

DHSSPS Core Team
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Castle Buildings
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BT4 3SQ

20 August 2015

Dear Sir/Madam

RE: Co-operating to Safeguard Children and Young People in Northern Ireland

The office of the Commissioner for Children and Young People (NICCY) welcomes the opportunity to comment on the above policy document. 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. In carrying out her functions, the Commissioner's paramount consideration is the rights of the child or young person, having particular regard to their wishes and feelings. In exercising her functions, the Commissioner has regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

Under articles 7(2)(3) of this legislation, NICCY has a mandate **to keep under review the adequacy and effectiveness of law, practice and services** relating to the rights and welfare of children and young people. It is with these duties in mind that we are providing a number of comments on the document, which are not intended to be comprehensive, but instead highlight key thematic concerns.

Introduction

NICCY acknowledges the range of changes made as part of this revision of Co-operating to Safeguard Children and Young People and note that this reflects developments in both child protection structures and in our evolving understanding of safeguarding, including emerging risks to children. Whilst we recognise the challenge of addressing this complex area **we would note that the document is at times challenging to navigate.**

Children's Rights

NICCY welcomes the positioning of the United Nations Convention on the Rights of the Child (UNCRC) as part of the legislative context of safeguarding in Northern Ireland but would emphasise that all articles of the Convention, not just those identified, are central to ensuring an effective approach to safeguarding. This reflects the interdependent and indivisible nature of rights contained within the UNCRC for all children, including children in need and children in need of protection. The document's commitment to the UNCRC should be incorporated in a more comprehensive policy aim of embedding a culture which recognises child rights more broadly, not simply the right to be safe.

In relation to the **UNCRC article 12** right for children to express their view and for this to be given due weight in all matters concerning them, we note that engagement with children should reflect the concept of evolving capacity and the obligation for this participation to be properly facilitated. Section 6.1 references assessing the capacity of children and we request further detail on this, including whether this is in regard to the Fraser Guidelines / Gillick Competence or to other work being undertaken in relation to capacity in children.

In section 7.2.1 we welcome guidance that social workers must see and speak to children alone to gain their views regarding foster placements but note that this standard should operate across all forms of alternative care, including residential and kinship care. We also acknowledge the emphasis given to ensuring the views of children inform Looked After Children Reviews but highlight that monitoring should be in place to ensure this occurs in a meaningful manner.

Also on the theme of the voice of the child, in 6.4 NICCY welcomes the clear direction given that professionals should be alert to parental 'disguised compliance' which may place children at significant risk and ensure that children's views are heard. **However, professionals must also maintain an enduring focus on the needs and best interests of each individual child and not rely on a child's disclosure or articulation of need to assess if risk is present, including in cases where children do not identify themselves as victims in need of protection and in cases concerned with persistent neglect.**

Remit of policy

In considering the remit of the policy we note the importance of reflecting the role of other departments, such as Culture, Arts and Leisure and Employment and Learning whose agencies and associated bodies have contact with large numbers of children and

who should play a lead role in assuring the highest standards of safeguarding across these respective sectors.¹ In relation to the Department of Education, NICCY would note concern that greater recognition should be afforded to the role of youth work in the lives of many children and young people.

Whilst NICCY fully supports the intention of para 3.3.2, the references to the remit of the ELBs (now Education Authority) to proactively monitor and refer safeguarding concerns regarding children electively educated at home appear to be incorrect. According to Schedule 13 of the Education and Libraries (Northern Ireland) Order 1986, Education and Library Boards can only take action if it appears to the Board that the parent of a child of compulsory school age is failing to cause their child to receive 'efficient, full-time education suitable to his age, ability and aptitude...' There are no requirements on parents to register children as electively home educated, nor to establish in advance that required educational standards have been met. Equally, there is no legislative basis for a 'multi-disciplinary check' to be completed, or for 'ongoing monitoring of elective home education programmes'.

In our letter of 19 August 2014 to the Education and Library Boards in relation to elective Home Education, we raised concerns in terms of ensuring adequate safeguarding, as well as the provision of quality education, for children and young people who are home educated, and suggested that a more robust system of registration would assist in meeting these important objectives. It is likely, however, that this would require changes to the existing legislation.

NICCY would observe that the role of Justice agencies should include specific reference to the accommodation of detained children and young people in both Woodlands Juvenile Justice Centre and Hydebank Wood Young Offenders Centre. Further to this, the policy should more explicitly state where effective coordination and joint working across devolved and excepted matters and agencies is pivotal to safeguarding. **This notably includes establishing close working relationships with UK Home Office agencies in regard to Separated Children Subject to Immigration Control and the National Crime Agency in relation to online exploitation.**

The document should also highlight the **particular role of the multiagency and cross sectoral Safeguarding Board for Northern Ireland (SBNI) throughout the policy** and in discussing the expectation that members co-operate should instead emphasise the **statutory duty** placed on the Board in this regard. We also note that the work of the

¹ See for example the 2013 Culture, Arts and Leisure Committee Inquiry into Investigation into Gaps in Child Protection and Safeguarding across the Culture, Arts and Leisure Remit.

Children and Young People's Strategic Partnership (CYPSP), particularly in planning services for children in need should be more clearly identified. In recognising the important work of the voluntary and community sector, the policy should also pay regard to the central role of faith organizations in many communities. In addition to this, the document should consider the remit of the policy in relation to the independent sector, Internet Service Providers, others operating in the online world and the media. We welcome the acknowledgement of the key role emergency services play in safeguarding children and young people.

NICCY supports the principle of 'safeguarding sound' services as outlined in section 4.5 but notes that support, monitoring and assurance mechanisms for promoting high standards of child protection need to be more clearly defined. This should be given particular consideration in relation to groups not in receipt of government funding or subject to departmental or arms length body requirements. On a related theme, NICCY has previously expressed concern regarding the provision of services by individuals, such as private tutors, who are not subject to criminal records checks or required to adhere to organisational safeguarding standards and we note concern that the policy does not fully address this.

Vulnerable groups

It is important to draw attention to the groups of children who may be particularly vulnerable as outlined in the document but we would note concern that young people in need of education, employment or training and young people in contact with justice agencies are not identified within this section.

In 7.1.5 NICCY welcomes the recognition of the complex dynamics of peer involvement in abuse and grooming and we note the importance of ensuring that interventions have a therapeutic focus. **These principles of promoting a therapeutic approach and making sure that a child in need or at risk of significant harm is recognized as such are also central to addressing Harmful Sexual Behaviour.** While section 7.3.1 references that children should be held accountable for their actions, including through criminal prosecution, NICCY would draw attention to the unacceptably low minimum age of criminal responsibility in Northern Ireland and the importance of ensuring that children have access to specialist support, including forensic psychiatric services, as needed. This must, of course, be accompanied by robust safeguards to protect other children and young people who may be at risk. Further to this, a regional lead for this specialised area of work should be designated.

In discussing the protection needs of 'looked after' children in 7.2.2 NICCY notes that while it is important to streamline assessment and review procedures, confirmation that safeguarding concerns are thoroughly addressed within looked after review processes must be secured. This principle of close and effective management of concerns across different teams and processes applies to a range of cases, including those involving children with disabilities or with complex needs and where Multi Agency Risk Assessment Conference procedures have been invoked.

In relation to risks to children who go missing in section 7.2.3, particularly regarding sexual exploitation, we would underline that this does not apply only to children and young people in care. NICCY would also note our understanding that there may be variations in practice regarding the undertaking of safe and well checks and independent return interviews for children who have been missing.

Regarding 7.2.7 which discusses parents with additional needs, we welcome recognition of the impact that mental health difficulties, disability and alcohol and drug use may have on children and families, as shown in case management and serious case reviews and inquiries. We note that this also applies to the risks that domestic violence and abuse poses to children's welfare and safety.² **The policy should reinforce the remit of government in providing assistance to families, including through universal, prevention and early intervention services, as well as highlighting the role of authorities in invoking protective measures.**

In considering the needs of children with disabilities in section 7.2.9 we note that the language used should underline that responsibility for abuse lies with perpetrators and not the reduced capacity or ability of the child. Our developing understanding of sexual exploitation also highlights that young people with learning disabilities can be identified by abusers as being vulnerable to this form of abuse.

In relation to Separated Children Subject to Immigration Control NICCY requests clarification that Care Orders are only noted as being sought where it is suspected a child is a victim of trafficking in 7.2.8. The document should highlight that the case of each child should be assessed individually and that factors, including age, presentation, circumstances of arrival and vulnerability should determine whether applications for care orders or other measures, such as the accommodating a young person under Article 21 of the Children (Northern Ireland) Order 1995, are put in place. We welcome the clear direction given that age assessments must be 'Merton compliant' and the

² See for example Devaney et al (2013) Translating Learning into Action: An overview of learning arising from Case Management Reviews, Belfast: QUB.

acknowledgment of the new Independent Guardian role although it would be helpful to include a date by which this provision will be in operation.

In addressing the vulnerability of children at risk of self harm and suicide in sections 7.3.3 and 7.3.4 NICCY views that this should not be described as 'children's behaviours'. **Indeed, throughout the document phrasing should not suggest that children are responsible for their own vulnerabilities, exposure to risk or abuse.** It is important that the policy ensures proper coordination and information sharing across mental health and social care services on an ongoing basis. NICCY would also highlight the importance of recognising the needs and vulnerabilities of children who are experiencing mental health problems more broadly within the document. In terms of accessing mental health services, in addition to the provision of inpatient treatment it would be helpful to state that this should only occur when other stages of the stepped care model, including intensive home and community based treatment, are not effective or appropriate. **NICCY has repeatedly expressed concern about the practice of accommodating children on adult wards and advises that the policy should address this directly.**

Areas of protection

In relation to e-safety, NICCY would highlight the need to ensure that awareness and training support discussed is of a high standard and that further detail should be provided on the resources that will be provided to support parents and others to have up to date knowledge as referenced in section 7.1.11.

NICCY welcomes acknowledgement of the risk posed by community or paramilitary violence to children and the responsibility placed on statutory authorities and others to take protective measure to safeguard children in such circumstances.

We welcome in sections 7.1.8 – 7.1.10 recognition of the need to protect children from Forced Marriage and Honour Based Violence and to protect girls and young women from **Female Genital Mutilation** and draw attention to the need for a **designated regional lead on this issue.**

In relation to CSE, we would query that the definition developed by SBNI is not used and note the importance of a shared and agreed definition being used by all agencies. **NICCY requests clarification regarding the statement that CSE victims in Northern Ireland often have no obvious vulnerability factors and are not otherwise known to children's social care.** We welcome recognition of the need for early engagement with police to enable effective disruption and prosecution of sexual

exploitation offences and that police involvement is not dependent on formal complaint from a young person. It is again important to underline that young people may not identify themselves as victims of abuse.

In commenting on the policy in general, we note **the document should explicitly address the need to incorporate learning from Case Management Reviews, inquiries and other forms of investigation or review which identify learning and recommendations to be incorporated into law, policy and practice.**

Processes

Throughout the document it would be helpful to have greater clarity regarding the respective roles of Gateway/Regional Emergency Social Work Service and children's social care more generally, particularly the contact points which the policy intends as the primary route for referrals and other contacts. In relation to the Protocol for Joint Investigation by Social Workers and Police Officers of Alleged and Suspected Cases of Child Abuse we welcome the establishment of the PSNI Central Referral Unit and anticipate that this will facilitate greater consistency in the use of the Joint Protocol regionally.

NICCY seeks clarification, as outlined in section 5.4, that only consideration will be given to calling a Child Protection Case Conference when an allegation is substantiated and we note that where it is agreed not to proceed to a case conference the rationale for this and agreed measures to monitor the welfare of the child concerned should be clearly recorded. In considering case conference attendance it is important to highlight the role of health and education professionals.

In relation to children in need we request clarification in sections 4.3 and 4.7 regarding the designation of the lead professional. NICCY also requests an update on discussions within health and social care following research on cases of adolescent suicide which identified that coordinated support plans led by a designated professional should be put in place for young people known to a range of agencies as having considerable needs but not designated as a child in need or placed on the child protection register.³ **The document should provide greater clarity on the status and trigger and review points in process for the consideration of 'early authoritative intervention'.**

³ Devaney et al (2012) Still Vulnerable: The Impact of Early Childhood Experiences on Adolescent Suicide and Early Death, Belfast: NICCY.

We welcome the direction that all interventions, and as part of this all assessments and related processes, should be proportionate and timely in nature. Again we note that the views of all children and not simply those who are older should be taken account of in order to ensure that any safeguarding measures put in place are effective.

In commenting on the effective use of legislative powers NICCY would draw attention to the value of reviewing the repeated use of interim care orders in cases to consider how this may potentially impact on the best interests and welfare of the child. We also recommend robust monitoring of the use of powers regarding secure care and the regional procedures which relate to the restriction of children's liberty. In addition to this, we are keen to clarify if the Judicial Review concerning the use of Harbourer's Warning Notices has significantly impacted on their use and effectiveness (2014/NIQB 81).

In considering the responsibilities of organisations where procedures regarding abuse by a person in a position of trust have been instigated, NICCY has previously expressed concern about the dilution of safeguarding standards in revised vetting and barring arrangements. In addition to directing that a referral must be made to the Disclosure and Barring Service the policy in 7.1.6 should set out the clear responsibility of bodies to share relevant information to ensure that children are protected in other settings.

Section 8 which outlines interagency working and information sharing should reference the **SBNI Information Sharing Agreement**, giving emphasis to lines of accountability through the Board for members. **The policy should also identify the processes that should be adhered to for bodies who are not part of SBNI or positioned within the health and social care family of organisations, such as faith groups.** The anticipated publication of the revised Circular CC 3/96 (Revised) Sharing to Safeguard will play a key role in this area.

We welcome the acknowledgement of the need to ensure effective transition to adult services for young people and note this should include guidance as to when young adults are considered as meeting the definition of a vulnerable adult. This reflects a recommendation of the 2014 Independent Inquiry into Child Sexual Exploitation in Northern Ireland and it is of concern that the recommendations of the Inquiry as a whole are not more evident in the policy.

NICCY is disappointed that the policy does not discuss the review and learning processes that should be in place and undertaken on a statutory basis by SBNI in relation to child deaths. We have repeatedly raised concerns about the need to establish a robust review system for child deaths and recommend that this is addressed directly in the document. We are also concerned that the policy does

not make reference to Sudden Unexpected Death in Infancy or the protocols that should be in place regarding this. NICCY would highlight the significant number of Case Management Reviews that have been undertaken following sudden death in infancy and note that safeguarding policies should reflect this.

The role of the state as corporate parent should be afforded greater consideration throughout the document.

Resources

The proper provision of the full range of support, services and interventions outlined in the draft policy are central to Northern Ireland's ability to effectively safeguard and protect children and young people. NICCY is acutely concerned about the capacity and commitment of government to provide full and sustained resourcing for this. This concern relates to both 'core' or statutory areas of responsibility as well to areas which have been traditionally underfunded, including child and adolescent mental health services, preventative and early intervention provision and transitions. The policy should clearly articulate the need for proper resourcing in order to secure positive safeguarding outcomes for our children.

Please do not hesitate to contact my office if you require any further information.

Yours sincerely



Koulla Yiasouma
Commissioner for Children and Young People