

Transport and School Meals Team
Room 6-10
Department of Education
Rathgael House
43 Balloo Road
Rathgill
BANGOR
BT19 7PR

5th June 2017

Dear Sir / Madam

The Office of the Commissioner for Children and Young People (NICCY) was created in accordance with 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland. Under Articles 7(2) and (3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. Under Article 7(4), NICCY has a statutory duty to advise any relevant authority on matters concerning the rights or best interests of children and young persons. The Commissioner's remit includes children and young people from birth up to 18 years, or 21 years, if the young person has a disability or has been/is in the care of social services. In carrying out her functions, the Commissioner's paramount consideration is the rights of the child or young person, having particular regard to their wishes and feelings. In exercising her functions, the Commissioner has regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

The UNCRC places obligations on State Parties with regard to the provision of education. Article 28 of the Convention states that,

*"States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of **equal opportunity**, they shall, in particular:*

*(a) Make primary education compulsory and available **free to all**;*

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and

*take appropriate measures such as the introduction of **free education and offering financial assistance in case of need...***” (Our emphasis)

Article 29(1) outlines the Aims of Education. Under this Article, education must develop every child’s personality, talents and abilities to their fullest potential. The UN Committee on the Rights of the Child produces General Comments on some of the rights contained in the Convention. These are statements of the meaning and objectives of rights in the Convention which provide Guidance to Member States about what the compliance and fulfilment of their obligations to children entails under some of the most fundamentally important rights in the UNCRC. The Committee’s first General Comment is on Article 29(1) on the Aims of Education.¹

The UN Committee on the Rights of the Child’s General Comment 1 provides some clarity on what a children’s rights compliant ‘education’ should look like. It states that education must be child-centred, child-friendly and empowering, with its goal being to strengthen the child’s capacity to enjoy the full range of human rights, to promote a culture which is infused by appropriate human rights values and to empower the child through developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. The Committee is clear that for the purposes of compliance with the UNCRC’s education obligations, ‘education’ should go far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually or collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society. It is this vision that NICCY believes all education service providers are obliged to work towards by virtue of the Government’s ratification of the UNCRC, regardless of where children receive their education or their particular circumstances.

In its 2016 examination of the UK Government’s compliance with its obligations under the UNCRC, the UN Committee on the Rights of the Child made a number of recommendations which relate to education.

With regard to the allocation of resources the Committee recommended that,

“...the State party... allocate the maximum extent of available resources for the implementation of children’s rights, with a special focus on eradicating child poverty and reducing inequalities within and across all jurisdictions.”²

¹ United Nations Committee on the Rights of the Child, General Comment No. 1 (2001) ‘The aims of education’ CRC/GC/2001/1.

² Para 12, CRC/C/GBR/CO/5, 3rd June 2016.

The Committee also recommended that,

“...the State party ensure that its international development cooperation supports the recipient States in guaranteeing the right to free compulsory primary education for all, by prioritizing free and quality primary education in public schools, refraining from funding for-profit private schools, and facilitating registration and regulation of private schools.”³

NICCY understands the Department’s rationale for carrying out this consultation given the imminent phased introduction of Universal Credit in Northern Ireland. We also understand that the Department’s primary aim in carrying out this consultation is to ensure that those most in need are able to access free school meals and uniform grants following the introduction of Universal Credit. In proposing an earnings threshold of £14,000 to qualify for free school meals and uniform grants, the consultation document states that data modelling has been conducted and the earnings threshold proposed would allow for the number of pupils currently receiving free school meals and uniform grants to be broadly maintained following the switch to Universal Credit.⁴ This new criterion will eventually replace five existing welfare benefit based criteria. The five benefits will be phased out and replaced by Universal Credit by March 2022.

NICCY has been carrying out extensive engagement with children and young people, their parents, carers and other educational stakeholders in informing its education priorities through our, ‘Big Conversation’ and ‘Your Voice Matters’ projects. We also have a dedicated education youth advisory group and external advisory panel comprised of education stakeholders which meets regularly and advises NICCY on its education work. One issue which has repeatedly been raised with NICCY with regard to education, is the impact of the costs of education on the ability of children to fully participate in their education. There is a great deal of research on child poverty and on the impact of the costs of education on families and children. Research shows that living in poverty greatly exacerbates the impact of these costs. Most of the related research examines the impact of the costs of education on families who are living in poverty, however as research shows, the face of poverty in Northern Ireland is changing and that there is a marked increase in the number of people who are now in ‘working poverty’.⁵ In the UK there are now more people in ‘working poverty’ (55%) than in ‘out of work poverty’. Despite this, there has been no attempt by Government to quantify need, further examine its impacts, to address these nor are there any significant responsive policy initiatives on the horizon. Research by NASUWT⁶ into the costs of education found that the costs of education are increasing for families, with a consequential increase in disparity of opportunity. For many

³ Para 17, CRC/C/GBR/CO/5, 3rd June 2016.

⁴ Para 8.6, Department of Education consultation on Changes to Eligibility Criteria for Free School Meals and Uniform Grants, April 2017.

⁵ New Policy Institute for Joseph Rowntree Foundation, Monitoring Poverty and Social Exclusion, 2016

⁶ NASUWT The Teachers Union, The Costs of Education 2013/14, NASUWT, 2014

children, access to critical educational opportunities and key entitlements are based on their parents' ability to pay. There is an increasing disparity between schools not only in terms of what provision is offered, but also how much it costs to access this provision, and this is increasing inequality.

Under the Department of Education's Common Funding Scheme, additional funding is allocated to schools for children who are entitled to free school meals.⁷ There is no reporting requirement on schools to account for this funding or to prove that this funding is being spent on improving the educational outcomes of this group of pupils. Concerns exist that this funding is being spent by schools to plug gaps in general education funding and not for the purpose for which it was intended. This is not the case in England where there is an obligation on schools to account for funding that specifically targets economically deprived pupils to tackle the attainment gap between pupils from a low income background and those from a more affluent background.

Goretti Horgan's research, "Child Poverty and Education,"⁸ highlights the large gap between the educational outcomes of children living in poverty and children from better-off families as well as the impact of poverty on maternal mental health, children's anxiety levels, behaviour and cognitive development. Recommendations include the introduction of a 'free school day' for low income pupils to cover the cost of uniforms, books, materials and school trips. She also recommends the redirection of funding to raise teaching quality and incentivise the best teachers to work in the most economically deprived schools. She suggests replacing the current expensive segregated education system with a socially integrated model which is known to provide the best educational outcomes and value for money.

NICCY is currently in the process of carrying out a piece of research with the parents / carers of over 1,000 children at various stages and in the various education sectors in Northern Ireland. It aims to comprehensively examine the costs associated with the education of children in Northern Ireland and its impacts on families and children. It will make clear recommendations based on the research findings and will be used by NICCY to advise Government⁹ and to influence the development of policy and legislation in these areas. The findings of this research will be published in August 2017 and it is envisaged that the area of access to free school meals and uniform grants and the impact that additional funding for schools for children entitled to free school meals will be an important element of this. We will

⁷ Common Funding Scheme 2015 – 2016, Department of Education.

⁸ Child Poverty Alliance, *Beneath the Surface Child Poverty in Northern Ireland*, 2014.

⁹ NICCY has a statutory duty to advise any relevant authority on matters concerning the rights or best interests of children and young persons under Article 7(4) The Commissioner for Children and Young People (Northern Ireland) Order 2003

be seeking a meeting with relevant senior Departmental Officials to discuss this research and our recommendations in the near future.

NICCY has a range of concerns about the current system of free school meals and uniform grants which we believe need to be addressed through a comprehensive review of this entire area. Firstly, given that many nursery pupils are required to wear a school uniform we believe that uniform grants should be accessible to parent and carers of nursery pupils. Also, many parents and young people who NICCY have engaged with have raised the inadequacy of the uniform grant as it does not meet the total cost of many children's school or PE uniforms. They have also informed us of severe hardship suffered through delays in the payment of uniform grants which were not paid before the start of the school term. In addition, NICCY wishes to see the eligibility threshold being amended to reflect family size through use of the methodology used in the Family Resources Survey,¹⁰ the Government's continuous household survey which collects information about the incomes and living circumstances of households and families in the UK. While we are aware that access to free school meals and uniform grants has widened in Northern Ireland over the last number of years, we would also be keen to participate in a wider debate on how access to this vital financial assistance could be further widened where necessary. This should include a comprehensive examination of 'holiday hunger' and measures which should be taken to ensure that no child goes hungry whether they are in school or during the school holidays. We also have serious concerns about the fact that only 82.2% of children entitled to free school meals are actually taking them.¹¹ This clearly requires attention by the Department in terms of destigmatising uptake of free school meals, raising awareness of entitlements and how to make a claim. We recommend that the Department undertakes an urgent comprehensive review and public consultation, including direct consultation with children and young people on access to free school meals, uniform grants and the additional funding schools receive for children entitled to free school meals.

In the context of the current consultation, NICCY appreciates the extreme pressure on public resources across all Government Departments. The Department plans to introduce the receipt of Universal Credit with a net earnings threshold of £14,000 by a parent/guardian or pupil to the eligibility criteria to provide free school meals and uniform grants. It is intended that this new criterion should approximately maintain the numbers of pupils entitled within the available resources. While this appears to be merely a technical amendment to the eligibility criteria, it is acknowledged that there will be some families who currently access these benefits through Working Tax Credit, which has a financial threshold of gross annual taxable income not exceeding £16,190, who will not be entitled under the newly proposed financial eligibility

¹⁰ <https://www.gov.uk/government/collections/family-resources-survey--2>

¹¹ Pg 6, Statistical Bulletin 4/2017 School Meals in Northern Ireland, 2016/17, 11th April 2017, Department of Education.

criteria. This is also identified as a potential adverse impact in the Equality and Human Rights Policy Screening document which states that the overall projected increase in numbers eligible under the new Universal Credit criteria outweighs the smaller number who may no longer be eligible under Universal Credit.¹² The above statement displays a worrying disregard for the section 75 statutory equality obligations with regard to the identification of potential for adverse impact on members of the nine section 75 categories and the resultant statutory obligations. Where potential for adverse impact is identified on members of any of the section 75 categories, this must be mitigated against or an alternative policy progressed which will further the policy aims without having the adverse impact on enjoyment of equality of opportunity. There is a clear statutory equality obligation to take action to address the adverse impact on the enjoyment of equality of opportunity by those children who will no longer be entitled to these benefits as a result of the changes to the criteria and to their parents or carers who will no longer be able to receive this vital financial assistance. These groups are protected under section 75 under the grounds of age and those with dependants.

In addition, designated public bodies are required to not only ensure that there is no adverse impact suffered by members of any of the section 75 categories as a result of proposed legislation, policy or practice, but also to have due regard to the need to promote equality of opportunity among members of the nine groups. This means that there is a statutory obligation on the Department of Education to take action not only to mitigate against adverse impact or inequality but also to proactively promote equality of opportunity in order to comply with section 75 of the Northern Ireland Act 1998. A failure to take action to address a clear adverse impact is in NICCY's view a clear breach of section 75 of the Northern Ireland Act 1998. NICCY recommends that the Department introduces measures to protect those children and their families who are currently entitled to free school meals and uniform grants through claiming Working Tax Credit and ensure ongoing eligibility to these benefits for the lifetime of their claim and for all younger children in the household until they leave school.

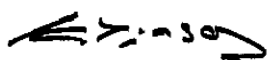
While we appreciate that this is not the subject of the current consultation, where the allocations of scarce resources in any area of education in Northern Ireland are being considered by Government, we feel it is necessary to make one additional point. NICCY believes that there is an urgent need to carry out a thorough examination of the cost to the public purse though the 'duplication' of spend on the administration of the various education sectors in Northern Ireland. While we appreciate that education in Northern Ireland has become a politically sensitive area; however, the focus of any Government consultation related to resource allocations in education within severely restricted budgets must be on ensuring that all children receive an education in line with Article 29(1) of the UNCRC and fulfil their

¹² Department of Education Equality and Human Rights Policy Screening for New Eligibility Criterion for Free School Meals and Uniform Grants, February 2017.

maximum potential. It is extremely regrettable that despite the pressure on resources within education in Northern Ireland there has been no examination of the savings that could be made through educating children and young people in Northern Ireland together. The young people with whom NICCY has engaged on education have been very clear about their desire to be educated together, inclusive of religion or ability. It is vital that the Department carries out a comprehensive public consultation on this issue, including direct consultation with children and young people and also that this consultation exercise examines all the options for the future of education in Northern Ireland. The question as to whether the education of our children is suffering due to the investment of resources in maintaining multiple systems of education must be addressed without further delay. Views should be sought and taken into account in line with Schedule 9 of the Northern Ireland Act 1998 on this issue specifically.

NICCY welcomes the opportunity to provide advice to the Department of Education on its Consultation on Changes to Eligibility Criteria for Free School Meals and Uniform Grants. We call on the Department of Education to take into account the advice and recommendations made in this submission, which we provide in the statutory advice capacity under Article 7(4) of 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003). We would be happy to discuss any element of this submission or provide further information / clarification if required.

Yours Sincerely



Koulla Yiasouma
Commissioner