



northern ireland commissioner
for children and young people

Advice to the Department of Education regarding proposals for progressing the Review of Special Educational Needs and Inclusion

Northern Ireland Commissioner for Children and Young People

February 2012

PURPOSE OF PAPER

This paper presents the Children's Commissioner's advice to the Minister for Education regarding his summary of key proposals for progressing the Review of Special Educational Needs (SEN) and Inclusion. This is outlined in the Ministerial Foreword to the Department of Education's (DE's) January 2012 'Summary Report' of responses to the associated 2009 consultation and Equality Impact Assessment¹.

The Commissioner's advice is also informed by the Minister's briefing to the Northern Ireland (NI) Assembly Committee for Education on 18 January 2012², and discussions between the Commissioner, members of her staff and members of the Department's SEN and Inclusion Review team during a meeting which took place on 6 February 2012. **It was agreed at that meeting that the Commissioner would respond to the Department in writing regarding the Minister's proposals for developing the policy towards implementation.**

It was indicated to the Commissioner that the Minister wishes to receive feedback from Department officials regarding stakeholders' perspectives on the updated proposals by the end of February 2012. This paper highlights some pertinent child rights issues which the Minister should take into account before making final decisions on the development of the policy.

¹ Department of Education (January 2012) 'Summary Report of Responses to the Consultation on Every School a Good School – The Way Forward for Special Educational Needs and Inclusion and the associated Equality Impact Assessment' (Bangor: DE).

² Northern Ireland Assembly Committee for Education Official Report (Hansard), 'Special Educational Needs and Inclusion', 18 January 2012:
<http://www.niassembly.gov.uk/Documents/Official%20Reports/Education/2/Special%20Educational%20Needs%20and%20Inclusion.pdf> [last accessed 16 February 2012].

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Appendix 1: Commissioner's recommendations in her January 2010 response to the consultation on 'Every School a Good School - The Way Forward for Special Educational Needs and Inclusion'

Appendix 2: Extract from: NICCY (2009) 'Children's Rights Rhetoric or Reality – A Review of Children's Rights in Northern Ireland 2007/08'

SUMMARY OF THE COMMISSIONER'S ADVICE TO THE MINISTER FOR EDUCATION

This summary outlines the Commissioner's key recommendations concerning the SEN and Inclusion Proposals. It also highlights a number of key queries and concerns regarding the proposals. It addresses each of the main issues in turn.

1. Critique of the Department of Education's engagement with stakeholders

RECOMMENDATIONS:

The Commissioner's overarching recommendation regarding the current SEN and inclusion proposals is to urge the Minister to continue to engage with stakeholders. The following actions are recommended:

The Minister must act on the concerns already expressed by parents, stakeholders working at the operational level (and those representing them) and oversight bodies including NICCY. This should involve making necessary changes to the Department's plans in order to better protect the rights of children with SEN, and providing further details on the Department's proposals, which may alleviate some concerns.

The Minister must ensure that the Department meaningfully engages with children and young people with SEN, and ensure that the developing SEN and Inclusion policy is informed by this engagement. The Department has indicated to the Commissioner that it wished to complete any such engagement with children and young people by February 2012, as the Minister intends to finalise his proposals by then. The Commissioner does not believe this would be possible, and recommends that the Department consider a longer term plan of engagement, further proposals for which are outlined in this section.

1. SEN and inclusion framework

RECOMMENDATIONS:

The Department must provide detail on the structure of the two-level approach and demonstrate how it believes this will reduce the level of bureaucracy associated with the current five-stage approach, and how the needs of children will be better met.

In particular, the Department must provide clarity regarding the trigger for statutory assessment, which is currently set out within stage 3 of the Code of Practice on the Identification and Assessment of Special Educational Needs.

2. Role of the Education and Training Inspectorate (ETI) in monitoring standards in schools for identifying, assessing and meeting the needs of SEN pupils

RECOMMENDATION:

Given the fact that almost one fifth of primary schools and almost two fifths of post-primary schools inspected in 2010/11 did not have arrangements of a sufficiently high standard in place to identify, assess and meet the needs of pupils with SEN, the Department of Education must outline the measures that will be put in place to enable inspectors to revisit such schools, as well as outlining details of how inspections will be undertaken in other schools.

3. Strengthening legislative duties of boards of governors

RECOMMENDATIONS:

The Commissioner recommends that the proposals regarding strengthening of legislative duties on boards of governors must go further than the proposed statutory duty to ensure that every child has a Personal Learning Plan (PLP) in place.

Given the fact that a significant proportion of pupils in mainstream schools will move from a statement to a PLP, coupled with the fact that a significant proportion of schools inspected in 2010/11 did not have high standards in place to identify, assess and meet the needs of pupils with SEN, very strong duties on boards of governors will be required. The enforcement mechanism must be strong enough so as to ensure that schools which are currently not achieving high standards are forced to make that provision. One of the Department's proposals in this regard is to ensure that PLPs have stronger links with outcomes (than is the case under the current SEN framework). The Department should indicate how the achievement of outcomes will be monitored by the Education and Training Inspectorate.

Given the Minister for Education's indications in 'Putting Pupils First' that the role of boards of governors will be reviewed, the Commissioner would urge the Minister to explore mechanisms for parents and pupils to appeal decisions of boards of governors.

The Department must also provide details of the training which it will propose that boards of governors are given in order to ensure they understand the content and application of the strengthened statutory duties.

4. Capacity building of teachers

QUERIES:

- In light of the Minister's indication that the pilot in 'educational assessment' will be rolled out over the next two years, does this mean that the pilot will be rolled out over the course of 2012/13 and 2013/14?
- Is the 'educational assessment' pilot for primary and post-primary teachers, and pre-school teachers? If pre-school teachers are not currently included, can they be included? Which schools (and early years' settings, if relevant) are participating?
- Who will be responsible for delivering the pilot?
- Officials indicated during their recent meeting with the Commissioner that the pilot will be formally evaluated – What are the details of the formal evaluation?

5. Substantial reduction in access to the enforceable rights associated with statements/ CSPs

QUERIES:

With reference to the comment by the Minister for Education in his January 2012 briefing to the Assembly Education Committee to the effect that:

"Following a transitional period [which NICCY understands will be a two year period following the introduction of legislative changes to the SEN framework], CSPs will generally apply to around half the children who currently have statements":

- The Commissioner would be very keen to hear how the Department has made the calculation that CSPs will generally apply to around half the children who currently have statements.
- Does the Minister's comments to the Education Committee in this regard, mean that the Department has already given some thought to the definition of "multiple and / or complex needs"? Or is it the proposing that the 50% decrease is a target?

6. Levels of provision typically required for children with statements

QUERY:

The Commissioner would be interested to know if any comparable data is collated by the Department of Education and/or by the Education and Library Boards, regarding the types of special educational needs provision and non-educational provision which have been written into statements of SEN, as necessary to meet children's SEN. This would assist in determining patterns of provision/need.

RECOMMENDATION:

The Department has used the example of a pupil holding a statement for the primary purpose of obtaining a laptop a number of times, both in relation to the recent proposals as well as the 2009 consultation. From the numerous cases dealt with by NICCY, this example would not be typical. The Commissioner requests an analysis of a representative sample of SEN statements to determine what levels of provision are typically required for children with statements.

7. Awarding criteria for CSPs

RECOMMENDATION:

The Department must engage fully with stakeholders at an operational level in the early development stages of the definition of *"multiple and / or complex needs"*.

8. Impact on the rights of children with statements in mainstream schools who move to provision via a PLP

COMMENTS:

The Commissioner is concerned for the rights, and therefore, future provision for children who currently go through the statutory assessment process and, as a result, are awarded a statement of SEN; but who will not meet the criteria required for obtaining a coordinated support plan (CSP).

The Commissioner is concerned that provision for these children will have to be made by their school through the personal learning plan (PLP). The

Commissioner has not been persuaded that the details of the statutory basis for PLPs will 'force' schools to make the necessary provision. The consequence could be that such children will regress in terms of their educational development.

The monitoring, evaluation and review processes for PLPs will be vital. The Commissioner expects that ETI will have a strong role in monitoring PLP delivery – school self-evaluation is not recommended.

9. Possible risk to inclusion of children with SEN in mainstream educational settings

COMMENTS:

If CSPs are accompanied by a higher level of protection than PLPs, and access to a CSP is significantly more unlikely for pupils within mainstream educational settings, there is the potential that fewer children with SEN in mainstream education settings will have access to the additional support or resources they require.

The resulting situation could possibly influence parents in terms of triggering a preference for their child to be provided for within a special educational setting, rather than in a mainstream setting. Such a predicament would be retrogressive in terms of the implementation of Article 23(3) of the UNCRC, and the progress made towards inclusion, post-enactment of the Special Educational Needs and Disability (NI) Order (SENDI) in 2005, in line with international human rights principles, including recommendations of the UN Committee on the Rights of the Child.

10. The transitional period for moving from statements to CSPs

RECOMMENDATIONS:

The Department must clarify the timeline for the commencement of the transitional period (it has been indicated that the transitional period will follow the introduction of new legislation), and the meaning of "leaving school", within the context of its proposal that *statemented children who are within three years of "leaving school"* will retain their statement until "leaving school".

The Department should be able to provide an estimate of the numbers of children whose provision is expected to be moved from a statement to a CSP,

from a statement to a PLP, and from an individual education plan to a PLP. It should also be in a position to estimate the number of children who will retain their statement as part of the transitional arrangements. Indications were given in the Minister's recent briefing to the Education Committee that, following the transitional period, CSPs would apply to approximately half the number of children who currently hold statements. However, the basis for this estimation is not clear.

11. Proposal to reduce the statutory timeframe to 20 weeks for the production of a CSP

QUERY:

The Commissioner welcomes the reduction in the timeframe for the production of the CSP (20 weeks) as opposed to the production of a statement (26 weeks). However, should the statutory timeframe for producing a CSP be reduced even further?

This question is asked in light of the fact that the Minister has indicated that the number of CSPs is likely to be significantly less than the current number of statements, following the transitional period. This should result in significantly reducing the administrative workload, enabling any backlog to be addressed.

12. Interface with the health sector

RECOMMENDATIONS:

The Minister for Education has indicated that DE officials have been directed to engage further with DHSSPS officials to explore if a statutory duty can be placed on health authorities to meet the health provisions set out in a CSP, and how improved multi-disciplinary working can be achieved. In this regard, the Commissioner recommends that the Department provide responses to the following questions, in order to update on the current situation:

- Have DE and DHSSPS officials now engaged to discuss the issue of a statutory duty regarding required health provisions as set out in a CSP? What is the outcome of any such discussions?
- How is joined up working between education and health being pursued at an operational level, in addition to the policy level?
- What is the role of the health sector with respect to the early years' pilot and the teacher capacity building pilot?

- Has DE considered any opportunities for progressing joined up working between education and health through the Children and Young People's Strategic Partnership?

13. Training and development: SEN resources

QUERIES:

Regarding the Minister's assertion that a "*detailed SEN resource file*" has been produced and has been made available to every school:

- Is this resource file available to primary schools and post-primary schools?
- What monitoring arrangements will be put in place to measure the extent of operational use of the SEN resource available to mainstream schools?

14. Two-year pilot Postgraduate Certificate in Education for post-primary schools

QUERIES:

- Is the pilot a discrete PGCE course – covering only SEN, or is it a module that forms part of PGCE post-primary courses?
- If a discrete PGCE course is proposed for post-primary teaching students, will a similar option be available for students undertaking PGCE primary or other subjects?
- Is it the intention for students who undertake the PGCE pilot to become Special Educational Needs Coordinator (SENCO) (or 'Learning Support Coordinator' (LSC) – it is proposed that the title of 'SENCO' will change to 'LSC') in schools?
- How is the course being quality assured? How is the learning from the course to be implemented in the school environment?

15. Funding: Implications of potential increased delegation of SEN monies to schools

COMMENT:

The Commissioner remains firmly opposed to the delegation of SEN funding to schools, in the absence of appropriate ring-fencing mechanisms and strict guidelines for delivery.

RECOMMENDATION:

The Commissioner understands that Departmental officials have asked that the terms of reference for the upcoming Review of the Common Funding Scheme includes a requirement to give consideration to the potential to include a SEN factor in the Common Funding Formula (CFF). If a SEN component was to be included within the Common Funding Formula, this would have to be strongly linked to outcomes for pupils with SEN.

16. Proposed requirement on ELBs/ESA to set out what supports will be made available to schools and pupils with SEN

RECOMMENDATIONS:

It will be essential that the range of supports “*ordinarily*” made available to schools by the ELBs/ESA will relate to those children who within Level 1 of the proposed two-level structure, that is, those children with a personal learning plan.

The range of supports “*ordinarily*” made available to schools must also be consistent across the ELBs and at a regional level.

Clarification is required regarding the budgetary arrangements for the ELBs/ESA to ensure an agreed range of supports is “*ordinarily*” available - the awarding of supports which are to be “*ordinarily*” made available must be based on objective need.

17. Role of learning support coordinators (LSCs)

RECOMMENDATIONS:

The Commissioner is concerned that the updated proposals do not require Learning Support Co-ordinators (LSCs) (which is the proposed new title for Special Educational Needs Coordinators (SENCOs)) to be in a senior management position. It should be a prerequisite for learning support co-ordinators to be in a position of seniority within the school structure, particularly in light of the fact that the Department of Education’s broad proposals place an emphasis on all schools achieving high standards for all children with SEN. This is also important given the recognition by the Department of Education that significant proportions of primary and post-primary schools do not currently have high standards in place for meeting SEN.

It is vital that learning support co-ordinators are in a position to negotiate access to appropriate resources and to design and lead on SEN policies in schools. If SEN is to be treated as a priority area in all schools, there should be consistency across schools in terms of the seniority of the teacher who is leading on SEN.

18. Annual reviews of CSPs – Impact of the annual review proposals on children’s rights

COMMENTS:

The updated proposals indicate that annual reviews will now be retained. However, an annual review takes place only when requested by the school or parent. This represents insufficient protection from a rights-based perspective. The Commissioner is not only critical of the proposed ‘optional’ nature of the annual review, but is also concerned that the proposal disregards a number of rights under the UNCRC.

In the first place, by focusing on the rights of parents and schools to request an annual review, no regard is being given to the child’s right to participate in the decision-making process. This contravenes Article 12 of the UNCRC, which requires authorities to ensure that children who are capable of forming their own views are afforded the right to express and have their views taken into account in accordance with their age and maturity.

Secondly, the reliance on parents and/or the school to request an annual review potentially negates the principle of non-discrimination, as outlined in Article 2 of the UNCRC. These arrangements mean there is the potential for discrimination against children from lower socio-economic backgrounds and children whose parents’ lack capacity, etc. Where parents are not fully aware of the value of triggering an annual review, or where parents lack confidence, or resources, to enable them to engage in the decision-making process, the opportunity for a formal review of a child's situation could be lost.

19. Value of formal review of CSPs

COMMENT:

The Department has indicated that it does not view annual reviews of CSPs as a necessary or effective mechanism. Rather than making annual reviews optional, the Commissioner would argue that it would be more appropriate to consider ways of improving the overall review process.

20. Transitions

COMMENT:

The 2009 consultation proposals suggested that access to transition services should be extended beyond pupils with a statement/CSP to include any pupil with SEN. The Commissioner welcomed this proposal in her response to the 2009 consultation. However, given that there has been no update on this proposal, it is not clear whether this will be actioned.

RECOMMENDATIONS:

Access to transition planning will become increasingly vital as the number of statements is reduced. It will be absolutely essential that the Department ensures that children with PLPs have the same rights of access to avail of transition planning services as children with co-ordinated support plans.

QUERY:

The Commissioner would request further information regarding how the Department has considered the question of how access to transition services for all children with SEN will be guaranteed?

21. Continued lack of progress on implementation of the child's right of access to the Special Educational Needs and Disability Tribunal (SENDIST)

COMMENTS:

There is still no movement on this issue in Northern Ireland (NI), with the result that children still do not have the right to make an independent appeal to SENDIST. In addition, there is no formal mechanism for ensuring that their voices are heard as part of the appeal process.

The Commissioner was advised during her recent meeting with officials that the Minister wishes to await the outcome of the programmes in England and Wales piloting an independent right of appeal for children, before he makes any decisions regarding children having a right of appeal to SENDIST in NI. The Commissioner opposes this position in light of the clear guidance from the UN Committee on the Rights of the Child. It is not acceptable for the Department to deny the rights as enshrined in Article 12 in this manner, particularly given the progress on this matter in England and Wales.

RECOMMENDATIONS:

The current Review process presents an ideal opportunity to embed pupils' Article 12 rights in relation to access to SENDIST. The Commissioner strongly advises the Minister to progress this matter.

In parallel to this, the Review should urgently address the current barriers regarding access to SENDIST for lower income families – specifically, the current lack of access to legal aid for representation at SENDIST.

1.0 Role of the Children's Commissioner

The Commissioner's primary aim under The Commissioner for Children and Young People (Northern Ireland) Order 2003 is to safeguard and promote the rights and best interests of children and young people in Northern Ireland (NI). This includes children and young people from birth up to 18 years of age, or 21 years where a child or young person has a disability or experience of being in care.

NICCY has a strong interest in the development of the Department of Education's (DE's) policy proposals regarding the Special Educational Needs (SEN) and Inclusion Review. The Commissioner's primary concern in relation to the policy proposals is the need to promote and safeguard the rights and best interests of the children most affected by the Department's plans.

In providing this advice to the Department, the Commissioner is acting by virtue of her statutory duties and powers outlined in the Commissioner for Children and Young People (NI) Order 2003, including:

- The article 7(2) duty to keep under review the adequacy and effectiveness of law and practice relating to the rights and welfare of children.
- The article 7(3) duty to keep under review the adequacy and effectiveness of services for children by relevant authorities.
- The article 7(4) duty to provide advice to relevant authorities on matters concerning children's rights or best interests.
- The article 8(2) power to issue guidance on best practice in relation to any matter concerning the rights or best interests of children and young people, after consultation with such bodies or persons as the Commissioner thinks appropriate.

The Department of Education is a 'relevant authority' for the purposes of the 2003 Order.

The rights and best interests of children and young people are the Commissioner's paramount considerations in determining how to carry out her work, and the 2003 Order requires the Commissioner to have regard to any relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC). In exercising her functions, the Commissioner must take reasonable steps to ensure that the views of children and young people and their parents are sought.

2.0 Summary of the Department of Education's plans

The plans for reviewing the system of support for children with special educational needs plans include replacing the current statement of SEN with coordinated support plans and reducing the current five-stage process to two-levels. CSPs will only be available to children who are assessed as having 'multiple and/or complex' needs, according to a legislative definition which is to be developed. The plans also include placing a legislative duty on boards of governors to produce a personal learning plan (PLP) for children with SEN, which will replace the individual education plans within the current SEN framework.

In addition, there are proposals to develop the capacity of schools to provide for children with special educational needs, and to roll out a number of pilots on improving early identification and assessment of needs in early years' settings. It is also proposed to improve the interface between education and health sectors.

3.0 Critique of the Department of Education's engagement with stakeholders

A number of overarching recommendations are included immediately below. The Commissioner believes that the Department's process of engagement with stakeholders is absolutely crucial to the review of the SEN framework.

Recommendations:

The Commissioner's overarching recommendation regarding the current SEN and inclusion proposals is to urge the Minister to continue to engage with stakeholders. The following actions are recommended:

The Minister must act on the concerns already expressed by parents, stakeholders working at the operational level (and those representing them) and oversight bodies including NICCY. This should involve making necessary changes to the Department's plans in order to better protect the rights of children with SEN, and providing further details on the Department's proposals, which may alleviate some concerns.

The Minister must ensure that the Department meaningfully engages with children and young people with SEN, and ensure that the developing SEN and Inclusion policy is informed by this engagement. The Department has indicated to the Commissioner that it wished to complete any such engagement with children and young people by February 2012, as the Minister intends to finalise his proposals by then. The Commissioner does not believe this would be possible, and recommends that the Department consider a longer term plan of engagement, further proposals for which are outlined in this section.

3.1 The Department's communication of the Minister's updated proposals

The Commissioner believes that there has been somewhat of a vacuum, in terms of Departmental engagement, between the ending of the consultation period on the SEN and Inclusion Review in January 2010 and the update in January 2012.

While some sense was given from the Department in 2010 that an update would be forthcoming regarding the SEN and Inclusion consultation, the briefing to the Education Committee on 18 January, the contacting of stakeholders to discuss the updated proposals with officials, and the subsequent publishing of the 'Summary Report' on 31 January, has been quite closely managed by the Department.

The Commissioner is not entirely clear how much willingness there is from the Department to allow the Minister's proposals to be influenced by stakeholders' views communicated to them during the February round of engagement. The Commissioner urges the Department to undertake ongoing engagement beyond February. The Commissioner's perception, from a number of stakeholders in the voluntary sector and from the views expressed by parents in the media, is that the Minister has not yet established confidence in his proposals.

3.2 The Department's plans regarding the establishment of 'reference groups'

During their recent meeting, the Department informed the Commissioner of plans to establish ten themed reference groups, which would cover the main SEN and Inclusion proposals. It is understood that officials wished to include 15 to 20 representatives in each reference group, among which would be parents, voluntary sector and school stakeholders. It was indicated that the Minister wishes to receive feedback from the reference groups by the end of February, and that officials had arranged 20 timeslots to ensure that the reference groups could each meet twice during that period.

The Commissioner welcomes the establishment of reference groups, however, has some concerns that the timescale for reporting to the Minister is ambitious. Now that the timescale for the reference groups to meet has passed, **the Commissioner requests an update from the Department regarding the outcome of the reference groups, and whether the Department was able to meet the Minister's targets.**

3.3 Queries regarding the Department's engagement with parents

The Commissioner is particularly interested to hear what level of parental engagement has been achieved during the Department's recent round of engagement with stakeholders, including through the reference groups. The Commissioner's statutory remit requires her, when exercising her functions, to

take reasonable steps to ensure that the views of parents are sought. A recommendation was made by the Commissioner in her January 2010 response to the SEN and Inclusion consultation exercise regarding the need for greater engagement in the SEN and Inclusion Review, given the Commissioner's perception that the consultation process generated a significant level of parental distrust in the Department's plans:

"NICCY would be happy to support real engagement between the Department and parents. Additionally, parents support organisations, such as Parenting Forum [now 'Parenting NI'], may be able to provide advice on this" (the full list of the Commissioner's recommendations in response to the consultation exercise is included as an appendix to this paper).

During the recent meeting with officials the Commissioner particularly queried how the Department intended to achieve parental engagement in order to inform officials' feedback to the Minister by end of February. The Commissioner specifically asked what contact had been made with parent representative bodies to inform the Department's round of engagement during February. The Department assured us that it believed that their plans for establishing the reference groups would allow for an appropriate standard of parental engagement.

The Commissioner recommends that the Department outline what level of engagement it achieved with parents during the February round of engagement, including how parents were ultimately recruited to the reference groups. The Commissioner would be interested to hear if the Department was able to achieve representation of parents of children without statements, particularly those who are currently on stages 2 and 3 of the SEN register (in addition to children with statements of SEN), and parents of different social classes (given the Commissioner's particular concerns that lower income families are not discriminated in any way as a result of the ultimate changes to the SEN framework).

3.4 Engagement by the Department with children and young people

The Department has recently indicated to the Commissioner that the consultation exercise on the SEN and Inclusion proposals did not generate much meaningful feedback from children and young people. The Commissioner was not

surprised by this. For quite some time now, the Department has been aware of the Commissioner's dissatisfaction with the way in which the Department managed the engagement process with children and young people during the consultation process.

Department officials indicated to the Commissioner that the Participation Network provided support to the Department in the matter of the Department's engagement with children on the consultation proposals in 2009. The Commissioner's concerns regarding the Department's engagement with children on the SEN proposals should not in any way be interpreted as having any association with the Participation Network. It is the Commissioner's standard policy to refer all statutory agencies to the Participation Network to seek consultancy support on effective engagement with children. It is the Department's responsibility to follow this through.

Consulting with children and young people on complex policy proposals requires a significant level of commitment, not least when the policy proposals in question are as complex as the proposed changes to the SEN framework, and when the target children and young people have special educational needs. However, this in no way prevents effective engagement. Indeed, the Commissioner on a number of occasions has cited the example of the Department of Education's consultation work with young people on the development of the 2011 'Community Relations, Equality and Diversity in Education Policy' as a good example of meaningful engagement.

The Commissioner does not see any value in repeating her concerns expressed on the manner of the engagement with children and young people during the consultation period. However, there are a number of concerns regarding the absence of engagement post-consultation, which must be addressed.

3.4.1 Consultation responses from children and young people

As stated above, the Department recently indicated to the Commissioner that the consultation exercise did not generate much meaningful feedback from children and young people. The Commissioner has since reviewed Appendix 9 of the Department's 'Summary Report' of responses to the consultation, which reproduces the responses to the consultation which the Department received from children and young people.

Despite the Department's concerns, from a brief scan of Appendix 9 it is clear that there is useful feedback contained within the responses sent in from

children and young people. While any analysis of this feedback would need to be contextualised by the presumed lack of overall representativeness of the respondents, the feedback is valuable, given that it is the only concrete feedback which the Department has received to date. Through a brief scan of the responses, key themes are apparent.

It is presumed that no analysis has been undertaken to date of the responses from children and young people, since no indication of this has been given in the consultation document. **The Commissioner recommends that the Department of Education undertake a brief analysis of responses to the consultation from children and young people (this should be contextualised by the clear limits to the representativeness of the sample) and outline how the views will influence the development of the policy.**

3.4.2 Consultation with children and young people post-consultation

The Commissioner's statutory remit requires her, when exercising her functions, to take reasonable steps to ensure that the views of children and young people are sought.

Despite the Commissioner's Office having made offers to the Department to advise further on the development of the SEN policy post-consultation, the Commissioner was not approached until her recent meeting with the Department on 6 February.

In light of the Department's difficulties with engaging with children during the consultation period, the Department asked the Commissioner for advice regarding how consultation might be meaningfully achieved at the current stage in the development of the policy proposals. Officials indicated to the Commissioner that any such engagement would need to be completed by February 2012, as the Minister intends to finalise his proposals by then. The Commissioner is of the belief that meaningful engagement would not be possible within such a short timescale.

It is disappointing that the Department has allowed a two-year period to pass before approaching the Commissioner with a view to planning and completing engagement with children and young people with SEN within a matter of weeks.

3.4.3 Advice to the Department on how it can achieve feedback

The Commissioner recommends that the Department consider a longer term plan of engagement with children and young people with special educational needs. It would be particularly important for the Department to hear the views of children and young people who do not have statements, particularly those children who are stages two and three of 'Code of Practice on the Identification and Assessment of Special Educational Needs'. Longer term engagement could involve the organisation and facilitation of focus groups of young people accessed via representative groups. The development of appropriate tools for consultative focus groups could be developed in partnership with representative groups with expertise in pitching materials at the appropriate level(s) for children with SEN. In particular, the Participation Network may be able to provide support.

Department officials should also consider going into schools to meet children and young people in their own environment – this would be an incredibly valuable mechanism – and the Commissioner believes this should be common practice within the Department of Education.

The Department has indicated to the Commissioner its belief that it would be difficult to consult with children on the high level themes associated with the SEN and Inclusion Review. The Commissioner believes that the Department will achieve more relevant feedback by asking for children's views on the issues that most impact on them on a day to day basis. Children and young people should be made to feel that their contribution is valued; this could be as low level as consulting on their views of some of the terminology used within the revised SEN framework, or on influencing how capacity building of teachers is undertaken. The Department obtain children and young people's views regarding how they feel they could more effectively participate in the processes associated with the SEN framework, including for example, the lack of a right to appeal to the SEN and Disability Tribunal.

The Commissioner would be happy to engage in further discussions with Officials regarding how feedback from children and young people can most meaningfully be achieved.

3.4.4 Value of existing research on views of children and young people

The Commissioner is aware that a report was published in 2010 by the Staff Commission for the Education and Library Boards on the experiences of pupils

with special educational needs in mainstream schools³ which involved a survey of children and young people. **Has the Department taken on board the findings of this work, or considered the possibility of whether any follow up work can be taken which would support the development of the revised SEN framework?**

The Commissioner published her updated 'Children's Rights Review' report in early 2009 which constituted a review of children's rights over the period 2007/08, and involved research with around 2000 children and young people (and professionals and parents/guardians). This included consideration of the experiences of children and young people with special educational needs, which was outlined in the Commissioner's response to the SEN and Inclusion consultation. The relevant extract from the Children's Rights Review has been included in Appendix 2 to this paper. The extract includes three direct quotes from children and young people with special educational needs in mainstream settings. However, the rest of the text is informed by the wider research with children and young people, and alludes to this where appropriate. *The quotes from children and young people are related to teachers' ability to understand their needs and/or cope with their associated behaviours in mainstream settings.* **This extract should help inform the Department on the perspectives of children and young people.**

³ Staff Commission for the Education and Library Boards (2010) 'It's good to listen! Experiences of Pupils with Special Educational Needs' (Belfast: Staff Commission for the Education and Library Boards).

4.0 Comments on the Minister's summary of proposals

Within the Foreword to the 'Summary Report' of responses to the consultation, the Minister for Education makes a number of 'summary proposals' for developing the SEN and Inclusion policy towards implementation. The Minister groups his proposals into seven broad areas:

1. SEN and inclusion framework
2. Role of schools
3. Early identification of need and provision in Early Years' settings
4. Coordinated support plans (CSPs) and personal learning plans (PLPs)
5. Interface with the health sector
6. Training and development
7. Funding.

The Commissioner has reflected on the 'summary proposals' provided within each of these seven areas and has provided a child rights analysis of the proposals where possible, within the subsections below (4.1 to 4.7). The Commissioner's analysis identifies a number of potential gaps in the Minister's proposals, and makes a number of recommendations.

The subsections are numbered according to the seven broad areas to which the Minister's 'summary proposals' pertain. The corresponding 'summary proposals' from the Ministerial Foreword to the Summary Report have been reproduced in text boxes at the beginning of each of the seven subsections below⁴.

Where appropriate, extracts from the 2009 consultation proposals are also reproduced.

⁴ Pages iii to vi of the Ministerial Foreword to the Department of Education (January 2012) 'Summary Report of Responses to the Consultation', see above for full reference.

4.1 SEN and Inclusion Framework

Minister's indications in the 2012 Summary Report:

*"Of primary importance is that the needs of children with SEN and/or disability are addressed by schools and ELBs [that is, 'Education and Library Boards']/ESA [that is, 'Education and Skills Authority'] and that no unintentional confusion is created by a change to definitions. I propose that the existing policy base would remain, where the definitions of SEN and disability have been clearly established in legislation. The original proposal of an overarching 'additional educational needs' framework will not be separately defined in legislation. **I propose that the current 5-stage process for identifying and meeting needs will be replaced by a more straightforward 2-level structure, with either the school in the lead at Level 1, or the ELBs/ESA in the lead at Level 2.** This would significantly reduce the bureaucracy associated with the current framework"⁵ [emphasis added].*

Basic policy proposals in the 2009 consultation document:

"It is proposed the sequential stages of 1-5 in the current Code of Practice will be replaced by a new model which will consist of three strands:-

- Within School*
- Within School plus External Support (other schools/ESA/MGs [that is, 'multi-disciplinary groups'])*
- Co-ordinated Support Plans (CSPs)"⁶.*

The 2009 consultation document helpfully sets out the current five-stage approach as set out in the 'Code of Practice on the Identification and Assessment of Special Educational Needs' ('the Code of Practice'). This is reproduced below for ease of reference:

⁵ Page iii of the Ministerial Foreword to the Department of Education (January 2012) 'Summary Report of Responses to the Consultation', see above for full reference.

⁶ Department of Education (August 2009) 'Every School a Good School: The Way Forward for Special Educational Needs and Inclusion' (Bangor: DE).

The five-stage approach (Extracted from 'Every School a Good School - The Way Forward for Special Educational Needs and Inclusion'):

"The Code of Practice on the Identification and Assessment of Special Education Needs (introduced following the Education (NI) Order 1996) sets out a 5-stage approach to the process.

Stages 1, 2 and 3 are school-based, although at Stage 3 support can be sought from external specialist services, including those provided from the ELB.

At Stage 4 the ELB considers the need for a statutory assessment. The parents are notified and subsequently the ELB will seek parental and professional opinion to enable them to undertake the assessment.

At Stage 5 the ELB decides whether the degree of the child's learning difficulty or disability, and the nature of the provision necessary to meet the child's SEN, requires it to determine the SEN provision through making a statement.

If a statement is considered appropriate, the ELB has 18 weeks, subject to certain exceptions, to issue a proposed statement. DE requires Boards to achieve 100% of statements drafted within the 18 weeks statutory timeframe, subject only to the exemptions as outlined in the Code of Practice. The Department of Education does not have any role in the identification and assessment of children's special education needs, or any power to intervene in the process, which is intended to be conducted between parents, schools and ELBs".

The Special Education Needs and Disability (NI) Order 2005 (SEND0) amended the 1996 Order providing strengthened rights of children with SEN to a mainstream education where a parent wants it and where it is not incompatible with the provision of the efficient education for other children; it also introduced new disability discrimination responsibilities"⁷.

The Commissioner supports the concept of basing the SEN structure around children's level of need. However, the Department has yet to provide details of the structure that will replace the five stages associated with the current Code of Practice.

⁷ Department of Education (August 2009), 'Every School a Good School - The Way Forward for Special Educational Needs and Inclusion' (Bangor: DE) Annex B, pages 74 to 75.

Nothing further has been detailed aside from the proposed two-level structure, with either the school in the lead in terms of providing for needs at Level 1, or the Education and Library Boards (ELBs)/Education and Skills Authority (ESA) in the lead at Level 2. (For information on the Commissioner's understanding of 'co-ordinated support plan', see section 4.4 of this paper, below).

For the purposes of this paper, the Commissioner is presuming that the SEN of children in receipt of a Personal Learning Plan (PLP) will be addressed at Level 1 of the new structure, with the school in the lead in terms of meeting needs. It should be noted that the Department's proposals are not sufficiently clear on this point (for information on the Commissioner's understanding of 'personal learning plan', see section 4.4 of this paper, below).

The Commissioner is also presuming that the needs of children who have a Co-ordinated Support Plan (CSP) will be addressed at Level 2 of the new structure, where the ELBs/ESA will be in the lead. Again, it should be noted that the Department's proposals are not sufficiently clear on this point.

The Minister asserts that the proposed two-level structure "*would significantly reduce the bureaucracy associated with the current framework*". The need to reduce bureaucracy is a view shared by many stakeholders. However, it is a misapprehension to presume that bureaucracy can be reduced simply by reorganising five stages into two levels. The hurdles of gathering information, making initial assessments of a child, drawing up of an education plan (or personal learning plan), accessing specialist services, triggering a statutory assessment, etc. will still have to be overcome. It is still not clear how the two-level structure will reduce bureaucracy with respect to the process of identifying needs. The Department may have developed internal plans around the detail of the proposed two-level structure; however, to the best of the Commissioner's knowledge, no such plans regarding the detail of the proposed structure have been shared with external stakeholders.

In light of the fact that much of the criticism regarding the development of the SEN and Inclusion policy consultation stemmed from the perception that the Department did not adopt an inclusive process [as outlined in section 3 of this paper, above], it is particularly crucial that the Department provides detail on the proposed two-level structure, before moving forward with developing draft legislative changes associated with the policy.

Given the current lack of detail regarding the processes within the proposed two-level structure, the Department cannot reasonably expect stakeholders to

accept that it will reduce bureaucracy, or better meet the needs of children and young people.

The detail provided in the most up-to-date proposals is even more limited than that provided in the 2009 consultation proposals. As set out above, the consultation proposals advocated a three-strand structure, encompassing the meeting of children's SEN "*within school*", "*within school plus external support*" and through "*co-ordinated support plans*". The 'middle' strand is absent from the currently proposed two-level approach. Crucially, it is within the range of outcomes of this 'middle' strand where the initiation of the statutory assessment process begins. In terms of the current Code of Practice, the statutory assessment process is triggered as an outcome of stage 3. This detail is lost in the most recent proposals from the Minister.

Recommendations:

The Department must provide detail in relation to the structure of the two-level approach and demonstrate how it believes this will reduce the level bureaucracy associated with the current five-stage approach, and how the needs of children will be better met.

In particular, the Department must provide clarity regarding the trigger for statutory assessment, which is currently set out within stage 3 of the Code of Practice on the Identification and Assessment of Special Educational Needs. The trigger for statutory assessment was apparent in the 2009 proposals within strand two of the three-strand approach. However, it is not apparent in the updated proposals

4.2 Role of schools

Minister's indications in the 2012 Summary Report:

*"Evidence from the work of the ETI in mainstream schools clearly demonstrates that, where a serious commitment is given to SEN by school leadership, the arrangements to identify, assess and meet the needs of SEN pupils are of a high standard. According to ETI reports these high standards were not in place in 18% of the primary schools and 38% of the post primary schools inspected in 2010/11. **Some strengthening of the legislative duties on boards of governors is proposed in order to achieve high standards across all schools.** On-going work to **build the capacity of schools** in relation to SEN has already demonstrated the importance of training and continuing professional development for teachers. **A pilot in 'educational assessment', which aims to enhance the SEN assessment skills of teachers, will be rolled out across ELB/ESA areas over the next two years**"⁸ [emphasis added].*

4.2.1 Role of the ETI in monitoring standards in schools for identifying, assessing and meeting the needs of SEN pupils

The Minister has indicated that the arrangements in place to identify, assess and meet the needs of pupils with SEN were not of a sufficiently high standard in almost one fifth of primary schools and almost two fifths of post-primary schools inspected in 2010/11. This is a significant cause for concern.

It is difficult to reconcile the ETI figures with the Department's assertion that schools will be enabled to more effectively address the special educational needs of pupils through mechanisms such as the capacity building of teachers, as outlined above. The ETI figures are particularly worrying in light of the fact that, at the heart of DE's proposals for reviewing the SEN policy framework, is the proposal that far fewer children will obtain a CSP (which is the proposed replacement for statement of SEN), compared to the number of children who currently possess a statement of SEN. (These issues are explored in section 4.4 below). Given the fact that stakeholders, and particularly parents, regard a statement as providing legal enforcement for ensuring that children's SEN are met, the absence of a CSP for pupils who are currently in receipt of a statement is of concern. This concern is heightened given the fact that a significant proportion of schools are not meeting the current standards associated with

⁸ Page iv of the Ministerial Foreword to the Department of Education (January 2012) 'Summary Report of Responses to the Consultation', see above for full reference.

identifying, assessing and meeting SEN, as outlined above in the subsection on 'Role of schools'.

Recommendation:

Given the fact that almost one fifth of primary schools and almost two fifths of post-primary schools inspected in 2010/11 did not sufficiently high standards in place to identify, assess and meet the needs of pupils with SEN, the Department of Education must outline the measures that will be instigated to enable inspectors to revisit such schools, in addition to undertaking inspections of other schools. Schools which are failing to achieve the prescribed standards must be of significant concern to the successful implementation of the Department's SEN and Inclusion policy.

4.2.2 *Strengthening of the legislative duties on boards of governors*

The Minister has indicated that his proposals regarding the role of schools will include *"some strengthening of the legislative duties on boards of governors in order to achieve high standards across all schools"*.

The current principal legal duty on boards of governors in mainstream schools to make provision for a child's SEN is found in Article 8 of the Education (Northern Ireland) Order 1996, which states that that a board of governors shall *"use its best endeavours, in exercising its functions in relation to the school, to secure that if any registered pupils has special educational needs the special educational provision which his [/her] learning difficulty calls for is made"*.

Given the fact that a large proportion of children with statements in mainstream education settings will not transfer to a CSP (which is the proposed replacement for statements), but instead will be awarded a school-led PLP, it is particularly important that the duties on boards of governors are strong enough to force schools to put in place high standards to meet the SEN of their pupils.

Guidance was provided by the Minister in his briefing to the Education Committee on 18 January 2012, regarding the proposed duties on boards of governors to ensure that the schools meet the needs of pupils in receipt of a personal learning plan:

"Current statutory guidance requires schools to put in place individual education plans (IEPs) for SEN pupils. I propose to introduce personal learning

plans (PLPs) to replace IEPs and place a **new statutory duty on boards of governors to ensure that every child with SEN has a personal learning plan**. PLPs, like CSPs, will have **stronger emphasis on outcomes** than there is at present and will be **reviewed regularly**⁹ [emphasis added].

In addition, in response to an Assembly question for oral answer on 20 February 2012¹⁰, the Minister stated that:

*“...the needs of each and every child will be assessed and the best programme of work for that child will be put in place. In some instances, that work will be referred to as a co-ordinated support plan, and in other instances, it will be referred to as a personal learning plan, **both of which will have a legislative basis and legislative protection...***

*“The outcomes for the child are the important thing. Parents’ concerns appear to stem from the fact that they want to ensure that there is a legislative basis for such matters, and **I assure them that there will be a legislative basis and legislative protection for their children**”* [emphasis added].

However, the extent of the strengthened statutory duties on boards of governors remains unclear. It is evident that boards of governors in mainstream schools will have a statutory duty to ensure that every child with SEN has a PLP. The Minister has indicated that PLPs will have a stronger emphasis on outcomes than the current ‘individual education plans’ (which are the equivalent to the proposed PLPs). The Minister has also indicated that PLPs will be reviewed regularly. The proposals for stronger emphasis on outcomes and regular reviews of PLPs are to be welcomed, however, it is unclear whether there will be any statutory basis for these provisions.

The Commissioner believes that a statutory duty to ensure that every child has a PLP is not sufficient in itself. The Department may have further proposals in mind regarding the strengthening of statutory duties, which have yet to be articulated.

Training for boards of governors with regard to the content and application of the strengthened statutory duties will also be essential.

⁹ NI Assembly Committee for Education Official Report (Hansard), ‘Special Educational Needs and Inclusion’, 18 January 2012, see above for full reference.

¹⁰ Official Report (Hansard) Monday 20 February 2012, Volume 72 , No 5, Session 2011-2012.

The provision of statutory guidance would be helpful in terms of meeting of needs of children with PLPs, (this has not yet been proposed as far as the Commissioner is aware). However, statutory guidance in itself will not go far enough to ensure that schools are effectively meeting needs, as it will not 'force' schools to make provision.

The enforcement and review mechanisms must be strong enough to ensure that schools which are currently not achieving high standards are forced to make that provision. A significant reduction in the number of statements/CSPs awarded to children in mainstream education settings should not be carried out in the absence of stringent statutory duties being on schools.

Recommendations:

The Commissioner recommends that the Department of Education's proposals regarding the strengthening of the legislative duties on boards of governors in order to achieve high standards across all schools must go further than the proposed statutory duty to ensure that every child has a PLP in place. Given the fact that a significant proportion of pupils in mainstream schools will move from a statement to a PLP, coupled with the fact that a significant proportion of schools inspected in 2010/11 did not have sufficiently high standards to identify, assess and meet the needs of pupils with SEN, there is a requirement for strong duties to be placed on boards of governors. The enforcement and review mechanisms must be strong enough to ensure that schools currently not achieving high standards are forced to make that provision.

Given the Minister for Education's indications in 'Putting Pupils First' that the role of boards of governors will be reviewed, the Commissioner would urge the Minister to explore mechanisms for parents and pupils to appeal decisions of boards of governors.

The Department must also provide details of the training which will be given to boards of governors to ensure they understand the content and application of the strengthened statutory duties.

The Department should also indicate whether its proposal to ensure that PLPs have stronger links with outcomes than the current individual education plans, will have any statutory basis.

4.2.3 Capacity building of teachers

Within the summary proposals concerning the enhanced role of schools in identifying, assessing and meeting the needs of pupils with SEN, the Minister alludes to “on-going work to build the capacity of schools in relation to SEN”, and also to “a pilot in ‘educational assessment’”, which aims to enhance the SEN assessment skills of teachers, will be rolled out across ELB/ESA areas over the next two years - **The Commissioner requests clarification regarding a number of issues related to the capacity building of teachers:**

- **In light of the Minister’s indication that the pilot will be rolled out over the next two years, does this refer to 2012/13 and 2013/14?**
- **Will the ‘educational assessment’ pilot for primary and post-primary teachers, also include pre-school teachers? Which schools (and early years’ settings, if relevant) are participating?**
- **Who will be responsible for delivering the pilot?**
- **Officials indicated during their recent meeting with the Commissioner that the pilot will be formally evaluated – How and when will this evaluation be undertaken?**

4.3 Early identification of need and provision in early years' settings

Minister's indications in the 2012 Summary Report:

*"Early identification and intervention programmes for children with SEN are of vital importance, in order to promptly address difficulties, and to reduce the need for long term and extensive interventions at a later stage in a child's education. This is particularly the case for [though not confined to,] children in early years' settings. **I propose to optimise the capacity of staff in all DE-funded settings, through a SEN capacity building programme and with appropriate supports from ELBs/ESA. A pilot in early years' settings is being rolled out and will be fully operational from early 2012.** A formal evaluation of this will consider the right balance of external supports between capacity building for staff and individual supports for children"*¹¹ [emphasis added].

The Commissioner warmly welcomes the Minister's commitment to build the capacity of staff across all Department-funded settings in relation to early identification and intervention.

However, it is not clear whether the proposals regarding the delivery of a SEN capacity building programme and provision of appropriate supports from ELBs/ESA, and those regarding the pilot in early years' settings, are two distinctive sets of proposals, or if the early years' pilot is linked to the capacity building programme. Clarification on this point would be welcome.

If early identification of need and provision in early years' settings and earlier intervention at first signs of difficulty is made more effective, this should, in theory, help to prevent children and young people disengaging from mainstream education provision and falling under alternative education provision. We are aware of the numbers of Young People subsequently provided for in Alternative Education Centres. The Commissioner understands that a review of alternative education provision is imminent. It will be essential that the review is linked into the SEN and Inclusion proposals.

¹¹ Page iv of the Ministerial Foreword to the Department of Education (January 2012) 'Summary Report of Responses to the Consultation', see above for full reference.

4.4 Coordinated support plans and personal learning plans

Minister's indications in the 2012 Summary Report:

*"I propose that **ELB/ESA-led statutory Coordinated Support Plans (CSPs) would be introduced for SEN children with the most significant educational needs and that these would have a new emphasis on outcomes and targets for SEN children and on input by parents.** The CSPs would generally apply to SEN children in special schools or special units, and to those in mainstream classes with the greatest level of need. In order to assist ELBs/ESA identify the SEN children for whom they have a specific responsibility, I propose to **introduce a legislative definition of multiple and / or complex needs** for those children who require Level 2 support and whose educational needs must be set out by ELBs/ESA in a CSP. I also propose that the **statutory timeframe for Boards to produce a CSP would be set at 20 weeks, compared with the current 26 weeks to produce a statement.***

*Central to the implementation of this change is that the **ELBs/ESA would be required to set out clearly the range of supports they intend to ordinarily make available to schools and to SEN pupils.** This would ensure that ELB/ESA supports would be more flexible and responsive to need than at present [the Commissioner's comments regarding this proposal are found in section 4.7 of this advice paper, under the heading of 'Funding'].*

*I propose that the **statutory duties on boards of governors would be strengthened to include a statutory requirement to put in place a Personal Learning Plan (PLP) for all SEN pupils.** The PLP would replace the existing provision of individualised education plans and would be kept straightforward to avoid bureaucratic overload"¹² [emphasis added].*

A number of issues are addressed within this section regarding potential gaps and implications around the CSP and PLP proposals. These are set out below as follows:

- Absence of evidence of significant support for the proposed co-ordinated support plans
- Substantial reduction in access to the enforceable rights associated with statements/CSPs

¹² Page iv to v of the Ministerial Foreword to the Department of Education (January 2012) 'Summary Report of Responses to the Consultation', see above for full reference.

- Awarding criteria for CSPs
- Impact on the rights of children with statements in mainstream schools who move to provision via a PLP
- The transitional period for moving from statements to CSPs
- Proposal to reduce the statutory timeframe to 20 weeks for the production of a CSP

4.4.1 Absence of evidence of significant support for the proposed coordinated support plans

It was indicated to the Commissioner and her staff during her recent meeting with officials (as well as in the 'Summary Report') that 27% of the 'tick box' consultation responses were in favour of the coordinated support plan (CSP) proposals (with 52% against). This figure demonstrates a relatively low level of support for the CSP proposals. When the 'Summary Report' is examined in closer detail however, it is evident that the level of support shown was even lower.

It appears that 'tick box' responses to the consultation equated to only 606 of the 2902 respondents who responded to the 2009 consultation. And on further examination, it appears that just 10% of the narrative responses, submitted within 544 completed response booklets offered positive comments regarding the CSP proposals. Furthermore, only 10% of the 17 stakeholders who responded to the consultation, via a written paper were assessed as having favoured the CSP proposals.

The analysis of consultation responses does not demonstrate any significant degree of support for the coordinated support plan proposals.

4.4.2 Substantial reduction in access to the enforceable rights associated with statements/CSPs

The Department of Education has indicated that substantially fewer children with SEN will be awarded a CSP than is the case within the current statementing system. This will trigger a substantial reduction in the number of children with the legally enforceable rights associated with a statement/CSP.

The Minister made the following statement regarding the reduced number of CSPs, as compared to statements, in his briefing to the Committee for Education on SEN and Inclusion on 18 January 2012:

*“Following a transitional period [which the Commissioner understands will be a two year period following the introduction of legislative changes to the SEN framework¹³], CSPs will generally apply to **around half the children who currently have statements**”¹⁴ [emphasis added].*

The Commissioner would be very keen to hear how the Department has arrived at a calculation that CSPs will generally apply to around 50% of the children who currently have statements. Does the Minister’s comments to the Education Committee in this regard mean that the Department has already given some thought to the definition of “multiple and / or complex needs”? Or, is the proposed 50% decrease a target?

As outlined in section 4.2 above, regarding the role of schools within the new SEN framework, the Department asserts that, despite the fact that many children in mainstream education will not be entitled to a CSP, their needs will be met by virtue of the PLP, which will also protect the rights of children *“under the law”*¹⁵. Section 4.2 of this paper outlines a number of concerns regarding the lack of clarity in the enforceability mechanisms for guaranteeing PLP delivery.

The Commissioner is concerned that it is the statement of SEN which currently enables certain children to get the provision they need in order to ensure that they can effectively enjoy their right to education under Articles 28 and 29 of the UN Convention on the Rights of the Child. Without the statement/CSP, there is a huge expectation upon schools to make the necessary provision.

The Department’s indication that statements of SEN are currently awarded for the primary purpose of providing pupils with SEN with a laptop:

The Commissioner would be interested to know if any comparable data is collated by the Department of Education and/or by the Education and Library Boards, regarding the types of special educational needs provision and non-educational provision which have been written into statements of SEN, as necessary to meet children’s SEN. This would assist in determining patterns of provision/need.

¹³ NI Assembly Committee for Education Official Report (Hansard), ‘Special Educational Needs and Inclusion’, 18 January 2012, see above for full reference.

¹⁴ NI Assembly Committee for Education Official Report (Hansard), as above.

¹⁵ Minister’s answer to a question for oral answer – see: Official Report (Hansard) Monday 20 February 2012, Volume 72, No 5, Session 2011-2012.

The Department has used the example of a pupil holding a statement for the primary purpose of obtaining a laptop a number of times, both in relation to the recent proposals as well as the 2009 consultation. From the numerous cases dealt with by NICCY, this example would not be typical. **The Commissioner requests an analysis of a representative sample of SEN statements to determine what levels of provision are typically required for children with statements.**

4.4.3 Awarding criteria for CSPs

The Commissioner understands that the number of CSPs will be reduced as a result of the setting of a higher qualifying threshold.

The Department has proposed that children and young people with “multiple and / or complex needs” will be awarded a CSP and that a legislative definition of “multiple and / or complex needs” will be introduced. The criteria for this definition have yet to be defined.

The development of a definition of “multiple and / or complex needs” to be agreed as the criteria for awarding a CSP, will be hugely significant. The Department must engage fully with stakeholders at an operational level, to identify an appropriate definition.

4.4.4 Impact on the rights of children with statements in mainstream schools who move to provision via a PLP

The inference of the Department’s proposals is that children with statements who are currently in mainstream educational settings are among those most likely to lose out on access to a CSP and the associated rights which previously accompanied a statement. The proposals in the 'Summary Report' as outlined above confirm this:

"The CSPs would generally apply to SEN children in special schools or special units, and to those mainstream classes with the greatest level of need".

This inference was further reflected in the Minister's briefing to the Education Committee on 18 January 2012:

"Children in special schools or learning centres will not need transitional arrangements but will automatically transfer to a CSP"¹⁶.

Of the estimated 13,900 pupils with statements, the Department indicates that around 9,700 are within mainstream schools and units (it is presumed units includes 'special units'). This suggests that the significant decline in the number of CSPs, compared to the existing number of statements, will occur through transferring many pupils in mainstream settings from a statement to a PLP.

The Commissioner is concerned that the current statement of SEN enables certain children to access the provision they need, facilitating their right to education under Articles 28 and 29 of the UNCRC. Without the statement/CSP, there is a huge expectation and reliance on schools to make the necessary provision. Children who currently hold a statement, but who will not meet the enhanced criteria for a CSP, could find their rights insufficiently protected under the PLP proposals.

A number of concerns are outlined in section 4.2 of this paper regarding the current ambiguity of the proposals for strengthening the duties on Board of Governors to ensure high standards for meeting SEN.

The Commissioner is concerned for the rights, and therefore, provision for children who currently go through the statutory assessment process and, as a result, are awarded a statement of SEN, but, who will not meet the criteria required to obtain a co-ordinated support plan (CSP). The Commissioner is concerned that provision for these children will have to be made by their individual school through the PLP. The Commissioner is not persuaded that details of the statutory basis for PLPs will 'force' schools to make the necessary provision. This could have a detrimental impact on some children's educational development.

The monitoring, evaluation and review processes for PLPs will be vital. The Commissioner expects that ETI will have a strong role in monitoring PLP delivery – school self-evaluation is not recommended. As outlined in section 4.2.2 above ('Strengthening the role of boards of governors'), given the Minister for Education's indications in 'Putting Pupils First' that the role of boards of governors will be reviewed, the

¹⁶ NI Assembly Committee for Education Official Report, 18 January 2012, as above.

Commissioner would urge the Minister to explore mechanisms for parents and pupils to appeal decisions of boards of governors, and the issue of a right of redress for parents and pupils.

Possible risk to inclusion of children with SEN in mainstream settings:

Extract from Article 23(3) of the UNCRC:

'Recognizing the special needs of a disabled child, assistance... shall be designed to ensure that the disabled child has effective access to and receives education... in a manner conducive to the child's achieving the fullest possible **social integration** and individual development, including his or her cultural and spiritual development' [emphasis added].

If CSPs are accompanied by a higher level of protection than PLPs, and access to a CSP is significantly more unlikely for pupils within mainstream educational settings, **there is the potential that fewer children with SEN in mainstream education settings will have access to the additional support or resources they require. There is also, therefore a risk that children who currently depend on a statement and who move to a PLP, could regress in terms of the progress they have made as a result of the statement.** This could influence parents, in terms of triggering a preference for children to be accommodated within a special educational setting, rather than a mainstream school. Such a predicament would be retrogressive in terms of the implementation of Article 23(3) of the UNCRC, and the progress made towards inclusion, post-enactment of the Special Educational Needs and Disability (NI) Order (SENDO) in 2005, in line with international human rights principles, including recommendations of the UNCRC, as outlined below:

Committee on the Rights of the Child – extract from 'General Comment No. 9':

"Measures taken for the implementation of the rights contained in the Convention regarding children with disabilities, for example in the areas of education and health, should explicitly aim at the maximum inclusion of those children in society...

....

"Inclusive education should be the goal of educating children with disabilities. The manner and form of inclusion must be dictated by the individual educational needs of the child, since the education of some children with disabilities requires a kind of support which may not be readily available in the regular school system. The Committee notes the explicit commitment towards the goal of inclusive education contained in the draft convention on the rights of

*persons with disabilities and **the obligation for States to ensure that persons including children with disabilities are not excluded from the general education system on the basis of disability and that they receive the support required, within the general education system, to facilitate their effective education...***¹⁷ [emphasis added].

4.4.5 The transitional period for moving from statements to CSPs

The Minister stated in this briefing to the Education Committee that:

*"Statemented children who are within three years of leaving school will retain their statement until leaving school. All remaining statements in place at that stage of full implementation will convert to CSPs"*¹⁸.

The Department must clarify a number of matters regarding the transitional period for moving from a system of statements to a system of CSPs. This would include the need to identify a timeline for the commencement of the transitional period -it has been indicated that the transitional period will follow the introduction of any new legislation.

The Department should be able to provide an estimate of the numbers of children whose provision is expected to move from a statement to a CSP, from a statement to a PLP, and from an individual education plan to a PLP. It should also be in a position to estimate the number of children who will retain their statement as part of the transitional arrangements. In his 18 January 2012 briefing to the Education Committee, the Minister indicated that following the transitional period, CSPs would apply to approximately half the number of children who currently hold statements, however, the basis for this estimation is not clear.

The "*statutory transitional arrangements review*"¹⁹ to be undertaken by the ELBs/ESA during the two-year transitional period will be a crucial exercise.

¹⁷ Committee on the Rights of the Child (2006) 'General Comment No. 9: The Rights of Children with Disabilities' (Geneva: United Nations), paragraphs 11 and 66.

¹⁸ NI Assembly Committee for Education Official Report, 18 January 2012, as above.

¹⁹ As cited in NI Assembly Committee for Education Official Report, 18 January 2012, as above.

4.4.6 Proposal to reduce the statutory timeframe to 20 weeks for the production of a CSP

It is proposed that the statutory timeframe for ELBs to produce a CSP will be reduced to 20 weeks compared to the current 26 weeks set for the production of a statement. The Commissioner welcomes the reduction in the timeframe for the production of the CSP (20 weeks) as opposed to the production of a statement (26 weeks). The Commissioner would query whether the statutory timeframe for producing a CSP should be reduced even further from 26 weeks to 20 weeks, given that the Minister has indicated there will be a significant reduction in the number of CSPs. This should significantly reduce the administrative workload, enabling any backlog to be addressed.

4.5 Interface with the health sector

Minister's indications in the 2012 Summary Report:

*"The fact that the interface between the education and health sectors is crucial to a successful educational outcome for SEN children, with more significant educational and health-related needs, was borne out by the consultation responses. **Health and Social Care Trust (HSCT) input is central to the review's proposals on multi-disciplinary working and to meeting the non-educational needs set out in a CSP.** The review proposed that the commitment to provide health sector provision contained within a CSP would be achieved through a memorandum of understanding or service level agreement.*

The establishment of local multi-disciplinary groups (MGs) was also proposed by the review as a means of improving cross-sectoral working and to support schools with the interventions that are required for pupils. This particular proposal attracted significant opposition from respondents to the consultation for a variety of reasons. I do not intend to pursue this route and instead I have introduced pilots in early years' settings that will inform how multi-disciplinary working might be best achieved in future.

*Following the consultation, **I have asked officials to engage further with the Department of Health, Social Services and Public Safety with a view to exploring if the option of a statutory basis for the health provision set out in a CSP can be reached, and on how improved multi-disciplinary working can be achieved, given the current systems and structures in place***¹²⁰ [emphasis added].

The Commissioner agrees that the input of Health and Social Care Trusts should be central to the Review's proposals on multi-disciplinary working and to meeting the non-educational needs set out in a CSP. While it is understood that the 2009 proposals regarding the establishment of multi-disciplinary groups is not currently being pursued, **it will be essential to use the opportunity created by the Review, to consider the feasibility of introducing a statutory duty to ensure that provision is made to meet non-educational provision set out in a CSP. The Commissioner has a number of further recommendations in this regard:**

²⁰ Page v of the Ministerial Foreword to the Department of Education (January 2012) 'Summary Report of Responses to the Consultation', see above for full reference.

- **DE should outline the outcome of discussions with DHSSPS on the issue of a statutory duty regarding required health provisions as set out in a CSP.**
- **DE should clarify how joined up working between education and health is being pursued at an operational level, in addition to the policy level.**
- **DE should outline the role of the health sector with respect to the early years' pilot and the teacher capacity building pilot.**
- **DE should consider opportunities for progressing joined-up working between education and health sectors through the Children and Young People's Strategic Partnership.**

4.6 Training and development

Minister's indications in the 2012 Summary Report:

*"Within the current SEN framework, a comprehensive SEN capacity building programme has been rolled out to schools since the 2010/11 school year. **A detailed SEN resource file has also been produced and has been made available to every school.** This has aimed to ensure that all schools are equipped with the necessary knowledge and skills to manage successfully the needs of pupils with SEN and/or disability. **A SEN resource file for early years' settings is currently under production.** Having the necessary training and information in place will ensure that all schools can successfully meet the needs of SEN children and can also be prepared in advance of any legislative changes to their duties or responsibilities.*

A 2-year pilot Post-graduate Certificate in Education for post-primary schools is nearing completion. This pilot in initial teacher education has been developed jointly by the Queen's University Belfast and the University of Ulster. The aim of the course is to provide student teachers with the enhanced practical skills and knowledge needed to assess and meet the needs of SEN pupils"²¹ [emphasis added].

4.6.1 SEN resources

With regard to the Minister's assertion that a "detailed SEN resource file" has been produced and made available to every school, the Department should clarify that this has included primary and post-primary schools.

The Commissioner believes the Department should also clarify the arrangements for monitoring of the operational use of the SEN resource available to mainstream schools, and of the practical benefits demonstrated.

4.6.2 Two-year pilot Postgraduate Certificate in Education for post-primary schools

The Commissioner has a number of questions regarding the 2-year pilot Post-graduate Certificate in Education (PGCE) for post-primary schools, which the Minister indicates is nearing completion:

²¹ Page vi of the Ministerial Foreword to the Department of Education (January 2012) 'Summary Report of Responses to the Consultation', see above for full reference.

- Is the pilot a discrete PGCE course on SEN, or a module that forms part of all PGCE post-primary courses? If it is a discrete PGCE course, is a similar option available for students undertaking PGCE primary courses or other post-primary courses? The Commissioner believes it is important that every student teacher is adequately trained.
- Is it the intention for students who undertake the PGCE pilot to become Special Educational Needs Coordinators (SENCOs) (or 'Learning Support Co-ordinators' as the Department proposes that the SENCO title will change to) in schools?
- How will the course be quality assured? The Department should provide information regarding how learning developed on this course will be implemented in the school environment.

Furthermore, **the Commissioner would suggest that, while it is important such training is provided to student teachers, given the current difficulties facing newly qualified teachers in finding posts, it is important to ensure sufficient resources are allocated to training practising teachers across all school types.**

4.7 **Funding**

Minister's indications in the 2012 Summary Report:

*"A key funding proposal from the review suggested the greater delegation to schools of SEN monies that are currently held by ELBs. It was clear that respondents to the consultation had a range of issues with this proposal. Given the feedback received and the fact that my policy proposals have developed to some extent from those contained in the consultation document, it is clear that, given the budgetary pressures bearing down on Education, **further consideration needs to be given to determine how funding arrangements will support the new policy**"²² [emphasis added].*

As a preliminary point, the Commissioner welcomes the ring-fencing of the £210 million annual SEN budget for mainstream schools, special units and special schools.

4.7.1 Implications of possible increased delegation of SEN monies to schools

The updated proposals provided by the Department regarding funding mechanisms lack clarity with regard to how SEN monies will be held and allocated. The Minister's update in the 'Summary Report' does not rule out the delegation of SEN monies to schools. The comments on this matter in the 'Summary Report' are vague: *"further consideration needs to be given to determine how funding arrangements will support the new policy"*. **In the absence of appropriate ring-fencing mechanisms and strict guidelines for delivery, the Commissioner remains firmly opposed to the delegation of SEN funding to schools.** This is in line with international human rights standards, as detailed below.

Committee on the Rights of the Child – extract from 'General Comment No. 9':

*"...many States parties not only do not allocate sufficient resources but have also reduced the budget allocated to children over the years. This trend has many serious implications especially for children with disabilities who often rank quite low, or even not at all, on priority lists... Decentralization and privatization of services are now means of economic reform. **However, it should not be forgotten that it is the State Party's ultimate responsibility to oversee that adequate funds are allocated to***

²² Page vi of the Ministerial Foreword to the Department of Education (January 2012) 'Summary Report of Responses to the Consultation', see above for full reference.

children with disabilities along with strict guidelines for service delivery. Resources allocated to children with disabilities should be sufficient --and earmarked so that they are not used for other purposes-- to cover all their needs...²³.

Given the fact that the proposals state that the majority of children in mainstream schools will have their needs met through PLPs, rather than statements, this implies that a significant amount of provision will have to be delivered at school level. The delegation of additional SEN funding to individual schools risks 'draining' the school's available SEN budget, given the cost of providing specific assistance to children with PLPs from school level funding (for example, Classroom Assistants, technological and any other necessary resources, etc.). Given the limited information issued by the Department regarding how it envisages that SEN monies will be held, it is difficult to understand how schools will be able to provide for every child with SEN.

The Commissioner understands that Department officials have requested that the terms of reference for the upcoming Review of the Common Funding Scheme include a requirement to give consideration to identifying a SEN factor in the Common Funding Formula (CFF)²⁴. In addition, officials have indicated to the Commissioner that the ELBs are being asked to consider how they allocate resources from the Block Grant. In terms of the former, **if a SEN component was to be included within the Common Funding Formula, this should be strongly linked to outcomes for pupils with SEN.**

4.7.2 Proposed requirement on ELBs/ESA to set out what supports will be made available to schools and pupils with SEN

The Minister has indicated that, central to the implementation of the changes associated with CSPs, will be a requirement upon the ELBs/ESA to:

*"Set out clearly the range of supports they intend to **ordinarily** make available to schools and to SEN pupils"²⁵ [emphasis added].*

²³ Committee on the Rights of the Child (2006) 'General Comment No. 9: The Rights of Children with Disabilities' (Geneva: United Nations), paragraph 20.

²⁴ This was indicated to the Commissioner during her meeting with officials on 6 February 2012.

²⁵ Page v of the Ministerial Foreword to the Department of Education (January 2012) 'Summary Report of Responses to the Consultation', see above for full reference.

It will be essential that the range of supports “*ordinarily*” made available to schools by the ELBs/ESA cover children with PLPs, who will be classed as having ‘Level 1’ needs within the terms of the proposed two-level structure. The range of supports “*ordinarily*” made available must also be consistent across the ELBs and at a regional level. Clarification is also required regarding the budgetary arrangements for the ELBs to ensure the agreed range of supports “*ordinarily*” available. The Commissioner would be interested to learn whether such supports will be provided through the ELB’s/ESA’s budget? **The award of supports which will be “ordinarily” made available must also be based on objective need.**

5.0 Further key issues

5.1 Role of learning support coordinators (LSCs)

The Commissioner is concerned that the updated proposals do not require all Learning Support Co-ordinators (LSCs) to be in a senior management position. The Minister has indicated that “*guidance will be included within a revised code of practice*” for SMTs to accept responsibility for the needs of pupils with a SEN and to ensure that the “*LSC has a voice*” at SMT meetings. The Commissioner does not believe that this will guarantee a sufficiently strong commitment at the school leadership level.

Given the fact that the Department’s broad proposals place an emphasis on all schools achieving the best standards for all children with SEN, and the recognition that significant proportions of primary and post-primary schools do not currently have sufficiently high standards in place to address pupils’ SEN, it should be a prerequisite that LSCs are in a position of seniority within the school structure.

It is vital that LSCs are in a position to negotiate access to appropriate resources and to design and lead on SEN policies in schools. If SEN is to be treated as a priority area in all schools, there should be consistency across schools in terms of the seniority of the teacher who is leading on SEN.

5.2 Annual reviews of CSPs

The 2009 consultation proposals advocated a shift away from annual reviews of statements, towards reviews of CSPs at transition points.

5.2.1 Impact of the annual review proposals on children’s rights

The updated proposals indicate that annual reviews will now be retained, however, **the annual review will take place only when requested by the school or parent. The Commissioner believes that, from a rights-based perspective, this does not offer sufficient protection. The Commissioner is not only critical of the proposed ‘optional’ nature of the annual review, but is also concerned that the proposal disregards a number of key rights under the UNCRC:**

In the first place, by focusing on the rights of parents and schools to request an annual review, no regard is given to the child's rights to participate in the decision-making process. This arguably contravenes Article 12 of the UNCRC, which requires authorities to ensure that children who are capable of forming their own views are afforded the right to express and have their views taken into account in accordance with their age and maturity.

Secondly, the reliance on parents and/or the school to request an annual review runs counter to the principle of non-discrimination, as outlined in Article 2 of the UNCRC, in terms of the potential for discrimination against children from lower socio-economic backgrounds, children whose parents lack capacity, etc. In instances where parents are not fully aware of the value of triggering an annual review, or where they lack the confidence or the resources to engage in the decision-making process, the opportunity of a formal review could be lost.

The Commissioner believes that the optional nature of an annual review means that monitoring mechanisms should be put in place to identify if there is a failure to take up reviews, and to identify if this affects particular children, such as those who coming from lower income families.

5.2.2 Value of formal review of CSPs

The Department has indicated that it does not view annual reviews of CSPs as a necessary or effective mechanism. **Rather than making annual reviews optional, the Commissioner would argue that it will be more appropriate to consider ways of improving the overall review process.**

5.3 Transitions

It is disappointing that the Minister's update has provided no further details regarding the consultation proposals on transition planning.

The 2009 consultation proposals suggested that access to transition services should be extended beyond pupils with a statement/CSP to include any pupil with SEN. The Commissioner welcomed this proposal in her response to the 2009 consultation. However, given that there is no update on this proposal, it is not clear whether it will be actioned.

The Commissioner believes that the summary proposals fail to provide reassurance that the necessary SEN provision will be maintained for children and young people who transfer from a statement of SEN to a PLP. Access to transition planning will become increasingly vital as the number of statements is reduced. **It will be absolutely essential that the Department ensures that children with PLPs have the same rights of access to avail of transition planning services as children with CSPs.**

The Commissioner is interested to know if the Department has given consideration to the question of how access to transition services for all children with SEN will be guaranteed.

5.4 Continued lack of progress on implementation of the child's right of access to the Special Educational Needs and Disability Tribunal (SENDIST)

In its 2008 Concluding Observations on the UK's compliance with the UNCRC, the Committee on the Rights of the Child made a specific recommendation to education authorities in the UK to:

"Ensure that children who are able to express their views have the right to appeal... to special educational need tribunals".

There has been no movement on this issue in Northern Ireland, with the result that children still do not have the right to make an independent appeal to SENDIST. Furthermore, there is no formal mechanism for ensuring that their voices are heard as part of the appeal processes.

In Wales, a pilot programme has been introduced to give children an independent right of appeal, and the Commissioner understands that pilots are also in the process of being established in England. **The Commissioner was advised during her recent meeting with officials that the Minister wishes to await the outcome of the pilots in England and Wales before making any decisions regarding children having a right of appeal to SENDIST in NI. The Commissioner opposes this position in light of the clear guidance from the UN Committee on the Rights of the Child and the provisions contained in Article 12 of the UNCRC.**

The current Review process presents an ideal opportunity to embed pupils' Article 12 rights in relation to access to SENDIST. The Commissioner therefore strongly advises the Minister to progress this matter. In parallel, the Review should urgently address the current barriers regarding access to SENDIST for lower income families – specifically, the current lack of access to legal aid for representation at SENDIST, as outlined by the Children with Disabilities Strategic Alliance:

“Representation and advocacy services for children with SEN and for their parents have no legislative basis and are not funded by the DE. Although legal aid is available through a solicitor to obtain independent expert evidence to support an appeal, there is no legal aid funding for representation. Given the complexity of the law on SEN and the level of legal regulation of hearings at Special Educational Needs and Disability Tribunal (SENDIST), a lack of continuity in case planning via funding for legal representation for children and their parents is a major barrier to children’s equality of access to their educational right”²⁶.

²⁶ Children with Disabilities Strategic Alliance (2012) ‘Manifesto (Review and Update 2012)’ (Belfast: Children in Northern Ireland/Disability Action).

APPENDIX 1

Commissioner's recommendations in her January 2010 response to the consultation on 'Every School a Good School - The Way Forward for Special Educational Needs and Inclusion'²⁷

1. *"NICCY recommends that the Department to attempt to remedy concerns expressed by external stakeholders regarding the SEN Review and consultation through engaging in a much more inclusive process post-consultation".*
2. *"NICCY recommends that the Department work towards building the relevant UNCRC articles into the policy proposal framework".*
3. *"NICCY recommends that the Department ensure that its policy takes on board the Committee's comments and reflects its recommendations" [this refers to the 2008 Concluding Observations of the United Nations Committee on the Rights of the Child].*
4. *"NICCY would recommend that the Department to take on board the Children's Rights Review findings as it develops its policy proposals post-consultation".*
5. *"NICCY would ask the Department to clarify how it has ensured to gather the views of a proportionate spread of children and young people across each of the groups who fall under the SEN and Inclusion proposals. We would also ask the Department to clarify how those views will influence the development of the policy proposals".*
6. *"The NICCY Youth Panel²⁸ would recommend to the Department in planning future children or young persons' versions that it:*
 - *Makes sure that the version is child-/young person-friendly.*

²⁷ The Commissioner's full consultation response, submitted to DE in January 2010, can be accessed here:
http://www.niccy.org/uploaded_docs/2010/Consultations/NICCY%20response%20to%20DE%20SEN%20%20Inclusion%20consultation%20%20Jan%202010.pdf [last accessed 27 February 2012].

²⁸ The Commissioner's Office held a consultation workshop with its Youth Panel to gain its comments and recommendations on the 2009 policy proposals. The Youth Panel's comments informed the Commissioner's response, and where particularly pertinent comments were made, these were integrated into the Commissioner's consultation response, and referenced as such.

- *Spends an adequate amount of money and time to show to children/young people that it is serious about achieving their views.*
 - *Considers going out to schools to consult.*
 - *Considers using different, innovative mediums to consult with children/young people, e.g., using a DVD.*
 - *Creates enticing front covers for documents aimed at young people – this would make it more encouraging for a young person to look to see what is inside.*
 - *Consider which age-range(s) of children or young people it is aiming at and bear in mind that one version may not suit all".*
7. *"NICCY recommends that the Department provide clarification on how the SEN concept will integrate within the AEN concept in practice".*
8. *"We urge the Department to give further detail on the AEN proposals and extensively consult with stakeholders on this before acting any further on the current policy proposals".*
9. *"NICCY would recommend that the Department clarify how its move towards a good practice model based on inclusion for all will not be detrimental for those individual children and young people who currently hold legally enforceable rights through possession of a statement".*
10. *"Since the policy proposals may ultimately entail a huge shift in the way that SEN are addressed, NICCY recommends that the Department provide concrete evidence to demonstrate how they will benefit children with SEN".*
11. *"NICCY would recommend that the Department provide further detail" [regarding how it will ensure that early identification/intervention takes place, including details regarding any proposed time-bound mechanisms, accountability arrangements, etc.].*
12. *"Where there is emphasis on meeting children's needs at the first two stages ('within school' and 'within school plus external support'), NICCY recommends that statutory accountability mechanisms be introduced to cover these stages as well as at the CSP/statement stage".*
13. *"NICCY would be happy to support real engagement between the Department and parents. Additionally, parents support organisations, such as Parenting Forum, may be able to provide advice on this" [this*

recommendation was made with respect to the need for DE to establish parental confidence in the special educational needs proposals].

14. *"NICCY recommends that funds for SEN should be ring-fenced within school budgets. We would also expect that any proposed changes to funding would be subject to full, public consultation".*

APPENDIX 2

Extract from: NICCY (2009) 'Children's Rights Rhetoric or Reality – A Review of Children's Rights in Northern Ireland 2007/08'

The following extract is reproduced from Chapter 6 of this report. Full references to reports cited in the extract are available in the Children's Rights Review report. This is available at:

http://www.niccy.org/uploaded_docs/1_71784_NIC71784%20Childrens%20Rights%20Text%206.pdf

6.8.7 Children with Special Educational Needs

The law pertaining to special education needs in NI is that contained within the Education (NI) Order 1996, as amended by SENDO.

The term 'special educational needs' is defined in the legislation as 'a learning difficulty which calls for special educational provision to be made'. 'Learning difficulty' means that the child has significantly greater difficulty in learning than the majority of children of his or her age, and/or has a disability which hinders his or her use of everyday educational facilities (or, where the child is below school age, would hinder such use if the child were of school age). 'Special educational provision' means educational provision which is different from, or additional to, the provision made generally for children of comparable age (DE 1998).

According to School Census data for 2007/08, almost 1 in 5 (18%) pupils were classified as having SEN; 4% had been officially stated, a further 14% were classified as having SEN but had not been stated.²⁹

Traditionally most children with SEN have been educated in alternative 'specialised' settings; however, the enactment of SENDO in September 2005 has given children with SEN increased rights to be educated within mainstream settings. One year after the enactment of the Order, 67% of pupils with statements of SEN were being educated in mainstream schools; this compares with a figure of 63% immediately prior to the enactment of the Order and 56% in 2000 (SC/CLC 2008).

While the increasing numbers of children with SEN being educated within mainstream educational settings post the enactment of SENDO is in line with

²⁹ www.deni.gov.uk/sen_by_elb_2007_08_-_suppressed-2.xls [accessed July 2008].

the Committee's recommendations on the schooling of children with disabilities and SEN (CRC 2006b), it is questionable whether the actual educational experiences of individual pupils are currently in line with what the Committee has envisaged. As SC/CLC (2008:36) observe:

"Educationalists and advocacy workers have expressed concerns at the lack of resourcing, planning, preparation and support linked to the introduction of SENDO, resulting in pupils with disabilities being placed in mainstream education settings that are ill-prepared to meet their needs. Lack of training for teachers and classroom assistants, as well as lack of appropriate resource materials to support pupils with disabilities, have also been highlighted."

Both education and disability support professionals and parents/carers of children with SEN who participated in this review reiterated these concerns regarding the current capacity of mainstream schools to meet the additional needs associated with SEN:

"It is a lottery especially for children with special educational needs" (professional).

"There would appear to be a lack of recognition of the need to cater for the vocation needs of special needs children within mainstream education. There appears to be an inability by the Education Board to put in place structures and programmes to cater for children at the lower end of mainstream education" (professional).

"For deaf children their range of choices (education) has been more and more diminished under the guise of 'mainstreaming'" (professional).

"Teachers phone parents to come in when child is being disruptive. Puts pressure on parents who are crying out for help" (parent).

"My disabled son has had little provision by education – he is still performing tasks that were introduced when he was 4 years old. He has been denied speech and language therapy despite being diagnosed as having a communication disorder and when school can't cope with his challenging behaviours, we as parents are sent for to bring him home" (parent).

"My son is dyslexic and the school he attends has no idea how to cope with his needs and he is falling further behind" (parent).

"Children with ASD need structure and can't manage free time in mainstream. Staff don't know how to manage young people who get stressed when structure fails, eg bus trips cancelled. On one occasion a teacher called a child "evil"

because the child reacted after being disappointed about a change in schedule. Teachers don't understand ASD" (parent).

"I feel teachers are not taught properly to meet the needs of visually impaired children. I get "he's doing fine" but I know he struggles and should not have to struggle with his IQ. I do work at home" (parent).

Children and young people with SEN who participated in this review also highlighted issues in relation to teachers' ability to understand their needs and/or cope with their associated behaviours in mainstream settings:

"Teachers didn't know how to deal with me because I have Asperger's. They just thought I was being bad or I was being stupid."

"It is humiliating if teachers speak to you about ADHD or my medication in front of the class."

"Need to educate teachers – big time – [about my condition]."

The challenges facing mainstream educational establishments in meeting the needs of children with SEN, in the absence of adequate funding, training and support, are further complicated by the increasingly diverse and/or complex nature of children's needs. The changing profile of pupils with SEN noted in a 2006 ETI report on the future of special schools and the increasing demands of addressing *"a wide variety of diverse and complex needs"* is equally, if not more, applicable to mainstream environments which, generally speaking, lack the experience of special schools in educating pupils with SEN (ETI 2006b:7).

The ETI report explores the potential of the special school sector providing mainstream schools, principals and teachers with support and advice on how best to meet the educational needs of pupils with SEN, concluding that insufficient attention has been given to *"exploring the potential of special and mainstream schools working more formally together for the benefit of pupils with SEN"* (ETI 2006b:2). The importance of such cooperative working, and the sharing of existing knowledge and experience, is again highlighted in the Chief Inspector's report which concludes that:

"Special schools are developing well their capacity to support mainstream schools. They have an important role to play as part of the continuum of provision for SEN within an increasingly inclusive education system. Special schools need to develop further as forward-looking centres striving for excellence, in partnership with mainstream schools and with one another, to

support the development of inclusion and the promotion of even higher standards” (ETI 2007b:33).

The current inability of mainstream schools to adequately address the needs of pupils with SEN is a concern which must be addressed as a matter of urgency if these children are to fully enjoy their right to education, as envisaged within the Convention. The Committee on the Rights of the Child has explicitly commented that fulfilment of this right for children with SEN requires *“modification to school practices”* and *“training of regular teachers to prepare them to teach children with diverse abilities and ensure that they achieve positive educational outcomes”* (CRC 2006b:para 62). Evidence gathered in this review would suggest that while there are some pockets of good practice the training and support of school staff in mainstream settings is, in the main, not being adequately addressed, nor indeed are the necessary modifications to school practices always being implemented.

A lack of funding was identified by many parents and professionals with knowledge of SEN who participated in this review as key to the current *inadequacies in provision:*

“We have had to fight tooth and nail with the education board to have the support put in place to help him at school. This is an ongoing battle which at the end of the day is dictated by budgets and does not put his needs or rights first” (parent).

“[My] eldest son suffers from mild reading disability which does not merit extra help/support from ELB. Unfortunately there is no remedy for this due to scarcity of funds/resources from ELB” (parent).

“The cuts in the education board have left less able children not receiving the education that they need. The boards have made it extremely difficult for children to receive help. These children still deserve a little extra help but cannot get it because it is too difficult to qualify for this help” (professional).

“No resources or lack of teacher training leading to no support for my child and not meeting his educational needs” (parent).

“My daughter was diagnosed with dyslexia in her P3 year. She is now going into P6 and is only due to receive help for the first time in September. I feel that it is essential that these children should be given the help they need as a matter of urgency. It is almost inevitable that my daughter will not sit the 11 plus test next year because she was denied a place at a special reading centre due to lack of funding” (parent).

"A child needed a hoist to attend a preschool place. They couldn't find the funding for the hoist, neither health, social services or education, so the child lost out on the place" (professional).

A further issue that requires urgent redress if children and young people with SEN are to access the education that is their right, is the issue of statementing. The process of statementing, and the delays frequently associated with this, was raised as a matter of concern by many parents/carers and professionals who participated in this review. The Committee on the Rights of the Child has clearly stated that early identification and intervention is of utmost importance to help children with SEN develop to their full potential (CRC 2006b), yet the reported reality for many families in NI is a struggle for identification and assessment:

"Diagnosis is very difficult and parents need support from others who 'help' their child – some teachers do not even acknowledge the existence of some special needs" (parent).

"Even getting the right diagnosis from the time the child is born, takes a long time, through to getting a statement for educational provision, so the parents are constantly fighting for every ounce of letting their child have the rights" (professional).

"Quite often parents have to push to get a good meaningful statement, where their needs are specified properly" (parent).

"I am now content that he is receiving an education but I had to fight to get him assessed. If I didn't he would never be able to reach his potential" (parent).

A series of reports by the ETI have highlighted a number of deficiencies in relation to the assessment and diagnosis of SEN. These include a lack of consistency in procedures/protocols for assessing need, differential thresholds for intervention and particular difficulties assessing and diagnosing pupils with *"less evident needs, notably in terms of their literacy and numeracy competences"* (ETI 2006a:2). Particular difficulties were also noted in delays in assessment in preschool provision in a 2007 ETI report, which observed important shortcomings in all types of pre-school provision in the planning for and assessment of children's SEN (ETI 2007a). Given the link between receipt of a statement and access to services, it is imperative that these delays and inconsistencies in the statementing processes be urgently addressed if children are to be able to access the additional support and provision necessary to enable them to effectively enjoy their right to education.

A welcome addition for parents who are unhappy with the statementing process, is the Special Educational Needs and Disability Tribunal (SENDIST) established under the SENDO Order, which offers parents a right to appeal certain ELB decisions. The legislation grants parents a right to appeal to the tribunal in a number of different circumstances including if a Board:

- decides not to carry out a formal assessment of their child's SEN
- after a formal assessment, decides not to issue a statement of SEN
- decides not to maintain a statement
- turns down a request to change the school named in a statement (subject to certain restrictions)
- turns down a request to reassess a child's SEN six months or more after the last assessment
- after reassessing a child, decides not to amend a statement.³⁰

While the avenue for redress allowed for by the establishment of this Tribunal is to be welcomed, DE's failure to fund advocacy or representation services for children with SEN restricts the potential impact of the Tribunal significantly. As SC/CLC (2008:37) observe, *"there is currently a lack of legal aid for representation at SENDIST, or for the cost of obtaining independent expert evidence to support an appeal"*. It is imperative that this and the other barriers facing children with SEN outlined above, are urgently redressed if these children are to fully enjoy their right to education.

³⁰ www.education-support.org.uk/parents/special-education/sendist/ [accessed October 2008].