Advice to the Department of Education on its Consultation on the Review of the Statutory Admissions Criteria for Pre-school Education

July 2021

Introduction

The Northern Ireland 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 up to 18 years, or 21 years, if the young person is disabled or 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).

Child rights standards

The UNCRC is a set of legally binding minimum standards and obligations in respect of all aspects of children’s lives which the Government has ratified and must comply with in the discharge of its functions. The Northern Ireland Government Departments, including the Department of Education (DE) and its arm’s length bodies, are obliged to comply with the obligations under the UNCRC by virtue of being a devolved administration of the UK Government, the signatory to the UNCRC. There are a number of UNCRC articles, Committee recommendations and Committee General Comments which are relevant to the Review of the Statutory Admissions Criteria for Pre-school Education.

**Articles 28 and 29 are the main UNCRC articles which relate to education.** Article 28 outlines the right to education, whereas Article 29(1), which details the aims of education, adds a qualitative dimension to the general right to education under Article 28. Article 29(1) reflects the rights and inherent dignity of the child; it insists on the need for education to be child-centred, child-friendly and empowering and highlights the need for educational processes to be based upon the principles outlined in Article 29(1).

**Other articles are also relevant in the context of the consultation on the Framework for Future Early Years SEN Provision, not least the 4 principles of the Convention.** The UNCRC principles require the Government to ensure that children are not discriminated against - Article 2; their best interests are upheld - Article 3; they develop to their maximum potential - Article 6; and they are able to meaningfully participate in all aspects of their lives - Article 12.

Reflections on the consultation document

We congratulate the DE Pre-School Education Team for producing an extremely clear and informative consultation paper, mapping out the need for change, the range of considerations and options available, and the preferred option of the Department. The issues that need to be considered in relation to this decision are complex, but the document has helpfully provided the information required in a succinct and helpful manner, which will maximise the usefulness of the responses from stakeholders.

Advice on proposals

In considering the best approach to amend the legislation, NICCY has reached the following conclusions:

1. **If the socially disadvantaged circumstances (SDC) criteria continue to benefit children from disadvantaged backgrounds they should be retained**

Both NICCY and the Department recognise the persistent educational inequalities faced by children from disadvantaged backgrounds, and the importance of overcoming these inequalities. We are encouraged by the work of the Expert Panel on Persistent Educational Underachievement. In keeping with its commitment to tackle educational disadvantage, the Department should support measures that benefit children from backgrounds which have higher rates of disadvantage, including children in poverty.

The consultation document outlines the inconsistency in maintaining the SDC criteria while not providing priority to other disadvantaged groups, for example care experienced children. Rather than ensuring consistency by reducing entitlement, the Department should consider including other statutory criteria for pre-school places, particularly where these represent groups of children who are more likely to have poorer educational outcomes than other children.

1. **There continues to be a benefit for children in poverty to be prioritised in pre-school admissions, particularly where there are differences in provision between full-time (4.5 hours with or without a meal) and part-time (2.5 hours).**

NICCY is not supportive of a standardisation of ‘patterns of attendance’ as set out in the Department’s framework for early years, *Learning to Learn*, if this means that all provision will be ‘standardised down’ to part-time hours. However, if it is the Department’s intention to ‘standardise up’ to full time hours, along with a meal, this would be very welcome. Without this information NICCY is unable to support the suggestion of standardising pre-school places or removing the SDC criteria.

The DE paper outlines ‘a longer pre-school education session may have other benefits in terms of opportunities for socialisation, child development and increased engagement with parents’.[[1]](#footnote-1) The provision of a meal is also in keeping with the provision of Free School Meals to disadvantaged children in primary and post-primary schools.

We seek assurances that DE will not reduce all pre-school provision down to part-time provision but, if standardisation of provision is to be achieved, will instead increase the provision across settings to provide full-time hours with meals.

In addition to the benefit of potentially accessing full time places and a meal, there may be benefits in terms of reducing travel costs. As the consultation document points out, unlike provision for children attending primary or post-primary schools, there is no support for travel to pre-school settings for families on low incomes: ‘Prioritising children from lower income backgrounds may assist children in accessing provision close to home, thus removing a potential barrier to their participation.’[[2]](#footnote-2)

1. **If the SDC criteria is to be retained, it should be inclusive of all children in poverty, including those in working households**

NICCY recognises that some parents have not been supportive of the SDC criteria, where they perceive these as prioritising families in receipt of benefits over the ‘working poor’. The SDC criteria should apply to all children in poverty, aligned to the official government measure of Relative Child Poverty (After Housing Costs).

The most recent data for this, as outlined in the Poverty Bulletin 2019-20, showed that 23% of children were in poverty according to this measure, and that two in three (66%) of these children were in households where at least one parent was working.[[3]](#footnote-3) Thus there are twice as many poor children in working households as there are in households entirely dependent on benefits. The SDC criteria must therefore be amended to include poor children in working households.

As part of the Co-design group for the Anti-Poverty Strategy, NICCY recently requested a comparison of children in receipt of Free School Meals with children living in poverty using the government poverty measures. As the table below, provided by NISRA, demonstrates, less than a third of children in poverty are in receipt of Free School Meals. The Department’s statistical bulletin ‘School Meals in Northern Ireland 2019/20’ reports that in that year 96,686 pupils were eligible for Free School meals and there was an uptake of 77,210 pupils.[[4]](#footnote-4)

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| **Percentage and Number of Children in Poverty Receiving / Not Receiving Free School Meals 2016/17 - 2018/19[[5]](#footnote-5)** |   |
|   |   |   |   |   |   |   |   |   |   |
| **Free School Meal Status** | **Relative Poverty (BHC)** | **Absolute Poverty (BHC)** | **Relative Poverty (AHC)** | **Absolute Poverty (AHC)** |   |
| % | Number | % | Number | % | Number | % | Number |   |
| In Receipt of Free School Meals | 28 | 27,000 | 28 | 23,000 | 32 | 36,000 | 30 | 29,000 |   |
| Not in Receipt of Free School Meals | 72 | 69,000 | 72 | 58,000 | 68 | 77,000 | 70 | 67,000 |   |
|   |   |   |   |   |   |   |   |   |   |
| All Children | 100 | 97,000 | 100 | 81,000 | 100 | 114,000 | 100 | 97,000 |   |
| *Figures based on an average of 3 years of data* |
| *Figures are rounded to the nearest thousand / %* |

These statistics suggest that eligibility for Free Schools Meals does not closely match the accepted measures for child poverty, with only one in three children in poverty being in receipt.

Given that this measure is used to target support for socio-economically disadvantaged children, there is an urgent need to review the eligibility criteria for Free School Meals to ensure that it includes all children in poverty. NICCY is not, therefore, supportive of using the Free School Meals criteria as it currently stands. However, if it is reviewed and amended to ensure that all children in poverty are eligible, it would be appropriate for this measure to be used as the SDC criteria.

On the basis of these points, NICCY agrees that, in the short term, the most suitable option is ***Option 3: Retain the statutory criterion and amend the current definition of ‘socially disadvantaged circumstances to include universal credit and all its legacy benefits.***

Retaining the SDC criteria and extending it to Universal Credit (UC) and its legacy benefits provides the best assurance of extending eligibility to all children in poverty, whether they are in working or workless households. It also addresses the inequalities between those who have remained on legacy benefits and those who are now in receipt of UC.

However, we do not agree with the second part of the proposal – i.e. to standardise pre-school education session times and then remove the statutory criterion for ‘socially disadvantaged circumstances’. Without clarity as to whether the provision would be standardised up to full time hours (including a meal), or standardised down to part time hours, it is not possible to determine the implications of this proposal. Moreover, even in the situation where provision is standardised, there is a benefit of maintaining SDC criteria to families in low incomes for whom there is no support for home-school transport. If the SDC criteria were to be removed the Department would need to start funding home-school transport for pre-school children who have not been able to access pre-school places close to home.

Instead, NICCY proposes that DE conducts a review of the Free School Meal eligibility criteria, and amends this to ensure that it more accurately reflects the government measure for relative poverty. Once this has been done, and all children in poverty are eligible for Free School Meals, then at that point the SDC criteria should be changed to match this. This would provide consistency in how DE targets its support to children in poverty.

**Recommendations**

**NICCY recognises that there may be a rationale for differences in the pre-school provision, particularly if this allows children from socially disadvantaged households to access longer hours and a meal. Therefore NICCY recommends that, if standardisation of pre-school provision is to be achieved, this should not be a ‘standardising down’ to part-time hours, but a ‘standardising up’ to full time hours, along with a meal.**

**NICCY agrees that, in the short term, the most suitable options is *Option 3: Retain the statutory criterion and amend the current definition of ‘socially disadvantaged circumstances to include universal credit and all its legacy benefits.* However, NICCY does not agree to the subsequent removal of the SDC criteria.**

**NICCY recommends that DE conducts a review of the Free School Meal eligibility criteria, and amends this to ensure that it more accurately reflects the government measure for relative poverty. Once this has been done, and all children in poverty are eligible for Free School Meals, at that point the SDC criteria should be changed to match this.**

In conclusion, we welcome the opportunity to advise on the review of the Pre-school statutory admissions criteria. Please get in touch if anything is not clear or if you would like to discuss this further.

1. DE, (2021), Consultation document, *Pre-school Education: Review of the Statutory Admissions Criteria*. [↑](#footnote-ref-1)
2. Ibid [↑](#footnote-ref-2)
3. DfC, [Northern Ireland Poverty Bulletin 2019-20](https://www.communities-ni.gov.uk/system/files/publications/communities/ni-poverty-bulletin-201920.pdf). [↑](#footnote-ref-3)
4. DE/NISRA, (April 2020), [School Meals in Northern Ireland 2019-2020.](https://www.education-ni.gov.uk/sites/default/files/publications/education/School%20meals%20statistical%20bulletin%20-%20Apr%202020.PDF) [↑](#footnote-ref-4)
5. DfC, Note of Meeting - Anti-Poverty Strategy Co-design Group 23 February. [↑](#footnote-ref-5)