

LEGAL ADVICE AND ASSISTANCE POLICY AND GUIDANCE

Northern Ireland Commissioner for Children and Young People
Equality House
7 – 9 Shaftesbury Square
BELFAST
BT2 7DP

Telephone: 028 9031 1616

Website: www.niccy.org

Email: legalteam@niccy.org

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INTRODUCTION

The Commissioner for Children and Young People for Northern Ireland (NICCY) was established under the Commissioner for Children and Young People (Northern Ireland) Order 2003 (hereafter ‘the 2003 Order’).

Aim

Article 6(1) of the 2003 Order established the Commissioner’s principal aim as:

“To safeguard and promote the rights and best interests of children and young persons”.

Vision

Our vision is for a society in Northern Ireland where all children and young people flourish, are valued and their views are respected.

Mission

To safeguard and promote the rights and best interests of children and young people.

Values

All of our work is underpinned by a number of core values. We use these in our day to day work and we seek outcomes based on the fulfilment of these values.

They are:

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| Child centred - | Children are at the centre of all we do and we will encourage and value their participation. |
| Rights focused – | Our work is underpinned by the United Nations Convention on the Rights of the Child (UNCRC). |
| Independent - | We will challenge Government and relevant authorities and hold them to account. |

- Dynamic -** We are a forward thinking organisation, innovative and open to change.
- Transparent -** We are open, honest, accountable and responsive in all our work.
- Collaborative -** We will work together with others, while maintaining our independence, to deliver more effectively for children.
- Enabling -** We will work to build support and capacity to help children, young people, parents and others to act and promote children's rights.

This document contains guidance in respect of the role and responsibilities of the Legal and Casework Team within NICCY. It outlines how, why and in what circumstances we can offer advice and assistance to clients.

ETHOS OF CASEWORK

The ethos of the casework function within the Legal and Casework Department of NICCY is that legal proceedings are a last resort. We believe much can be achieved without the need to initiate legal proceedings. We shall therefore make all efforts to resolve a case by engagement, communication, facilitation and whatever other methods we can use in the particular circumstances. However not all matters can be brought to a conclusion this way and in circumstances where it is appropriate and the client wishes to proceed the matter may become the subject of legal proceedings. In these circumstances the client will either be referred to a private solicitor for specialist legal advice or if our legislation permits it NICCY may provide legal advice, legal representation or funding for the matter.

Responsibilities of the Legal and Casework Team

Staff within the Legal and Casework Team shall treat all clients with respect and courtesy. Staff shall deal with all cases professionally and efficiently.

If a client is of the opinion that these standards have not been met, and wishes to make a complaint, such a complaint can be addressed to the Head of the Legal and Casework Team.

Responsibilities of Clients

Clients shall identify as clearly as possible all issues in respect of their case. Clients shall provide all available information in support of their case in a manageable format. Clients shall co-operate with staff and keep them informed of any new developments or changes in circumstances regarding their case.

Should a client who is seeking assistance not meet their responsibilities this may result in assistance being limited or conditions being set upon the handling of the case. We have a zero tolerance policy on abuse, harassment or threats to the safety or welfare of staff. If any client is found to be behaving in this way their case will be closed and assistance terminated.

Confidentiality

Confidentiality is of utmost importance to the Legal and Casework team and client confidentiality shall be maintained except for circumstances in which a disclosure is made

with regard to child protection. All information obtained is stored on a secure database and is kept confidential. However, if any information comes to light or is passed to us which gives us concern that a child or young person may be at risk, then we are required to pass this on to the appropriate authorities and this will not constitute a breach of confidence.

NICCY offers assistance to clients on the basis that they agree, that in accepting such assistance they shall not contact the media regarding their case without informing NICCY and having our consent.

MAKING AN ENQUIRY OR REQUEST FOR ASSISTANCE

The Administrative Officer (AO) within the legal and casework team will be the initial point of contact for all cases or requests for assistance. The AO shall complete an initial contact form with all available details of the case. This information shall be held on a confidential and secure database. The information shall be retained in line with NICCY's data retention policy.

If an enquiry is made by a child, or is, in the opinion of the AO of an urgent nature, the AO shall refer the matter to the first available Casework Officer (CO) at the earliest opportunity, by-passing the normal allocation process, in the first instance.

If a case concerns a matter which falls outside the remit of NICCY, the AO shall advise the client of this and signpost them appropriately. The case will then be acknowledged in writing (if an address is provided) clearly outlining how the matter was not within the remit of NICCY and reiterating the signposting advice. The case will then be closed on our database, without being allocated to a caseworker.

If a case concerns a matter which falls within the remit of NICCY, the AO shall advise the client of our case allocation policy. The case will then be listed at the next case review meeting and allocated to a caseworker at that time.

CATEGORIES OF ADVICE OR ASSISTANCE WHICH MAY BE PROVIDED

1. Assistance with complaints to relevant authorities (Article 11)
2. Investigation of complaints against relevant authorities (Article 12)
3. Assistance in relation to legal proceedings (Article 15)

Assistance may be provided with a complaint to a relevant authority that the rights of a child or young person have been infringed by any action taken by a relevant authority, or that such action has resulted in the interests of the child or young person being adversely affected.

A list of relevant authorities is contained within the schedule to our legislation, but a generic explanation is anybody which is carrying out a function on behalf of government. This includes schools, doctors, dentists, health authorities and many others.

Assistance can only be provided with such a complaint if it appears to the Commissioner that there is no other person or body likely to provide such assistance. The Commissioner cannot take any action in relation to such a complaint unless she is satisfied that there is no other person or body likely to take such action.

If a client is unsure whether their complaint is with regard to a relevant authority or whether or not there is another body or person likely to assist, they should contact the Legal and Casework team for advice on this. If the matter does not relate to such an authority or there is some other body or person who can help them more appropriately the client will be signposted to that body or person.

The Commissioner can carry out an investigation into a complaint against a relevant authority, made by a child or young person that their rights have been infringed or their interests adversely affected by the action of that authority. The Commissioner can only do so if the complaint raises a question of principle and the complaint does not fall within an existing statutory complaints system. The Commissioner can not investigate the matter if the client has or had a right of appeal, complaint, reference or review to or before a tribunal or a remedy by way of proceedings in any court, unless the Commissioner is satisfied that in the particular circumstances, it is not reasonable to expect the complainant to resort to or have resorted to the right or remedy. The Commissioner cannot conduct an investigation in respect of the commencement of any criminal court proceedings or any

civil court proceedings by anyone other than a relevant authority, nor can she investigate the conduct of any court proceedings. The Commissioner cannot investigate any action which is, or has been, the subject of a local or public inquiry. The Commissioner cannot investigate a complaint in which it appears there has been an unreasonable delay in referring the matter to her.

Assistance can be provided in relation to legal proceedings if the Commissioner is satisfied that the case raises a question of principle, it would be unreasonable to expect the child or young person to proceed without assistance or there are other special circumstances. The Commissioner cannot provide such assistance unless it appears to her that there is no other person or body likely to provide such assistance. Assistance in relation to legal proceedings can include legal advice, representation or any other assistance which the Commissioner thinks appropriate.

PROVISION OF ASSISTANCE

Depending on the nature of the case different levels of assistance may be provided, which will include the following:

- Signposting
- Advice and guidance
- Help and support
- Advocacy / Representation for a client
- Legal Advice
- Legal Assistance by way of representation or funding
- At each stage of their case the client shall be sent a letter or email confirming the level of assistance being provided to them.

DEFINITIONS OF LEVELS OF ASSISTANCE

Signposting – Referral of a client to another more appropriate body or person to assist them either with the entirety or their case or an aspect of it; or for additional support.

Advice and Guidance – Advice (other than legal advice) on how to progress a complaint, including guidance through complaints procedures, codes of practice etc.

Help and support – Engagement with a relevant authority to assist a client or on their behalf. This could include the writing of letters, drafting of documents, telephone conversations with key personnel, facilitating meetings and supporting clients at same.

Advocacy / Representation for a client – Advocating for and representing clients at meetings and other forums.

Legal Advice – advice given by a properly qualified legal practitioner either a solicitor or barrister. This could include oral advice or written advice such as a barrister’s opinion.

Legal Representation or funding – Representation in relation to legal proceedings by a qualified legal practitioner (either internal staff or an external person) or funding to enable a client to engage legal representation or advice.

Generally only once level of assistance may be provided at any given time however, if circumstances require it, several levels of assistance can be offered. It is not necessary to progress through levels of assistance to complete the process. Save in the case of Legal Representation / Funding, the decision as to which level (or levels) of assistance are required will be made by the Casework Officer allocated to the matter and will be reviewed at the weekly Legal and Casework Team Case Allocation meetings, where appropriate.

LEGAL REPRESENTATION

In certain circumstances it may be possible for NICCY to provide legal representation for a client. This will only be if legal assistance from the Legal Services Commission by way of legal aid is not available. The Legal and Casework team has among its staff experienced barristers and solicitors, who carry full practising certificates. In certain defined circumstances these staff can represent a client.

NICCY may also decide to instruct an external legal representative where it has insufficient internal legal resources to deal with the matter, or there is any other good reason to do so.

APPLICATIONS FOR LEGAL REPRESENTATION OR FUNDING

If a client wishes to apply for legal representation or funding they should make a written application to the Legal and Casework Team outlining all the circumstances of their situation. The application will be considered with regard to our legal funding criteria by our Legal Funding Committee. These criteria are available on our website, and are set out at an Appendix hereto. It should be noted that these are derived from our legislation which places constraints on which matters we can offer funding in. In addition it should be noted that we have a relatively small budget for these matters and may not be able to fund all cases for which we receive applications. In some cases we can also provide partial funding, for a discrete aspect of a case, such as an expert report or expenses for the attendance of an expert witness. As stated above we can only provide funding if legal aid is not available and it will therefore be necessary for a client to be able to show that this is unavailable. This should not put a client off contacting NICCY as we can guide you through the necessary steps.

REVIEW OF DECISION TO OFFER ASSISTANCE

NICCY may, at any stage, review the decision to offer assistance, either in the following circumstances or otherwise and may decide to discontinue the provision of assistance:

- The client fails to provide full information on request
- The client fails to accept or act on advice given
- New information comes to light which undermines the position presented by the client

- The client misrepresents information or makes false or misleading statements
- The client fails to comply with requests
- The client fails to attend meetings, or engage with staff when requested
- The client acts unreasonably, or subjects staff to unreasonable behaviour
- The client abuses, harasses or threatens staff

COMPLAINTS / APPEALS

Should any client wish to make a complaint / appeal about any decision made under this policy, to include decisions of the Legal Funding Committee, then this complaint / appeal should be made in writing to the Commissioner directly within 7 working days of the date of being notified of the decision. Any appeal shall only be successful if the criteria in this policy or the Legal Funding Criteria have not been applied correctly. If the criteria is found by the Commissioner to have been applied correctly then the appeal shall be dismissed.

PUBLICITY

NICCY reserves the right to publicise on its website or otherwise the fact that they funded a legal case or provided representation in a legal case to a client. When a client accepts an offer of assistance from NICCY they agree not to contact the media in connection with the matter without first informing NICCY of their intention.

CONDITIONS OF OFFER OF ASSISTANCE

This policy should be read in conjunction with any letter or communication regarding an offer of assistance and as appropriate NICCY's legal funding criteria.

REVIEW

This policy shall be reviewed on an annual basis and NICCY reserves the right to vary or amend same as and when it deems necessary.

APPENDIX 1

LEGAL FUNDING CRITERIA

Date: August 2012

All decisions taken regarding legal funding, entering into legal proceedings or assisting with complaints to relevant authorities must be considered in light of the relevant provisions contained within the Northern Ireland Commissioner for Children and Young People (NI) Order 2003.

LEGISLATIVE HURDLES TO BE MET

POWER TO BRING, INTERVENE IN OR ASSIST WITH COURT PROCEEDINGS (Art. 14)

- Do the proceedings involve law or practice concerning the rights or welfare of children or young persons?
- Is the Commissioner satisfied that the case raises a question of principle or there are other special circumstances?
- If the Legal Funding Committee are satisfied that the above criteria are met - move to secondary criteria.

APPLICATION FOR ASSISTANCE IN RELATION TO LEGAL PROCEEDINGS (Art. 15)

- Do the proceedings involve law or practice concerning the rights or welfare of children or young persons or does the child or young person wish to rely on such law or practice?
- Does the case raise a question of principle?
- Would it be unreasonable to expect the child or young person to deal with the case without assistance because of complexity, his position in relation to another person involved or for some other reason or are there special circumstances?

- Is any other body likely to provide such assistance?
- If the Legal Funding Committee is satisfied that the proceedings meet the above criteria and that no other body is likely to provide such assistance - move to secondary criteria.

APPLICATION FOR ASSISTANCE WITH A COMPLAINT (Art. 11)

- Is the complaint that the rights of the child or young person have been infringed or adversely affected?
- Is there any other body likely to provide assistance?
- If the Commissioner wishes to act on behalf of the child is there any other body likely to take such action?
- If the Legal Funding Committee is satisfied that the complaint falls within these criteria and no other body is likely to provide assistance or take action - move to secondary criteria.

IF THE APPLICATION HAS MET THE LEGISLATIVE HURDLE THEN THE FOLLOWING MUST BE CONSIDERED:

The availability of resources and whether the cost is commensurate with the benefit to be gained. This should be considered in light of both the availability of budget and any future potential for further costs to the organisation, if for example an appeal were lodged or costs could be awarded against NICCY.

IF THE APPLICATION MEETS THIS TEST THEN WE MOVE TO THE SECONDARY CRITERIA

In each case all the secondary criteria for a particular type of application should be met, unless there is a justifiable reason for pursuing the matter which falls outside of these criteria.

SECONDARY CRITERIA FOR APPLICATION OR DECISION UNDER ARTICLE 14

Interventions:

- Would our intervention add value?
- Is there potential to raise awareness of children's rights?
- Is the issue in the case one in which we are best placed to assist the court?
- Does our intervention have potential to impact upon the outcome of the case?

Amicus Curiae:

- Has the Court invited us to be an amicus curiae, and if so are we best placed to provide this service?

Bringing Legal Proceedings:

- Is there potential to raise awareness of children's rights or bring about a change in practice which will be of benefit to a number of children?
- Is there a reasonable prospect of success? (The Legal Funding Committee may seek external legal advice on the merits of a case). If not is there sufficient reason to proceed on the basis of raising public awareness of an issue or opening a debate?
- Will the outcome affect a number of children, or have sufficient impact in respect of one child to warrant our involvement?
- Is there any risk to the organisation in respect of costs if we are unsuccessful? If so can a protected costs order be sought?

SECONDARY CRITERIA FOR APPLICATION UNDER ARTICLE 15

- Is there potential to raise awareness of children's rights or bring about a change in practice which will be of benefit to a number of children?
- Is there a reasonable prospect of success? If not is there sufficient reason to proceed on the basis of raising public awareness of an issue or opening a debate?
- Will the outcome affect a number of children, or have sufficient impact in respect of one child to warrant our involvement?

SECONDARY CRITERIA FOR APPLICATIONS UNDER ARTICLE 11

- Does the complaint concern an area which has been highlighted to us through our casework function?
- Would the child or young person be unable to pursue their complaint properly without our assistance?
- Is there potential to bring about a change in practice which could benefit either this child or a number of children in the future?