

## **Response from the Northern Ireland Commissioner for Children and Young People to the Community Safety Strategy 15 April 2011**

### **1.0 Introduction**

The office of 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)(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. The remit of our office is children and young people from birth up to 18 years, or 21 years of age where a young person is care experienced or has a disability.

In determining how to carry out her functions, the Commissioner's paramount consideration is the rights of the child and NICCY is required to base all its work on the United Nations Convention on the Rights of the Child (UNCRC).

NICCY responded to the 2008/09 NIO consultation on the "Together. Safer. Stronger." Strategy, participated in the November 2009 NIO Engagement Event and responded to the Department of Justice pre-consultation exercise and children's sector stakeholder event in August and September 2011. We therefore welcome the opportunity to provide comment on the "Building Safer, Shared and Confident Communities" Community Safety Strategy consultation document.

### **2.0 International Law**

#### **2.1 Children's Rights**

The UK Government, including Northern Ireland, is a signatory to the UNCRC and has agreed to uphold the rights of children and young people based on the Convention.

NICCY appreciates that there are often complexities when reconciling the rights of children and young people with their welfare and best interests. We recommend the proposals are reviewed against the following relevant articles within the UNCRC and that they are incorporated as underlying principles to ensure that the rights and best interests of children are upheld and protected:



- Article 2: Children shall not be discriminated against and shall have equal access to all articles in the UNCRC.
- Article 3: All decisions taken which affect children's lives should be taken in the child's best interests.
- Article 6: All children have the right to life and to the fullest level of development.
- Article 12: Children have the right to have their voices heard in all matters concerning them.

The following articles are also relevant and require special consideration within the Implementation Plan:

- Article 15: Children and young people have the right to meet together in groups as they wish, as long as this does not harm other people or stop them enjoying their rights.
- Article 19: Children have the right to be protected against all forms of violence.
- Articles 33: Children should be protected from the use of drugs and illegal substances and not be used in the production or trafficking of such substances.
- Article 37: Children should not be subject to cruel, inhuman or degrading treatment or punishment and those who come into contact with the law have the right to a fair trial, treated fairly and humanely.
- Article 40: All children accused, or convicted, of committing a crime must be treated in a way that helps them to respect the human rights of others and there should be many ways to help children and young people who break the law, including care, guidance and counselling.

In its Concluding Observations in its Report on the United Kingdom in October 2008, the United Nations Committee on the Rights of the Child expressed concern at the restriction imposed on the freedom of movement and peaceful assembly of children, by Anti Social Behaviour Orders (ASBOs) and the introduction of the concept of dispersal zones and recommended that:

- Government should reconsider ASBOs as well as other measures such as mosquito devices insofar as they may violate rights to freedom of movement and peaceful assembly.
- Government, in cooperation with the media, should respect the privacy of children in the media, especially when exposing children to public shame.
- Government should conduct an independent review on ASBOs with a view to abolishing their application to children and young people.



NICCY encourages the Department to take all possible steps to ensure the Community Safety Strategy is compatible with the UNCRC.

## **2.2 European Convention on Human Rights**

The Human Rights Act (1998) incorporated provisions of the European Convention on Human Rights into domestic legislation. Although the Human Rights Act is not child-specific, children are afforded the rights contained within it to the same degree as adults. It is therefore essential that the proposals outlined in this consultation are compatible with the following articles:

- Article 5: The right to liberty and security of the person.
- Article 6: The right to a fair hearing.
- Article 8: The right to family life.
- Article 11: The right to freedom of association and assembly.

## **3.0 Research**

In 2008 NICCY published a major review of children's rights which highlighted the gaps, problems and difficulties in the protection, promotion and implementation of children's rights in Northern Ireland.<sup>1</sup> A key theme arising from this research was protection, including in relation to community safety. Children and young people identified concerns such as, crime and the fear of crime, community segregation and sectarian violence, paramilitary control and drug and alcohol use as needing addressed.

The review identified the following as priority areas for government action:

- Take steps to address the negative portrayal of young people within the public domain and the implications this has for children's use of public space.
- Replace the use of ASBOs with responses that address the causes of anti-social behavior and do not blur the boundaries between civil and criminal law.
- Provide greater protection of children within communities through the delivery of effective initiatives to strengthen and promote community safety.

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<sup>1</sup> NICCY (2008) Children's Rights: Rhetoric or Reality, A Review of Children's Rights in Northern Ireland 2007/08, (Belfast: NICCY).



We have also included a copy of our March 2010 policy briefing on Community Safety which called for government to:

- Ensure a more positive focus on children and young people is developed as policing and justice are devolved.
- No longer use ASBOs against children and abandon proposals for the introduction of Dispersal Zones which would impact on children.
- Make greater efforts to overcome community divisions and address the threats they pose for children and young people.

This was one of a series of papers released during our 'Make It Right' campaign to celebrate the anniversary of the UNCRC. As part of this, briefings and workshops for children and young people were developed. Messages NICCY received from children for government in relation to community safety have been enclosed with our response.

In 2010, NICCY placed questions on the Young Life and Times Survey in relation to the negative stereotyping of young people and their experiences of being asked to move on within communities and in other public spaces. We have also enclosed a copy of this paper.

#### **4.0 Consultation with Children and Young People**

NICCY has regularly expressed concern that the Section 75 statutory duty to consult on and equality impact assess policies has not been adequately enforced in respect of the age criterion. This has meant public authorities are consistently failing in their duty to meaningfully consult with children and young people on issues that have direct relevance to their lives. Article 12 of the UNCRC also states that children have the right to express their opinion in matters directly impacting upon them and to have those views given due weight in accordance with their age and maturity.

NICCY welcomes the consultation that the Department has facilitated on the Community Safety Strategy. We would like further information on how the process has sought to engage the specific groups of children and young people that are more likely to be most affected by the proposals contained in the draft strategy.



## **5.0 Comments on the Policy**

### **Foreword**

NICCY endorses the comments made by the Minister that the devolution of policing and justice powers presents a “once in a generation opportunity” to create a new vision for a safe and just Northern Ireland and to develop policing and justice arrangements that reflect this. The Community Safety Strategy is an important element of this vision and this consultation provides scope to reframe the meaning of community safety so it is focused on ensuring communities are safe and inclusive places for children and young people.

We welcome the recognition that the Strategy must take a long term approach and the commitment that it will seek to address the underlying risk factors which act as barriers to communities being safe and cohesive places in which to live. The role of early intervention is appropriately highlighted as a key area in this approach.

### **Executive Summary**

NICCY broadly welcomes the aims and objectives of the Strategy. It is important that the document has referenced the wider policy context in which it will operate. It must seek to complement and strengthen developments in other key areas, such as the Review of Youth Justice and Neighbourhood Renewal programmes.

The Strategy must also pay due regard to the Children’s Strategy, particularly in relation to the high level outcomes that children and young people will live in safety and with stability, contribute positively to community and society and live in a society which respects their rights. Again we would remind the Department that the Strategy should reflect both the spirit and entitlements of the UNCRC.

### **Introduction**

We broadly welcome the principles of the Strategy and endorse the commitment to ensure that evidence based solutions are used and a balanced approach to community safety is developed.

### **Community safety**

It is helpful that the scope and definition given recognises the importance of prevention and diversion activities. It is important that this work in relation to community safety is distinct and separate from the remit of the agencies and



services, such as youth justice, that become involved when a crime has been committed.

We would recommend that the definition of community safety should be more reflective of the introductory comments to the document, which highlights the need for communities to be cohesive and shared. As part of this, the Strategy should fully embed the principle that children are integral members of our communities whose concerns and protection must be central to community safety policy.

In this context, the particular needs and vulnerabilities of children and young people should be recognised. For instance, children may have limited access to outside space and opportunities due to parental fears that communities are not safe places and their access to travel outside their neighbourhood may be dependent on family members and cost. The importance of neighbourhood areas and facilities are therefore particularly significant for children, especially those living in disadvantage, whether this relates to access to public spaces and parks or use of libraries and centres.

The Community Safety Strategy must also recognise that young people are more likely to be victims of crime and to be at risk due to community conflict and paramilitary activity. Indeed, the significant contextual issues regarding the legacy of the conflict cannot be ignored and were raised by children and young people in the 2008 Children's Rights Review and by the NICCY Panel who were consulted to inform this response. Children and young people have discussed the negative impact these issues have on their safety and their ability to move freely within their communities and into other areas, representing a significant risk to their welfare.

Focusing on the protection of children in community spaces is not intended to dismiss the fears or minimise the impact of criminal or anti-social behaviour in which a small number of children and young people may be engaged and which must be appropriately and effectively addressed. However, a concern with children's protection does require a review of current approaches and their impact. For example, a failure to accommodate children in public spaces who may then be moved on can result in them being in more dangerous areas where few adults choose to go and where they can be vulnerable to violence or other forms of harm.<sup>2</sup> Such dynamics often have a negative impact on relations

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<sup>2</sup> McAllister, S., Scraton, P., and Haydon, D., *Childhood in Transition: Experiencing Marginalisation and Conflict in Northern Ireland* (2009), (Belfast: QUB, SCUUK, Prince's Trust).



between young people, adults and the police, as well as failing to address the underlying causes of community tensions.<sup>3</sup>

NICCY has raised concerns about the negative stereotyping of children and young people on a number of occasions. We are concerned that a number of recent high profile incidents which have been portrayed as signifying an escalating crisis in the behaviour of children creates a climate in which it is difficult to address issues about children's vulnerabilities and safety within communities.

We warmly welcome the Minister's commitment not to consider proposals in relation to Parenting Orders, Dispersal Zones and Support Orders. We are of the view that such proposals would present significant breaches to the rights of children and young people and would not offer an effective way of addressing community safety issues. We request that the Department contacts the Commissioner immediately if such measures are considered at any point in the development of the Strategy or an accompanying Action Plan.

### **Safer Communities**

In considering anti-social behaviour within this aim, the Strategy must remain mindful of its own noted concern that definitions and perceptions of this will often be subjective. This will depend on a number of factors, such as, the context and location of behaviour and incidents and the exceptions and experiences of individuals. NICCY's view is that while anti-social behaviour is indeed a problem which can affect the lives of children, young people and adults alike in communities, this must be distinguished from criminal acts. Prevention and diversion pathways for anti-social behaviour should therefore differ from those for criminal behaviour.

In considering the Department's reference to enforcement we remain of the view that ASBOs are not an effective way of dealing with anti-social behaviour and fail to address the underlying problems that contribute to this problem. We would highlight our concerns regarding the low thresholds applied when an Order is issued and the potential for a child to be given a criminal record for the breach of an Order which has been granted on a civil standard.

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<sup>3</sup> Roche, R. (2005) Something to Say: the Complete TRIPPOJECT Survey Report on the Views of Young School Leavers in the Derry City Council District Areas. (Belfast: Blackstaff).

Byrne, J., Conway, M. & Ostermeyer, M. (2005) Young People's Attitudes and Experiences of Policing, Violence and Community Safety in North Belfast, (Belfast: Institute for Conflict Research).



Indeed, the United Nations Committee on the Rights of the Child notes that ASBOs blur the line between civil and criminal law and “may in practice contribute to [children’s] entry into contact with the criminal justice system”.<sup>4</sup> Further to this, ASBOs do not engage young people in rehabilitative practices. As we have stated previously, we recommend that government ends the use of ASBOs in relation to children and young people. It is also our view that no other enforcement powers should be employed in relation to anti-social behaviour and that resources should instead be invested in effective prevention and intervention methods.

In reflecting on the Department’s consideration of community safety interventions and enforcement strategies more broadly, it is important government ensures that responses deployed do not prevent children from accessing their rights to freedom of movement and peaceful assembly, regardless of involvement in anti-social or criminal behaviour.<sup>5</sup>

NICCY welcomes the comments in relation to addressing underlying risk factors but notes our concern that while early years intervention is mentioned, the Strategy does not identify a full range of underlying risk factors. For instance, it is important to acknowledge that age itself is not simply a risk but that this is mediated by exposure to other factors, such as poverty, marginalisation and violence. This involves not only appreciating the individual and family context of children’s lives, but also the broader social and economic factors which shape this.

Therefore, in order to properly address community safety issues the Department and the Executive as a whole must tackle these issues. It is right that the document acknowledges that Justice is not the appropriate Department in relation to early years intervention. Indeed, our view is that the focus should not simply be on the delivery of services by Justice but on making sure children and families can access high quality, universal services across health, social care and education and are supported by multi-agency, holistic interventions. Such support must also be available in relation to the early stage interventions at key transition points noted in the Strategy.

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<sup>4</sup> UN Committee on the Rights of the Child (2008) Consideration of Reports Submitted by State Parties under Article 44 of the Convention, United Kingdom of Great Britain and Ireland. Concluding observations (Geneva: United Nations).

<sup>5</sup> UN Committee on the Rights of the Child (2008) Consideration of Reports Submitted by State Parties under Article 44 of the Convention, United Kingdom of Great Britain and Ireland. Concluding observations (Geneva: United Nations).



The principles of such an approach would also be more in keeping with the United Nations Riyadh Guidelines for the Prevention of Juvenile Delinquency. These standards set out, for example, the importance of avoiding criminalising children for behaviour that does not cause serious harm, ensuring approaches reduce the motivation, need and opportunity for offending as well as addressing the conditions which give rise to offending.<sup>6</sup> The Strategy must address why experiences of inequality and disadvantage are so common where there are issues in relation to community safety and crime.

Following from this, while we acknowledge the potentially positive impact of diversionary programmes, the referral of both offending and non-offending behaviour to the same programmes could be understood as criminalising young people who have not offended, effectively bringing children who have not committed an offence closer to the justice system.<sup>7</sup>

A further illustration of our concerns can be seen in the Child Intervention Panels pilot that is referenced. While we support the commitment to multi-agency approaches to address underlying concerns in children's lives we again state that this should be on the basis of recognising them as being in need of such support rather than simply as being at risk of offending. Therefore, while we endorse the Department's support for and resourcing of such programmes we would seek assurances that these initiatives are delivered by agencies other than those within the justice sector. It is also important that other departments and agencies provide appropriate support to and place equal value on such holistic interventions.

NICCY is also concerned that the Youth Conferencing Scheme is considered to be an early intervention tool. We regard the conferencing process as providing a restorative justice response when a crime has been committed and as such are unclear about the appropriateness of this in dealing with community safety concerns. We are aware of concerns in relation to young people's informed consent for participation in the conferencing process and note that all approaches, including panels, contracts and conferencing must be child rights compliant and include appropriate follow up support.<sup>8</sup>

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<sup>6</sup> UN High Commission for Human Rights (1990) Guidelines for the Prevention of Juvenile Delinquency, (Geneva: United Nations).

<sup>7</sup> UN Committee on the Rights of the Child (2008) Consideration of Reports Submitted by State Parties under Article 44 of the Convention, United Kingdom of Great Britain and Ireland. Concluding observations (Geneva: United Nations).

<sup>8</sup> Haydon, D. (2008) NGO Alternative Report to the UN Committee on the Rights of the Child. (Belfast: Save the Children/Children's Law Centre).



We welcome the acknowledgement that design and planning have an important role in creating safer, more inclusive and cohesive communities and reducing opportunities for crime and anti-social behaviour. We highlight the importance of involving local communities and children and young people in this and in responding to environmental problems.

We agree with the Department's concerns to improve town and city centre safety and again note children and young people's experiences of feeling and being unsafe in these spaces. In relation to the aim of developing safer communities we also welcome the Strategy's discussion on the need to tackle the harm caused by alcohol and drug use within communities. Children who participated in the 2008 Children's Rights Review highlighted this and it is important that the Department works closely with health and education agencies who are most appropriately placed to address these issues. We must also reiterate our position that it is not acceptable for test purchasing which involves children to be part of the justice and policing approach to dealing with the sale of alcohol to those under 18 years.

NICCY further welcomes the Strategy's recognition that domestic and sexual violence is too often a part of life within communities. This must of course include a recognition that children and young people may themselves be subject to sexual and domestic violence and acknowledge the impact of witnessing domestic violence on children and young people. The Strategy must ensure that appropriate links are made with the MARAC and PPANI arrangements.

## **Shared Communities**

We recommend that the aim in this section includes references to respecting everyone's rights, including those of children and young people, as set out in part 2.4.1 of the document.

We welcome the commitment to address divisions within and across communities and to deal with difficulties in interface areas, particularly by addressing these through means other than physical barriers. It is important in this context that children and young people's particular vulnerability and need for protection, for example, in instances of interface violence or parading conflict, is prioritised.

We note that this area reflects one of the calls of our March 2010 Community Safety briefing which stated government should make greater efforts to overcome community divisions and address the threats they pose for children



and young people. This context was a significant omission from the 2008/09 strategy document and it is important it is now being recognised.

Research in North Belfast found that 82% of young people had experienced violence and disorder and 61% felt that their religious or cultural background restricted their movements in the wider community.<sup>9</sup> This illustrates not only the very high levels of violence some of our young people are subject to but also draws attention to how political and religious segregation can limit the ability of children to move safely.

The 2009 'Childhood in Transition' report which explored children and young people's experiences in six communities across Northern Ireland concluded that they were often 'badged' by the places they lived and felt imprisoned within their communities. The report also noted that young people had a fear of being identified as 'the other', with this limiting their ability to move freely, enjoy play and leisure opportunities or build social relations which all impact on their feelings of safety.<sup>10</sup> These findings underline the importance of the Department's stated aim of building safe and shared access to play and leisure, to services and to employment.

It is important that the Community Safety Strategy also raises the issue of addressing hate crime which affects many children and families. A further finding of the 2009 research cited above was that children and young people across the religious divide shared negative views towards foreign nationals. As well as responding to issues arising from the legacy of the conflict, the Strategy must therefore also have the capacity to respond to the antagonism and harassment experienced by children from minority ethnic groups and to support the promotion of good relations within areas.<sup>11</sup> In discussing community safety, the NICCY Youth Panel identified the importance of neighbourhood initiatives to build relationships between different sections of the community, including on an intergenerational basis and with newcomer children and families.

The Strategy's statement that addressing this range of issues is part of a broader agenda which includes supporting communities through economic development, improved housing, increased employment opportunities and so on is important. We would welcome greater detail on how the Community

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<sup>9</sup> Hamilton, J., Hansson, U., Bell, J. & Toucas, S. (2008) *Segregated Lives, Social Division, Sectarianism and Everyday Life in Northern Ireland*. (Belfast: Institute for Conflict Research).

<sup>10</sup> McAllister, S., Scraton, P., and Haydon, D., *Childhood in Transition: Experiencing Marginalisation and Conflict in Northern Ireland* (2009), (Belfast: QUB, SCUK, Prince's Trust).

<sup>11</sup> Jarman, N. (2003) *Victims and Perpetrators, Racism and Young People in Northern Ireland* *Child Care in Practice*, Vol. 9, No.2, pp.129-139(11).



Safety Strategy will work in practice to address the complex and multiple problems experienced by some communities.

The Department is right to highlight the critical role of leadership within communities and we note that safeguards must be developed to ensure that inclusive, progressive and rights respecting leadership is fostered and supported. We also remind government of their role in facilitating the development of cohesive and active communities.

## **Confident Communities**

As part of the goal of having confident communities we note the importance of children, young people and adults feeling safe and also having confidence in justice agencies. The Department's reference to less than half of all crimes committed being reported to PSNI may reflect levels of confidence in statutory agencies. The NICCY Youth Panel drew attention to the importance of police having an in-depth knowledge of the areas they work in and ensuring they build relationships with all groups in communities, including young people, in order to support greater confidence.

The Commissioner has previously contacted the Policing Board to voice concerns in how the police may use stop and search powers in relation to young people and in how they may respond to children's reporting of crime and concerns about their safety. The Young People's Behaviour and Attitudes Survey has found that more than half of the children who participated had come into contact with the police over the previous year with 30% saying this was because they were moved on. Almost a quarter of young people believed that they were treated unfairly by the police.<sup>12</sup> The Policing Board's recent Human Rights Thematic Review on children has highlighted the importance of addressing these concerns to ensure that young people have confidence in justice agencies.<sup>13</sup>

We are pleased the Department recognises that the fear of crime in a community may not represent the risk levels of actual crime and that this needs to be addressed in a sensitive manner while being remaining mindful that fear of crime impacts on everyday lives.

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<sup>12</sup> Northern Ireland Statistics Research Agency (2007) Young Person's Behaviour and Attitudes Survey, (Belfast: NISRA).

<sup>13</sup> Northern Ireland Policing Board (2010) Human Rights' Thematic Review: Children and Young People. (Belfast: NIPB).



In relation to the introduction of Community Safety Wardens we would like to highlight that such schemes, including watch schemes, must be carefully planned and regulated to ensure they are not associated with paramilitary groups or other forms of community control. We would also signal our concern that where district Councils issue the enforcement powers available to wardens, guidance is put in place to ensure consistency across council areas and guard against children experiencing more punitive regimes simply on the basis of the council area they live in.

NICCY acknowledges the progressive principles that are at the centre of community based restorative justice projects, but in the context of the Community Safety Strategy would again state our concern that the lines between community safety and criminal justice must not be blurred. Where initiatives are responses to crime that has been committed they should be in the remit of justice agencies and remain distinct from prevention work, projects to reduce crime and responses to anti-social behaviour where no crime has been committed. Following from this we request further detail from the Department on the expansion of community based restorative justice into the areas of neighbourhood renewal, mediation and diversionary youth work. Where community based restorative justice projects and other initiatives are in operation they must of course operate in compliance with the principles of children's rights and the paramountcy of the best interests of the child.

### **Delivering in partnership**

The ability of the Strategy to develop and sustain meaningful partnerships will be integral to its success. Delivering in partnership must include working across the Executive, with local government, with the voluntary and community sector and, most importantly, with communities, families and children themselves.

NICCY is acutely aware of the economic climate in which the Strategy is being developed. We warmly welcome the Department's recognition of the financial savings that will be achieved through effective early intervention and highlight the broader social benefits that preventing and intervening early to address problems will secure. We would highlight that achieving this will require a strategic funding approach across all departments. It is important the Strategy's commitment to supporting evidence based approaches is shared across all agencies.

In monitoring the Community Safety Strategy, while we appreciate the rationale for not including crime reduction targets, it is important that the evaluation is both qualitative and quantitative. This must not be simply adult focused but should reflect children and young people's experiences and views. Indeed, a



commitment to building in participatory mechanisms across all aspects of the Strategy, whether this relates to developing new Policing and Community Safety Partnership structures, monitoring the impact of warden and watch schemes or evaluating the success of the Community Safety Strategy as a whole, should be given by the Department.

## **Equality**

As we have highlighted throughout our response, children and young people require special attention within the Community Safety Strategy and all aspects of the Strategy must be compliant with and respectful of the rights and entitlements of the UNCRC.

## **6.0 Conclusion**

### **Key Recommendations**

- The Community Safety Strategy must reflect the rights and entitlements of the UNCRC and recognise the particular needs and vulnerabilities of children and young people, including their need for protection within communities.
- The Strategy must ensure that responses to community safety issues where they are not of a criminal nature, remain distinct from criminal justice interventions.
- The Department put in place safeguards to ensure that all initiatives and programmes within the Strategy, including early intervention programmes, Community Warden Schemes and community based restorative justice projects, are child rights compliant.
- Government should end the use of ASBOs against children and young people.
- The Department should contact the Commissioner immediately if proposals to consider measures such as, Dispersal Zones and Parenting Orders are considered.
- The Northern Ireland Executive must work together to address the root causes of community safety problems, including through the provision of multi-agency, holistic support to children and families and through tackling community division and violence.



- The Department must work in partnership across the Executive, with local government, the voluntary and community sector and, most importantly, communities, families and children themselves to develop and deliver the Strategy.

