

barrie foster & associates



triple jeopardy  
children's homes, holiday destinations &  
adventure activities

*An Independent Perspective on Sir William Utting's Review  
of the Safeguards for Children Living Away From Home*

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# 1. introduction

- 1.1 In recent years, and especially in Wales, there has been widespread exposure of sexual and physical abuse in children's homes. Evidence presented to various tribunals and inquiries suggest that this situation has existed for at least thirty years. In parallel there has been an increase in public awareness of paedophilia and child abuse in the community at large and the ability of abusers to infiltrate and manipulate settings which provide access to vulnerable children.
- 1.2 In June 1996 the Secretary of State for Health and the Secretary of State for Wales commissioned Sir William Utting to review the safeguards introduced by the Children Act 1989 (implemented 1991) and the further measures since taken to protect children living away from home. Sir William was required to assess whether these safeguards were effective and being satisfactorily enforced. The Review, entitled '*People Like Us*', was presented to the commissioning Departments in July 1997 and published in November 1997. The Review notes that children's homes are the area of greatest current anxiety and that: "Information has come to light... about serious and systematic abuse of children in children's homes over a period of many years before the (Children) Act came into force." (*People Like Us*, 1.2). Sir William goes on to ask whether the safeguards introduced since 1991 are strong enough to prevent similar abuses occurring. The findings presented in '*People Like Us*' give no grounds for complacency, and there is especial risk identified with regard to small unregistered homes.
- 1.3 Prior to the publication of the Utting Report, the author of this present document had become increasingly concerned over one category of small children's home, that catering for children exhibiting challenging behaviour and located in (mainly rural) holiday destination areas, especially where adventure activities were offered as an aid to personal development or rehabilitation. These concerns were fuelled by issues raised by ordinary people in rural communities, by discussions with mainstream activity holiday providers, by discussions with employees and ex-employees of the sector in question, and by discussions with child care professionals and educationalists. It seemed apparent that, although numerically low, such homes represented a higher order of risk than the mainstream, and in the case of adventure activities that risk might extend, at the least, to physical injury. Consultation with various agencies through the summer of 1997 revealed that these homes, perhaps because of low numbers and their ability to avoid the regulatory framework, had escaped notice. Even the Adventure Activity Licensing Regulations, introduced by the Department for Education and Employment and the Health and Safety Commission in 1996 to regulate the provision of outdoor activities to young people, fail to identify private children's homes as a category requiring specific attention.
- 1.4 During the progress of this Review it became apparent that proper regulation would involve the co-ordinated efforts of a number of responsible parties if the interests of looked after children, responsible agencies and host communities were to be protected. As a result the ground covered is somewhat more extensive than originally envisaged,

so as to engage, hopefully, the interests of those whose primary responsibilities appear far removed from the child care sector.

- 1.5 *People Like Us*' is principally concerned with physical, sexual and emotional abuse. Sir William Utting recognises that matters which are the subject of other legislation, including health and safety legislation, are "obviously of cardinal importance in safeguarding children". These matters are remote from the central purpose of his Report and are not discussed. The current debate does, however, provide an opportunity for these matters to be raised and addressed in any forthcoming legislative review.
- 1.6 The purpose of this independent document is to identify key issues and inform debate on general principles. It is not intended to point the finger at individual operations and allow the issues to be obscured by recrimination and counter-argument over specific examples. It should be noted, however, that every identified area of potential bad practice has been supported by anecdotal (and sometimes more than anecdotal) evidence of at least one actual example. Having said this, the author would wish to state at the outset his view that meaningful leisure and adventure activities can make a significant contribution within regimes dealing with young people with behavioural problems. We would not wish to suggest that every children's home offering adventure activities is exploiting the system and placing children at risk. We would, however, echo Sir William Utting's view that: "Human nature and human organisations being what they are, one must be alert to the possibility of the worst happening even where one has confidence in the best." And it should be noted that within a month of publication of the Utting Report, a House of Commons debate focussed on the operations of one provider, with allegations of the terrorising of local communities by inmates, of unseaworthy vessels used to provide ocean going trips and with virtually every other concern raised in this document exemplified - all this within a single private company (Mr. Colin Pickthall M.P., West Lancashire, Hansard 3rd December 1997).
- 1.7 For a reasonably full understanding of the type of operation under discussion it is necessary to examine developments in holiday destination areas which create opportunities for providers, and developments within the adventure activity sector which have led to the application of outdoor pursuits to remedial scenarios. This background context is covered in Section 2 of this document.
- 1.8 Section 3 examines the implications for risk in the operation of children's homes in holiday destination areas, and especially in the context of adventure activities. The record of safety in the adventure activities sector as a whole is examined, together with the current regulatory framework. A number of potential areas of risk are identified: those associated with outdoor activities and the environments in which those activities take place; risks which are inherent in participants exhibiting challenging behaviour; and, not least, risks arising from institutional systems. Appropriate reference is made to key findings and recommendations within the Utting Report, throughout.
- 1.9 Section 4 summarises the impact which badly managed children's homes can have on small rural communities, local economies and the mainstream adventure holiday industry.
- 1.10 It was hoped to undertake a comprehensive summary of all relevant legislation and discuss the dissemination of information and the co-ordination and implementation of

monitoring and enforcement systems, following consultation with the various responsible agencies. Limited time and resources have placed this objective beyond what can be achieved in an independent review. Some areas for future action are, however, identified in Section 5, and it is to be hoped that the necessary resources will be found to complete the task begun in this document.

- 1.11 We would hope that government will respond to the Utting Report with a review of legislation and the introduction of more effective monitoring and enforcement procedures. We would hope that any such review will broaden the agenda to include areas of risk additional to physical, sexual and emotional abuse. A more comprehensive regulatory framework places an onus on appropriate agencies to provide information on the responsibilities of providers and the regulatory framework in which they are operating. Even the most idealistic providers will need guidance, regulation and monitoring; less idealistic, but nonetheless professional proprietors, more so; and the unscrupulous need to be identified, exposed and eradicated.
- 1.12 The conclusions and recommendations in Section 5, necessarily limited in scope due to the lack of time and resources for full consultation, represent the views of the author and are his responsibility solely. The author would, however, acknowledge the valuable assistance, and the endorsement and validation of various Sections of the remainder of this Review, which has been provided by a number of agencies and individuals. All of this help was gratefully received, and especial mention should be given to:
- Mr. John Walsh Heron (Managing Director) and Mr. Marcus Bailie (Head of Inspection Services), Adventure Activities Licensing Authority.
  - Mr. David Halse, Head of Child Care Services, Pembrokeshire County Council.
  - Professor Terry Stevens, prime instigator of the Safety in Leisure Research Unit, Swansea IHE; author of 'Activity Holiday Centres - Managing a Safer Product'; and Board Member of the Adventure Activities Licensing Authority.
  - Ms. Chris Samra Tibbetts, independent training consultant, child care services.
  - Institute of Leisure and Amenity Management Information Services.
- 1.13 The author of this Review retains all copyright and publication rights but has no objection to extracts being quoted in an appropriate context so long as the courtesy of acknowledgement is extended.
- 1.14 **The Author:** Barrie Foster is a tourism development and marketing specialist with a particular interest in rural tourism and integrated economic development in rural areas. He has lived in and worked from West Wales since 1987. A personal involvement with outdoor pursuits, primarily mountain and water sports, extends over forty years and includes several years in the mid-1960s as an Expedition Training Team Leader in the Royal Air Force. His professional activities have included examination of the strategic role of outdoor activities in local tourism economies for such clients as the Wales Tourist Board, the Welsh Development Agency, the Development Board for Rural Wales and Shannon Development, and numerous Local Authorities in Wales and elsewhere. More specifically he has provided consultancy services and business counselling to individual outdoor activity providers, whether directly or through

schemes operated by the Department of Trade and Industry, the Wales Tourist Board and the West Wales Training and Enterprise Council. The author is a Fellow of the Tourism Society, and a member of the Chartered Institute of Marketing and the Institute of Leisure and Amenity Management. Amongst other past and present commitments to the industry in which he works he is a corresponding member of the ILAM Tourism and Visitor Attractions Panel and a member of the West Wales TEC Tourism, Leisure and Catering Forum.

# executive summary

## Context of the Review

**ES.1** Structural changes in the UK domestic tourism industry have, on the one hand, led to a supply of cheaply available property and, on the other, to the development of alternative business uses, especially those which produce high returns against low investment and overhead costs. The most lucrative alternative uses are those which add value to a basic accommodation product, for example by the introduction of a care component. The child care sector provides one such opportunity.

**ES.2** The ostensible contribution of adventure activities to personal development and rehabilitation provides, potentially, an additional added value opportunity. Volatility within the activities sector suggests that at least some operators may be considering the child care sector as an alternative market opportunity (and there is evidence to suggest that this has already happened). Other scenarios are that personnel from the activities sector may elect to embrace child care as new entrants; or enter into business partnerships with established owners of appropriate properties; or take employment with conventional children's homes which are already established in suitable regions. The commercial potential is for exponential added value through combining child care with adventure activities.

**ES.3** Current legislation allows entrants into the child care sector, whether or not providing adventure activities, to avoid statutory regulation and control. Cost savings can therefore be achieved by the less than scrupulous through the employment of underqualified staff and by low standards of maintenance and care.

**ES.4** There is evidence of imitative behaviour in holiday destination areas generally, and in the activities sector specifically, which creates 'ripple effects' as new business opportunities emerge. In the absence of appropriate regulation, the danger with such cloning, and with rapid adjustment to new markets, is that operators may enter a new field of business activity without appropriate qualifications and experience.

**ES.5** Where new business opportunities are embraced as a solution of last resort, at least some entrants will be under-capitalised, under-resourced and driven by purely commercial considerations. In such cases the need to maximise returns over the shortest possible time can increase the temptation to minimise staff and maintenance costs.

**ES.6** From the above it is apparent that there is a convergence of opportunity created by the characteristics of certain holiday destination areas and specific sectors of the tourism industry. Lack of regulatory control opens the door to exploitation. Sir William Utting's review of safeguards for children living away from home *'People Like Us'* [PLU] identifies that children are at risk of abuse in small children's homes. Adventure activities have the potential to place participants at additional, physical, risk if inadequately supervised.

## **The Climate of Risk**

**ES.7** In addition to the risk environment reviewed in PLU, children are at triple jeopardy in children's homes which offer adventure activities. There is risk inherent in the activities and the environments in which they take place. This risk is compounded by participants who are less responsive to instructions and safety regimes. Less obvious but of considerable complexity are the institutional risks inherent in current systems and processes, not least those which mitigate against proper selection and effective monitoring, or which dilute or delay the introduction of a properly regulated framework of good practice.

**ES.8** Risks in the sector as a whole are serious enough in themselves. PLU (2.13) notes that under current procedures almost half social services authorities were using these homes: "There were some who had a history of financial misdealing... There were others against whom allegations of both physical and sexual abuse had been made prior to them setting up small homes... In all cases given as examples, however, local authority checks had not been sufficiently robust to prevent them from placing children in the care of these people... Children are being placed by some local authorities in accommodation which, at the very least is unsuitable and, in some cases, is placing them at risk". In the case of some homes offering adventure activities, that risk includes the possibility of serious injury or death.

**ES.9** PLU (2.8) notes that the children's home sector lacks the capacity to initiate widespread improvements in standards. The independent sector is now largely made up of small suppliers, and there is no grouping of sufficient strength to provide the basis and the motive power for the development required. As a result (PLU:2.9) the changes needed in residential child care require the implementation nationally of a national strategy, and the Review recommends that the Department of Health and Welsh Office establish and resource a dedicated group to develop and implement such a strategy. Hazards arising from adventure activities should be recognised in any such strategy.

## **Community and Economic Impact**

**ES.10** Inadequate management, supervision and control of even low numbers of looked after children can produce significant imbalances in small rural communities. The most obvious effects relate to anti-social behaviour ranging from abuse, through vandalism, to physical assault. This type of behaviour has most impact where populations are small and where crime rates have been low traditionally. Those living in small towns, villages and isolated rural dwellings experience a feeling of threat when faced with anti-social actions which are beyond their normal experience. The potential problems are exacerbated by lack of institutional controls, especially where placements are from distant agencies. In many cases no clear lines of responsibility are apparent or observed. Disruption can extend beyond streets and public spaces into health care, education and elsewhere. There are cost implications for services in areas where public spending is already hard pressed.

**ES.11** Disruption will also affect visitors to rural destination areas. The expectation is of quiet enjoyment and an authentic experience very different from the urban/suburban source regions of most visitors. Exposure to anti-social activity in any given area may prompt visitors to exercise the prerogative of choice when deciding on their next leisure trip. The inclusion of adventure activities in care regimes brings looked after children into close proximity to the generality of leisure users of natural resources. The impact of any anti-social behaviour is heightened and there is the added possibility of physical risk to bystanders. Many rural areas

have become increasingly dependent on tourism as an integrated part of the regional economic mix. Impact on the tourism economy therefore produces impact on the wider local economy.

**ES.12** The public at large make little or no differentiation between the providers of adventure activities. Any incident involving outdoor pursuits reflects badly on all providers, and the mainstream activity industry especially. This will be true of incidents involving looked after children, and the risk of incident will arguably be higher in these settings unless brought under proper regulation. The value of the activity sector is considerable in terms of both seasonal extension and revenue. Centres tend to be concentrated in a small number of comparatively small sub-regions. Threats to the mainstream activity sector therefore represent significant threats to the local economies in which centres are located.

### **The Regulatory Framework**

**ES.13** Many of those involved with child care would argue that, ideally, all children's homes should be under Local Authority management. More stringent controls resulting from the exposure of abuse in LA homes will ensure that children are placed in a closed and totally managed system. In the absence of this ideal and so long as there is private sector involvement with child care, there will need to be confidence that comprehensive regulatory frameworks, support systems and enforcement mechanisms are in place. Appropriate legislation will involve a wide range of government departments and agencies, including those responsible for planning, general health and safety, social services and, in the case of adventure activities, the Department for Education and Employment, the Health and Safety Executive and the Adventure Activities Licensing Authority. Various reviews of many of the issues applicable to children's homes are in progress, and this provides a confluence of opportunity for consultation and co-ordination between departments and agencies, leading to a national strategy which can be implemented nationally. Statutory registration of all children's homes is a necessary pre-requisite, following on from which many of the risks, including institutional risk, identified in PLU and this Review will be addressed.

**ES.14** Refinement of the regulatory framework should be followed by clear and easily understood summaries of duties and responsibilities, for Local Authorities and/or placing agencies and for existing or aspiring providers. These Guidance Documents should be supplemented by more detailed technical guidance notes, and in the case of Local Authorities it should be clearly defined where special local circumstances can be taken into account. There should be a clear formula for the co-ordination of departmental responsibilities at Local Authority level. Guidance for providers should be disseminated by all Local Authority departments with whom proprietors are likely to come into contact, and by enterprise agencies and TECs who may be approached for assistance by aspiring entrants.

**ES.15** The measures identified in this Review will contribute to what is succinctly defined as "'a high level and a safe level of care' for looked after children" in a submission to Sir William Utting by the Welsh Local Government Association:

- a) A proper needs-led assessment of each child in, or likely to enter, the looked after system.
- b) A choice of accommodation to meet those needs.
- c) Access to specialist advice and services.

- d) A high quality of care provided by qualified, trained supported and secure staff, appointed following a rigorous selection process.
- e) A valid and comprehensive inspection, registration and monitoring process.
- f) The provision of good quality education.
- g) Mechanisms to ensure that children make their voices heard.

**ES.16** Our greatest concern is that the marginal nature of children's homes providing adventure activities, and the probable small numerical base, will allow the issues discussed in this review to be sidelined or ignored, whether on grounds of complexity or cost. Again, we would emphasise that the potential consequences of bad practice are many times disproportionate to the number of providers. The House of Commons debate of December 1997 highlights the possible repercussions of one small badly managed home, with a small number of children in its care, on a small local community. The Lyme Bay tragedy provides the ultimate example of the devastating consequences which one badly managed activity centre can inflict on young people and their families. And Lyme Bay has demonstrated the impact that a single incident can have on an important tourism sector, with a potential knock-on effect into wider rural economies. Here, too, is triple jeopardy. Unless appropriate measures are introduced, vulnerable children and vulnerable communities will remain at risk.

## 2. context of the review: holiday destinations, adventure activities & private children's homes

### **Holiday Destinations**

- 2.1 The UK tourism industry as a whole has experienced substantial structural change since the 1970s, not least because of the impact of the overseas package holiday. Traditionally, UK holiday destinations have been dependent on volume domestic audiences, but this market base has been gradually eroded by the lure of affordable, more exotic, locations offering guaranteed sunshine and cheap food and drink. The volume markets for British tourism products will not disappear, but there have been significant reductions in numbers in traditional destination areas. This loss of volume has been only partly replaced by emergent markets, predominantly those taking short breaks and additional holidays, often outside of high season.
- 2.2 Loss of volume has meant loss of revenue for tourism operators who have neglected to adjust to changing trends. This has produced a fall in trading surpluses for re-investment and a consequent decline in quality, over a period when consumers have become increasingly sophisticated, with ever more demanding expectations. The downward spiral is often irreversible: reduced investment leads to falling quality and loss of business; further reductions in revenue, and surpluses for re-investment, perpetuate the cycle. The result has been a range of outcomes: entrenchment in marginal trading; or changes of business use; or distress sale of businesses; or business failure. In the latter two cases business premises often fail to achieve high prices; and this situation is exacerbated in those regions which are experiencing acute problems, where the volume of businesses for sale at any one time can drive down property prices.
- 2.3 Within the general changes summarised above there have been other distinct shifts arising from evolving tourism trends. Of especial relevance to the subject of this document are changes in the use of tourist accommodation in the UK.
- 2.4 For many years there has been a discernible movement amongst consumers away from serviced accommodation and into self-catering accommodation, especially in more traditional destination areas. This movement can be explained by a number of factors:
  - a) Self-catering accommodation offers total flexibility to staying guests, without the constraints of fixed meal times, etc.
  - b) The absolute cost of self-catering holidays can be below that of holidays in serviced accommodation, especially for families and larger groups.

- c) Self-catering often represents better value-for-money, especially when compared with the lower end of serviced accommodation provision, which often leaves much to be desired in the way of quality.
- 2.5 The trend towards self-catering accommodation was already underway before the package holiday boom. The most prominent accommodation type was the static caravan park in traditional resort areas, and over the past twenty years there have been improvements in this product in terms of general ambience and quality, and the provision of ancillary facilities and amenities. A more recent development was growth in self-catering cottages, especially where these are of high quality and in areas of high landscape/coastal quality.
- 2.6 Not all serviced accommodation has been affected by this trend. Better quality hotels, country house hotels, farmhouse bed and breakfast and other establishments which offer an individualistic visitor experience to clearly identified audiences have, in many cases, sustained or increased their occupancy levels. The most vulnerable accommodation types are small guesthouses and bed and breakfast establishments which have failed to recognise the continual rise in consumer expectations and are locked into the standards and attitudes of the 1960s and 1970s.
- 2.7 The most obvious example is the traditional coastal resort guesthouse. Often small and located in Victorian terraces, this product has become less and less relevant to modern demands. Equally vulnerable although less numerous are rural guesthouses operating out of converted properties, whether larger farmhouses or medium sized country houses, which lack the ambience, quality and individuality of country house hotels. In both cases low standards mitigate against high occupancy rates; poor quality of accommodation predicates low rack rates; both of these factors work against the generation of trading surpluses; and all of this is in the context of older properties which often carry a heavy repairs and renewals overhead.
- 2.8 We have noted that, aside from continuation of trading at a marginal level, the results of vulnerability can include change of business use or the disposal of properties, whether voluntarily or otherwise. Where properties are disposed of, often at forced-sale prices, it is not unusual for new owners to seek business alternatives which will provide higher returns than tourism, where price competitiveness and seasonality are considerable constraints.
- 2.9 Whether under continued or new ownership, there have been numerous examples of conversions to other business use. Changes have, historically, tended to exploit demand as new opportunities come on-stream. An early instance was the conversion of holiday to student accommodation in resorts which were also centres of higher education. The 1980s were notable for the conversion of rural properties to residential and nursing homes. More recently, many coastal resorts have seen exploitation of DSS schemes for funded accommodation.
- 2.10 These examples have in common a number of characteristics:
- a) They escape, for the most part, the seasonality patterns inherent in tourism destinations.
  - b) Overall, annual revenues are greater than those generated by tourism accommodation.

- c) Staff costs are virtually non-existent where conversions are to living accommodation. Where new business use includes an element of care (e.g. residential/nursing homes) this can be seen as adding value to the operation and is reflected in increased revenues.
  - d) Repair and renewal costs are much reduced from those required to maintain the appropriate standards for tourism accommodation. This is especially true of living accommodation, but there are examples of quality shortfalls in residential establishments.
  - e) Many of the other overheads associated with tourism operations are avoided.
- 2.11 The general scenario with the given examples is, therefore, that earnings are higher than in the tourism sector, over a longer period, with significant reductions in outgoings. Add to this the low cost of acquisition of premises already noted, and we are left with the potential for considerable returns on investment. These returns can be further increased if owners are unscrupulous enough to neglect necessary maintenance; and/or fail to provide adequate levels of care in the case of residential operations. There is sufficient evidence that such unscrupulous operators exist, and that in the case of residential care existing regulatory controls are sometimes inadequate to prevent bad practice.
- 2.12 One final characteristic of conversions to alternative uses is apparent to the close observer. An opportunity identified and exploited by one operator will often spawn clones, as other businesses in crisis look for 'quick-fix' solutions through imitation of operations which are perceived as successful. This goes some considerable way towards explaining the 'clustering' of business conversions in both space and time: imitators are generated by 'ripple effect' until the appearance of a more lucrative or fashionable business alternative, when the process is repeated. The danger with this cloning phenomenon is that operators may enter a given field of business activity lacking qualifications, experience and proper motivation, unless regulatory controls are in place and adequately enforced.
- 2.13 The relevance of the foregoing to the private children's home sector can be summarised as follows:
- a) Private children's homes represent the latest in a progression of business opportunities which offer a more attractive, year round, alternative to tourism.
  - b) The care element involved adds value to the service, generating substantial per diem rates whether for short or long stay placements.
  - c) Funding of placements out of the public purse provides security of income.
  - d) Current planning and registration rules allow small homes to avoid regulatory controls.
  - e) Current registration rules allow small homes to be established without demonstrable qualifications and experience on the part of management.
  - f) Current registration rules allow unqualified staff to be employed, thus reducing costs to the employer.

- g) Suitable properties in rural locations can be acquired at comparatively low cost.
  - h) Minimum maintenance requirements are lower than with many other business alternatives.
  - i) Homes which are located in holiday destination areas may be more attractive to some placing authorities.
- 2.14 There are, therefore, a number of compelling commercial arguments which make entry into private child care a tempting proposition. Not least is the added value of providing a care element at low cost; but the added value component can be increased if additional elements, over and above basic care, can be introduced. It is in this context that the role of adventure activities need to be examined.

### **Adventure Activities**

- 2.15 Participation in outdoor pursuits has grown enormously since World War II. Underlying all was growth in disposable income, leisure time and, especially, growth in private motor car ownership which rendered remote areas accessible to increasing numbers of people. These changes, which affected domestic tourism trends as a whole, were buttressed through the 1950s by the cumulative effects of such factors as the creation of National Parks from 1948 onwards; interest in the aims of the Outward Bound movement; significant British achievements such as the ascent of Everest and Sir Vivian Fuch's polar exploration; and even the choice of Gordanstoun, with its rugged outdoor regime, for the education of HRH Prince Charles.
- 2.16 By the late 1950s activity centres were well established in Wales, the Peak District, the Lake District, the Scottish Highlands and elsewhere. These centres were managed by a number of dedicated/specialist organisations, including Outward Bound, the Central Council for Physical Recreation, the Youth Hostel Association and Scottish Youth Hostel Association, and a number of private operators. There were also centres operated by a small number of the more innovative Local Education Authorities.
- 2.17 By this time there were already two distinct strands to the emerging outdoor pursuits industry. The first was 'skills based' and provided formal introduction to and training in various outdoor sports for those wishing to pursue these sports seriously or wishing to acquire recognised qualifications as employment opportunities in the industry increased. This last was in the context of emergent structuring of levels of attainment by sports governing bodies. The second was 'experiential/development based'. Demands on personal resources were perceived as an inextricable accompaniment to participation in outdoor activities. Exposure to rugged pursuits was seen as contributing to character building, personal development and constructive social interaction, regardless of whether participation led to long term enthusiasm for any particular sport: in most cases it did not.
- 2.18 In the early 1960s burgeoning interest in outdoor pursuits and their perceived benefits, especially for young people, generated a spate of acquisitions of private centres, or suitable properties for conversion, by more LEAs. By 1970, centres managed by education authorities had become numerically significant, moving the industry

emphasis towards the experiential/development strand, which was increasingly informed by a developing theoretical base.

- 2.19 It was, perhaps, predictable that the cost of maintaining centres for individual LEAs might come under scrutiny. In the event, the deteriorating economic climate of the 1970s and early 1980s created something of a crisis in public spending. Public spending cuts forced LEAs to look closely to their budgets and eliminate a number of cost centres which were additional to their core educational function. There followed closure or sale of many LEA outdoor centres, and a resurgence of the private sector.
- 2.20 There is little doubt that a good proportion of private operators identified that a market opportunity had been created by the withdrawal of LEAs. School trips were still continuing, but on a bought-in basis. What were not fully appreciated in many cases were the problems inherent in over-reliance on school visits. Income was constrained by the comparatively low per capita rates acceptable to the market, and seasonal patterns resulted in substantial periods of under-use. At the same time it was sometimes found difficult to develop products and markets which might be complementary to the seasonality of school trips. There was, especially, incompatibility between the quality of accommodation acceptable to youth groups and that acceptable to other potential, adult, markets.
- 2.21 The basic weaknesses of over-reliance on school groups were exacerbated in the mid-1980s by deteriorating industrial relations in the education sector. Withdrawal of teachers from extra-curricula activities introduced volatility into the marketplace; and this was compounded later in the decade by new legislation on charging for school trips. The mid to late 1980s saw a number of business failures and/or changes in ownership. In parallel, there was intensified effort towards the development of new markets which would produce higher revenues and break the pattern of seasonality.
- 2.22 The contribution which the experiential/development strand might lend to staff and management training had been recognised by a number of centres, which had developed products and markets accordingly. Now the volatility of the schools market and the culture of management training which emerged in the mid to late 1980s prompted many operators to look to this growth sector, which offered added value opportunities. The quality differential between youth and adult market products remained a considerable hurdle; and many operators lacked the skill base necessary to integrate outdoor activities with management training regimes and objectives. Although some have been successful in making the transition, initial under-capitalisation followed by marginal trading mitigated against necessary investment by others.
- 2.23 One result of the differential between the demands of management training markets and the quality of supply-side provision was the development of specialist, 'office based', training companies. These companies claimed the integrative skills necessary to realise the full benefits of outdoor activities in a management training context. They were able to offer a 'mix and match' approach: accommodation of an appropriate standard, and in desired locations, could be sourced to meet clients' requirements and budgets. Management training inputs were supplied by the office based company with technical outdoor skills contracted in. The outcome was some deflection of the management training market away from residential centres. And as the 1990s progressed, and the economic climate again entered a period of flux, corporate training budgets were cut, reducing the overall size of the available market.

- 2.24 The situation with outdoor activity centres thus mirrors in many respects the scenario with tourism accommodation. At the lower end of the spectrum there exists the potential for a downward spiral of revenue and quality within a climate of market volatility. Underlying dynamics within trading sectors can increase the attraction of new markets dramatically, especially those which offer high returns against low outgoings. Rapid adjustment to new market opportunities can lead to re-positioning which is often superficial in scope and fails to provide an adequate resource base.
- 2.25 One such opportunity is the child care sector, where the real or ostensible contribution of outdoor pursuits to personal development and rehabilitation provides a plausible route into a market with the potential for considerable added value. All of the factors relevant to children's homes which are summarised under 2.13 are equally relevant here. Of especial additional significance are the following:
- a) The acceptable quality of accommodation provision is even lower than that required in the mainstream youth group sector, and far below that required in mainstream tourism.
  - b) The adventure activity component adds further value to the value already added by the care component in conventional children's homes.
  - c) The comparatively low technical level of the adventure activity component currently allows supervision by staff without formal qualifications in outdoor pursuits.
  - d) Almost by definition, enterprises offering adventure activities will locate in holiday destination areas, most notably in regions which offer appropriate natural environments such as National Parks and similar rural/coastal areas. The implications for the cost of property acquisitions are the same as those summarised under Holiday Destinations.
- 2.26 One final characteristic of the adventure activities sector should be noted. 'Cloning' - imitation of successful enterprises - is prevalent throughout the tourism industry and has been summarised with regard to alternative business uses for accommodation establishments (see 2.12 above). A specific aspect of this process is relevant to the activities sector. There is a distinct culture of personnel movements within the industry. Staff will often build up a portfolio of skills and experience by moving from smaller to larger centres. However, an alternative to movements between centres is in evidence, where staff set up their own businesses, or enter into business partnerships, having gained some insight into the industry through past employment. Here again, then, is the potential for 'ripple effect' development. Our view is that it is particularly likely to occur where cost of entry (acquisition of property) is low, overheads can be minimised, revenue can be maximised and where regulatory controls are less than stringent.

### **Summary and Conclusions**

- 2.27 Structural changes in the UK domestic tourism industry have, on the one hand, led to a supply of cheaply available property and, on the other, to the development of alternative business uses, especially those which produce high returns against low investment and overhead costs. The most lucrative alternative uses are those which add value to a basic accommodation product, for example by the introduction of a care component. The child care sector provides one such opportunity.

- 2.28 The ostensible contribution of adventure activities to personal development and rehabilitation provides, potentially, an additional added value opportunity. Volatility within the activities sector suggests that at least some operators may be considering the child care sector as an alternative market opportunity (and there is evidence to suggest that this has already happened). Other scenarios are that personnel from the activities sector may elect to embrace child care as new entrants; or enter into business partnerships with established owners of appropriate properties; or take employment with conventional children's homes which are already established in suitable regions. The commercial potential is for exponential added value through combining child care with adventure activities.
- 2.29 Current legislation allows entrants into the child care sector, whether or not providing adventure activities, to avoid statutory regulation and control. Cost savings can therefore be achieved by the less than scrupulous through the employment of underqualified staff and by low standards of maintenance and care.
- 2.30 There is evidence of imitative behaviour in holiday destination areas generally, and in the activities sector specifically, which creates 'ripple effects' as new business opportunities emerge. In the absence of appropriate regulation, the danger with such cloning, and with rapid adjustment to new markets, is that operators may enter a new field of business activity without appropriate qualifications and experience.
- 2.31 Where new business opportunities are embraced as a solution of last resort, at least some entrants will be under-capitalised, under-resourced and driven by purely commercial considerations. In such cases the need to maximise returns over the shortest possible time can increase the temptation to minimise staff and maintenance costs.
- 2.32 From the above it is apparent that there is a convergence of opportunity created by the characteristics of certain holiday destination areas and specific sectors of the tourism industry. Lack of regulatory control opens the door to exploitation. Sir William Utting's review of safeguards for children living away from home *'People Like Us'* [PLU] identifies that children are at risk of abuse in small children's homes. Adventure activities have the potential to place participants at additional, physical, risk if inadequately supervised. In the next Section of this Review the nature of that risk and the adequacy of existing legislation and regulation is examined.

# 3. the climate of risk

## Risk and Small Children's Homes

- 3.1 In the previous section it was suggested that commercial considerations might lead to the conversion of tourism accommodation to child care in holiday destination areas. Where small private children's homes are concerned, there is comparative ease of entry due to the current regulatory environment:
- a) Homes offering less than six places may not require planning consent.
  - b) Homes offering less than three places are not required to register with Social Services.
  - c) Regardless of size, homes where the length of stay does not exceed 28 days are not required to register with Social Services.
- 3.2 Sir William Utting identifies that children are at risk in small children's homes. A number of risk factors are evident for establishments which are able to avoid the regulatory net, and it might be argued that these risks increase when those establishments are located in holiday destination areas which are to a greater or lesser degree remote from administrative centres.
- a) Owners/managers are able to enter the sector without qualifications or appropriate experience.
  - b) Establishments are able to employ underqualified or unqualified staff, at less than ideal staff:placement ratios.
  - c) The scrutiny of children's homes which led to the commissioning of the Utting Report, and increased vigilance in the local authority sector, may render unregulated and peripheral establishments attractive to abusers who wish to escape that scrutiny. PLU:1.33 notes that: *"Giving the extra protection that particularly vulnerable groups of children need may ... deflect persistent abusers to other groups of children living away from home. What is needed in addition, therefore, is for every setting in which children live away from home to provide the same basic safeguards against abusers."*
  - d) PLU identifies the possibility that some agencies responsible for looked after children are less than stringent in their vetting of smaller establishments, especially where children with acute behavioural problems are concerned.
  - e) Homes which are at a distance (e.g. outside of the responsible local authority's area) may be less stringently monitored by the placing agency.
- 3.3 PLU is principally concerned with physical, sexual and emotional abuse and finds considerable evidence of serious and systematic abuse in children's homes, over many

years. It is noted (9.9) that although preferential paedophiles attract most attention in relation to abuse of children living away from home:

- a) **More** children are at risk from casual or opportunistic abuse than from 'professional' abusers.
- b) "**Most** children, however, are at the more general risk that the systems in which they are caught up will malfunction to the extent that in the worst case they will do more harm than good."

3.4 The conventional understanding of child abuse aside, we would suggest that there is significant risk of 'institutional' abuse of the type identified in 3.3b in small unregistered children's homes. We believe that institutional failings open the door to risk where establishments are driven by primarily commercial considerations; and that an even greater level of institutional failing can lead to unacceptable risk where adventure activities are on the agenda.

3.5 There are a number of areas highlighted in the Utting Report, of concern in themselves, where the addition of adventure activities will compound the risk to looked after children. These are identified and discussed in context, in this Section and elsewhere. Firstly, however, it is necessary to examine the climate of risk within the mainstream adventure activity sector, the record of that sector and the current regulatory framework.

### **Risk and Adventure Activities**

3.6 Activities in outdoor environments, primarily involving mountain, water and equestrian sports, are variously described as outdoor activities, outdoor pursuits, rugged pursuits, adventure activities or risk sports. The last definition provides an essential focus. All activities of the type under discussion involve hazards and potential risk.

3.7 Some activities carry an inherent risk of physical harm across a spectrum which ranges from minor injury to death. Most mountain sports above (low) thresholds of technical difficulty are included in this category; water sports in coastal areas or white water conditions, and some sub-categories of water sport in any circumstances (e.g. kayaking), are also included; as are equestrian activities. Other less extreme activities create risk by virtue of the environments in which they take place. Walking in mountains or along sea cliffs can bring participants into risk zones if there is deviation from established footpaths, if paths are prone to weather erosion, or if there is sudden and unpredicted deterioration in the weather. And the consequences of even minor injury can be severe if that injury is sustained in a remote and inaccessible environment, where extrication of the injured party is complicated and time consuming.

3.8 The ever present potential for risk calls for a strictly professional approach when dealing with novices, especially those from younger age groups. Most personnel in the activities industry are attracted initially by the possibility of pursuing their interests (in one or more sports) through their employment. There is a recognised danger that these interests may be of higher priority than the principle responsibility of outdoor instructors, which is to ensure the safety and well being of those being instructed. In the early days of the industry there was an entrenched attitude in some instructors that risk was an inalienable component of outdoor activities and that the occasional accident

was to be expected and was acceptable. The involvement of LEAs in the provision of adventure activities, and their responsibilities *in loco parentis*, was one contributing factor to a less muscular approach, where safety considerations were given primacy. Nonetheless, incidents occurred, and it is in the nature of adventure activities that the seriousness of some incidents were disproportionate to their frequency. And the attitude that risk is acceptable and accidents inevitable has never been completely eradicated.

- 3.9 By the mid to late 1980s concerns were being expressed over some aspects of outdoor activities involving young people, following recent significant growth in the industry. It may be more than coincidental that these concerns emerged when the resurgence of the private sector was already apparent. Ironically, public attention was first focussed on safety issues by incidents involving the education sector. Most notable were deaths caused by a freak wave which carried away children on a school trip to Lands End; and a tragedy involving a school party in the Alps. Although both parties were under the supervision of school staff rather than involved with the activity holiday sector per se, questions were raised as to how children were placed in risk situations and whether the staff involved were competent to plan and supervise trips of this kind. In passing, it is worth noting that both tragedies were primarily the result of risk **environments** rather than participation in risk sports (see 3.7 above). Although neither incident involved the commercial activities sector, it was perhaps a natural outcome that attention would be drawn to this sector as a major player in the provision of risk activities in risk environments.
- 3.10 At around the same time the Consumer Association magazine *'Which'* conducted a survey of commercial suppliers of activity holidays. A number of criticisms were directed at the variable quality found within the sector, even in larger organisations with two or more base sites. Questions were raised over safety regimes at some sites. Interestingly, in some cases criticisms were focussed on accommodation rather than on the adventure activities offered: breaches of Health and Safety and Fire Regulations were highlighted.
- 3.11 In 1990 a two year research project into safety in the outdoor activities sector in Wales was instigated by the Safety in Leisure Research Unit (SaiL) at Swansea Institute of Higher Education. Wales had long been established as one of the premium activity destinations in the UK, and the principal sponsors of the study were the Wales Tourist Board and the Sports Council for Wales. The report, "*Activity Holiday Centres - Managing a Safer Product*", was published in December 1992.
- 3.12 The SaiL Report found that a 41% growth in activity holiday centres had occurred in Wales in the decade prior to publication. SaiL identified 439 direct providers of activity holidays in Wales, with a further 61 operators based outside of Wales but offering an activity product within Wales. 105 operators responded to an initial SaiL survey, giving a sample size of 21%. 86% of the market was made up by individuals who owned only one company or centre. Most centres were found within the rural heartland areas of Wales. On average 3,500 people attended a centre per year. Young people made up the majority of client groups. SaiL noted that concerns were rising over safety, and that "*activity holiday operators often appear to place safety low on their priority list, for safety is an unseen commodity which is most likely to be cut back on when the budget is tight*".

- 3.13 A great part of the SaiL Report was concerned with categorising and quantifying accidents; and with a review of staff qualifications and recruitment procedures. Broadly, however, there was implicit and explicit criticism of the sector as a whole although, as always, not all operators were subject to the same degree of criticism. Some findings were particularly worrying:
- a) Personnel were identified as an essential part of maintaining a minimal risk environment. Competency and quality are important criteria for centre staff. SaiL expressed concern over recruitment procedures and recommended that a system similar to that used by LEAs should be installed, with all candidates screened by police records to avoid employment of convicted child abusers. There should be a standardised interview format within which emphases could be changed depending on the requirements for any particular post. All staff should be both qualified and experienced to instruct, supervise and lead participants within an environment of minimal risk. Accreditation should be through the various sports governing bodies. It was noted that 51% of operators required no paper qualifications from full time staff and that 59% required no paper qualifications from seasonal staff. Training of personnel was identified as an important commodity, ensuring that an on-going level of safety is sustained. Training should be assessed to ensure homogeneity throughout the industry.
  - b) 26% of centres held no records on accidents. Even more centres had no procedures for recording near misses, which is an excellent management tool for the identification of foreseeable risks. Significantly, 50% of accidents required hospital treatment. 70% of casualties were in the 13-24 age group. It was recommended that every centre should keep a detailed and comprehensive record of every injury; that there was a need for standardisation of the format of accident record books; that near misses should be recorded; and that regular reviews of records should inform corrective action on the part of management.
  - c) Almost half of centres sought no first aid qualification from their staff. Centres should ensure that every staff member in charge of a group off-site should have an up-to-date, relevant, first aid qualification. Throughout the industry there was a need for increased provision for staff training in first aid and general health and safety.
- 3.14 In parallel with the SaiL research, the Wales Tourist Board and Sports Council for Wales had been in consultation with sports governing bodies concerning the introduction of an accreditation scheme for activity holiday centres. The WTB introduced a voluntary Code of Practice for activity holiday centres in 1991, as a precursory pilot to a voluntary inspection and verification scheme introduced in 1992. Whilst campaigning for statutory licensing, the Board sought to give strength to the voluntary scheme by publishing an activity holiday brochure with free entry for verified operators; and by making voluntary verification a condition of advertising in WTB and Local Authority marketing publications. Nevertheless, take-up was disappointing and the then Marketing Director of the Wales Tourist Board was moved to voice WTB concerns to the industry and the general public.
- 3.15 In 1993 four teenagers lost their lives in a kayaking accident in Lyme Bay, Dorset. The key factors were remoteness from land, failure to pay due regard to local weather reports and an inadequate instructor:student ratio. This tragedy exemplified the disproportionately severe consequences of a single incident in an adventure activity environment. Subsequent media coverage, pressure from parent groups and the debate

amongst relevant government and autonomous agencies was sustained for far longer than had been the case with previous incidents, and government eventually responded with The Activity Centres (Young Persons' Safety Act) 1995. A direct result of this legislation was the creation of the Adventure Activities Licensing Authority [AALA]; and the publication of The Adventure Activities Licensing Regulations 1996 under the aegis of the Department for Education and Employment and the Health and Safety Commission and Executive.

### **AALA and The Adventure Activities Licensing Regulations 1996**

- 3.16 In essence, the Adventure Activities Licensing Regulations prevent individuals or organisations from providing specified outdoor activities to young people under the age of 18 in return for payment, unless licensed to do so. Following a transitional implementation period, failure to obtain a licence is now a criminal offence.
- 3.17 The 1996 Regulations stipulated four activity categories where licensing would be required, at or above given hazard levels:
- a) **Caving.** The licensing criteria encompass all variants of underground activity including cave diving and mine exploration. Show caves, tourist mines and visits to natural caves which give rise to only everyday hazards are excluded. A judgement on whether exploration can be carried out safely without specialist skills or techniques may have to be made by an expert practitioner in all but the most straightforward of cases.
  - b) **Climbing.** The licensing criteria define climbing as movement over difficult terrain which requires the use of hands as well as feet and requires either the use of the equipment or the skills and techniques of a rock or ice climber. The criteria include variants such as gorge walking, ghyll scrambling and sea level traversing. A licence is not required for scrambling where injury would not occur if equipment or special techniques to prevent the individual from falling are not used and where other hazards which may cause injury are everyday hazards which would be obvious to and surmountable by someone with no previous rock or ice climbing experience. Use of purpose designed manmade training structures such as climbing walls are excluded from licensing, but this does not extend to other manmade structures such as railway viaducts.
  - c) **Trekking.** Trekking is defined as walking, pony trekking, mountain biking or off-piste skiing and its variants, in remote open country. A licence is required for trekking on moorland (open uncultivated land at any height above sea level) or on a mountain above 600m, from which it would take more than 30 minutes travelling time to walk back to an accessible road (i.e. a road with the width and surface suitable for use by a road going ambulance) or refuge (i.e. an emergency shelter which must either be manned or have some means of summoning help). The time of year and weather conditions must be fully considered when defining accessible roads and refuges. Woodland, forests and other cultivated land are excluded only where they are less than 600m above sea level. The distance which can be covered in 30 minutes travelling time will never be more than 2.5 km and will be less if it includes uphill sections. It must also be over a route which can be walked safely (e.g. without unfordable rivers or precipitous ground).

- d) **Watersports.** The licensing scheme covers most activities involving unpowered craft on specified waters. The craft subject to licensing are canoes, kayaks and variants; inflatable or improvised rafts; and sailing boats, sailboards or other wind propelled craft. A licence is not required for rowing boats, powered or towed inflatables or rafts, and larger sea-going vessels which are subject to Merchant Shipping Act certification. Specified waters include any place within the territorial limits of Great Britain on the sea or any other tidal waters, including estuaries, the tidal reaches of rivers, sea lochs and harbours. The term also includes any body of inland water in which it is possible to be more than 50m from the nearest perimeter bank; and inland waters where the surface is turbulent because of weirs, rapids, waterfalls or fast flowing currents (white water). Any stretch of inland water which is categorised at Grade II or above according to the International Canoe Federation classification would be subject to licensing. Grade I waters would normally be outside licensing, but unlicensed providers will not be able to use them when they are turbulent at times of spate flow.
- 3.18 AALA has a statutory duty to **consider applications**, to **inspect** and, if necessary, provide guidance to applicants, to **decide** on applications following the inspection report and to **grant** licences to satisfactory applicants. The Authority can **restrict** the range of activities offered by an operator or **impose specific conditions** if considered necessary. AALA has the power to **revoke or vary** licences in the event of bad practice. The Authority also has a duty to investigate complaints and to make information about licence-holders available to the public.
- 3.19 Detailed requirements are contained in '*Guidance to the Licensing Authority on The Adventure Activities Licensing Regulations 1996*' published by the Health and Safety Executive. In broad terms, operators are required to produce a risk assessment which identifies hazards and systemises appropriate management and operational measures within an overall culture of safety. The management of safety should be in the hands of competent people, and instructors should be sufficient in number and suitably qualified for the activities undertaken. A matrix of necessary qualifications for various activities and hazard levels is provided in the Guidance document. Where staff competence levels are claimed via in-house training or experience, competence should be confirmed by a qualified assessor. Guidance is offered on instructor/participant ratios, the supervision of novices and supervision of unaccompanied groups.
- 3.20 Procedures should be in place to ensure that staff and participants are made fully aware of safety measures and requirements, and the use of safety equipment. Equipment should be subject to frequent checks, with results recorded, maintenance recommendations followed and equipment replaced when necessary.
- 3.21 Groups, whether accompanied or unaccompanied, should include at least one responsible person with a valid, nationally recognised appropriate first aid certificate. At least one member should be trained in emergency procedures and carry appropriate equipment and have guidelines for the abandonment or modification of activities in the event of bad or deteriorating conditions. There should be written procedures for accidents and emergencies, and systems should be in place for recording and reporting accidents and dangerous occurrences (near misses) as a basis for review of risk assessment and the instigation of actions to prevent recurrences.
- 3.22 The Regulations recognise that special arrangements may be necessary for participants with special needs, including special educational needs. **However, no detailed**

**guidance is provided for the various sub-categories of special need.** The Regulations are, therefore, primarily concerned with the mainstream activity holiday sector and have as yet to deal comprehensively with the particular hazards and risks inherent in adventure activities conducted outside of the mainstream. Private children's homes offering adventure activities fall into this last category. In AALA's first year of operation the children's home issue had not been recognised:

- a) Homes operating on the margins of adventure activities are a comparatively small proportion of the activities sector as a whole.
- b) Identification of such establishments is problematic due to their marginal status and the prevailing regulatory framework.
- c) The marginal status of establishments may have resulted in some being unaware of the Regulations, or assuming that the Regulations were not applicable to their operations.
- d) Even where homes were registered with Social Services, Local Authorities may have been (may be?) unaware of the applicability of the Regulations, or may have assumed that the Regulations were directed solely at the mainstream leisure tourism sector.
- e) Establishments may, in any event, fall outwith or avoid the Adventure Activities Licensing Regulations by operating below the technical/risk thresholds at which the Regulations come into force.

3.23 A review of the first year of AALA was published in the May 1998 issue of *The Leisure Manager* (Institute of Leisure and Amenity Management, article by Keith Donne, Cheltenham and Gloucester College of Higher Education). The article recognises that considerable progress has been made, but nonetheless raises a number of valid points of concern, summarised below. The statistical data have been confirmed by AALA.

3.24 The Health and Safety Commission originally estimated that 3,000 licence applications would be received for processing. However, in the first year only 939 applications were made. Furthermore, it was anticipated that Wales and Scotland would produce the majority of applications, given the traditional geographical base of the sector and the suitability of upland areas with adjacent coastal zones for outdoor pursuits. In fact only 31% of licences were granted in the two countries combined, while 30% were awarded in the West Country alone with the remainder being divided between the Midlands and Northern England. It is suggested that if the anticipated 3,000 applications had been forthcoming, the geographical distribution of licences would have been more reflective of the traditional base.

3.25 The Leisure Manager article poses the question whether there are organisations operating without a licence. It is suggested that the cost of application and inspection (average £520, with a maximum possible fee of £1,200) is a barrier, especially to smaller operators. Additionally, smaller operators were reluctant to use external technical advisers for training and assessment (a principal recommendation of the SaiL Report) on grounds of cost. We would also suggest that the development of properly structured and documented management and safety systems may be beyond the competence of some operators, and that others may be reluctant to make the effort or commit management time to apparently theoretical exercises of this kind. It is certainly probable that costs and administrative requirements have tempted some operators to

ignore licensing requirements, and these cases can only be resolved by identification and prosecution of offenders. Others may have been leaving applications to the last legal minute. Our own contacts within the industry suggest that it is also probable that some operators have removed themselves from the licensing criteria, either by eliminating young people under the age of eighteen from their client base or by adjusting the technical level of activities so that they fall below the licensing thresholds.

- 3.26 One way or the other, it seems that some operators are avoiding or manipulating the licensing system. The factor of cost cannot be eliminated, but more worrying is the factor of inadequate qualifying management systems and safety regimes. That this factor exists even in establishments which have applied for licences is indicated by the fact, pointed out in *The Leisure Manager*, that only 66% of applicants met the licensing criteria first time. Of the 939 applications received in the first year, 12 were refused on inspection, 226 organisations required a second confirmatory visit and a further 78 were deferred and set improvement targets before their licences were awarded. A further indicator of the confidence of inspectors is the length of time for which licences were granted. Only a handful of licences were granted for three years. 48% were granted for two years, but around half of the licences granted were for one year or less.
- 3.27 Obviously there are still no grounds for complacency regarding the overall quality of the mainstream activity sector. Our view is that the requirements of the Licensing Regulations provide reasonable and realistic parameters of good practice which should be in place in any operation dealing with outdoor activities, especially where young people are involved; indeed, in some areas of operation the requirements fall short of the ideal. If a significant number of operations are proven to be lacking in the requisite professional approach to management and safety, and others have ignored or avoided statutory regulation because of these requirements, it might be argued that the industry has yet to put its house fully in order. And if criticisms can still be levelled at the mainstream industry, questions must inevitably be asked about those establishments which are operating at its periphery.

### **Exponential Risk - Small Children's Homes and Adventure Activities**

- 3.28 *People Like Us* emphasises the risk to looked after children in small private homes. Our review of the mainstream adventure activities sector and the progress of regulation suggests that unreasonable risk, especially arising through lack of adequate management systems and safety regimes, has yet to be fully eliminated. We have suggested that, if questions remain over the mainstream industry, then those questions must be even more relevant to those operating at its margins and especially those who may have escaped, or avoided, the notice of regulating bodies. Where small children's homes provide adventure activities an exponential potential for risk is therefore created. At risk of repetition of some of the ground already covered in this Review, the context of risk is summarised in the preliminary assessment below.
- a) A key issue is that children's homes and adventure activities may be regarded as a soft option by operators whose establishments are in crisis and/or who are driven by commercial considerations and motivated primarily by profit. The potential is for added value to a low cost product through care and instruction.
  - b) Ease of entry (current regulatory framework) and low cost of entry (property prices, levels of maintenance, staff costs, etc.) renders private children's homes attractive to

those who may place children at risk, whether those who wish to escape scrutiny, those whose profit motivation over-rides all other considerations, or those whose experience and expertise is inadequate for the considerable responsibilities involved.

- c) Operators entering the field in response to crisis, who are inadequately financed for other reasons, or who are driven by profit, can place children at risk through failure to make proper investment. The most obvious area is that of specialist/safety equipment, which requires regular inspection, maintenance or replacement and which can represent a considerable financial commitment. Equally importantly, lack of resources will impact on staff recruitment and training. And as was highlighted in the Consumer Association review, there is the potential of risk through inadequate provision and maintenance **within** centres and homes. This will include failure to observe Building Regulations, Health and Safety Regulations and Fire Regulations; and failure to maintain properties to an appropriate safe standard. It should be of particular concern that homes which escape notice as a result of the current social services regulatory framework may also avoid inspections by other relevant local authority departments. At the same time it can be argued that children with behavioural difficulties may themselves create risk situations in residential settings, and that this should be reflected in more stringent criteria for children's homes.
- d) Homes operating at the margins may escape the Adventure Activities Licensing Regulations, whether through ignorance, deliberate avoidance or by adjusting risk thresholds to fall below the licensing criteria. If there is evidence of this in the mainstream, it is even more likely to occur at the periphery of the industry. Avoidance of licensing means that, even under the current AALA criteria, there is no means of checking that adequate management and safety systems are in place. This situation is likely to continue unless children's homes are brought firmly within the focus of AALA activity.
- e) However, and leading on from (d) above, we would argue strongly that the current AALA criteria are inadequate for the special circumstances in which looked after children are introduced to adventure activities. There are, patently, risks inherent in a number of adventure activities and it has been noted (3.7) that even 'less extreme activities create risk by virtue of the environments in which they take place'. **In the case of children exhibiting challenging behaviour a second, and perhaps more serious, risk element can be identified. Where children are less responsive to authority figures, instruction and direction they are at additional hazard, not only when undertaking risk activities but also when placed in environments which would in normal circumstances be regarded as low risk. The risk is inherent in the participant.** PLU:12.11 notes that: *"... the care of most (children living away from home) is far from straightforward. At best they will not be biddable and in some cases their behaviour will be offensive, bewildering or dangerous."* This risk potential can be manifest in a number of ways, from independent activity which counters received instructions from supervisors; through actions intended to enhance the participants' status amongst their peers; to actions undertaken as a result of peer pressure or bullying. The argument is that Adventure Activities Licensing criteria should be extended to include all **environments** which bring participants close to risk zones, and that staff qualifications and experience for these situations should be clearly specified.
- f) If there is risk inherent in participants, this should be legislated for in the skills required of staff responsible for those participants. Beneficent manipulation is a clear

requirement in dealing with children who may be normally unresponsive to instruction and direction. However, where centres/homes with an activity component require qualifications, the focus is most often on outdoor pursuits rather than professional child care. This situation may persist even if Adventure Activities Licensing criteria are extended. Our view is that AALA regulation is insufficient in itself. There is a need for insistence first and foremost on appropriate child care qualifications given the complexity of working with high risk participants in high risk situations. PLU:11.20 notes that "*...techniques for maintaining safety and control ... for children with challenging behaviour will be different to those used in other settings*". Chapter 12 of PLU makes a number of recommendations regarding management and staff training and qualifications in children's homes. As a minimum, heads of homes should be professionally qualified in social work and post-qualifying qualifications in child care specialisms are recognised as extremely important. It was put to the Review that a specialist higher qualification is appropriate for those responsible for running residential settings. The use of adventure activities to further the personal development of looked after children calls for post-qualifying specialist training and qualifications for heads of homes and, at appropriate levels, for instructors. The principle is summarised in PLU:17.21: "*Professional staff should be qualified and experienced in their particular disciplines.*" The regulatory criteria should also include stringent requirements on supervisor ratios for children exhibiting challenging behaviour.

- 3.29 Adventure activities and/or the environments in which they take place, when combined with challenging behaviour, make for a potent combination which places participants at double jeopardy, with risk increasing exponentially. An additional area of potential hazard, predicating triple jeopardy, is that defined as 'institutional' risk in 3.3b and 3.4 above.

### **Institutional Risk - Agencies and Regulation**

- 3.30 Children "*...are at the more general risk that the systems in which they are caught up will malfunction...*". Sir William Utting's Review examines a comprehensive range of instances in children's homes and the institutions surrounding them where systems have failed or have the potential for failure. Where children's homes offer adventure activities, there is additional scope for institutional systems to fail, whether particular to the inclusion of activities or exacerbating those risks already identified in the Utting Report.
- 3.31 An especially worrying area is exemplified by the progress of this review. It is apparent from the foregoing that the issues examined are the concern of a number of agencies and departments. There are implications for Planning Policy Guidelines and for enforcement by Local Authority Planning Departments. Child Care Departments of LA Social Services have a primary responsibility, alongside the Department of Health and the Welsh Office (sponsors of the Utting Report). Responsibilities also fall on the Adventure Activity Licensing Authority and, by implication, the Department for Education and Employment and the Health and Safety Executive. Where safety within residential settings is concerned, there are issues which should be addressed by Building Regulations, Fire Regulations and Health and Safety Regulations. The potential impact on local tourism economies and local communities is examined in Section 4 of this Review, and this brings the matter within the sphere of agencies and departments responsible for tourism and general economic development.

- 3.32 Prior to this Review, approaches were made to a number of agencies at, variously, national, regional and local levels. The intention was to engage the interest and support of those with key responsibilities in the area under discussion: child care; activities licensing regulations; planning; tourism; and general economic development and training. All of the contactees recognised that the subject was of considerable or grave concern. All gave encouragement to the author to proceed with a detailed examination of the issues. But with the exception of Pembrokeshire County Council Social Services, all considered that the subject was sufficiently peripheral to their mainstream functions to prevent them from contributing anything but in-principle support to this Review.
- 3.33 A frequent theme in *People Like Us* is the volume of legislation and guidance regarding the operation of children's homes, and the number of agencies with responsibilities in the sector. The call is made for simplification of the regulatory framework and greater co-ordination between departments to ensure that regulation, monitoring and enforcement is delivered effectively. PLU points out that unwieldy regulation, gaps in the system and under-resourced monitoring and enforcement are likely to be exploited by unscrupulous operators: "*The framework of statutory regulation - even as improved by the Children Act - has not prevented fraudulent and abusive practitioners operating at the margins of residential care...*" (PLU:1.37); and "*A few determined or litigious proprietors exploit every gap in registration and every delay in the disciplinary process...*" (PLU:17.40). The peripheral position taken by agencies with an interest in children's homes and adventure activities implies that this subject may continue to be marginalised in any forthcoming legislative review, that there may be dysfunction in the monitoring of the sector, and that there may be a failure to enforce existing or forthcoming legislation within the time frames required to protect children from harm. **The main purpose of this Review is to bring activities and looked after children within the focus of the current debate, so that the very real risks can be minimised by the development of effective institutional systems.**

### **Institutional Risk - Placements and Monitoring**

- 3.34 It has been noted (2.18) that the experiential/development strand of adventure activities has been supported by a developing theoretical base. The process was accelerated with the shift towards management training (2.22) when theory and language were refined as part of product and marketing development. We would fully endorse the positive contribution that adventure activities can make to personal and social development over a wide spectrum of applications. But there is a danger that marketing-speak and pseudo-scientific psycho-babble can overstate that contribution, or be used to obscure a shortfall of theoretical and technical expertise amongst providers. Those responsible for deciding placements can be seduced by aggressive and apparently expert presentations, especially if those decision makers themselves lack in-depth knowledge of the outdoor development environment.
- 3.35 Sir William Utting (PLU:2.12) quotes the 1995 Social Services Inspectorate report into small unregistered children's homes and its finding that 14 Local Authorities who claimed not to be using such homes were in fact doing so. "*All too frequently it was left to junior management staff to make such decisions, often without reference to senior staff and sometimes in contradiction to the stated policy of their employing department*". If this can be the case with conventional placements, then the problem of proper choice is exacerbated when dealing with settings where specialist knowledge is required for proper evaluation.

- 3.36 PLU (8.36) points out that children with emotional and behavioural difficulties are vulnerable in a number of ways, including vulnerability to weaknesses in institutional systems: *"The agencies responsible for them may not be disposed to ask too many questions of institutions which appear to be containing particularly difficult children. And they may be exposed to abuse under the guise of innovatory treatment."* This problem appears to be more acute when placements are made outside of the Local Authority. Comments to Sir William Utting from Kent and Wales (PLU:2.12) *"...suggested at least the possibility that children placed there by other authorities lapsed into a limbo out of sight, out of mind."*
- 3.37 PLU (2.3) notes that residential child care has shrunk to a level below that at which a reasonable choice of placement is possible for any child, and that shoe-horning children into vacancies in unsuitable establishments exposes them to the danger of unforeseen harm.
- 3.38 PLU (1.38) points out a number of identified factors associated with children's homes where children have been abused:
- they often have a charismatic leader with apparent expertise
  - \* they can often have a good reputation and be seen as being successful and
  - they deal with damaged and vulnerable residents with low self-esteem, usually children or young people whom the relevant authority has found hard to place and who are regarded as 'unreliable' witnesses.
- 3.39 From 3.6, 3.7 and 3.8 above a number of conclusions or implications can be drawn when considering the introduction of adventure activities:
- a) Children exhibiting challenging behaviour are especially vulnerable, and are often placed with small children homes as an option of last resort but at above average risk.
  - b) Placements outside of the local authority increase risk. Many placements in homes offering adventure activities fall into this category, given the limited number of geographical regions in which participation in a full range of adventure activities can take place.
  - c) The comparatively small number of establishments offering adventure activities restricts choice for those agencies seeking an activities component. This may result in unsuitable placements and increased risk.
  - d) Risk increases with charismatic leaders with apparent expertise. It has been a characteristic of the outdoors sector that charismatic personalities emerge, whether through personal achievement, through the development of theory, or both. The spectrum has ranged from well respected and high profile figures of their day such as Kurt Hahn and John Ridgeway, to the generality of obscure and sometimes immature proprietors whose professed enthusiasm for outdoor pursuits and their developmental benefits can provide a charismatic momentum when dealing with decision makers in placing agencies. It is easy for those decision makers to be influenced by charisma supported by seemingly expert jargon and an aggressive sales pitch when they lack the specialist knowledge which should inform judgement. Providers with a track record of placements, or new entrants who can market their product on the experience of

recruited staff and new staff alignments, can appear to be successful or have the appearance of potential success. (And we are aware of at least one case where the marketing material of an aspiring entrant misrepresented the nature of its staff establishment and fraudulently claimed the involvement of a qualified child care professional.) Without effective regulatory and monitoring systems, however, it is difficult to evaluate 'success'. The principle benchmarks of success should be the care of, and benefits to, looked after children within the establishment. This is the guiding principle of The Children Act 1989, which places children at the centre of the processes which affect their lives. There are instances where the integration of adventure activities with a care and development programme has been promoted, but where, in fact, those activities have been undertaken as 'time-fillers' without any formal structure. The use of adventure activities and their objectives and benefits should be clearly specified in care plans, and the stated outputs monitored by placing agencies.

- e) Children may be exposed to abuse (in the form of exposure to risk) under the guise of innovatory treatment. Even now, and with a well established corpus of theory and practice, the developmental and rehabilitatory possibilities of adventure activities may be regarded as innovatory in comparison with conventional care regimes. Again, decision makers are at risk of being seduced by well argued presentation if an informed critical faculty is lacking. It is not the purpose of this Review to comment on emotional and sexual abuse, but risk through activities, environments and institutional systems are demonstrated in the context of looked after children and adventure activities, and placing agencies should be aware of the potential for hazard which may accompany such 'innovative' regimes.
- f) Take-up of innovatory regimes can be influenced by the trends and fashions of the day. Over the past few years there appears to have been a resurgence of interest in the potential of leisure activities in general and adventure activities in particular to contribute to the personal development and rehabilitation of young people exhibiting challenging behaviour. Something of a nexus of attention was evident in the mid-1990s. In the summer of 1994 the Institute of Leisure and Amenity Management [ILAM] invited over twenty organisations to discuss youth crime and the ability of leisure programmes to divert young people from anti-social behaviour. The result was an ILAM Joint Statement published in October 1994 entitled '*Purposeful Leisure as an Alternative to Crime and Punishment*'. Also in October 1994 a Home Office Conference Report was published entitled '*Demanding Physical Activities for Offenders in the Community*'. Although these papers were concerned with the more extreme manifestations of challenging behaviour, the ILAM Statement presents some interesting statistics. A survey of Probation Services' use of physical activities for offenders found that 19% of Probation Areas offer outdoor activities. Of all leisure provision by the Probation Services for offenders, 44% involved expedition/camping, 42% involved water based sport other than sailing, 21% involved sailing and 16% involved Duke of Edinburgh Award activities. 18% of leisure providers were from the private sector. Adventure activities therefore appear to be high on the list of remedial leisure provision. Equally interesting was the recommended reading list included in the ILAM Statement, which demonstrates a growing focus of interest in the developmental/remedial strand of adventure activities at that time. Titles and publication dates are indicative:

- Personal Growth Through Adventure (*Hopkins/Putnam 1993*)
- Adventure Therapy (*Editor: Gass 1993*)

- Adventure-Based Interventions With Young People In Trouble Or At Risk (*Editor: Barrett 1994*)
- More Than Activities (*Greenaway 1990*)
- Playback - A Guide To Reviewing Activities (*Greenaway 1993*)
- Directory Of Outdoor Activity Provision For Young People In Trouble Or At Risk (*Barrett 1993*)
- Outdoor Education Safety And Good Practice - Guidelines for Guidelines (*Duke of Edinburgh's Award 1988*)

With the exception of the last title, all of the above reference works were published in the period immediately preceding the ILAM and Home Office papers. The indication is of an accelerating theoretical base and the likelihood of increasing innovation as the theoretical base increases in sophistication. This process has continued to some extent, and there has been further expansion of the reference material available. There is a danger that theory, and especially innovative theory, can outrun the experience of those implementing the regulatory/monitoring framework. Equally dangerous is the possibility that decision makers on placements can, on the one hand, be influenced by the trends of the moment and the pre-occupations of influential bodies; and on the other, be insufficiently informed on innovatory developments to make well judged selection of providers.

- g) Where decision making agencies lack the expertise to properly evaluate and select providers, it follows that they will also lack the necessary expertise to monitor those providers. *"Regulations and operational instructions are useless without monitoring and enforcement."* (PLU:1.36). Chapter 17 of PLU examines the question of maintaining standards in considerable detail. It is noted (PLU:17.21) that *"Local Authority inspection units must obtain the services of staff and of lay people who are able to operate confidently across a wide range of client need and service provision. Professional staff should be qualified and experienced in their particular discipline. Both they and their lay colleagues need training in their inspectoral methods."* PLU (1.36) states that *"...the essential supplements of inspection and research ... disclose an inconsistent implementation of regulatory requirements... Some of its manifestations speak clearly of incompetent or irresponsible practice, and of management which is haphazard, insouciant or unscrupulous."* If this is true of mainstream child care, there must be additional dangers associated where adventure activities are involved. Inspection of activity centres is in itself complex, even under the current licensing regulations. Inspectors need substantial knowledge of a range of individual activities and their relevant management/safety regimes. This task cannot be undertaken by untrained non-specialists, even if frequency of inspection is at recommended levels. The problem is further complicated where child care disciplines are superimposed upon outdoor activities. Co-ordination of Local Authority inspection units with adventure activity inspectorates is a key issue.

- 3.40 In summary, there are numerous factors affecting the decision making process which produce a confluence of risk. Many of these factors also argue against the effective monitoring of establishments providing adventure activities to looked after children.

### **Institutional Risk - Dislocation**

- 3.41 Chapter 7 of PLU represents the views of young people who were interviewed during the Review. It is noted (PLU:7.3) that: *"Entering the care system causes bewilderment, displacement and loss... What is needed then and thereafter is a trusted adult who knows the system, answers questions, listens to anxieties, cracks problems, guides and supports..."* ***The key to a child***

***or young person feeling safe in care is the quality and stability of the relationships they form with significant adults they can trust."***

- 3.42 One small group of children, from a well regulated environment and with full familiarity with the reasons for their being looked after and their care histories, stressed that: "What upset them most was the sense of crisis and emergency that surrounded changes of placement." (PLU:7.8) In problem situations, and particularly where there have been allegations of abuse, a not infrequent management response is a change of placement: "... all that happens is that you are shipped from placement to placement because social services do not want to deal with the embarrassment." (PLU:7.9)
- 3.43 PLU (7.5) notes that the danger most often referred to was that from other children, particularly bullying, physical abuse and theft. One submission to the Review *"commented that research 'revealed that the existing mix of young people is rarely taken into account when placing a child' ... 'Some mixes are virtually impossible to manage.' ... 'Under such circumstances the Home is in a virtually constant state of crisis and unsettledness.'"* (PLU:2.11) A corollary of unsuitable mixes of young people must be an escalation of bullying and abuse of the more vulnerable by the more dominant.
- 3.44 All of these findings have particular implications for small children's homes offering adventure activities in remote/rural areas:
- a) If changes of setting cause a sense of displacement, that sense of displacement must be especially acute when placements are in alien settings. Many children, especially those from inner city areas, will find a sudden transition into an unfamiliar rural setting disorientating at best and disturbing at worst, at least initially. Not least important is the feeling of physical remoteness from the institutional/systems context to which children may have become accustomed. The sense of displacement must be intensified if the change of setting is only short term, whether for a specific remedial/emergency programme or as respite care.
  - b) Displacement can be exacerbated if transfer procedures are inadequate. We have heard anecdotal evidence of children being handed over to children's home staff at convenient meeting points, part way between the Local Authority area and the end destination. A long journey leads to a short introduction and hand-over, followed by an equally long journey into increasingly unfamiliar territory. It seems obvious that there should be some continuity involved in transfers, that transfers should take place at the end destination, that time should be allowed for full discussion of care histories, and that children should feel comfortable in their new surroundings before the adults with whom they are familiar are removed.
  - c) The sense of displacement arising from an unfamiliar **setting** can be intensified by an unfamiliar wider **environment**. Wild, remote upland or coastal environments can be at the very least intimidating, even for adults, where normal surroundings have been predominantly urban. A feeling of intimidation and risk can escalate into oppression with young, already vulnerable people, especially when compounded by other displacement factors.
  - d) If certain environments can generate disquiet, then the obligation to participate in risk activities, or at the least activities which carry the perception of risk, can be disturbing. This will be most apparent with children with a sense of insecurity and/or who are less

physically capable. Underperformance in comparison with peers will intensify the sense of insecurity and inadequacy.

- e) There are a number of implications arising from ill-matched mixes of residents where adventure activities are on the agenda, all of which stem from the creation of hierarchies, pecking orders and power structures within resident populations. Poor matching of resident populations can occur in various ways, individually or in combination. A wide age range will lead to internal structures where the older dominate the younger. Residents exhibiting more extreme and violent behaviour may victimise those whose behavioural problems are manifestly less aggressive. Newly arrived placements may find themselves at the bottom of a pecking order created by established residents, and this 'time-served' hierarchy may be especially acute where there is a mix of more permanent residential placements with short stay placements. In common with many sporting/competitive environments, differences in physical aptitude and competency can define status and generate feelings of inadequacy. As noted in PLU, mis-matches can result in emotional, physical and sexual abuse amongst residents (see 3.43 above). In the context of adventure activities, and as noted in 3.28e above, any or all of the mis-matches identified can lead to high-risk and unauthorised actions as a result of the need to enhance personal status, or through peer pressure or bullying.

### **Institutional Risk - Anticipation vs Reaction**

- 3.45 There are areas of concern highlighted in PLU where it is apparent that logical and necessary actions, long identified, have yet to be implemented, due to delays in legislative and regulatory processes. As example, Sir William Utting points to recommendations in the 1996 Burgner Report that small children's homes be brought within the regulatory framework (PLU:2.13 - 2.15) and expresses the hope that the necessary legislation will proceed quickly, given the government's acceptance of the recommendation "... *since the absence of regulation exposes children to unnecessary danger.*"
- 3.46 The consequences of untoward delay are even more evident from the progress of adventure activities regulation. Concerns were being expressed in the 1980's; those concerns were made concrete in the SaiL Report; The Wales Tourist Board, whilst introducing voluntary verification in 1991, was pressing for a statutory framework; but it was not until 1995 that legislation was passed by Parliament, with licensing introduced in 1996. The licensing framework is now under further review, with calls for extension of the range of activities covered and for voluntary groups, schools, etc., to be brought within the regulatory framework. Many in the industry would argue that the initial legislation was a direct reaction to Lyme Bay and that, without the pressure brought to bear following that disaster, legislation would still be awaited. Even so, there was a two year delay between the incident and the passing of The Activity Centres (Young Person's Safety) Act, with a further year's delay before the creation of a regulatory body. And many would argue that if legislation had been enacted more speedily, Lyme Bay might never have occurred.
- 3.47 Risks are not held in abeyance pending government decisions and processes. Where risks have been identified, it should be a matter of priority to **anticipate** through appropriate regulation, rather than to await a worst case scenario and **then** react accordingly, after the event. *People Like Us*' has, hopefully, placed the regulation of children's homes and the prevention of abuse high on the government's agenda. It is

also to be hoped that other (health and safety) issues, identified as of cardinal importance in PLU but not addressed in that Review, will be brought within the scope of government action. There must not be another Lyme Bay resulting from the inclusion of adventure activities in residential child care settings.

### Summary and Conclusions

- 3.48 In addition to the risk environment reviewed in PLU, children are at triple jeopardy in children's homes which offer adventure activities. There is risk inherent in the activities and the environments in which they take place. This risk is compounded by participants who are less responsive to instructions and safety regimes. Less obvious but of considerable complexity are the institutional risks inherent in current systems and processes, not least those which mitigate against proper selection and effective monitoring, or which dilute or delay the introduction of a properly regulated framework of good practice.
- 3.49 It seems obvious that adventure activities can add a new order of risk to those that Sir William Utting has identified with regard to small unregistered children's homes generally. Risks in the sector as a whole are serious enough in themselves. PLU (2.13) notes that under current procedures almost half social services authorities were using these homes: *"There were some who had a history of financial misdealing... There were others against whom allegations of both physical and sexual abuse had been made prior to them setting up small homes... In all cases given as examples, however, local authority checks had not been sufficiently robust to prevent them from placing children in the care of these people... Children are being placed by some local authorities in accommodation which, at the very least is unsuitable and, in some cases, is placing them at risk"*. In the case of some homes offering adventure activities, that risk includes the possibility of serious injury or death.
- 3.50 PLU (2.8) notes that the children's home sector lacks the capacity to initiate widespread improvements in standards. The independent sector is now largely made up of small suppliers, and there is no grouping of sufficient strength to provide the basis and the motive power for the development required. As a result (PLU:2.9) the changes needed in residential child care require the implementation nationally of a national strategy, and the Review recommends that the Department of Health and Welsh Office establish and resource a dedicated group to develop and implement such a strategy. Hazards arising from adventure activities should be recognised in any such strategy. We would support Sir William Utting's hope that government will proceed quickly with the necessary legislation.

## 4. community & economic impact

- 4.1 It is, perhaps, natural that communities react negatively to any alien intrusion, especially if that intrusion, real or threatened, is perceived as being damaging. 'Not In My Back Yard' is a not untypical reaction to a whole range of industrial and social phenomena. If this is true of communities in general it is especially true of rural communities, and most true of all of remote rural communities.
- 4.2 Probably the greatest resentment arises when rural communities see themselves as servicing the needs or providing solutions to the problems of urban areas. Power generation, toxic waste disposal and mineral and water extraction are perceived as industrial activities which impose disruption, environmental degradation and risk on rural areas for the benefit of distant urban populations. Prisons and other forms of secure accommodation, special schools and children's homes, all catering for problematic inmates, are seen as importing social dysfunction and risk of criminal behaviour into regions which have traditionally experienced low crime rates.
- 4.3 All of this must be placed in the context of increasing threats to the rural way of life and social problems which are often very different to, but no less serious than, those of towns and cities. Traditional economic activity, particularly agriculture, has been in decline for many years. Many rural areas are characterised by low wage economies, high unemployment, social deprivation, the lack of amenities and facilities and shrinking resources. The issue was summarised succinctly by one community councillor: "We have enough problems of our own, without bringing them in from outside."
- 4.4 Protest and resistance to existing and threatened alien imports often take the form of subjective arguments focussed on immediate disbenefits to local people. Little consideration is given to the wider picture. Knee-jerk reaction, over-reaction, the generation and exaggeration of anecdote and modern myths, unreasonable fears and native conservatism can all result in an apparently self-seeking ground swell of public opinion. Such manifestations of opposition can be counter-productive. It is very easy for responsible authorities to dismiss community concerns as mere NIMBY-ism, which can be discounted in the decision making processes which allow or disallow controversial developments. But the nature of community protest and the tendency towards subjectivity and confrontation can obscure very concrete issues which should be taken into account in any objective decision-making.
- 4.5 Intrinsic conservatism in rural areas can lead to parochialism, resistance to change and the fear of the spread of urban problems and vices into vulnerable communities, all of which can lead to a blockhouse mentality. Against these weaknesses can, however, be set considerable strengths. There is a perpetuation of values to which politicians and urban populations can only aspire. There are more clearly defined parameters of

acceptable behaviour. There is greater concern for quality of life and a determination to preserve that quality in the face of outside influences. Cultural traditions are protected and fostered. There are traditions of self-reliance and self-help which extend to mutual aid within communities. These and other virtues are guarded jealously.

- 4.6 Rural virtues can be refreshingly therapeutic, even for the generality of city-dwellers. Hence the emergent markets and the potential for growth in rural tourism which have been identified by all concerned with integrated economic development in rural areas. The therapeutic benefits of cultural change may be even more pronounced for children with behavioural problems (given our caveats on placements in alien settings and environments: 3.44a, 3.44c) so long as they are cared for within appropriate regimes, under proper management and supervision; and so long as their presence is accepted by the wider communities in which they are resident.
- 4.7 But the various balances which allow small communities to function are fragile and easily destroyed. There should be adequate systems to ensure that imbalances are not created. Issues affecting rural areas are currently to be found on a number of agendas, including the Land Reform Policy Group, Agenda 2000 and the current or forthcoming reviews of the Planning Policy Guidelines in England, Scotland and Wales which will affect planning policy in the countryside. All current thinking on rural issues recognises that sustainable communities require new development and employment opportunities, but that these should be appropriate to local conditions and sensibilities. The guiding principle is that development should, first and foremost, benefit local communities economically, socially and environmentally.
- 4.8 This document is primarily concerned with holiday destination areas and potential changes of business use. Perhaps the most visible impact of past changes in the use of tourism accommodation can be found in examples given earlier in this document - student and DSS accommodation in coastal resorts. As noted, the most vulnerable accommodation type in resorts is the small guesthouse, often located in Victorian terraces and overlooking esplanades and harbours - the focus of visitor activity within the town. There are numerous instances of neglect of properties which no longer need to maintain the standards which are so important in tourism accommodation. A very few such properties in prominent locations make for visual blight and degradation of the townscape, detrimental to the tourism product of the resort, the local economy and, incidentally, the value of adjacent properties.
- 4.9 Visual blight is perhaps less apparent in rural settings. Where conversions are to residential and nursing homes, good standards of presentation are in any event necessary if businesses are to succeed. This argument may not be true in the case of children's homes, and the neglect of prominent properties in prominent locations can have environmental impact and will certainly contribute to the degradation of the built heritage, an important consideration in Planning Policy Guidelines for rural areas. However, there are far more important possible impacts of children's homes on rural communities which argue for planning and regulatory controls to ensure that establishments are properly managed and that the over-proliferation (ripple effect) of residential centres catering for challenging behaviour is avoided.

## Community Impact

- 4.10 In the House of Commons debate on the regulation of private care agencies (Hansard, 3rd December 1997) a number of matters were highlighted which reflect the concerns discussed in PLU and in this document. It is noteworthy that the operation under discussion was centred on the provision of adventure activities to challenging children, and that the safety regimes covering those activities seemed far from satisfactory. There were serious questions on the maintenance of equipment, on staff qualifications and experience and on contravention of specific work orders which placed staff at risk. But many of the points made by Colin Pickthall MP exemplify the potential for disruption of small communities by the generality of children's homes if inadequately managed, and it is this particular area which is examined at this point in this Review.
- 4.11 It is interesting to note that when representations on disturbances were made to Mr. Pickthall by local residents, he believed initially *"that that was a very usual reaction to neighbourhood nuisance, which is a common complaint..."* (see our comments in 4.4 above). But further investigation revealed a very real problem, and it became clear *"that the difficulties faced by the authorities, the company and the community had national implications"*. Mr. Pickthall notes the lack of supervision and inspection of the type of home in question. He notes that placements are mainly from distant local authorities and that *"the contracting authority cannot or does not effectively monitor the progress and condition of the young people for whom it should be responsible; the local authority in which the home is located does not have powers effectively to deal with the situation that it discovers is growing in its bailiwick."*
- 4.12 Complaints from local residents were of a 'reign of terror' introduced into their quiet area. Accusations were made of open vandalising of cars, incessant abusive language and excessive noise in the early hours of the morning. There were accusations of drug taking and of children being taken to parties and getting drunk in public (although the proprietors denied these latter charges). *"In general, the residents described a lack of control being exercised by the carers."*
- 4.13 Mr. Pickthall notes that, although most of the children under 16 do not attend school, one case was known of a child who did attend a local school where considerable trouble was caused. *"The school could not deal adequately with the child because nobody was acting in loco parentis."* There may also be demands on local health services, and the recovery of costs from the placing authority can involve drawn out processes (even when costs can be allocated legitimately to outside authorities).
- 4.14 We concur with Colin Pickthall that the examples given in his speech to the House of Commons have national implications. We have been made aware of instances of disruptive behaviour which include general vandalism, car break-ins, car theft and abuse of local residents which has extended to threatening behaviour and physical assault. All of the examples are from small communities which are especially vulnerable to social disorder which is beyond their normal experience and where policing is thinly spread. Examples have also been provided of demands on local resources due to absconding inmates, in one case where helicopter searches have been required.
- 4.15 Such instances are extremely distressing for all local residents and more so for those living in isolated properties, who feel particularly vulnerable to criminal behaviour. Substantial costs are incurred by local services, where budgets are already under considerable pressure. Finally, there are the costs associated with property damage and

the possible reduction in property values where disruptive behaviour is entrenched and of long duration.

- 4.16 Colin Pickthall notes that, because of their background most children in these situations do not attend school. In theory, educational needs, often on a one-to-one basis, should form part of individual care plans (although Sir William Utting finds that over one third of children in residential care are not receiving education - PLU:2.16). There is also a greater readiness of schools to exclude difficult pupils who are already known to be 'in care'. Mr. Pickthall provides a single example of a child attending a local school and the disruptive consequences, and our own limited discussions with educationalists have only provided one or two other examples, albeit with similar consequences. More examples have been provided of challenging children in foster care being introduced into local schools, and these examples perhaps point to the potential impact if children's home residents are introduced into local education systems.
- 4.17 Challenging behaviour creates disruption in the classroom and the playground and increases the incidence of vandalism, bullying and conflict. Less obviously, the necessary special treatment of children with challenging behaviour can lead to resentment from local children and victimisation of incomers. Finally, there are often security implications arising from the introduction of problem children into the mainstream educational system. Increased disruption and catering for the special needs of children exhibiting challenging behaviour make demands on staff which can affect delivery to the generality of pupils; and, again, there are additional costs to local communities.
- 4.18 The consequences recorded in Hansard stem from one small establishment and arise from loopholes in the regulatory and enforcement framework. These consequences would be magnified where 'ripple-effects' occur and where control is similarly lacking. A further possibility, suggested by one child care professional, is that areas/sectors where regulation and enforcement show weaknesses may attract (are attracting?) individual abusers or abuser networks.

### **Local Economic Impact**

- 4.19 National Parks in England and Wales, and the Highland areas of Scotland, epitomise the attraction of rural holiday destinations. It is a stated function of National Parks to foster quiet enjoyment of the countryside, and this function informs planning decisions on commercial development. Environmental quality, access to remote upland or coastal areas and the opportunities for a range of active and passive pursuits make for the kind of holiday experience which is sought by increasing numbers as mainstream tourism products become more and more homogenised.
- 4.20 A significant component of the visitor experience is the authenticity of local communities and traditional ways of life. Although an ideal balance is often difficult to achieve, there is the theoretical potential for symbiosis between tourism and host communities, where tourism buttresses local economies which are under pressure from many directions. Tourism revenues help preserve the integrity of rural areas. Tourism in isolation is not a total panacea for rural problems, but it is an increasingly important element of integrated economic development - so much so that many rural areas are now heavily dependent on tourism as part of the overall economic mix.

- 4.21 Quiet enjoyment of the countryside and immersion in the ambience of rural life do not sit comfortably with vandalism, theft and abusive behaviour. Visitors to rural destinations bring the expectation of freedom from the day to day problems of more populous source regions. Because of this, instances of anti-social behaviour are magnified in their perception. The House of Commons debate and other, anecdotal, evidence indicates the disproportionate level of disruption to local communities which can be caused by small operations. The difference between local residents and visitors is that visitors have a choice and will exercise this choice by avoiding regions where unacceptable incidents have occurred, with a corresponding loss to local economies. Inadequately managed children's homes can, therefore, be detrimental to already hard-pressed rural economies.
- 4.22 The introduction of adventure activities into these homes can exacerbate the situation. There is a commonality of venues (craggs, footpaths, waterways, beaches, etc.) with those frequented by ordinary leisure users, with the result that children's home residents are brought into close proximity to the visiting public. Any antisocial behaviour will be especially disturbing in quiet and remote locations. And irresponsible behaviour of the kind suggested in 3.28e can place innocent bystanders at risk, along with the instigators.

### **Impact on the Mainstream Activity Holiday Sector**

- 4.23 It is evident that there is little differentiation in perception between the various types of provider of adventure activities to young people. Incidents involving school parties in risk environments (see 3.9 above) contributed to concerns over the totality of adventure activities provision, even though the commercial sector and risk sports were not involved in those incidents. There have been several occasions where accidents to school groups and youth groups who *were* engaged in adventure activities have prompted similar concerns.
- 4.24 It is apparent that outdoor and adventure activities *per se* provide the focus for public concern, rather than the individual mechanisms through which young people become involved. As further example, the Lyme Bay incident focussed the subsequent legislation on the commercial activity industry, but even as the legislation was introduced there were calls for regulation to be extended to teacher-led school parties and voluntary groups. There is now a proposal for a voluntary licensing scheme for these sectors based on the legislation criteria, but it is currently unclear how this might be implemented.
- 4.25 If there is little differentiation made between providers in debates between agencies and organisations over safety and regulation, the same is also true of consumers. Accidents, especially well publicised accidents, cause an immediate consumer reaction. The Lyme Bay tragedy was damaging to the activities sector as a whole, and a by-product of the subsequent legislation was a public re-assurance campaign conducted by AALA. It is predictable that any serious incident involving a children's home will have equal impact. The additional risks associated with children's homes, detailed in the previous section, indicate that incidents are more, rather than less, likely in these settings unless appropriate regulation is in place.
- 4.26 Negative consumer reaction is particularly likely where young people are involved in group outings. A typical decision making chain involves instigation by group leaders (schools, youth groups, etc.), approval of governing organisations, followed by

recruitment of participants and the approval of individual parents. At any one of these four points, resistance to the idea of adventure activities on grounds of safety can result in the cancellation of planned activity. With many outdoor centres still dependent on the youth group market a heavily publicised accident can have a severe impact on business. But the ramifications of concern over safety will also extend to other market sectors, whether comprising individuals, adult groups or management training courses.

- 4.27 Any downturn in the mainstream activity sector will have a knock-on effect in those areas where centres are concentrated. Adventure activities produce a number of advantages for tourism economies. Perhaps more than any other tourism sector in holiday areas, outdoor pursuits produce seasonal extension and year-round visitation. The necessity for high instructor to student ratios in many activity settings has implications for employment. The value of the industry is difficult to estimate, but the SaiL research provides some indication of the situation in Wales in the early 1990s.
- 4.28 500 operators were identified in Wales during the progress of the SaiL Report, and this can be regarded as the **minimum** number of sites at that time, given that 14% of providers operated more than one site. The average figure of 3,500 customers per centre per annum may be high as a result of distortion within the sample - larger, more professional operators are more inclined to respond to a research project of this kind. But even if the average customer base were 50% of that given, the resultant figure of persons serviced annually by the industry in Wales was 875,000. At a (low) average stay of 3 nights per person, this figure represents 2.625 million bednights contributed to the Welsh tourism economy in the early 1990s, against current Wales Tourist Board estimates of 40 - 45 million bednights for the Principality as a whole. Even the most conservative estimate of average per capita expenditure (say £15 per diem) gives total annual expenditure of £39.375m. And the bulk of this expenditure is concentrated into the three National Parks in Wales. It is therefore obvious that threats to the activity industry present very real threats to the comparatively small sub-regional economies in which centres are located.

## Summary and Conclusions

- 4.29 Inadequate management, supervision and control of even low numbers of looked after children can produce significant imbalances in small rural communities. The most obvious effects relate to anti-social behaviour ranging from abuse, through vandalism, to physical assault. This type of behaviour has most impact where populations are small and where crime rates have been low traditionally. Those living in small towns, villages and isolated rural dwellings experience a feeling of threat when faced with anti-social actions which are beyond their normal experience. The potential problems are exacerbated by lack of institutional controls, especially where placements are from distant agencies. In many cases no clear lines of responsibility are apparent or observed. Disruption can extend beyond streets and public spaces into health care, education and elsewhere. There are cost implications for services in areas where public spending is already hard pressed.
- 4.30 Disruption will also affect visitors to rural destination areas. The expectation is of quiet enjoyment and an authentic experience very different from the urban/suburban source regions of most visitors. Exposure to anti-social activity in any given area may prompt visitors to exercise the prerogative of choice when deciding on their next leisure trip. The inclusion of adventure activities in care regimes brings looked after children into

close proximity to the generality of leisure users of natural resources. The impact of any anti-social behaviour is heightened and there is the added possibility of physical risk to bystanders. Many rural areas have become increasingly dependent on tourism as an integrated part of the regional economic mix. Impact on the tourism economy therefore produces impact on the wider local economy.

- 4.31 The public at large make little or no differentiation between the providers of adventure activities. Any incident involving outdoor pursuits reflects badly on all providers, and the mainstream activity industry especially. This will be true of incidents involving looked after children, and the risk of incident will arguably be higher in these settings unless brought under proper regulation. The value of the activity sector is considerable in terms of both seasonal extension and revenue. Centres tend to be concentrated in a small number of comparatively small sub-regions. Threats to the mainstream activity sector therefore represent significant threats to the local economies in which centres are located.

# 5. the regulatory framework

- 5.1 Many of those consulted during the progress of this Review have suggested that residential settings for looked after children should be solely the responsibility of public sector agencies. The long history of "serious and systematic abuse" is being exposed, resulting in far more stringent controls on establishments under Local Authority management. Looked after children would therefore be placed within a closed, totally managed, system with all appropriate monitoring and complaints procedures in place and ideally informed by a nationally recognised template of good practice.
- 5.2 But so long as there is private sector involvement in child care there will need to be confidence that appropriate and comprehensive regulatory frameworks, support systems and enforcement mechanisms are in place. In this section we attempt to identify matters which should be addressed by regulation. Sir William Utting echoes the Burgner Report in calling for the statutory registration of small children's homes; and the Utting Report deals comprehensively with the many of the issues which give rise to concern in residential settings, especially sexual, physical and emotional abuse. Legislation, including The Children Act 1989, is already in place, or is in process, to deal with many such areas, including the employment of sex offenders. Government has promised a review of existing legislation in response to Sir William Utting's Report.
- 5.3 It is not the purpose of this Review to deal with the generality of child care legislation, although there is passing mention in what follows. Our intention here is to focus on the findings of this Review and examine the wider implications for the regulation of children's homes, especially those in rural holiday destinations and those involving adventure activities. The various areas where regulation seems advisable are dealt with sequentially.
- 5.4 Many of the issues discussed in this Review are under consideration by government at the time of writing. Planning Policy Guidelines on Rural Development are undergoing refinement. The results of the inquiry into abuse in children's homes in North Wales are awaited. Government is expected to co-ordinate a response to the Utting Report in late summer or autumn of 1998. The Adventure Activities Licensing Regulations and the performance of the Adventure Activities Licensing Authority are due for review in October 1998. The Department for Education and Employment is currently publishing Draft Guidance on Pupil Health and Safety on School Visits, which may well identify health and safety issues which are relevant to residential settings and to adventure activities generally. There is therefore a confluence of opportunity to anticipate and resolve many of the potential problems identified in this Review and elsewhere, through co-ordinated action.

## **Planning Policy**

- 5.5 Hotels and guesthouses which have been brought within the planning framework (Use Class C1) and which intend to convert to such residential uses as nursing and children's

homes (Use Class C2) are required to obtain planning consent for change of use. Otherwise, and unless it is intended to create more than six places, no planning consent is required for children's homes. Planning authorities will normally consult with Social Services on planning applications for children's homes, but it is not the primary purpose of planners to establish the credentials of providers.

- 5.6 We would suggest that all children's homes, especially those in rural areas, should require planning consent. The initial result of homes being brought under planning regulations would be that all homes would be identified, providing regional and national databases which would ensure that no provider escapes the net of regulation. Planning decisions should ideally be informed by the following considerations:
- a) **Impact on host communities.** Are individual proposals of a size which can be absorbed without undue disruption and cost penalties to the communities in which they are to be located?
  - b) **Avoidance of proliferation.** Any new planning application should be considered in the wider regional context, so as to avoid undue concentrations and subsequent imbalances in host communities.
  - c) **Suitability of premises.** Planners should be cognisant of the particular risks associated with children exhibiting challenging behaviour and ensure the fitness of premises for the purpose in concert with responsible Local Authority departments (see General Health and Safety below).
- 5.7 We are aware of instances where local objections to proposed children's homes have been based on the lack of qualifications of aspiring proprietors, and some community representatives have argued for more comprehensive consultation with Social Services before planning consent could be granted. This would, however, present problems in that insistence on proper credentials, etc., would vest the planning consent in the proprietor rather than the premises, and this is counter to the principle of planning legislation. Management and staff credentials can only be assured by the statutory registration of all children's homes with Social Services.
- 5.8 The primary **planning** function should be to avoid imbalances in local communities, and the issue should be addressed by Planning Policy Guidance at national level.

### **General Health & Safety**

- 5.9 It should be recognised that children with behavioural problems may place themselves and others at risk in a wide range of settings, including residential settings. Hazards can be created by any number of unauthorised actions, from smoking in non-smoking areas, through petty vandalism, to more extreme behaviour such as arson. These risks, over and above the norm, should be provided for over the full spectrum of general health and safety regulation, including building and fire regulations for children's homes.
- 5.10 Minimum safety/design requirements should be established for existing homes, properties seeking change of use, and new build. The most useful mechanism would be the publication of a nationally agreed Design Guide for Children's Homes, similar to that produced in some regions for hotels and guesthouses. As is already the case with

planning applications for new build, there should be consultation and co-ordination between planning departments and other regulating departments on converted properties.

- 5.11 Properly documented health and safety regimes should continue to be insisted upon as part of the registration process and should take full account of the Revised Health and Safety Regulations of February 1998.

### **Registration of Children's Homes**

- 5.12 It now seems obvious that compulsory registration of private children's homes, regardless of size and the length of stay catered for, is long overdue. Most of the generality of requirements are adequately covered in The Children Act, PLU and other reviews, and will include consideration of the qualifications and experience of proprietors and management; staff recruitment procedures and compliance with current and upcoming legislation on the employment of sexual offenders, etc.; appropriate management systems and controls, including properly prepared and implemented individual care plans; complaints procedures; etc., etc. We would also suggest that, alongside complaints procedures for placements, there should be formal channels of complaint, perhaps via Community Councils, to enable valid cases of community disruption to be brought to the attention of registering authorities. All such valid complaints should be investigated and registrations reviewed.
- 5.13 As is noted in PLU, general health and safety requirements are also of cardinal importance in safeguarding looked after children, and minimum standards should be established to provide a national template, specific to the sector, against which registration applications should be judged.
- 5.14 Given the risks which may arise as a result of inadequate financial resources, all proprietors should be required to provide evidence of satisfactory financial status, supported by guarantees and detailed business plans.
- 5.15 Where establishments propose to include innovatory care and development regimes, the use and objectives of these regimes should be clearly stated as part of the registration process. The use of innovatory programmes and projected outcomes should be fully documented in individual care plans, and results monitored. Implementation should be the responsibility of staff who are appropriately qualified over and above the minimum child care qualifications required for the various levels of supervision. Heads of Home should be able to demonstrate adequate qualifications and experience in the disciplines involved, and in the integration of those disciplines with child care programmes. The principle concern of this Review in this context is the use of adventure activities, and these are discussed in the following paragraphs.

### **Adventure Activities Licensing Regulations**

- 5.16 This review has identified the potential for triple jeopardy in the context of children's homes providing adventure activities. Risk is inherent in the activities themselves, the environments in which they take place and the institutional context in which placements are decided and monitored.

- 5.17 Current adventure activities licensing legislation provides a starting point for the regulation of outdoor pursuits in children's homes. We have noted that the scope of the Regulations is likely to be expanded - surfing, high rope courses and jet skis are activities where there have been calls for inclusion in the licensing criteria. We would urge that residential settings for looked after children be regarded as a special case, and that the full spectrum of adventure activities should be examined in detail to identify where the potential of risk exists in these special circumstances. The licensing criteria should be adjusted accordingly. Although the highest concerns are associated with private children's homes, an extension of the principles of AALA licensing into the voluntary sector and residential/special schools should also be welcomed, whether under voluntary or statutory schemes.
- 5.18 The hazard thresholds above which licensing comes into play for each individual pursuit should also be reviewed in cognisance of the fact that children may place themselves at risk through irresponsible behaviour in, or close to, risk environments. Criteria on qualifications and instructor:student ratios should be established for any pursuit which brings children within reach of such risk zones as precipitous ground, mountain crags, sea cliffs and tidal zones. The same approach should be applied to pursuits where risk can be created by irresponsible behaviour in any circumstances, such as most equestrian, underground and water-based activities (including power boats). It seems sensible that the sports qualifications applicable to technical difficulties at the present minimum risk threshold for each pursuit (and for any additional pursuits brought within the criteria) should be insisted upon in all such circumstances.
- 5.19 As has been noted in 3.28f, technical sports qualifications are insufficient in themselves when dealing with challenging behaviour. Child care qualifications and experience are the overriding requirement. There should be consultation between adventure activities and child care specialists to establish appropriate qualifications for those responsible at all supervisory levels. Heads of Home and higher management should be fully conversant with and experienced in the application of the theory and practice of outdoor development, as it applies to their operations.
- 5.20 Internal and external monitoring are equally important in safeguarding children from risk. Statutory registration/licensing is the preliminary necessary step towards bringing all operations within the net of applicable legislation and ensuring that minimum operating standards are in place. As part of the registration criteria, adequate internal monitoring procedures should be demonstrated as recommended in PLU, and there should be clear systems for monitoring the performance of innovatory programmes, including adventure activities, as noted in 5.15 above. Cash flow forecasts in business plans should include adequate provision for the maintenance and replacement of equipment, within adequate safety parameters. With aspiring proprietors, the registration system should require all appropriate management systems and processes to be in place at least three months prior to the arrival of the first placements - this condition is already operated by AALA.
- 5.21 There will need to be consultation between and co-ordination of the roles of Social Services and Adventure Activities Inspectorates to determine the best mechanisms for registration and on-going inspection. There is an argument for specialist cross-disciplinary training for at least one member of staff in each Social Services Inspectorate and for an adequate number of AALA inspectors.

- 5.22 Our discussions with personnel who are or have been employed in the children's home sector suggests that there can be a high staff turnover due to the pressures of dealing with challenging behaviour. At the same time, some homes see a frequent turnover of placements, with wide variations in the type of challenging behaviour involved. This indicates that in at least some instances, homes are in a continual state of flux and need to continually adjust to new combinations of staff and resident. Their compliance with statutory obligations, especially with regard to staff qualifications and experience, and their ability to cope with continual change, can only be confirmed by a stringent registration system. All homes should be required to maintain and update a staff register with Social Services Inspectorates. Where adventure activities are involved, there should be more frequent inspections in recognition of heightened risk, with spot checks carried out following any significant changes in the staff establishment.
- 5.23 Statutory registration, external monitoring, reporting and specialist training will ensure that staff in placing agencies use only authorised providers and will assist staff to make better informed decisions on the choice of provider. This will avoid many of the risks identified under **Institutional Risk - Placements and Monitoring**.

#### **Package Travel, Package Holidays and Package Tours Regulations 1992 as Amended**

- 5.24 PLU:1.20 states that "*People and organisation paying for services should satisfy themselves that those services keep children safe*". We would also argue that there is a responsibility to ensure that public money is properly spent. Over and above the financial guarantees suggested as part of the registration process, proprietors offering adventure (or other leisure) activities in certain circumstances will fall within scope of consumer protection legislation in the form of the Package Travel, Package Holidays and Package Tours Regulations. The Regulations apply to all establishments providing more than one of the following components, thereby constituting a 'package':
- a) Accommodation.
  - b) Transport (other than courtesy transport to and from railway stations, airports, etc.).
  - c) Other ancillary services.
- 5.25 A children's home providing adventure activities is, in fact, offering all three of the qualifying components. Accommodation is included by definition. Adventure activities fall within the definition of 'other ancillary services'. Transport to and from outdoor pursuits venues fall within the qualifying criteria, as would other excursions. Children's homes would not be exempted from the Regulations on 'Educational Package' grounds, offering as they do both transport and accommodation.
- 5.26 There are a number of implications for businesses falling within scope of the Regulations. Marketing material should comply with the guidelines provided. There are requirements to enter into contractual agreements with clients and stipulations on the form and content of contracts. Financial safeguards are required, in the form of either: bonding with an approved trade association; insolvency insurance; or the placing of payments in a separate trust account, from which they can be withdrawn only when the service has been delivered. Non-compliance with the Regulations is a criminal offence.

- 5.27 Although the Regulations are predominantly concerned with the mainstream travel and tourism industry, consultations with the Department of Trade and Industry and local Trading Standards Officers have confirmed that any operation offering more than one of the three qualifying components would fall within scope, regardless of how it defines itself. There is some ambiguity over the period of stay which might place homes beyond the Regulations, but certainly respite/holiday care and other temporary placements would bring homes within scope. The question of qualifying lengths of stay needs to be clarified with DTI.

### **Dissemination of Information**

- 5.28 It has become apparent from a (limited) number of contacts with various responsible departments and agencies at local government and regional level that unregistered homes can operate in their areas without their knowledge. Even more worrying is the fact that distant placing agencies will not necessarily pass information on placements to the Social Services departments of Local Authorities in which homes are located.
- 5.29 Statutory registration will allow the creation of regional and national databases of all homes, bringing them within the orbit of inspection and monitoring by Local Authorities as is recommended in PLU. Cross-referencing of all providers used by all placing agencies should assist in the identification of unregistered homes which need to be informed of their new responsibilities (see 5.32 below). In future it should be a statutory requirement that all placements, regardless of the placing agency, should be in registered homes - bearing in mind that there is evidence of some private homes using other, unregistered homes for short stay holiday/respite care. Placing agencies should be obliged to consult with relevant Local Authorities before placing children in homes outside of the agency's area, and clear lines of responsibility for monitoring and costs should be established.
- 5.30 There is already a labyrinth of legislation applicable to children's homes, and this is likely to increase or be refined as a result of any forthcoming legislative review. A review of general health and safety issues and of the inclusion of adventure activities, as recommended in this Review, will add complexity to the existing regulatory framework. PLU:1.18 calls for *"clear direction from the centre on the implementation of statutory duties, clear statements of policy and clear guidance on the principles of good practice"* if consistent standards are to be secured nationally. *"Directions and guidance should be as short and simple as possible, and allow scope for local interpretation and flexibility wherever possible."* Responsible agencies will need to be informed of any new statutory duties. Existing proprietors will need to be informed of their responsibilities. Aspiring proprietors will need clear guidance on the statutory duties and responsibilities which they are about to assume.
- 5.31 The *"implementation nationally of a national strategy"* (PLU:2.9) will require consultation between all government departments responsible for the areas highlighted by Sir William Utting and in this Review. The requirement is for an Outline Guidance Document for Local Authorities and/or placing agencies which summarises all relevant areas of legislation, with references given to Technical Guidance Notes on each area of legislation. The technical guidance notes should provide chapter and verse on the legislation as it applies to the children's home sector, with a clear indication of where special local circumstances (e.g. planning issues) might be taken into account. There should be a clear formula provided for the co-ordination of departmental responsibilities at Local Authority level.

- 5.32 Not all legislation will apply to all children's homes. There will, nonetheless, be a requirement for a general Providers' Guidance Document which summarises all of the statutory requirements and conditions placed on proprietors. Again, the Guidance Document should contain references to Technical Guidance Notes on each area of legislation, allowing existing and aspiring providers to familiarise themselves with the statutory requirements, including any regional variations, which are applicable to their own establishments. The Document should also provide clear information on registration, inspection and monitoring procedures, in the form of flow paths, for both existing and aspiring providers. Guidance Documents should be disseminated by all Local Authority Departments with whom existing, and especially aspiring, providers are likely to come into contact. Subsequent non-compliance with or contravention of **any** element of the regulatory framework should result in an immediate review of the registered status of the home, and any criminal offence should be prosecuted as a matter of course (see PLU:17.42).
- 5.33 We are aware of one or two instances where aspiring providers have applied for assistance on business planning or for grant-in-aid from various agencies, including local enterprise agencies, Local Authorities and Training and Enterprise Councils. Non-specialist agencies may offer advice and assistance in good faith to aspiring providers. Many new entrants may not be aware of the complexity of the sector which they are considering. Others may be unsuitable as proprietors of children's homes for any number of reasons. The Providers Guidance Document should be provided by agencies to intending providers on first approach; and they should be required to contact LA Social Services and demonstrate their commitment to fulfilling their statutory duties before any assistance is provided. This mechanism will ensure, on the one hand, that new providers applying for assistance will be identified as early as possible; and that public money is not wasted on 'non-starters'.

### Summary and Conclusions

- 5.34 Many of those involved with child care would argue that, ideally, all children's homes should be under Local Authority management. More stringent controls resulting from the exposure of abuse in LA homes will ensure that children are placed in a closed and totally managed system. In the absence of this ideal and so long as there is private sector involvement with child care, there will need to be confidence that comprehensive regulatory frameworks, support systems and enforcement mechanisms are in place. Appropriate legislation will involve a wide range of government departments and agencies, including those responsible for planning, general health and safety, social services and, in the case of adventure activities, the Department for Education and Employment, the Health and Safety Executive and the Adventure Activities Licensing Authority. Various reviews of many of the issues applicable to children's homes are in progress, and this provides a confluence of opportunity for consultation and co-ordination between departments and agencies, leading to a national strategy which can be implemented nationally. Statutory registration of all children's homes is a necessary pre-requisite, following on from which many of the risks, including institutional risk, identified in PLU and this Review will be addressed.
- 5.35 Refinement of the regulatory framework should be followed by clear and easily understood summaries of duties and responsibilities, for Local Authorities and/or placing agencies and for existing or aspiring providers. These Guidance Documents

should be supplemented by more detailed technical guidance notes, and in the case of Local Authorities it should be clearly defined where special local circumstances can be taken into account. There should be a clear formula for the co-ordination of departmental responsibilities at Local Authority level. Guidance for providers should be disseminated by all Local Authority departments with whom proprietors are likely to come into contact, and by enterprise agencies and TECs who may be approached for assistance by aspiring entrants.

5.36 The measures identified in this Review will contribute to what is succinctly defined as *"a high level and a safe level of care' for looked after children"* in a submission to Sir William Utting by the Welsh Local Government Association:

- a) *A proper needs-led assessment of each child in, or likely to enter, the looked after system.*
- b) *A choice of accommodation to meet those needs.*
- c) *Access to specialist advice and services.*
- d) *A high quality of care provided by qualified, trained supported and secure staff, appointed following a rigorous selection process.*
- e) *A valid and comprehensive inspection, registration and monitoring process.*
- f) *The provision of good quality education.*
- g) *Mechanisms to ensure that children make their voices heard.*

5.37 Finally, we would reiterate our greatest concern, which is that the marginal nature of children's homes providing adventure activities, and the probable small numerical base, will allow the issues discussed in this review to be sidelined or ignored, whether on grounds of complexity or cost. Again, we would emphasise that the potential consequences of bad practice are many times disproportionate to the number of providers. The House of Commons debate of December 1997 highlights the possible repercussions of one small badly managed home, with a small number of children in its care, on a small local community. The Lyme Bay tragedy provides the ultimate example of the devastating consequences which one badly managed activity centre can inflict on young people and their families. And Lyme Bay has demonstrated the impact that a single incident can have on an important tourism sector, with a potential knock-on effect into wider rural economies. Here, too, is triple jeopardy. Unless appropriate measures are introduced, vulnerable children and vulnerable communities will remain at risk.