

Response from the Northern Ireland Commissioner for Children and Young People to the DHSSPS Consultation: A Draft Policy for Developing Advocacy Services

1.0 Introduction

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)(3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. The remit of the Office is children and young people from birth up to 18 years, or 21 years of age if the young person is disabled or in the care of Social Services.

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

2.0 International Law

2.1 Children's Rights

The United Nations Convention on the Rights of the Child (UNCRC) provides the overarching framework which guides the work of NICCY. The UK Government, including Northern Ireland, is a signatory to the Convention and has agreed to uphold the rights of children and young people based on the Convention. While each of the articles of the Convention is regarded as important, Article 12; the right of children to have their voices heard in all matters concerning them, is particularly relevant in the context of the issues addressed in this consultation concerning advocacy services. Article 12 enshrines the right of the child to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or appropriate body. In order to fulfill its obligations to recognize the rights of the child in this regard, it is fundamentally important that the Government provides children and young people who are experiencing mental health problems, with appropriate and effective access to quality advocacy services. These services should articulate their views and consult with them in regard to their feelings and wishes and in respect of their decisions about treatment and care.



In relation to the consultation, the following articles are also of significance:

- *Article 2: Children shall not be discriminated against and shall have equal access to all articles in the UNCRC.*

Children and young people should be entitled to the same safeguards proposed through the provision of independent advocacy services as adults. The document references the role of advocacy in 'safeguarding.... those who are vulnerable or are at risk of being discriminated against' (para.6.8). NICCY would strongly suggest that children and young people should be considered within the scope of these proposals.

- *Article 3: All decisions taken which affect children's lives should be taken in the child's best interests.*

The governing principle which should underpin the development and implementation of all policies and provisions relating to children and young people, is that the welfare of the child is paramount. In seeking to apply this principle in relation to children and young people with mental health issues, NICCY believes that every opportunity should be taken to ascertain the views of the child or young person. The value of an advocate in this context is significant, given his or her ability to speak on behalf of those who may have no-one to speak for them.

In 2010, NICCY launched the 'Make it Right' campaign to celebrate the 20th anniversary of the United Nations Convention on the Rights of the Child (UNCRC). A series of 12 policy and campaign briefings were published to highlight key child rights issues identified in the NICCY Reports; Children's Rights: Rhetoric or Reality (2008)¹ and the NICCY Rights Review on the UN Committee on the Rights of the Child's Concluding Observations on the UK Government's Report (2008)² and its General Comment No. 12 (2009)³. The policy briefing 'Having your Say', emphasised the need for children to have access to independent advocacy services, 'particularly where they are marginalised or vulnerable, or where decisions will have significant ramifications for their lives'.⁴ In the briefing, NICCY called for the Northern Ireland Executive to develop, resource and implement an advocacy strategy for children

¹ <http://www.niccy.org/PolicyandResearch/ChildrensRightsReview>

² http://www.niccy.org/uploaded_docs/CRU/NICCY%20Rights%20Review%202008%20.pdf

³ UN Committee on the Rights of the Child (2009) General Comment No. 12: The Right of the Child to be Heard, (Geneva:UN).

⁴ <http://www.niccy.org/Makeitright/childrenhavingasay>



and young people in Northern Ireland. Furthermore, access to appropriate and effective advocacy provision is an ongoing issue of concern for Children's Commissioners across the UK and will be referenced in their forthcoming mid-term report to the UN Committee on the Rights of the Child⁵.

3.0 Comments on the Proposal

3.1 Timing of consultation

NICCY would question the scheduling of this consultation on a draft policy for the development of advocacy services. It is concerned that the consultation has been issued for consideration and response, in advance of any agreement being reached by the NI Executive, regarding the contents of the Mental Capacity (Health, Welfare and Finance) Bill. Indeed, the consultation states that the finalised policy 'aims to pave the way for the proposed new statutory right to an independent advocate in the...Bill'. The provision of advocacy services is therefore inextricably linked to the contents of this Bill. Given that the proposed contents are still being scrutinized by key political, statutory, voluntary and community stakeholders, the publication of this consultation, however, seems rather premature.

3.2 Human Rights

The Ministerial foreword makes reference to the value of advocacy services in 'protecting the human rights of the most vulnerable in our society' although there is no substantive reference to human rights or relevant instruments or provisions in the body of the consultation document. If the proposals are seeking to address the most vulnerable groups within society, and to take account of their human rights, NICCY believes that the rights of children and young people, enshrined in the UNCRC and other relevant human rights legislation, should also be recognized and included.

3.3 Inclusion of Children and Young People

The Bamford Review of mental health estimated that Northern Ireland has a higher prevalence of mental health problems compared with England⁶ and a recent RQIA Review of Child and Adolescent Mental Health Services (CAMHS) in Northern Ireland (2010), cited findings from the Review, noting that 'epidemiological evidence would suggest that 20% of children and young people in Northern Ireland could develop a significant mental health problem' (p.2)⁷.

⁵ The UK Children's Commissioners' Mid-term Report to the UK State Party on the UN Convention on the Rights of the Child will be published in November.

⁶ Bamford Review (2005)

⁷ http://www.rqia.org.uk/cms_resources/RQIA%20CAMHS%20Report%2022%20Feb%2011.pdf



Given the potential impact of mental health issues on many children and young people in Northern Ireland, the compilation of a draft policy for the development of advocacy services should constitute an important step towards ensuring their rights and providing an effective safeguard. It is therefore disappointing that the scope of the policy proposals is limited to those aged 16 years or over, who, in a health and social care setting 'require support in relation to decisions about their health and well-being'.

The Royal College of Psychiatrists has highlighted the need to safeguard children and young people who occupy 'a particularly vulnerable position when they are in contact with mental health and learning disability services'. It emphasizes the need for practitioners to consider the 'separate needs' of child and adolescent patients, the importance of strong structures being established to 'safeguard the needs of children' and of an 'independent advocacy scheme' being in place.⁸ The Children's Law Centre and Save the Children (Northern Ireland) have highlighted the need for a statutory right to independent advocacy provision for children and young people⁹. In doing so they referenced work completed by the Human Rights and Equality subgroup of the Bamford Review. This group highlighted the necessity of advocacy services for children and young people, the need for advocacy to be enshrined in legislation and identified the key components of effective advocacy provision¹⁰.

NICCY would urge the Department to consider previous work completed and advice provided by practitioners and researchers in the area of children and young people's mental health and to take account of their findings and recommendations in relation to advocacy. In this regard, NICCY strongly believes that children and young people with mental health problems should have access to advocacy services, irrespective of their age.

NICCY understands that, at this time, the protections outlined in the draft mental capacity legislation will apply only to over 16's and to those aged under 16 years who have been detained under the mental health provisions in the legislation¹¹. It is unclear from the draft policy proposals if advocacy services will be made available to this latter group. NICCY would argue strongly that

⁸ <http://www.rcpsych.ac.uk/files/pdfversion/cr74.pdf>

⁹ Children's Law Centre and Save the Children (NI) (2006) Paper submitted to the UN Committee on the Rights of the Child for its 2006 Day of General Discussion on 'To Speak, Participate and Decide-The Child's Right to be Heard'

¹⁰ O'Rawe, A., Caul, T. & McKeown, P. (2005) *Advocacy*. Unpublished paper.

¹¹ NICCY is aware that the DHSSPS has recently agreed to consider the inclusion of 'mature minors' in the provisions of the draft Bill.



these very vulnerable children and young people should have access to an appropriate advocate who will be able to represent their views effectively.

In addition, children and young people should be properly consulted during the development of advocacy services which will provide for them and their views should be given due consideration.

3.3 Stage at which Advocacy is offered

The consultation document includes a section entitled 'Understanding Where Advocacy fits in'. However the explanations in this section do not indicate at which stage in their treatment and care an individual is entitled to request the services of an independent advocate, nor does it detail if access to an advocates varies between the different tiers of mental health provision. Furthermore, it does not provide information regarding the process by which an advocate may be appointed. NICCY believes it is important that further detail with regard to these issues should be communicated in order to more fully inform the development of advocacy services.

3.4 Type of Advocacy offered

The proposals briefly outline different types of independence associated with advocacy provision, comparing the approaches adopted in England and Wales and in Scotland. NICCY strongly endorses the Department's view that advocacy should have structural independence from service providers and that this should be agreed as the ultimate goal. NICCY would suggest that clear and detailed policy guidelines should be provided to organizations with regard to how conflicts of interest can be minimized and psychological independence actively promoted. As the Department notes, this is the most important type of independence. As part of the draft policy, NICCY would propose that additional information should be provided with regard to how the Department envisages advocacy being delivered. Specifically, will an individual have access to the same advocate or are they likely to have different advocates acting on their behalf during the period they require advocacy provision.

4.0 Conclusion

NICCY would like to thank the DHSSPS for the opportunity to comment on the draft policy for developing advocacy services. If the Department requires any clarification regarding our comments, or would like to discuss the issues with NICCY in further detail, please contact:

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