

Written Evidence to the Committee for the Office of the First and Deputy First Minister 24 February 2016

NICCY Priorities

Since coming into office in March, 2015 I have identified priority areas for the work of NICCY which are implementation of the UNCRC, child poverty, mental health and educational inequalities. As part of this process we have engaged with over 500 young people from 8 to 21 (in keeping with my remit) from across NI and from a variety of communities and settings.

Your Voice Matters

The young people we spoke with confirmed that the issues we had identified were important but also raised a number of others which can be broadly summed up in the categories of safety and respect. Many young people reported not feeling safe to be themselves particularly if they are lesbian, gay, bisexual or transgender and many stated that the presence of paramilitary-type organisations means many do not feel safe in their communities. The issue of bullying also was of significant concern. Again young people stated that they feel stereotyped or experience a lack of respect from adults such as the police, bus drivers and shop keepers making everyday life uncomfortable and difficult.

Through this widespread engagement with children and young people, one area that was consistently raised was the “legacy of the conflict”. The impact of the Troubles and the divisions underlying it, continue to significantly impact upon the lives of our children and young people all of whom were born after the Belfast Agreement. It is no coincidence that in NI we have a 25% higher prevalence of mental ill-health and higher rates self-harm amongst our children than in Britain. The most recent figures show that NI continues to have the highest rate of suicide in the UK. The communities most impacted upon by mental ill-health are also those most socio-economically deprived and with the lowest levels of educational attainment. These are the communities most deeply affected by the NI conflict and the children living in these communities deal daily with the ongoing impacts of a conflict not of their making and which supposedly ended before they were born. Reports of activity by non-state forces have been confirmed by young people across both communities who have stated that there is increasing recruitment to paramilitary organisations often through coercion or in payment for drug debts. Young people perceived to be involved in crime or anti-social behaviour continue to be excluded from

their communities. One of the young people NICCY spoke to reflected that, “*The conflict is not so much between communities, but within communities*”. It is my intention to take this work forward and is an issue that the Commissioner for Victims and Survivors and I have agreed we will work together on. Young people in Northern Ireland want to be active participants in all relevant discussion regarding Northern Ireland’s future.

Review of Commissioner for Children and Young People (NI) Order, 2003

NICCY was founded under the Commissioner for Children and Young People (NI) Order 2003. Article 24 of that Order makes provision for review of the legislation and for the Commissioner to make reports on it to the First Minister and Deputy First Minister. This was first done in 2007 when a substantial report was made recommending amendments to the legislation. No reply was ever received. In 2013 the exercise was repeated and an updated report was submitted in compliance with Article 24 of the legislation again recommending amendments to increase the effectiveness and efficiency of NICCY. To date both my predecessor and I have had several meetings with officials and Ministers providing more detail to aid decision making. In spite of this no formal reply has been received, I find this delay to be wholly unacceptable.

I have some concern with regards to the move of NICCY to the Department of Communities and the implications this may have of the process already commenced on the review of the legislation.

UNCRC reporting

NICCY’s role is to promote and safeguard the rights of children and young people in NI and in order to do this I am required to have regard to the United Nations Convention on the Rights of the Child. The UNCRC periodic reporting cycle is therefore a vital aspect of our work, as it is about the UN formally assessing the actions taken by the UK and devolved governments to implement children’s rights. The outcome of each reporting period is a set of recommendations, or Concluding Observations, that are intended as advice to the governments on what needs to be done to better meet their commitments to children’s rights.

The formal examination of the UK state party will occur this year. The UK state party report was submitted in 2014, and we worked with the other three UK Commissioners to produce a joint UK-wide ‘shadow’ report to the Committee on the Rights of the Child, submitted on 1 July 2015. This provided an alternative assessment of the critical failings of the UK and devolved governments in respect of their duties to implement children’s rights across the UK.

Shortly after along with NGO colleagues we hosted, a ‘task force’ visit from Committee members to Northern Ireland in September 2015. The purpose of this visit was to provide the Committee members with direct experience of the situation facing children in Northern Ireland, to help inform the formal examination of the State Party this year. During the visit they met with NGOs and statutory bodies, as well as, and most importantly, children, young people and their parents, who were able to speak of their experiences of growing up in Northern Ireland and the particular challenges they face.

Following this, in October of last year, we travelled to Geneva to a ‘pre-sessional’ meeting with the UN Committee on the Rights of the Child, along with a number of children and young people, NGOs and other independent bodies from NI and across the UK. Having considered the various reports, their visit and discussions at the pre-sessional the Committee have published a ‘List of Issues’ requesting further information from the UK government. Having examined the list we are confident that the Committee have understood the many issues facing Northern Ireland’s children including participation of young people, mental health, the education system, child poverty and discrimination. The UK government are currently working to submit their formal response to the committee next week and we will be presenting an analysis of this to by the middle of April.

All of this work culminates in the formal examination of the State party which is due to happen in May or June, whereby officials from across the UK will be questioned on how they are implementing the UNCRC, and the Concluding Observations will be issue. Ultimately it is the response to the Concluding observations that is the most important part of the process and will form a significant part of NICCY’s work into the future.

The Children’s & Young People’s Strategy and The Programme for Government

The next Children’s & Young People’s Strategy is currently under development as is the framework for the next Programme for Government. It is NICCY’s role to act as Advisor to Government. As the Committee may be aware, under UN Committee’s General Comment No. 5, jurisdictions are called upon to develop a ‘National Action Plan for Children’ – the Children’s and Young People’s Strategy is viewed as such for Northern Ireland.

This Action Plan for Children and Young People must be embedded within the Programme for Government with all relevant strategies ‘flowing’ from this over arching strategy. It is vital; if we are improve outcomes for our children and young people, that we ensure effective implementation and delivery on clearly defined and achievable action and goals.

The Children’s Services Co-operation Act (Section 3) sets out the obligations on the Executive in relation to the Children’s & Young People’s Strategy highlighting the need to

identify clear outcomes (3.2.a), the actions by NI departments (among others) to achieve these (3.2.b) and the need to monitor delivery of these (3.2.c). This Act also states at Section 10(2) that the CYPS is to be laid before the NI Assembly 12 months after the Act received Royal Assent – this was received on 6 December 2015 and due therefore on 6 December 2016.

NICCY places great importance on the Children's & Young People's Strategy because the actions flowing from it will make a difference to the lives of our Children and Young People. NICCY recommends that this Committee and indeed the whole Assembly ensures 'due weight' is given to the next Children's and Young People's Strategy through appropriate articulation of it in the next Programme for Government.

Age Discrimination Legislation, Goods Facilities and Services

The Committee will be aware of the work NICCY has been doing in relation to OFMDFM's proposals to bring forward legislation to make it unlawful to discriminate on grounds of age in accessing goods, facilities and services. We have spoken on this issue previously at this Committee, as has the previous Commissioner as part of a joint delegation with the ECNI and the Older Person's Commissioner. Robin Allen QC also presented his thorough legal analysis to the Committee detailing his legal opinion, set out in his Expert Paper¹ which we secured jointly with ECNI that clearly stated that everyone, regardless of their age, should be included in and benefit from the protections of future Age GFS legislation. One of the principles of the UNCRC is the right of all children to be protected from discrimination. Similarly the European Convention on Human Rights as incorporated by the Human Rights Act 1998, protects against discrimination. Neither of these protections are age based. To legislate in a manner which allows children and young people under the age of 16 to continue to experience age discrimination in accessing goods, facilities and services including vital health services, education, policing, justice and leisure is in conflict with both of these Conventions.

There are many areas where children experience discrimination in accessing goods, facilities and services, from discriminatory policies employed by shops and leisure facilities to arbitrary age limits in accessing literacy support and the chronic underfunding of child and adolescent mental health services despite clearly identified need. NICCY and others in the children's sector have worked extensively with Government on this issue over a considerable period of time and have provided OFMDFM with a range of compelling

¹ Strengthening Protection for all Ages. Protecting children and young people against unlawful age discrimination in the provision of goods and services. Expert Paper, Robin Allen QC and Dee Masters BL, commissioned by NICCY and the ECNI, April 2013

evidence, which clearly highlights the need to include children and young people of all ages within the scope of future Age GFS legislation and expels the myth that there is any legal impediment to the inclusion of all age groups. I have spoken on this issue to a range of audiences and I convene regular roundtable discussions with children and young people's advocates with an interest in this area and the message that children of all ages need and have the right to be protected from discrimination is clear.

Article 7(4) of NICCY's founding 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. Despite my statutory remit I do not believe that any of the evidence we have provided to date has been taken cognisance of in progressing proposals for future Age GFS legislation. Prior to the consultation we were informed that the exclusion of under 16s from the scope of the legislation is a political decision that has already been taken therefore I await the publication of OFMDFM's report on the findings and outcome of the consultation with interest. The Committee will be aware that there is a statutory and common law obligation to take into account the views expressed in consultation and it is my understanding that the majority of responses expressed support for the inclusion of all age groups in future Age GFS legislation. I am aware that the Committee recently heard from OFMDFM officials and in the course of that evidence the issue of NICCY taking a formal complaint to the ECNI about the Age GFS consultation exercise was raised. I accept that this is a highly unusual situation however the ECNI's Investigation Procedure requires me to treat the complaint with the utmost confidentiality, and in particular avoid making any public statements about the complaint.² At present the ECNI is considering the complaint and when I can give further information to the Committee in line with the ECNI's Guidance, I will. In light of the importance of this issue to children and young people, the need to take account of the advice provided by my office and the support for the inclusion of all age groups in future Age GFS legislation, I remain hopeful that in the next mandate we will see the introduction of Age GFS legislation that includes everyone in its protections.

Child poverty act and child poverty strategy

The most recent government figures indicate that there are now 114,000 children living in relative poverty (after housing costs) in NI (26%)³. It is not evenly experienced across Northern Ireland with child poverty particularly high in inner city wards in Belfast and Derry, and in the West of the region.

² Para 1.7, Investigation Procedure Under Paras 10 and 11 of Schedule 9 of the NI Act 1998, Equality Commission for Northern Ireland (Jan 2010)

³ NI Poverty Bulletin 2013-14.

A report commissioned by the Office of First Minister and Deputy First Minister in 2014 provides projections of the likely levels of child poverty by 2020, and makes for worrying reading with absolute child poverty is projected to rise from 22.0% to 29% (compared to 24.5% in the UK generally).

Having committed in 1999 to eradicating child poverty across the UK, in 2010 the government set a number of legally binding targets to reduce child poverty by 2020. These included reducing the proportion of children in households in relative low income to below 10%, and those living in households in absolute low income to below 5%. The Child Poverty Act 2010 also required the UK and each devolved government to publish strategies outlining the actions that would be taken to reach the targets and annual reports on delivery, with the UK-wide strategy relating in the devolved nations to reserved matters. While a three year child poverty strategy was published in 2011, Northern Ireland is the only part of the UK where there is not a current child poverty action plan in place, despite the fact that, according to the Act, it should have been published in March 2014. We are very concerned at this delay in moving ahead on this important issue. This is despite the Executive's commitment in target 37 of the current Programme for Government to *'Fulfil our commitments under the Child Poverty Act to reduce child poverty.'*

The Committee will be aware, of the proposed amendments to the 2010 Act contained in the Welfare Reform and Work Bill currently in final stages at Westminster. Last Autumn I, and the other three UK Children's Commissioners, sent a letter to Lord Freud, advising of the importance of maintaining the four measures of child poverty contained in the 2010 Act. Together these provide the most robust indicators of child poverty, combining income deprivation, material deprivation and identifying the numbers of children living in poverty year after year.

The Committee will also be aware that legislative consent has been required for the changes to the 2010 Act contained in the Welfare Reform and Work Act relating to devolved matters, in particular the Welfare Reform changes agreed to in the Fresh Start Agreement. However, NICCY is very concerned that Legislative Consent would also be given to remove the statutory duty on the Northern Ireland Executive to produce Child Poverty Strategies every three years. As the child poverty statistics are collated in each jurisdiction and in our case, NISRA it is therefore, entirely within the powers of the Executive to both produce Child Poverty Strategies and continue to measure progress against these targets.

Conclusion

I am pleased to be presenting to the committee on Wednesday 24th of February and hope this paper assists the Committee to understand NICCY's position on the relevant issues. It

is clear that we are concerned about significant delay in progressing issues such as review of NICCY's legislation and non-compliance with legislative duty including a 2 year delay in the publication of the Child Poverty Act plan or the likely delay in publishing the Children's Strategy within a year of the passing of the Children Services Co-operation Act.

We will be happy to discuss all the issues raised in this paper and others that the Committee view as relevant for the work of NICCY.