

Response from the Northern Ireland Commissioner for Children and Young People to 'Transfer 2010- Guidance to Primary School Principals, Post- Primary Schools Boards of Governors and Principals, and Education and Library Boards/Education and Skills Authority on Post Primary School Admissions for 2010/11 School Year'.

29 April 2009

1.0 Introduction

The Office of 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 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).

The Commissioner for Children and Young People has in the past stated clearly her position regarding academic selection; it is not in the best interests of children and young people and should not be used as a means of selecting pupils for transfer to post primary.

The amendment of the Education (Northern Ireland) Order 2006 by the Northern Ireland (St Andrew's Agreement) Act 2006 has created a position whereby schools can still use academic selection. While we welcome the moves from the Minister and the Department to develop a new process for transferring to Post Primary school, we are concerned at the current fragmented process and the continuation of academic selection by some schools, which will continue to have a negative impact on children and young people in particular those from disadvantaged backgrounds.

Indeed the Commissioner has been approached by a number of parents and groups of parents who are concerned about the impact that continued selection and uncertainty is having on their children who are currently in Primary 6. The



parents explained how the current unregulated system of transfer has created confusion and anxiety for the children. There is also the stress for the children of the possibility of having to sit a number of entrance tests, in schools choosing to use academic selection criteria. In particular we are concerned that this guidance does not impose legal restrictions on what criteria can be used by schools. The current situation is not in the best interests of children and young people.

While we recognise the efforts of the Minister to find a solution by producing this guidance we do not feel that this guidance will provide any solution to the problem or clarify transfer procedures for parents or teachers. As the guidance cannot prohibit the use of academic selection then this guidance cannot meet the stated aims that *“admissions decisions are fair and give each child the opportunity to reach his/her full potential”*.

We encourage the Minister to work with all stakeholders to find a compromise and solution to this problem to ensure that no child is subject to unfair discrimination whether it is academic selection or any other criteria, and that all children have equality of opportunity in educational outcomes.

Any decisions regarding future arrangements for transfer to post primary should be based on and informed by the UNCRC and research. NICCY found that consultations with our Youth Panel on ‘Transfer 2010’ showed the extent to which their opinions on academic selection varied greatly depending on their own experiences of selection. Indeed this was reflected in the Kids Life and Times Survey¹ which showed *“The kids most likely to want to keep the test were those who got an A grade. Twice as many of the kids with A grades as those with D grades wanted to keep it”*.

NICCY recommends the Northern Ireland Executive bring forward a legislative framework to regulate the transfer system. In doing so state clearly the core principals that will underpin the transfer system. This process needs to be informed by research and based on the 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

¹ http://www.ark.ac.uk/klt/pdf/comic_web.pdf



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. NICCY would recommend the proposals are reviewed against the following relevant Articles within the UNCRC and incorporate them in the policy as underlying principles, to ensure that the rights and best interests of children and young people are upheld and 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 and reference within the policy

- Article 28- the right of the child to access education based on equality of opportunity
- Article 29- education should be aimed at developing the child's talents and personality. It should also teach them about human rights and prepare them for adult life.
- Article 5- the right of the child to be supported and guided by their parents

These articles should be used as the minimum standards to which the policy on transferring pupils to post primary schools should met in order to fulfill children's rights

In its Concluding Observations in its Report on the United Kingdom in October 2008, The United Nations Committee on The Rights of the Child (CRC) made a specific recommendation about the transfer test, stating that the State Party

"Put an end to the two tier culture in Northern Ireland by abolishing the 11+ transfer test and ensure that all children are included in admission arrangements in post-primary schools"



NICCY welcomes moves from the Department of Education to introduce a new system for transferring pupils to post primary school as recommended by the CRC as proposed by the Burns Report in 2002. However as previously noted we are concerned at the impact the Northern Ireland (St Andrew's Agreement) Act 2006 has had on efforts to abolish academic selection. Clearly retaining some form of academic selection is against the recommendations of the CRC and is not in the best interests of children and young people or the fulfillment of their rights. We again encourage the Minister and the Department to work with relevant stakeholders to devise a new system for transfer to post primary school that ensures no child is subject to a form of academic selection.

3.0 Research

In 2007/08 NICCY conducted a major review on the current state of children's rights in Northern Ireland, '*Children's Rights: Rhetoric or Reality, A review of Children's Rights in Northern Ireland*²'. This review highlights the gaps, problems and difficulties in the protection, promotion and implementation of children's rights in Northern Ireland.

In relation to admission to post primary schools this review highlighted the negative impacts that academic selection has had on the education system in Northern Ireland and recommends

"in further developing her proposals for 2010 onward, the Minister take full cognisance of the provisions of the UNCRC and, in particular, the four general principals which are not adequately protected within the current system" (NICCY: 2008:278).

The Kids Life and Times Survey (2008) carried out by ARC, surveyed primary seven children. In relation to the future of the transfer test, the children were split as to whether it should continue or not, however those who favoured keeping academic selection were more likely to have gotten an A in their eleven plus. One fifth of young people surveyed felt under pressure by the transfer test, and most had felt some pressure.

The following comments made by members of the NICCY youth further demonstrate the different opinions held on selection criteria, in many cases reflecting their own positive – or negative – experiences.

"if you are nervous it's the fault of the teacher for making it out to be a such a big deal, the problem is not the test it's the reaction of the teacher"

² Copies of this report can be sent to committee members on or after 17th February on request.



"fair for people it works out for, but not for those who don't"

"you could have an off day, everyone has had one yet this could seal your fate should have ongoing assessment"

"can have off days but the exam should also reflect what work and effort they have put in revising etc"

"I went to a grammar school and so think that I have developed an attitude that I wouldn't be where I am today if I had been in a school full of messers"

"I think catchment areas would be a good idea if all schools were equal but they aren't pupils from bad areas will go to bad schools so I just don't know"

"the problem isn't the 11+ it's the attitudes and expectations surrounding it. If teachers were better trained and less pressure was put on the young people it would all be fine"

"I think children should stay at same school until 14 (3rd year) and then be streamed into academic or vocational routes with equal positive emphasis on both. There are however issues over who should decide this- I think young people themselves should as by 14 they would be mature enough to know what direction that want to go"

4.0 Consultation with Children and Young People

NICCY has regularly expressed through a broad range of policy and consultation work our concern that Section 75 is not being adequately enforced in respect of the age criterion and that public authorities are consistently failing in their duty to meaningfully consult with children and young people on issues that have direct relevance to their lives. Article 12 of the UNCRC also provides that children have the right to express their opinion in matters directly impacting upon them and have those views given due weight in accordance with the age and maturity of the child.

In addition to this Action 4.1 of Our Children and Young People- Our Pledge Action Plan 2007-2008 states that all Departments should 'consider the views of children and young people in the development of new policy that impact on their age group'. This action places an emphasis on all Ministers to ensure that their department is actively seeking the views and opinions of children and young people.



NICCY would like further information on how the department has sought the views of children and young people at this stage of the consultation.

5.0 Other Relevant Policies or Legislation

NICCY welcomes the efforts that have been made by the Minister and the Department to end the use of academic selection as a means to transferring pupils from primary to post primary school as recommended by the Burns Report in 2002.

However we would like to know how the criteria that are proposed in 'Transfer 2010' has been influenced by previous research and reviews carried out by DE; namely the Burns Report and the Costello Report and the previous consultation on Admissions Arrangements in 2005.

In relation to admissions criteria the Burns Report recommended that there should be

"A statutory requirement on all schools to use the following year 8 criteria (in order of priority)

- *Parental (and pupil) preference i.e. first preferences would have priority over second preference applications, etc. in circumstances where the school was over subscribed at any parental preference stage, the Board of Governors should be required to apply the criteria set out below*
 - *Siblings already at school, or eldest child of a family*
 - *Children of staff at the school, provided this applies to all staff employed at the school*
 - *Compelling individual circumstances, i.e. special consideration for social, welfare or other personal reasons, which would be supported by appropriate documentary evidence to justify different treatment from the generality of other applicants*
 - *Proximity to the pupil's home i.e. those for whom the school is the nearest suitable school"* (executive summary Burns Report:2002: Para 33)

How has the admissions criteria recommended in the Burns Report been used to develop the criteria in 'Transfer 2010'?

In particular why have some of the recommended admissions criteria such as children of school staff or compelling individual circumstances not been included in the criteria in 'transfer 2010'?



The Costello Report which looked at responses to the Burns consultation was established to look at new arrangements for post primary education. In relation to admission criteria the Costello report recommended the following

- Family connections- siblings/ children of employees of the school/eldest child
- Geographical factors
- Final Criterion- proximity to the school/random computerized selection.

How have the admissions criteria recommended in Costello been used to inform the development of the criteria in 'transfer 2010'?

Costello also recommended that DE

"Commission demographic and geographic research in order to inform how the geographic factors should be expressed in the menu of criteria from which schools may draw. The term 'nearest suitable school' will also need to be defined" (Costello: 2005: 55)

NICCY would like to know if the Department did commission this research and if so what consideration was given to the findings when developing the admissions criteria outlined in transfer 2010?

We would also like to know how DE has reached the definition of the term 'nearest suitable school' as defined in this consultation?

In 2005 DE consulted on "New admissions Arrangements for Post Primary Schools", the criteria included the following

- Family focused criteria
- Community based criteria
- Geographical criteria
- Tiebreakers

NICCY would like to know the outcome of this consultation and how the findings of that consultation informed the development of the criteria outlined in Transfer 2010.

6.0 Comments on the Proposal

6.1 General comments on criteria



NICCY recognises that there are no simple, uncontested ways of deciding, in situations where schools are oversubscribed, how to determine which children should be given a priority over others. This issue is not only contentious in Northern Ireland, but is subject to debate and disagreement internationally.

There is no simple option when drawing up criteria, as each option benefits some children over others and for that reason will be opposed by some, while welcomed by others. However, decisions on criteria for selection must be guided by the principles stated in the UNCRC as outlined in section 2.

6.2 Consultation with children and young people as part of the transfer procedures.

From the outset NICCY stresses that the best of interests of children and young people must be central to this process, a child must have access to the school that best meets their needs.

Children and young people and their parents must be involved in deciding what school the child goes to; parents must be given the opportunity and information to decide what school is best placed to meet the needs of their child.

6.3 Status of Guidance document

NICCY would like further information as to the legal status of this guidance. In a recent debate in the Assembly the Minister stated *"in the absence of regulations, I have issued guidance. The policy of the Department of Education is Transfer 2010. Schools will be obliged in law, to have regard for the guidance."*³ What this means in practical terms is not clear however it is clear that this guidance will not be uniformly applied in all schools across Northern Ireland. In essence this means that schools can use whatever form of selection criteria they feel is most appropriate for their school, including academic selection.

The consultation document itself states that *"primary schools, the principals and Boards of Governors of post-primary schools and the Education and Library Boards/ Education and Skills Authority will, therefore be required to 'have due regard' to this guidance when issued"*. NICCY believes that "have due regard" is open to wide interpretation, and that it would be helpful if the Department would clarify exactly what this means and outline the obligation that this will place on stated bodies.

³ <http://www.niassembly.gov.uk/record/reports2008/090324.pdf>



We are concerned that this will result in schools being subject to numerous legal challenges from parents. Who will be responsible for financing and defending challenges against schools decisions?

NICCY is concerned that it is not compulsory for all schools to use these criteria for admitting students, therefore what will happen to schools that choose to use other criteria such as academic selection and how do schools demonstrate to the department that they 'have regard to' this criteria?

NICCY notes the motion that was passed by the Assembly on 24 March 2009:

That this Assembly notes that schools may choose to use an examination as part of their entry criteria under the Minister of Education's 2010 guidelines; calls on the Minister of Education to re-commission the CCEA test, she abandoned on 2 February 2009, that schools may then use for a maximum of two years; and calls on the Executive to agree new, legally binding guidelines for post primary transfer for use from 2011.

We request information on the actions the Minister has taken in response to this motion?

6.4 Comments on specific criteria

Applicants who are entitled to free school meals

NICCY welcomes the recognition from DE that children from lower socio-economic backgrounds have low educational achievement, and that the transfer system needs to overcome inequalities experienced by children in the current transfer system. While we welcome this recognition we do not see how the Free School Meals criterion will work in practice.

NICCY is concerned that this criterion will not be used in all schools as Boards of Governors must only 'have regard to' this guidance, therefore some schools may choose to use this criteria and others may not. If this criterion is to be successful then it must be implemented uniformly across all schools. Therefore, while we strongly support the use of a measure that will ensure equal access to post primary schools by children living in poverty, it is difficult to make detailed comment on how it will work in practice until we see the further information that will be issued by DE later.

Sibling

The inclusion of siblings in the criteria reflects a family friendly approach; however this is not necessarily in the best interests of children and young



people. An example of this would be a child who is not the eldest child, but who needs to attend another school from their siblings because they have different needs or circumstances such as special educational needs. The Department must ensure that a child in this circumstance has access to the school that best meets their own individual needs.

Eldest child

NICCY welcomes the use of eldest child in the criteria as this should ensure that eldest children are not disadvantaged by the 'siblings' criteria.

Feeder/named primary school

While this seems like a practical criterion to use, its adoption would have implications for admission to primary schools. Parents may choose primary schools depending on what post primary schools they are feeder to, this may cause over-subscription of certain primary schools. Again this criterion may unfairly discriminate against certain children. Indeed, depending on how schools select feeder schools, this method of selection may prove to be a highly discriminatory.

NICCY requests further information on how schools will choose what primary schools are feeders to their schools. If this criterion is adopted, it will be vital to ensure that there is a requirement for post primary schools to undertake wide consultation in determining feeder schools, including consultation with children and parents in the area.

The consultation document states that *'the department may intervene where it considers that this criterion may be used in a manner that disregards these specific points'*. However as schools are only required to 'have regard to', it is not clear that the Department will be in a position to intervene if the school can illustrate that they did indeed have regard to the guidance but decided not follow it.

It is essential that the selection of feeder schools is a transparent process, and in each case allows children, parents and primary schools to feed into the decision-making process. There must also be a process for appealing these decisions and for the Department to intervene when necessary.

Parish (with nearest suitable school)

NICCY would like to know if the use of parish criteria is specific only for entrance to catholic maintained schools and if DE will issue to guidance to schools outlining how they choose to include a parish in their criteria. As with the 'Feeder schools' criteria, this must be done in consultation with children, parents and the Department.



Catchment areas (with nearest suitable school)

The introduction of a catchment area for entry into post primary may in effect restrict or reduce the choices of parents/children, as they will only be able to choose from schools in a given geographical area.

We are concerned about the impact that geographical criteria will have in areas of deprivation, in effect this could segregate children based on socio-economic factors.

NICCY recommends DE issue guidance to schools which outlines how catchment areas will be determined and ensure this is used in tandem with 'nearest suitable school'.

NICCY welcomes the need to use this criterion along with that of 'nearest suitable school' as this should ensure that children do not find themselves falling outside the catchment areas of all available schools.

Nearest suitable school

NICCY is uncertain as to what this term means and how will schools define what a 'suitable' means. The consultation defines this as 'nearest to the child's normal place of residence', how then does this differ from the catchment area?

NICCY cannot comment on this criterion until we see a clear definition of 'nearest suitable school', the current consultation suggests this will be based on the child's address. It is not clear how this would differ from using a catchment area or a parish.

Random selection (tie breaker)

NICCY would advocate that, when considering children's applications to post primary schools, their needs or circumstances be the overwhelming consideration. However where one child's circumstances cannot be distinguished from another then arguably a random selection may be appropriate.

Academic admissions criteria

NICCY strongly agrees that academic selection should not form part of the new admissions criteria for transferring to post primary and regrets that this guidance, while recommending that schools should not use academic selection, cannot prohibit them from doing so.

We are extremely disappointed at the current situation whereby schools are setting their own entrance exams and parents and children are confused over



how transfer 2010 will take place. NICCY, while welcoming the Minister's attempts to address matters does not believe that this guidance provides any clarity as to how schools will admit pupils and how children and parents will choose a school.

We believe a legislative framework is needed to regulate the system so that schools cannot set their own entrance exams to choose pupils based on their academic ability. We strongly urge the minister to engage with all relevant stakeholders and look at the range of possible solutions that have been put to the minister from various organisations.

7.0 Conclusion

While we welcome efforts of the Minister and Department to develop a new system for transferring pupils from primary to post primary school, we do not feel that this guidance provides parents or schools with any clarity on new admissions arrangements. Further information is needed to outline how schools will demonstrate they have had regard to the criteria and how specific criteria will be practically applied by schools.

Currently schools can choose to develop their own criteria and continue the use of academic selection, which is unfair and not in the best interests of children and young people. We need to see legislative reform to ban the use of academic selection and clearly outline the new procedures for transferring pupils which will be used uniformly in all schools promoting equality of opportunity for all pupils.

We strongly urge the Minister to begin a process of engaging with all stakeholders and political parties to develop an agreed solution and bring forward legislative reform.

NICCY hopes that this advice is useful in finalising the Guidance document. However, we are concerned that the Guidance has already been issued to schools and seeks assurance that consultation responses will be given full consideration and Guidance will be amended where appropriate. We request further information on the timeframe for reviewing the Guidance.



Recommendations

- **NICCY recommends the Northern Ireland Executive bring forward a legislative framework to regulate the transfer system. In doing so state clearly the core principals that will underpin the transfer system. This process needs to be informed by research and based on the UNCRC.**
- **NICCY recommends DE issue guidance to schools which outlines how catchment areas will be determined and ensure this is used in tandem with 'nearest suitable school'**

Questions

How has the admissions criteria recommended in the Burns Report been used to develop the criteria in 'Transfer 2010'?

In particular why have some of the recommended admissions criteria such as children of school staff or compelling individual circumstances not been included in the criteria in 'transfer 2010'?

How has the admissions criteria recommended in Costello been used to inform the development of the criteria in 'transfer 2010'?

NICCY would like to know if the Department did commission this research and if so what consideration was given to the findings when developing the admissions criteria outlined in transfer 2010?

We would also like to know how DE has reached the definition of the term '*nearest suitable school*' as defined in this consultation?

NICCY would like to know the outcome of this consultation and how the findings of that consultation informed the development of the criteria outlined in Transfer 2010?

NICCY is concerned that it is not compulsory for all schools to use these criteria for admitting students, therefore what will happen to schools that choose to use other criteria such as academic selection and how do schools demonstrate to the department that they 'have regard to' this criteria?



NICCY would also like to know what actions the Minister has taken in response to the motion on the 2010 guidance passed by the assembly on 24th March 2009.

NICCY requests information on the timeframe for reviewing the Guidance document in light of consultation responses.

References

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

