



Children's
Rights Alliance
for England

EXECUTIVE SUMMARY

STATE OF CHILDREN'S
RIGHTS IN ENGLAND

2014

CRAE believes that human rights are a powerful tool in making life better for children. We're one charity working with over 100 organisational and individual members to promote children's rights, making us one of the biggest children's rights coalitions in the world. Our vision is a country that values and upholds every child's human rights.

We fight for children's rights by listening to what children say, carrying out research to understand what children are going through, and using the law to challenge those who violate children's rights. We campaign for the people in power to change things for children. And we empower children and those who care about children to push for the changes that they want to see.

CRAE has produced an annual State of Children's Rights in England report since 2003.

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Any views expressed or errors in this report are CRAE's and do not reflect the views of these individuals and organisations, or of CRAE's members.

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Executive Summary

What are children's human rights?

Human rights are the basic things we all need in order to live with dignity: food, housing, education and health care; the right to spend time and communicate with others, to access information, form opinions, express ourselves, and hold religious beliefs; and the right to be free from violence, exploitation and abuse. Everyone, including children, has these rights just because they are human, no matter what their circumstances. Human rights mean that children must be respected as the people they are today, not just when they reach 18.

The UN Convention on the Rights of the Child (UNCRC) is an international treaty - an agreement between different governments – on a set of human rights for children up to the age of 18. The UNCRC reflects the particular needs, vulnerabilities and potential of children. It includes the right to education, the right to play, children's right not to be separated from their parents, unless it is in their best interests, and the right to be well cared for if they are living away from their family. It sets out children's right to be listened to and take part in decisions which affect their lives and, for those children living in difficult circumstances, the right to special protection and help from the government. All children should enjoy all their rights without discrimination on grounds such as disability, sex, ethnicity, age, faith or sexual orientation.

About this report

Since the UK signed up to the UNCRC in 1991, all areas of government and the state, including local government, schools, health services, and criminal justice bodies, must do all they can to fulfil children's rights. This report looks at whether enough is being done to fulfil the human rights of children in England.

There is no definitive list of indicators which determines precisely whether or not children's rights have been fulfilled, but the UN Committee on the Rights of the Child explains what is required by the UNCRC and looks at whether each state is complying with it. Based on what the UN Committee has said, this report explains what human rights mean for different areas of children's lives, and selects indicators to illustrate particular rights issues facing children in England. It looks at whether there have been improvements since the UN Committee on the Rights of the Child last examined the UK's record on children's rights in 2008. It is based on official statistics, published research and additional material gathered through Freedom of Information requests. It also summarises significant laws or policies which affect children's human rights.

General measures of implementation

The UK government is expected to do all it can to implement the UNCRC - to make sure all law, policy and decisions which impact on children comply with their human rights. The systems and structures which make sure this happens are known as "General Measures of Implementation".

There have been a few positive developments:

- The Children's Commissioner for England was recently reformed and now has a rights-based mandate, greater powers and independence from government¹
- There are limited, but welcome, duties on leaders in local authorities to have regard to children's views²

In most other respects, there is poor implementation of the General Measures of Implementation in England:

- There is no domestic law requiring all public bodies, such as schools, hospitals and the police, to comply with children's human rights and allowing children to challenge laws and decisions which breach their rights
- Nor is there any duty on public bodies requiring them to have regard to children's human rights when making decisions. The evidence suggests that they do not systematically do so
- There is currently no cross-government children's rights strategy with actions and targets to implement children's human rights
- Government budgets do not identify how much money is spent on children
- There is currently a lack of data showing whether children enjoy their rights in certain areas

1 Children and Families Act 2014, Part 6

2 DfE (2013) Statutory guidance on the roles and responsibilities of Directors of Children's Services and the Lead Member for Children's Services. pp.5-6

- Professionals working with children are not systematically trained on children's human rights
- Access to justice for children, and those working with and for them, has been significantly undermined by changes to legal aid and judicial review

CRAE sent a Freedom of Information request to the Ministry of Justice, asking them to provide information about the number of children granted legal aid in 2008-09 and 2013-14 for specific types of cases. The number of children granted legal aid for private law cases (where their parents are or have divorced or separated) has fallen by 69%, and the number of children granted legal aid for education cases has fallen by 84%.

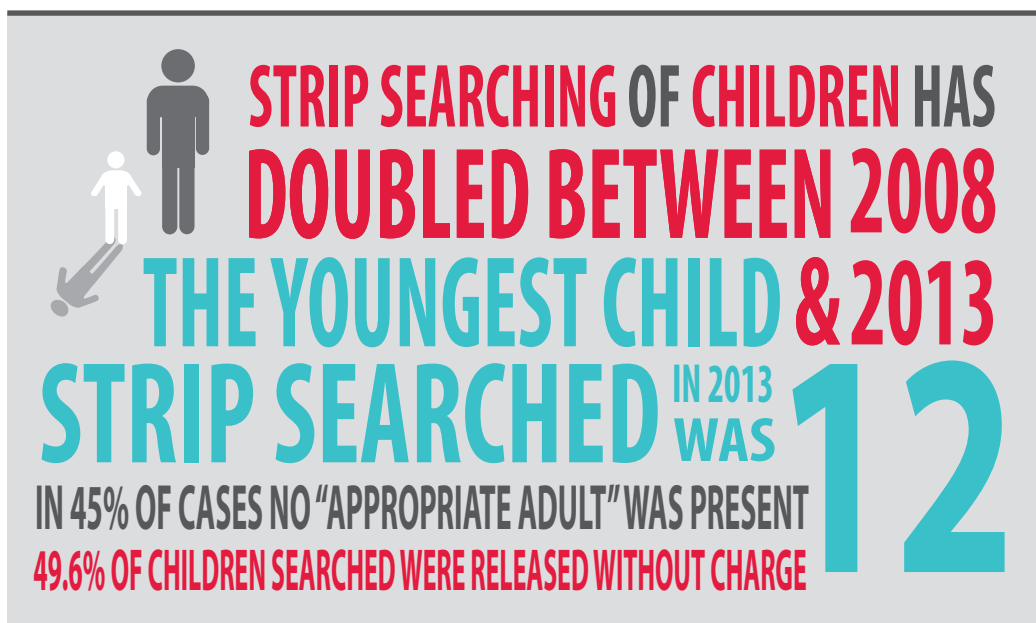
Civil liberties

Children have a right to access and to move freely in public spaces and to meet up and spend time with others. Children have a right to think and believe what they like, to access information and to speak their mind, so long as this is not harmful for others; they have a right to keep personal matters and communications private; and they have a right to be protected and free from violence.

The UN Committee on the Rights of the Child has raised significant concerns about anti-social behaviour measures, which can seriously restrict children's civil liberties. This system has been reformed, but children engaging in low-level disruptive behaviour can still find themselves with an injunction and breach can still result in imprisonment. Sixty-seven percent fewer children were stopped and searched in 2013-14 than in 2008-09, but over 30% of those children were Black or Asian.³

Privacy is particularly important for children. Revealing children's personal details, or events in their lives, to the world, can place children at risk, and the things they do as children can hang over them for the rest of their lives. There are gaps in the protection of children's privacy. In criminal courts, privacy protections do not apply pre-charge and do not stop people naming and shaming children via social media. They expire when a child turns 18, meaning children cannot leave their past behind. There have also been moves to open up the family courts, meaning cases relating to child protection and adoption are subject to public scrutiny. Children have expressed strong objections to this, and experts have warned this may deter children from reporting abuse.⁴

Children's human rights are currently threatened when they come into contact with the police. Strip-searching can be a terrifying and traumatic experience for children, especially for those coming into contact with the criminal justice system, many of whom will be feeling frightened and very vulnerable. It should only happen when absolutely necessary, and where proper safeguards are in place to keep children safe from harm and limit the trauma they are likely to experience. This is not happening in practice.⁵



3 Under Freedom of Information law, CRAE asked 40 police forces in England about the number and characteristics of children stopped and searched in their area in 2008-09 and in 2013-14. Ten police forces responded

4 Brophy, J and others (2014) Safeguarding, privacy and respect for children and young people & the next steps in media access to family courts. Wirral: NYAS and the Association of Lawyers for Children

5 Under Freedom of Information law, CRAE asked 40 police forces in England about the number of times children had been subject to strip searches at the police station in 2008 and in 2013; the ages of the children; whether an appropriate adult had been present during the strip search; and whether the child was released. Only 5 police forces responded

Two UN human rights committees have said that the use of Tasers on children should be banned.⁶ Instead, these weapons are increasingly used on children.⁷

IN 2013, TASERS HAD BEEN USED ON
230 CHILDREN 
BY 15 POLICE FORCES WHO RESPONDED TO FOI REQUEST RE: TASER USE
THE YOUNGEST CHILDREN WERE 13
26% WERE BETWEEN 13 and 15.
IN 7.5% OF CASES, THE WEAPONS WERE FIRED OR THE "DRIVE STUN" TECHNIQUE USED
CAUSING PAIN BUT NOT INCAPACITY.

Children have a right to be protected from violence. However, the use of force is still permitted against children in various contexts, and the way in which it is regulated does not reflect human rights standards:

- The use of force should only be permitted when strictly necessary for preventing harm to the child or others, and should never be used as a punishment. However, parents and those in loco parentis are allowed to physically punish their children and schools and prisons are allowed to use force in order to maintain "good order and discipline"
- Techniques which aim to deliberately inflict pain should not be used on children, but these are still permitted in children's prisons
- There is a lack of training for those permitted to use force on children, and a lack of transparency around the extent to which force is used. Police forces and schools were not, for example, able to tell us about how often they use force on children

Family and alternative care

The UNCRC recognises parents' primary role in protecting and promoting the rights of their child - describing the family as '*the fundamental group of society*' - but says the government should support parents in bringing up their children. Children have a right not to be separated from their parents, unless this is in their best interests. Where children must live apart from their families, they have a right to be well cared for. If the child's parents are living apart, the child has the right to maintain contact with both, if that is safe and in their best interests. Children should have a say when adults make decisions about where they live and how they should be cared for. Under Article 19 of the UNCRC, the state should protect children against all forms of violence and abuse. They must take appropriate action to properly investigate suspected abuse.

⁶ Committee against Torture (2013) Concluding observations on the fifth periodic report of the United Kingdom, para.26. Committee on the Rights of the Child (2008) Concluding observations on the United Kingdom of Great Britain and Northern Ireland, para.31

⁷ Under Freedom of Information law, CRAE asked 40 police forces in England about the number of times the police has used Tasers in relation to children in 2013. 15 police forces responded to the request

Children rarely have a voice in what happens when their parents separate and their rights are not always central to decision-making:

- New rules mean that parents applying for divorce, judicial separation or to end a civil partnership are now required to attend mediation before going to court, but there is no right for children to take part. The government has, though, announced that children aged 10 and over will have direct access to judges in family cases⁸
- Under new legislation, there is a presumption that both parents will continue to be involved in their child's life where that is consistent with the child's welfare.⁹ Critics have raised concern that this will, in practice, prioritise the parent's right to contact over the child's best interests

The professionals who are supposed to keep children safe have faced a huge increase in their workload, while investment in their work has reduced. More and more children are classed as "in need" - meaning more children are considered at risk - and being put on a child protection plan.¹⁰ CAFCASS received 10,608 care applications in 2013-14,¹¹ compared to 6,465 in 2008-09.¹² At the same time, funding for "early intervention" has lost its protected status and expenditure on early intervention and family support services has fallen significantly - 32% in 2011-12, according to the Local Government Association.¹³ The NSPCC believes that the thresholds for accepting children in need referrals are rising and that only the more serious cases are being taken on by local authorities.¹⁴

There has been a lot of focus on improving care for children who are separated from their parents, largely in response to concern about current standards.

- The quality of care and safety in children's homes have been called into question following high profile sexual exploitation cases like Rotherham.¹⁵ New standards¹⁶ are being introduced to ensure children's homes are located in safe areas, staff are well qualified and staff know what to do when a child goes missing
- A focus on adoption in recent years¹⁷ has seen an increase in the number of children being adopted,¹⁸ though concerns have been raised about the quality of the decisions being made.

But currently, the experiences and outcomes for children in care remain poor:

- Like all children, children who are looked after need stability in their home life. Despite this, placement stability has shown no real improvement since 2008-09, with 23% of children experiencing 2 or more placements during 2013-14¹⁹
- While some children are placed far from home in their best interests, broadly, the distance between a looked after child's home and their placement can affect their safety and wellbeing. Despite this, in 2012-13 more than a third of children in care were placed outside their home local authority, and one in six was more than 20 miles away from home²⁰
- 34% of care leavers were not in education, employment or training in 2012-13 - an increase from 31% in 2008-09²¹

There is inadequate protection for children against certain harms:

- Around 130,000 children in the UK live in households where there is a high risk of domestic violence - it was a factor in 63% of serious case reviews (a review that takes place when a child dies or is seriously injured, and abuse or neglect is a factor).²² Her Majesty's Inspectorate of Constabulary has found that the police response to domestic violence is not good enough²³ and women's refuges are in crisis, with funding cuts and a 32% shortfall in beds²⁴

8 Hughes, S (25 July 2014) Children will be seen and heard in family courts. Ministry of Justice Press release

9 Children and Families Act 2014

10 DfE (2010) Children in need, including their characteristics and further information on children who were the subject of a child protection plan. (Children in need census - final), year ending 31 March 2010

DfE (2014) Characteristics of children in need in England, 2013-14. SFR 43/2014

11 CAFCASS, Care applications, June 2014

12 CAFCASS (2009) CAFCASS care demand. Press release 8 May 2009

13 Local Government Association (2012) Early Intervention Grant

14 Jütte, S, Bentley, H, Miller, P, Jetha, N (2014) How safe are our children 2014? NSPCC

15 Office of the Children's Commissioner (2012) Briefing for the Rt Hon Michael Gove MP, Secretary of State for Education, on the emerging findings of the Office of the Children's Commissioner's Inquiry into Child Sexual Exploitation in Gangs and Groups, with a special focus on children in care

16 The Children's Homes and Looked After Children (Miscellaneous Amendments) (England) Regulations 2013. DfE (2014) Children's homes regulations: high expectations and aspirations. Consultation

17 DfE (2013) Further action on adoption: finding more loving homes

18 DfE (2013) Children looked after in England (including adoption and care leavers) year ending 31 March 2013

19 DfE (2013) Children looked after in England (including adoption and care leavers) year ending 31 March 2013. DfE (2014) Children looked after in England (including adoption and care leavers) year ending 31 March 2014. SFR 36/014

20 DfE (2013) Children looked after in England (including adoption and care leavers) year ending 31 March 2013. [includes data for 2008/9]; DfE (2014) Children looked after in England (including adoption and care leavers) year ending 31 March 2014. SFR 36/014

21 DfE (2014) Outcomes for children looked after by local authorities in England as at 31 March 2013

22 Brandon, M and others (2012) New learning from serious case reviews: a two year report for 2009-2011. DfE

23 HMIC (2014) Everyone's business: improving the police response to domestic abuse

24 Women's Aid (2014) SOS campaign pages

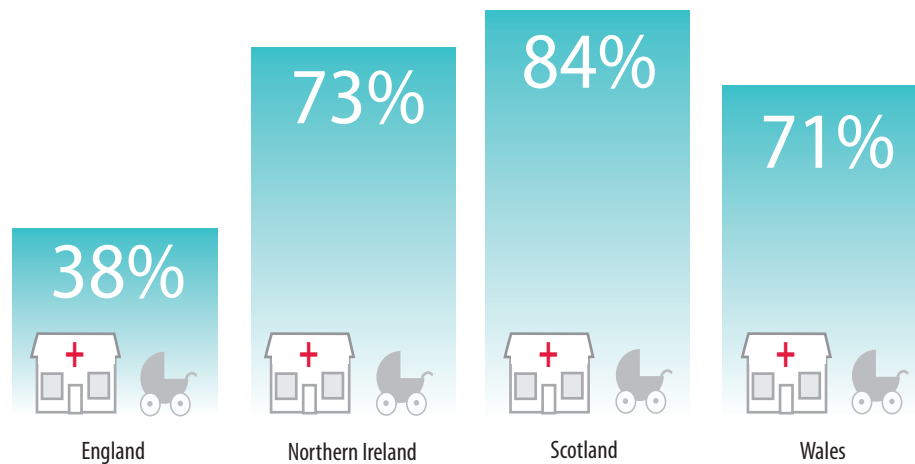
- Though Female Genital Mutilation has been illegal since 1985, no prosecutions had taken place until three were announced this year. A suite of new measures to tackle FGM have been announced
- It has become clear that child sexual exploitation is under-reported and in cases that have come to light, a common factor has been the failure of professionals to listen to or believe what children were saying - to regard them as "collaborators in their own abuse"²⁵
- Professional responses to neglect have been criticised, with cases left to drift and thresholds for intervention too high²⁶

Health

Under Article 24 of the UNCRC, all children have the right to be as healthy as they can be and to access health services. Many indicators relating to children's physical health have improved slightly since 2008, but poorer children have a far worse chance at a healthy life and developments in relation to children's standard of living are likely to undermine any progress made. Children's mental health services are in crisis.

Care for pregnant women and new mothers is key to children's right to have a healthy start in life. Good ante-natal and neo-natal services are crucial to this. However, there was a shortfall of 4,800 midwives in 2012,²⁷ and England has the lowest proportion of baby-friendly hospitals - which promote good infant feeding and mother-child bonding - in the UK.²⁸

BIRTHS IN BABY-FRIENDLY HOSPITALS



Fewer women are smoking during pregnancy and more are breastfeeding their babies. These factors have a huge impact on a child's health. However, progress is too slow, and there remains a strong correlation between a woman's socio-economic status whether she smokes and breastfeeds.

- Despite huge benefits for children, only 1% of mothers in the UK breastfeed exclusively at six months.²⁹ The rate of breastfeeding decreases with increasing social disadvantage³⁰
- The proportion of women smoking at the time of delivery has reduced to 12%, but smoking is more prevalent among women from lower socio-economic groups than others³¹

There are signs that children are being supported to make healthier choices. Though still high, compared with other European countries, teenage pregnancies are now at their lowest since records began in 1969.³² The numbers of children smoking, drinking alcohol and taking drugs have fallen considerably since 2008.^{33,34} But conception rates are higher in more deprived areas and alcohol, solvent and drug use are associated with deprivation.

25 Home Affairs Select Committee (2013) Child sexual exploitation and the response to localised grooming. Second report of session 2013-14

26 Ofsted (2014) In the child's time: professional responses to neglect

27 Royal College of Midwives (2013) State of maternity services report 2013

28 Unicef UK (2014) Baby friendly statistics 2014

29 ONS (2012) Infant feeding survey - UK, 2010

30 Health and Social Care Information Centre (2012) Infant Feeding Survey

31 Health and Social Care Information Centre (2014) Statistics on women's smoking status at time of delivery: England. Quarter 4: April 2013 to March 2014. Final report

32 ONS (2014) Conceptions in England and Wales, 2012

33 NatCen (2009) Smoking, drinking and drug use among young people in England in 2008

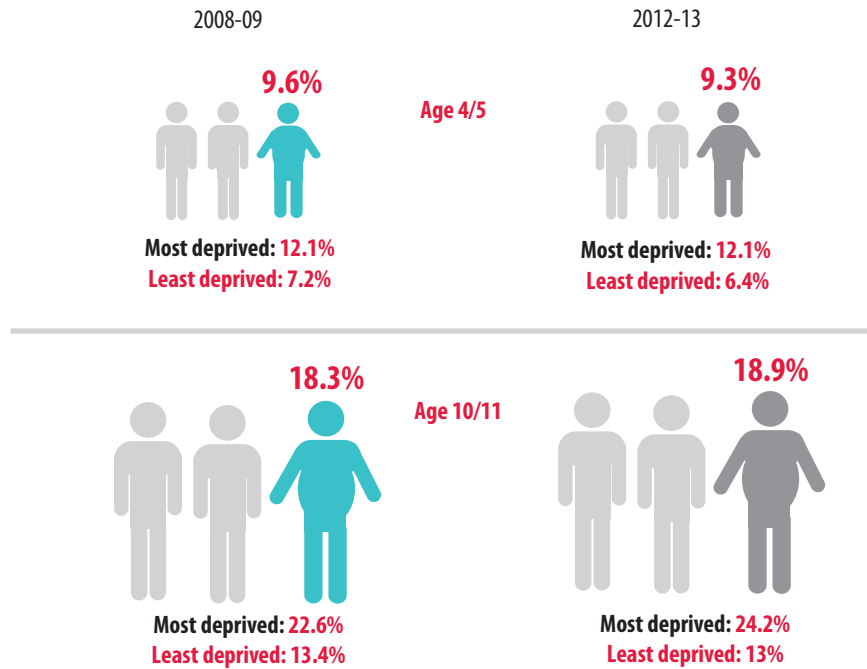
34 NatCen (2014) Smoking, drinking and drug use among young people in England in 2013

Childhood obesity is a major public health challenge - some say the most urgent public health challenge in the UK today.³⁵ This is a worsening problem.^{36,37}

- Obesity levels have gone down very slightly among younger children, but are still rising for children aged 10 to 11
- Levels of physical activity have decreased for both boys and girls since 2008-09
- The proportion of children eating a healthy diet - has fallen slightly since 2008-09

Again, weight, diet and activity levels are strongly related to socio-economic status³⁸

CHILDHOOD OBESITY



DIET AND NUTRITION



| PHYSICAL ACTIVITY BY CHILDREN AGED 5-15 | 2008-09 | 2012-13 |
|---|-----------------------|-----------------------|
| At least 1 hour of moderate to vigorous intensity physical activity a day | 28% boys 19% girls | 21% boys 16% girls |

35 Health and Social Care Information Centre (2014) Statistics on obesity, physical activity and diet
 36 NHS Information Centre (2009) National child measurement programme England, 2008/9 school year
 37 NHS Information Centre (2012) National child measurement programme England, 2012/13 school year
 38 Health and Social Care Information Centre (2014) Statistics on obesity, physical activity and diet

- There is insufficient investment in community services, with Clinical Commissioning Groups and local authorities freezing, cutting or making below-inflation increases to their budget³⁹
- Children are still being admitted to adult psychiatric wards, where they may be treated by staff who are not trained in child and adolescent mental health, and may be denied their right to education
- In 2012-13, of 580 mentally ill children who should have been taken to a “place of safety,” 45% were detained in police custody because there were no safe places available⁴⁰

The President of the Royal College of Paediatrics and Child Health has said that child death rates in the UK represent ‘a major crisis’⁴¹ - despite improvements since 2007, the UK is still ranked bottom out of 20 European countries for deaths of children under five.⁴²

Standard of living

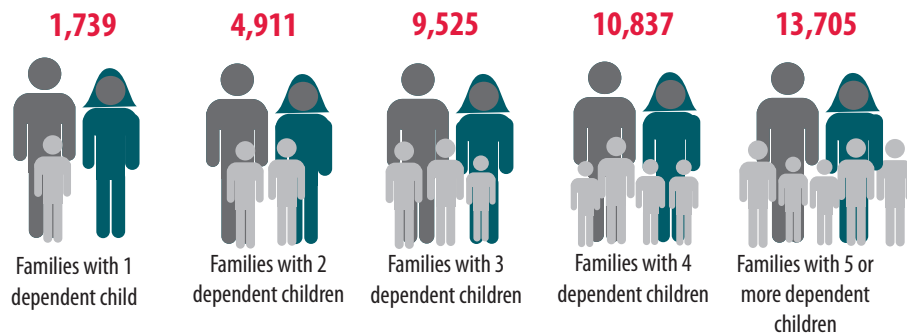
The UNCRRC recognises that parents are primarily responsible for meeting their children’s needs, but when families do not have enough to live on, children have a right to financial support from the government - in particular to make sure they have enough food, clothing and housing.

Increasingly children’s living standards fall below the level required by their rights, and not enough is being done to meet their basic needs. “Relative child poverty” - that is the number living on an income which is low compared to average incomes – has gone down since 2008-09, but only because average incomes have fallen.⁴³ The proportion in “absolute” poverty (taking account of housing costs) has increased - from 28% in 2008-09 to 31% in 2012-13.⁴⁴

The government’s strategy for tackling this – which is based on families working themselves out of poverty - has been heavily criticised. In 2012-13, 63% of children in poverty were living in families where at least one adult works.⁴⁵ This is not surprising – while the cost of living has increased by 27-28% since 2008, average annual earnings have risen by only 9%⁴⁶ and millions of workers are earning less than a living wage.

Since 2010, the government has introduced a series of cuts to the benefits and tax credits system. This includes a benefit cap of £500 a week for families with children, no matter how big the family.⁴⁷

HOUSEHOLDS AFFECTED BY THE BENEFITS CAP



96% OF ALL THE HOUSEHOLDS IN ENGLAND, AFFECTED BY THE BENEFITS CAP, HAVE CHILDREN

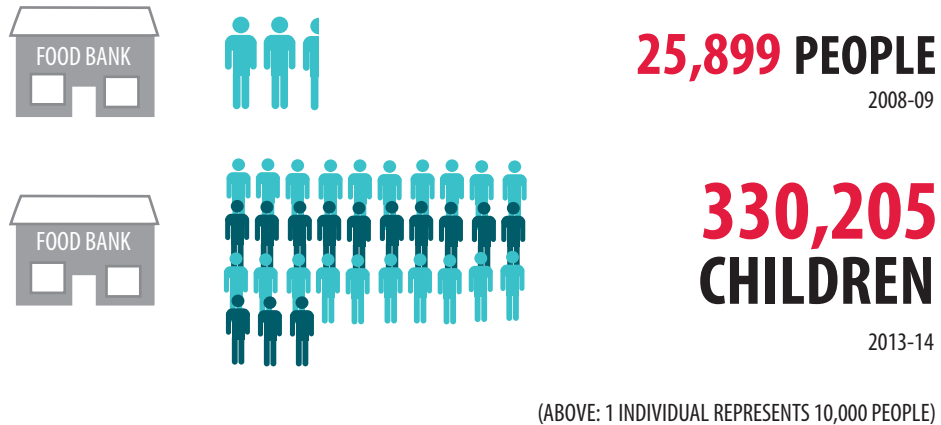
APRIL 2013 - MAY 2014

39 Leaman, C. (2014) Devastating cuts to leading to children’s mental health crisis. 21 June 2014. Young Minds Press release
40 Care Quality Commission (2014) New map of health-based places of safety for people experiencing a mental health crisis reveals restrictions in access for young people. 16 April 2014, CQC Press release
41 Roberts, Y. and Campbell D. (13 July 2013) British child death rates are ‘a major crisis’, says paediatricians’ leader, The Observer
42 Wang, H and others (2014) Global, regional and national levels of neonatal, infant and under-5 mortality during 1990 - 2013: a systematic analysis for the Global Burden of Disease Study 2013. Lancet, 22 July 2014, pp.957-979
43 Department for Work and Pensions (DWP) (2014) Households below average income (HBAI): 1994 to 2013
44 Department for Work and Pensions (DWP) (2014) Households below average income (HBAI): 1994 to 2013
45 Department for Work and Pensions (2013) Households Below Average Income 2011/2012
46 Hirsch, D (2014) The cost of a child 2014. London: CPAG
47 Department for Work and Pensions (DWP) (2014) Benefit cap: number of households capped to May 2015. Table 1

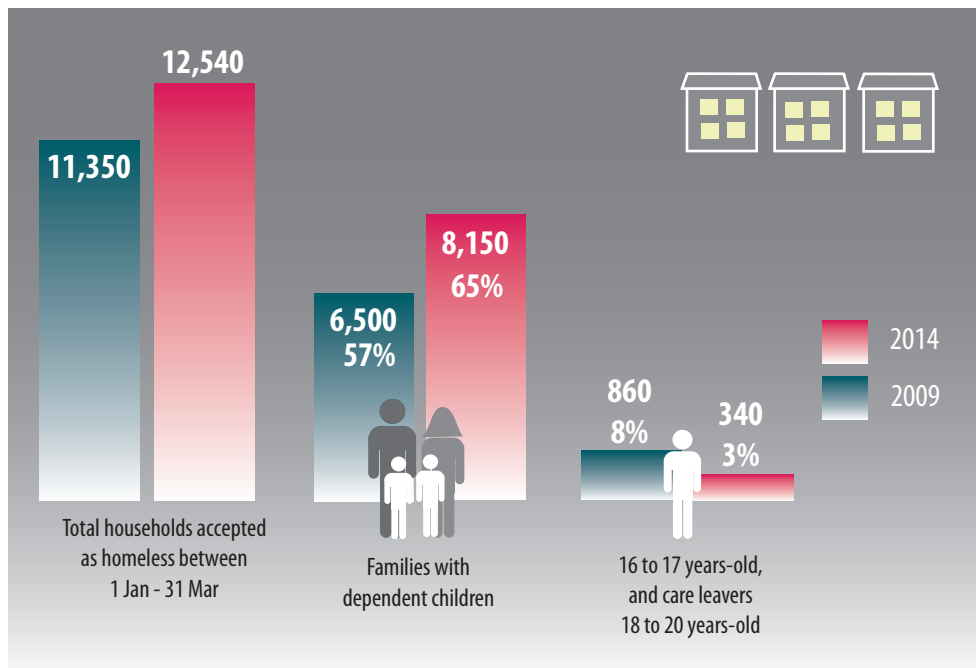
Low wages, inadequate benefits and rising costs are having a real impact on children's lives:

- In 2012, 45% of the 2.28 million households living in fuel poverty were families with children, compared to 17% in 2008^{48 49}
- There has been a huge increase in food poverty, and a rapid rise in the use of foodbanks⁵⁰
- More and more children are affected by homelessness – 65% of homeless households are families with children - and they are increasingly housed in unsuitable bed and breakfast accommodation. There was a 400% increase of families with children living in bed and breakfast accommodation between 2009 and 2014⁵¹

REFERRALS TO TRUSSELL TRUST FOOD BANKS



HOMELESSNESS HOUSEHOLD COMPARISON 2009:2014



48 DECC (2012) Trends in fuel poverty, 2003 to 2010. Table 5
 49 DECC (2014) Annual fuel poverty statistics report, 2014, Chart 3.6
 50 Trussell Trust website <http://www.trusselltrust.org/stats#Apr2013-Mar2014>
 51 DCLG (2014) Live tables on homelessness. Tables 773 and 775

Education and play, rest, leisure and culture

All children, no matter what their ability, interests or background, have a right to an education that will help them achieve their potential without discrimination. Children have a right to play and recreational activities, to rest and leisure, and to take part in cultural life. A lack of investment in the services which are crucial for a child's development and well being – such as high quality early years education and childcare and play and youth services – means that children do not all have an equal chance in life.

High quality education during a child's early years has a significant positive impact on the child's outcomes and helps close the gap between rich and poor children. There have been positive moves to improve children's access to early year's education. Free early years provision for three and four year-olds was expanded to cover 40% of all two year-olds from September 2014. However, there are concerns in other areas:

- Children's centres improve outcomes for young children, and particularly for the most disadvantaged families. 4Children reports a cut of 20% in spending on children's centres and early years services between 2012-13 and 2014-15⁵²
- Quality matters, but only 50% of two year-olds and 52% of three year-olds in private, voluntary or independent settings are taught by well-qualified staff⁵³
- Since 2009, the cost of childcare in England has risen by 27%.⁵⁴ Thirty-seven percent of lone parents and 23% of couples paying for child care said they found it difficult or very difficult to cover the costs⁵⁵

The need to address inequality through early investment becomes clear when you look at results later in life. Official figures show attainment improving between 2008-09 and 2012-13, including for more disadvantaged children on free school meals.⁵⁶ However there is still huge inequality in the system:

- There have been improvements for black pupils, but results for white pupils at early stages have remained static
- Children in care are achieving better results at earlier stages, but the gap starts to widen by the time they take their GCSEs
- The attainment gaps for children with special educational needs (SEN) have actually increased at all stages

The number of exclusions from school has fallen significantly since 2008, but figures show that the vast majority of exclusions affect the most disadvantaged children.^{57 58}

- More than two-thirds of those excluded have a special educational need
- Almost half of permanent exclusions (46%) affect children on free school meals
- Children in care are twice as likely to be permanently excluded, and three times as likely to get a fixed term exclusion from school
- More than a quarter of permanent exclusions affect minority ethnic pupils

Children have a right to play, rest, leisure and culture. This is important for children's development and learning, for their health and wellbeing, and for their resilience and confidence. In response to Freedom of Information requests sent to 152 local authorities in England by CRAE:

- 32 local authorities were able to provide information on play budgets, which showed all had reduced their play budgets - overall, a 54% reduction in funding for play between 2008-09 and 2014-15. Three had no play budget at all in 2014-15
- 60 local authorities responded in relation to youth services, showing budgets have fallen by 35% as a proportion of local authority spending, from an average 1.28% of the total local authority budget in 2008-09 to 0.87% in 2014-15. Eleven local authorities have increased their budget for youth services since 2008-09

52 4Children (2014) Children's centres census 2014

53 Huskinson, T et al (2014) Childcare and early years survey of parents 2012-2013. DfE

54 Daycare Trust (2009) Childcare costs survey 2009; Family and Childcare Trust (2014) Childcare costs survey 2014

55 Huskinson, T et al (2014) op cit.

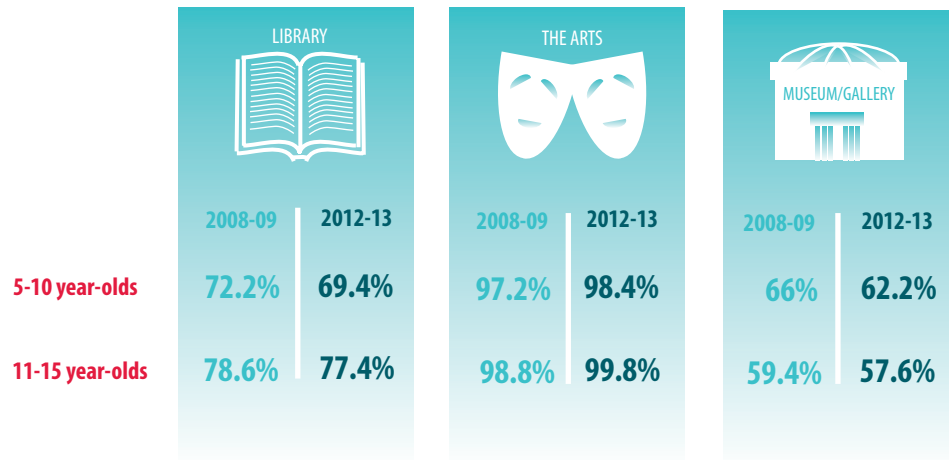
56 DfE (2010) Early Years Foundation Stage Profile Achievement by Pupil Characteristics, England 2008/09; DfE (2014) Early Years Foundation Stage Profile results, 2013 to 2014; DfE (2014) National curriculum assessment at Key Stage 2 in England, 2014 (provisional); DfE (2014) Provisional GCSE and equivalent results in England 2013/14; DfE (2009) National curriculum assessments at Key Stage 2 in England, 2008/9 (revised); DfE (2013) National curriculum assessments at Key Stage 2: 2012 to 2013; DfE (2014) GCSE and equivalent attainment by pupil characteristics in England, 2012/13; DfE (2013) Early Years Foundation Stage Profile Attainment by Pupil Characteristics, England 2013; DfE (2013) Outcomes for Children Looked After by Local Authorities in England, as at 31 March 2013, Tables 10 and 11

57 DfE (2010) Permanent and fixed period exclusions from schools and exclusion appeals in England, 2008/09. Tables 6.1, 12 and 15

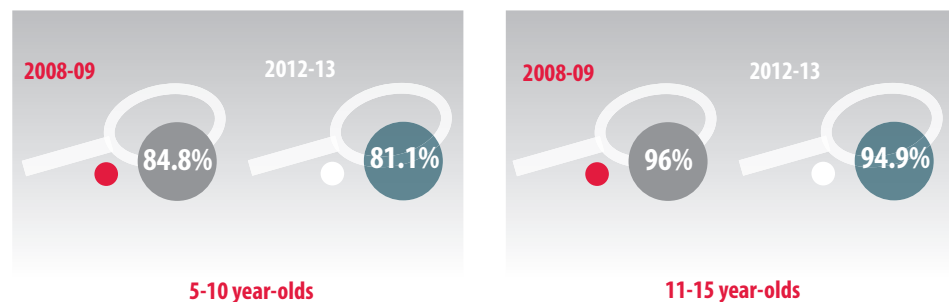
58 DfE (2014) Permanent and Fixed Period Exclusions in England: 2012 to 2013

Children's participation in the arts increased slightly between 2008-09 and 2012-13, but a lower proportion of children were taking part in sport and visiting libraries and museums.⁵⁹

PARTICIPATING IN CULTURAL ACTIVITIES (OVER THE YEAR)



PARTICIPATING IN SPORTING ACTIVITIES (OVER A 4 WEEK PERIOD)



Immigration, asylum and migrant children

Migrant, asylum-seeking and trafficked children have a human right to be properly cared for. The best interests of each child should be assessed, that assessment should guide all decisions made in relation to them and take precedence over immigration considerations. Like all children, when their family cannot meet their basic needs such as food, housing and education and healthcare, migrant and asylum-seeking children have a right to help from the government. They should not be discriminated against.

There have been some positive steps to protect the rights of migrant, asylum-seeking and trafficked children:

- In 2008, the government removed its immigration reservation – a sort of exception - to the UNCRC
- A duty now requires immigration officers to safeguard children's welfare⁶⁰
- In 2010, the government said it would end the detention of children for immigration purposes
- In 2008, force was being used to control children in immigration detention, but there were no recorded cases of this in 2013.⁶¹ This may change - the Home Office has said that the rules should allow force to be used to remove children from the UK⁶²

59 DCMS (2014) Taking part: annual child report

60 Borders, Citizenship and Immigration Act 2005, s.55

61 Under Freedom of Information law, CRAE asked the Home Office for details of how often force was recorded as being used on children and young people under 18 in immigration detention in 2008 and 2013

62 Home Office (2014) The Home Office response to the Independent Family Returns Panel report 2012 to 2014

There remain, however, important breaches of the rights of migrant, asylum-seeking and trafficked children:

- Rather than being treated as children “in need” and looked after by local authorities, a high proportion of unaccompanied or separated children are subjected to controversial age assessments, are “age disputed” or treated as adults on the basis of their appearance⁶³
- There is evidence that immigration concerns are too often given priority over the best interests of the child in immigration decision-making⁶⁴
- Although the numbers have fallen significantly, children are still being detained for immigration reasons – with 203 detained in 2013^{65 66}
- Financial support offered to asylum-seekers, who cannot claim mainstream benefits, leaves them well below the poverty line. In some cases, a family needs nearly three times as much as they currently receive on asylum support to be lifted out of poverty⁶⁷
- Children can be separated from their families in order to ensure the family’s arrest and return⁶⁸ and the Home Office could not tell us how many are treated in this way
- 120,000 undocumented children and their families in the UK are likely to find it hard to find housing and access healthcare, following changes brought in under the Immigration Act 2014
- There is no specific offence criminalising child exploitation and no clear statutory law which says child victims of trafficking and exploitation should not be prosecuted for behaviour linked to their exploitation
- Unaccompanied and separated migrant children do not have independent legal guardians, instead, a child advocacy service is currently being piloted^{69 70}
- Legal aid is no longer available for non-asylum immigration cases, including children’s cases. Children are not, therefore, able to challenge decisions which breach their rights, such as separation of children from their parents, in relation to support and/or housing

Criminal justice

The UNCRC is clear that children who are in conflict with the law are children first, and should be treated as such. Children should be kept out of the criminal justice system if possible – it is not well-suited to address the welfare needs which generally lie behind a child’s behaviour. Children need a separate system from adults – in which they can understand what is happening, they are protected from harm and from contact with adults accused or convicted of crimes. The decisions made about how to deal with children’s cases should be proportionate, take account of their age and help them turn their lives around. In particular, punishment should never be cruel or inhuman and detention should only be as a last resort, in settings where children are safe and cared for.

There has been huge progress in keeping children out of the criminal justice system, and today children are dealt with in a more proportionate way than they were in 2008-09:

- In 2008-09 17% of all arrests made by the police were of children,⁷¹ but in 2012-13, this had reduced to 11.8%⁷² While there are still more than 27,000 children entering the criminal justice system for the first time in 2012-13⁷³ – making up 38% of all those in the system - this has dramatically reduced from more than 79,000 in 2008-09⁷⁴
- A higher proportion of children are given out of court disposals⁷⁵
- The number of custodial sentences given to children has dropped dramatically, from 6,720 in 2008-09 to 2,780 in 2012-13⁷⁶

The criminal justice system continues to discriminate against certain groups, and punish disadvantage:

- While the number of children in prison has been reduced hugely, black children are over-represented in the prison population, and this has got worse as the number of children in prison has gone down. In 2008-09 black children accounted for 15% of the population and in 2012-13, they represented 21%⁷⁷

63 Home Office (2013) Immigration statistics, Oct to Dec 2013. Asylum tables

64 Joint Committee on Human Rights (2013) Human rights of unaccompanied migrant children and young people in the UK. First report of session 2013-14

65 Home Office (2010) Control of immigration statistics United Kingdom 2009

66 Home Office (2014) Immigration statistics, Oct to Dec 2013. Detention tables

67 The Children’s Society (2014) From persecution to destitution: section 95 asylum support

68 Home Office (2014) Visa and immigration operational guidance: chapter 45 Families and Children. Section (b) Family returns process operational guidance. p.32

69 Bradley, K (2014) Charity to provide specialist support for child victims of trafficking. Home Office press release 4 June 2014

70 Lord Bates (2014) Human trafficking: children. House of Lords Hansard, 14 October 2014, WA36

71 Home Office (2011) Police powers and procedures England and Wales 2009/10. Table 1.02

72 Home Office (2014) Police powers and procedures England and Wales 2012 to 2013. Table A_03

73 Youth Justice Board (2014) Youth justice statistics, 2012/13, England and Wales

74 Youth Justice Board (2010) Youth justice annual workload data 2008/9, England and Wales

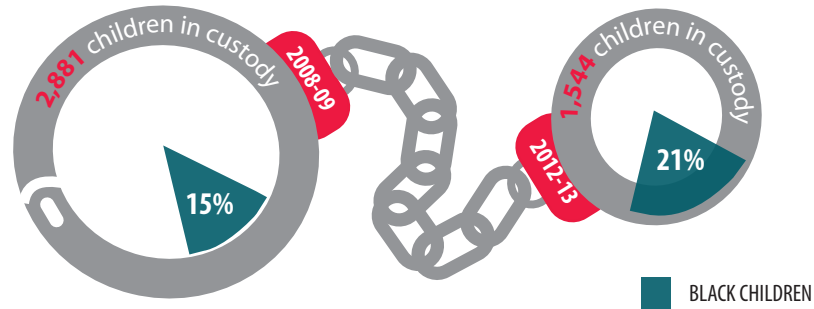
75 Youth Justice Board (2014) Youth justice statistics, 2012/13, England and Wales

76 Youth Justice Board (2014) Youth justice statistics, 2012/13, England and Wales

77 Youth Justice Board (2014) Youth justice statistics, 2012/13, England and Wales

- 33% of children in young offender institutions (YOIs) said they had been in local authority care and 19% said they had emotional or mental health problems⁷⁸
- Between 23% and 32% of the children in custody have a generalised learning disability, compared with between two and four percent in the general population⁷⁹

NUMBER OF CHILDREN IN PRISON CUSTODY (AVERAGE)



Those children who end up in custody are very vulnerable, with highly complex needs, yet children's experience in prison are becoming increasingly difficult:

- There is a move away from small, therapeutic environments which are close to home (Secure Children's Homes) and towards larger units, far from home, with more repressive regimes (Secure Colleges)
- The rate at which staff use force on children increased by 45% between 2009-10 and 2012-13. In 2012-13, 170 children were injured and in 5% of cases required hospital treatment. Self harm increased by 5% and assaults increased by 22%⁸⁰
- Staff can still deliberately inflict pain on children, and force can be used to make children follow staff instructions
- Children are still dying in prison – three have died since 2008 – but the government's review into deaths in custody will not cover children
- Less than half of children in YOIs receive a visit each week,⁸¹ there are barriers to children accessing health services⁸² and the amount of education offered is currently very low, at 12 hours each week in YOIs - though there are moves to increase education⁸³

Not enough is done to address the fact that children in the criminal justice system are in a different situation from adults - too many children are still treated as adults by the police, come into contact with adult defendants, appear in adult courts or encounter professionals, such as lawyers and judges, who are not specialists in dealing with children. Their privacy is not properly protected in court, which can put them at risk and hold them back for life.

CRAE sent a Freedom of Information request to the Ministry of Justice, asking them to provide statistics for the number and proportion of specific categories of cases involving a child under 18 granted legal aid for 2008-09 and 2013-14. The number of children able to apply for legal aid for private law cases (their parents are or have divorced or separated) has fallen by 69%, and the number able to apply for legal aid for education cases has fallen by 84%.

Disabled children and children with special educational needs

Disabled children have a right to enjoy all the human rights in the Convention, including the rights to education, to health and to play, without discrimination. This means that barriers which exclude disabled children should be removed, and they should be provided with additional support to access the same opportunities as other children.

To date, there has been no government-led campaign to raise awareness of the rights of disabled children, and 35% of parents of disabled children say that others' attitudes act as a barrier to their children participating fully in life.⁸⁴

78 Kennedy, E (2013) Children and young people in custody 2012-13. HMI Prisons/Youth Justice Board
 79 Office of the Children's Commissioner (2012) Nobody made the connection: the prevalence of neurodisability in young people who offend
 80 Youth Justice Board (2014) Youth justice statistics, 2012/13, England and Wales
 81 Kennedy, E (2013) Children and young people in custody 2012-13. HMI Prisons/Youth Justice Board
 82 British Medical Association (2014) Young lives behind bars: The health and human rights of your people detained in the criminal justice system
 83 Ministry of Justice (2014) Transforming Youth Custody: Government response to the consultation
 84 ONS (2010) Life opportunities survey: wave 1 results

Nor does there appear to have been any cross-government attempt to anticipate and mitigate the impact of government policies on disabled children.

The parents of disabled children have difficulty accessing suitable child care for their children, making it difficult for them to work. In 2014, only 28% of local authorities in England reported having a sufficient supply.⁸⁵ In 2014, almost 30% of children with a special educational needs were eligible for free school meals – compared with around 16% of the general population.⁸⁶ While one in eight disabled children have been excluded from the new cap on benefits, a significant number of families with disabled children could still be affected. A child rights impact assessment of the budget⁸⁷ showed that families with disabled children have been hit harder than others by changes to benefits, tax and public spending.

Children still enter care because of their disability, suggesting a failure to support families before this was necessary. Since 2011, local authorities have been required to provide short break services for parents of disabled children,⁸⁸ but funding for the programme is no longer ring-fenced and significant reductions in expenditure on short breaks have been reported. In 2013, Mencap reported that eight out of 10 families had reached breaking point due to a lack of short breaks.⁸⁹ Disabled children are three to five times more likely to be abused or neglected than non-disabled children.⁹⁰

Despite huge reforms to the legislation regulating support for children with special educational needs and disabilities, the rights are heavily education focused.⁹¹ Children do not have a right to have their health needs met under the rules, unless they also have educational needs.

Disabled children should not be excluded from the general education system because of their disability and have a right to support to facilitate their participation. Teachers and other education staff should be trained to work with children with SEN and disabilities. The proportion of SEN pupils attending special schools has gone up since 2009,^{92 93} despite the government's commitment '*to continuing to develop an inclusive system where parents of disabled children have increasing access to mainstream schools and staff, which have the capacity to meet the needs of disabled children*'.⁹⁴ Despite a reduction in the total number of exclusions since 2008-09, SEN pupils still make up more than two-thirds of all those excluded.^{95 96} It arguably discriminates against children who have moderate or severe learning difficulties to use attainment as the only measure of a child's educational experience, but using that measure, the attainment gap for SEN pupils remains stubbornly high at all assessment stages. At GCSE, the attainment gap at GCSE increased from 44.9% in 2008-09 to 47% in 2012-13 for children with SEN.^{97 98 99} Disabled children are as likely as other children to visit a library or museum at least once a year, but less likely to take part in sport.¹⁰⁰ An Ofsted survey into youth work shows disabled young people who accessed youth services found them enjoyable and beneficial, but only 4% to 6% of disabled young people were accessing local provision.¹⁰¹

85 Rutter, J and Stocker, K (2014) *Childcare costs survey 2014*. London: Family and Childcare Trust

86 DfE (2014) *Children with special educational needs 2014: an analysis*. Table 1.9

87 Office of the Children's Commissioner (2013) *A Child Rights Impact Assessment of Budget Decisions: including the 2013 Budget, and the cumulative impact of tax-benefit reforms and reductions in spending on public services 2010 – 2015*

88 Children and Young Persons Act 2008, s.25. The Breaks for Carers of Disabled Children Regulations 2011

89 Mencap (2013) *Short breaks support is failing family carers: reviewing progress 10 years on from Mencap's first Breaking Point report*

90 Jütte, S and others (2014) *How safe are our children 2014?* NSPCC

91 Children and Families Act 2014, Part 3

92 DCSF (2010) *Special educational needs in England, January 2009*. Table 1A

93 DfE (2014) *Children with special educational needs: an analysis*

94 UK Government Interpretative Declaration to the Convention on the Rights of Persons with Disabilities. Cited on ALLFIE website

95 DfE (2010) *Permanent and fixed period exclusions from schools and exclusion appeals in England, 2008/09*. Tables 12 and 15

96 DfE (2014) *Permanent and Fixed Period Exclusions in England: 2012 to 2013*

97 DfE (2013) *Early Years Foundation Stage Profile Attainment by Pupil Characteristics, England 2013*

98 DCSF (2010) *Level 2 and 3 attainment by young people in England measured using matched administrative data: attainment by age 19 in 2009*

99 DfE (2014) *Op cit*.

100 DWP (2013) *Fulfilling potential: building a deeper understanding of disability in the UK today*

101 Ofsted (2013) *Critical issues in the provision of youth work for young disabled people*



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