

UN Committee on the Rights of Child

Day of Discussion on

**THE PRIVATE SECTOR AS SERVICE PROVIDER  
AND ITS ROLE IN IMPLEMENTING CHILD RIGHTS**

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Palais Wilson, Geneva

Submission by

**Children's Rights Alliance for England (CRAE), UK**

# Children's Rights Alliance for England

*Promoting the fullest possible implementation of the UN Convention on the Rights of the Child*

## **The private sector as service provider and its role in implementing child rights**

### *Submission to the Committee on the Rights of the Child*

#### **Introduction**

CRAE is a coalition of 180+ organisations, mainly NGOs, committed to the fullest implementation of the United Nations Convention on the Rights of the Child (CRC) and other human rights instruments relevant to children. We carry out public policy advocacy, provide training especially to children and young people, and disseminate up-to-date information on all aspects of children's human rights.

This submission focuses on the private business sector, 'for profit' organisations, rather than on the non-profit 'voluntary' sector, and on England rather than on the devolved administrations of Scotland, Northern Ireland and Wales. The UK Government is the State Party responsible for ensuring UK-wide CRC implementation, but political enthusiasm for the current rapid expansion of public private partnerships (PPPs) and Private Finance Initiatives (PFIs) appears to be stronger in England than in the rest of the UK. Wales for example has rejected any private sector involvement in education. On the same day as the Government published the White Paper *Schools Achieving Success* (September 2001) proposing several initiatives to increase private sector involvement, the Minister for Education and Lifelong Learning published a plan for schools and colleges which does not include any private sector input. In July 2002 Scottish Nationalist Party Leader John Swinney said his party was determined to set out a viable alternative to involving the private sector in public services: "Under PFI the nation's assets are reduced to the status of cash cows for the private sector. Under a not-for-profit trust the nation's assets perform a very different role - to enhance the life of Scotland and its people as a whole."

Increasingly rapid growth in business involvement in children's services has been encouraged by the Government since 1997, although before coming into power they opposed these initiatives. The companies involved are in some cases the same as those taking on public private partnerships in activities totally unrelated to children's services such as the London Underground system, for example Amey plc (joint owners of Education, contracted to run Waltham Forest's local education authority services) and WS Atkins (running large parts of Southwark education service in London), and may have little or no specialist knowledge or experience.

There is a lack of centrally available evidence about the range and size of these new contracts, how they have worked, how many have failed, and no clear way to specify responsibilities, performance standards and penalties. This means that specific information on the effect of privatised services on children is hard to establish; and, given that the UK Government does not generally frame children's policy in CRC terms, it seems highly improbable that respect for children's human rights features in planning and monitoring of privatised services.

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For CRAE the basic notion of organisations accountable primarily to shareholders providing services to children, often the most vulnerable, on behalf of the State seems questionable, and unlikely to be the best use of public resources or to guarantee that children's rights and best interests are given priority. The authors of a recent working paper<sup>1</sup> suggest that "Relying on private companies to provide state funded services introduces new stakeholders into the system with a financial claim on public revenues. It will almost certainly lead to an increase in administrative costs and will move public services further away from democratic control." They produce evidence that "service quality and efficiency is likely to deteriorate as private operators cut corners and distort priorities to increase their margins."

In particular CRAE finds the case of children incarcerated in custody or other forms of detention by private business organisations morally repugnant in principle, especially when the record increase in the number of children in custody, in breach of CRC Articles 37 and 40 among others, coincides with rapid growth in privately managed prison services.

### **CRC Article 3 – the best interests of the child as primary consideration**

This general principle of the Convention requires compliance by private as well as public welfare institutions. Although the Children Act, 1989, requires courts to give paramount consideration to the welfare of the child when making decisions concerning a child's upbringing, this principle is not generally established across UK legislation. It therefore does not automatically apply to services provided outside the remit of the Children Act, and especially not to privately provided services, except where these are fully covered by statutory regulation and inspection (see below). In May 2002 the High Court granted the Howard League for Penal Reform permission to judicially review the failure of the Home Office to implement the provisions of the Children Act in young offender institutions, with the hearing due shortly.

Ashfield Prison, which holds up to 300 15-17 year old boys as well as young adults, is run by Premier Prison Services Ltd. Established in 1999 on a Design, Construct, Manage and Finance (DCMF) contract, it has been beset with problems since opening, as shown in a recent Howard League report.<sup>2</sup> In 1991 Ashfield had the highest rate of assault (71%, calculated as a proportion of the average prisoner population) of any prison holding juveniles. Provision of education and training was inadequate, and participation extremely low, with children spending long hours in their cells. Staffing problems are seen to be at the root of Ashfield's failures, low levels, rapid turnover and inadequate training and experience. These staffing problems appear to arise directly from the imperative to make money by cutting staff costs, both by employing fewer and by offering reduced salaries and fewer benefits.

Lower staff costs accounted for the whole 11% average difference between costs in four privately managed prisons and comparable publicly managed ones, and the most important element in those savings was reduced staff hours per prisoner.<sup>3</sup>

Ashfield staff's lack of experience has particularly shown itself in their readiness to resort to 'control and restraint', which was used 368 times between April and December 2001.<sup>4</sup> The Howard League also found that children had to endure long hours in court cells and vans known as 'sweatboxes'. Companies such as Reliance and Group 4 run the transport system for profit and prefer to operate only with full vans. Children also went hungry during these long delays, in breach of CESCR Comment 12 on adequate food, that 'the private business sector . . . . should pursue its activities within the framework of a code of conduct conducive to respect of the right to adequate food, agreed upon jointly with the Government and civil society'.

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<sup>1</sup>Catalyst (2001) *Public services and the private sector – a response to the IPPR*.

<sup>2</sup> Howard League for Penal Reform (2002) *Children in prison, provision and practice at Ashfield*

<sup>3</sup> IPPR (2001) *Building better partnerships* cited in Catalyst (2001)

<sup>4</sup> Howard League for Penal Reform (2002) *Children in prison, provision and practice at Ashfield*

Secure Training Centres (STCs) are child prisons for 12-14 year-olds planned by the previous Government and provided under Private Finance Initiatives (PFIs) since 1998. Opposed by the present Government before coming to power, as well as by NGOs, they are now planned to increase in number and to take in remanded children including 15 and 16 year-olds. Until the introduction of STCs the main secure provision for children was local authority social services' 'secure accommodation' units, fully covered by Children Act statute and guidance. STCs are the joint responsibility of the Home Office and the private companies. The experience of children in them, as described in Social Services Inspectorate reports, has been similar to those in Ashfield – high turnover of largely unqualified staff, high levels of bullying, self-harm and the use of restraint, with poor educational provision and little monitoring of individual progress.<sup>5</sup>

### **CRC Article 2 – non discrimination**

The principle of non-discrimination, also established in Article 2d of the Convention on the Elimination of all forms of Racial Discrimination, aiming to 'prohibit and bring to an end by all appropriate means discrimination by any persons, group or organisation', risks being breached when services traditionally provided by the public sector are privatised and become subject to market forces. The current rapid increase in early years childcare provision, (although still falling short of Government targets and European levels) is driven largely by the Government's wish to encourage parents into the workplace, and is provided mainly by the private sector. NGOs are concerned at the unpredictably rising prices charged by providers, making quality care unaffordable for many families, and also by potentially discriminatory distribution of provision. It seems that private companies are likely to choose not to provide an affordable service in neighbourhoods with socially excluded and deprived families.

In the education field too, with profit the driving motive, companies are likely to be less enthusiastic about establishing or running institutions in 'problem' areas. And for individual children, with schools having to compete through league tables, there are concerns that those needing extra support or seen as not achieving academic success will be less likely to be offered a place or more likely to be excluded.

### **CRC Article 4 – measures to be taken for the implementation of rights**

Article 4 requires the Government to 'undertake all appropriate legislative, administrative, and other measures for the implementation of CRC rights .... to the maximum extent of their available resources', while under Article 27, 3 States Parties must 'in accordance with national conditions and within their means.....in case of need provide material assistance and support programmes'. These requirements imply an expectation on government to ensure that public money spent on children's services should both reflect sufficient investment, in terms of available national resources, and represent the best use of those resources in terms of quality and value for money, within the context of full implementation of all Convention rights. At the same time Article 42 commits government to making the 'principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike', which must include the private business sector. The implications of these rights, and obligations for government contracting out services to the private sector are complex, when combined with the private sector's need to guarantee shareholders the maximum return on their investment.

For CRC compliance, contracts such as those for PFIs should routinely include clauses on the implementation of children's human rights under the Convention and other human rights instruments, emphasising the best interests principle as well as the whole range of children's welfare, protection, privacy and other rights, and be open to public scrutiny. The Freedom of Information Act 2000 allows public agencies to withhold financial information relating to its outsourcing contracts on the grounds of commercial confidentiality, and NHS trusts use this as a

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<sup>5</sup> Social Services Inspectorate (January 1999) *Inspection of Medway secure training centre* & Social Services Inspectorate (July 2001) *Inspection of Hassockfield secure training centre*

reason for refusing to explain why a contract was cancelled or even who a contractor was.<sup>6</sup> A specific example of a contract whose details are confidential is that between Surrey County Council and Nord Anglia Education plc which is to directly manage Abbeylands community school for five years, closing it and reopening it as Runnymede Business and Enterprise College.<sup>7</sup>

In terms of the best use of resources, there is assumed to be some general correlation between the cost and the quality of a service, regardless of which sector the provider is in, usually on the basis of staff ratios, pay and conditions, and qualifications and skills. Where the cost and quality of expanding private provision are higher than public alternatives this can have perverse effects on children. For example in the public care system it is a familiar problem for children to be moved against their will out of private residential homes into less suitable placements because the local authority needs to save money. This is in the context of the total capacity of private registered children's homes in England growing by 29% between 1995 and 2000, while the total capacity of all children's homes in England decreased by 16% between 1997 and 2000.<sup>8</sup>

The real costs of private provision as compared to public, and its direct impact on children, are not always easy to establish. According to the Fostering Network, Independent Fostering Agencies (IFAs) for example tend to pay higher allowances to foster carers and provide them with more support. They may also provide some services directly to children, such as counselling or educational support, which for local authority foster care would come from general Council resources.

In some situations the unacceptable costs of private contracts, and their negative impact on children is all too clear. Typical is an account of a primary school in Brent, North London, with a decaying, leaking building in urgent need of repair, one of a group of schools signing up to a Private Finance Initiative (PFI) scheme.<sup>9</sup> The plan, starting in 1997, was for a construction company to take on the repair work and for the school to repay the cost over 25 years, the only way that Brent Council would allow any money to be spent on essential building work in schools. Two companies, Jarvis and Accord, competed for the contract, at a cost of nearly £1m on preparatory work. Four years later no work had been done and it was clear that the cost would be far greater than if done by the public sector. It was not possible for this school to be totally rebuilt, the contractors' preferred solution, as there was no space. The amount of money that was now made available to the school for repairs was less than half the amount already owed to the Council for roof repairs completed before the PFI plan had been introduced. This has to be repaid over five years from 'capitation' income, money allotted per pupil for running costs. Meanwhile teaching staff have been paying for swimming costumes for children, and a breakfast club because most children come to school hungry, out of their own money.

A council-wide PFI school refurbishment scheme with Jarvis in Haringey, North London, has proved disastrously expensive for the local authority and individual schools, demonstrating that 'private finance is a debt and not a new source of funding'.<sup>10</sup> The Council gave reluctant school governors to understand that central government would meet all the annual costs of servicing the debts incurred for the refurbishment. But by the time the contract was signed in 2000 it was clear that a considerable proportion of the costs would have to be met from the Council's own resources. Later it became clear that some essential costs had not even been included in the contract in order to make it 'affordable'. The additional costs amount to £6.25m of which £4.5m still needs to be found by the Council and the schools. It seems likely that some of this will have to be diverted from the schools' teaching budgets, and the Council already plans to take money from the borough's primary and special schools.

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<sup>6</sup> Catalyst (2001) *Public services and the private sector – a response to the IPPR*

<sup>7</sup> Unison (November 2001) *Private sector involvement increases ED/29/01*

<sup>8</sup> Department of Health statistical bulletin 2001/9, *Children's homes at 31 March 2000, England*

<sup>9</sup> Beckett, F., *Private profit, public squalor*, New Statesman 15 July 2002

<sup>10</sup> McFadyean, M., and Rowland, D., *A costly free lunch*, The Guardian 30 July 2002

This rapid expansion in privatisation of education services supports and is supported by the Government's education reforms, and can only increase the divisive effect of a 'two tier' system. As well as the increased use of private sector consultants and contractors by Local Education Authorities (LEAs) as in the examples above, there is greater private involvement in education through initiatives such as specialist schools, City Academies and Education Action Zones, and an expanding schools PFI programme – 480 schools had signed PFI contracts by September 2001.<sup>11</sup> At the same time the Education White Paper *Schools Achieving Success* introduced several further initiatives which are now becoming law, boosting private sector involvement. A number of education services seen to be in need of improvement, following critical reports by the Office for Standards in Education (OFSTED), have been virtually completely privatised through public-private partnerships. An example is Southwark in London, with WS Atkins taking over most of the service in April 2001. By February 2002 serious problems were already appearing with the company's performance, poor staff relations, high teacher vacancies, failure to meet its education targets and complaints about children with no secondary school places.<sup>12</sup>

Meanwhile more successfully performing LEAs are now considering outsourcing their services of their own volition. Essex County Council for example has been given £100,000 by the Department for Education and Skills (DfES) to pursue a partnership. Of the three companies competing for this valuable contract Cambridge Education Associates have already been penalised for poor performance when running Islington's education service, and Serco QAA, has been the subject of controversy over Bradford's education.<sup>13</sup>

It is not clear what would happen in the event of a contractor getting into financial difficulties or going bankrupt, but it seems likely the money would have to be found from public sources, presumably taken from schools or services still publicly funded, to the detriment of children in that less favoured sector.

### **CRC Article 3, 3 – the obligation to set standards and monitor compliance**

Regulation, standards, registration and inspection are clearly of fundamental importance for privatised services for children. In the field of daycare, new national standards are being implemented, but they do not have the statutory status of Regulations. That the Government sometimes appears to protect private service providers from an obligation to respect children's rights can be seen in these National Standards for Daycare issued in 2000 which state that childminders in England can smack babies and young children with written permission from parents.

For many children living away from home not previously protected, the Care Standards Act 2000 has introduced regulation, with registration, national standards and inspection currently being implemented by the National Care Standards Commission, with the newly established Children's Rights Director having a monitoring role for these regulated services. HM Chief Inspector of Prisons has the essential role of inspecting and reporting on the situation of children in custody in privately run establishments as well as public.

### **CRC Article 19 – Child protection**

For children, one of the most dangerous consequences of receiving private sector services which operate outside the mainstream legislative and regulatory framework can be a lack of statutory protection from violence, abuse or neglect. One example is the Immigration Service's Reception Centres and Detention Centres, and the proposed Accommodation Centres, run under contract by private sector companies such as Group 4 and UKDS. CRAE believes the detention of children and families in these centres to be clearly in breach of children's human rights, and especially unacceptable when managed by private businesses for profit. In addition, when set up the centres

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<sup>11</sup> Unison (November 2001) *Private sector involvement increases ED/29/01*

<sup>12</sup> *ibid*

<sup>13</sup> Unison (June 2002) *News ED/13/02*

had no provision for child protection systems, as they are seen to be outside the remit of the Children Act, and there was no body with the authority to investigate allegations of abuse or harm. The centres provide education and health services on site, so the protection usually afforded to children using mainstream services was also lacking. An NGO, the NSPCC Child Protection and Training Consultancy Service, has been working with the contractors from the outset to establish child protection policies and procedures, links with Area Child Protection Committees and local social services departments, and training for staff and managers. Although these children's lack of the right to protection has been substantially improved by collaborative work with an NGO, the example serves to illustrate the double danger of establishing institutions and services where children are isolated from the normal statutory protection of their rights, and in addition contracting out those services to the private sector, making accountability even more remote.

### **CRC Article 22, 2 – refugee children**

Unaccompanied asylum seeking children of 16-17, and even younger, are often not offered accommodation as children 'in need' under the Children Act 1989 but treated as homeless adults under the auspices of the Home Office's National Asylum Support Service (NASS). They may then be housed in privately run 'bed and breakfast' accommodation, or sent to rented housing which may be far from where they live, owned by companies contracted with Social Services departments to provide care and accommodation. The accommodation is often unfit and the young people frequently lack essential social work and other support, for example with access to health services and education, and independent complaints procedures.<sup>14</sup> Commercial confidentiality is often given as a reason to prevent public scrutiny of contracts.

### **CRC Article 24 – the highest attainable standard of health; & CESCR General Comment 14 para. 42 re private business sector's responsibilities regarding the realisation of the right to health**

The Government, through the Health and Social Care Act 2011, has made 'ample provision for redefining NHS (National Health Service) care and introducing charging and greater privatisation of NHS services'.<sup>15</sup> In its engagement with the private sector it has "far exceeded that of the Thatcher administration", but it is thought likely that "people will see no benefit from the spending increases announced (before this year's budget), because of the mounting costs of PFI schemes, dependency on agency staff and use of private sector facilities".<sup>16</sup> The specific effects this may have on children's rights to health care cannot easily be analysed, but the same general principles apply.

NGOs have particular concerns about children's mental health services. It is widely acknowledged that children's mental health provision is seriously lacking and fragmented, with a dearth of preventive services, and with children placed in mental health in-patient units often far from their home when there are no available social care or residential educational placements. These children and young people then tend not to be diverted into more appropriate placements. About 7,000 children per year use NHS mental health in-patient care.<sup>17</sup> Members (not all for-profit) of the Independent Healthcare Association (IHA) provide more than one third of all medium secure mental health care. They have 319 children's mental health beds available, with probably the majority used by NHS referrals, but the IHA does not have any specific information about the children using their services and this information does not seem to be centrally available.

### **CRC Articles 28 & 29, & CESCR General Comment 13 para. 30 - the right to education and rights in education**

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<sup>14</sup> Save the Children (2001) *Cold Comfort – young separated refugees in England*

<sup>15</sup> Catalyst (2001) *Public services and the private sector – a response to the IPPR*

<sup>16</sup> Brindle, D., *Sleight change* The Guardian May 8 2002, reviewing Charles Webster, *The National Health Service – A political history*, Oxford University Press 2002

<sup>17</sup> Children's Rights Alliance for England (2002) *Report to the pre-sessional working group of the Committee on the Rights of the Child*

Some probable effects of privatisation on children's Article 28 rights to education have been explored above. But there are widespread concerns that the Government's education modernisation agenda, combined with private sector investment in the education system, could be breaching Article 29 rights concerning the aims of education. These developments may have a distorting effect on children's educational experience in two main ways – giving excessive prominence to the interests of private sector employers in children being prepared to contribute to the national economy, and through commercial sponsorship including the provision of promotional teaching materials, influencing children's present and future consumer choices.

In one recent example a trade union rather than a company is investing in schools to encourage a particular vocational specialisation. Amicus, the manufacturing union is to give money to 10 new specialist schools focusing on engineering. Estelle Morris, the education secretary said "Amicus is joining business and industry in recognising that education is core to the prosperity of the nation".<sup>18</sup> The European Round Table of Industrialists says that "partnerships should be formed between schools and local businesses".<sup>19</sup> They have also said that "All too often the education process is entrusted to people who appear to have no dialogue with, nor understanding of, industry and the path of progress... a profound reform of education systems in Europe is needed".

"State education now has to look to the private sector for extra resources. And the private sector loves it to do so" stated an Observer report of last year, giving striking examples.<sup>20</sup> Companies seem to have four main ways of marketing to children in schools; producing educational materials, competition sponsorship, voucher schemes and secondment of staff. A firm called Educational Project Resources acts as a distributor for any company of organisation wishing to supply promotional curriculum materials to schools. Many further disturbing examples are revealed in the Observer article, in Baby Milk Action's publication for children *Seeing through the Spin*, and in *No Logo* by Naomi Klein and *Captive State* by George Monbiot.

A current example of competition sponsorship aimed at children in after school clubs is a partnership between financial services company AMP and Kid's Club Network. Following an investment of over £2m to support additional playworkers, AMP is promoting its children's savings plan directly to children via a promotional competition in which a family can win a 'five-star luxury break in London'.

Two large scale voucher schemes are Walkers Crisps 'Books for Schools' and Tesco's 'Computers for Schools', while secondment of business personnel into schools is a growing trend encouraged by the Department for Education and Skills. In an initiative called Business Schools, state school pupils are to be taught how to run small businesses at 20 company-sponsored enterprise schools to be set up in 2002. Ministers hope that by 2003 at least 1000 schools will be specialist colleges.<sup>21</sup>

#### **Contacts**

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<sup>18</sup> Woodward, W., *Blairite union to sponsor engineering schools* The Guardian July 6 2002

<sup>19</sup> ERT paper 1995

<sup>20</sup> Mathiason, N., *Can schools survive commercial drive* the Observer February 11 2001

<sup>21</sup> Sunday Times January 13 2002.