**Consultation by Department of Justice of Court approval of minor settlements (Compensation settlements agreed for personal injuries in respect of children where legal proceedings have not issued)**

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”).

NICCY welcomes reviews of law and legal practice that have the goal of improving the access, experience, and outcomes of children and young people to justice. Article 2 of the UNCRC requires prevention of discrimination against children and young people. Article 3 directs courts of law, when acting in concern of children, to have the best interests of the child as the primary consideration. Article 4 calls upon countries to put in place legislation and administrative practices to uphold UNCRC rights.

It is in the context of the above that NICCY has reviewed the Department of Justice (“DoJ”) Consultation *‘Court approval of minor settlements’* (“the Consultation”) as published in July 2021.[[1]](#footnote-1) In doing so NICCY has also been mindful of the *‘Review of Civil and Family Justice in Northern Ireland’* (“the Review”) report as published in September 2017.[[2]](#footnote-2)

The Consultation gives attention to the current situation in Northern Ireland whereby if a child (or young person under the age of 18) is injured the insurer of the “at-fault” parties can, outside of court proceedings, make an offer of compensation to those who have parental responsibility for the child or young person, who can decide whether to accept. This can occur regardless of whether those with parental responsibility have received independent legal advice. This carries the real risk that matters will be resolved for less compensation than what might be deserved according to prevailing legal standards.

If the matter for which compensation is being given is subject to legal proceedings then the amount of the award must be approved by the court. In most such cases the court will then supervise and protect those compensation funds until the child or young person reaches the age of 18. Cases which are substantively resolved outside of legal proceedings can at present be *voluntarily* submitted to the court for final approval of the amount as well as management of the funds.

In cases where the judiciary are not involved there will be no court protection (on behalf of the child or young person) of compensation money paid directly to parents or guardians.

There is thus a lack of consistency as to what can and will happen when a child or young person in Northern Ireland is involved in a matter that justifying compensation. The Review commented with *‘grave concern’* as to the number of people under the age of 18 years who had resolved road traffic cases without legal representation in the period of 2011 - 2014.[[3]](#footnote-3) The Review opined that such cases had been settled without court approval or supervision of resulting compensation. It was concerned that the observed trend would increase[[4]](#footnote-4) and explicitly recommended that:

*‘Legislation … be brought forward to compel a requirement for court approval for all legal cases involving a settlement or award of damages to minors’*.[[5]](#footnote-5)

The Consultation demonstrates that efforts to obtain confirmation of the number of compensation claims involving children showed an inconsistency between records held by the Department for Communities (“DfC”) and those of the Association of British Insurers (“ABI”). In trying to explain this, DoJ appear to have placed heavy reliance on replies from ABI.

However, NICCY also notes that a comparison of DfC figures cited in Table 1 and Table 3 within the Consultation show that:

* In 2017, 2018, and 2019 2,034 cases involving children were resolved out of court;
* In 947 of those resolved cases there was no record of a legal representative being instructed.

Seemingly on the basis of explanations from ABI, the Consultation concluded that there appears *‘to be around 100 settlements of compensation to children per year that are not submitted for court approval’*.[[6]](#footnote-6) The value for these is unknown.

Even if the lower figure is accepted a considerable number of children and young people in Northern Ireland are involved. It is impossible to know how many of these were under-compensated. Without court protection it is also impossible to know where the awards to all children and young people were properly distributed or spent.

It is clear young people in Northern Ireland under the age of 18 entitled to compensation for injury experience different levels of protection by virtue of whether or not an adult make a decision to bring the case to court. Such decisions cannot be made without proper information and informed advice. This is a breach of the UNCRC principles cited above. NICCY believes this should be resolved in accordance and strongly welcomes the recommendation of the Review:

*‘Legislation … be brought forward to compel a requirement for court approval for all legal cases involving a settlement or award of damages to minors’*.[[7]](#footnote-7)

Regulation of this matter should be statutory, not voluntary. NICCY is aware that concern has been expressed as to the potential costs of all cases being brought before the courts. It is the position of NICCY that judicial protection should be applied to all, equally. For the same reason the Commissioner does not agree that a threshold should be applied in respect of the value of cases subject to judicial scrutiny. Whilst parents endeavour to do the best for the children it is important that judicial processes support them fully.

Therefore the Commissioner believes that legislation requiring such judicial protection is important in protecting children’s rights and that having settlement funds managed under the direction of the court, until the child reaches the age of eighteen, closes the lacuna that currently exists; a lacuna that can lead to breaches of children’s rights.

Furthermore, NICCY notes that the Consultation focussed heavily on “parents” being able to agree settlements for their children. That term (“parents”) was not explicitly defined as meaning those with statutory Parental Responsibility. This raises questions as to what consideration was given to Looked After Children or those living in informal fostering arrangements. This is something which DoJ, must factor in when finalising arrangements.

NICCY also calls attention to a matter not considered within the Consultation; in instances of accidents involving untraced drivers, where the compensating body can decide whether awarded funds are placed under the supervision of the court.[[8]](#footnote-8) NICCY urges the DoJ to take the opportunity to review this matter when progressing legislative reform so to avoid any differential treatment.

In conclusion the NI Commissioner for Children and Young People welcomes the proposal to reform the process by which compensation for children with personal injuries where court proceedings have not been issued and looks forward to seeing this progressing in compliance with the rights of children and young people in Northern Ireland.

1. [Consultation minor settlements | Department of Justice (justice-ni.gov.uk)](https://www.justice-ni.gov.uk/consultations/consultation-minor-settlements) (“Consultation”) [↑](#footnote-ref-1)
2. [Review Group's Report on Civil Justice | Judiciary NI](https://www.judiciaryni.uk/publications/review-groups-report-civil-justice) (“Review”) [↑](#footnote-ref-2)
3. Paragraph 7.56, Review [↑](#footnote-ref-3)
4. Paragraph 7.58, Review [↑](#footnote-ref-4)
5. CJ34, Review [↑](#footnote-ref-5)
6. Paragraph 2.29, Consultation [↑](#footnote-ref-6)
7. CJ34, Review [↑](#footnote-ref-7)
8. The Untraced Drivers Agreement, paragraph 25. [2004-northern-ireland-untraced-drivers-agreement.pdf (mib.org.uk)](https://www.mib.org.uk/media/166901/2004-northern-ireland-untraced-drivers-agreement.pdf) [↑](#footnote-ref-8)