

## Commissioner's closing speech for 2014 Annual Conference - 20 November 2014

**\*Please check against delivery \***

Our purpose for this seminar has been to explore how we can better take account of children's best interests in our work – whether it is in relation to policy or legislative development, or in providing services directly to children and young people. As we know, and as has been made clear in the presentations and plenary discussion, it isn't always straightforward to assess a child's best interests, particularly if they appear to clash with their own wishes. Other issues can also complicate matters, for example, where what may be in one child's best interests are not in the best interests of another child, or if administrative systems or available services have become the lens through which the child's best interests can be assessed.

I hope that, through exploring the General Comment in the context of some of the challenging scenarios facing professionals in Northern Ireland, you will feel that you have a better understanding of how to assess, and work to achieve, children's best interests.

Our contributors today have provided such useful inputs. Firstly, Olga Khazova spoke as a member of the UN Committee on the Rights of the Child, introducing the background to the development of General Comment 14 on the right of the child to have his or her best interests taken as a primary consideration. She also outlined the key themes in the General Comment, and how this article 3 right related to other UNCRC rights.

The contributions from our three professionals working in health, justice and education – Deirdre Mahon, Tony Macklin and Jill Trotter, then provided us with pertinent real life examples of competing rights and best interests in relation to children and young people.

Junior Ministers Bell and McCann offered us some insights into the challenges for government in promoting and protecting children and young people's best interests.

Finally, Gerison Lansdown explored some of the perceived conflicts between best interests and other rights with particular reference to Article 12 and the opportunities for children and young people to participate in decision-making affecting their lives.

We are very grateful to you all for attending, and speaking so eloquently and knowledgeably on this important topic. I would also like to thank Chris Lyttle, the Chair of the All Party Group for Children and Young People, for hosting this event.

The subject for this conference came from the purpose of the Children's Commissioner: 'To safeguard and promote the rights and best interests of children and young people in Northern Ireland'. For eight years this has been my mission statement, and as many of you will be aware, I am coming to the end of my second – and last – four year term as Children's Commissioner, and it has been a real privilege to be in the post. Over these eight years, I and my staff have met thousands of children, and worked with numerous parents, professionals, politicians, and colleagues from NGOs, and we have worked on a wide range of issues, seeking to influence change for children and young people in Northern Ireland.

With your indulgence I would like to close this seminar by reflecting a little on my experiences of working in this post, and leave you with some final thoughts.

I was appointed as Children's Commissioner in 2006, and started in the role in January 2007. At this point the Assembly was in suspension, but agreement had been reached at St Andrews and elections were called to the Northern Ireland Assembly in May 2007. While there remained a great deal of tension between political parties, I and many others felt optimistic about the restoration of devolution, both as a symbol of progress and a structure for ensuring that decisions affecting Northern Ireland would be made by political representatives elected by the people of Northern Ireland.

The Children's Strategy had been launched the previous summer, in June 2006, and I was also optimistic that this would be a vehicle for strategically driving forward action in relation to children's rights and best interests.

While things haven't played out quite as positively as I – and others – had hoped, devolution has been maintained over this period, although continuing disputes among political parties have meant that progress on key issues facing children has been slow.

There has been progress, and I have seen some positive changes over the past eight years.

It has been encouraging to see that more people are now aware of children's rights and what they mean in reality. From children and young people, to parents and politicians, the media and professionals, and those working for, and on behalf of children and young people, awareness of children's rights and how their application can change lives has steadily been increasing.

Working together with children, their parents, NGOs, professionals working with children and government, we have all managed to bring the Convention from relative obscurity to centre stage. It is now acknowledged and recognised as integral towards realising children's rights.

For example, the Department of Health, Social Services and Public Safety, in its recent consultation on Paediatric Services, recognised its responsibility to ensure that its recommendations were: "...consistent with the relevant Articles in the UN Convention on the Rights of the Child".

Moreover, we welcome the reference in the recent Justice Bill which amends the aims of the youth justice system to fully reflect the best interest principles as espoused in Article 3 of the UN Convention.

The Department of Education has also been taking account of the UNCRC. Following several years of engagement with NICCY, in June 2014 the Department published a circular in June 2014 providing advice on how schools should encourage pupils' participation decision-making. The Circular references Art 12 in the opening line of the Introduction and this principle informs the aims and objectives of the circular.

**We have indeed seen real progress in many ways.**

Last year I produced a report highlighting some of the work of the office since it had been established, showing how we had sought to monitor, advise and –if necessary - challenge Government to ensure it delivers effectively for children and young people.

In my first year in post I was able to publish for the first time ever, a joint report with the Office of First Minister and deputy First Minister and the Department of Finance and Personnel that clearly showed the disparity between how much is spent on a child's personal health and social care here in Northern Ireland, and in other parts of the United Kingdom.

We have followed through with this scrutiny of public spending on children, by publishing another report, commissioned from CES, looking at how we can track budget allocation down to spend on services in March of this year. A second study, commissioned in partnership with Atlantic Philanthropies, is gathering information on the spending on children's services, and identifying the proportion of this allocated to early intervention programmes is nearing completion.

My Legal team has been involved in numerous legal cases over the last eight years, including most recent two cases addressing children's rights with the European Court of Human Rights. This is the first time that a Commissioner for Children and Young People has had such interventions allowed by that court.

The Office commissioned an initial Child's Rights Review in 2004 which I had updated in an extensive report on Children's Rights in 2008. Both of these reports have informed the advice we have provided to Government and are still being widely used.

Over the two terms I have had as Commissioner for Children and Young People, I have had so many opportunities to raise issues relating to children's rights and best interests with Ministers and MLAs in a variety of settings, from face-to-face meetings through to detailed evidence sessions to committees. At each meeting and evidence session the Convention was not only referred to, but it was emphasised to all present that it is the best way to ensure children and young people's rights and their best interests are being met.

I am pleased at the access I have had to Ministers. The six-monthly meetings I have with the Ministers for Education, Health, Justice and the OFMDFM Junior Ministers have been extremely positive and productive. At these meetings we have discussed a very wide range of issues affecting children and young people, and we have seen progress in relation to many.

But as we gather here on November 20<sup>th</sup> to also celebrate the 25th Birthday of the UNCRC perhaps unsurprisingly, my fondest memories are the times I have spent meeting with children and young people, hearing from them directly; and learning more from them on the issues they face.

I have been consistently amazed and delighted with their skills, their eagerness, and dedication and their clarity of thought. They are truly experts in their own lives, which is why it is so important to involve them in decisions that affect them.

Children and Young People helped inform my first corporate plan and indeed this current one. They delivered their views to government ministers in my Make It Right campaign, they have challenged the media over the negative stereotyping of young people and developed their own campaign around this issue.

And, they have been designers, judges and presenters for my Participation Awards. These awards have shown that the very concept of participation is becoming embedded in government agencies and departments.

Today more and more government departments and their agencies have committed to the participation of children and young people. 11 Government departments have committed to developing real strategies for the participation of children and young people in decision making and beyond.

In addition, many government agencies have also made this commitment, and over recent months we have been working with the new councils to support them to ensure that they are hearing the voices of children and young people in council decision-making, and involving them in community planning.

We have also seen the appointment of Departmental Children's Champions – a step towards departments acknowledging the need to begin to have children and young people's issues informing the agendas in policy, strategy and legislative developments.

Just as I started my time in office getting out to meet with children and young people, this has also been a real focus in my final weeks. Since September I have been going out and about across Northern Ireland to meet with children and young people to hear directly what was important to them, what issues they faced and what messages they wanted me to bring back to the Executive Ministers.

The children and young people talked a lot about how they felt **growing up in their communities**. A major focus was on **road safety**. Children were worried about unsafe drivers, people driving too fast and parking dangerously. They said that traffic around school was particularly problematic, and it was sometimes dangerous to walk or cycle to school. They wanted to see more traffic calming measures.

Their concerns about not feeling safe extended beyond this, however, to **general concerns about violence** within their communities. They felt that CCTV, better pavements and lighting, and more community policing would help them feel safer. Younger children sometimes felt intimidated by teenagers drinking, playing with fireworks or other **'anti-social' behaviour**. Young people also talked about this and the problem of **peer pressure**, getting in with 'the wrong crowd'. Many commented on their environment being dirty, with a lot of litter, broken glass, and vandalism.

One of the most common themes was the need for more community **play and leisure facilities** for children and young people.

Children tended to either speak about how they loved their **parks or play equipment**, or about being unhappy that there weren't any close to their home. Several children were upset about young people vandalising their parks or not letting them play on some of the equipment. Many children recognised that this was due to the young people not having anywhere else to go.

The most common recommendation from young people was that funding needed to be allocated to providing **better facilities for teenagers**. While there was a lack of provision across the board, many felt that 16-18 year olds were particularly disadvantaged. Many alluded to a connection between problems with antisocial behaviour, including drug and alcohol consumption and young people not having anywhere to go.

Being **judged negatively and discriminated against** seemed to be a common experience for young people. They talked about being asked to move on, or questioned by police, when in crowds in their communities. Shops and shopping centres and buses were two places they were regularly discriminated against.

Many young people talked about the need for more support for young people with **mental health** problems. Some talked about problems with young people dying through suicide,

and others said that there needed to be more support for young people to come off legal highs and drugs.

**Bullying** was also recognised as being a problem, more so with some groups than others. Children and young people talked about bullying at school, on buses, in communities and through social media.

Specific groups of children and young people were identified as **needing particular support**, including young carers, disabled children, children with special educational needs, young parents, children recovering from illness and bereaved children.

I also talked to the children and young people about their experiences of **education**. There were many specific points relating to individual schools, including about inadequate facilities, needing access to a wider range of subjects or more money for school trips, clubs and updating pitches and play facilities.

There was a great deal of talk about the pressure children and young people experienced in school. This largely focussed on examinations, including the transfer test, and too much homework. Some felt pressure from parents to get good grades, or to go to university and felt that it was very stressful having to make major life decisions at 16. They felt that adults didn't understand the pressure they were under.

Children and young people talked passionately about the importance of having a voice in school, and many felt that schools councils were a good thing. A number said that they should learn more about children's rights and the Children's Commissioner in school.

Some children talked about the impact of **austerity or family break up**. Where parents had separated or divorced, or in single parent families, some children and young people felt like they had to pretend everything was okay at home, when they really needed someone to talk to and which created mental anxiety for many of them.

Several talked about their parents having lost their jobs or finding it difficult to get work, while others felt that welfare reforms were impacting on their families. More support for families looking after an elderly or disabled family member was suggested, along with a plea to address the rising costs of fuel.

A group of care experienced young people talked about decisions being made for them by social workers without their involvement. They spoke about having too many placement changes and needing to be matched carefully with foster parents. When in secure care, they felt very isolated from their communities and from the people and services that supported them.

Finally, some teenagers said that schools could prepare them more practically with lessons on sex education and financial planning. They felt getting a part time job would be good, but that these were hard to get. Several spoke in support for voting at age 16.

It has been wonderful to meet with these children and young people over recent weeks, but it has also been concerning to hear of the issues currently affecting them – some of which have been issues I have previously identified.

All too often, children and young people remain in the margins. Decisions affecting them are regularly made without their involvement, and many spoke about feeling disregarded and ignored. They are stereotyped by communities and the media as anti-social trouble-makers and driven to the margins of our communities and public spaces, where they are vulnerable to those who would exploit them or harm them. They have to get used to being told to move on by police or paramilitaries, or followed around shops by security guards, presuming negative intentions.

When it comes to government policy and legislation too, children are often marginalised. Seen as a 'special case' because of their age, it is often easiest to exclude them rather than to do the additional work that would be required to include them. I have seen this in so many cases.

One example is the **Mental Capacity legislation**. This groundbreaking legislation replaces the Mental Health Order, which is deemed to be archaic and in need of modernisation, to present a better way of assessing whether people aged 16 and over have the capacity to make decisions, and provide them with the support to do so. Over the past five years as the legislation has been in development, we have engaged with the Department for Health, arguing that if the mental health order is archaic and in need of modernisation for adults, then this is also the case for children.

The debate over the five years has been whether children should be included, and earlier this year it was decided that there was insufficient time to do the work that would be required to include children in the Bill. Instead, the Mental Health Order, which is not considered 'fit for purpose' for adults will merely be amended. The Department for Health has stated that a more extensive review relating to children's capacity will need to be taken forward in the future, but there is no clear commitment to take this forward in the next Assembly.

Another, quite shocking example, is the proposed **Age discrimination legislation**, relating to Goods, Facilities and Services. This was a commitment in the Programme for Government and had been included on the advice of the Equality Commission. It turns out that, when Executive ministers had committed to addressing discrimination in relation to 'Age' they had been meaning older people only, and had not considered including children and young people. Their concern has been that there are reasons why children should not be treated exactly the same as adults, because of their emerging capacity and need for protection.

We have done a great deal of work with the Equality Commission over the past two years, including commissioning a detailed legal report, to demonstrate that there is no reason to exclude children and young people from this beneficial legislation – indeed, it is hard to see how the Executive could create Age discrimination legislation that discriminates against children because of their age!

A final example of how children are overlooked in the development of government policy and legislation, is in relation to the proposed **Welfare Reform Bill**. I was very concerned when the Department for Social Development published its Equality Impact Assessment on the proposals back in 2011 to see that, while it recognised that 'the majority of households affected by the policy will have children', it failed to carry out a proper assessment of the data and research with regard to the impact on children, under the 'Age' category. It focused solely on direct recipients of benefits, and did not take account of the very direct impact these proposals would have on children.

To help to bring visibility to the impact on children, I commissioned a child rights impact assessment from Goretta Horgan and Marina Monteith of the University of Ulster, and have used this in my subsequent engagement with the Department and Social Development Committee at the Assembly.

Another matter that I was very concerned about coming into post and has become more problematic over time is **child poverty**. Back in 2007, 22% of children in Northern Ireland were living in relative poverty before housing costs – a similar figure to the rest of the UK. Since then, the UK figure has dropped to 17% while our figure has remained steady at 22%. An analysis commissioned by OFMDFM from the Institute for Fiscal Studies is predicting a rise in relative poverty for children to 31%, an unprecedented rise of nine percentage points by 2020, the date that UK and Northern Ireland politicians had committed to eradicate child poverty.

Poverty devastates children's lives. It impacts on their home life, their education, their health, and their opportunities to play and relax with friends. It has really struck me as I have spoken with children and young people over recent weeks how many have been talking about their worry over their parents losing work, and their worry over their own futures. Professionals working with young people have told me that they are picking up on a real sense of hopelessness among 14-18 year olds who are seeing older siblings without employment and without hope.

One child talked about his Daddy having to work away from home to make ends meet and that he hoped he would make it home for Christmas. Indeed, several spoke about their concern for their parents, worry about having to move house, and their guilt for having to ask their parents for anything. Hearing young children, given the opportunity to give a message to Northern Ireland ministers, speak about the price of diesel is a bad sign.

At this time, when we need the Executive to be working together to actively tackle the poverty affecting families, and children, we don't have a child poverty strategy published. According to the Child Poverty Act 2010 it should have been presented to the Assembly by March, but it has been delayed. This must be addressed as a matter of urgency.

Returning to the messages I received over recent weeks from children and young people, one of the things that has struck me again is that they have really important points to make – they are critical voices to be heard within our communities. We have seen real progress in relation to departments and agencies stating a commitment to participation, and we have also seen some very positive examples of authorities engaging with children. However, as our report 'Walking or Talking Participation' found, in general the engagement with children is limited, and there is very little evidence of their views being taken into account by government departments and agencies.

This matches one of the findings in an earlier study we had commissioned back in 2011, from Professor Lundy and Dr Byrne which used the UNCRC General Measures for Implementation as a standard to assess how effectively government was delivering for children and young people through the development of policies and strategies. It identified a number of critical problems, including significant delays in the development of strategies, little connection between strategies and actions, limited participation of children in the development and implementation of strategies and action plans, a lack of transparency in relation to budgets and a significant problem with 'joining up' - both at the strategic level with funding, strategies, and planning, but also in implementation.

Frankly, the findings confirmed our growing conclusions. Through our advice to government on policies and services, and our interventions in individual cases we have found that, too often the response to a child reflects the administrative arrangements, rather than their needs, rights and best interests. Bureaucracy and silo-mentality result in piecemeal, uncoordinated services and impacts very significantly both in enabling early 'light touch' interventions, as well as the complex, integrated interventions that are needed for children with complex needs.

Last year, at our annual conference, Dr Byrne and Professor Lundy, gave a presentation of work they had taken forward in partnership with my office, funded by ESRC, looking at options for Child Rights legislation in Northern Ireland. This came out of the research they had previously conducted for NICCY on the barriers to delivery for children, as well as developments in Scotland and Wales, where legislation had been progressed in relation to the implementation of children's rights. Some of you will remember our conference two years ago where we had speakers from Scotland and Wales present on their legislative developments.

At a time when, due to budget constraints, government departments are having to focus primarily on addressing their statutory responsibilities, I am more convinced than ever that legislation is required to properly implement children's rights in Northern Ireland. This should include 'direct' incorporation of the UNCRC, that is, making the UN Convention legally enforceable, as well as 'indirect' incorporation, which would place a statutory responsibility on government in relation to the general measures of implementation.

This would mean government ensuring **that awareness of the Convention** grows so everyone realises it will benefit their children, their grandchildren, their nieces, their nephews and their neighbour's children.

It would mean every policy in Northern Ireland that affects children and young people is subject to a **Child Right's Impact Assessment**.

It means ensuring that **accurate up-to-date data** is collected about every aspect of children and young people's lives. We must know how many children are in need, and where they are, if we are to reach them with the services they are entitled to.

It means that children are at the centre of service planning and delivery, and every government department works beyond the 'silos' to **join up their work** for children and young people.

It means being able to say **how much is spent on children's services**, and ensuring adequate, appropriate and accountable budgeting.

It means **children and young people's involvement in decision-making** being the norm, not the exception.

It means having **an effective overarching strategy and action plan** to deliver on children and young people's rights.

I don't think these are radical demands, but just common sense, and certainly very achievable. Child Rights legislation would not necessarily require new money, but would ensure more effective use of resources, and – critically - more effective delivery for children in Northern Ireland.

I would like to finish with my final calls to government, based on my experiences in this post over the past eight years, and taking account of the messages the children and young people entrusted to me.

**Government needs to** include children and young people – hearing their opinions in relation to decisions affecting them, including them automatically in positive developments – such as the Age discrimination legislation, and seeking to shield them from negative impacts for example in relation to Welfare Reform.

You should – as we all should - be ambitious in delivering the best possible for children and young people in Northern Ireland, and should be innovative and pushing boundaries in seeking the best possible outcomes for them.

We all need to understand that a children's rights approach to delivering for children is the common sense approach. In essence, it is about guaranteeing some basic things to every child, things they should receive automatically as required, rather than having to be fought for once the children are in crisis. Rights are about early intervention and prevention.

We all need to recognise the vital role parents and guardians play in caring and providing for children and as advocates for their rights. While I have heard it claimed several times that there is a fundamental clash between parents' rights and children's rights, in reality the parents calling my office seeking help to access support for their children are happy that their children are rights-holders, and indeed wish that the UNCRC was enforceable.

I have gone into some detail already about the importance of Child Rights legislation to incorporate and implement the UNCRC in Northern Ireland. This is vital. The UNCRC provides a structure and the means to drive strategy and delivery for children.

I strongly advise the Executive to engage wholeheartedly in the UNCRC reporting process coming up in 2015 and 16, and to seek advice from the Committee on the actions it needs to take to implement children's rights in Northern Ireland.

I am leaving at a time when the recession is seriously beginning to impact on public sector finances. Government departments are having to be make hefty cuts to their budgets, and increasingly having to focus on delivering their statutory functions. This leaves me very worried about the essential prevention and early intervention services that may be vulnerable to cuts at this time. The Executive must work together to protect vital services to children and young people.

And finally, I would like to warmly thank everyone who has worked with me and my staff over the past eight years. We have had most impact where we have had positive engagement with others – including government officials, media, professionals, NGOs, political representatives, parents/guardians, international colleagues, academics and – of course – children and young people themselves.

I would ask that you continue to work so positively with the incoming Children's Commissioner and the staff of the office to 'safeguard and promote the rights and best interests of children and young people across Northern Ireland.'

Thank you.