

Curriculum Policy Team
G11
Department of Education
Rathgael House
42 Balloo Road
Rathgill
Bangor
BT19 7PR

8th February 2016

Dear Sir / Madam

Re. Consultation on the Complaints Tribunal (Curriculum and Related Matters) Regulations (Northern Ireland) 2016

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

I welcome the current consultation which is primarily procedural in nature and outlines the Department's proposed amendments to the current regulations to replace references to Education and Library Boards (ELBs) with references to the Education Authority (EA). I am aware that the draft amendments also provide for the EA to establish a panel of persons comprising persons appearing to the EA to have experience in education or who are the parents of a registered pupil in a school. I acknowledge that the regulations will revoke and replace the Curriculum (Complaints Tribunal) Regulations (Northern Ireland) 1992; and Curriculum (Complaints Tribunals) (Amendment) Regulations (Northern Ireland) 1997.

I also note the proposed amendment to the name of the regulations from Curriculum (Complaints Tribunal) Regulations to Complaints Tribunals (Curriculum and Related Matters). The Department of Education's Equality and Human Rights Policy Screening document¹ states that this change reflects a suggestion from stakeholders involved in Curriculum Complaints Tribunals that these tribunals have been used to adjudicate complaints that were not strictly related to the curriculum. Greater legislative clarity on the scope of this Tribunal is helpful.

Article 7 of NICCY's founding legislation, 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003), details my statutory duties. Article 7(4) of this legislation outlines the statutory duty I am under to provide advice to Government on matters concerning the rights or best interests of children and young persons. While it is not my intention to provide comment on the specific clauses within the draft Regulations, I do wish to bring the issue of separate representation of children and young people to the Department's attention in developing its proposals for the future operation of Complaints Tribunals (Curriculum and Related Matters). I note from the Department of Education's Equality and Human Rights Policy Screening document² that it is the intention of the Department that parents/guardians have greater clarity on the complaints procedure following the creation of the EA. I also note that while it is acknowledged that pupils are one of the main stakeholder groups affected by the policy, under the section on Evidence³ in relation to each of the section 75 categories, reference is made to the fact that these regulations will enable the parents/guardians at any grant aided school to make a complaint in regard to the curriculum or matters related to the curriculum.

In aiming to clarify whether it is possible for children to make a complaint about the curriculum and/or related matters to this Tribunal, NICCY staff contacted a number of education bodies, including the Department for Education. Information on Curriculum Complaints Tribunals was extremely difficult to find, either online or when contacting numerous education bodies directly. When requesting clarification from the Department of Education about whether a child could take a complaint to the Curriculum Complaints Tribunal in her/his own right, as this is not expressly stated either in the draft Regulations or its parent legislation, the Department did not know and sought advice from the Departmental Solicitors Office. This reflects criticism of the Curriculum Complaints Tribunal as detailed in, *"Human Rights in Northern Ireland The CAJ Handbook"*⁴ which states that in theory a parent who has concerns about the way in which an ELB (as it was known) or Board of Governors of a Schools is discharging its duties in relation

¹ The Department of Education's Equality and Human Rights Policy Screening document for Complaints Tribunals (Curriculum and Related Matters) Regulations and Revocation of Existing Regulations

² *Ibid.*

³ Page 5, *Ibid.*

⁴ 2015, Edited by Brice Dickson and Brian Gormally

to the curriculum or assessment, religious education, access to information or any related manner, can apply in writing to the Curriculum Complaints Tribunal. In practice, information about the Curriculum Complaints Tribunal is not published and it is not clear that the statutory complaints procedure is used to any great extent.⁵ It is concerning to me that the Department of Education, who has responsibility for the policy and legislation relating to the Curriculum Complaints Tribunal, needed to seek legal advice on the issue of whether children and young people can access the Tribunal directly. It is also concerning that information on the Tribunal is not published and is extremely difficult to find and knowledge about the Tribunal within the education sector is so limited. While the Curriculum Complaints Tribunal may not be utilised to any great extent, which I hope is because issues arising about the curriculum and related matters are being satisfactorily dealt with at school level, although this is not stated anywhere in the consultation, it is my view that there may be an access to justice issue which requires further examination. In order for children and their parents and guardians to access justice, they must be made aware of the existence of complaints mechanisms and feel knowledgeable and confident to pursue matters where necessary.

I now understand, from information received from the Department of Education, that there is nothing to prevent a young person making a request to the Tribunal. The Tribunal would have to be satisfied that the young person had sufficient mental capacity to make the case, which will be a matter for the Tribunal to decide.⁶ It is unclear how decisions regarding the mental capacity of young people would be determined by a Tribunal, which raises a number of issues regarding the right of the child to separate representation in legal proceedings. Article 12 is one of the key principles of the UNCRC and places an obligation on the Government to have respect for the views of the child. It affords a child not only the right to be heard but to have their views taken into account and given 'due weight'.

Article 12 deals specifically with the voice of the child and requires State Parties to assure to a child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

For this purpose, the child shall in particular be provided with the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative and in a manner consistent with the procedural rules of national law.

⁵ Page 497, Education Rights, Laura Lundy, Grainne McKeever and Viviane Treacy, *"Human Rights in Northern Ireland The CAJ Handbook"*, 2015, Edited by Brice Dickson and Brain Gormally

⁶ E-mail received by NICCY staff member from the Department of Education, 8th February 2016

Children and young people require an enforceable statutory right to have their voices heard and their views considered in judicial and administrative proceedings affecting them.

The right of the child to be heard as provided for under Article 12 of the UNCRC is extremely broad with regard to its application. The Committee on the Rights of the Child in its 2008 Concluding Observations following its examination of the UK Government's compliance with the UNCRC recommended that the State party,

*"...promote, facilitate and implement, in legislation as well as in practice, within the family, schools, and the community as well as in institutions and in administrative and judicial proceedings, the principle of respect for the views of the child."*⁷

The United Nations Committee on the Rights of the Child's General Comment No 12 on the Right of the Child to be Heard details the obligations on State Parties to ensure the child can effectively participate in decision making impacting on their lives. It states that,

*"A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. Proceedings must be both accessible and child-appropriate."*⁸

It also states that

*"The child's right to be heard imposes the obligation on States parties to review or amend their legislation in order to introduce mechanisms providing children with access to appropriate information, adequate support, if necessary, feedback on the weight given to their views, and procedures for complaints, remedies or redress."*⁹

With regard to the right to information as provided for under Article 17 of the UNCRC and the right to meaningfully participate in proceedings which impact on their lives, General Comment 12 states that,

"Fulfilment of the child's right to information, consistent with article 17 is, to a large degree, a prerequisite for the effective realization of the right to express views. Children need access to information in formats appropriate to their age and capacities on all issues of

⁷ United Nations Committee on the Rights of the Child, Concluding Observations United Kingdom, CRC/C/GBR/CO/4, 20th October 2008, para 30.

⁸ Para 34, General Comment No. 12 (2009) The right of the child to be heard CRC/C/GC/12

⁹ *Ibid*, para 48

concern to them. This applies to information, for example, relating to their rights, any proceedings affecting them, national legislation, regulations and policies, local services, and appeals and complaints procedures.”¹⁰

Also relevant is the Committee on the Rights of the Child’s General Comment No 5 on General measures of Implementation which states that,

“For rights to have meaning, effective remedies must be available to redress violations. This requirement is implicit in the Convention and consistently referred to in the other six major international human rights treaties. Children’s special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance.”¹¹

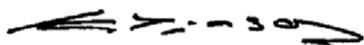
I wish to alert the Department to the Special Education Needs Disability (SEND) Bill which has progressed through the Assembly and is currently awaiting Royal Assent. Articles 11 and 12 of this Bill allow for the transfer of appeal rights in Tribunals dealing with both SEN and Disability claims from parents to children over compulsory school age. Article 13 provides for a pilot scheme for children under compulsory school age to take Tribunal appeals in their own right on a range of issues. It is encouraging that the Department of Education under the SEND Bill is moving towards a greater recognition of the child as a rights holder. It is vital that this recognition within education is meaningfully extended to all children, including those who wish to access Curriculum Complaints Tribunals through the provision of information and advice on how to access the Tribunal and the provision of adequate support to do so. I would urge the Department of Education to take cognisance of this as well as its international obligations, as outlined above, in the operation of all education Tribunals, including Curriculum Complaints Tribunals.

I would request that the Department keeps me informed of the development of these Regulations and how it intends to ensure compliance with its international children’s rights obligations with regard to informing children and young people of their right to access and ensuring access to the Curriculum Complaints and other education Tribunals.

¹⁰ *Ibid*, para 82

¹¹ Para 24, General Comment 5 (2003) General measures of implementation of the Convention on the Rights of the Child CRC/GC/2003/5

Yours sincerely



Koulla Yiasouma
Commissioner for Children and Young People