their concerns with an adult’ was an essential recognition of young people’s article 12(1) rights, the pamphlet did not recognise the full extent of young people’s rights under the UNCRC, such as their right to participate in an administrative proceeding (article 12(2)) or their right to receive information (article 13).

The second sentence in the pamphlet defined complaint as being ‘about the residential school’. From the perspective of young people, ‘residential school’ may have invoked varying interpretations and understandings by young people whose everyday lives often involved experiences within diverse geographical, social and professional contexts. The ‘residential school’ provided various services to young people – services falling within general categories relating to social care, education and health. While young people would have drawn from their everyday experiences in their reading of the pamphlet, the ambiguity of the definition required young people to rely upon adult interpretations of how complaint was defined for purposes of accessing the complaints process (see Wallis and Frost, 1998).

The pamphlet was notable, therefore, in what it *did not* communicate to young people about how complaints were defined. While young people may have concerns relating to the entitlements under the UNCRC, the residential school’s pamphlet did not define complaint in a manner that ensured young people could use the residential school’s complaints process to claim possible rights violations and to seek remedies. There was no reference in the pamphlet, for example, to the relationship between young people’s concerns about their protection rights and the residential school’s process for responding to child protection concerns, despite the statutory guidance stipulating that young people must be informed about child protection procedures<sup>40</sup>.

The pamphlet contained no reference to other complaints processes nor was there an explanation that other processes, such as grievance proceedings, police investigations or social work department child protection investigations might have pre-empted the complaints process, depending upon how young people defined their complaint and how those definitions were interpreted by adults. The residential school’s pamphlet for young people made no mention of local authorities’ complaints processes although the pamphlet advised young people that a social worker could take their complaint ‘forward’. The pamphlet did not explain that young people could directly access or be

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<sup>40</sup> See CSA Regulations and Guidance Volume 2, Chapter 4, Section 41; UNCRC article 13.

required to access other complaints processes, such as those associated with health and education services, depending upon how their complaint was defined and interpreted. There was no ‘mapping’, for example, of complaints processes that existed to address particular issues relating to young people’s everyday lives.

The residential school also had a policy on its complaints process for residential staff. In reviewing this policy, however, there were no references to the UNCRC and, more specifically, how complaint was defined. Described as a ‘grievance process for resolving young people’s complaints’, the policy outlined the process ‘to be followed in resolving young people’s grievances or incidents’ without referring to ‘complaint’. The residential school’s policy process required those persons using it to ‘record in log book/case notes’ and ‘complete an incident form’, suggesting that complaints were defined as matters specific to the residential school environment and informed by adult interpretations of what constituted an ‘incident’. In a specific referral to ‘rights’, the policy stated that young people needed to be informed about their ‘rights’ at the end of the ‘grievance’ process. It was not made clear what informed the word ‘rights’ used in this context although the word was used in association with the requirement to inform young people that the police might be involved. This possibility was not mentioned in the pamphlet for young people.

Finally, there was no reference in the residential school policy to a child protection procedure, although by implication the policy suggested that child protection or potential criminal matters might have been captured by this process with the possible result that the police, social workers and parents/guardians would be contacted. The policy used language that associated complaints with ‘grievances’, common to staff union disputes and that employed a judicial discourse by using words such as ‘victim’ and ‘accused’. Persons responsible for the ‘grievance process’, for example, were required to ‘inform parents/guardians of both victim and accused at earliest opportunity’ as well as social workers and the police. Unlike the pamphlet, the policy did not refer to children’s rights services or the Care Commission, nor did it mention the local authorities’ or other complaints processes for young people to use, depending upon how they, adults and complaints processes themselves, interpreted and defined their concerns.



## ***Defining 'complaint' in domestic legislation***

The 1995 Act and the 1995 Act:RG recognise that young people have a legal right to express their view, which includes their right to make a complaint.

The Act requires that children's views are taken into account when decisions are being made which affect them. Children's rights services may help young people and children in expressing their views and being heard. Some children may require particular support in expressing views or **making a complaint** [author emphasis] if they have communication difficulties or other problems. (1995 Act: RG)

These regulatory provisions fall short of equating young people's entitlement to receive information about the UNCRC with 'making a complaint'. While young people at residential school may receive a statement about their 'rights' (see chapter 5), it is not apparent that those statements are linked to making complaints and complaint definitions. Young people may receive information about the 'practical arrangements' for exercising their rights, however, there is no association between the exercise of those rights, how complaints are defined and complaints processes (see chapter 5).

Children and their parents should be given a clear statement of their rights and responsibilities. They should have a confidential means of making complaints... Their rights should be consistently respected.

The home or responsible organisation should produce a statement of the rights and responsibilities of children residing in their establishments and convey to children the practical arrangements for them to exercise their rights and responsibilities... Staff should foster a culture in which children are encouraged to express their views. (1995 Act:RG, para 23, 24)

The 1995 Act:RG contain legal provisions requiring residential schools to have complaints processes that recognize certain key principles such as accessibility, confidentiality, independence and timeliness. These principles, however, are not associated with young people's rights and, more particularly, do not explain how residential schools might define complaints from a rights-based perspective.

Each establishment must have a formal complaints procedure **which is part of** [author emphasis] the responsible agency's procedures. The procedure should be easily understood and readily accessible to the children and staff. This procedure should include provision for children to gain access, by such means as private use of a telephone, to a person independent of the establishment, for

instance a complaints officer. Complaints should be followed up promptly and thoroughly. The child should be informed, usually in writing, of the outcome. A record should be maintained of the complaint, follow-up and outcome. Staff should receive training to familiarise them with procedures. It is also helpful to review the number and characteristics of complaints on an annual basis to identify any wider implications for practice and management in the establishment. (1995 Act:RG, para 25)

Schools will need to have their own complaints system for children. Children need to be aware of the complaints system used by their placing local authority if applicable. Access to a children's rights or advocacy service is helpful to children in residential settings. (1995 Act:RG, para 37)

The requirement for residential establishments (such as residential schools) to have complaints processes and to make them accessible to young people, sits alongside the requirement for residential schools to set out their statements and objectives organized according to Skinner's eight principles (1995 Act:RG). The second Skinner principle requires residential establishments to define young people's rights and 'responsibilities', involve young people in decisions in 'affecting them' and ensure young people have a confidential means of making complaints while stipulating that '[t]heir rights should be consistently respected' (1995 Act:RG). While 'defining' young people's rights may be *interpreted* to include specifying young people's UNCRC participatory, provision and protection rights and their relationship with complaints processes, there is no specific and explicit requirement to ensure that complaints processes are informed by UNCRC principles (see chapter 5).

Young people's concerns about 'safety' within residential environments (see Scottish Commission for the Regulation of Care, 2004; UNCRC article 19) is an issue covered within statutory provisions associated with child protection procedures, and not complaints processes, adding to the complexity about how residential schools define 'complaint' within the context of complaints processes. The child protection procedure, as defined in legislation and as standing apart from complaints process legal provisions, encourages an adult-initiated process, rather than a young person-initiated process through which concerns expressed by young people about their safety are addressed in ways that may not adequately respond to young people's rights under the UNCRC or capture all matters important to young people.

Legal provisions stipulate that the complaint and child protection procedures, in accordance with UNCRC article 13, must be made known to young people (1995 Act:

RG). This approach requires young people to compartmentalize their concerns - define their complaints - in accordance with statutory and institutional procedural requirements. Young people defining their concerns as 'child protection' matters may be denied access to the residential school complaints process, with the possible effect that their participatory involvement in matters important to them becomes diminished and usurped by less participatory processes compartmentalizing young people's concerns as breaches of their protection rights. Young people's complaints, however, do not always fit neatly within the confines of an 'acceptable' complaint definition for accessing the residential school's complaints process or for assessing child protection allegations under child protection guideline (see Skinner, 1992; Kent, 1997).

In summary, there is an absence of clear statutory guidance within the 1995 Act and the 1995 Act:RG about how residential school complaints processes must define 'complaint', although there is the implication that complaints must be about 'the establishment' (see 1995 Act:RG). There is no clear statement about what 'the establishment' means, such as whether it includes all services young people might receive on-site, or how to respond to complaints defined as matters related to public services outwith 'the establishment'. The reference to 'complaints officers' within the regulatory framework suggests a relationship between residential schools and local authorities' complaints processes, although in the absence of how complaint is defined, this association is unclear (see 1995 Act:RG). The regulatory framework does not make explicit that complaints must be defined, and interpreted, in a way that ensures young people are able to exercise their participatory rights through the residential school's complaints process and to use that process to claim rights violations relating to their protection, participatory and provision rights.

### ***Defining 'complaint' in National Care Standards***

In addition to the 1995 Act and the 1995 Act:RG, the NCS make explicit statements about the complaints of young people at residential schools. The NCS, written to young people as its audience, inform young people, within the context of their 'equality and diversity' principle, that they have a '**right...to complain** [author emphasis] without fear of victimization' (Scottish Commission for the Regulation of Care, 2005: 8). The NCS do not, however, provide standards that inform residential schools about how complaints must be defined and that require definitions to be informed by a rights-based perspective.

## Expressing your views - comments, concerns and complaints and advocacy

This last section refers to issues that may be present at any time. They are the standards relating to comments, concerns and complaints and advocacy. They are very important to your experience of the support and care you receive, and to the way in which you feel you **can influence and contribute to how services are delivered** [author emphasis]. Together, the standards for comments, concerns and complaints, and advocacy, show that the provider takes the principles of the national care standards seriously and will put you first when they plan and run the care home (Scottish Commission for the Regulation of Care, 2005, para 41).

While the NCS introduction makes a distinction between young people's 'concerns' and their 'complaints', there is no following explanation about what defines the distinction (Scottish Commission for the Regulation of Care, 2005). The introduction implies that complaints will be defined in accordance with 'how services are delivered' without defining 'services' and whether, for example, 'services' includes all services provided at the residential school and services originating outwith the residential school environment (Scottish Commission for the Regulation of Care, 2005). In outlining their standards relating to complaints, however, the NCS stipulate that 'you are encouraged to express your views on **any aspect of the school** [author emphasis] (Scottish Commission for the Regulation of Care, 2005: 42).

The NCS also advise young people that 'you can be confident that staff listen to, and take seriously, your wishes and concerns about **any part of your care** [author emphasis]' (Scottish Commission for the Regulation of Care, 2005: 41). These standards may appear contradictory to young people, implying they may express their views about the 'school' and their concerns about their 'care'. By defining complaints as those relating to 'care', this NCS definition does not take account of other concerns young people may have about their safety, education and health, experiences with the Children's Hearing System or any other matters important to them. Furthermore, the standard provision that young people can expect staff to 'listen to' and 'take seriously' young people's 'wishes and concerns' about any part of their 'care' places restrictions on young people's participatory rights.

There is clear indication that the NCS expect residential school complaints processes to limit complaint definitions to 'how services are delivered' and, more specifically, to concerns relating to 'care' within the residential care setting with the consequence that young people may be prevented from using the residential school complaints process

to allege protection, provision and protection rights violations and seek redress. There is no mention of young people's right to express their views about any matter important to them, to participate in complaints processes, to acquire information about complaints processes and to be safe from harm before, during and after young people's engagement with complaints processes (see UNCRC articles 12, 13 and 19).

Furthermore, there is no association made with young people's rights to express their views, complaints and the UNCRC. On the other hand, the NCS have implications for how complaint definitions are interpreted by young people who understand the NCS and who would like to use the residential school's complaints process. The NCS, in concert with other legislation such as the 1995 Act:RG, may also affect how residential school staff define and interpret what constitutes an 'acceptable' complaint for young people wanting to access the residential school's complaints process.

### **6.3.3 Mapping complaint definitions: beyond the residential school environment**

The following section maps complaints processes located outwith the residential school environment examining, from a rights-based perspective, how 'complaint' is defined within those processes. The complaints processes subjected to analysis within this section are situated within core services - education, health, police, local authority and Care Commission services - that young people at residential school will encounter in their everyday worlds by virtue of their association with the residential school. Those complaints processes linked to the Children's Hearing System are explored in the subsequent section.

#### ***Education services complaints processes***

Young people at residential school attended educational classes provided on-site and governed by a regulatory framework that included legislation specific to education services. As it was not apparent from the previous analysis that the residential school's complaints process defined 'complaint' as including young people's concerns about their educational experiences, this section examines complaints processes associated with the general provision of education services.

As the foregoing analysis demonstrated, adults' knowledge about defining 'complaint' within the context of the residential school's complaints process is socially organized by the residential school policy and the regulatory framework. The residential school policy, for example, provides no specific definition of complaint although there are implicit suggestions that the complaint may relate to a 'victim' and 'accused', suggesting that 'acceptable' complaints will be defined as those relating to possible abuse. The 1995 Act:RG, on the other hand, provides that complaints should be defined as being about 'services', such as 'care services', and that complaints processes should not define complaints as being about 'staff' practice and decision-making. The statutory provisions are not explicit about whether education services provided to young people at residential school fall within the definition of 'services' provided by residential school or whether 'staff' included those individuals associated with education provision at the residential school, leaving that particular definition open to interpretation.

The references to 'care services', however, in the NCS requires adults with responsibility for the residential school's complaints process to interpret complaint definitions within that context, with the result that young people's concerns about rights violations relating to education, for example, do not appear to fall within an 'acceptable' definition of complaint. The pamphlet for young people does not make this clear to young people nor does it specify where young people might take concerns about their education entitlements. Young people are required to look outwith the residential school, therefore, for a complaints process that defines 'complaint' in a way that captures their education concerns. Looking outwith the residential school environment transported young people at residential school into a complicated complaints procedural environment.

The complaints procedure for education is complex, involving a number of different internal stages and four separate, statutory sources of external review, developed to suit specific issues such as additional support for learning, placing requests and exclusions. (Scottish Consumer Council, 2006: 1)

The Scottish Consumer Council (2006) found there is no legal obligation for schools or councils to have complaints procedures in place or to provide young people with information about them. Complaints within mainstream education must be addressed in 'informal' ways at the local school or council education service level, depending upon how those complaints are defined (Scottish Consumer Council, 2006).

Headteachers or Directors of Education conduct an internal review, Directors of Education assess those internal reviews and local authority Chief Executives' review decisions made by Directors of Education (Scottish Consumer Council, 2006). For external reviews, complaints need to be defined in particular ways to progress through formal complaints processes, located outwith local processes, otherwise they can not proceed (Scottish Consumer Council, 2006). Complaints defined as placing requests or exclusions need to be made to the Education Appeal Committee within local authorities (Scottish Consumer Council, 2006).

Complaints defined as those associated with additional support for learning where young people do not require a coordinated support plan must be addressed by independent adjudication, employing dispute resolution, while those situations where young people do require such a plan are handled by an Additional Support Needs Tribunal (Scottish Consumer Council, 2006). If complaints are not defined as related to additional support needs, placing request or exclusions, they go to the Scottish Public Services Ombudsman and Court of Session (The Scottish Consumer Council, 2006). Not surprisingly, the Scottish Consumer Council (2006) reported that a barrier to parents making complaints on young people's behalf is the lack of information about how to advance complaints relating to their child's education when matters are not resolved at the local level. The Scottish Consumer Council (2006) was unable to report on barriers experienced by young people who wanted to make complaints on their own behalf as young people were not included in their study (although the Scottish Consumer Council suggested it was important to include young people in future research). This study did not make any reference to a relationship existing between the education complaints process arena and the UNCRC.

### ***Health care services complaints process***

While the National Health Service continues to have responsibility for providing health care services to young people at residential school, as illustrated earlier it is not apparent that the residential school's complaints process encapsulates concerns young people might have about their health care. The ambiguous complaint definition in the residential school pamphlet, and the interpretative nature of how 'complaint' is defined, means that young people with concerns relating to their health care services - provided by nurses, physicians, dentists and/or mental health care professionals - need to look outwith their residential school environment for suitable complaints processes.

The residential school's complaints process and its regulatory framework context do not appear to contemplate those types of concerns arising for young people at residential school. The complaints process for young people who have complaints about health care they receive is located within the National Health Service (NHS), which defines 'complaint' in very precise, but complicated, terms.

The health care regulations state that complaints to a NHS body are defined within the realm of health care services although these regulations also provide nine specifications about what does *not* define a complaint (National Health Service (Complaints) Regulations 2004). According to guidance for the NHS complaints process, the process is intended to deal with complaints made about the NHS services provided by the 'practice' (National Health Service (Complaints) Regulations 2004). If a complaint is defined as one that should have been addressed through a social services complaints process<sup>41</sup>, the responding person is obligated to ask the 'complainant' if he or she wanted their complaint 'details' forwarded to the relevant local authority. The regulations make provision for *some* complaints to be addressed through the NHS complaints process and some to be forwarded, depending upon how the complaints are defined and interpreted. Under the regulations, the two complaints processes – NHS and social services - are expected to cooperate and to agree upon which process take the lead in coordinating and dealing with the complaint (National Health Service (Complaints) Regulations 2004).

In the guidance for the NHS complaints procedure, a complaint is defined as an 'expression of dissatisfaction requiring a response' (NHS Scotland, 2005: 17). The guidance states that the 'potential subject of the complaint is wide and not just related to medical care', indicating that 'each complaint must be taken on its own merit and responded to appropriately' (NHS Scotland, 2005: 18). The guidance also stipulates, however, that complaints needed to be defined as primarily about patient care, service provision and health related issues associated with a NHS organization when individuals are affected (NHS Scotland, 2005: 18). Complaints may be defined, however, as those relating to a broad range of health care services provided by hospitals and health centers, family health services, dental practitioners, opticians, community pharmacists, community services, private hospitals, care homes funded by the NHS and NHS funded catering (NHS Scotland, 2005). In addition, complaint

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<sup>41</sup> See Statutory Instrument 2006 No. 2084, The National Health Service (Complaints) Amendment Regulations 2006.



definitions might also capture those concerns about environment matters, public health related issues and NHS board decisions relating to funding and organizing services (NHS Scotland, 2005).

On the other hand, the guidance is specific about what does *not* define a complaint, such as private care or treatment; services not funded by the NHS, and ‘some aspects of care where social services have responsibility’ (NHS Scotland 2005: 19). Other examples include NHS consultation processes or complaints about a NHS job interview. Complaints that fall into different categories falling outside what is defined as a complaint, such as those concerning disciplinary matters, professional regulation, independent inquiries, criminal investigations, negligence claims and freedom of information, require complaints staff to advise about where those complaints would have gone. There are no references to complaints about health care services and the UNCRC.

### ***Police services complaints process***

Young people at residential school may have had contact with the police services either before and/or during their residential school placements, sometimes in relation to child protection matters, as victims of assault, as witnesses during court proceedings and as alleged offenders. Information about making complaints about police services stipulated that young people are required to contact the Chief Constable via their local police station to express concerns they may have relating to police services (Police Complaints Commissioner for Scotland, 2008).

If you think a police force or other police organisation has not performed as you expected, or if you think a member of the police service has behaved wrongly or has committed an offence, you may wish to make a complaint....if your complaint is about a police organisation that is not one of the eight police forces (for example the Scottish Crime and Drug Enforcement Agency), write to the head of that organisation. (Police Complaints Commissioner for Scotland, 2008)

The Police Complaints Commission, established as an independent body in 2007, exists to consider complaints about the way police forces or police organizations in Scotland had responded to complaints in the first instance (Police Complaints Commissioner for Scotland, 2008). In other words, young people’s complaints need to be defined in ways that meet their local police force complaints process definition of what constitutes an ‘acceptable’ complaint before proceeding to the Police

Complaints Commission with their concerns. Again, there is no reference to complaints about police services and the UNCRC.

### ***Local authorities' complaints processes***

Local authorities throughout Scotland have a statutory obligation to have complaints processes in place for individuals, such as young people at residential school, who receive local authority services. Most young people at residential school, for example, will have a direct services relationship with local authority social work departments and an indirect services relationship with other non-statutory agencies.

Local authorities are required to have procedures for considering representations or complaints about the discharge of any of their social work functions, including those for child care services... Representations or complaints may be made by the child, his or her parents or anyone else with parental responsibility, any carer including foster carers or any person who has a legitimate interest in the child's welfare. (1995 Act: RG, Chap 9.1)

The legal provisions make clear that complaints must be defined as related to 'social work functions, including those for child care services'. The *Circular SWSG5/96 Local Authority Complaints Procedures* (Circular, 1996, para 67) stipulates that the local authorities' complaints procedures should be coordinated with the residential school's complaints procedure as delegated service providers: 'the authority's complaints procedure should have regard to arrangements which the service provider has established for dealing with complaints about his own services'. It is not readily apparent what 'own services' means, with the result that the phrase may have been subject to various interpretations. Secondly, the provision to coordinate complaints processes means that the residential school must coordinate their complaints process definition with 32 local authority complaints processes for which local authorities are permitted under the regulatory framework to exercise their discretion about how complaints are defined. This statutory requirement places a duty upon residential schools that it can not realistically fulfill.

While residential schools are required under guidance to integrate their complaints processes with local authorities' complaints processes, local authorities have an obligation to ensure that information about the residential school's complaints process, including how complaint is defined, is known to 'service users', such as young people at residential school (Circular, 1996). There is no information in the residential school

pamphlet about how complaints associated with local authorities' complaints processes are defined – a challenge for the residential school which necessitated gathering information for 32 potentially different local authority complaints process definitions.

While complaints made through the residential school's complaints process need to be reported to local authorities, the reporting of complaints to local authorities depends heavily upon how the residential school's complaints process defines complaint and how those definitions are interpreted by young people and residential school staff. There is a requirement 'for assistance to be given by the third party (such as the residential school) to persons wishing to make complaints' – a requirement that also introduced advocates' roles, for example, in interpreting and influencing complaint definitions (Circular, 1996).

While the CSA:RG defines complaints relating to local authorities' complaints processes as being about 'social work functions', the guidance is more specific about what 'subjects' local authorities' complaints processes might address (Circular , 1996).

People with social care needs and their carers are entitled to have a second look at **assessments, service decisions** and the **way in which matters have been handled** [author emphasis]...it would be inconsistent [with government policy]...to restrict the types of case to which complaints procedures relate. Local authorities can have alternative appeals arrangements for responding to certain types of complaints.

The complaints which will form the material for the procedures to which the directions and guidance will apply will **in the main** be made by or on behalf of users or carers about the **provision or non-provision of services, the quality and extent of services, the operation of services and allied issues** [author emphasis]. (Circular, 1996, para 27, 28)

It is evident that considerable latitude exists in relation to how 'services' are interpreted and defined, with the consequence that it isn't readily apparent whether education or health-related services provided at residential schools, for example, fall within that definition. While it is apparent from this statutory guidance that complaints definitions for local authorities' complaints processes might potentially relate to various services, the residential schools' pamphlet, policy and the specific statutory provisions for residential school complaints processes, located within the 1995 Act:RG and the NCS, suggest that complaints are defined as those relating

specifically to care services, which further inhibits the coordination between residential school and local authorities' complaints processes. The guidance is specific, however, about what does *not* constitute a complaint:

Such matters should not be confused with ones that fall to be dealt with under:

- grievance procedures, which concern staff issues, i.e., conditions of service, management and support; or
- disciplinary procedures which apply to the actions of staff in relation to failure to comply with codes of conduct, practice, instructions or other relevant professional or administrative guidance. (Circular, 1996)

It is inevitable that grievance and disciplinary procedures relating to service providers will overlap with possible concerns young people at residential school may have – concerns they would like addressed through a complaints process. This guidance potentially influences how a complaint is defined for purposes of accessing the residential school's complaints process as young people may have concerns about practitioners or managers providing services to them. It is not made clear within the statutory provisions, the residential school pamphlet or the residential school policy what alternatives exist for young people who want to report possible violations of the UNCRC by members of staff, social workers or any other adults providing services to young people.

Written from an organizational perspective, the guidance states that '[i]t is a clear aim of Government policy, reflecting the Citizen's Charter, to expose procedures and professional decision-making to more scrutiny than hitherto' through complaints processes (Circular, 1996). While the guidance implies that complaints processes offer a mechanism for scrutinizing 'professional decision-making', the guidance appears to contradict itself by stating that complaints cannot be defined as staff failure relating to 'practice'. 'Complaints processes' are defined as methods for scrutinizing 'procedures' and 'professional decision-making' rather than defined as processes for seeking redress for rights violations. There is no reference to the UNCRC within the context of local authority complaints processes.

### ***Scottish Commission for the Regulation of Care complaints process***

Young people at residential school may access the Care Commission's complaints process provided their concerns fall within the definition of what constitutes an 'acceptable' complaint. The pamphlet provided to young people at residential school

makes a specific reference to the Care Commission, which in its own information defines complaint in specific terms.

A complaint is an expression of dissatisfaction about the **quality of service** [author emphasis] provided by a registered care service or about the competence, attitude or performance of members of Care Commission staff while carrying out their duties. The Care Commission will, at the outset of the complaints process, agree with the complainant the National Care Standard, which is applicable to the complaint. (Care Commission, 2008: 8)

The term 'quality of service' is not defined and concerns must be framed as related to service quality by a 'registered care service' (such as the residential school) whereas complaints about local authorities as the commissioning services must be made through local authorities' complaints processes. From the Care Commission's definition of complaint, it is difficult to determine whether the failure of young people to receive information about the UNCRC or their children's rights service from the residential school, for example, constitutes 'dissatisfaction' about 'the quality of service', particularly as there is no associated National Care Standard. It is also not evident whether young people's unhappiness about their lack of participation in the residential school's complaints process or their failure to receive information during the process are issues defined as 'permissible' complaints from the Care Commission's perspective as there are no corresponding standards. Whether National Care Standards exist determines how complaints are defined for purposes of accessing the Care Commission's own process.

While young persons wishing to access the Care Commission's complaints process are advised they have direct access to the process, 'evidence suggests that the quickest route to results can be by raising the problem directly with the provider' (Care Commission, 2008: 9). This direction is based upon the assumption that the 'provider' has a complaints process and, secondly, that the 'problem' fits within the definition of what constitutes an acceptable complaint for consideration under the providers' own complaints process. Reaching the outcome of the residential school's complaints process for young people, in other words, is contingent upon how the residential school's complaints process defines 'complaint'. As both the residential school pamphlet for young people and policy for residential staff are non-specific about how complaints are defined, whether young people's concerns about 'the quality of service' will proceed through the residential school's complaints process is largely determined by how adults responsible for the process interpret and define young

people's complaints. Whether those definitions will correlate with the Care Commission complaints process definitions is not readily apparent.

The Care Commission's complaints process also defines what complaints are *not*, such as those complaints falling outside its regulatory responsibilities and relating to education, health and legal matters (Care Commission, 2008). The Care Commission states that while other bodies such as the NHS and local authorities 'may have an interest in complaints raised about registered care providers', the Care Commission retains the lead responsibility for all issues investigated as a complaint (Care Commission, 2008). Complaints about the NHS and local authorities, in other words, need to be addressed through other complaints processes, although the Care Commission does not provide specific information about those processes.

The Care Commission complaints process allows that in 'special cases' certain complaints will be fast tracked if those complaints are defined as relating to 'allegations of abuse or neglect of service users', 'serious malpractice' or criminal conduct or 'circumstances indicative of a present or potential risk to the health or welfare of service users' (Care Commission, 2008: 12). It is not apparent what happens when these concerns are also defined as falling within the mandates of child protection and/or disciplinary and grievance processes, to be addressed under the corresponding statutory framework. The statutory provisions for residential school and local authorities' complaints processes suggest, for example, that those types of complaints do not meet the definitional test under their complaints processes, with the potential result that many young people, and adults, may become confused about what processes take precedent when complaints are defined in these ways. In general terms, the Care Commission's complaints process is not informed by standards or guidance linking its complaints process to young people's rights and, more specifically, defining complaints from a rights-based approach to its process.

#### **6.3.4 Mapping complaint definitions: the Children's Hearing System**

The following section maps complaints processes located outwith the residential school environment centring upon how 'complaint' is defined within those processes. The Children's Hearing System (CHS), in accordance with an institutional ethnography theoretical perspective, is seen as a 'functional complex' system comprised of social workers, children's rights officers, advocates, reporters, solicitors,

children's panel members and other professional advisors, such as safeguarders, and existing as 'an integral part of individual and collective action' (Jackson, 1995: 1968). The complaints process definitions examined are those associated with the CHS, the Scottish Reporter's Administration and the Law Society of Scotland.

### ***Children's Hearing System complaints process***

The CHS in Scotland has responsibility for making decisions about young people under 16 years, and in certain instances under 18 years, who commit offences or who are in need of care and protection. The Panel, drawn from communities throughout Scotland and representing a wide range of backgrounds in a voluntary capacity, make those decisions guided by a regulatory framework. There is no explicit legislative provision requiring the Panel to provide young people in contact with the CHS with information about the UNCRC, including their participatory rights, and, more specifically, their right to complain and participate in complaints processes. The CHS's own complaints process makes no reference to the UNCRC. It is specific, however, about what defines a 'complaint' for those persons wishing to access its procedure.

If your complaint relates to **a member of a Children's Panel; or a member of a CPAC** [author emphasis] then please contact the Clerk to the CPAC for the relevant local authority area. The Clerk has formal responsibility for investigating all complaints. (Children's Hearings, 2008)

To access the CHS complaint process, a complaint must be defined as one relating to a Panel member or CPAC member (without specifying what the acronym 'CPAC' represents). The CHS complaints process information also makes evident what it does *not* define as a complaint for purposes of accessing its process, such as complaints about a 'reporter' or social work department 'decisions' (Children's Hearings, 2008). It is not possible to complain about 'decisions' reached during the Children's Hearing process; 'acceptable' complaints are defined strictly as complaints about the Panel and CPAC.

This is because it is considered to be in the **best interests** [author emphasis] of the child for such matters to be kept private. Under the terms of the Children (Scotland) Act 1995 however, where children and 'relevant persons' (usually the parent(s)) disagree with such a decision, they may appeal to the sheriff within 21 days of the Hearing. If children or relevant persons have a complaint relating to how a particular Social Work Department has implemented a decision, then

contact should be made with the Director of the Department. (Children's Hearings, 2008)

If young people have a complaint about a Panel 'decision', they are required to 'appeal' the decision to the sheriff within 21 days - to enter into a formal court process and bypass any complaints process. The UNCRC article 3 'best interests' principle is used to usurp young people's UNCRC article 12(1) and 12(2) entitlements to express their views - to 'complain' - through the CHS complaints process about Panel decisions and to participate in the CHS complaints process as an administrative process. The CHS complaints process does not appear to contemplate, however, whether it is in young people's 'best interests' to require them to 'appeal to a sheriff' in an unspecified and unsupported way – a process that may be impossible for young people to access without adult support and the financial means to employ a solicitor.

Furthermore, there is no apparent consideration given as to whether it is in young people's 'best interests' to require them to contact a 'Director' of a social work department to complain about the work done by that Director's own department. While the CHS complaints process anticipates that complaints may arise about Panel 'decisions' and social work department 'decisions', it does not consider that young people may have concerns about services provided by safeguarders, children's rights officers, advocacy workers, solicitors, social workers and other professionals associated with the CHS such as psychologists, educators and health workers. The CHS complaints process defines complaint in a very narrow, precise and adult - oriented way that does not fully acknowledge young people's participatory, protection and provision rights within the context of the CHS.

### ***Scottish Children's Reporter Administration complaints process***

Reporters, employed by SCRA, take referrals about young people from various sources - police, social work, health, education, the public or young people themselves - for purposes of assessing whether to refer young people to the CHS and whether compulsory measures of supervision are needed. Similar to the Panel, Reporters carry out their responsibilities under statutory authority. In examining information about the SCRA, there is no reference to the UNCRC in public information about it or the SCRA complaints process. The SCRA complaints process defines a complaint for purposes of access:



What is a complaint and who can make one?

You may wish to complain about any matter relating to the work or staff of the SCRA, including:

- Decisions made by SCRA staff
- The actions or behaviour of SCRA staff
- The time taken to deal with any matter
- The property or facilities provided by SCRA.

We will regard information from any person that wishes to complain about any of the issues above as a valid complaint. (SCRA, 2008)

This definition states that if young people have concerns about ‘decisions’ made by SCRA staff, including Reporters, they can use the SCRA complaints process (while if they have concerns about ‘decisions’ made by the Panel, they must appeal to a sheriff, and if they have concerns about ‘decisions’ made by social work departments, they must contact the department’s Director). The stipulation that the SCRA complaints process considered any complaints falling within its definitions to be ‘valid’ complaints implies that some complaints may be defined as ‘invalid’ or possibly inconsequential. The SCRA complaints process, similar to the CHS complaints process, makes clear what a complaint is *not*, such as any complaints about CHS panel member decisions, CHS panel members, the courts, social work, education or health services, safeguarders<sup>42</sup> or the police (SCRA, 2008).

The Reporter in the ‘local office’, presumably the geographical location where young people normally reside, *may* be able to advise young people about where to take their complaint (SCRA, 2008). The information about the SCRA complaints process offers specific examples about what options are available if complaints fall within particular definitional categories. For young people with a complaint about a hearing decision, for example, they may ‘appeal’ to the sheriff and the Chair of the Hearing may be able to assist with that process (SCRA, 2008).

If you have a complaint about the members of the children's Panel then this is a matter for the Chairman of the Children's Panel in your area. SCRA or individual Reporters cannot deal with complaints about panel members but the Reporter in your local office may be able to give you advice about the person to contact if you have this sort of complaint. (SCRA, 2008)

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<sup>42</sup> ‘Safeguarders are persons with a relevant professional background who may be appointed by child welfare authorities when required to safeguard the interests of the child in the proceedings. Safeguarders offer support and advice, and provide written reports for children's hearings and sometimes for court cases’ (Hill et al 2002: 4).

If young people disagree with a sheriff's decision, the SCRA information advises them to seek legal advice or to 'contact the Clerk of the Sheriff Court if you wish to appeal' although no information is provided about who might assist young people in taking their concerns forward (SCRA, 2008). While the SCRA information contemplates that young people may have complaints about education or health services, safeguarders or the police, there is no information about what, if any, complaints processes exist for those types of complaints nor is there any reference to solicitors and how young people might complain about their legal representation. Possible complaints about social work services are defined specifically as possible complaints about 'supervision requirements', which SCRA information states that a children's reporter will attempt to have addressed through a children's hearing (SCRA, 2008). There is no reference to local authority or residential school complaints processes.

If you are not happy with the way a supervision requirement is working, you should contact the Reporter who can tell you when a review can be held, and who may be able to arrange a children's Hearing to review the requirement. A Reporter cannot change the supervision requirement; this can only be done by a children's Hearing. (SCRA, 2008)

The SCRA offers specific information for children under 12 and 12 years and older although there was no direct reference to the UNCRC or complaints processes. The information for children under 12 years, for example, describes the Children's Hearing as a place where children can talk about their 'worries and problems' without contextualising those 'worries and problems', making reference to complaints processes available to young people or linking that opportunity to young people's rights, such as their right to participate and express their views (SCRA, 2008).

A Children's Hearing is a meeting where children and the people who look after them can talk about their worries and problems. There are 3 people at the meeting called panel members who will decide if you need help to sort out these worries. (SCRA, 2008)

The information for children 12 years old and over represents the Children's Hearing in slightly different terms and is more specific about defining 'problems'.

The Children's Hearings System is unique to Scotland and was established in 1971 to look at the needs and behaviour of children and young people who face

serious problems in their lives... These problems can include, for example, a child committing an offence, the child's parents having difficulty looking after them or a child not going to school. (SCRA, 2008)

There is no reference to the UNCRC. Rather than identifying 'problems' as child-identified, the SCRA information defines 'problems' from an adult perspective and as *about children as problems* rather than about *children's problems that concern them*. The SCRA message to children under 12 years old is that the children's hearing is a place to discuss *their* 'worries'; the communication to young people 12 years and over is that the children's hearing is a place that will address *them* as a problem. There is no information provided to either age group about complaints processes available as administrative processes to take their concerns. Young people are not advised that they have entitlements under UNCRC article 12(2) to participate in those processes as administrative proceedings nor does the SCRA inform young people about how to seek redress for possible rights violations.

The SCRA information also presumes that if young people have concerns that they will define those concerns as being about unspecified children's panel 'decisions' (SCRA, 2008). For children under 12 years old, the SCRA information states:

You should tell someone straight away. They will help you to talk to someone about why you do not like the decision and maybe the decision can be looked at again. (SCRA, 2008)

The over 12 year old age group is provided with slightly more information:

If you do not agree with the decision of the children's Hearing you can appeal to the Sheriff. This appeal must be made within 3 weeks from the date of the decision of the Hearing...If you do not agree with the decision of the Hearing you should tell someone immediately. You should also consider taking legal advice before deciding whether to appeal. (SCRA, 2008)

In both communications, the SCRA information defines complaints young people may have as possible concerns about Panel 'decisions'. In defining complaints in these terms, young people are advised that to seek redress or a resolution to their concerns about 'decisions', they need take those concerns to an adult, seek legal advice and 'appeal to the Sheriff' within 21 days. Complaints are defined from an adult perspective, without regard to the UNCRC and young people's participatory, provision and protection rights.

### ***The Law Society of Scotland<sup>43</sup> complaints process***

Young people appearing before a Panel may have a solicitor present at their hearing. The Law Society of Scotland (LSS) acts as the governing body for Scottish solicitors, promoting solicitors' and public interests (LSS, 2008). The LSS addresses specific legal rights and obligations relating to young people's everyday lives, without reference to the UNCRC (LSS, 2008). In information about 'law for children', the LSS describes children's legal rights in relation to areas relating to young people's lives, naming categories: 'police', 'jobs', 'babysitting', 'school', 'sex', 'family problems', 'abuse', 'doctors', 'solicitors', 'children's hearings' and 'looked after children' (LSS, 2008).

Children of any age can benefit from the services of a solicitor, although from the age of 12, you can have one of your own, without the need to tell your parents...

Solicitors can help if your parents have split up or are getting divorced...if you are being bullied at school or claiming financial support... They can also help if you are in trouble with the police... or **if you are going to a children's hearing** [author emphasis]... They can write letters for you, speak in court, or just explain how the law affects you (LSS, 2008).

Within the context of explaining how it defines 'complaint', for purposes of accessing its complaints process, the LSS states that 'most people' will be 'fully satisfied' with the solicitor services they received (LSS, 2008).

Most people consulting a solicitor in Scotland will be fully satisfied with the service they receive. Occasionally, there is a problem and you may wish to register a complaint (LSS, 2008).

Without specifying what types of 'problems' might exist, persons wanting to make a complaint are advised to raise their concerns initially with the law firm providing legal services (through the law firm's 'client relations partner') and, if their problems remain unresolved, to register a complaint through the LSS's complaints process.

The Law Society of Scotland has powers and duties given to it by Parliament. The powers are divided into two categories and vary depending on whether the complaint is about the conduct of the solicitor or the quality of the service provided to a client. How much the Society can do will depend upon the type of complaint that you are making (LSS, 2008).

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<sup>43</sup> A new Scottish Legal Services Complaints Commission will be established during 2008. It is intended as a 'one-stop-shop' for complaints about legal practitioners within Scotland (The Law Society of Scotland, 2008).

The LSS provides examples of what might constitute professional misconduct or inadequate professional services although for non-legal persons, such as young people, it may be difficult to differentiate between the two general categories. An example in the professional misconduct category is ‘your solicitor has misled or misinformed you’ while in the inadequate professional services category there is the example ‘your solicitor has given you inaccurate or incomplete information’ (LSS, 2008). Both these examples may be confusing to young people, and others, who want to register a complaint relating to solicitors’ services provided within the context of a children’s hearing, for example.

In its ‘Law for Children’ information, the LSS advises young people that if they disagree with a children’s hearing decision, they can ‘appeal’ the decision and that the government ‘may’ pay for a solicitor to assist with the appeal. There is no reference to the UNCRC or complaints processes. In the ‘looked after children’ section, the LSS contemplates that young people will have specific concerns about social workers or carers but does not provide specific information about what complaints processes exist for young people with such concerns and how those complaints processes are accessed (LSS, 2008). The LSS information suggests that young people may receive support from a designated person – a children’s rights officer rather than a solicitor (LSS, 2008).

If you have concerns about social workers or people looking after you, you can tell the council or make a complaint. There **might** [author emphasis] also be a children's rights officer for your area who can help you. (LSS, 2008)

The LSS information anticipates that young people may define their complaints as relating to abuse, in which case young people are advised to contact a national children’s charity helpline if they do not want to reveal their name (LSS, 2008).

Most adults will try to help you if you tell them about abuse you might be suffering. The social work department at your local council and the police have a duty to check if they think children are in danger or being abused. (LSS, 2008)

It is evident from the LSS information that complaint definitions determine the processes - complaint, child protection or legal - that arise when young people express concerns about matters important to them. These definitions, and their associated processes, are constructed from an adult perspective that does not incorporate

references to the UNCRC and ensuring that young people's participatory, provision and protection rights are realised.

### ***Safeguarder, children's rights and national advocacy services***

Mapping the complaints processes available to young people who define their complaints in ways that are specific to children's rights and national advocacy services is a multifarious process. For young people who define their complaint as relating to safeguarder services, for example, it is not clear what, if any, complaints process exists that captures this type of concern. Local authorities may employ children's rights officers, or utilise children's rights services and national advocacy services, although there is no uniform approach throughout Scotland to the provision of these services. As a result, young people who define their complaints as related to safeguarder, children's rights officers and national services are young people with a complaint definition in search of a complaints process; it is a dilemma making it challenging for young people to claim rights violations and realise their UNCRC entitlements. This is an area not covered within this thesis as it is too multifaceted to unravel within the space available, however, it is an area that needs to be further explored.

## **6.4 CONCLUSION**

This research illustrates how institutional, adult-led definitions of 'complaint' may actually construct barriers to hearing the voices - the concerns - of young people at residential school. Young people participating in this research, as elsewhere, defined complaints as being about 'anything' and did not specifically associate their complaint definitions with the UNCRC, although it is possible to conclude that many specific types of concerns identified by young people constituted possible rights violations. Some young people participating in this research, for example, associated a 'complaint' definition with abuse, although other young people viewed the definition of complaint in a more procedural, institutional way – as being about the residential school's complaints process and filling out the complaint form.

From these particular research findings, it appears that young people's understandings about complaint definitions originated, in part, from their intuitive sense of what constituted a complaint, influenced by what they observed, or experienced, within

their residential school environment. It was probably unclear to young people, however, what external factors shaped their understanding, and the interpretations of adults around them, and to what extent those understandings constituted barriers to young people making complaints about any and all matters which are important to them.

The analysis shows the lack of a centralised, local complaints process for young people at residential school, operating as a complaints process that defined complaints from young people's perspectives, relating concerns to any and all aspects of their everyday lives<sup>44</sup>. The residential school policy about its complaints process did not define complaint, leaving residential school staff and other adults to individualise their interpretation of what constituted an 'acceptable' complaint. While the residential school pamphlet for the complaints process defined a complaint as 'about anything' young people were unhappy about, the analysis shows how the pamphlet lacked coordination with the residential school policy. The analysis also reveals how the influencing regulatory framework, unseen by young people, directed adults at the residential school to interpret an 'acceptable' complaints definition as care-related and to exclude young people's other concerns, such as those associated with health, education, police or children's hearings services.

The generalised, external mapping of complaint definitions indicates that young people's concerns, or complaints, need to fall within the acceptable parameters of how each of the many complaints processes capturing a range of issues potentially relevant to young people define complaint. These complaints processes define 'complaint' in keeping with organisational mandates that are not directly associated with or informed by UNCRC principles. It was apparent from the analysis that most complaint definitions in the wider context are not constructed in child-accessible ways but rather assumed, or reflected, an adult-oriented perspective. Complaint definitions within each service are multifarious, fragmented and lack coordination with each other, ranging from the general to the specific. The number, fragmentation and complexity of complaint definitions potentially create insurmountable barriers for young people at residential school who want to express concerns about any and all matters important to them. The state and locale of complaints process definitions, it appears, has neglected

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<sup>44</sup> A 'one-stop-shop' process has been proposed in Wales for children in care who want to make complaints about social care, health and education services.

to take a holistic account of young people's experiences, needs and entitlements under the UNCRC.

While young people 'know' that their complaints may be 'about anything', it is argued that this knowledge is subsumed and displaced by other, institutional forms of knowing, often in ways that are not apparent to young people or their advocates. Mapping the trans-local territory of complaint definitions reveals potential barriers to hearing young people's concerns - barriers that are often unknown and unseen, such as the use of power to structure institutional language and coordinate young people's experiences in ways that require young people to [re]define their concerns to fit within institutional categories designed to serve institutional interests. On the other hand, young people's expression of their concerns - their 'complaints' - is embedded within young people's UNCRC participatory rights to express their views, to receive information and to participate in judicial and administrative processes such as complaints processes. This research highlights the disjuncture between young people's entitlements and what exists, making it possible to pinpoint critical sites of necessary change.



# 7

## YOUNG PEOPLE COMMUNICATING 'COMPLAINTS'

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### 7.1 INTRODUCTION

This chapter provides an account of what young people contributing to this research reported about communicating their concerns – their ‘complaints’ – about what is important to them. As in the previous chapters, the analysis takes a rights-based and institutional ethnographic approach in looking beyond the standpoint of young people to those external textual factors shaping and influencing young people’s understanding about to whom they might communicate their concerns about everyday matters. The analysis is based upon an underlying assumption that distinctions need to be made among adults whom young people consider to be their informal, or ‘natural’, advocates (such as their support persons), adults who work as ‘formal’ advocates<sup>45</sup> and adults, with responsibility for complaints processes.

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<sup>45</sup> An informal or ‘natural’ advocate is any person that young people know and trust who they would like to represent their views while ‘formal advocates’ are those adults, independent or otherwise, associated with public or private services.

## 7.2 COMMUNICATING A 'COMPLAINT'

Over the years there has been growing research into young people in government care, however, there has been a dearth of research in Scotland into the perspectives of young people at residential school on rights, 'complaints', complaints processes and advocacy with public reports in Scotland offering the most insight into those topics and the nature of their relationship (see chapter 2). These reports highlight the difficulties young people face with communicating their concerns about possible wrongdoing affecting their daily lives. Skinner (1992) noted, for example, that young people may have found it challenging to contact advocates when matters arose that concerned them and when those issues may have led to conflict.

Time and time again young people told us that they would find it more difficult to contact a person whom they did not already know. Many said that knowing the person was essential before they would have the confidence to discuss and disclose what it was that was bothering them. (Skinner, 1992: 56)

In their investigation, Finlayson and Newman (1993: 40) found that '[y]oung people made it very clear to us that they would wish to voice their complaints to someone they know and trust and who they believe to be an effective person'. While there was 'the very clear lead message' by the director and senior management responsible for social work within the local authority that it was important to listen to children and act 'on what they say', staff expressed anxiety about the 'power' vested in children when the director was willing to listen to children rather than staff, which potentially led to 'an unfortunate balance' in this area (Finlayson and Newman, 1993: 14).

Concerns were expressed that such young people, well aware of the current climate in relation to complaints, were being provided with an opportunity of power which a number of them might be ready to exploit. Staff in exercising their responsibilities to carry out appropriate control might be victimised by residents. In this connection we were concerned to learn that some staff had interpreted these matters as requiring need for duplication of staff wherever a child goes lest the lack of corroboration might put a member of staff's career and reputation at risk... These observations of power for young people contrasts starkly with the feeling of powerlessness that the young people who gave evidence experienced. (Finlayson and Newman, 1993: 17)

In the late 1990s, without focusing specifically on young people and complaints processes, Hill (1999) determined that many young people were suspicious of specialist professionals who were strangers to them, suggesting that these findings

have implications for adults working with young people in that young people's confidence in those relationships evolves over time through effective direct work. Hill (1999) also found that young people wanted to be treated as 'whole human beings, not simply in relation to one 'problem' or 'disorder' - a finding analogous with situations in which young people must compartmentalize their problems to access localised complaints processes (see chapter 6).

According to Hill (1999), it may be most effective for adult service providers to work with individuals within young people's social network whom young people already trusted. In its emphasis on the importance of trusted individuals within children's cultures, as well as institutional structures, Hill's (1999) study leads to the conclusion that the design of child-accessible complaints processes, as components of institutional structures, need to acknowledge the significant role trusted individuals can play in diminishing barriers for young people who want access such processes.

In their general comments about identifying and expressing concern, Marshall *et al.* (1999: 35) stated that '[t]here is a need to ensure that particular concerns are not camouflaged by a general appearance of contentment... The Council clearly has an obligation to set up structures to facilitate the identification and expression of concerns about the safety of the children looked after by it', which include structures such as complaints processes. Whilst some people involved in safeguarding processes identify concerns, there is an inevitable reliance on young people feeling sufficiently confident and trusting to express concerns to them although whether this happens may depend upon personalities (Marshall *et al.* 1999).

In observing that 'relationships' rather than professional roles were noteworthy factors in young people's lives, these authors questioned whether young people would contact an external person with whom they had no trusting relationship and, if they would not, the adequacy of that safeguarding role (Marshall *et al.* 1999). In response to its own queries, Marshall *et al.* (1999) stated that it was important that *somebody* from outside the unit was known and trusted by young people. Since Marshall *et al.* (1999) and Hill (1999), research has continued to affirm young people's desire to communicate with individuals, including service providers, whom they know and trust.

Preceding a consultation process in England on complaints procedures for young people, the children's charity NCH (2003a) conducted research with 32 young people

in government care about their views on the management of their problems and complaints by the charity. This research found that most young people stated that they would talk to people they knew such as their keyworker, social worker, family members, staff members, project manager and friends in their placement (NCH, 2003a). When given a choice, none of the young people indicated that they would 'phone a helpline for advice', 'talk to an independent visitor' or 'talk to someone who does not work for NCH' (NCH, 2003a: 6). Consistent with Hill's (1999) study, this research found that '[m]ost young people want to talk to someone they already know if they have a problem', preferably adults within their placement such as keyworkers although the research also found that some young people did not distinguish among staff and expected adults, in general, to sort out their problem (NCH, 2003a: 9; NCH, 2003b).

Clarke (2003: 49), the Children's Commissioner for Wales, also explored to whom young people would communicate their concerns, finding that '[t]he majority used the word tell specifically as their starting point in complaining. They said that they would "tell" various adults in professional roles, and significant others including friends and relations'. This research found, however, that young people 'telling' various adults depended upon the quality of the relationships young people had with adults in their lives together with access to trusting adults at a time and place suitable to young people (Clarke, 2003: 49). The research also determined that despite numbers of young people reporting they would 'tell' adults about their concerns, 'there is strong evidence that there is a long way to go before all children feel able to feel and confident of the response' and queried whether it is necessary for young people to discuss their concerns with so many professionals when they had a complaint (Clarke, 2003: 49).

In England, the Children's Rights Director's top messages from young people, in general, included comments such as 'ask what we think and listen to what we say' and 'we want to be looked after by adults we can trust' and 'don't always believe an adult over a child' with children preferring to talk to someone they know and to be taken seriously (Morgan, 2005). Osborne (2005), in The Children's Society's consultation submission, as well, demonstrated the need for young people to develop relationships with adults they trusted and who could assist young people with expressing their concerns and accessing complaints processes.

In Australia, the New South Wales Commission for Children and Young People published a report on their inquiry into 'children who have no-one to turn to' in which they adopted a wide perspective that suggested vulnerability originated from various factors (New South Wales Children's Commission, 2004). Similar to what young people reported in Wales and England, 'the importance of relationships was a clear and consistent message heard from children and young people in all settings' with 'children and young people...most likely to seek advice and support from people with whom they have some kind of close and trusting relationship' (New South Wales Commission for Children and Young People, 2004: 10).

The critical role of relationships in young lives provides a valuable basis not only for assessing how things are for children and young people but for determining what kinds of change need to be pursued. (New South Wales Commission for Children and Young People, 2004: 10)

Some young people living in institutional environments, such as residential schools, identified social workers as persons to hear their concerns although those young people also indicated that it was difficult to reach social workers and that 'they often took too long to do anything' (Morgan, 2005). In identifying various reasons that made it difficult for young people to complain, some young people stated they found it hard because 'they did not feel they could trust the adults to listen seriously and fairly to what a child had to say' (Morgan, 2005). Bridge and Street (2001: 726) identified a difficulty with young people in government care making a complaint to a link worker or social worker, suggesting 'both...have an enormous investment in the placement not disrupting'. These researchers found that young people, particularly older ones, could be viewed as 'troublesome' and disbelieved when they made a complaint, resulting in young people's expressed concerns to people they knew, who were associated with service provision, stalling at the informal stage (Bridge and Street, 2001).

Bridge and Street (2001: 730) argue that a child or young person should have access to an independent person who is not their link worker or field social worker, stating that '[s]everal [independent persons] raised the suggestion of a children's rights officer, who might, for example, be employed by a voluntary sector organisation and provide a service to a number of neighbouring authorities'.

The recommendations in the Waterhouse Report (1999, pp 214-5) on the abuse of children in Wales that an 'independent Children's Commissioner' should be appointed, and that 'an independent advocacy service should be available to any complainant or affect child who wishes to have it', deserves attention'. (Bridge and Street, 2001: 229)

In their research, Kilkelly *et al.* (2004) found that young people and non-government organisation representatives reported that the area of most concern for young people was their relationships with adults and the power relationship dynamic. In this regard, Kilkelly *et al.* (2004: 23) identified that the problems faced by young people may not be taken seriously by adults as 'they fear that they will not be well received or that they will not be believed'. Kilkelly *et al.* (2004) also found that in many areas throughout Northern Ireland there were no child or youth-friendly complaints mechanisms and that there was concern about the accessibility of complaints procedures for children who could not advocate on their own behalf.

In addressing the issue of advocacy in earlier research, Wallis and Frost (1998: 73) argue that complaints procedures should be only one of a range of safeguards in child protection and that 'a whole series of reforms are required, the most important of which is to enhance the role and availability of advocacy'. In reference to local authority complaints procedures, Clarke (2003: 49) suggested that '[w]e should consider whether a confusing, lengthy process which draws in a variety of different adults in different roles serves the needs of the service providers much more than children and young people'. In his report, Clarke (2003: 97) concluded with recommendations that the Welsh Assembly 'undertake comprehensive research with children and young people in Wales as soon as possible to identify what would best enable children and young people to express their views and raise concerns'<sup>46</sup>. The research also recommended that local authorities should consider a 'one-stop-shop' approach to receiving complaints from young people about any service (Clarke, 2003).

Hodgkin and Newell (1998) linked the predominant research messages that relationships are important to young people, and the importance of assessing 'how things are for children and young people', with the reality of young people's everyday lives when they reside in residential schools.

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<sup>46</sup> This recommendation resulted in the Welsh Government's comprehensive review of advocacy services for children and young people across health, education and social care settings. At the time of writing, this review outcome was undergoing a public consultation process.

Children in institutions are especially vulnerable, often isolated from independent adults; disabled children may also be particularly vulnerable, because of communication and other difficulties. Children's complaints, and their evidence when cases come to court, must be taken seriously, in line with the Convention. Difficulties for children in challenging exploitation in court and having their evidence taken seriously have concerned the Committee. (Hodgkin and Newell, 1998: 464)

While Hodgkin and Newell (1998) made explicit references to courts, it can be inferred that the same principle applies to any judicial or administrative proceeding involving young people. Hodgkin and Newell (1998) also highlight particular challenges for younger children or children with special needs who may find it difficult to communicate in conventional ways and who may require individuals they trust to adopt initiatives that facilitated hearing children's concerns. Meltzer *et al.* (2004: 15), for example, found that approximately one third of young people able to participate in their research indicated that they had 'sought help because felt unhappy or worried' and, within that group, 64% wanted to 'talk things over...' These findings are an indication that communication needs for young people need to be facilitated by adults, with special attention paid to those young people who find it difficult to communicate.

### **7.3 RESEARCH FINDINGS**

The following section reports on the analysis and findings of this research specific to how, or to whom, young people communicate their concerns, or 'complaints'. The first part provides an account of young people's responses during the research. These views, informed by a rights-based perspective, are situated within a broader textual context in which complaints processes most directly related to young people's everyday lives are analysed, with emphasis placed on mapping those persons to whom young people are required to communicate their concerns.

The texts examined include the residential school's pamphlet and policy on complaints and relevant sections within the domestic regulatory framework. Other texts include those associated with complaints processes for education services, health, police and the Children's Hearing System, all of which are services young people may encounter during their time at the residential school. Similar to chapters five and six, there is a predominant analytical focus on the texts in this chapter for reasons stated in those previous chapters.

### 7.3.1 Young people at residential school: communicating a 'complaint'

Most young people participating in this research indicated that they wanted to communicate a concern, or their unhappiness about matters important to them, in direct, informal ways to people they knew and trusted. It was clear from the interviews that young people wanted the opportunity to express their views, including their concerns, about everyday matters important to them. Young people talked about situations they were unhappy about, where they disagreed with what had happened or where they were worried about something or somebody. When asked about what they would like to do in these situations, young people reported that they preferred to talk to adults whom they trusted to listen although they differed when identifying whom those adults might be. None of the young people identified a 'complaints officer' or a person directly associated with a complaints process as individuals to whom they would communicate their concerns.

*I: So if you have a concern about something that's going on here, for you, what would you do?*

*YPH: Either speak to my social worker or speak to my key worker.*

*I: Can you think of the kind of issues you would talk about?*

*YPH: What, with my social worker or my key worker?*

*I: Either one of them.*

*YPH: I get on really well with my key worker, so I could talk about anything really.*

*I: Can you? So when something comes up for you that you're not happy about you're saying you would feel comfortable talking to your key worker?*

*YPH: Aye.*

*I: Is there anyone in the unit you would talk to...you have trust in?*

*YPJ: Aye, a few of the staff.*

*I: A few of the staff. So...there are some people you trust who you can talk to?*

*YPJ: Aye.*

*I: And do you think these are people who can help you?*

*YPJ: Aye. Some ae them. All the staff try an' help ye. Some in different ways.*

Many young people indicated that while they might talk to various residential staff, they preferred to express their concerns, or communicate a complaint, to their keyworker. A day pupil identified the 'head teacher' as someone he would speak to as an alternative to his key worker if he had a particular issue he wanted to discuss with



her. In general, the day pupils at the residential school identified a relatively small network of people they would speak to about their concerns and, typically, they identified the people who had the most daily contact with them such as keyworkers or keytutors.

- I: So you can talk to either one of those two people if you have any questions?*  
*YPK: Aye. Talk to any one of the staff, but I get on really well with my key worker and I get on quite good with my co-key worker.*  
*I: Are you comfortable talking to either one of them?*  
*YPK: Aye.*
- I: And did the key worker sit down with you when you came and explain the school?*  
*YPM: Aye.*  
*I: So if you're not happy with something, you'll talk to your key worker?*  
*YPM: Aye.*  
*I: Is there anything you wouldn't talk to your key worker about?*  
*YPM: No.*  
*I: No. So do you think you have a pretty comfortable relationship with that person?*  
*YPM: Aye.*  
*I: And how accessible is your key worker; how often do you see your key worker?*  
*YPM: Every day in the school.*

A young person living in a residential unit said he did not know if he could talk to his current key worker because he had not known her very long. Another young person, in government care for a few months, said he would only speak to his keyworker and did not identify any person outside the residential school environment to whom he would communicate his concerns. Other young people identified a wider network of adults, including residential staff, social workers, family members and friends to speak to about matters important to them.

- I: If you could pick, who would be the person you would prefer to talk to about something?*  
*YPA: (residential unit keyworker)*  
*YPB: He's leaving though.*  
*YPA: But he's still here.*  
*YPB: Your key worker, if you like him.*  
*YPA: Yeah, I know, if you like him.*  
*I: It sounds like the key worker's a pretty important person.*  
*YPA: Not really – your mum and dad's more important than anybody.*  
*I: Who else, if you wanted to ...*

YPB: *Just a member of staff you can trust. The social worker if you like her; your family, your friends. If I've got a problem, I usually tell him before anybody. That's because we've known each other for ages though.*

I: *Tell...?*

YPB: *Your pals or somebody.*

I: *Your friends?*

YPB: *Somebody you really like that you can trust.*

I: *So if you wanted someone to help you with something, who would you ask?*

YPR: *Ehm, my key worker.*

I: *Your key worker, ok...*

YPR: *Or my social worker.*

I: *Or your social worker. What about outside the school – is there anybody outside the school?*

YPR: *My auntie. My auntie I'll mostly talk to about my problems because it's somebody who I can trust the most.*

Other young people had difficulty identifying a person or place to express their views about any matter important to them.

*You can hardly trust anybody in here. (YPS)*

A few young people who had spent many years in care grasped the hierarchical nature of the residential school, indicating they would talk to duty managers, unit managers and senior managers, including the complaints manager and the residential school director, if they were not happy about their discussions with the unit residential care staff. Some young people said they would contact their local authority social workers, particularly if they weren't happy with the initial response from a member of staff whom they might speak to, but a number of young people stated they had a temporary social worker, they did not like their social worker or they had not seen their social worker for many months. One young person reported that he had seen his social worker about one year ago, that he used to see her every two weeks and that 'she is hopeless'. In his first interview, this young person described his positive experiences with social workers:

I: *You were saying you don't know who your current social worker is?*

YPB: *No. Every social worker has been ok but I haven't met this one yet.*

I: *So you've had good experiences with your social workers?*

YPB: *Aye.*

I: *How long have you had social workers?*

YPB: *Well I had the same social worker for three years but then she had to move department then I got another social worker and she got*

*pregnant then I got this one. I had a couple of social workers before that but that was when I just started moving into care.*

*I: So because you've had good experiences, you've had a good relationship with them, you feel comfortable calling them?*

*YPB: Aye.*

In a second interview held several months later attended by another young person, however, this same young person had a different impression of his social worker.

*I: Do you know what's in your care plan?*

*YPB: I've not looked at mine for ages.*

*YPA: Because I've just moved here, my care plan's in a shambles.*

*I: Is it?*

*YPA: Aye. Not even the social worker knows what's going on with my care plan.*

*I: So whose responsibility is it to look after your care plan?*

*YPB: Social worker supposed to be...*

*YPB: Mhm.*

*I: So why do you think it's in a shambles?*

*YPB: But my social worker's a stuck up cow.*

*I: Really? You don't like her it sounds like.*

*YPB: No. I've liked every one of my social workers apart from this one.*

*YPA: I don't like mine either.*

*I: Do you have a choice about social workers?*

*YPA: You've got no choice really.*

*I: You don't? So if you wanted to make a complaint about your social worker, where would you go?*

*YPB: It's not that she's actually doing anything bad it's just, she just pisses me off sometimes.*

*I: Does she? ...What if you wanted a change in social worker so you could work with someone you really liked, what would you do?*

*YPB: I don't know. Every one of my social workers I've had have been off on maternity leave.*

*I: Oh really?*

*YPB: I've went through four lately.*

*I: So they go off on maternity leave and they don't come back?*

*YPB: Aye.*

*YPA: How weird's that?*

Another young person stated he would not go to his unit manager or other residential school staff with his concerns because 'there was no point' and he did not believe they listened to him. This young person described how he assessed whether a person was listening to him.

*I: How do you know whether they [keyworker, key tutor] are listening, what's a sign?*

*YPT: You tell them something and they'll reply exactly like what you said first and then they'll give you the answer an' that.*

I: *So that means that...they're checking with you to make sure they've heard you and then they have a response, and that works for you...?*  
YPT: *Yes.*

Most young people did not identify roles or structures as viable alternatives for taking forward their concerns but rather stated that they preferred to talk to people they knew, who treated them with respect and with whom they had a trusting relationship.

*There's some staff that ah know ah can talk to that ah've no known for that long 'cos of the wiy that they treat me. But some staff that ah know a' cannae and some staff that ah don't know if ah can or cannae, know whit ah mean? (YP B)*

Young people varied in their experiences and perceptions as to what structures they would utilise to express their views. Most young people said they relied upon 'keytime' - the one-to-one weekly meeting with their keyworker - as a structure for discussing their care plans and other issues important to them and upon their keyworker as the person to deal with those matters. One young person referred to the school council meeting as a place to take forward specific types of concerns and a few young people identified the unit meetings as structures to talk about problems relating to their residential unit. Few young people mentioned the residential school's complaints process as a process through which to voice their concerns and no young person referred to any other complaints process as an option available to them.

Overall, most young people participating in this research identified either informal advocates or specific formal advocates - people working in professional roles directly associated with the residential school, such as keyworkers and social workers - as the people to whom they would express their concerns and not formal advocates working outwith the residential school, such as children's rights officers and national advocacy workers who are specifically designated as formal advocates to represent young people's views. Furthermore, no young person identified the residential school complaints manager, or any other complaints officer, as adults to whom they would communicate their complaints.

### **7.3.2 Mapping communication: young people's everyday lives**

This section explores *what adults, or roles*, are identified as associated with the residential school's complaints processes within the context of the residential school

pamphlet for young people, the residential school's policy and the regulatory framework.

### ***Defining 'who' and the residential school complaints process***

The residential school's pamphlet (pamphlet) for young people and the residential school policy (policy) for residential school staff contain information for young people and staff about the residential school's complaints process. The pamphlet for young people states that young people have the 'right to complain' and the 'right to discuss [their] concerns with an adult that [they] feel able to talk with', consistent with young people's right to express their views (UNCRC article 12) and with young people's desire to express their concerns to adults they know and trust (see Finlayson and Newman, 1993; Hill, 1999; NCH, 2003a, Clarke, 2003; New South Wales Commission for Children and Young People, 2004; Morgan, 2005). There is no articulated distinction made between the adults to whom young people could express their concerns, the adult responsible for the complaints procedure and informal' or formal advocates. The policy omits references to young people's right to complain or their right to discuss their concerns with any adult chosen as their confidante. Neither the pamphlet nor policy makes reference to a complaints officer.

The pamphlet provides information about professional roles, such as social workers and national advocacy workers and organisational structures located outwith the residential school for helping young people with their concerns. The pamphlet does not indicate that these roles and organisations will support young people to *participate* in the residential school complaints process, or any other complaints process, but rather that those roles/organisations may hear complaints from young people. The policy does not identify persons or organisations that may offer advocacy support to young people, such as helping them to express their concerns or to participate in any complaints process. There is no reference to children's rights officers - as formal advocates for young people - in the pamphlet or the policy despite the potential for that professional role to hear young people's concerns, answer their queries and advise young people about their rights, including their right to participate in the residential school complaints process.

## ***Domestic legislation: Making the connection***

The pamphlet and policy, as this section demonstrates, did not stand textually apart from statutory provisions informing the residential school's complaints process. Rather, the statutory provisions, such as those within the 1995 Act and the 1995 Act:RG, influence how the residential school interprets its obligations within the context of young people's rights, complaints processes and advocacy. The residential school has no statutory obligation, for example, to extend its duties beyond what the legislation and accompanying guidance strictly require. While national policy initiatives make the Scottish Government's commitment to implementing UNCRC principles evident (see Chapter 5), the lack of clear statutory obligations and guidance means that the residential school is not required to provide clear information to young people and residential school staff about young people's rights, advocacy and complaints processes.

The 1995 Act does not contain statutory provisions that clearly associate advocacy responsibilities with the UNCRC and complaints processes. The 1995 Act:RG affirms, however, that young people should have a 'confidential means of making complaints', that 'their rights should be consistently respected' (without stipulating what those rights are) and that young people should be informed about the practical arrangements for exercising their rights while it also requiring staff to 'foster a culture in which children are encouraged to express their views' (1995 Act:RG). While these requirements lay an important foundation for young people at residential school who may have wished to express their views - to 'complain' - through the residential school's complaints process, the statutory references relating to the adults to whom young people may complain, and under what circumstances, is somewhat ambiguous.

Within the 1995 Act:RG, the concept of 'complaints' has a particular focus under the heading of 'rights', stating that residential establishments 'must have a formal complaints procedure which is part of the responsible agency's procedures'.

The procedure should be easily understood and readily accessible to the children and staff. This procedure should include provision for children to gain access, by such means as private use of a telephone, **to a person independent of the establishment**, for instance a **complaints officer** [author emphasis]. Complaints should be followed up promptly and thoroughly. The child should be informed, usually in writing, of the outcome. A record should be maintained of the complaint, follow-up and outcome. Staff should receive training to familiarize

them with procedures. It is also helpful to review the number and characteristics of complaints on an annual basis to identify any wider implications for practice and management in the establishment. (1995 Act:RG, Section 25)

As the above section demonstrates, there is no information linking complaints to the statement of rights for young people in residential care (see chapter 5) or to advocacy for young people (although it was implicit in the first sentence that adults would contribute to making the complaints procedure ‘easily understood’ and ‘readily accessible’). While this section states that young people should have access ‘to a person independent of the establishment’, it presents a conflicted message by referring to the ‘complaints officer’ as that role, which may not exist, or be interpreted, as an advocacy role and which may be perceived as one lacking independence. Possible advocates, such as children’s rights officers and informal advocates identified by young people, are not mentioned in this section. In a subsequent section, however, the 1995 Act:RG state that children’s rights services, for example, *may* be needed to support young people who want to access the *local authorities’* complaints processes.

There is no reference in section 25 to the residential school’s complaints manager’s role, as an initial point of contact for young people, or what responsibilities that role needs to assume, such as providing young people with information about their rights and the complaints process. By stating that the ‘child should be informed, usually in writing, of the “outcome” of the complaints process, the section does not reflect that young people have a right to participate in the residential school’s complaints process, that young people have other UNCRC rights associated with the process and that they may require advocacy support to realise their rights.

### ***National Care Standards: making the connection***

As indicated in earlier chapters, the 1995 Act:RG sit alongside the NCS, which also impose statutory obligations upon the residential school and influence its approach to the residential school complaints process. Similar to the previous analysis, the NCS make no clear association between advocacy, rights, complaints and complaints processes for young people. The NCS state that young people need to have access to complaints procedures ‘that are easy to understand’ and that young people should be told to *whom* they may complain (Care Commission, 2005). In compliance with these standards, the residential school’s pamphlet states that young people have the ‘right to discuss [their] concerns with an adult that [they] feel able to talk with’ while the

residential school's policy makes no reference to whom young people can make their complaints. It appears that NCS envision a complaints officer hearing complaints from young people rather than 'any adult' identified by young people as their advocate.

There is no direct reference within the NCS to a possible link between advocates for young people and complaints or complaints processes, although there is an implicit message that young people may use advocates to assist them with expressing their concerns. An advocate is defined as a 'person who assists a child or young person to put forward their views or makes their case on their behalf' (Care Commission, 2005). While this definition implies informal advocates may represent young people's views, the NCS place an emphasis upon 'agencies and services' rather than persons and on formal advocacy, such as the Children's Rights Officer role (Care Commission, 2005).

You have access to other agencies and services who can support you in making your needs and preferences known. They can, with your permission, represent you and give your views.

You have access to information about your local Children Rights Officer (if your local authority has one) and other services that might represent you.

1. You receive information on these services in a way that you can understand.
2. If you have an advocate, people will listen to what she or he has to say on your behalf as if the views expressed were your own. (Care Commission, 2005: 42)

The first point stipulates that young people need to have access to information about their 'local Children's Rights Officer' and 'other services' (without stating that young people must have access to information about their rights). The phrase 'if your local authority has one' identifies the Children's Rights Officer as a discretionary role rather than an obligatory one. By subsequently defining a 'children's rights officer' as 'a **social worker** [author emphasis] employed by the local authority to **safeguard the rights** [author emphasis] of all children and young people living in the local authority area' (Care Commission, 2005: 44), there is the implication that the children's rights officer role lacks independence. There is no statement in the NCS about what 'rights' this standard refers to, what is meant by 'safeguard' and whether there is a relationship between advocacy, safeguarding rights, complaints and complaints processes. The last point (3) places an onus on young people to identify their advocate, stipulating that 'people will listen' without identifying who those 'people' might be and what



responsibilities those people might have for addressing issues, or concerns, that young people relate through their advocate.

In a reference to qualified advocacy support, the NCS state that the young people entitled to ‘communication support’ for taking forward their concerns are young people with disabilities<sup>47</sup> or those young people whose first language isn’t English (Care Commission, 2005).

If you are disabled or your first language is not English, you have access to translation, interpretation and communication support that you need to help you make your representation or complaint. (Care Commission, 2005: 5)

The NCS do not require that all young people in residential care must have access to informal or formal advocacy support.

### **7.3.3 Mapping communication: beyond the residential school environment**

The following section maps complaints process texts located outwith the residential school environment, identifying those persons to whom young people are required to express their concerns. The complaints process texts under scrutiny are those associated with education services, health care services, police services, local authorities and the Care Commission.

#### ***Defining ‘who’: education, health care and police services complaints processes***

There are several complaints processes, external to the residential school, within local authority education services for reporting concerns about education service provision to young people (see chapter 6). While the several processes are identified by different names, their common objective is to grant access to individuals with concerns falling within the education service sphere. Within this multifaceted complaints arena, the various individuals empowered to take complaints associated with these processes include the Scottish Public Services Ombudsman, Ministers, officers with the Court of Session, the Education Appeal Committee members, Sheriff

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<sup>47</sup> There is no reference in the National Care Standards to how the word ‘disabilities’ must be interpreted.

Court members and persons associated with the Additional Support Needs Tribunal (see chapter 6).

The *Education (Additional Support for Learning) (Scotland) Act 2004* (*Additional Support Act*) mandates qualified advocacy support for young people with concerns about education services, stipulating that education authorities are obliged, when exercising their duties, to provide advocacy support for young people meeting the legislative criteria unless the request for advocacy support is ‘unreasonable’ (see section 4). Young people at residential school who are identified as meeting the additional support criteria under this legislation may receive advocacy support for taking forward their concerns, which must be restricted to complaints about education services falling within the scope of the legislation (although the practical aspects of providing such support remain unclear). Young people with wide ranging concerns about education services and/or young people who do not meet the criteria for advocacy support under the *Additional Support Act* do not appear to have a legal entitlement to advocacy support.

Furthermore, the *Additional Support Act* also stipulates that education authorities have no duty to pay for advocacy support for eligible young people. There is no statutory reference to advocacy for young people that will assist them with understanding their rights and with participating in complaints processes intended to address any concerns young people may have about education services. In recognition that disputes or conflict may arise within education services, the *Additional Support Act* introduces provision for independent mediation services ‘for the purposes of seeking to avoid or resolve disagreements’ between the authority, parents and young people relating to the education authority exercising its authority. While these mediation services may be viewed as an alternative process to a formal complaint process, it is not clear what advocacy support is available to young people who wish to access and participate in such a process or what relationship exists between mediation services and young people’s rights.

Young people with concerns relating to health care services are required to complain formally to persons outwith the residential school who have responsibility for the National Health Service (NHS) complaints process within young people’s particular

local authority area (NHS Scotland, 2005)<sup>48</sup>. While there is no reference to the UNCRC, independent advocacy services are mentioned within NHS guidance.

Staff involved in the implementation of this guidance should therefore use the *Equality and Diversity Impact Assessment Toolkit* to ensure their local arrangements fully meet the needs of potentially disadvantaged individuals or groups. This includes ensuring ready access to translation and interpretation services, including for those people with sensory impairment, and the provision of appropriate independent support and advocacy services for all who need it. (NHS Scotland, 2005)

From this statement, staff associated with the complaints process are responsible for assessing young people's qualification for independent support and advocacy services, although it is not clear how 'appropriate' is defined. The distinction made between 'independent support' and 'advocacy services' implies an informal and formal advocacy divide although the exact difference is not made clear. There is no information about how advocates might assist young people with understanding their rights and participating in the complaints process.

Young people at residential school may have experiences involving the police at the residential school or in an outside community. Those young people with concerns relating to their experiences with police services are directed to write the Chief Constable for their local police force, provide details to their local police station, ask a solicitor, member of the Scottish Parliament or their local councillor for assistance, contact the Area Procurator Fiscal (if it appeared that a police force member had broken the law) or speak to 'someone' at Citizens Advice Bureau (Police Complaints Commissioner for Scotland, 2008). There is no reference to advocacy services for young people with concerns, to advocates who may assist young people with understanding their rights and with participating in the complaints process.

### ***Defining 'who': local authorities' complaints processes***

Young people at residential school have the option of making complaints directly to their local authorities. Each local authority within Scotland has its own complaints process mandated under legislation but allowing each local authority discretion as to the processes' structure and operation under the guidance (Circular, 1996). Young people are required to contact the complaints officer, or designated local authority

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<sup>48</sup> Note: This approach is currently under review by NHS Scotland.

person, within their own local authority to make a complaint (Circular, 1996). For adults, in particular, who are providing advocacy support to several young people, this situation requires them to negotiate an extensive complaints process environment as there are potentially 32 complaints officers responsible for 32 local authorities' complaints processes throughout Scotland.

The regulatory framework identifies children's rights services as structures that may assist young people with expressing their views - 'making a complaint' - although there is no statutory *obligation* placed on these services to provide advocacy support to young people.

Children's rights services may help young people and children in expressing their views and being heard. Some children may require particular support in expressing their views or making a complaint if they have communication difficulties or other problems. (1995 Act: RG)

While guidance acknowledges advocates' discretionary role in supporting young people wanting to make complaints, it fails to make the connection between the advocacy role and young people receiving information about their rights, claiming rights violations and complaints processes (Circular, 1996).

There will be occasions where a complainer (or potential complainer) will need help, advice or support from another individual or from an outside agency in framing or pursuing a complaint. An offer of support and the opportunity to explain and discuss a concern may help resolve complaints more quickly than might otherwise be the case. Authorities may particularly wish to arrange support where language or other difficulties impede communication. (Circular, 1996, para 43)

The language in this paragraph allows local authorities to exercise their discretion about whether advocacy services are offered to young people, despite the identification of key principles to inform complaints procedures, such as the importance of ensuring that their service users or their representatives have easy access to ensure their views are known (Circular, 1996). The guidance recognises that adjustments may be needed so that the rights of persons making complaints 'to fair and full consideration of his or her case are maintained' without, however, imposing a statutory requirement to ensure advocacy is made available (Circular, 1996). While the guidance envisions individuals having responsibility for local authority complaints procedures providing 'support' to 'complainers', it is likely these people are unknown

to young people and they may lack the necessary independence important to young people (Pithouse and Crowley, 2007).

Staff with special responsibility for the operation of the procedure will include those likely to be called on to support complainers and may require special training in the skills they will need to do their job effectively. (Circular, 1996, para 35)

There is no reference in the guidance to children's rights officers, as possible advocates for young people, and their role along with other advocates in helping young people understand their rights and participate in the local authorities' complaints processes.

### ***Defining 'who': the Care Commission's complaints process***

Young people at residential school can make complaints directly to the Care Commission, although the Care Commission encourages young people to use their localised complaints process in the first instance. Young people who want to make a complaint by accessing the Care Commission complaints process are required to make their complaint to the Care Commission offices, including its head office. There is no specific person identified beyond the 'complaints resolution officer' as the person considering young people's complaints at the first stage. The Care Commission's complaints procedure recognises, however, that young people and others may require advocacy support.

Complainants may ask anyone to advise them on the formulation of their complaint and to advocate for them during the investigation (a list of useful contacts is available on the Care Commission's website). Some complainants may wish to be represented by a solicitor. Where appropriate, Care Commission staff should assist complainants to formulate their complaint including offering advice and guidance on the use of the procedure... If you think you will need independent help to make your complaint, an independent advocacy service may be able to provide assistance... (Care Commission, 2007)

Similar to Circular 1996, the Care Commission's complaints process refers to discretionary advocacy and not advocacy required under statutory authority. There is no reference to children's rights officers and their role along with other advocates in helping young people understand their rights and participate in the complaints process.

### 7.3.4 Mapping communication: the Children's Hearing System

Young people with concerns about their Children's Hearings experiences, whether they relate to matters associated with the Panel, Reporters' services, legal services or advocacy services, are required to express their concerns to a myriad of adults who are affiliated with various complaints processes (see chapter 6). The CHS complaints process requires young people whose concerns fall within the complaints process acceptable definition to contact the 'Clerk to the CPAC'<sup>49</sup> for their local authority area. While this Clerk has formal and official responsibility for investigating all complaints, information about the CHS complaints process does not explain how the Clerk can be contacted (Children's Hearings, 2008).

If young people have a complaint about a Panel *decision*, they can appeal to a sheriff with the Chair of the Hearing (who is not independent from the CHS) designated as the person to assist with that process. If young people are not happy with the sheriff's decision, then 'the decision of the sheriff can be appealed to a higher court. You should seek legal advice or contact the Clerk of the Sheriff Court if you wish to appeal' (Children's Hearings, 2008). There is no reference to the Chair of the Hearing, the solicitor, the sheriff or the Clerk of the Sheriff Court as persons with responsibility for providing young people with information about their rights or the complaints processes. There is no information about advocacy support for young people with concerns and about assisting young people with understanding their rights.

For young people with concerns about Reporters' services, the SCRA complaints process requires young people to make a complaint 'in person', by telephone or fax, by writing to the SCRA or by having another person contact the SCRA on young people's behalf (although the information states that if they made a complaint in person or writing, young people would 'probably' have to confirm the complaint in writing) (SCRA, 2008). If the complaint isn't resolved in the first instance, the SCRA advises that the complaint 'will be recorded and referred to the appropriate line manager for investigation' (SCRA, 2008). The SCRA complaints process also stipulates that complaints in writing need to be made to the 'Authority Reporter' within the young people's local authority office; the Authority Reporter will be

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<sup>49</sup> CPAC: While this acronym is not made explicit in publicly available information, upon inquiry it refers to the Children's Panel Advisory Committee.

identified by the office receptionist whereas if the complaint is *about* the Authority Reporter, young people must make their complaint to the Reporter Manager for their local authority area (SCRA, 2008). If the complaint is about the Reporter Manager's office or national headquarters, then young people must contact the Director of Corporate Development at the national headquarters (SCRA, 2008).

If we are at fault, we will accept responsibility. Whenever appropriate we will offer an apology, tell you what we can do to put things right, and tell you what we can do to stop a similar problem arising in the future. Otherwise we will explain why we feel the complaint is not justified. If you are still unhappy, you have a right to raise a complaint with the Scottish Public Services Ombudsman which you can do directly or through your MSP. (SCRA, 2008)

If young people have a complaint about a hearing decision, the SCRA complaints process advises that young people can appeal to the sheriff and that the Chair of the Hearing can assist with that process, although young people needed to decide within three weeks that they disagreed with such a decision (SCRA, 2008).

If you have a complaint about the members of the children's hearing then this is a matter for the Chairman of the Children's Panel in your area. SCRA or individual Reporters cannot deal with complaints about panel members but the Reporter in your local office may be able to give you advice about the person to contact if you have this sort of complaint. (SCRA, 2008)

If young people disagreed with a sheriff decision, they are advised to seek legal advice or to 'contact the Clerk of the Sheriff Court if you wish to appeal' although no information is provided to assist young people in taking their concerns forward (SCRA, 2008). While it is contemplated that young people may have complaints about education or health services, safeguarders or the police, there is no information provided about the individuals who young people need to contact or how (SCRA, 2008). Furthermore, there is no reference to solicitors, how and to whom young people might complain about their legal representation. Possible complaints about social work services are defined as complaints about 'supervision requirements', which the Reporter will attempt to have addressed through a Children's Hearing (SCRA, 2008). There is no identification of local authority complaints processes for young people who have complaints about their social work services.

If you are not happy with the way a supervision requirement is working, you should contact the Social Worker responsible. You may be able to request from the Reporter that a children's hearing review the requirement. A Reporter cannot

change the supervision requirement; this can only be done by a children's hearing. (SCRA, 2008)

Young people unhappy with the outcome of the complaints process are required to contact the Ombudsman or their MSP (SCRA, 2008). The SCRA complaints process information advises children under 12 years old that they could talk to three adult Panel members about their 'worries' during the Children's Hearing process while older young people are directed to communicate as above (SCRA, 2008).

For young people at residential school who want to complain about legal services, the Law Society of Scotland (LSS) complaints process requires young people to contact a client relations person at the law firm where their solicitor is employed. If young people are unhappy about the outcome of their contact, they may contact the LSS's Client Relations Office on their helpline to discuss concerns. There is also a complaint form on the website for 'complainants' to complete. For young people unhappy with the outcome of the complaints process, they are required to contact the Legal Services Ombudsman or their MSP. There is no reference to advocacy services for helping young people understand their rights and how they might participate in the complaints process.

For young people with concerns about safeguarder, children's rights and national advocacy services, it is unclear what complaints processes are available and to whom they might express their concerns. Also, for young people with concerns about their advocacy support, the issue of how to acquire advocacy support within this context is murky, opening up an area for possible research.



**Table 1**

**FORMAL ROLES AND PROCESSES ASSOCIATED WITH YOUNG PEOPLE'S  
'COMPLAINTS' (RELEVANT TO THEIR EVERYDAY WORLDS AT RESIDENTIAL  
SCHOOL)<sup>50</sup>**

<b><u>INDIVIDUAL ROLES</u></b>	<b><u>DESIGNATED COMPLAINTS PROCESSES</u></b>
<ul style="list-style-type: none"> <li>• Residential school staff</li> <li>• Children's rights officers</li> <li>• National advocacy workers</li> <li>• Non-governmental agency helpline</li> <li>• Social workers</li> <li>• Staff at Child Law Centre</li> <li>• Complaints officers: <ul style="list-style-type: none"> <li>• Local authorities</li> <li>• Care Commission</li> <li>• Legal Services Ombudsman</li> <li>• Scottish Public Services Ombudsman</li> <li>• NHS, solicitors</li> <li>• Client relations persons at legal firms</li> </ul> </li> <li>• Clerk to the Sheriff Court</li> <li>• Sheriff</li> <li>• Children's Hearing panel chair</li> <li>• Clerk to the CPAC</li> <li>• Authority Reporter, Reporter Manager</li> <li>• Director of Corporate Development (SCRA)</li> <li>• Members of Scottish Parliament (MSPs)</li> <li>• Police Complaints Commission Ombudsman</li> <li>• Ministers</li> <li>• Officers with the Court of Session</li> <li>• Education Appeal Committee members</li> <li>• Sheriff Court members</li> <li>• Additional Support Needs Tribunal Staff</li> </ul>	<ul style="list-style-type: none"> <li>• Residential school</li> <li>• Local authorities</li> <li>• Care Commission</li> <li>• National Health Service</li> <li>• Children's Hearing System</li> <li>• Scottish Children's Reporter's Administration</li> <li>• The Law Society of Scotland</li> <li>• Local Police Services</li> </ul> <b><u>OTHER ADMINISTRATIVE, JUDICIAL AND APPEAL 'COMPLAINTS' PROCESSES</u></b> <ul style="list-style-type: none"> <li>• Internal local school review</li> <li>• Council education service review</li> <li>• Education Appeal Committees (local authorities)</li> <li>• Independent education adjudication</li> <li>• Additional Support Needs Tribunal</li> <li>• Scottish Public Services Ombudsman</li> <li>• Children's Panel Advisory Committees</li> <li>• Sheriff Court</li> <li>• Court of Session</li> <li>• Legal Services Ombudsman</li> <li>• The Police Services Complaints Commission</li> </ul>

<sup>50</sup> This information is not exhaustive and does not include complaints relating to criminal, disciplinary or other matters relating to public services for which there are specific types of complaint processes in existence.

### **7.3.5 ‘Knowing the complaints process: conjecture and experience**

This section reports on young people’s understandings about how the residential school complaints process was ‘supposed to work’. As there was no information in the young people’s pamphlet about how the residential school’s complaints process was intended to operate, young people residing in different units and attending as day pupils needed to inquire, experience or speculate about how the residential school complaints process worked. While it appeared that few young people had any direct experience with the complaints process, many young people had constructed an understanding about how it was ‘supposed to work’ in ways that did not accord with each others’ versions.

#### ***Common experiences with adults***

There is evidence to suggest that adults and children alike have difficulty understanding complaints processes. While human rights institutions and international human rights instruments use complaints processes for adults concerned about rights violations, complaints procedures are also used to scrutinise or monitor public services (MacLardie *et al.* 2007). Craigforth (2006), for example, conducted research for the Scottish Public Services Ombudsman and the Scottish Health Council relating to adult experiences and attitudes to NHS complaints processes, finding there was widespread lack of information about the NHS complaints process.

The majority of the general population are unsure about how to complain about GP or hospital based services and this is likely be an important barrier to complaining. Evidence suggests that there is a need for more high profile information and publicity about how to complain if dissatisfied with services... There is a need to conduct larger scale complaints research in Scotland to produce robust findings to inform the ongoing development of guidance in relation to implementing the NHS complaints procedure and to inform ongoing review of the procedure itself. (Craigforth, 2006: 104)

MacLardie *et al.* (2007) identified several barriers to individuals complaining about public services, which included ‘lack of knowledge about how to complain’ among with other factors such as lack of ability to complain, concerns about repercussions, fear of appearing to nag and skepticism about whether anything would happen as a

result of complaining. Participants in this research, such as NHS hospital patients, found the complaints process ‘confusing and unclear’ (MacLardie *et al.* 2007: 61).

### ***Making sense of the complaints process***

Some young people participating in this research indicated that they knew how the complaints process was ‘supposed to work’, despite their lack of experience, and they expressed confidence in its ability to deal with their concerns. Other young people, who had experience with the complaints process and described how they thought it was ‘supposed to work’, indicated they would not use it because ‘there was no point’. One young person stated he had accessed the complaints process but his original concerns had resolved before the complaints manager spoke to him so he used his interview time with her to ‘complain’ about another issue. The day pupils did not have any knowledge about the complaints process. Overall, the research reveals that every young person interviewed had some but varied different understandings about the residential school’s complaints process.

- I: Ok. So what would you do with the complaint form after you wrote on it?*  
*YPV: Ah’d give it to senior management.*  
*I: A senior manager. And what’s the senior manager supposed to do?*  
*YPV: If you feel you’re getting bullied by a member of staff in here an’ they’re pushin’ you about, you go an’ make an appointment to see a person called [executive director].*  
*I: Oh. Ok.*  
*YPV: Or is it [social work director]. It’s either [executive director or social work director]. To see what’ll happen in that situation, tell him all about it. Then what’ll happen is they’ll speak to the staff an’ then hopefully, if it happens again, the staff’ll lose their job.*  
*I: So what do you think about that process?*  
*YPV: Well it’s never happened to me so ah really cannae say anythin’ about it.*  
*I: So you’re not sure whether it works or doesn’t work for you because you haven’t made a complaint like that before?*  
*YPV: Naw.*  
*I: Ok. Do you know anybody else who has?*  
*YPV: Naw, no really.*

Another young person said that he had seen the complaint form, but he did not know where it was located, he had never used it, and he did not know anything about the residential school’s complaints process. One young person, who said he never used the complaints process and didn’t intend to use it, stated that accessing the complaints process involved filling out the complaint form and giving it to residential staff who

did not read it but who gave it to the ‘duty’ manager (while he thought there were four duty managers, he didn’t know their names). This young person said the duty manager would get the young person and staff member together to ‘talk about it’, which he thought was a good process because ‘it’s good to talk about it and work it out’. In this young person’s opinion, however, the complaints process had nothing to do with ensuring that he felt safe and when asked if he felt safe, he replied that he didn’t know and said ‘I keep to myself’.

One young person, who wanted his keyworker (KW) to attend his interview with him, described his perspective on how the complaints process ‘was supposed to work’. During the interview, it was apparent that this young person and his keyworker had different understandings about the residential school complaints process although they shared the impression that social workers and the national advocacy agency were involved in responding to a complaint.

- YPX: *If you fill in a complaint form that goes to your social worker or your [advocacy agency] worker and they take it from there.*
- I: *So is that what happens when the complaint form is filled out?*
- YPX: *Ah don’t really know ‘cos ah’ve never filled wan oot. Usually, they just get posted, dain’t they? To the [advocacy agency] or the [advocacy agency] worker gets phoned and he usually comes out.*
- KW: *The complaint form gets filled out and it would go to your manager...then head of social work, [name], in here, who’d then deal wi’ it.*
- YPX: *Aye, that’s the man – you’d just go to him wi’ problems then.*
- KW: *No, you wouldn’t. You would give it to me. I would give it tae [name], the unit manager of both [unit names]. It would then go on to [director social work]. He would action that, ‘cos he’s head of social work.*
- I: *Ok.*
- KW: *Most young people, the ones that I have seen fill one [a complaint form] in, will ask for their key worker or a member of staff to help them fill it in anyway. They want to word it correctly if it’s going to go to [the advocacy agency] or whatever. They obviously don’t want to write daft things, you know what I mean, they want it right. I mean, as I say, it’s no’ something that I’ve seen.*
- I: *So [the complaints process] doesn’t get used?*
- KW: *No. Well, I would imagine it does, yes. I’ve heard they have been used, yes. But I’ve never seen it.*

Another young person said he would take the complaint form to the residential care staff whom he thought would look at the complaint form ‘right away’ and ‘deal with it’. These young people described yet another understanding about the residential school’s complaints process:

I: *And you've written out your complaint? Then what do you do with the form?*

YPZ: *There's boxes in the corridor and we put them in there. The staff will open them once a week and read all the complaints and then they take them to [complaints manager]. You can just put it underneath the door and naebidy would kens, kens who it wis. 'Cos they canna read it.*

I: *So where do you get the form?*

YPZ: *They gie us one. I've seen it on the back of my door.*

I: *Oh, it's on the back of your door. So you would write on the form and then what would you do with the form?*

YPZ: *Efter ah've written it oot, put it in an envelope and then put a stamp or whatever on it, and put it underneath the door.*

I: *Underneath the unit manager's door?*

YPZ: *Aye. Yep.*

I: *And then the unit manager reads the complain?*

YPZ: *Naw.*

I: *Oh. He takes it someplace?*

YPZ: *Aye. He takes it ower the office. Or I can take it over.*

I: *To the main office?*

YPZ: *Yep.*

I: *And so who, who looks at it over there? Do you know?*

YPZ: *No, they send it away to the complaints officer.*

I: *Oh, they send it away.*

YPZ: *Aye.*

I: *So who would you talk to in the unit about it?*

YPQ: *You write them and you can hand it into [complaints manager]; she deals with all the complaints.*

I: *What would she do, do you know?*

YPQ: *She'd come over and speak to you about it. You can also put them into your social worker as well.*

Young people who had direct experience using the complaints process described their experiences with initiating the process.

I: *So that would be how you would deal with it, is by talking to your key worker. Ok. Have you ever used a complaint form?*

YPY: *Yes.*

I: *Oh you have? Where is it kept?*

YPY: *You can get one [complaint form] out of the office. If you want one, you just need to ask for one.*

I: *You ask for one and they're in the office?*

YPY: *Aye. They did put them up in the corridors so if you didn't want staff to know you'd filled one out. But I think the kids all were just ripping them up.*

I: *So they moved them into the office?*

YPY: *Aye.*

One young person said he had used the residential school's complaints process because he'd 'fallen out with the staff' and that while the complaints manager had spoken to him after he made his complaint, he had already 'sorted it out with the staff'. This young person said he used the opportunity, however, to raise another issue about some broken furniture in the unit he believed needed to be fixed, which happened 'about a month later'. In their second interviews many months later, however, these same young people - YPC and YPD - sounded quite disillusioned about the complaints process.

- I: OK. So if you wanted to make a complaint, you would fill out that form and then what would you do with it?*
- YPD: Sign it and then you could either hand it to your social worker, hand it in to anybody really.*
- I: To anybody?*
- YPD: Aye.*
- I: Ok. Who would be your first choice to give it to?*
- YPD: The staff member I'm getting annoyed at just to wind him up.*
- YPC: Yeah.*
- YPD: I don't deal with complaints.*
- I: You don't deal with them?*
- YPD: I don't think nothing happens with them to be honest so I don't bother with them.*
- I: Really?*
- YPC: That's what everybody thinks.*
- YPD: Nothing does happen.*
- YPC: No.*
- I: So you think that boys make a complaint but there's no response?*
- YPD: I've put in about twenty complaints in my time being here and not one person's came to speak to me about them.*
- I: Really?*
- YPC: That's what always happens.*
- I: How long have you been here?*
- YPD: How long have I been here? Twenty-one months, no twenty-three months and still counting.*

These young people who had direct experience with the complaints process described their understanding about how it worked, or explained how it didn't work for them, and what options they believed were available to them.

- I: So you're saying that when you make a complaint and the staff try to talk to you about it...*
- YPN: The staff 'll talk to me and say. The staff basically. Well see the feeling ah get when the staff talk to me, they talk to me right, but they'll try and solve it, but they'll try and tell me dinnae go further with this complaint. They dinnae say don't fill out the complaint form. They'll do it in a way that they think they can twist.*

I: If you want to make a complaint outside the unit, do you have that choice? Can you do that?

YPN: What do you mean? In the education?

I: Like if you don't want to use the complaint form...

YPN: If we don't want to tell the staff, we'll tell the staff can you phone [complaints manager]. You tell the staff ah want tae talk to the duty manager. You make a complaint tae him. Then half the time, they just go back and tell the staff.

I: Do they?

YPN: You can hardly trust anybody in here.

I: Are you worried that if you talk to someone, and you have a complaint about a staff member that they'll tell that staff member?

YPN: Yes. They always do. They do it all the time. You make a complaint about a staff member, they'll tell that staff member straight away.

I: And you'd rather they didn't tell the staff?

YPN: Mhm. Ah'd rather go to [complaints manager's] office, right. Then if that could happen that a member of staff could get a transfer for a couple of days, see how the person, like the member of staff or whoever, like if a serious complaint was made about a member of staff, get a person up here and they can monitor it. Then they go back...

I: Can you go directly to [complaints manager's] office if you want?

YPN: If you make a complaint at night, you can. If ah'm no' wantin' tae tell the staff on a weekday, I'll go to education. Then ah'll phone and say ah want tae talk tae [complaints manager]. Then ah'll go straight tae the office.

I: So you have that choice?

YPN: Well ah do it anyway. Ah don't know if you're allowed that choice or not.

YPM: Ah got tooked in tae the duty room. [A staff member] stayed there himself wi' me. Ah started swearing at him an' he grabbed me by the neck, put me up against the wall, threatened to kick me, threatened to punch me. He kicked a chair off me. Then ah filled in a complaint but nothing happened because it was just me an' him. But ah wis wantin' another member of staff down, but he says naw.

I: Right. And you've used the form? How many times have you done that?

YPM: Quite a few.

I: Quite a few? And what's your feeling about it? What do you think about it?

YPM: Nothin' happens to the members of staff. Nothin' will happen. Because the staff are wantin' to stay.

YPW: ... Ah've filled in complaint forms an' that, aboot the way ah get treated in here, but they never went naewhere.

YPS: Aye, an' filled in a complaint form aboot the manager that took ma leave aff us, but ah don't know whit happened tae the complaint form.

I: You don't know what happened?

YPS: Whit happened tae it.

I: You never heard anything about it?

YPS: Nope.

I: When was that?

YPS: A good while ago. Two months ago or something.

*I: Two months ago. So you gave the complaint form to the duty manager?*  
*YPS: Naw...*  
*I: I mean to the unit manager?*  
*YPS: It wis aboot the unit manager.*  
*I: Oh, it was about the unit manager.*  
*YPS: Aye. So ah gave it tae wan ae the staff.*  
*I: So you gave it to a staff member.*  
*YPS: Aye, an' ah think he must ae seen it an' read it.*  
*I: Did you put it in an envelope and seal it or did you just give it...*  
*YPS: Just gie it ower tae them.*  
*I: So you had made the complaint about the unit manager because you weren't happy with a decision he had made?*  
*YPS: An' the way ah'd been treated.*  
*I: You weren't happy with the way you had been treated. So you wrote that on the form, but you never heard anything after that?*  
*YPS: Nope.*  
*I: Mmm. That's interesting. Did you ever ask about it?*  
*YPS: There's nae point 'cos nuthin's gonnae happen aboot it. Nuthin ever happens aboot it.*  
*I: And would you use the complaint procedure again to make a complaint about the unit manager?*  
*YPS: Naw. Ah'd go an' see ma social worker an' that.*

The interview results show that many young people participating in this research had no clear understanding about how the residential school's complaints process 'was supposed to work'. The views of these young people suggest that the residential school's complaints process has not been adequately communicated to young people in ways that ensure that they understand how it operates, that all young people have the same understanding and that it is responsive to their needs. The predominant message from young people participating in this research is that they want to communicate their concerns to someone they have a trusting relationship with, who respects them, who will listen to them and who will respond in ways that meet their needs. The complaints process needs to make it happen.

*I: And what if you have a complaint. What if there's something that's happened that you don't like?*  
*YPO: Well, I've got a rights officer's form or I can speak to them [staff] aboot it.*  
*I: Right. And what would your first choice be?*  
*YPO: Talk to them.*  
*I: Talk to them?*  
*YPO: Yep.*  
*I: And are you comfortable doing that?*  
*YPO: Yep.*

*I: So, what do you do if you're not happy about something, if you're not going to use the complaints process?*



YPB: *I don't know, it's nothing that you really think about.*  
 YPA: *Nup.*  
 I: *Do you think knowing something about ...*  
 YPB: *If I'm pissed off with someone, I usually tell it to them.*  
 I: *Do you?*  
 YPA: *Best way to be.*  
 YPB: *If you're not happy with somebody you tell them.*

## 7.4 CONCLUSION

Young people participating in this research indicated that they prefer to communicate with individuals whom they know and trust when expressing their concerns or making a 'complaint'. These young people did not refer to structures or processes that they would engage with but rather identified family members, friends, residential staff and social workers as persons to whom they would speak about matters important to them. These findings are consistent with other research in which young people reported, as well, that the quality of their relationships with other people is a significant factor in their decisions about whether to communicate their unhappiness or their concerns about issues arising in their lives (Skinner, 1992; Finlayson and Newman, 1993; Hill, 1999; Marshall *et al.* 1999; NCH, 2003a; Children's Commissioner for Wales, 2003; Morgan, 2005; New South Wales Commission for Children and Young People, 2004).

This outcome suggests that young people who have verbal skills may find it difficult to speak about their concerns unless meaningful relationships exist in their lives while, conversely, power imbalances, fear, peer pressure, isolation and unsupportive environments may inhibit that communication. Inherent in this observation is the recognition that there are young people who face enhanced communication difficulties due to their special needs, age or cultural contexts. Diversity exists in the preferences, communication and coping styles of young people, who may engage in distraction techniques, avoidance, absconding, smoking, drinking, drugs, self-harming, violent behaviour and silence as ways of bringing attention to their concerns. It is for these reasons that advocacy can play a central role in ensuring the voices of all young people are heard.

The residential school pamphlet for young people gave some recognition to what young people want by specifying that young people may speak to an adult with whom they feel able to communicate (although this stipulation overlooks that some young people may want to confide in their friends). It was not clear, however, if the

intention articulated in the pamphlet translated into a practice whereby all individuals in young people's everyday lives at residential school see themselves as potential recipients of young people's concerns, with advocacy responsibilities, or whether those individuals defer to other adults whom they identify as having 'official' responsibility for the residential school's complaints process and for responding to any other concerns arising for young people. And yet, this research shows that young people wanting to express concerns about matters that do not qualify as an 'acceptable' complaint for the residential school's complaints process must look to administrative and judicial processes outwith the residential school and make their complaints in prescribed ways to designated persons who may, or may not, be known and trusted by young people (see Table 1). Within this context, there is no statutory requirement that young people should receive advocacy support.

The research also shows that while international human rights instruments, regulatory, policy and procedural texts recognise the importance of advocacy for young people who want to express their concerns, there is a disjuncture between what young people at Nona residential school say they want and what the domestic regulatory, policy and procedural framework actually stipulates. Inevitably, this disjuncture will have implications for practice, making it challenging for adults to meet young people's expectations while working within their organizational requirements. Together, the residential school pamphlet for young people, the residential school policy, local procedures and the regulatory framework do not adequately reflect the perspective of young people, which may have discouraged young people from expressing their concerns to persons they trusted and adults from taking up an advocacy role for young people who wanted to access complaints processes.

The research also makes evident how the regulatory framework, in particular, compartmentalizes advocacy, limiting statutory advocacy support to certain young people with particular types of concerns, such as those relating to education services. Furthermore, the regulatory framework distinguishes 'official' advocates from other types of advocates without making that distinction readily apparent and clarifying their functions. Young people wanting to access complaints processes relating to core services that they may encounter are required to contact, possibly without advocacy support, approximately 20 adults they may not know and trust who are associated with a myriad of complaint and judicial processes (see Table 1). These adults are not 'official' advocates for young people, and, in many instances, this research illustrates

how they lack independence from the complaints and judicial processes they must administer.

Young people may have a multitude of concerns related to any number of contexts. And yet, many formalized processes, existing as administrative or legal proceedings in numerous locations, require young people to segregate their issues. Young people are required to contact adults responsible for structures that, in turn, determine the specific, institutional roles these persons need to adopt when contacted by young people. In doing so, the regulatory, policy and procedural framework operate on a 'general level to structure institutional action and reality coordinating people's work at local levels' in ways that make them accountable to their organisations and subject to the legislative and policy framework in ways that are not entirely visible (Smith, 2005: 191). The multi-dimensional nature of the complaints arena, situated within complex and uncoordinated institutional environments, dictates that young people will require advocates to assist them with taking forward their concerns. Despite this need to ensure the implementation of young people's participatory rights, there is no legal imperative for young people to have direct access to advocacy support.

The frontline work of converting people's experienced worlds in to the textual realities of institutions is articulated to regulatory texts – laws, administrative rules, systems of accountability, policies, and so on – that frame and authorise the institutional capacity to act. (Smith, 2005:191)

It is evident from this research that young people did not understand how their residential school's complaints process was 'supposed to work', alerting us to the challenges young people will encounter when trying to understand how other complaints processes work on an individual basis and in concert with each other. In the same way that 'knowing' that rights exist does not translate into *understanding*, most young people knew about the complaints processes' existence (with the exception of day students) although they have different *understandings* about how the process would evolve. There was no written procedural information about the complaints process for young people and adults at the residential school, suggesting that the versions reported during the research originated from young people's own observations within their individual units and perhaps from verbal information provided to them. This finding suggests that young people at residential school might possibly have decided *not* to access the residential school's complaints process on the basis of perceived, rather than 'real' information about how it actually functioned. It

also highlights the need for advocacy and its essential role in helping young people to understand complaint processes.

# 8

## CONCLUSIONS AND REFLECTIONS

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### 8.1 INTRODUCTION

It is often said that the measure of a fair and just society is how it treats its most vulnerable citizens. Human rights principles offer a benchmark against which we can measure our progress in building a strong civil society in which the human rights of all citizens, including children, are promoted and protected. This research incorporates this perspective in addressing a ‘problematic’ associated with a particularly vulnerable and marginalized group – young people at residential school. By making the understandings of these young people central to this research and mapping those external factors often unknown and unseen by young people, it has been possible to illuminate the social organisation of their everyday worlds and to develop insights into what needs to change to better recognise young people’s human rights.

Research has been absent in Scotland about what young people at residential school understand about the UNCRC, how those young people define ‘complaint’ and what approach young people want for raising issues about what concerns them. Research in other jurisdictions, and my own personal experience, has shown that barriers exist for young people at residential schools who have concerns, or

‘complaints’, about matters important to them and who may want to access complaints processes to have those concerns addressed (Aires and Kettle, 1998; Kilkelly *et al.* 2005, Scottish Commission for the Regulation of Care, 2004). As a researcher, I began to investigate these barriers as a children's rights advocate while concurrently recognising and acknowledging the critiques of rights discourse, which include the view that adhering to rights focuses upon young people's individualisation to the potential detriment of addressing collective issues (Barnes, 2007). To some extent, this critique is met within this research through its emphasis upon social relations affecting the everyday lives of all young people at residential school.

A positive contribution of a children's rights approach is that it highlights the agency of young people at residential school, reinforcing the significance of hearing young people's voices at risk of becoming submerged amongst the voices of service providers involved in their daily lives. It is an approach that is situated alongside developed concepts of childhood exemplified by several themes, including the notion that young people actively contribute to their social worlds (James and Prout, 1997). By taking up the assertion, however, that an interplay exists between individual agency and social structure (see Hill and Tisdall, 1997), 1997: 13), in which childhood is shaped by political and economic influences, it is possible to see how children are often denied agency and their own identity in matters that affect their everyday worlds (Tomlinson, 2008). When promoting children as bearers of human rights, and when providing public services to children, it is essential to recognise the tensions inherent in constructions of both childhood and children's rights (Connolly and Ward, 2008) in order to better integrate children's liberty and welfare (see Welch, 2008).

We know little about the actual institutional relations - the system - organising young people's everyday lives in ways that interfere with young people's ability to express their concerns, access complaints processes, claim rights violations and seek resolutions. By beginning from the standpoint of young people at Nona residential school in Scotland and by giving a voice to those young people, this research has engaged in this wider investigation of the institutional relations within which those young people's lives are embedded. The research has sought to contribute to this gap in knowledge and, on a broader level, to ‘reorganize the social relations of knowledge’ about young people's everyday worlds, extending our understanding of young people's lives to how those lives are connected ‘into the extended social relations of ruling and economy and their intersections’ (Smith, 2005: 29).

Institutional ethnography has provided the theoretical underpinning to this research, also informed by my own commitment, as researcher, to human rights and the theoretical construct of young people as competent social actors. By integrating these approaches and mapping the trans-local and textual realities of institutional relations, it has been possible to see how the complex matrix of young people's human rights, complaints processes and advocacy is socially organised in ways that may actually inhibit hearing young people's voices – their 'complaints' – through such mechanisms as complaints processes, sometimes relied upon as indicators of what concerns are important to young people.

In adopting the theoretical assumption that the foundation of social relations is textual (see Smith, 2005), this research focuses upon the standardising elements of legislative, policy and practice texts affecting the everyday worlds of young people at residential school. Within this context, the research has explicated those complex macro-level institutional relations, represented within textual forms often unseen and unacknowledged, organising the lives of young people at residential school in ways that do not always recognise young people's human rights and facilitate hearing the voices of young people who are among society's most vulnerable. Through this illumination, the research has highlighted systemic textual barriers that exist for young people wanting to access complaints processes and the human rights implications for young people and society if those barriers continue to exist in ways that prevent young people from claiming breaches of rights and seeking redress.

The UN Committee, Human Rights Watch, other international human rights instruments and research have established the important symbiotic relationship between human rights, complaints processes and advocacy, particularly for marginalised young people attending and living in institutions such as residential schools (see chapters 2 and 3). Throughout the United Kingdom, including Scotland, the predominant literature contributing to those three themes, underpinning this research, has emerged through public inquiry reports into institutional child abuse, however, significant gaps have existed in research that investigates those connections. This research has sought to make those connections, encouraging us to see beyond the immediate in young people's lives to the external organising societal structures affecting the everyday worlds of young people at residential school. In doing so, it has been possible to extend our knowledge in ways that allow us to effect changes that

may contribute to young people at residential school fully realising their UNCRC entitlements.

## **8.2 RESEARCH SUMMARY**

This research explored the understandings of young people at a residential school in Scotland, using institutional ethnography to advance the inquiry into those textual factors that contribute to the social organisation of young people's knowledge about rights, complaints and advocacy. Consistent with the theoretical emphasis underpinning institutional ethnography, the research has sought to offer 'an alternative form of knowledge of the social' (Smith, 2005: iv), in which the agency of the young people participating in this research is recognized, valued and drawn upon in order to extend the analysis into the social relations and institutional structures within which they acquire their own expert knowledge about their everyday worlds.

Various conceptual themes have informed this exploration, beginning with children in the social world and the recognition that society has shifted towards recognizing children as competent social actors with views that may, or may not, reflect the views of adults around them. This shift is situated within a complex human rights environment in which the UNCRC has provided children with 'special rights', to be realized through State obligations as a signatory to the UNCRC. Human rights instruments, academic research, legislation and policy have given prominence, at times, to children in State care due to the particular vulnerability of that group of children. Within this context, complaint processes – processes that have associations with national human rights institutions and international human rights instruments – are seen as viable mechanisms for monitoring the implementation of children's rights and ensuring children realize their rights (see Aiers and Kettle, 1998; Wallis and Frost, 1998; Cousins *et al.* 2003; Alston and Tobin, 2005; Pinheiro, 2007; Pithouse and Crowley, 2007a). There are challenges, however, to children accessing such processes which this research has sought to understand.

Rather than utilizing a research methodology that seeks to explain young people's behaviour in relation to complaint processes, the research has drawn upon institutional ethnography whereby the researcher starts from where young people are located in their everyday worlds and from there 'explores social relations and organization in which our everyday doings participate but which are not fully visible to us' (Smith,



2006: 1). A particular challenge in adopting institutional ethnography, however, was that the 'work of discovery sometimes calls for research that is technical and conceptually outside the everyday language of experience' (Smith, 2006: 1), necessitating that this research is communicated in ways that can be understood within the context of individuals' more general and everyday knowledge about their lives. It is intended to expand knowledge through the dissemination process rather than substitute the expert knowledge that individuals' possess about their own experiences and understandings.

Institutional ethnography as deployed in this study does not claim to explain adult/child relationships but rather draws attention to the work practices of service providers who are situated within the complex world of institutional relations affecting the everyday lives of young people at residential school. While institutional ethnography offers insight into the institutional relations impacting young people's understandings, it is essential to see this approach as situated within its own broader research context in which varying strategies within child research also contribute to wider societal insights into the everyday worlds of young people. Institutional ethnography, for example, takes us into a broad exploration of institutional relations in order to explicate those systemic factors often unseen in daily life while other research approaches concentrate on meaning, agency and identity within the individual voices of research participants. As institutional ethnography does not assign meaning to individual voices or explain 'why' institutional relations exist as they do, so it must be seen as contributing to a more systemic grasp of young people's lives rather than as providing definitive insights into how they understand their world.

Texts within institutional ethnography are given prominence as participants in the ruling relations of institutions. It must be understood, however, that while texts may standardize and coordinate the work of service providers who work with young people at residential school, the constructs in texts cannot and do not determine wholly the nature of relationships between those service providers and young people. While the analysis of texts can assist us with mapping likely institutional factors that impact upon those relationships at a fixed point in time and place, those factors must be seen as influencing rather than causal. Children's agency and institutional ethnography's emphasis on structures and texts are two aspects of young people's lives that do not need to be seen in contradiction or as standing apart. Institutional ethnography allows us to 'see', however, the power of external structural relations and their potential to

limit the capacity of young people to exercise agency. Research within this paradigm, therefore, extends our gaze beyond the focus of much current research in childhood which is largely focused upon young people's perspective.

The research was set within the theoretical and contextual framework of young people's social worlds, young people's human rights, young people at residential school, complaints processes, advocacy and the broader literature informing these topics. The research sought to:

- Provide an account of young people's knowledge of their rights while at Nona residential school;
- Provide an account of how young people at Nona residential school define 'complaint', how they prefer to express their concerns and their understanding about how the residential school's complaints process 'actually' worked;
- Extend our knowledge about the relationship between young people's understandings and institutional processes;
- Extend our knowledge about how external forces, such as legislative, policy and procedural texts, shape young people's experiences and understandings.

Governments have an obligation to disseminate information about the UNCRC and yet this research illustrates how most young people participating in this research knew very little, if anything, about their rights. Young people's *knowing* that rights information existed, or *seeing* rights information, did not equate with *understanding* the UNCRC or their entitlement to claim rights violations. Many young people lacked a uniform understanding about where, and from whom, they might have obtained UNCRC information they considered relevant and accessible. Young people knew very little about those services often relied upon by agencies as instrumental for disseminating rights information, such as children's rights and national advocacy services. Key textual factors identified in the regulatory framework, policy and procedural texts highlight the disjuncture between young people's lack of understanding and the dissemination of UNCRC information.

As the research also demonstrates, the regulatory framework, policy and procedural texts lacked a clear, uniform and coordinated message about distributing UNCRC information. Direct practice affecting young people's everyday worlds at residential

school did not appear to provide for sufficient dissemination of UNCRC information in ways that young people understood. The regulatory framework, in particular, exists as the lynchpin between UNCRC article 42 and policy and procedural texts determining practice. It is apparent from this research, however, that the regulatory framework is not sufficiently compliant with the UNCRC to ensure proper dissemination of UNCRC information to young people at residential school. As a result, there are human rights implications for those young people who may be unable to claim rights violations due to their lack of understanding about their entitlements. The failure of young people at residential school to understand their rights may have prevented them from claiming breaches of rights and, more specifically, from accessing complaints processes to seek redress for rights violations.

In general, young people participating in this research, and elsewhere, defined complaints as being about ‘anything’ and did not specifically associate their complaint definitions with their UNCRC entitlements, although it is possible to conclude that specific types of concerns identified by young people in general constitute rights violations. Some young people participating in this research, for example, associated a ‘complaint’ with abuse although they also linked their complaint definition with the residential school’s complaints process and filling out the complaint form. It is widely acknowledged that complaints processes are important mechanisms for ensuring young people realise their UNCRC entitlements and yet we know that young people are often reluctant to use these processes.

By mapping official and authoritative complaint definitions associated with children’s services, the research illustrates the complexity, the number and the diversity of complaint definitions linked to matters that may concern young people at residential school. It shows how those definitions seldom reflect what young people say they want, demonstrating, instead, how young people must construct their concerns – their complaints – to fit within the acceptable, organisational and non-child-centred parameters around how complaints are defined. None of the complaints processes examined linked complaint definitions with the UNCRC nor did the residential school’s complaints process, for example, refer to young people’s statement of rights. How complaints were defined may have constituted barriers to hearing the voices – the concerns – of young people at residential school and prevented them from seeking remedies for breaches of rights.

Young people in this research identified that they want to communicate with adults they know and trust, revealing that they did not know their children's rights officers and national advocacy workers. Advocacy and meaningful relationships in young people's lives are widely acknowledged as essential for young people living away from home, without parental care, particularly as those roles can facilitate young people's understanding about and realization of their rights (see chapter 7). An examination of key regulatory, policy and procedural texts highlights, however, the lack of clear, unified statutory requirements needed to ensure young people at residential school have access to advocates with whom they can develop trusting relationships, who can assist them with giving voice to any matter important to them and who will help them relate their UNCRC entitlements to their everyday worlds.

The absence of advocacy support for young people at residential school possibly had implications for those young people wanting to access local and external complaints processes. The research shows how young people lacked external advocacy support within their residential school environment and how they must look to external complaints processes, without advocacy support, when their concerns fall outside the definitional boundaries of their local process. Young people wanting to make complaints outwith the residential school are required to express their concerns potentially to one or more than 20 adults affiliated with 'formal' and 'official' roles, which may have created obstacles for young people at residential school who wanted to make a complaint about possible rights violations.

Finally, the views of young people participating in this research show that young people either did not know or had varied understandings about how the residential school's complaints processes was 'supposed to work', with the possible effect that they would find it difficult to understand other complaints processes and also that they would not use the residential school's complaints process due to their misunderstanding. The number of complaints made through the residential school's complaints process – one complaint per month – suggests that young people may have lacked confidence in the process although further study may be required at this particular residential school to identify what factors contributed to the actual use, or decisions not to use, its internal complaints process. This finding also highlights the essential role for advocacy in assisting young people with understanding complaint processes.

This research has allowed us to see how external social relations, unseen and unknown to young people, structure their experiences in ways that may discourage or inhibit young people from expressing their concerns, participating in complaints processes, claiming rights violations and seeking redress. The key domestic legal and policy framework affecting young people's lives at residential school is burdened with contradictions and tensions, overlooking the essential link between young people's rights, complaints processes and advocacy and making it difficult, if not impossible, to implement the UNCRC at the direct service level. It is critical to facilitate meaningful, trusting relationships for young people at residential school with advocates who can inform young people about the UNCRC and support them with expressing their concerns, which can only happen if those instrumental roles in young people's lives are legally mandated and informed by a regulatory framework needs embedding UNCRC principles. There is a need to complete the matrix – to recognize in legislation, policy and practice – the very important relationship between young people's rights, complaints processes and advocacy.

It is acknowledged that the voices of residential staff, and other adults working in children's services, are absent from this thesis although those views were not overlooked in the study itself as my observations, informal discussions and interviews with adults providing services to young people contributed immensely to the analysis and to my insights into factors that influenced young people's understandings. It was not possible within the confines of this research, however, to incorporate and report on the views of adults, which have been widely reported in other research, and to cover the extensive textual research material considered relevant. I have focused upon the reporting the voices of young people who have fewer opportunities than adults, it is suggested, for making their views known within a public discourse. Secondly, there has been a noticeable gap in research mapping institutional relations – in the form of regulatory, policy and procedural texts in young people's lives - that help us to see how textual influences are related to each other and how they affect young people's understandings about rights, complaints processes and advocacy. This research has sought to contribute to filling that gap.

### **8.3 RESEARCH IMPLICATIONS**

This research has implications associated with three general areas categorised as: the voices of young people, the theoretical approach to child research and the regulatory, policy and procedural texts.

#### ***The voices of young people***

This research gives a voice to a particular group of vulnerable young people who often find it difficult to have their individual and collective voices heard within public discourses about matters affecting their everyday worlds; this group includes young people at residential school. Through representing the views of young people, the research recognises the human rights and agency of young people, their separate status from the adults in their lives and the participatory significance of their contributions to the social world around them. By hearing and recording young people's understandings about rights, complaints processes and advocacy, it has been possible to identify what changes are required that will better serve their interests, what may enhance our understanding about other vulnerable groups within the wider population, what future research needs exist and how we might better contribute to the fulfillment of young people's UNCRC entitlements.

#### ***The theoretical approach to child research***

This research has demonstrated how institutional ethnography, as a theoretical method of inquiry, can be used within child research to examine macro-level factors affecting young people's experiences and understandings in ways that are often unseen and unknown to them and others. While institutional ethnography has its theoretical origins in research that sought to bring attention to the marginalized voices of women, its theoretical approach has evolved to become one which aims to 'explore institutional regimes from people's standpoint' (Smith: 2005: 71). In this regard, institutional ethnography offers research opportunities to begin from the standpoints of young people, who are among the most powerless and marginalized within society, and to illuminate those institutional relations impacting young people's everyday worlds. By taking this approach, it is possible to identify where systemic changes can be made from a rights-based perspective to improve young people's lives.

## ***The regulatory, policy and procedural texts***

This research has shown how key regulatory, policy and procedural texts require significant changes to ensure that:

- young people at residential school, their advocates and service providers, receive information about the UNCRC in ways that enable the development of meaningful understandings and to relate those understandings to young people's everyday worlds;
- how young people at residential school define 'complaint' is reflected in processes intended to respond to young people's concerns or 'complaints' about matters important to them;
- young people at residential school develop trusting relationships with their advocates and that advocacy support is provided for young people who want to express their views about any matter important to them;
- complaints processes for young people at residential school are informed from a rights-based perspective;
- complaints processes for young people at residential school are coordinated in ways that make those processes accessible and meaningful to them.

***Disseminating UNCRC rights information to promote understanding:*** The research illustrates how existing regulatory, policy and procedural texts did not provide for the adequate dissemination of UNCRC information to the young people at Nona residential school in a way that ensured those young people fully understood the UNCRC and its relationship to their everyday worlds. Young people's lack of understanding suggests that service providers, as well, required more information about the UNCRC to ensure better transmission of UNCRC information to young people who depend on the State as their corporate parent to facilitate the realisation of their rights.

Within this context, it should not be presumed that all young people at residential schools, and in government care, will have the same or consistent understandings about their rights and rights *violations*. Those understandings may be dependent upon such factors as the accessibility of rights information for young people, the degree of trauma young people have experienced and their special needs, young people's

interest in learning about rights and the initiative of adults in making rights information relevant to the everyday lives of young people. Young people's understanding about how rights *violations* are understood and defined, therefore, may range from non-existent to well-informed. This research has revealed how the regulatory, policy and procedural texts may obfuscate young people's understanding about their rights when UNCRC principles are not fully embedded at all levels of service provision and when young people do not receive UNCRC information in a manner that is understood by them.

From this research, therefore, it is apparent that the regulatory, policy and procedural texts require changes to ensure that Scotland meets its UNCRC article 42 obligations so that young people at residential school may fully realise their entitlements.

***Defining 'complaint' from young people's perspectives:*** This research, consistent with other research, has demonstrated how many young people define complaint as 'about anything'. The research illustrates how regulatory, policy and procedural texts do not make adequate provision for defining complaints in ways that make complaint processes accessible to young people, who may be subjected to a multitude of rights violations associated with their residential school experience. There is need, therefore, for a regulatory, policy and procedural overhaul to ensure that young people's opportunities to complain 'about anything' are captured within processes accessible and meaningful to young people.

***Significant advocacy support:*** The research highlights the weaknesses within the regulatory, policy and procedural texts that grant *powers* without imposing *duties* to make certain that young people receive advocacy support in a manner that is significant to them. Young people participating in this research, and other child research, have indicated that they prefer to communicate their concerns – their 'complaints' - to adults they know and trust. Within this context, young people accessing children's services, experiencing the children's hearing system and being placed at residential school may not have an understanding about their rights and how to exercise those rights directly relevant to their everyday worlds. Without advocacy support and access to adults knowledgeable about the UNCRC, young people may be prevented from developing an understanding about and claiming their rights, including their participatory right to self-advocate.



Young people at residential schools often face enormous personal challenges, traumatised by life events beyond their control which, in turn, makes communication and self-advocacy particularly difficult for them. In the same way that we must view the UNCRC as a holistic instrument, we must also view young people's 'complaints', rights and advocacy as interdependent and in ways that take account of the many challenges faced by young people. The research illustrates the need for changes within regulatory, policy and procedural texts to ensure that young people's voices are heard through self-advocacy and advocacy support provided to all young people who require it.

***Designing complaints processes from a rights-based perspective:*** There is evidence to indicate that human rights abuses have occurred within residential schools and that various mechanisms, such as complaints processes, are needed to hear the voices of young people, and/or their advocates, who may have concerns about breaches of rights and who seek redress for possible rights infringements. Colton (2002:43) argues that shortcomings within the public care system, for example, are not the fault of current administrations, but rather stem from 'generations of neglect and policy failure', making the importance of hearing from young people particularly significant at this time.

In truth, services for our most vulnerable children are beset by problems of quite awesome magnitude; they are a national disgrace, and do not even approximate the standards to which any civilised nation should aspire and which exist in other European countries. Political consensus and long-term commitment are required to bring about fundamental improvements. The government and all political parties in the UK must work together to establish a public care system that any country would be proud to call its own. (Colton, 2002: 43)

By highlighting institutional barriers existing within the regulatory, policy and procedural texts, through this research, it has been possible to identify 'sites of change' located within those texts where it is possible to introduce rights-based principles and language in order to protect and promote young people's human rights throughout the complaints process.

***Coordinated, accessible complaints processes:*** By mapping the myriad of complaints processes that young people must access, depending upon how their complaints are defined, it has been possible to explicate the complexity of the complaints process milieu for young people at residential school. In doing so, it has become evident that

there is a need for changes to the regulatory, policy and procedural framework to provide for coordinated, accessible complaints processes for young people that take account of the potential multiplicity of their concerns.

### **8.3 REFLECTIONS**

Where, how and to whom do young people at residential school express concern about possible rights violations? This research suggests that there are remaining challenges within all three areas, beginning, perhaps, with the use of the word ‘complaint’. It is notable, for example, that there is a current international initiative to introduce a ‘communications’ procedure for the UNCRC rather than a ‘complaints’ procedure. It may be more beneficial for young people at residential school if we hear their ‘communications’ about matters that concern them rather than their ‘complaints’, which is a word that may itself establish barriers as it sometimes carries negative connotations that attach to the person rather than the issue.

Young people say they prefer to express their concerns – their ‘complaints’ – to persons they know and trust in their localized settings. Adults have the responsibility for ensuring these concerns are heard in ways that are meaningful to young people and responsive to their entitlements. As existing national human rights institutions in Scotland lack the legislated mandate to hear individuals concerns about possible rights violations, and may be too far removed from young people’s everyday worlds to be accessible to them, it is apparent that existing complaint processes for vulnerable young people at local levels need to be designed to ensure that young people’s rights are protected, promoted and realised through legislated advocacy support. National human rights institutions can play a vital role in providing guidance, oversight and education to ensure that these processes are compliant with the UNCRC and, in particular, the Paris Principles.

Freeman (2002) argues that if children’s rights are going to prevail within societies, however, it is important to engage in dialogue. Rather than viewing human rights – children’s rights – as a ‘foreign imposition’ or ‘tool of power’, it is essential to see these rights as an element of shared common sense (Freeman, 2002). While it is imperative for the State to embed human rights within its domestic regulatory framework and for broader society to adopt rights-based approaches to procedures and policy, such changes cannot exist in isolation nor will they happen within a short

timeframe. To make such changes, it is essential to promote cultural attitudes that recognise young people as active social agents and that value human rights we all inherently possess. Institutional ethnography, as utilised within the context of this research, has shown how regulatory, policy and procedural texts - components of institutional relations - may actually reflect cultural attitudes, existing in textual forms as forces unseen and unknown and organising our everyday experiences within the social world.

Cultural attitudes and textual factors, as an inter-related dynamic, need to reflect an understanding that while the inherent human rights of young people do not alter, young people's own attitudes, beliefs, needs, interests and concerns are ever-changing and evolving. Unlike texts, which remain static and fixed within their own historical contexts, the circumstances of young people's lives change along with their own expert understandings and knowledge about their worlds. And the environments of young people in residential establishments, as research has demonstrated, are complex.

Young people move to, from and back to residential environments within which they also migrate from open units to closed units to secure accommodation and back. They shift from their family homes to foster care to residential schools and return to similar placements, changing geographical locations that may involve young people moving between local authorities and sometimes over vast distances. Young people's family circumstances, educational and health care experiences can become disconnected from each other, chaotic and fraught with challenges for service providers trying to ensure the best possible outcomes for those young people. As these factors may create risks for young people, this research highlights the importance of reducing these risks by ensuring a rights-based perspective is reflected in co-ordinated cultural attitudes and the regulatory, policy and procedural texts impacting young people's everyday lives.

Shifting cultural attitudes towards recognising children as rights bearers requires that we see ourselves as advocates for children and their 'complaints' as communications about matters that concern them. This shift also demands that cultural attitudes respecting children's rights are supported by a national legal framework embedding UNCRC principles in a substantive manner that is ultimately coordinated with policy and procedures also reflecting UNCRC principles (UNICEF, 2005; Stockholm Declaration on Children and Residential Care, 2003). A change in the regulatory

framework governing children's services to embedding UNCRC principles, in particular, can contribute to shifting cultural attitudes by imposing *duties* rather than powers, strengthening accountability on the part of governments.

Those same governments are also accountable to the international community through the various reporting, complaints and other mechanisms designed to establish a system of checks and balances on government conduct, in so far as it affects respect for human rights. (Alston and Tobin, 2005: 33)

Young people can advise us about how we are doing. There is a need to ensure that young people have the opportunity to make complaints about 'anything', that adults with responsibility for young people understand that complaints may constitute rights violations and that adults with responsibility for those young people understand their duties to assist young people with resolving their concerns. While it should not be incumbent upon young people to define their complaints from a rights-based perspective, it is crucial that young people and adults understand that their concerns may constitute rights violations which need to be addressed. A gradual change of culture associated with young people at residential schools toward ideas of children's rights' must be fostered by complaints processes that offer young people the opportunity to allege rights violations and claim redress.

By hearing the research messages and responding to what young people want, it is evident that adults providing services to young people within the structures that claim to care for them, including complaint processes, must acknowledge, facilitate and promote strong human ties and relationships within young people.

We owe children truth; we owe them reasons for our conduct. Sustained moral concern implies helping them to understand us as the imperfect but struggling agents we are. (Ignatieff, 2000: 109)

Perhaps we need to explain to young people why we, as adults, have struggled to redress the challenges many young people face when we fail to support them in the realization of their essential human rights. By acknowledging young people as 'moral agents in their own right, with intentions, purposes, and visions of the world' that are not the same as our own (Ignatieff, 2000: 108), we challenge our assumptions and remind ourselves that we are imperfect and struggling agents. We learn that it is our shared common humanity, children and adults alike, that binds us and it is the

realization of human rights that protects our agency in which we are united by difference in all its forms. Treating young people with dignity and respect - core human rights principles – is the least that we, as a society, can offer what young people want, such as trusting relationships with adults who will listen and believe.

## **8.4 FUTURE RESEARCH**

Overall, this thesis has explored issues relating to young people's understanding about their UNCRC rights, complaints at local and extra-local levels and advocacy. There is a demonstrated need for further research in all these areas.

Research is needed to identify the circumstances in which young people appear particularly vulnerable and at risk of experiencing violations of their UNCRC provision, participation and protection rights. This research might include exploring general human rights awareness and understanding among those particular young people, relevant adults and systemic influences.

Considerable research has emerged on the topic of risks to young people who live in residential environments. Young people's own identified concerns while living in vulnerable circumstances need to be further investigated within Scotland and on a national scale. This research might explore avenues young people may pursue to have those concerns addressed, including informal and formal mechanisms associated with judicial and administrative proceedings, such as complaint processes. This research could address such topics as understandings, effectiveness, outcomes and relationships with children's human rights and advocacy.

There is a need for research into advocacy services for young people in government care and/or receiving public services. This research might explore what constitutes meaningful and trusting relationships for young people in ways that ensure effective advocacy support. Within this context, the formal roles of advocates, including carers and children's rights officers, needs to be examined from the perspective of how those roles are situated within institutional relations and how, in turn, those roles shape young people's experiences.

In general, there is a need to conduct research into what constitutes a rights-based approach to practice and policy, how human rights progress with young people is assessed and how violations of rights are addressed.

## **APPENDIX A**

### **INTERVIEW SCHEDULE**

The interview began with an explanation of the research and the obtaining of consent for young people's participation. As indicated in chapter 4, the interviews followed a conversational style of interviewing, informed by several key themes relevant to the research.

#### **Rights**

What are they?

Have you learned about them? How? What was learned?

Do you know about children's rights officers?

Do the staff know about rights?

Other comments?

#### **Participatory opportunities**

Do you participate in residential/school life? How? Do you 'tell' others what you think about what is going on?

Do you participate in decisions about your life?

If so, what types of decisions? How? If not, why not?

Would you like to participate? How? When? About what?

#### **Conflict, Disagreement, Concerns (informal processes)**

What happens when something happens that you don't like or agree with?

What happens when you disagree with a decision?

Do you talk about it? If so, how? To whom? In what way?

What works best for you for talking about what you don't like? For solving problems?

What is a 'complaint'?

#### **Advocacy/Representation**

Do you have support people in your life (ie advocates/representatives)?

If so, who are they? If not, why not?

[Friend? family? keyworker? social worker? children's rights officer?]

What do they do? What would you like them to do?

How do you contact them? When do you see them?

What is important about those people who are your advocates?

#### **Complaints Process**

Do you know about the residential school's complaints process?

How did you learn about it? When? Do you know how it is 'supposed' to work? How?

How does it 'actually' work?

What are the good parts? Does it need improvement? If so, how would you like it to work?

What would make it easy to use?

What gives you confidence in it?

Any comments? Anything you want to add?

## **APPENDIX B**

### **TEXTS INFORMING DATA ANALYSIS**

#### **RESIDENTIAL SCHOOL DOCUMENTS**

Residential school pamphlet for young people  
Residential school policy for staff

#### **DOMESTIC REGULATORY FRAMEWORK**

Children (Scotland) 1995 Act  
Children (Scotland) Act: Regulations and Guidance  
Human Rights Act 1998  
The Scotland Act 1998  
The Commissioner for Children and Young People (Scotland) Act 2003  
The Scottish Commission on Human Rights Act 2006  
Regulation of Care (Scotland) Act 2001  
National Care Standards: School Care Accommodation Services  
Education (Additional Support for Learning) (Scotland) Act 2004  
Standards in Scotland's Schools etc. Act 2000  
National Health Service (Complaints) Regulations 2004  
Circular SWSG5/96 Local Authority Complaints Procedures (1996)

#### **REPORTS**

Scottish Executive (1997, reissued 2000). *Child Strategy Statement*. [Online]  
Available at: <http://www.scotland.gov.uk/library3/social/css-00.asp>

Scottish Executive (2001). *For Scotland's children: Better integrated children's services*. [Online] Available at: <http://www.scotland.gov.uk/library3/education/fcsr-00.asp>

Scottish Executive (2002). *It's everyone's job to make sure I'm alright: Report to the child protection audit and review*. [Online] Available at:  
<http://www.scotland.gov.uk/Publications/2002/11/15820/14009>

Scottish Executive (2004a). *Protecting children and young people: The charter*. [Online] Available at: <http://www.scotland.gov.uk/library>

Scottish Executive (2004b). *Protecting children and young people: Framework for standards*. [Online] Available at:  
<http://www.scotland.gov.uk/library5/education/pcypfs-02.asp>

Scottish Executive (2004c). *Getting it right for every child: A report on the responses to the consultation on the review of the children's hearing system*. Available from  
[www.scotland.gov.uk/publications/2005/06/20135608/56098](http://www.scotland.gov.uk/publications/2005/06/20135608/56098)

Scottish Executive (2006). *Extraordinary Lives: Creating A Positive Future For Looked After Children and Young People in Scotland*. [Online] Available at:  
<http://www.scotland.gov.uk/Publications/2006/08/07134204/0>



Scottish Executive (2007). *A report on the implementation of the UN convention on the rights of the child in Scotland 1999-2007*. [Online] Available at:  
<http://www.scotland.gov.uk/Resource/Doc/184924/0052026.pdf>

## **COMPLAINTS PROCESSES: RELEVANT TEXTS**

### **Residential school complaints process:**

Residential school pamphlet for young people  
Residential school policy  
Children (Scotland) Act 1995: Regulations and Guidance

### **Local authority complaints processes:**

Children (Scotland) Act 1995: Regulations and Guidance  
Circular SWSG5/96 Local Authority Complaints Procedures (1996)

### **Care Commission complaints process:**

Scottish Commission for the Regulation of Care, 2008. *Complaints procedure*.  
[Online] Available at:  
<http://www.carecommission.com/images/stories/documents/publications/documents/71.pdf>

Scottish Commission for the Regulation of Care, 2008. *National Care Standards*.  
[Online] Available at:  
<http://www.carecommission.com/images/stories/documents/publications/documents/71.pdf>

### **Education complaints processes:**

Scottish Consumer Council, 2006. *Complaints in Education*.  
[Online] Available at:  
[http://www.scotconsumer.org.uk/publications/reports/documents/rp12comp\\_full.pdf](http://www.scotconsumer.org.uk/publications/reports/documents/rp12comp_full.pdf)

### **Health services complaints processes:**

Scottish Executive Health Department, 2008. The NHS Complaints Procedure. *Can I help you? Learning from comments, concerns and complaints*. [Online] Available at:  
<http://www.show.scot.nhs.uk/Publications/ME/complaints/>

National Health Service (Complaints) Regulations 2004. [Online] Available at:  
<http://www.opsi.gov.uk/si/si2004/20041768.htm>

### **Police complaints process:**

Police Complaints Commissioner for Scotland, 2008. [Online] Available at:  
<http://www.pcc-scotland.org/making-a-complaint.aspx>

### **Children's Hearing System complaints process:**

Children's Hearing System, 2008. [Online] Available at:  
<http://www.chscotland.gov.uk/>

**Scottish Children's Reporter Administration complaints process:**

Scottish Children's Reporter Administration, 2008. [Online] Available at:  
<http://www.scra.gov.uk/>

**The Law Society of Scotland complaints process:**

The Law Society of Scotland 2008. [Online] Available at:  
[www.lawscot.org.uk/Public\\_Information/Complaints\\_against\\_Scottish\\_solicitors](http://www.lawscot.org.uk/Public_Information/Complaints_against_Scottish_solicitors)

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