

Response by the Northern Ireland Commissioner for Children and Young People to the Safeguarding Board (Membership, Procedure, Functions and Committee) Regulations (Northern Ireland) 2011, 20 December 2011.

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

In determining how to carry out her functions, the Commissioner considers the rights of the child and NICCY bases all its work on the United Nations Convention on the Rights of the Child (UNCRC).

2. International Law: Children's Rights

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

NICCY appreciates that there are often complexities when reconciling the rights of children and young people with their welfare and best interests. We recommend that the following guiding principles of the UNCRC are incorporated as underlying principles in the Regulations to ensure that the rights and best interests of children are protected:

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



- Article 3: All decisions taken which affect children's lives should be taken in the child's best interests.
- Article 6: All children have the right to life and to the fullest level of development.
- Article 12: Children have the right to have their voices heard in all matters concerning them.

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

- Article 19: Appropriate measures should be taken to protect children from all forms of physical violence or mental harm. Programmes for the prevention of abuse and the treatment of victims should be established.
- Article 34: Children should be protected from all forms of sexual exploitation and abuse.
- Article 35: All measures to prevent the abduction, sale or traffic of children for any purpose should be taken.
- Article 37: Children should not be subjected to torture or other cruel or degrading treatment or punishment.

The establishment of the Safeguarding Board provides government with an important opportunity to strengthen arrangements to protect children and meet its obligations under the UNCRC. NICCY encourages the Department to take all possible steps to ensure that the Regulations are compatible with the UNCRC.

3. Research

In 2008 NICCY published a major review of children's rights which highlighted the gaps, problems and difficulties in the protection, promotion and implementation of children's rights in Northern Ireland.¹ The review noted that the establishment of a regional statutory Safeguarding Board would have potential to provide a more comprehensive and consistent approach to protecting children and young people.

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



Recent research on Local Safeguarding Children Boards in England has noted that the new multiagency structure has encouraged child protection to be seen not solely as the responsibility of social care agencies.² NICCY is hopeful that the establishment of the Safeguarding Board in Northern Ireland will secure similar change.

It will have been helpful if, in drafting the Regulations, the Department has been able to consider the Munro Review of Child Protection in England³ and Lazenbatt et al's evaluation of the Case Management Review process in Northern Ireland.⁴ We would draw particular attention to the aspects of both reports which seek to ensure greater learning from serious cases of abuse and child deaths.

4. Consultation with Children and Young People

NICCY has regularly expressed concern that the Section 75 statutory duty to consult on and equality impact assess policies has not been adequately enforced in respect of the age criterion. Article 12 of the UNCRC also states that children have the right to express their opinion in matters directly impacting upon them and to have those views given due weight in accordance with their age and maturity.

We welcome the work undertaken by the Department with the Participation Network and other stakeholders to ensure this consultation seeks the views of children and young people. We would however note our concern that the restricted timeframe for the six week consultation, which includes the Christmas period, may restrict the engagement of children and young people, as well as other interested parties, in the process.

5. Comments on the draft Regulations

Introduction

² France A., Munro E.R. and Waring A. (2010) The Evaluation of Arrangements for Effective Operation of the New Local Safeguarding Children Boards in England, (London: Department of Education).

³ Munro E. (2011) Munro Review of Child Protection: Final Report, A Child-centred System, (London: Department of Education).

⁴ Lazenbatt, A., Devaney, J, and Bunting, L. (2009) An Evaluation of the Case Management Review Process in Northern Ireland, (Belfast: QUB, NSPCC).



NICCY strongly supports the establishment of the Safeguarding Board which should provide a new strategic focus on child protection and strengthen current arrangements. Indeed, in her previous role, the Commissioner sought to place the work of the Area Child Protection Committees on a statutory footing by sponsoring a Private Members Bill, prior to the suspension of the Northern Ireland Assembly in 2002.

It is problematic that the consultation does not include the draft guidance currently being developed by the Department. A consultation exercise on both Regulations and guidance would provide a more substantive basis on which to offer detailed comment. This is of particular relevance to the Board's duties in regard to Case Management Reviews and to promoting communication with children and young people.

In drafting the Regulations, we note that the Department has continued engagement with selected stakeholders as was established in developing the primary legislation. While we support government drawing on the expertise of a range of organisations, NICCY must highlight that we have not had opportunity to meaningfully advise on the Regulations, specifically in relation to the Case Management Review function, in which the Commissioner has expressed a particular interest. While we welcomed early receipt of the Regulations, as this was only two working days before the public consultation, this did not allow NICCY to provide comment that the Department could take account of prior to publication.

Regulations three and four: Membership

NICCY recognises the importance of the Safeguarding Board securing representative membership while remaining an effective working forum. We welcome the recent inclusion of British Medical Association (BMA) and voluntary sector representation. We would observe that the BMA does not represent all doctors practicing in Northern Ireland and would comment that it is disappointing the consultation document does not outline the procedure through which voluntary sector representation will be selected. We would also note that the primary legislation does not allow for the appointment of additional members without the approval of the Department.



In relation to membership, NICCY remains concerned that where there are significant gaps in representation, mechanisms must be developed to address this. Examples of this include ensuring strong links with the judiciary and adult mental health services. We would also highlight the need to review the effectiveness of Board representation.

To ensure the effectiveness of the Safeguarding Board, members and joint members, must carry the delegated authority to speak on behalf of their organisations. The role and responsibilities of members should be clearly set out and we ask that the Department clarifies if Membership Agreements are being developed for this purpose.

Regulations 5 – 9: Arrangements for disqualification, tenure, resignation and termination of appointment of Chair and lay members

NICCY has strongly endorsed the principle that the Safeguarding Board should have an independent Chair selected through the public appointments process. The independence of the Chair must go beyond the appointments process and we would draw attention to the need for the Chair to act as a ‘critical friend’ to government and statutory authorities.

NICCY observes that arrangements within the Regulations should reflect best standards in public appointments processes and procedures. We note that the resignation notice period for the Chair is only 30 days while the termination of appointment applies when the Chair is absent from Board meetings for 6 consecutive months which appears to be a lengthy timescale.

Regulation 10 and Schedule 1: Meetings and proceedings

NICCY welcomes the frequency with which the Board will be required to meet and would encourage meetings to be held in public, where appropriate and in accordance with concerns set out in Schedule 1. It is also important that Board minutes, as well as those of Panels and Committees, are publicly available.

Regulation 11: Appointment of deputy chair



We note that the deputy Chair will be selected by the Board from those who have been appointed by the Department through the public appointments process.

Regulation 12: Annual report

The annual report should outline the activities of the Safeguarding Board but must also offer an analysis of the strengths and weaknesses of safeguarding arrangements, including identifying trends and new concerns in child protection. Reporting should reflect key areas of the Board's responsibilities, such as, assessing the effectiveness of action taken to safeguard children at local and regional levels.

The reporting process should ensure alignment between the Board report and those of its constituent Committees and Panels, with the Board report reflecting these. In submitting evidence on the primary legislation, NICCY advocated that where the Department had issued directions to the Board these should be publicly documented and we welcome the inclusion of this in the annual report. We are supportive of the requirement in primary legislation that the report is laid before the Assembly and note this should be publicly available as soon as is practicable.

Regulations 13 -15: Staff, premises and expenses

NICCY notes that arrangements for the Safeguarding Board as an unincorporated statutory body housed within the Public Health Agency must ensure it can operate independently. The Department must make sure that the Board has the staffing and resources required to discharge its functions effectively.

Regulation 16: Case Management Review function

NICCY strongly supported the primary legislation statutory responsibility placed on the Board in relation to Case Management Reviews (CMRs). CMRs should provide a robust review process to reflect on cases where, for example, children have died or experienced significant harm or where there are concerns that agencies have not worked effectively together to safeguard children.



Due to the Commissioner's concerns about the effectiveness of these processes, a protocol with the Health and Social Care Board was developed to enable NICCY to monitor CMRs and associated action plans and update reports. We acknowledge the recent work that has been undertaken by the Health and Social Care Board and Regional Child Protection Committee to review CMRs that were conducted under the legacy health and social care arrangements. It is important that a focus on ensuring greater consistency across the CMR process and in the implementation of learning continues in the transition to the Safeguarding Board.

NICCY recommends that the draft Regulations place a positive duty on the Safeguarding Board to review the implementation of CMR action plans and monitor update reports. It is of concern that the consultation document is not accompanied by draft guidance for the CMR function and we would note that this should be subject to consultation.

Safeguarding Board (Northern Ireland Act) 2011: Section 3 (5) and 7 (1)(b)

NICCY also welcomed the statutory responsibility placed on the Safeguarding Board in relation to reviewing information regarding child deaths. However, as we have previously expressed to the Department, it is of great concern to the Commissioner that the draft Regulations do not take account of the Board's specified Section 3(5) function in this area or the Section 7(1)(b) requirement to establish a Child Death Overview Panel.

The Commissioner asks that the Department clarifies the rationale for this and outlines how work in relation to this function will be progressed. We request that this information, which will form the basis of any decision by NICCY to consider further action, is provided within four weeks.

We note that the Regulations do not address a number of other prescribed functions, such as, keeping under review the effectiveness of what is done by each member and advising the Health and Social Care Board and Local Commissioning Groups and request that the Department provides further information on this.



Regulations 17-19: Exercise of functions in relation to the development of policies and procedures and promotion of communication with children and young persons

NICCY welcomed the strengthening of the duty placed on the Safeguarding Board in 3(7) to promote communication with children and young people which we called for during the Assembly Committee consideration stage of the primary legislation. We consider that engaging with children should be an active duty placed on the Board and that the voices and experiences of young people, gathered through this function, should inform the work of the Board.

We are supportive of Regulations 17(a) and 19 which provide substantive direction for this function requiring the Board to take account of the views of children on the effectiveness of safeguarding arrangements and to ensure a range of methods, including direct communication, are used for this purpose. It is again unfortunate that the draft guidance being developed for this function has not formed part of the consultation and we would ask the Department to clarify if guidance will require the Board to establish a Committee for the purposes of Section 3(7) of the legislation.

Regulation 20: arrangements to safeguard and promote the welfare of children

NICCY welcomes the extension of this duty to the voluntary and British Medical Association Safeguarding Board members.

Regulations 21 – 29: Safeguarding Panels

NICCY welcomes the establishment of Safeguarding Panels and observes that the arrangements for Panels and Panel Chairs largely reflect those of the Board. The structure of the Safeguarding Board will result in significant areas of work being undertaken by Panels and it is important that there are strong links between them and the Board and also that Panels operate consistently across Northern Ireland.

We note the recruitment of Panel Chairs by the Department through the public appointments process and observe that Chairs may therefore not be required to be members of the Safeguarding Board. The provision for Panels to have additional



members is also welcome and should ensure that membership takes account of locality needs.

We note the functions of Panels as documented in the Regulations and would highlight that they must maintain a strong focus on child protection functions, particularly in the transition and bedding down period of the new arrangements.

We assume that the reference in Regulation 27 (d) is intended to refer to 33 (d) as 33 (e) is not listed.

Regulations 30 – 33 and Schedule 5: Case Management Review Panel

NICCY welcomes Regulations to further define the statutory responsibility of the Board in relation to CMRs. We are supportive of the requirement for the Panel's annual report to summarise the recommendations from CMRs and comment on their implementation. The report should also present a clear assessment of concerns, including trend analysis, where appropriate across CMRs.

However, in order to ensure that there is effective and consistent implementation of learning from CMRs across Northern Ireland we recommend that the Regulations specify that as part of their function, the CMR Panel has a duty in relation to the implementation of CMR action plans and progress reports. The Committee should also have the function of ensuring that CMRs have been conducted in accordance with guidance. The development of associated guidance must outline how CMR Chairs and members will be selected and clarify the procedure for the Board accepting CMR reports and action plans. The Department should also confirm if the guidance will permit the Board to conduct other forms of case review.

We have raised with the Department that, due to our particular role in this area, NICCY should be able to attend such meetings of the CMR Panel and request such information as deemed necessary by the Commissioner. This should also be applied to the Child Death Overview Panel when it is established. It is of particular importance during this period of transition in child protection arrangements that NICCY, as the statutory body with the principal aim of promoting and safeguarding the rights and best interests of children, is able to meaningfully monitor the adequacy and effectiveness of safeguarding arrangements in this way.



Other comments

NICCY's understanding is that the establishment of the Safeguarding Board will not impact on the Scheme of Delegation which currently operates between the Department, the Health and Social Care Board and Health and Social Care Trusts. It is important that the Department ensures this is the case and that there is clarity in the remit of the Board and all other agencies.

NICCY welcomes confirmation by the Department that the Safeguarding Board will be regarded as a relevant authority in relation to Article 4(1) (c) of 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003).

Equality and human rights implications

NICCY would observe that the Regulations, in seeking to strengthen arrangements for the purposes of safeguarding and promoting the welfare of children, should have a positive impact on children and young people. We would however note that in developing the Regulations and guidance, the Department must remain mindful of the needs and vulnerabilities of particular groups of children. For example, research has identified that children with disabilities and long term illness are at greater risk of physical abuse⁵ and NICCY, along with the other UK Children's Commissioner, has expressed concern regarding the special protection needs of separated children subject to immigration or trafficking procedures.⁶

6.0 Conclusion

⁵ Cawson P., Wattam C., Brooker S. and Kelly G. (2000) Child Maltreatment in the UK: A Study of the Prevalence of Child Abuse and Neglect, (London: NSPCC).

⁶ NICCY (2008) Children's Rights: Rhetoric or Reality, A Review of Children's Rights in Northern Ireland 2007/08, (Belfast: NICCY).

UK Children's Commissioners (2011) Midterm Report to the UK State party on the UN Convention on the Rights of the Child. Available at:

http://www.niccy.org/uploaded_docs/2011/Mid%20Term%20report/UNCRCMIDTERMREPORT_FINAL.pdf



Key Recommendations

- NICCY welcomes the establishment of the Safeguarding Board and requests that the Department ensures that the Regulations are compatible with the UNCRC.
- The Department should ensure that NICCY has opportunity to meaningfully advise on the Regulations and guidance and that guidance will be subject to consultation.
- The membership of the Safeguarding Board, as well as its overall effectiveness, should be reviewed.
- The annual reporting process of the Board and its constituent Panels and Committee should be aligned and reports should offer an analysis of the strengths and weaknesses of safeguarding arrangements.
- The CMR Panel should have the function of overseeing the implementation of recommendations and action plans and of assuring the Board that reviews have been conducted in accordance with guidance.
- The Department should outline the rationale for not referencing the Board's Section 3(5) duty to overview information in relation to child deaths and Section 7(1)(b) requirement to establish a Child Death Overview Panel in the Regulations within 4 weeks.
- NICCY should be provided with the opportunity to attend such meetings of the CMR and Child Death Overview Panels and request such information in these areas as deemed necessary by the Commissioner.
- The Safeguarding Board must ensure that the views and experiences of children and young people inform its work and the Department should clarify if a Committee for the Board's 3(7) function will be required to be established.

