



A GUIDE TO NICCY INVESTIGATIONS

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FOREWORD BY THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE

“In all actions concerning children... the best interests of the child shall be the primary consideration”
Article 3, UNCRC



My role, as Northern Ireland Commissioner for Children and Young People, is to safeguard and promote the rights and best interests of children and young people. As such NICCY is recognised as “an important mechanism” to ensure the implementation of the rights of children and young people.

The Commissioner for Children and Young People (NI) Order 2003 outlines the duties and powers of my Office, which includes the authority to investigate breaches of the rights of children and young people.

I invoke the investigative functions of the office in order to identify the most pressing breaches of children's rights with the intention of ensuring that public authorities accept their responsibilities to children and young people. This guide sets out how NICCY intends to carry out investigations, when and how they can take place and the circumstances in which it is appropriate for my office to investigate a complaint. It includes reference to the legislation under which my office was formed and the parts of that legislation which give me powers to investigate.

I can undertake general investigations and in certain circumstance can undertake formal investigations. Formal investigations give me specific powers regarding the production of documents and witnesses in relation to the matter and the power to report those who do not co-operate to the High Court. In addition I am given powers of entry in certain circumstances.

These powers assist me in carrying out my statutory role with regard to the children and young people of Northern Ireland.

The guide demonstrates the robust processes that we have introduced so that formal investigations are only undertaken when the legislation permits and when I am satisfied that it is the best method to realise the rights of the child or group of children.

A handwritten signature in black ink, appearing to read "Koulla Yiasouma".

**Koulla Yiasouma
NI Commissioner for Children and Young People**

NICCY LEGISLATIVE POWERS

NICCY was established under the Northern Ireland Commissioner for Children and Young People (NI) Order 2003.

The principal aim of the Commissioner in exercising her functions under this Order is to '*safeguard and promote the rights and best interests of children and young persons*'.

The duties of the Commissioner are to:

- ▶ Promote an understanding of the rights of children and young people;
- ▶ Keep under review the adequacy and effectiveness of law and practice relating to the rights and welfare of children and young people;
- ▶ Keep under review the adequacy and effectiveness of services provided for children and young people by relevant authorities;
- ▶ Advise the Secretary of State, The Executive Committee of the Assembly and a relevant authority on matters concerning the rights of best interests of children and young people;
- ▶ Take reasonable steps to ensure that children and young people and their parents are made aware of the functions of the Commissioner, the location of the Commissioner's office and the ways in which they may communicate with the Commissioner;
- ▶ Take reasonable steps to ensure that the content of any matter published by the Commissioner takes account of the age, understanding and usual language of any children and young people by whom it is intended to be read;
- ▶ Take reasonable steps to ensure that the views of children and young people and their parents are sought concerning the exercise by the Commissioner of her functions; and

- ▶ Take reasonable steps to ensure that the services of the Commissioner are made available to children and young people in the locality in which they live.

The general powers of the Commissioner include those to:

- ▶ Undertake, commission or provide financial or other assistance for research or educational activities concerning the rights or best interests of children and young people, or the exercise of her functions;
- ▶ Issue guidance on best practice in relation to any matter concerning the rights or best interests of children or young people;
- ▶ Conduct such investigations as she considers necessary or expedient;
- ▶ Compile information concerning the rights or best interests of children and young people;
- ▶ Provide advice or information on any matter concerning the rights or best interests of children and young people;
- ▶ Publish any matter concerning the rights or best interests of children and young people;
- ▶ Make representations or recommendations to any body or person about any matter concerning the rights or best interests of children and young people;
- ▶ Review the operation of advocacy, complaint, inspection and whistle blowing arrangements of relevant authorities;
- ▶ Review the advocacy, complaint and whistle blowing arrangements of relevant authorities in individual cases;
- ▶ Assist with complaints to relevant authorities;
- ▶ Investigate complaints against relevant authorities;
- ▶ Bring, intervene in or assist in legal proceedings; and
- ▶ Conduct formal investigations.

Legislative powers to Investigate

The 2003 Order gives the Commissioner the following powers in respect of investigations:

Article 8(3) of the Order gives the Commissioner the power, for the purposes of any of her functions, to conduct such investigations as she considers necessary or expedient.

Article 12(1) of the Order gives the Commissioner the power to conduct an investigation into a complaint made by a child or young person that:

- (a) His / her rights have been infringed by any action taken by a relevant authority; or
- (b) His / her interests have been adversely affected by any such action.

Article 16 of the Order gives the Commissioner the power to conduct formal investigations in relation to advocacy, complaint, inspection and whistle blowing arrangements of relevant authorities both generally and in individual cases. This is in addition to formal investigations in relation to complaints under Article 12.

INVESTIGATION PROCESS

On receipt of a complaint the Commissioner's Legal and Investigations team will determine whether the complaint falls within the remit of the Commissioner.

Article 13 of the Order sets out circumstances when the Commissioner cannot investigate a complaint.

These include:

- ▶ Where there has been unreasonable delay in making the complaint;
- ▶ Where the complainant had a right of appeal to a tribunal or remedy by way of proceedings in Court (unless unreasonable to expect them to have resorted to such a remedy);
- ▶ The commencement of criminal proceedings;
- ▶ The commencement of civil proceedings by anyone other than a relevant authority;
- ▶ The conduct of Court Proceedings; and
- ▶ A matter which is subject of an inquiry under the Inquiries Act 2005.

Some matters fall outside the remit of the Commissioner, these include:

- ▶ Private law matters between parents such as Contact and Residence Proceedings;
- ▶ Complaints against private organisations; and
- ▶ Complaints which fall inside the remit of another body, for example complaints against the PSNI which fall within the remit of the Police Ombudsman.

The Commissioner may not duplicate services, therefore if the complaint has been submitted to another body for investigation, this must be brought to the attention of the Legal and Investigations team at the time of submission to the Commissioner.

Complaint allocation

Upon receipt of a complaint the Legal and Investigations team shall decide how to deal with the complaint, once it is established that it falls within remit. If a matter is not within remit the complainant shall be signposted to the most appropriate organisation or person to assist them with their complaint.

The matter shall be brought to a case allocation meeting. The matter shall then be dealt with either as:

- ▶ A casework matter;
- ▶ An investigation;
- ▶ A Special Educational Needs (SEN) matter; or
- ▶ A matter for legal proceedings.

If a complaint is to proceed as a potential investigation, it will be allocated to an investigator who shall carry out an initial information gathering exercise. The purpose of this exercise is to establish if an investigation is warranted into the full circumstances of the complaint, or if there is potential for early resolution of the matter.

VOICE OF THE CHILD

Where a child or young person makes a complaint to the Commissioner which results in an investigation being taken forward, consideration will be given as to whether an investigator should meet with the child. It is extremely important that the voice of the child is heard in relation to any complaint they make, that their rights have been infringed, or they have been adversely affected by the action or inaction of a relevant authority.

If a complaint has been made on behalf of a child or young person by for example a parent, consideration will also be given as to whether it is appropriate to meet with the child.

The purpose of meeting with a child or young person will be to gather details in relation to the allegation and their views, it should be remembered that in investigations, we will not be acting as an advocate for the child.

When considering whether it is appropriate to meet with a child or young person in relation to the investigation, the following criteria shall be applied:

- ▶ Best interests of the child;
- ▶ Their age and understanding of the process; and
- ▶ The wishes of the child.

Investigation

If an initial information gathering exercise indicates that a full investigation is necessary, consideration shall then be given to ascertain under which of the Commissioner's legislative powers it shall be conducted and whether a formal investigation is required.

If a matter is identified which could be taken forward as a formal investigation, a meeting shall be convened by the Head of Department with the Chief Executive and the Commissioner to assess and decide whether we will proceed. Following necessary approval, the formal investigation processes will apply.

The following applies to all investigations irrespective of which statutory power is utilised:

- ▶ All investigations are carried out in private;
- ▶ All investigations are conducted from a neutral stance with the Commissioner being neither an advocate for the young person concerned nor an adversary to the relevant authority. This is necessary to ensure impartiality in the process;
- ▶ All necessary information shall be gathered, an analysis of this information carried out and a report shall be produced with recommendations contained therein; and
- ▶ Formal investigations shall be conducted in line with the Commissioner's legislative remit and powers.

EVIDENCE IN FORMAL INVESTIGATIONS

For the purposes of a formal investigation the Commissioner may require any person to supply information or produce documents relevant to the investigation.

For the purposes of such an investigation the Commissioner shall have the same powers as the High Court in respect of:

- ▶ The attendance and examination of witnesses, including the administration of oaths or affirmations and the examination of witnesses abroad; and
- ▶ The production of documents.

POWERS OF ENTRY

Where the Commissioner considers it necessary to do so for the proper conduct of a formal investigation, she may, at any reasonable time, enter any premises managed by a relevant authority in which:

- ▶ A child or young person is living or being looked after;
- ▶ A child or young person is being detained under any statutory provision; and
- ▶ Education, health, welfare or other services are provided for children or young persons.

On entering any premises the Commissioner may:

- ▶ Make an examination into the state and management of the premises and the treatment of children and young people therein;
- ▶ Inspect and take copies of any documents or records which are required by any statutory provision to be kept there;
- ▶ Interview in private, any child or young person present on the premises; and/or
- ▶ Interview in private, any other person present on the premises who is employed there, whether the employment is paid or unpaid, under a contract or otherwise.

DISCLOSURE OF INFORMATION

Information obtained by the Commissioner or her Officers in the course of, or for the purposes of, a formal investigation shall not be disclosed except where that information is likely to constitute a threat to the health or safety of any person. In those circumstances the Commissioner may disclose that information to any person to whom the Commissioner thinks it should be disclosed, in the interests of the health or safety of the person at risk.

The only other circumstances where information may be disclosed are:

- ▶ For the purposes of, or an inquiry into, proceedings for a criminal offence;
- ▶ For the purposes of proceedings against any person for obstruction or contempt in the conduct of a formal investigation; and
- ▶ In the report into an investigation made under the Order.

The Commissioner and her Officers shall not be called upon to give evidence in any proceedings, other than those mentioned above, of matters coming to her or their knowledge in the course of a formal investigation.

**Northern Ireland
Commissioner
for Children and
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